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Floor Debate
March 28, 2012

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the fifty-first day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Reverend Jack Sample of Wood River, Nebraska, Senator Dubas' district. Please rise.

REVEREND SAMPLE: (Prayer offered.)

SENATOR GLOOR: Thank you, Reverend Sample, for your multiple visits to this Chamber and starting us off with a prayer. I call to order the fifty-first day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Enrollment and Review reports LB310, LB391, and LB902 as correctly engrossed. And that's all that I have, Mr. President. (Legislative Journal page 1187.) [LB310 LB391 LB902]

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

CLERK: LB1053A is a bill by Senator Louden. (Read title.) [LB1053A]

SENATOR GLOOR: Senator Louden, you're recognized to open on LB1053A. [LB1053A]

SENATOR LOUDEN: Thank you, Mr. President and members. LB1053A is the A bill that goes with the tourism bill that sets tourism up as a cash-funded agency of its own.

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And all it does is, the A bill, is "The unexpended General, Cash, and Federal Fund balances existing on June 30, 2012, are hereby reapportioned to Agency 91, Program 618." It takes some money where they did have it and moves it out of the DED over into the new program, which would be Agency 91. With that, I would ask that you vote green on it. Thank you, Mr. President. [LB1053A]

SENATOR GLOOR: Thank you, Senator Louden. Members, you've heard the opening on LB1053A. Are there senators wishing to be recognized? Seeing none, Senator Louden, you're recognized to close. Senator Louden waives. Members, the question is, shall LB1053A be advanced to E&R Initial? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1053A]

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB1053A. [LB1053A]

SENATOR GLOOR: The bill advances. We now move to LB1054A. Mr. Clerk. [LB1053A LB1054A]

CLERK: LB1054A by Senator McCoy. (Read title.) [LB1054A]

SENATOR GLOOR: Senator Pahls, you're recognized to open on LB1054A. [LB1054A]

SENATOR PAHLS: Thank you, Mr. President and members of the body. I want to start with this A bill deals with cash funds, not General Funds. The Department of Insurance generates income by charging fees to companies they regulate. The department needs authority to spend these funds, and the A bill will give them that authority. The department projects the need for a .5 FTE at an estimated cost of \$26,972 of cash funds for reviewing filings for these products, as provided by the bill. The one thing I will add is the department is not charging these companies a fee based on LB1054, but the insurance companies that provide the financial backings to these companies are required by current law. It is out of these fees that the money will come from to pay for this appropriation bill. Thank you. [LB1054A LB1054]

SENATOR GLOOR: Thank you, Senator Pahls. Members, you've heard the opening on LB1054A. Are there senators wishing to be recognized? Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives. The question before the body is the advancement of LB1054A. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1054A]

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB1054A. [LB1054A]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB1054A]

CLERK: LB1087A by Senator Nordquist. (Read title.) [LB1087A]

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SENATOR GLOOR: Senator Nordquist, you're recognized to open on LB1087A. [LB1087A]

SENATOR NORDQUIST: Thank you, Mr. President. And good morning, members. LB1087A will appropriate the funds for the administration of the Natural Gas Fuel Board that LB1087 would create to advise the Energy Office on the promotion, regarding the promotion of natural gas vehicles in Nebraska. This is on the high end...it was the high end of their recommendations to get this board up and running, and it comes out of their Energy Office cash funds, which the Fiscal Office tells me there is...at the end of last year there was over \$700,000 of ending balance in that fund. I'd appreciate your support of this A bill. Thank you. [LB1087A LB1087]

SENATOR GLOOR: Thank you, Senator Nordquist. You've heard the opening on LB1087A. We now move to discussion. Seeing no senators wishing to be recognized, Senator Nordquist, you're recognized to close. Senator Nordquist waives. The question is the advancement of LB1087A to E&R Initial. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1087A]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB1087A. [LB1087A]

SENATOR GLOOR: The bill advances. Continuing with General File. [LB1087A]

CLERK: LB1145A by Senator McGill. (Read title.) [LB1145A]

SENATOR GLOOR: Senator McGill, you're recognized to open on LB1145A. [LB1145A]

SENATOR MCGILL: Thank you, Mr. President and members of the body. This A bill, of course, accompanies the human trafficking bill that the body passed through last week. The costs associated with it are largely due to the task force that we're setting up; and, in fact, I'm going to try to work between now and Select File on finding ways to cut down some of the costs. Right now the travel costs for task force members is estimated at about \$18,000 in the first year and \$12,000 in the second. I'm looking at maybe taking away reimbursement for service on the task force. And then the task force is charged with conducting a study, which has been estimated at \$35,000, and then \$5,000 in assistance to develop human trafficking curriculum to educate our law enforcement and judicial officers. With that, I would ask your support, and I will continue to work on this fiscal note. Thank you. [LB1145A]

SENATOR GLOOR: Thank you, Senator McGill. Members, you've heard the opening on LB1145A. Are there senators wishing to be recognized? Seeing none, Senator McGill, you're recognized to close. Senator McGill waives. The question before the body is the advancement of LB1145A to E&R Initial. Those in favor vote aye; those opposed vote

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nay. Have all voted who care to? Record, Mr. Clerk. [LB1145A]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB1145A. [LB1145A]

SENATOR GLOOR: The bill advances. Continuing with General File, senator priority bills. Mr. Clerk. [LB1145A]

CLERK: Mr. President, LB239, Senator Janssen. (Read title.) The bill was discussed last evening, Mr. President. When the Legislature adjourned for the evening, committee amendments, as offered by the Government, Military and Veterans Affairs Committee were pending, as was an amendment to those amendments by Senator Mello, specifically AM1627. (Legislative Journal page 106.) [LB239]

SENATOR GLOOR: Thank you, Mr. Clerk. Members, we return to discussion on AM1627. Senators in the queue: Lautenbaugh, Mello, Hansen, and Adams. Senator Lautenbaugh, you are recognized. [LB239]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wanted to take this opportunity to read an e-mail that I received yesterday on this topic, and the subject is: From an Elderly Hispanic Nebraskan. "Senator, I wanted to write and encourage you to support LB239, including voting for AM727, and supporting cloture. I support this bill for a number of reasons because I fit into several of the categories that opponents of the bill say would be disenfranchised. I am an elderly, 76 years young, please don't call me old, Nebraskan who also happens to be a minority, a full-blooded Hispanic. I take a lot of pride in the fact that I still stay active in the political process, and I don't like that opponents of the bill have insinuated that someone of my age or ethnicity wouldn't be able to figure out how to update my voting status or get a photo ID. I recently had to move from Senator Janssen's district to Senator Loudon's new district, and one of the first things I made sure I took care of was updating my voter registration. It seems important to me to make sure I got this done." Well, what are we to make of this? Here we have a woman saying: I'm not daunted by what we're proposing. And by the way, I think it's helpful to talk about what the amended bill actually does again. It says you're supposed to show an ID at the polling place; if you don't have an ID, we're going to mail you a card that you show at the polling place; and if you don't have the card, we're going to let you vote provisional. And that's what we're talking about here. And that's being compared to evils from many generations prior, and it's being called disenfranchisement. And I was quoted in the paper as saying something I said yesterday, that anyone who is disenfranchised or discouraged by that far from onerous requirement would be discouraged by a rainy day from voting. And I feel that some of the debate on this has gotten, well, heated, of course. That much is safe to say. And I was a little angry last night at some of the things that were said about the proponents of this bill and the attempts that were made to educate us on this topic. But I don't know how you explain the e-mail from this woman. And she's out there, as she describes

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herself, a full-blooded Hispanic woman, and saying she's offended that we're saying that somehow this would be a burden on her that she could not possibly navigate, or that it would be so hard to navigate that she probably won't even try. She'll just quit is what the assumption is, apparently, by the opponents. I don't buy that. And I've stood at this mike many times and talked about the things we talk about for voting and the things we want to do for voting. And I can't underline enough that we live in an age where, if you want, we'll just send you a ballot through the mail. But the argument is: that's not good enough, because it costs money to send it back; you have to put postage on it--even though we all know or we're told that the post master delivers them to the election commission, postage due. They're supposed to put postage on it; so that's too much of a cost. So we provide early voting at the election office--which is centrally located in Douglas County, by the way, now at 114th and Dodge, in my case. It was downtown previously. I preferred it to be downtown. But it's not downtown anymore, so it is where it is. And you can go there for several weeks, running up to the election, and vote in person if you're of a mind to. Or you can go to your polling place on election day from 8:00 to 8:00; you can find the way there and find the time. I fail to see how anyone...I bristle when people use the word "disenfranchisement," by the way,... [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR LAUTENBAUGH: ...because I fail to see how the regime we have actually disenfranchises anyone. I think we're using that word sloppily when we use it in this debate. And we had a lot of talk about Nebraskans being honest yesterday. And I said, well, do you lock your doors, do you really believe all Nebraskans are honest? And then a comment was made, well, no, the voters are honest certainly. Well, that's the problem. We're worried about the people who aren't necessarily registered voters and aren't necessarily honest. That's what we're dealing with here. And if you're willing to concede those people exist, then you should be willing to at least countenance this modest, modest, miniscule, non-onerous attempt to provide some security, some additional security to the voting process. And I think as I described it at the outset was exactly how it works. And this woman who e-mailed me seems to get it and seems to be offended by the implication that she can't get it, and... [LB239]

SENATOR GLOOR: Time, Senator. [LB239]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB239]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. (Doctor of the day introduced.) Continuing with discussion, the Chair recognizes Senator Mello. [LB239]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And with no avail, our good friend, Senator Lautenbaugh, provided I think a good segue in regards

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to continuing this debate on LB239. One, I have plenty of e-mails, as you all do probably, from young Caucasian Nebraskans who share the complete opposite view that the e-mail Senator Lautenbaugh just read from an elderly Hispanic woman. The reality is opinions on this issue vary and we know that. So the reality is, to single out one anecdote over another, I just don't see how that ultimately makes any kind of argument, because we know that there is a variety of opinions on this issue. But one opinion that has yet to be, I guess, verified in fact, which it was surprising--I know yesterday we had a lengthy conversation off and on about the challenges in Douglas County in regards to some of our closing of our polling precincts--was the Douglas County Election Commissioner last week on a well-known radio station stating that he didn't see this as a problem. LB239 is not really needed because in Douglas County, he said, we know if people are impersonating someone because we would see it when they show up at the polling location. Someone would show up and try to vote and someone would have voted in their stead. And there's been no documented instance of this occurring. So with Senator Lautenbaugh's, I guess, allusion to unregistered voters coming and voting in our places at polling locations, the people who do this day in, day out, in his former profession, has stated this doesn't occur, which at the end of the day the proponents of this legislation have still not been able to identify one instance in the state of Nebraska where there has been voter impersonation. There's not been one instance documented of the need for LB239. Now, colleagues, we deal with pieces of legislation every day where there is a solution in search of a problem. And I've heard many of you stand up and exclaim that statement on pieces of legislation where it doesn't impact Nebraska. It's not here yet, it doesn't impact our state, it's never impacted our state, and it's simply a senator putting forth a piece of legislation they feel is necessary, but ultimately it doesn't impact the state because it's not a problem here. This is one of those instances, and to some extent it's shocking to not hear people stand up and say that. For one reason or another, it's okay to do that on issues regarding whether it's labor law, whether it's other criminal penalties, whether it's some kind of educational program, but when it comes to trying to limit our constitutional freedoms we're silent. The underlying issue of LB239 is saying that we have a problem or we're going to have a significant problem of voter impersonation. That's never been the case and right now that's not the case. Talk to your election commissioner and talk to your county clerk. It's not a problem anywhere in the state, because if it was there would be documented cases. There would be criminal charges filed, and that's not occurring. So the question that you have to ask, even with AM1627 that I have in front of us that I think points out the hypocrisy of the committee amendment, which says a voter registration card, a black-and-white business card-sized piece of paper counts as your voter ID, but your state agency ID, your Nebraska Legislature ID doesn't count,... [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR MELLO: ...your child's University of Nebraska ID doesn't count, or those of

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you who represent Native American tribes, their federally recognized tribe cards do not count, shows there's something else going on with this issue. There's something else going on with LB239. And with all due respect, I can't compromise my view that this is an infringement on Article I, Section 22. I've been very clear from the beginning that I think this is an infringement on our constitutional rights, an attack on a fundamental freedom we have as Nebraskans when there's not a problem that exists. AM1627 simply points out the large, gaping loopholes that exist under the current bill and the existing bill. No matter what you try to do, there will always be existing loopholes if we move forward of trying to require some kind of photo ID, quote, unquote, for people to vote in Nebraska when there's no voter impersonation problem. [LB239]

SENATOR GLOOR: Time, Senator. [LB239]

SENATOR MELLO: Thank you, Mr. President. [LB239]

SENATOR GLOOR: Thank you, Senator Mello. The Chair recognizes Senator Hansen. [LB239]

SENATOR HANSEN: Thank you, Mr. President. Members of the Legislature, it was a little dark in here last night when Senator Haar passed out this business truism, and I wondered if he would yield to a question about it. [LB239]

SENATOR GLOOR: Senator Haar, would you yield? [LB239]

SENATOR HAAR: Yes. [LB239]

SENATOR HANSEN: Thank you, Senator Haar. Good morning. I don't know what book you got this out of, but I think it's upside down, I really do. We need to measure; we need to understand, control, and improve. And I assume that that may be in one business model, but I operate our business on a different model, and we use management by crisis, unfortunately, every once in a while. So whether we have time to study the problem efficiently enough, sometimes people would say we probably don't. This issue that we're talking about today looks like it has been studied by former President Jimmy Carter, former Secretary of State Jim Baker, and the report that Senator Hadley was alluding to last night. If you turn this upside down, we still have all four elements of the triangle. Would that be right? [LB239]

SENATOR HAAR: Yeah, the words are upside down, but yeah, exactly. [LB239]

SENATOR HANSEN: Yeah, but they're still there. And we have had some measure already through this study by the other group that Senator Hadley was talking about last night. So if we turn the diagram upside down, we still have a measurement, we've done the measuring. We can still control and understand. But if you put improve in that

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bottom line, we have a lot more room to improve upon something. And I think that's what we're doing with LB239, is improving on something that a group has measured, they've looked at, they've tested, and they think that there is a problem. Thank you, Senator Haar. I think that's all. I just wanted to point out that I think your triangle may be upside down, but certainly all the aspects of the triangle are accurate; but I'm not sure we need much more measuring or much more studying. We study things to death in here. We study things, and then we come up with legislation that may or may not be logical, may or may not pay for itself, may or may not have enough transparency to continue on. But we study and study and study. I've noticed that the study resolutions that we've had have been growing more and more, and the Clerk reads those off every day, and there's more and more study resolutions every year. Senator Avery talked last night about people not...that we may not be trusting the people of the state of Nebraska to be who they say they are. Even though we can't point at voter fraud, we know as a nation that it's there. Some other groups that evidently don't trust us is when we go to write a check; we have to show ID. And I still get asked for an ID when I write a check. I don't have a debit card, my wife doesn't have a debit card, so we still write checks. And I know it's old-fashioned but we still write checks, and every once in a while we get asked to provide actually who we are. You have to have an ID to donate blood, to rent a vehicle, to obtain school transcripts if you move out of state. You still have to have an ID to tell who you are. Even though we know who we are, they may not. [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR HANSEN: We're so used to showing an ID for so many things anymore that this is a logical step, that it just proves that you are who you are. Through these amendments that Senator Janssen has okayed, he said they're okay, it's starting to lose its effect. I think we've watered this down to the point where I still support it but I'm not sure it's going to do what it needs to do. But to get a marriage license, probably the preacher knows who you are but the courthouse doesn't. To get a driver's license, you have to either show your old one or a birth certificate. To get a passport you have to show photo ID plus maybe your birth certificate. I went through that a year ago. To sign up for the armed services, they want to make sure you are who you are, and that, I'm sure, is a follow-up from 9/11. [LB239]

SENATOR GLOOR: Time, Senator. [LB239]

SENATOR HANSEN: Thank you, Mr. President. [LB239]

SENATOR GLOOR: Thank you, Senator Hansen. Senators wishing to be heard: Adams, Burke Harr, Ken Haar, Janssen, Schilz, Krist, and others. Senator Adams, you are recognized. [LB239]

SENATOR ADAMS: Thank you, Mr. President. Members, I'll shed no new light on

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anything, which is not unusual, I suppose, when I come to the mike; but for the next 5 minutes I want to think out loud, and maybe it will help my own thinking. I look at voting as more of a political rather than a civil right, in contrast to speech; hence, we set an age, we require registration. When this bill came up, long before we came to debate, the thought in my mind is and was and still is the states have been given the authority; as long as we don't run up against U.S. constitutional amendments and case law, we have been given the authority to set qualifications for voting. And the history that Senator Cook spoke to yesterday has been one of expanding the franchise on the part of the U.S. Constitution, primarily, and states responding to that. Hence, if the federal government says that the age is 18, we can lower it to 17 if we want in Nebraska, but we can't raise it to 19. I think my understanding is correct. Now when I look at this bill and I attempt to weigh in my mind where to go, I really have two questions: One, are we creating an impediment that runs up against federal mandate, case law, the constitution; and what's it going to cost? The green copy of the bill, I think there was a real problem, I really do. Poll tax, the Twenty-Fourth Amendment. I don't think it would work. The committee amendment I think clears some of that up. Clear as mud, maybe to some, but maybe takes the Twenty-Fourth Amendment out of it. So now the question is still in my mind, is it an impediment? We have early balloting, absentee balloting. That's not going to change. If this were to pass, you walk into the voting booth, show an ID of some kind--I guess with the committee amendment now, a voter registration card or some other photo ID issued by the government. If you don't have it, a provisional ballot. Provisional is already in law. And when they check the provisional ballot, I understand that basically it's just to verify your registration and make sure you voted in the right precinct and that you haven't voted someplace else. Just standard procedure. So I'm sitting here asking myself, is that voter registration card that's in the committee amendment or the photo ID an impediment? I question whether it is. But you know what I haven't gotten a clear answer to yet is, aside from all the other things that are being discussed, if all we did was this committee amendment, what's it going to cost? And I've heard everything from 50 cents to \$15. And who's going to pay it? If it's the citizen paying it, we got a Twenty-Fourth Amendment problem, in my limited legal opinion. So then it's the county and/or the state. What is it going to cost? I'm thinking out loud here, as I told you at the beginning. And you know what? I think, in my opinion, this debate started out last night, last week, a month ago... [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR ADAMS: ...with verbal fistfight; and somewhere, to me, around 7:00 or 8:00, it turned into verbal chest butting. And now we're looking at each other saying, well, I think I'm right, well, I think I'm right; and we're stuck in the mud. I wish I could offer a solution but I can't. I'm just thinking out loud. Thank you, Mr. President. [LB239]

SENATOR GLOOR: Thank you, Senator Adams. Senator Burke Harr, you are recognized. [LB239]

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SENATOR HARR: Thank you, Mr. President. Members of the Legislature, good morning. It's good to see you all here this morning. So what is this about? This is about protecting a fundamental right to vote. We are protecting the constitution. I agree with that 100 percent. What this bill does, though, is people who have done nothing wrong, nothing illegal--repeat, nothing illegal--we are going to deny their right to vote. Think about that. Do you want to be responsible for that? I know we have some hearsay evidence out here where people say they have e-mails, and in those e-mails people say they are certain things. We don't know that for a fact. But what we do know is if we vote for this today, what we do, people who have done nothing wrong will be denied their constitutional right to vote. I want to thank Senator Janssen for introducing this bill and drawing a light to an issue of what I believe he believes is voter fraud. And I'd just like to ask him a couple of questions if he is available. [LB239]

SENATOR GLOOR: Senator, would you yield? [LB239]

SENATOR JANSSEN: Yes. [LB239]

SENATOR HARR: Good morning, Senator Janssen. How are you today? [LB239]

SENATOR JANSSEN: Good morning. I'm doing fantastic. [LB239]

SENATOR HARR: Great. Hey, what is the purpose of this bill? [LB239]

SENATOR JANSSEN: This is to stop voter fraud at the polling place before it can happen, really. Impersonation. [LB239]

SENATOR HARR: Okay. And what types of...I guess my...what types of fraud exist, voter fraud that you're aware of exist? [LB239]

SENATOR JANSSEN: Well, right now, as I explained many times on the mike last night with voter impersonation, we're not measuring for it right now. Just like I talked with Senator Ashford's truancy bill, the reason we take attendance in the morning is so we know who's there and who's not. By the same rationale, if we don't check, nobody ever misses school. I basically want to start taking attendance at the polling places. [LB239]

SENATOR HARR: Okay. And is there anything that prevents you from taking attendance at this time? [LB239]

SENATOR JANSSEN: Right now we don't require an ID when we get there. We don't know who it is that's showing up. We just have to take them at their word. [LB239]

SENATOR HARR: Well, we do know some things. We do know, for instance, whether

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that person is registered to vote. We know their age, we know their address, and we know their signature. So we do have some forms that we can look at, and it's not...and it hasn't been looked at. So I guess my question is, what do you believe is the most prevalent form of voter fraud? [LB239]

SENATOR JANSSEN: It's really not what I believe. It's this bill is pointed toward voter impersonation at the polling place and to stop that at the polling place, and that's why I put LB239 forward with AM727, in hopes of stopping it. And in some cases that may be proactive, I understand, and get that you don't see a problem with that. We can agree to disagree on that; and I think we have, cordially, over the past few months on that. [LB239]

SENATOR HARR: Okay. [LB239]

SENATOR JANSSEN: But it's just somewhere where I'd like to start on this. And I think we both agree that voter fraud, if it's out there, needs to be stopped. I think it is; maybe you don't. I don't know. [LB239]

SENATOR HARR: Okay. Thank you very much. I appreciate that. And I appreciate that last word, "I think." I think, ladies and gentlemen. So what are we going to do? We're going to deny people the constitutional right to vote on a thought, on a whim--no basis, none. In reviewing constitutional law, and I do not hold myself out as a constitutional scholar one bit, but in constitutional law there are three things you look at: rational basis, intermediate scrutiny, and strict scrutiny. Strict scrutiny is the highest level and... [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR HARR: Thank you. Strict scrutiny is a form of judicial review the courts use to determine the constitutionality of certain laws, and those laws are those that affect our most fundamental rights. Ladies and gentlemen, voting is our most fundamental right. It determines what our government looks like. So to pass this strict scrutiny, the Legislature must have passed law to further a compelling government interest--not a whim, not a thought--a compelling state interest. Yes, voter fraud is a compelling state interest, but we have no proof it exists, none. There has been no attempt, no attempt to even prove that it exists. I have yet to hear of an attempt if there is. And it must be narrowly tailored to achieve that interest. What is that interest? Stopping fraud. Well, this is just stopping it at one place. Ladies and gentlemen, we don't even know if this is the most prevalent place of fraud. Let's do a little work. You know what? Why spend all our time on this when the most prevalent form of voter fraud may be through the mail? It may be early voting. [LB239]

SENATOR GLOOR: Time. [LB239]

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SENATOR HARR: Thank you. [LB239]

SENATOR GLOOR: Thank you, Senator Harr. Senator Ken Haar, you're recognized. [LB239]

SENATOR HAAR: Mr. President, members of the body, for me, this is an emotional issue. "Suffrage is the pivotal right." Susan B. Anthony said that, and I believe that's absolutely true. And, you know, the voter ID at first makes sense. You say, well, we have to show our ID all over the place. But I do think my triangle is right that I handed out yesterday. First of all, before you try to control something and improve it, you have to know what you're trying to control. And I've submitted an amendment, it's way down the road, but it would give money to our Secretary of State here in Nebraska, the Nebraska Secretary of State, to study the whole issue of voter fraud in this state, to see and focus in on the place where we can make the most difference--if it exists. But there are so many problems with this right now; and I spent a lot of time doing what-if thinking on this. Senator Carlson brought up this whole idea of the insult to people who have been voting their whole lives and now they're required to fill out a provisional ballot because perhaps their driver's license has expired, things like that. We can use a passport in this bill, but a passport has no address so you can...you know, there's a loophole. If somebody is really going to try this and they find somebody that you know is not going to vote, and they have a passport, they can just go and show their passport. The whole thing of provisional ballots, there's going to be a large increase in provisional ballots, because as you look at how people vote--and I've done a lot of that--older people tend to vote more often, and they're going to come to the poll with their regular expectations. And, yes, they can fill out a provisional ballot, but we know that provisional ballots are very expensive at the county level. Somebody suggested only 500 new provisional ballots. Hogwash. There will be tons of provisional ballots. We heard one case where the poll worker wasn't trained. Well, if...the Omaha case where the poll worker went and says, are you this person, are you this person, and so on? Well, that's training of the poll worker. And my amendment would...in my amendment, that would be part of this study. Senator Krist brought up a case of sending postcards to new voters where a lot of them came back. That would be studied by the Secretary of State to see if that's a problem. Or if people who vote for the first time or just moving. We don't know what the problem is. I think the potential for voter fraud--and most of it probably is not even intentional--but it would be vote by mail, where somebody, for their elder relative, says, well, I know how they would vote; I'll vote. That's voter fraud. We need to look into that. This whole thing...and people said...this is another quote and I don't know who said it but, yeah, it may be a little bit of a bother. Okay, if suffrage is our pivotal right in this democracy, then before we add a little bother to the process we better know what the problem is. Another area of potential fraud is voter registration. In a study by the Secretary of State, we would see if that is the main issue. If there's voter fraud in this state, we need to focus our efforts on those areas where we know voter fraud is

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occurring. [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR HAAR: Thank you. And I believe a study by our Secretary of State would do that. But to put bother, to put some kind of burden in the way of our basic pivotal right in this democracy, I think is a big problem. And we need to explain to those constituents who would say we need this right now, that we need to find out where and if the voter fraud is happening and then work on those areas. And I'll continue this my next time at the mike. Thank you very much. [LB239]

SENATOR GLOOR: Thank you, Senator Haar. Senator Janssen, you are recognized. [LB239]

SENATOR JANSSEN: Thank you, Mr. President, members. Once again, I appreciate the, and I can't say this enough, the tone of the debate that we've had the three days that we've taken this measure up. I want to go over a few things dealing with the bill again, the actual LB239 and AM727, and some of my opening remarks, the premise behind the bill. The U.S. Supreme Court, Crawford v. Marion, did hold this up. It was an Indiana law held up at the Supreme Court stating that the states had a legitimate interest in preventing voter fraud, modernizing elections, and safeguarding voter confidence. Safeguarding voter confidence is the one I think that should be highlighted the most in showing a photo ID when you show up at the polling place. I think that is the one that resonates with a majority of Nebraskans, a vast majority of Nebraskans, is that security of showing your ID when you show up at the polling place. And I know several of you have said that that's not the end-all, be-all, and it may not be. But there is some sense of security in showing that, and that's the reason many people do that in all walks of life. I think we've covered several of them here today and throughout this debate. This is a key recommendation of the Commission of Federal Election Reform, cochaired by former President Jimmy Carter and James Baker in their 2005 report "Building Confidence in U.S. Elections." The National Conference of State Legislatures: 16 states request or require voters to provide ID; an additional 16 require ID but not necessarily requiring one with a photograph. And presently, we're not one of those. Certainly I think Nebraska and its unique Unicameral can find a way to make this happen in the state of Nebraska as I believe now it's 33 other states have done. It's estimated that 30,000 Nebraska voters are out there right now that would not have a driver's license or a state-issued ID. We came up with a reasonable Nebraska compromise in the committee in AM727 that would allow the Secretary of State to mail, they can identify these people and then let the election commissioners from each county know who these people are, and these people now will be sought out, sent a free voter registration card, excuse me, voter card that says they can go...use for voter identification at the polling place. They can show up, they could show that right now. That is free. It costs about 50 cents to produce. It comes to \$15,000 per election. That is certainly worth it, in my mind, to

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safeguard elections. Again, that's 98 percent of Nebraskans that voted in our last...in the 2008 elections had either a driver's license or a state-issued ID. The most recent study taken in 2010 of Nebraska registered voters, I can't hit on this enough, nearly 80 percent of Nebraska voters, nearly 80 percent of the people that voted each and every one of us into this body, said requiring an ID is the most important thing to them when they show up at the polls. That deserves our attention, nearly 80 percent of the people polled, that's...even with a margin of error. Seventy-five percent nationally said that's more important. I've always contrasted that, and I've done it several times on the floor, that in that same poll they asked, would you like an election day holiday? In essence... [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR JANSSEN: Excuse me, Mr. President? [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR JANSSEN: Thank you, Mr. President...an election day holiday, essentially a day off, only 50 percent said that's better. I'm reading in the paper this morning, it may have been brought up: ACT, SAT will require a photo with applications. Security is beefed up after students hired stand-ins to take college entrance exams. I think that can speak for itself of why it's important to have people show an ID. People are standing in. If they didn't bring an ID, hmm, I wonder how that could happen? I'm working, I've worked with some other people to deal with the provisional ballots. I've worked with Senator Carlson. We've talked. If we can get this through I would appreciate a cloture vote. We're going to do that soon. I would appreciate that when it comes up so we can work on some of these issues I think that would lessen provisional ballots and make the bill much better. I think it's a good bill. [LB239]

SENATOR GLOOR: Time, Senator. [LB239]

SENATOR JANSSEN: Thank you, Mr. President. [LB239]

SENATOR GLOOR: Thank you, Senator Janssen. Senator Schilz, you're recognized. [LB239]

SENATOR SCHILZ: Thank you, Mr. President. Good morning, colleagues. I'm sorry if I sound a little tired. We had a long night last night and I'm sure that you guys are in the same place. As I look at what we're dealing with here this morning from last night, I see that we've brought up quite a few issues in debate where we can see that there could be questions about whether or not we have enough safeguards to keep our elections true. I think we can talk about that. As I go around the room and as I talk to folks that are for or against the bill, almost to a person every one of them says, oh yeah, let me

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tell you about this time when I was here watching this, or that time when I was there. There are questions. There probably are issues with stuff. You know, as Senator Mello says, a solution looking for a problem, I don't want to say twist that around a little bit, but quite honestly, that's what leadership does. When you lead you anticipate the problems and you take care of them before they become an issue. You wonder why people don't like legislators so often or the Congress so often? It's because a lot of times they sit there, and on issues that everybody can understand and can see the problems, we can't get to a solution. I would like to make sure that we don't end up with one of these problems in the future. Is it the biggest...is it the largest area of voter fraud out there? I don't know. You can tell me yes; you can tell me no. Is there an opportunity for people to commit voter fraud this way? The way I see it and the way we've all talked about this, yes, there is. Should we have...I have the same concerns as Senator Council on the mail-in ballots. I'm not sure there should be any difference. I don't know. I'm not sure why there is. So if nothing else, this debate has shown us that we should question. We shouldn't be afraid of that. And we shouldn't look upon that as a threat, because it's not. Who would have thought anything about cyberbullying, ten years ago? But maybe if we would have thought about it a little bit we could have solved some issues and saved some of those people. That would have been leadership. That would have been good. And I'm not saying we're doing bad things here, but I'm saying it's okay to think a little bit ahead of a problem. Will it ever happen? Let's hope not. It is about protecting the right to vote, and those people that are qualified to vote deserve that protection. All of us who have run for elected office deserve that protection. Everyone in the state of Nebraska deserves that protection. We heard about today's vote taking away people's opportunity to vote. Well, that can't be further from the truth. As all of us here on the floor of the Legislature understand, this is the beginning of the conversation. This is a vote on General File to see if we will discuss it again on Select. And what I'm hoping is that everyone will sit here and understand that this is how our process works. Last night we sat here and we worked hard to try and identify those areas where we could come together with Senator Mello, Senator Council, and others. [LB239]

SENATOR GLOOR: One minute. [LB239]

SENATOR SCHILZ: Were we successful in that? Not necessarily, but we're working towards it. We're starting...we understand that there's some things that we can do to make this bill a little more palatable to some. I get that. I believe Senator Janssen introduced this bill because of what constituents asked him to do, and I will fault no one in this body for stepping up to do what a constituent asks. I believe that this is the place for this conversation. I believe that we are going to have a vote that comes up here, and I know that there are solutions out there that can put this one small area to rest so that we can move on and we can address the issues like Senator Council talked about, like Senator Mello talked about, I'm all for that, like Senator Ken Haar talked about doing a study. Let the conversation continue. Thank you, Mr. President. [LB239]

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SENATOR GLOOR: Thank you, Senator Schilz. Senators waiting to be heard: Krist, Lathrop, Nordquist, Lautenbaugh, Nelson, Council, and others. Senator Krist, you're recognized. [LB239]

SENATOR KRIST: Thank you, Mr. President. Good morning, Nebraska and colleagues. I ran out of time, which doesn't happen very often. I try not to go the full 5. But last night when I talked to you about issues that happened during my election process and those things that would give me cause for pause in terms of why did those voters disappear in that year-and-a-half period, where did they go, I support this being a General File discussion. I support Senator Lathrop's quest for a constitutional question, Senator Council's request for a constitutional question, Senator Janssen's request for looking at one portion of voter potential misuse or fraud or political influences that would cause our system to be diluted in any way. I support again the study mechanism that's been talked about several times on this floor. I support many things about making sure that our system of voting, of electing representative officials is protected from any kind of malfeasance, misfeasance, whatever you might want to call it. I don't think we get there without having the discussion. We had a good discussion yesterday. I disagree a bit with Senator Schilz. I do think we had that discussion yesterday and we're leading into it today. I think the greatest potential for misuse of the system exists in the mail and the provisional ballots. I know in my election, again, I was only elected by 55, but there were a great number of ballots that were thrown out by the election commissioner when he started hand counting. What was that all about? I think we need to look at that and look and see what happens. And between General and Select, I think Senator Janssen's work and Senator Schilz's work has just begun. If we're going to do a reform, if I'm going to vote yes on Select for this bill, then I'm going to have to see those other areas...I, as an elected official, will have to see that those other areas are being addressed as well. Let's have that discussion. The one thing I did last night...and I know you all do the same thing. Senator Brasch talked about it yesterday in terms of her public meetings or town hall meetings. I look at those e-mails, and I look at those that are willing to recognize that they're in my district and talk to me or call me and talk to me. It's about 60/40 in District 10. About 60 percent of the people want us to look at the situation. They don't want, as happened in New York and New York City, in a couple of elections ago, 1,000 dead people to be voting in an election. Now I would not pretend to relate this situation to fashion trends, but I will tell you, I see things happening on the Coast, because I fly all the time; and those trends continue to walk towards the Midwest, towards the conservative Midwest. I think if it can happen someplace else, it can happen here. We need to take a look at it. That's why I have the resolve at this point to tell you I will vote for cloture, and I will vote for this bill to go forward so that the work can now start by Senator Janssen, Senator Schilz, Senator Council, Senator Lathrop. And let's have a discussion about the situation as it exists and what we can do to prevent the erosion of our wonderful system. Thank you, Mr. President. [LB239]

SENATOR GLOOR: Thank you, Senator Krist. The Chair recognizes Senator Lathrop.

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[LB239]

SENATOR LATHROP: Thank you, Mr. President. Good morning, colleagues. I want to join Senator Janssen in expressing appreciation for the tone of the debate. Regardless of who has spoken or which side you take in the debate on LB239, I think it has been an admirable debate. It has been done, I think, in a very professional way and in a manner that we can be proud of, particularly given that both sides feel very strongly about the subject matter. I want to talk a minute about the problem, or maybe the way to put it is to talk about the current safeguards, because we have a couple of secondhand stories, some of them not even in Nebraska, a couple of secondhand stories. But let me walk you through, if we can, the guy who might impersonate, okay? And this person who we suspect or who we are imagining is out there trying to impersonate, understand what they have to do to do that. First, they show up at the polling place. The first problem that person is going to have is knowing if I'm going to pretend to be John Harms, where do I have to show up, because he doesn't have a postcard, this impersonator doesn't, so he's going to have to show up to the right place. When he gets there, he's going to face two poll workers, one a Republican, one a Democrat, right? They will make sure that everything is done correctly and properly. And our person who is going to impersonate would be 1 of probably 10,000 or 11,000 votes in a legislative race, okay? Unlike the guy that's stealing something out of my car, this guy is 1 out of 11,000 votes, and they're going to be facing a felony if they do it. And when they get to the poll worker and say, I'm John Harms, I want to vote, they'd have to know that John Harms has not voted already, they'd have to know that John Harms did not vote provisionally, and they would be facing a felony. In other words, is somebody for 1 out of 11,000 votes in a legislative district going to take the chance of a felony? And he could get caught at any point in the process because he doesn't know what John Harms has already done with his vote. That's the safeguard that's in place. That's the reason there isn't a problem, and that's the reason no one can offer a problem. But we have heard in the debate that we're not putting much of a barrier in front of the right to vote. In fact, it was compared to a rainy day. But the fact is, colleagues, and maybe if I can just step back for a second and talk about the electric chair. The electric chair was determined unconstitutional, not by our U.S. Constitution but by our state constitution. And that may be where I would expand on what Senator Adams said, and say it's not enough to be okay with the U.S. Constitution; it has to be okay with the state constitution. So the standard for what we are doing today is our state constitution, and our state constitution does not permit a small impediment; it does not permit a little hindrance. It permits no hindrance and no impediment. That is the standard. And so this bill, in my judgment, is problematic for two reasons. One is we haven't demonstrated a problem other than in the hypothetical. The system we have in place would discourage the very thing we're trying to regulate,...

[LB239]

SENATOR GLOOR: One minute. [LB239]

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SENATOR LATHROP: ...and our approach to this problem presents a hindrance or an impediment. And if you read our state constitution, Section 22 of Article I, we can't put any, not a little, not a small one, we cannot present any impediment or hindrance to someone's right to vote. And we certainly couldn't justify that when we can't articulate a problem that isn't already addressed in the process we have. When you go to the polling place, you face a felony if you try to do this, and there are so many ways you would get caught doing it, all to be 1 of 11,000 votes. It doesn't make sense. We haven't articulated a problem. And our solution in LB239 is a hindrance or an impediment to vote, and it will be unconstitutional if it passes. Thank you. [LB239]

SENATOR GLOOR: Thank you, Senator Lathrop. (Visitors introduced.) Continuing with floor debate, Senator Nordquist, you are recognized. [LB239]

SENATOR NORDQUIST: Thank you, Mr. President and members. You know, we heard some discussion earlier about the need to measure, and certainly that's important. The measurement that we currently have in Nebraska is zero. We have absolutely no reported cases, no prosecutions. Sitting over to my left we have over a decade and a half of experience in the Douglas County Election Commissioner's Office, and the only example we've heard on this floor is Cook County in 1960. Well, Cook County is not in Nebraska and this isn't 1960. That was 20-some years before I was even born, folks. Let's put this into perspective. Where is this happening in Nebraska? No one has said this. I think Senator Lathrop walked through the exact point. If you're going to commit voter fraud right now, you're going to go in, pretend to be somebody else, hope that the poll worker doesn't know you, hope you get the address right, hope you look the same age as the person whose age is on the list, hope they haven't voted by mail--which you wouldn't know, hope they didn't already sign in, and hope they don't come later. That's a lot of hope, all to be 1 vote out of 500, 10,000, a couple hundred thousand statewide. And the penalty on the other side is a felony, years in jail, tens of thousands of dollars of fine. Does that make a lot of sense? You think anybody who's rational would take that risk to be one ten-thousandth of an impact on an election and potentially be in jail for five years? No one would make that choice. We heard the example, oh, but the ACT and SAT are doing this. Well, number one, there's no constitutional right to take the ACT and SAT, but the article also says in the wake of a cheating scandal involving dozens of Long Island students, it's happening there. It's happening on the ACT and SAT probably because the stakes are very high on your college entrance exams; but it's not happening in voter fraud in Nebraska. And even if it was, this bill does nothing to address it. We talked about the voter ID cards and how easy it would be to reproduce it and go in and do the exact same thing you're alleging that people are doing now or could be doing in the future or did in Cook County in 1960. There's no constitutional...no one has addressed the constitutional issue. Senator Janssen said, oh, Indiana was upheld after \$7 million of voter identification...or voter education. That's partly why it was upheld. And this bill does not hit that threshold at all. And then there's a lot of scuttlebutt going around about a compromise. Oh, there's...we'll compromise. We've seen this

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happen time and time again on this floor, as long as I've been here as a legislator and a staffer: We'll get it past General File and we'll work on it. I want to...where are the details of this? Where is the compromise? There is no compromise. There's no compromise when our state constitution says that we cannot put impediments on somebody's right to vote. And with that, I'd yield the rest of my time to Senator Council. [LB239]

SENATOR GLOOR: Senator Council, 1 minute 25 seconds. [LB239]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. Colleagues, I just need you to know how important this issue is in terms of the impact on this body. I can understand the need to address an issue where there is a problem that needs to be addressed. But I'd remind you that Senator Janssen on several occasions has alluded to a 2010 poll of Nebraskans. Yet, when this bill was introduced last year, there was no such indication that that was the reason for introducing this bill. There was no indication that there was this hue and cry from citizens of Nebraska. Rather, if you read the hearing transcript, Senator Janssen had an epiphany when he went and voted one day, and said, whoa, you know, I'm not being asked for an ID. And I'm just paraphrasing what the testimony is. I don't believe that this bill is deserving of the time that this body has given it, because no problem exists. And there's all this discussion about what can occur between now and Select File, when efforts to address the bill, meaningful, substantive efforts have been summarily dismissed. AM1667 was summarily dismissed. [LB239]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Time, Senator. Thank you, Senator Council. (Visitors introduced.) Senator Lautenbaugh, you are recognized. [LB239]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I have a feeling this may be the last time I speak on this, for a variety of reasons. I can remember when we were debating cigar bars a few years ago, I was making some point about the safety of cigars versus cigarettes, and I looked up and there was a gallery full of students up there. And I felt the need to say, but by all means, kids, don't smoke because it's not good for you and you shouldn't do it. I was moved to do that. I'm having sort of similar impulses today. I feel like this is turning into a how to commit voter fraud seminar for anyone who's of a mind to, because we're listing all the ways it could be done. And I'd be remiss...and I do disagree with my good friend and successor three times removed, Dave Phipps, on something. There is a way, a very easy way to get around our system as it currently exists. All you would have to do is look at the voter file and see who's on the voter file that hasn't voted in any of the last elections. There's plenty of people on there who are just nonvoters. Those are the doors we don't knock on, to put it in terms we can all understand. And you go to their polling place and you vote for them. You don't have to say who you are. And if someone catches it after the

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fact, what are they going to do to you? They don't know who you are. You said you were the person who didn't vote who's in the book. And you can do that 20 times at 20 different precincts. And depending on how observant the staff was, you could do it twice at the same precinct. And if it's found out later, if that person shows up to vote and someone else has already signed in, well, what are you going to do about the person who showed up and said he was that person and voted? I'll give you the answer: There's nothing you can do because you don't know who it is. Now will this bill address that, 100 percent certain, can't happen? Of course not. There can be no absolute protection from out-and-out fraud. But this is, to roll out the cliches I've used too many times this year, another tool in the toolbox, an arrow in the quiver, etcetera, etcetera, Nebraska way, yada-yada-yada. It's something we can do to help this process be more secure. We've had discussions about how this might be seen as an impediment to voting in Nebraska, an impediment. Having to show your ID or show the card we mail you or vote provisional, that's an impediment--as some suggest it might be, I should say in all fairness. I would argue there's no way that's possible that a court would find that to be an impediment. I mean we make people register to vote, and that form has all sorts of blanks on it. You spend all sorts of time filling out the voter registration form. There used to be a person who worked in my office when I was election commissioner, had to throw that in, who used to do an hourlong training session for volunteer registrars. And I finally said--I won't use her name--but I said, look, it's a fill in the blank form; tell the registrars to tell the people to fill in the form. And that's what they did. But that was a lot harder than what we're asking of people on election day here under the bill as amended. But would that be found to be an impediment to voting, requiring people to register? And we put dates out there too. You have to register by a certain date or you can't vote. That's an absolute bar to voting. That's worse than an impediment. It's a 100 percent impediment. But we tolerate it, because there have to be rules. And I can't stress enough that this is a very, very modest thing we're asking, and I can't conceive of a way that this would result in someone not voting because you have to either show your ID again or show the card we mail you if you don't have an ID or vote provisional. I just...I'm trying to get down in my own head to how many people that would be that could be affected by this, really as a practical matter, because my experience is the same as many others. People would come to the polling place, surprised they don't have to show their ID. They just throw it out anyway because I don't remember what the... [LB239]

SPEAKER FLOOD: One minute. [LB239]

SENATOR LAUTENBAUGH: Thank you, Mr. President...I don't remember what the percentage of us are that have an ID already, but it's a pretty high number. We talked about it earlier. And there was talk of compromise and saying we should not push this bill on and compromise between General and Select. Well, if there was any interest in compromise, we've had eight hours to talk about it now, by my count; and if you don't like a bill and you don't want to compromise, just say that. And if someone wants to call

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you uncompromising, that's fine, because that's what you're doing. And that's what's happening here. There's been unwillingness to compromise on the part of the proponents, and there's been nothing that would be acceptable that I've heard from the opponents that's acceptable to them. So this isn't a circumstance where we don't want to pass it on and take someone's word. This is a circumstance where nothing will be acceptable. [LB239]

SPEAKER FLOOD: Time, Senator. [LB239]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB239]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Mr. Clerk. [LB239]

CLERK: Mr. President, I have a priority motion. Senator Janssen would move to invoke cloture, pursuant to Rule 7, Section 10. [LB239]

SPEAKER FLOOD: Thank you, Mr. Clerk. It is the ruling of the Chair that there has been full and fair debate afforded to LB239. Senator Janssen, for what purpose do you rise? [LB239]

SENATOR JANSSEN: I would request a call of the house and then would like to proceed with a roll call record vote in regular order. [LB239]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB239]

CLERK: 38 ayes, 0 nays, Mr. President, to place the house under call. [LB239]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside of the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. The following senators please return to the Chamber. We have Senator Larson, Senator Langemeier, Senator Pirsch, Senator Conrad, please check in or return to the floor. The house is under call. Senator Langemeier, the house is under call, please return to the floor. All senators are present or otherwise accounted for. Members, the first vote is the motion to invoke cloture. Mr. Clerk, please read the roll. [LB239]

CLERK: (Roll call vote taken, Legislative Journal pages 1188-1189.) 30 ayes, 16 nays on the motion to invoke cloture. [LB239]

SPEAKER FLOOD: The motion to invoke cloture is not adopted. I raise the call. We

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now, members, move to LB1090. But before that, Mr. Clerk, any items? [LB239 LB1090]

CLERK: I do, Mr. President, thank you. Thank you, Mr. President. Resolutions: Senator Nordquist offers LR603; Senator Fulton, LR604; Senator Price, LR605, LR606, and LR607; and the Transportation Committee offers LR608. That's all that I had, Mr. President. (Legislative Journal pages 1189-1192.) [LR603 LR604 LR605 LR606 LR607 LR608]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Mr. Clerk. We'll move to Select File, senator priority bills, LB1090. Mr. Clerk. [LB1090]

CLERK: Mr. President, Senator Larson, LB1090. I have Enrollment and Review amendments, first of all. (ER205, Legislative Journal page 888.) [LB1090]

SENATOR GLOOR: Senator Larson. [LB1090]

SENATOR LARSON: Mr. President, I move the amendments to LB1090 be adopted. [LB1090]

SENATOR GLOOR: All those in favor say aye. All those in favor say aye. All those opposed, nay. The amendments are adopted. [LB1090]

CLERK: Senator Wallman would move to amend with AM2487. (Legislative Journal page 993.) [LB1090]

SENATOR GLOOR: Senator Wallman, you're recognized to open on your amendments to LB1090. [LB1090]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. AM2487 makes a few small changes. It changes the term "service institutions" to "sponsor," a term the Department of Education already uses. Then a couple of minor changes to the language. Thank you. [LB1090]

SENATOR GLOOR: Thank you, Senator Wallman. Members, you've heard the opening on the amendment to LB1090. Are there senators wishing to speak? Seeing none, Senator Wallman, you're recognized to close on your amendment. Senator Wallman waives. The question before the body is the amendment to LB1090, shall it be adopted? All those in favor say aye...vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1090]

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Wallman's

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amendment. [LB1090]

SENATOR GLOOR: The amendment is adopted. [LB1090]

CLERK: I have nothing further on the bill. [LB1090]

SENATOR GLOOR: Senator Larson for a motion. [LB1090]

SENATOR LARSON: Mr. President, I move that we advance LB1090 to E&R for engrossing. [LB1090]

SENATOR GLOOR: You've heard the motion. Those in favor say aye. Those opposed say nay. LB1090 is advanced. Mr. Clerk. [LB1090]

CLERK: Mr. President, LB1090A. No E&Rs. Senator Wallman would move to amend the A bill with AM2635. (Legislative Journal page 1166.) [LB1090A]

SENATOR WALLMAN: Good morning again, Mr. President. After the fiscal note was written, the Department of Education found out that they cannot use federal funds to administrate this program. So the amendment allows for the department to fund an employee. It does not ask for more money. We took the money from the \$140,000 we asked for in the original bill, the original A bill. So this is all it does. Thank you, Mr. President. [LB1090A]

SENATOR GLOOR: Members, you've heard the opening on the amendment to LB1090A. Are there senators wishing to be recognized? Seeing none, Senator Wallman, you're recognized. Senator Wallman waives. Members, the question is the adoption of the amendment to LB1090A. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1090A]

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Wallman's amendment. [LB1090A]

SENATOR GLOOR: The amendment is adopted. [LB1090A]

CLERK: I have nothing further on the bill, Mr. President. [LB1090A]

SENATOR GLOOR: Senator Larson. [LB1090A]

SENATOR LARSON: Mr. President, I move that LB1090A be advanced to E&R for engrossing. [LB1090A]

SENATOR GLOOR: You've heard the motion. Those in favor say aye. Those opposed

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say nay. LB1090A is advanced. Mr. Clerk. [LB1090A]

CLERK: LB998. Senator, I have Enrollment and Review amendments. (ER208, Legislative Journal page 890.) [LB998]

SENATOR GLOOR: Senator Larson. [LB998]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB998 be adopted. [LB998]

SENATOR GLOOR: Members, you've heard the motion. Those in favor say aye. Those opposed say nay. The bill is advanced...the amendments are adopted. [LB998]

CLERK: Mr. President, Senator Krist would move to amend. Senator, AM2522. (Legislative Journal page 986.) [LB998]

SENATOR GLOOR: Senator Krist, you're recognized to open on your amendments. [LB998]

SENATOR KRIST: Thank you, Mr. President. And again, good morning, Nebraska and colleagues. Since we last met, my promise to you on LB998, which is reforming the Foster Care Review Board into a new noncode agency labeled the Foster Care Review Office, there's been much work done on the actual bill. But in consolidation, very little change except for wording. I'd like to walk you through part of that to show you what we have done. In response to Senator Langemeier's request, on page 9 we inserted the words "executive director" on lines 20 and 24 and took out the word "the office." On page 10, lines 7 through 12, we established the data coordinator to serve as the executive director for the office until the Foster Care Advisory Committee hires an executive director. And also for Senator Langemeier, on page 11, lines 5 through 9, and our discussion led us to change that to allow initial Foster Care Advisory Committee members to begin their duties after appointment by the Governor. They will stand for confirmation when the Legislature is back in session, which would be January of 2013. They will stand for confirmation when we are back in session. The list of possible appointees will be given to the Governor by the Health and Human Services Committee. No person's name will be included on this list that the Health and Human Services Committee would not be appointed...would not be...would not be...to be appointed by the Governor. On page 12, line 3, the Foster Care Advisory Committee will hire and fire the executive director. That is one of their primary responsibilities. On page--and this is due to comments from Senator Nelson--on page 12, line 4, we deleted the words "in Nebraska" after foster care so the executive director can be hired from any state as long as he or she has training and experience in foster care and also has the technical capability in terms of data processing, data management. On page 15, line 12, we changed office to executive director. And then again for Senator Langemeier's

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comments, on page 15, line 14, we deleted the words with three three-month reports, which makes that, in my mind and in everyone's mind, much clearer. I would like to say this about this experience: It has been an evolution. When I first brought the bill or conceived of it, it was to make sure that there were no entangling alliances, no issues with the 11-person board to return it to a smaller number, which is consistent with the 1982 legislation which created the Foster Care Review Board; and to ensure that there's timely information in a timely manner, and accurate information that comes to us as a decision-making body, as well as to the executive and the judicial branch. I'm proud of the way it turned out. I know that there is an amendment pending from Senator Sullivan, and we have talked about it off the floor. I think we need to have a bit of discussion about that in terms of how it will yield the effect that we ask for. With that, I would welcome any discussion or questions. [LB998]

SENATOR GLOOR: Thank you, Senator Krist. Members, you've heard the opening on the amendment to LB998. We now move to discussion. Are there senators wishing to be recognized? Seeing none, Senator Krist, you're recognized to close on your amendment. [LB998]

SENATOR KRIST: I would ask you for a green vote on AM2522. I believe we've been extremely responsive in our responsibilities to create an agency that will be responsive to us, and I think that was the intent in 1982 and consistently from that day forward. So I'd ask you for a green vote on AM2522. [LB998]

SENATOR GLOOR: Thank you, Senator Krist. The question is, shall the amendment to LB998 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB998]

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of Senator Krist's amendment. [LB998]

SENATOR GLOOR: The amendment is adopted. [LB998]

CLERK: Senator Sullivan would move to amend with AM2625. (Legislative Journal page 1193.) [LB998]

SENATOR GLOOR: Senator Sullivan, you're recognized to open on your amendment to LB998. [LB998]

SENATOR SULLIVAN: Thank you, Mr. President and members. AM2625 adds an operative date of July 1, 2012, to LB998. I want you to know that I discussed the concept of this amendment with Senator Krist and other members of the body before I had the amendment drafted. LB998, as we've just amended, represents a major change to how a state agency operates. It abolishes the Foster Care Review Board and creates

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the new Foster Care Review Committee and the Foster Care Review Office. So I think it's only right that we make sure that this change takes place in a reasonable and logical fashion, that the transition takes place smoothly and predictably. And that's precisely why I've introduced AM2625. Without this amendment, LB998 carries the emergency clause. But with my amendment, AM2625, it does the following: The operative date of July 1, 2012, coincides with the start of the state's fiscal year. This provides a reasonable time period for the Foster Care Review Board to transition into the Foster Care Review Office and the accompanying advisory committee. It eases the transition for other state agencies also involved in these changes, particularly agencies such as the State Treasurer's Office and the Department of Administrative Services which handle the financial transactions required by the bill. LB998 requires the Health and Human Services Committee to provide a list of at least 20 potential advisory committee appointees to the Governor for the five committee positions. An operative date of July 1 allows the Health and Human Services Committee the time to develop the required list of those potential appointees. I will also note that a permanent executive director cannot be hired until the advisory committee is in place. A July 1 operative date does not change the intent of LB998; it simply provides for a smooth and logical transition to the new state agency. I believe this amendment makes LB998 a better bill and I urge its adoption. Thank you. [LB998]

SENATOR GLOOR: Thank you, Senator Sullivan. Senator Flood for a Speaker's announcement. [LB998]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Just to give you a little idea of where we're going today. As you see on your agenda, at 1:30 we're going to switch gears and go to the Ashford division, and then at 5:30 the Nordquist division. As I explained yesterday, I anticipated a 9:00 p.m. adjournment tonight; but that's all subject to change depending on how we're doing and where we're at. I also want to give you a little heads up on tomorrow. I've had a few questions. Again, tomorrow we're going to start at 9:00 in the morning. We're going to begin with LB1161, which is from Senator Smith. It relates to the Major Oil Pipeline Siting Act and such. In the afternoon, we're going to...or mid-morning potentially when we get done with LB1161, we'll be back on LB806, which is from Senator Lautenbaugh. It relates to horse racing. And then we'll be taking up, after that, LB970, which concerns tax cuts from Senator Cornett and the Revenue Committee. That's what tomorrow looks like. I wanted to make sure everybody knew what was set on the agenda. And obviously you see today's work ahead of us. Let's make this a productive day. Thank you.

SENATOR GLOOR: Thank you, Senator Flood. Members, you've heard the opening on AM2625. We now move to discussion. There are senators in the queue: Krist, Lathrop, Dubas, and Coash. Senator Krist, you're recognized. [LB998]

SENATOR KRIST: Good morning again. I did talk with Senator Sullivan at great length,

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along with Senator Dubas and several others, about the implementation of what we are about here today. It does not take the E clause off. It does change the implementation date effectively or operational date. So we are moving forward in the same rate that we were, but we're allowing for that transition time with this amendment to be extended approximately 45 days. I do not see that as a hurdle. I think that we will take an active interest, I will take an active interest in making sure that no harm is created and a transition is done in an efficient, professional manner. I think if it's the will of this body to move forward with LB998 and we give it a little extra time as Senator Sullivan has suggested, we will just be doing a better job. I will warn you, though, after this discussion is over, Appropriations, Liz Hruska has told me that we need to amend one more time--and I'm going to hand this one in right now--because in all of our discussions, it never came up that we would have to, because we are creating a new agency even though the transfer of people is implied, don't forget the money. Don't ever forget the money. So we have to make sure that the money follows the trail. So we'll do that as an amendment, and I'd be happy to answer any questions; but I support AM2625 and obviously LB998. [LB998]

SENATOR GLOOR: Thank you, Senator Krist. The Chair recognizes Senator Lathrop. [LB998]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning once again. I stand not...I support the bill and the amendment, okay? That said, I want to talk a little bit about the Foster Care Review Board or Office and what we've done to this point in time for child welfare and where this fits in, and maybe make an observation. And hopefully I can encourage Senator Campbell and Krist to talk about what their vision is for this office going forward as it relates to where it plugs into the reforms that we're making in the role of Foster Care Review Board. This is my point: The Foster Care Review Board, I'm not sure if it has a clear mission statement or if we've defined the role of the Foster Care Review Board in the process. We know that one of their functions is to gather data so that we, as a policy-making body, the Governor who's supposed to administer child welfare, have information about things as basic as how many kids are in foster care. But they have for us, when it's done well and when we have the information I think we want, way more information. They drill down or they should drill down and give us the detail that we need that explains sort of the big picture. Is their function just to provide us with data or is their function to advocate for something once they have the data in hand? Okay. I think we should today have a little conversation about what their role is. Is it just data collection and assimilation, or do we want the Foster Care Review Office executive director to be an advocate once the information is in hand, or is that the role of the folks who...Voices for Children and people like that? Why is that important? I think in some ways what we're going with LB998 may be a temporary measure along the way to something else we're doing. You'll remember we're setting up a program. We're going to spend some money setting up a program that will clean up HHS and the computer system over there. And if it's

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done correctly, if it's done right, we expect to be able to push buttons, run management programs, and have it give us the data that we want. And if we do that computer program correctly, as I expect we will, and it will be a significant undertaking and an expensive undertaking, does it replace the Foster Care Review Board? In other words, if we have them here for the purpose of getting us data, is this computer program and process that we've gone down the road with, is it going to replace them, or what will be the role of Foster Care Review Board going forward? Because I think we owe it to the people who are going to get into this process as reformed or as changed, so that they know this is an assignment that will go beyond our new computer program or we're probably not going to need you once we have the computer program in place. And I'm hoping that Senator Campbell and Krist and anyone else who has a thought about that might share their thoughts. And I have to tell you I have a lot of respect for the work of the people on the Health Committee and how far into this process they've gotten and what their vision is for the Foster Care Review Board going forward, and then what's their vision... [LB998]

SENATOR GLOOR: One minute. [LB998]

SENATOR LATHROP: ...for Foster Care Review Board or the Foster Care Office once we put the computer program in place that's supposed to be able to provide us with the data that we want to help oversee the child welfare system. Thank you. [LB998]

SENATOR GLOOR: Thank you, Senator Lathrop. The Chair recognizes Senator Dubas. [LB998]

SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. First, I'd like to thank Senator Krist for all of his work on this issue. I know this has really become a priority issue for him, and he has invested a considerable amount of his time and energy looking at how do we need to deal with the Foster Care Review Board. I think Senator Lathrop pretty much summed up everything that I wanted to say. I support Senator Sullivan's amendment. I think it will aid in that transition process. You know, it's...as we've been trying to find our way through this mess we call child welfare reform, unfortunately the Foster Care Review Board has been caught up in that turmoil. So I think right now, again, what we're doing is reevaluating what is the purpose of the Foster Care Review Board. And I think that's good. They've been in place a long time. I know some of their members, these are incredibly committed and passionate people about serving children, and I appreciate all of the work that they do. But again, reevaluating their purpose I think is a good thing. With any transition, with any change, there is always a certain amount of angst and anxiety that comes with it: fear of the unknown, where are we going, what's going to happen. But when you create transition in the midst of turmoil, it does make things even more difficult, and people become a little more...paranoid maybe is a strong word; but I think there's a lot of fear on the parts of people whose jobs we're talking about, you know, whose livelihoods we're talking

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about. We're making changes to the way they do their business and the things that they believe very strongly in. So just in light of everything that we're doing right now, I do understand the anxiety that many of these people are feeling. But again, I trust Senator Krist's commitment to following through with that, with this issue. I'm more than happy to support him in any of those efforts. But I think along the line with what Senator Lathrop also just said, as we look at the HHS Committee's bills, especially the one dealing with creating that very comprehensive database so we can have an accurate understanding of the numbers and where these kids are at and what's going on with them, I think that hopefully we'll have better access to that information which will help us as we make policy decisions. But I think it will also help us define the purpose of the Foster Care Review Board, and is it an advocacy direction or is it more involved with how our policies are carried out. And I think we owe that to them to help them know the direction that we're going. But again, I appreciate Senator Sullivan's work on this amendment. I think it allows us to make that transition just a little bit smoother. It helps those who are in their various positions, especially the interim director, right now, kind of help her understand where things go from here when we're done with the session. And hopefully we'll be able to help them work through the anxiety and the uncertainty that they're facing right now, and ultimately end up in where we all want to be: it's good policy, sound policy, that serves the families and the children that we're talking about. Thank you, Mr. President. [LB998]

SENATOR GLOOR: Thank you, Senator Dubas. Senators wishing to be heard: Coash, Campbell, Krist, and Howard. Senator Coash, you're recognized. [LB998]

SENATOR COASH: Thank you, Mr. President. I want to start my comments, similar to Senator Lathrop, with an observation that I want us to consider, because I...and I will have some questions for Senator Sullivan. And here are my observations, colleagues. For a long time, the Foster Care Review Board had a sole focus on advocacy and data collection for children in foster care. They were the only voice for a lot of children. There are local elected foster care review board members, workers at the ground level whose sole focus was the welfare for children. And somewhere in the last 12 months, because of a variety of different reasons, their focus got pulled out of the best interests of children, and it seemed to have been pulled into a mode of survival; and it was the children that needed them that have suffered the most. And now we have an amendment, which I want to ask Senator Sullivan a question if she will yield. [LB998]

SENATOR GLOOR: Senator Sullivan, would you yield? [LB998]

SENATOR SULLIVAN: Yes, I will. [LB998]

SENATOR COASH: Thank you, Senator Sullivan. Your amendment does not remove the E clause to these changes, but it does give a transition time. And a very straightforward question for you is, in a nutshell, what needs to happen in the next 45

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days that just can't happen immediately? [LB998]

SENATOR SULLIVAN: Well, first of all, the Health and Human Services Committee, this allows them time to collect the names that they will then send forward to the Governor. So while perhaps some of that has already been in the mix...truly, you've got to submit a list of 20 names, so I would think that they'll use a thoughtful approach in arriving at that list that they're going to forward to the Governor. Secondly, as I indicated in my introduction, there's some logistical things with the State Treasurer's Office and the Department of Administrative Services that takes some time as well. So those probably are the things that will be more time-consuming and that will be allowed due to this time frame. [LB998]

SENATOR COASH: Okay. Thank you, Senator Sullivan. Would Senator Campbell also yield to a question? [LB998]

SENATOR GLOOR: Senator Campbell, would you yield? [LB998]

SENATOR CAMPBELL: Yes, certainly. [LB998]

SENATOR COASH: Thank you, Senator Campbell. Senator Campbell, do you agree with Senator Sullivan? Do we need these 45 days to get things in place? I mean, it is important to do things right. And 45 days does not seem like a long time. But it is a long time in my mind when the children need to get back into some stability, and I want to make sure this fits into the greater scheme of things. And I will just yield the balance of my time if you'd like to comment on the time frame. Thank you. [LB998]

SENATOR GLOOR: One minute 55 seconds. [LB998]

SENATOR CAMPBELL: Thank you, Mr. President. And, Senator Coash, I think you ask a very good question. And I, too, would join Senator Krist in supporting Senator Sullivan's amendment in the sense that it does allow the transition time, and not only for the Health and Human Services Committee to do its work, but I think all the mechanisms of setting up the account, making sure everything is starting at the fiscal year. I think it will help with that process. And, Senator Coash, we have very dedicated staff at the Foster Care Review Office, and extremely dedicated volunteers and local boards across the state. They are not going to stop operating; they are not going to stop caring for kids; they are not going to stop doing their job. They will continue to do this. I think this is more to make the mechanism work smoother, and I appreciate Senator Sullivan bringing it forward. Thank you, Mr. President. [LB998]

SENATOR GLOOR: Thank you, Senator Campbell. Senator Campbell, you are next in the queue. [LB998]

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SENATOR CAMPBELL: Thank you, Mr. President. Colleagues, Senator Lathrop asked a question with regard to what vision we might see, and I jotted down some thoughts; and they're probably not going to be well tied together, but hopefully they'll begin to answer. I think one of the most important things is the data that is collected not only at the local level as they review those cases but at the state level. The local boards will remain in place and continue to do their reviews, and that's a very important part of the vision that should be in place. The data now interfaces with N-FOCUS, and I would anticipate that as we go forward the Foster Care Office will continue to interface with whatever data system we put into place. Secondly, I believe that the bill sets forward a vision of more consistent communication with the Health and Human Services Committee and, thus, the Legislature. At times, we have had concerns about whether information needed to go directly to the Legislature or whether it needed to go through the board. I think we're clearly setting out a vision that the consistent information should come to the Health Committee and, thus, to the Legislature. Bringing issues forward on a more regular basis is put into the board or is put into the bill to provide information to the Health Committee. Access to that information is critical. We have talked about the importance of access information to the Legislature. The Legislature created this office and will continue to rely on it for its information on foster children. I think we have seen in the past year from the Health and Human Services Committee an intensely professional management, apart in our own departments, as we worked with the Legislative Audit staff, the Research staff, the Budget and Fiscal staff. We are looking here at the importance of professionally managing that data and providing access and consistent communication to the Legislature. I think the Speaker described it best when he said in a small meeting: You know, it's almost like you're trying to create a fire wall. And that's exactly correct. We want this agency to be able to exist, to be able to exist independently in the sense of getting their data together. And, Senator Lathrop, I expect that they will be a very strong advocate on issues. But there is a great difference between political advocacy, and advocacy on issues and data that needs to come forward. At times I believe and agree with Senator Coash that this has drifted more into the political advocacy than staying true to the mission of bringing issues and concerns forward to the Legislature through the Health Committee to formulate good policy on behalf of the foster children and all children who need protection in this state. I think that's an extremely important vision that we need to keep in place, and I would hope that we have provided in this bill mechanisms to ensure good access and information. I want to conclude my remarks by thanking Senator Krist and all members of the Health Committee; but particularly Senator Krist who has worked hours and tirelessly to ensure that going forward we have a good agency who can provide that data to the Legislature. Thank you, Mr. President. [LB998]

SENATOR GLOOR: Thank you, Senator Campbell. The Chair recognizes Senator Krist. [LB998]

SENATOR KRIST: Thank you, Mr. President and colleagues. To Senator Lathrop's

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concerns--and philosophically I would agree with you, sir--this organization will not be static in the future. It will be dynamic. It will potentially be the source of information that we need on many fronts. There is capability there in the software, in the tracking mechanisms, that will allow us to use this noncode agency that we have created to do some things that we desperately need to do. I made these comments in my opening remarks a month or so ago, but I'd like to reemphasize them again. I believe, very strongly, that if this body as it existed then, with the child deaths at a rise, if they would have known the data that was presenting itself, manifesting itself, early enough, there would have been a quicker resolution. I believe that if this body as it existed had the information that was statistically presenting itself during safe haven, you would have made decisions sooner, quicker, more efficiently. I certainly believe, after the 18 months I've just spent with Foster Care Child and Family Services and the chaos that exists within the Department of Health and Human Services, if this body as it exists right now would have known statistically what was happening, and as an example, the number of case workers that were changing out on kids and how we were losing kids in the system, if we would have seen that information in a more timely manner, we would have taken action quicker. We would have been decisive. It took LR37 to expose that it is simply an open meetings law within the current board structure that was prohibiting us from getting the information that they had four to five months previous that we then had to extract. This is the right move. I thank Senator Lathrop for his comments, and I thank Senator Campbell for her support and comments today. It will be an evolutionary process. And, Senator Sullivan, the extra 45 days will not be spent in vain. We will make sure in the transition that it is done effectively and efficiently. The number one thing though I want you to understand is I believe that the guts of this organization, the real boots on the ground, if you will, are those 46 foster care, local foster care review boards around this state. They truly manage those cases. They truly, as volunteers, go above and beyond to advocate for those kids and to talk to the judges if necessary where the discussions need to happen. Thank you to those local boards for all the support that they have given. That will not change. The data collection process will not change. The data that is analyzed on a daily basis by the coordinator will not change. That will continue on through this 60-day period or transition period. The thing that will change is the leadership: a five-member advisory committee that will hire or fire the quality executive director that the organization and the agency deserves. Thank you, Senator Sullivan. I support AM2625 and LB998, and ask you for your green vote. [LB998 LR37]

SENATOR GLOOR: Thank you, Senator Krist. (Visitors introduced.) Returning to discussion, Senator Howard, you are recognized. [LB998]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'm going to stand up here and join everyone who's thanked Senator Krist because he's just done such a good job. From the day that he joined the Health Committee and I got to know him better and talk with him, I've just so appreciated his willingness, his willingness to dig in and do the work and to find out more. He's always...when he would come to me,

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he would always say, I want to know more about this, tell me more about this issue. And it's just...I've just so appreciated having the opportunity to work with him and to know how committed he is to doing such a good job not only on this issue, but for other things that come up. And I think he's going to continue to be such an asset to this body. I'd like to say for the record that the success of the Foster Care Review Board depends on the cooperation of the Department of Health and Human Services. It always has, it always will. The files come from the department. The files need to be available for review, they need to be produced when requested, and the information on each child needs to be in the file. Oftentimes papers are sort of filed loosely in other folders or not put in the file. That information needs to be in there when the reviewer comes to collect the record in order to do an accurate review. That, again I'm going to stress, relies upon the department getting that information together and having that record available. I believe this is shared by my...this concern is shared by my fellow members on the Health Committee. And I would like to emphasize that Director Winterer, and anyone who may follow him, has the responsibility to provide the complete and full cooperation of the Department of Health and Human Services with the Foster Care Review Office. Change is always hard, and as humans we want to preserve the status quo. But I believe this bill will better define the purpose and the intent of the foster care review process. Clearly, this office is evolving into an arm of the Legislature, an information source for the members of the Legislature, and I think that's the way it can best deliver the mission that it's been given by this body. I thank you for your support of this bill, and I thank Senator Krist again for all the hard work he's done to bring it to us. Thank you, Mr. President. [LB998]

SENATOR GLOOR: Thank you, Senator Howard. Senator Sullivan, you are recognized. And, Senator Sullivan, there are no further members in the queue. Would you like to use this as your close? [LB998]

SENATOR SULLIVAN: Certainly. Thank you, Mr. President. And, first of all, I'd just like to clarify, since Senator Krist mentioned in his opening to his amendment and then Senator Coash alluded to it, too, that we still in this amendment retain the emergency clause but are adding the operative date of July 1, 2012. And this clarification was brought to us by Bill Drafters saying that we really needed to retain the emergency clause. The operative date of July 1 falls in between when we will hopefully adjourn the session April 12, and July 13, which is the effective date that bills take effect if they don't have the emergency clause. So if we add the operative date of July 1, and I wanted that to coincide with the start of the state's fiscal year, that's why we needed to retain the emergency clause. Had LB998 been drafted originally with an operative date of July 1, we still would have had to have retained the emergency clause. So I hope that clears up any confusion there might have been. It's clear in all the comments that have been made, we need to keep our focus on what's best for the children in the foster care system. And when we make changes to the structure that focuses on that, I think it's only right that we do this thoughtfully and logically. And that's precisely what my

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amendment, AM2625, hopes to do, and I urge your adoption of it. Thank you. [LB998]

SENATOR GLOOR: Thank you, Senator Sullivan. Members, you've heard the closing on AM2625. The question is, shall the amendment to LB998 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Record, Mr. Clerk. [LB998]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of Senator Sullivan's amendment. [LB998]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB998]

ASSISTANT CLERK: The next amendment, Mr. President, offered by Senator Krist, AM2658. (Legislative Journal page 1193.) [LB998]

SENATOR GLOOR: Senator Krist, you're recognized to open on your amendment. [LB998]

SENATOR KRIST: First of all, I want to thank Liz Hruska for finding the error in my ways. I thought a lot about the structure and a lot about your comments but not very much about the money. My wife will tell you that's also my failing. On page 10, after line 15, we insert, "(c) It is the intent of the Legislature that the funds appropriated to State Foster Care Review Board be transferred to the State Foster Care Review Office for FY2012-13." I would ask you for a green vote on AM2658. [LB998]

SENATOR GLOOR: Members, you've heard the opening on the amendment to AM2522. We now move to discussion. Are there senators wishing to be recognized? Seeing none, Senator Krist, you're recognized to close. Senator Krist waives. The question is, shall the amendment to AM2522 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB998]

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of Senator Krist's amendment. [LB998]

SENATOR GLOOR: The amendment is adopted. [LB998]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB998]

SENATOR GLOOR: Senator Larson. [LB998]

SENATOR LARSON: Mr. President, I move that LB998 be advanced to E&R for engrossing. [LB998]

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SENATOR GLOOR: You've heard the motion, members. All those in favor say aye. Those opposed say nay. LB998 is advanced. Mr. Clerk. [LB998]

CLERK: Mr. President, LB1104. Senator, I have Enrollment and Review amendments, first of all. (ER216, Legislative Journal page 985.) [LB1104]

SENATOR GLOOR: Senator Larson. [LB1104]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB1104 be adopted. [LB1104]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB1104. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB1104]

CLERK: Mr. President, Senator Sullivan, I have AM2324, but I have a note, Senator, to withdraw. [LB1104]

SENATOR GLOOR: So ordered. [LB1104]

CLERK: Mr. President, Senator Adams would move to amend with AM2614. (Legislative Journal page 1163.) [LB1104]

SENATOR GLOOR: Senator Adams, you're recognized to open on your amendment. [LB1104]

SENATOR ADAMS: Thank you, Mr. President and members. The changes that are being recommended in this amendment affect the Postsecondary Institution Act and the Nebraska College Savings Plan, which are the two major components of this bill. And basically what they are, they are additional changes that were suggested to us by E&R that we needed to peruse within the committee to make sure that they were not substantive changes in law. So, in effect, they are very technical in nature, brought to our attention by E&R. Thank you, Mr. President. [LB1104]

SENATOR GLOOR: Thank you, Senator Adams. Are there senators wishing to be recognized? Seeing none, Senator Adams, you're recognized to close. Senator Adams waives. The question is, shall the amendment to LB1104 be adopted? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1104]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Adams' amendment. [LB1104]

SENATOR GLOOR: The amendment is adopted. [LB1104]

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CLERK: I have nothing further on the bill, Mr. President. [LB1104]

SENATOR GLOOR: Senator Larson. [LB1104]

SENATOR LARSON: Mr. President, I move that LB1104 be advanced to E&R for engrossing. [LB1104]

SENATOR GLOOR: Members, you've heard the motion. Those in favor say aye. Those opposed say nay. LB1104 is advanced. Mr. Clerk. [LB1104]

CLERK: Mr. President, LB996, discussed yesterday briefly. When the Legislature left the issue, pending was an amendment to the bill by Senator Wightman, AM2622. (Legislative Journal page 1160.) [LB996]

SENATOR GLOOR: Senator Wightman, you're recognized to open on AM2622. [LB996]

SENATOR WIGHTMAN: Thank you, Mr. President. Before we start debate on AM2622 for the second time, it is appropriate to perhaps review again how LB996 has evolved. As advanced from the Education Committee, LB996 repealed an exception that allowed children who have reached the age of 16 to drop out of school if the child has the written consent of his or her guardian or parent. And I might say parenthetically that we, for a long time, had compulsory education to age 18, but we had an exception that the gate was wide. Senator Seiler then designated LB996 as his priority bill, and he stated his belief here that the public policy of Nebraska should send a clear message that children need to stay in school to obtain a high school diploma. A high school diploma is vital to the future earning power and for the state to have an educated work force in the future. On General File, and I mentioned this yesterday, Senator Council advanced the concept that instead of an outright repeal, perhaps we should add more teeth to Nebraska's current law that allows a 16-year-old to drop out of school. AM2333, the previous amendment, was based upon Indiana's law. AM2622 is also based on Indiana law, but is further refined to reflect specific language and standards found in Nebraska law, and addresses issues raised during the previous debate. We have listened to the concerns and have tried our best to address the concerns with this amendment. In summary, AM2622 is designed to make the parent accountable and responsible for allowing their 16-year-old to drop out of school. Nebraska law currently sets a low standard for a child to drop out of school. The testimony at the public hearing indicated that many times it is the child who makes the decision to drop out, not the parent; and this low standard is out of sync with parental responsibility and the demands of today's economy. Nebraska's law needs to send a clear message to the parents and the child that graduation from high school is essential. Increasing the number of students graduating from high school, which is a goal of the P-16 initiative and of the Department of Education. If Nebraska is to achieve that goal, the law must support it. This is what the

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position paper of the National Association of Secondary School Principals tell us about keeping children in school to obtain a high school diploma and what it accomplishes. "It reflects the twenty-first century, with an increased need for higher levels of education. It enables students to earn a higher wage in the future. Over the course of a lifetime, a high school graduate earns approximately \$260,000 more than a child without a diploma. Coupled with support for struggling students, it can curtail the dropout rate. It promotes social mobility by enabling students of poverty to stay in school longer and complete their education. It affords students additional benefits, such as better health...as access to private health insurance...and better satisfaction with their lives." As amended by AM2622, we would be sending a message to parents and children that the child should stay in school to earn that diploma, by requiring an exit conference before the child is allowed to drop out. The exit conference must be attended by the person in legal or actual control of the child, and the child, and the school superintendent or his or her designee. Nebraska law makes the public schools responsible for the enforcement of the compulsory education law. If a child drops out of a private, denominational, or parochial school, attendance by a representative for that school is optional and only is for additional informational purposes. The person in legal or actual control of the child must provide evidence that withdrawal meets the requirements of law. Parental responsibility and authority is affirmed, and the parent is made accountable. Under AM2622, the superintendent or the designee would no longer have to agree to the withdrawal but would instead be required to sign the application to withdraw if, in his or her opinion, the evidence presented meets the legal requirements set forth by the Legislature. This should alleviate any potential legal and ethical requirements raised by the previous amendment. Grounds for the child to withdraw: financial hardship requiring the child to be employed to support the child's family, which could be either parent or dependents; or an illness of the child making attendance impossible or impractical. The superintendent must identify in that conference all known alternative educational opportunities currently available at the school district, including vocational courses of study, and explain how withdrawing from school is likely to reduce the future earnings of the child and increase the likelihood of the child being unemployed in the future, and any other relevant information. And, finally, at the conclusion of the interview, the application for the child to withdraw from school must be signed by the person in legal or actual control of the child and the child. The superintendent signs the application, acknowledging the compliance with the provisions of the law. The superintendent is not required to agree to the withdrawal. As amended by AM2622, LB996 will do what was intended: send a clear message that children need to stay in school to earn that diploma. The evidence is overwhelming that staying in school is in the best interest of the child. At the same time, the child or the person in actual or legal control...the parent or person in actual or legal control may need to have that child withdraw from school to work or if the child is too ill to attend school. The decision to withdraw from school needs to be an informed decision made by the parent, not the child, as current Nebraska law appears to permit. Withdrawing from high school has life-changing consequences that must be taken seriously. AM2622 puts teeth into

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the current weak law. I do want to thank Senator Council for her assistance and cooperation in this matter. I do think the bill is better as a result of questions that she had and concerns that she had over the bill, and for that I thank her. On behalf of Senator Seiler and myself, I would urge the adoption of AM2622 and the advancement of LB996. I would try to answer any questions that you may have. Thank you, Mr. President. [LB996]

SENATOR GLOOR: Thank you, Senator Wightman. Members, you've heard the opening to AM2622 to LB996. We now move to discussion. There are senators wishing to be recognized: Dubas, Smith, and Wallman. Senator Dubas, you are recognized. [LB996]

SENATOR DUBAS: Thank you, Mr. President. Good morning again, colleagues. I think Senator Wightman touched on this again in his introductory...reintroductory comments this morning, but I think it's a point that we shouldn't overlook as to what our current statute says today. I, for one, was under the impression that children were allowed to drop out of school at 16. But that's not what our statute says. Our statute says it's 18 but that they can drop out at 16 with...there's just no teeth in the current statutes that encourage or provide for the schools to have any kind of intervention or interaction with the students. And so if Senator Wightman would yield to a question, I would appreciate it. [LB996]

SENATOR GLOOR: Senator Wightman, would you yield? [LB996]

SENATOR WIGHTMAN: Thank you. Yes, I will. [LB996]

SENATOR DUBAS: I would really appreciate you going back again or reemphasizing what our current statute says today. And really what your bill is doing today is just...in my estimation, is just trying to put teeth into what our current statute says. [LB996]

SENATOR WIGHTMAN: Right. We do have compulsory education to age 18. However, it doesn't have much teeth in it because one of the exceptions or actually the major exception is that the child can withdraw if the parent signs a notarized statement and delivers that to the superintendent or principal or whoever may be in charge of that. That's supposed to be kept in the file. As a practical matter, that has not even been done in the past. Now what our bill, LB996, with AM2622 would do is amend that to very much narrow that pathway. It would require, first of all, that there be an exit conference, that the child couldn't drop out without the exit conference. Originally it was requiring an agreement of three parties, the principal, the student, and whoever had legal guardianship or a parent. We've changed the language a little bit on that. But now it does require, and I want to be clear about this, it does require two things that have to be found: number one, that the child needs to drop out because of support, whether it be a dependent child or whether it be parental support even, it just says support; and/or

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illness. Either one of these would be sufficient to get out. But the superintendent's part now is just certifying that those two conditions have been met. [LB996]

SENATOR DUBAS: So with this bill as amended, we would now be able to have a more accurate picture of students who are making the decision to drop out, their reasons for dropping out, and ensuring that the parents are aware of all of the alternatives, all of the other options that if the child can't continue to stay in school, there are other avenues for them to take to allow this child to get the appropriate education that they really need. Would that be correct? [LB996]

SENATOR WIGHTMAN: That's correct. And this exit conference is pretty well defined in AM2622 in that there has to be discussion as to what the effect on this child's life is going to be if they do drop out, what other courses may be available to them within the school. As we move toward career academies, which I think the movement will be in that direction over the next several years, they need to know about that. That would be discussed. But mostly what is currently available. [LB996]

SENATOR DUBAS: I think that's really important to note. You know, this issue has been talked about in the past. [LB996]

SENATOR GLOOR: One minute. [LB996]

SENATOR DUBAS: Thank you, Mr. President. And there are school systems that do have alternative schools, that do have other options for these students to take if they don't want to stay in a traditional classroom setting. But it's helping the parents understand what those options are. And as we look at some of our smaller schools and our more rural schools who maybe don't have that ability to provide those options in their community, but there might be other ways through on-line learning or distance learning or I think there's other programs out there. So I just don't think we should overlook the fact that our statute does now today say students are required to stay in school until 18. We just haven't followed through with tracking why they want to drop out at 16. I think that's important data for us to have in helping our schools determine what are the other types of alternative educational opportunities that we need to provide for these children. [LB996]

SENATOR GLOOR: Time, Senator. [LB996]

SENATOR DUBAS: Thank you. [LB996]

SENATOR GLOOR: Thank you, Senator Dubas and Senator Wightman. (Visitors introduced.) Continuing discussion, Senator Smith, you are recognized. [LB996]

SENATOR SMITH: Thank you, Mr. President. I'm sorry for that. And good morning,

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colleagues. I do appreciate Senator Wightman's efforts and his intent with this bill and this amendment, but I'm going to have to ask him to yield here shortly. But I do have some concerns. I have some concerns from the home educators' and private educators' perspective, but also from the public educators' perspective, and I've had some correspondence with representatives from the school district that I represent. And I guess, first, there is a concern from the home educators' and private educators' perspective that this bill could infringe upon their rights to make decisions to make education choices for their children. And I'm going to come back around to that in a moment with a question. But kind of changing my view from the public educators' perspective, I still have concerns that a parochial, private, or homeschool child who has chosen not to attend or their parents have chosen that they not attend public school, that they would still need to meet and sign off on a withdrawal with the public school superintendent or designee. And so would Senator Wightman yield to some questions? [LB996]

SENATOR GLOOR: Senator Wightman, would you yield? [LB996]

SENATOR WIGHTMAN: Yes, I will. [LB996]

SENATOR SMITH: Thank you, Senator. First of all, I do not see that there's any carve-out in this amendment or this bill for home educators or private educators; that is that they would still be subject to meeting with the public school administrator. Is that correct? [LB996]

SENATOR WIGHTMAN: No, they will not be. [LB996]

SENATOR SMITH: Okay. [LB996]

SENATOR WIGHTMAN: They have been eliminated and they have reviewed it. And I might read a letter from them. "While we obviously do not speak for other schools listed in LB996, the Nebraska Christian Home Education Association board members are pleased with AM2622 as it regards exempt schools. We do support and approve this amendment. If this amendment is adopted, we will cease asking membership to call in opposition to LB996." [LB996]

SENATOR SMITH: That's fantastic. Thank you for sharing that and I'm going to come back and visit with you a little bit more on that. And another question I have for you from a public school perspective, how will the public school know that they have dropped out if they are in private education or home schooled? [LB996]

SENATOR WIGHTMAN: Well, first of all, this is part of the state law, and I don't think there's any reporting requirement from the parochial schools that informs them of that. But state law currently provides that the public schools are controlled, and I might

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question Senator Adams a little bit on that. He's more familiar with the statutes than I am. But I can do that on my time or you can do that. [LB996]

SENATOR SMITH: Okay. Very good. And maybe Senator Adams, it looks like he's poised to maybe speak, so he can address some of these questions as well. And then also, who is accountable if a dropout does not meet with the public school official? And again, we can just differ that for Senator Adams if you'd feel more comfortable, Senator Wightman. And then, finally, what are the consequences of failure to meet? And then who pays for the additional cost of the public school system having to take this additional step? So those are some questions... [LB996]

SENATOR GLOOR: One minute. [LB996]

SENATOR SMITH: Thank you, Mr. President. Those are some questions. Senator Wightman, you can have the remainder of my time if you'd like to speak on those or Senator Adams can later on. Thank you very much. [LB996]

SENATOR WIGHTMAN: Well, with regard to what the penalties I guess would be if they failed to meet, I think they'd become subject to the truancy laws if they did not meet. Right now, that probably would be the primary avenue that would be used. [LB996]

SENATOR SMITH: Thank you. [LB996]

SENATOR GLOOR: Senator Wightman, you have 25 seconds remaining, but you are on your time then. You're the next speaker in the queue. [LB996]

SENATOR WIGHTMAN: Well, I wanted to address a few issues. I think I will go ahead and turn my light off, and let Senator Adams...and I'll just yield my time to Senator Adams. [LB996]

SENATOR GLOOR: Senator Adams, 5 minutes. [LB996]

SENATOR ADAMS: Thank you. And thank you, Senator Wightman. Not that Senator Wightman hasn't done an effective job of answering particularly Senator Smith's questions, but let me give it another shot. Under our compulsory attendance laws, it is the parent who ultimately is responsible. Let me address, first of all, exempt school students. In this amended language, basically we're not treating the homeschool student any differently than we would under current law. They would be required, the parent would be required to say, based on our standards at home they have completed their course of study. Or they would have to notify the department that our son or daughter is no longer going to be part of the homeschool; they're done. Your question about the parochial and the private school and this communication. So I'm a superintendent at Papillion-La Vista and this appears to make me responsible for a kid

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that quits at a private school. How can I be? You aren't. You aren't. If a student leaves a private school, Creighton Prep, they leave Creighton Prep, that is between the kid, the parent, and Creighton Prep. But the minute they walk out the door, if they are under the age of 18, they are technically still under our Nebraska compulsory attendance laws. And they've got to be in school someplace. So in our current statutes, our current ones, even without these changes, it is the parent that has withdrawn the kid from Creighton Prep or that private or parochial school that is now responsible to notify Papillion or OPS or whoever it is that they're no longer there and to go through the interview process. I hope that's helpful. But those compulsory attendance laws, it puts it back on the parent. Now when the parent does show up and say that son or daughter has left the parochial school and shows up on Papillion's front step, Papillion would then be responsible under the provisions of this amendment--if they still want to drop out of school, now it's dropping out of Papillion--to sit down with them, have the exit interview. And really, folks, the essence of this exit interview, we're not saying they can't drop out. We're just saying now it's going to be more difficult to drop out, it's going to be tighter. And that the student, the parent, and the school's designee, whether it be the counselor or the principal or the superintendent, have to sit down and have a conversation with the kid. It may never change their mind. On the other hand, there may be a revelation. We have a course of study that we hadn't offered to you before, if it will help you keep in school. Maybe the young man or woman is leaving a parochial school; and you say, why should the public have to be responsible for them? Well, first of all, they're not, other than they are a resident of that school district. It's the parents are the one that's got to go to that public school district and say I want my kid to drop out. Why would the public school want to sit down and talk to them? Because maybe the public school has a program that's not offered at the parochial that might perk that kid's interest and get him to say, you know what, I'll stick it out for another semester and see how it goes. Quite simply, in my opinion, an eighth grade education isn't good enough anymore. A high school education, as valuable as it is, is probably not enough. You drop out of school at 16, what's left? Drop out of school at 17, what's left? Can't get in the military... [LB996]

SENATOR GLOOR: One minute. [LB996]

SENATOR ADAMS: ...until you're 18 or have a GED or a high school diploma. You can go to work. How many of those jobs are going to ultimately be potentially dead-end jobs? We're not saying you can't leave, but we're making it, honestly, a bit more difficult, and we're making sure that everybody in the decision-making process has had an opportunity to encourage that young man or woman to stay in school and finish it out. Thank you, Mr. President. [LB996]

SENATOR GLOOR: Thank you, Senator Adams. The Chair recognizes Senator Bloomfield. [LB996]

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SENATOR BLOOMFIELD: Thank you, Mr. President. Good morning, colleagues. I rise and I will support AM2622. I cannot, however, support LB996. I think we are taking the ultimate decision away from the parent and leaving it with the state and the schools. I have an amendment drawn up that goes forward with the interview--I think that interview is a good idea--but it leaves that final decision in the hands of the parent. I am probably not going to introduce this amendment in the interest of time. If this body feels with 25 votes that that final decision should be taken away from the parent, then that will be our vote out of here. Current law says, as I understand it, that the 16-year-old may withdraw with written permission from the parent. We are adding onto that obligations that they have to have a job or they have to be ill enough that they can't be there. That, to me, takes that decision away from the parent, and I don't think that's right; and I would urge you to vote against LB996 when that vote comes. Thank you. [LB996]

SENATOR GLOOR: Thank you, Senator Bloomfield. Senator Adams, you are recognized. [LB996]

SENATOR ADAMS: I had my light on in an attempt to answer some of Senator Smith's questions and realize now that I got that taken care of. So maybe...well, I hope I got it taken care of, and maybe you don't need the time. The only thing...I want to say something in response to Senator Bloomfield's amendment or what he's discussing. It's very difficult to debate the parental right issue, all right? We get that. And...but here's what I would tell you. We already have compulsory attendance laws that say you stay in school until 18. There, in and of itself, one could argue we've infringed on parental rights. Taken to its logical conclusion, then maybe we ought to just get rid of compulsory attendance altogether. Now I realize that's an extreme that probably none of us want to go down. But logically you could look at it in that way. You really could. I don't know that there is that much more I could add to the argument. We could maintain the status quo, or we can look at Senator Wightman's amendment in this bill and say, let's do more to try to keep them in school. This bill, with the amendment--with the amendment--still allows the parent to make that decision. Admittedly there are a couple of criterion that have to be met: one is financial and the other is illness--broadly interpreted could mean an awful lot of things. Thank you, Mr. President. [LB996]

SENATOR GLOOR: Thank you, Senator Adams. Senators remaining in the queue: Wightman, Smith, and Pahls. Senator Wightman, you are recognized. [LB996]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. I was going to make some of the same statements that Senator Adams made with regard to those issues raised by Senator Bloomfield. Certainly we have taken it away from a parental decision with regard to all children under 16 years of age. I guess we could always ask, what is the proper age? You know, they're minors until they're 19. For some purposes they can exercise rights at age 18, others they're held off until the age of 21. There's always going to be an impingement upon rights of the parents I think. And

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certainly we have compulsory education laws, and that's one we're addressing right here, that go beyond age 16. There's already a statement that they are compelled to attend until age 18. All we're doing is removing some of what we see as being a rather wide gate to get around that compulsory education law. But as Senator Adams says, taken to its conclusion, we could lower 16 to 15, or 15 to 14, or take them away altogether so that the parent always has the right. So to me, I think that is not a strong argument opposed to AM2622 or LB996 either one, the parental right issue, because it's already been done, and it's already been done absolutely until age 16. It starts at age 6 or thereabouts, with some exceptions. So I do urge you to vote for AM2622 and the underlying bill LB996. Thank you, Mr. President. [LB996]

SENATOR GLOOR: Thank you, Senator Wightman. And, Senator Wightman, that was your third time. Senator Pahls, you're recognized. [LB996]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I take a different look at this. I don't know if we have a significant dropout problem. If we do, then the schools, they will have to start analyzing what is the problem. Again, I haven't been told this is a significant problem, but if it is, then I would think this would give the schools an opportunity. And when they have this exit interview, they're going to start listening to parents and student and the teachers and administrators who are involved in this, they're going to start finding out that there is an issue. I look at this as a way of encouraging schools to change some of their curriculum. Instead of what I call the good old traditional schools that a lot of us went to...you hear though, you hear about academies, you hear about different approaches. And that's why I see this as a valuable tool for educators to take a look at. If change needs to be made, what is it? You can't quote always...and I'm going to use this, you can't blame the student because he or she wants to drop out. There are a lot of facets to that problem. And some of them may be what's going on in the school. If I happen to operate a particular school and there are an awful lot of kids who think it's time to leave early, then I would start taking a look at what's happening in those classrooms. Again, I still would like to know and I think this will give us some baseline information to see if we have a huge dropout rate or if there is a dropout rate in a certain school system, anywhere in the state of Nebraska. Again, that hasn't been proven to me that we do have that problem. And to some degree it's sad that we have to talk about dropout rates and compulsory education when we know, in the future, education is going to be what makes this country greater than what it is. It's not the child dropping out or the young student dropping out at an early age that's going to be the plus factor. We know that. And I think this is the time for all of us to take a look at education, not in a traditional sense, not in the way that many of us went through schools. They have changed. And sometimes when I hear my peers on the floor talk about it, when was the last time you really spent some time in a school? Be a student for a few days, and maybe you'd say, hey, this is great, I wish I could go back; or you may say, oh, I'm glad I'm already out. I do not see this taking away rights of the parent. That's not an issue that I see. I see it's a time for us to take a look at education.

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Thank you. [LB996]

SENATOR GLOOR: Thank you, Senator Pahls. The Chair recognizes Senator Price. [LB996]

SENATOR PRICE: Thank you, Mr. President, members of the body. Would Senator Wightman yield to a question? [LB996]

SENATOR GLOOR: Senator Wightman, would you yield? [LB996]

SENATOR WIGHTMAN: Certainly. [LB996]

SENATOR PRICE: Thank you, Senator Wightman. In reading over the amendment, mind you, and trying to piece it together with the bill, my understanding is, for the purpose of this conversation, the parent, the legal guardian/parent, decides to withdraw a student; they make an exit interview with the school principal or superintendent. Correct? [LB996]

SENATOR WIGHTMAN: It would be the superintendent or their designee rather than the principal as we originally had. [LB996]

SENATOR PRICE: Okay. Right. Well, okay, so it's with the superintendent. But the principal or their designee will be in attendance, along with the superintendent or their designee, etcetera. Correct? And then as they go through this, they're going to make...they have the conditions of a medical hardship or the financial. Correct? [LB996]

SENATOR WIGHTMAN: It'd be financial or illness. [LB996]

SENATOR PRICE: Right. Okay. One, how do we define, and do we define in statute, what financial hardship is? [LB996]

SENATOR WIGHTMAN: Well, we say that it is necessary for family support. I think that can be on either end of the family. It could be a dependent child or it could be the parent. You know, I think we need some latitude in that regard. [LB996]

SENATOR PRICE: Okay. Great. So we have some latitude. Then the person bringing the request has to sign the form that's designed by the superintendent, correct? [LB996]

SENATOR WIGHTMAN: They have to bring the form, and the superintendent only signs if the criteria has been met. They don't agree to it. [LB996]

SENATOR PRICE: Right. So the point I'm trying to get to is, the only person who's going to sign to agreeing to this would be that legal custodian, the parent, whomever.

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The school actually doesn't deny the request. [LB996]

SENATOR WIGHTMAN: That's the way it is right now. That's under AM2622. [LB996]

SENATOR PRICE: Okay. Great. I just wanted to make sure that that was perfectly clear, and that maybe said from a different vector, if you would, when we start talking about parental rights here. You're going to go the school; you're going to make your case; they're going to give you the interview; you're going to sign it and it's done. The school doesn't say, no, we don't believe that your financial hardship or your medical hardship is enough to warrant this. [LB996]

SENATOR WIGHTMAN: That's correct. They do not sign anything at that time. [LB996]

SENATOR PRICE: Thank you very much, Senator Wightman. [LB996]

SENATOR WIGHTMAN: Thank you. [LB996]

SENATOR PRICE: Members, I just wanted to make sure we understood that, because in the conversation that would be going on with the air gap in time between when we've heard it last time and now on Select File, and with the additional amendments here, it's still the same way it is. The parent is the only individual required to sign to authorize it. The school will not be able to or the superintendent will not be able to say, no, we don't agree to what it is that you're proffering for the reason. Until I had this conversation, I don't believe I could have supported it. But now that it's...it is still the same way it was. There's just one more hoop to run through. And that...so as of right now, I'm going to listen to more of the debate to see if we can ensure that that's exactly as I understand it. But right now, a student who decides that...and a family or legal guardian that decides to drop out of school will have to go to school, have some documents signed, and get some understanding. And then the parent signs that form and that's it. It's done. And until I hear otherwise, I think I know where I'm going to go on this bill now. Thank you, Mr. President. [LB996]

SENATOR GLOOR: Thank you, Senator Price. Senator Council, you are recognized. [LB996]

SENATOR COUNCIL: Thank you, Mr. President. And I want to begin by thanking Senator Wightman and his staff for considering the input provided on the original version of LB996 and piggybacking on something that Senator Price was just expressing as a concern. The amendment that I originally proposed for Senator Wightman's consideration did provide just that which Senator Price was concerned about. And when I presented it to Senator Wightman, I had some questions about it. But we were patterning it after a law in another state. Senator Wightman, indeed to his credit, saw that as an issue. And AM2622 removes the requirement that any school

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official has to approve of the withdrawal, and that the intent, as so aptly articulated by Senator Adams, is to ensure that the school is involved in the process and that parents are making knowing decisions about their child's withdrawal from education at age 16 and prior to age 18. If you go back and you listen to or look at the transcript of the committee hearing on this, one of the things that really jumped out was that under the existing system and under the existing statute, we really had no data showing how many parents were actually withdrawing their youngsters from school under the provision that allowed them to do so by providing a notarized statement. We had no data to show that. And so if there's going to be any allowance of withdrawal, that we should have some way to ensure that we're collecting the data so that we can respond to the concern that Senator Pahls was expressing, we have dropout data that the Department of Education maintains, but we don't have data of students who are withdrawing with their parent's permission. And another thing that became abundantly clear, at least to me, during that hearing was that school administrators really weren't getting involved in trying to discourage youngsters and their parents to allow withdrawal, that is was kind of an unspoken understanding that if the youngster had reached age 16, they were free to withdraw. In fact, Senator Dubas and I had had a conversation off the mike when this bill was initially presented on General File. The number of people in this state who still believe that the compulsory age is 16 were not aware of the fact that the body had raised the age to 18 and had inserted this withdrawal option. So I believe that to Senator...again to Senator Wightman and his staff's credit, and I know that he has consulted and been in consultation with Senator Seiler about it, have addressed all the concerns that have been raised and have crafted an amendment here that achieves what I believe should be this Legislature's ultimate objective, and that is to provide as much encouragement as possible for young people to stay in school until they receive a GED or a high school diploma or reach age 18. And otherwise, that if they're withdrawing,... [LB996]

SENATOR GLOOR: One minute. [LB996]

SENATOR COUNCIL: ...they're withdrawing with full knowledge and understanding that there are other educational alternatives that may be available to them and to encourage them to remain in school, and that they are fully aware of the consequences that have been documented that are associated with not completing your high school education. AM2622, in my opinion, accomplishes all of those objectives and I would urge the body's advancement. [LB996]

SENATOR GLOOR: Thank you, Senator Council. Senator Pahls, you are recognized. [LB996]

SENATOR PAHLS: Thank you. I wasn't going to speak...thank you, Mr. President and members of the body. I wasn't going to speak on this issue again, but Senator Council when she made a comment, and I'm sure this did happen, that there were some

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administrators who really didn't seem to know, I'm going to use it loosely, what was going on with these students who were dropping out. You know, that truly disappoints me, and I have to apologize for all those times that I did not thank teachers when they made home visits, when they called on a daily basis to parents wanting to know or concerned about their children. I don't think I thanked them enough. Now if there are administrators out there, and I'll go all the way from superintendents to the building level, if they had not shown a concern about a dropout, which apparently has happened, that's not right. And that's the purpose that I stood up, because I need to thank the people who used to work for me because I didn't...because they went way above and beyond. And my word is to those administrators: If you're allowing this to happen in your school districts, think of early retirement. Thank you. [LB996]

SENATOR GLOOR: Thank you, Senator Pahls. (Visitors introduced.) There are no senators remaining in the queue. Senator Wightman, you're recognized to close on AM2622. [LB996]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. AM2622 was an attempt to address many of the issues that were raised. And in that regard I want to thank particularly Senator Council and Senator Adams for their great amount of assistance in this regard. I do think that it's a substantially better bill than LB996 and I think makes LB996 a much better bill. To me it seems that it addresses a lot of the concerns about taking the decisions out of the hands of the parent, because really the parent or the legal guardian or that person in control, and the student, are going to be the only ones that are involved in the final decision. But that is after the superintendent or their designee certifies that all of the requirements have been met. So with that I urge your support of AM2622 and the underlying bill LB996. Thank you, Mr. President. [LB996]

SENATOR GLOOR: Thank you, Senator Wightman. Members, you've heard the closing on AM2622 to LB996. The question is, shall the amendment to LB996 be advanced...adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB996]

CLERK: 32 ayes, 1 nay, Mr. President, on the adoption of the amendment. [LB996]

SENATOR GLOOR: The amendment is adopted. [LB996]

CLERK: Senator Wightman, I have...and the second amendment, Senator, AM2389, a note that you withdraw that. I have nothing further on the bill, Mr. President. [LB996]

SENATOR GLOOR: Senator Langemeier, for what reason do you rise? [LB996]

SENATOR LANGEMEIER: I'd make the motion to advance LB963 (sic--LB996) to E&R

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for engrossing. [LB996]

SENATOR GLOOR: Thank you, Senator Langemeier. You have heard the motion. All those in favor...we've had a request for a machine vote. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB996]

CLERK: 25 ayes, 9 nays, Mr. President, on the advancement. [LB996]

SENATOR GLOOR: LB996 advances. Items for the record? [LB996]

CLERK: Just one, Mr. President. A new resolution. Senator Smith offers LR609. It will be laid over. (Legislative Journal page 1194.) [LR609]

The Speaker would move to recess the body until 1:30 p.m.

SENATOR GLOOR: Members, you have heard the motion to recess until 1:30. All in favor say aye. Opposed, nay. We stand recessed.

RECESS

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. I would ask the guests in the balcony to remember that there is a level of decorum that we try and hold in this body and in the Chamber and to hold your conversations to a whisper, please. Mr. Clerk, please record.

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

SENATOR GLOOR: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have nothing at this time, Mr. President. Thank you.

SENATOR GLOOR: Thank you, Mr. Clerk. We'll proceed to the first item on the agenda, General File, committee priority bills. Mr. Clerk.

CLERK: Mr. President, on LB1058, a bill by Senator Carlson. (Read title.) The bill was introduced on January 18, referred to the Business and Labor Committee, advanced to General File. There are Business and Labor Committee amendments, Mr. President. (AM2599, Legislative Journal page 1056.) [LB1058]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Carlson, you're recognized to open

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on LB1058. [LB1058]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. LB1058 was brought to me by the Department of Labor and heard in the Business and Labor Committee on February 6, advanced to General File with a unanimous vote. I want to thank Senator Lathrop and the Business and Labor Committee for making it a committee priority. The bill adopts necessary changes to the Employment Security Law and allows Nebraska employers to claim the maximum credit allowed against their federal tax liability under the Federal Unemployment Tax Act. LB1058 would also allow the Department of Labor to recover overpayments and penalties of unemployment benefits by intercepting federal income tax refunds. Such overpayments result from a claimant's failure to report wages earned while claiming benefits. Why should the Department of Labor not be able to recover overpayments? Why should businesses not be able to claim their maximum credit allowed against their federal tax liability? The bill as drafted also amends present law by requiring employers to provide the Department of Labor with information regarding an employee's eligibility for unemployment benefits within seven days after the department's mailing or electronic transmission of request for information. There was much discussion of this section of the bill. A committee amendment will follow. I'm going to mention the fiscal impact of this bill because it's a positive impact with federal dollars coming in and revenue resulting from that. There's also another portion of the bill that's very important. The Department of Health and Human Services indicates that the passage of LB1058 will have no fiscal impact. However, they also indicate that if the bill does not pass, there's the potential of losing \$25.8 million in federal funding to the Child Support Enforcement Program as a result of not being in compliance--and I don't think we want that to happen. In conclusion, LB1058 was presented by the Department of Labor as a general cleanup bill to codify present regulations and conform with federal requirements. I ask for your support on LB1058 and the underlying amendment. Thank you, Mr. President. [LB1058]

SENATOR GLOOR: Thank you, Senator Carlson. (Visitors introduced.) As the Clerk stated, there are amendments from the Business and Labor Committee. Senator Lathrop, as Chair of the committee, you're recognized to open on the committee amendments. [LB1058]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. LB1058 requires employers to respond to the Department of Labor's request for information concerning an individual's eligibility for unemployment benefits within seven days of the request. This amendment AM2599 would increase the response time to ten days. This accommodation was made at the request of the business community, as it affords more time to employers, especially the smaller employers, to comply with the department's request. I want to express my appreciation to Senator Smith who expressed concern in the committee with the short seven days, and worked with the business community and the Department of Labor to come to an accommodation of ten

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days which we believe is a reasonable period of time and accommodates the concerns of the business community. And with that, I would encourage your support of AM2599 and LB1058, which is for the most part a cleanup bill. Thank you. [LB1058]

SENATOR GLOOR: Thank you, Senator Lathrop. Members, you've heard the opening on LB1058 and committee amendment AM2599. There are senators wishing to be recognized. Senator Nelson, you are recognized. [LB1058]

SENATOR NELSON: Thank you, Mr. President and colleagues. Good afternoon. I have some questions for Senator Carlson if he would agree to yield. [LB1058]

SENATOR GLOOR: Senator Carlson, would you yield? [LB1058]

SENATOR CARLSON: Yes, I would. [LB1058]

SENATOR NELSON: Thank you, Senator Carlson. I'm a little bit familiar with this, in particular with the tribunal aspect. And I notice on the last item on the committee statement it says that this appeals 48-633, which provides for appeal tribunals. It appears to me from this statement that...and it does say that tribunals have not been used for a while. So how are appeals being held now if an employer wants to contest an employee's request for unemployment? [LB1058]

SENATOR CARLSON: I'll have to be honest with you, Senator Nelson, I don't know the ins and outs of that process, and the only thing I could respond to is that I'll find the answer. But I don't know that. [LB1058]

SENATOR NELSON: All right. Would Senator Lathrop have some idea, if Senator Lathrop would yield? [LB1058]

SENATOR GLOOR: Senator Lathrop, would you yield to a question? [LB1058]

SENATOR LATHROP: Yes, I will. [LB1058]

SENATOR NELSON: Senator, did you ever appear before an appeals tribunal on unemployment benefits? [LB1058]

SENATOR LATHROP: No. [LB1058]

SENATOR NELSON: No. (Laugh) All right. [LB1058]

SENATOR LATHROP: (Laugh) Sorry about that. That's outside the scope of my practice. [LB1058]

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SENATOR NELSON: Okay. Well, so you don't have any knowledge about the use of the tribunals or who does handle the appeals now. Are they designated state employees in the Department of Labor? [LB1058]

SENATOR LATHROP: I'm being told that we don't use an appeal tribunal any longer and that federal statute requires that that be done by the Labor Department's staff. [LB1058]

SENATOR NELSON: So it formerly was contracted out then. [LB1058]

SENATOR LATHROP: Yes. [LB1058]

SENATOR NELSON: All right. Okay, so we're just merely...we're just abolishing now this repealing it because it's no longer necessary and just took it out of the statute. [LB1058]

SENATOR LATHROP: I think that's right. And my understanding is for the most part this is the cleanup bill from the Department of Labor. So I don't think we're doing anything controversial or otherwise necessary than to comply with federal law. [LB1058]

SENATOR NELSON: All right. Okay. Thank you, Senator Lathrop. Thank you, Senator Carlson. Thank you, Mr. President. [LB1058]

SENATOR GLOOR: Thank you, Senator Nelson. Are there other senators wishing to be recognized? Seeing none, Senator Lathrop, you're recognized to close on the committee amendment. Senator Lathrop waives. The question before the body is, shall the committee amendments to LB1058 be adopted? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1058]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB1058]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB1058 to E&R Initial. There are no senators wishing to be recognized. Senator Carlson, you're recognized to close on the advancement of LB1058. [LB1058]

SENATOR CARLSON: Thank you, Mr. President. And, Senator Nelson, I did get just a bit of information that that is decided by a single administrative law judge, and it used to be three and now it's one. So that's the procedure that's in place. This is...it is a good bill. I think it's a legitimate request by the Department of Labor, and certainly I would ask for your support on LB1058. Thank you. [LB1058]

SENATOR GLOOR: Thank you, Senator Carlson. Members, you've heard the closing

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on LB1058. The question is the advancement of LB1058 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1058]

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill. [LB1058]

SENATOR GLOOR: The bill is advanced. Continuing with General File, Mr. Clerk. [LB1058]

ASSISTANT CLERK: Mr. President, the next bill is LB1001 introduced by Senator McGill. (Read title.) The bill was read for the first time on January 17 of this year, referred to the Urban Affairs Committee. That committee reports the bill to General File with committee amendments. (AM2528, Legislative Journal page 998.) [LB1001]

SENATOR GLOOR: Senator McGill, you're recognized to open on LB1001. [LB1001]

SENATOR MCGILL: Thank you, Mr. President, members of the body. LB1001 has been greatly reduced by amendments, so much of what was in the green copy of the bill is no longer there, will be taken out by the committee amendment and the amendment to the committee amendment. I'm just going to go ahead and open on what those amendments generally will do. The bill now only removes language from the state building code statutes that has previously permitted state agencies to amend the state building code. The Nebraska Supreme Court has said in the case Clemens v. Harvey that an administrative agency may not employ its rulemaking power to modify, alter, or enlarge provisions of a statute which it is charged with administering. The concern with the language that the bill strikes from statute is that it is an unconstitutional delegation of legislative authority if we continue to allow state agencies to amend the building code. The Supreme Court case clearly says that "It is the function of the Legislature through the enactment of statutes to declare what is the law and public policy of this state." And "The Nebraska Constitution...prohibits one branch of government from...improperly delegating its own duties." As state agencies are part of the executive branch of government, it would be unconstitutional to continue to leave language in the statute which gives them the authority to amend the state building code. The committee felt strongly about moving this section of the bill forward, and I urge you to vote for the amendments following. Thank you, Mr. President. [LB1001]

SENATOR GLOOR: Thank you, Senator McGill. As the Clerk stated, there are committee amendments. Senator McGill, as the Chair of the Urban Affairs Committee, you're recognized to open on the committee amendments. [LB1001]

SENATOR MCGILL: Thank you, Mr. President, members of the body. This is the amendment that strikes out a portion of the original green copy of the bill. We originally went into this legislation thinking that we would want to create an advisory board to help

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us work through building code issues. But after the hearings, the committee felt that maybe that is unnecessary. It's something that I think we should still consider in years to come. But at the current time we felt comfortable just moving forward with adopting building codes in the way we have been. And so this amendment takes that portion of the green copy out of the bill. Thank you, Mr. President. [LB1001]

SENATOR GLOOR: Thank you, Senator McGill. Mr. Clerk. [LB1001]

ASSISTANT CLERK: Mr. President, I do have an amendment to the committee amendments, AM2597, from Senator McGill. (Legislative Journal page 1163.) [LB1001]

SENATOR GLOOR: Senator McGill, you're recognized to open on the amendment to the committee amendments. [LB1001]

SENATOR MCGILL: Thank you, Mr. President. This takes out the third one of...the other third of the bill which originally stated that state agencies should be building to the building codes of the municipalities in which they are building in. And we again decided to take that part of the bill out. We do have circumstances where an agency like the University of Nebraska builds in different towns and is all building to the state code instead of the local city code, which I think was worthy of discussion. But at this time the Urban Affairs Committee decided to remove that from the bill, and it was just neglected to be put into the previous committee amendment. Thank you, Mr. President. [LB1001]

SENATOR GLOOR: Thank you, Senator McGill. Members, you've heard the opening on LB1001, the Urban Affairs Committee amendment, and the amendment to the committee amendment. We now move to floor debate. Are there senators wishing to be recognized? Seeing none, Senator McGill waives closing. The question is, shall the amendment to the committee amendment to LB1001 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1001]

ASSISTANT CLERK: 25 ayes, 0 nays on the adoption of the amendment to the committee amendments. [LB1001]

SENATOR GLOOR: The amendment is adopted. We now return to discussion. Any senators wishing to speak on the committee amendment? Seeing none, Senator McGill waives closing. The question is, shall the committee amendment to LB1001 be adopted? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1001]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of the committee amendments. [LB1001]

SENATOR GLOOR: The amendment is adopted. Discussion on the advancement of LB1001 to E&R Initial. No senators wishing to be recognized. Senator McGill waives

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closing. Members, the question is the advancement of LB1001 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1001]

ASSISTANT CLERK: 29 ayes, 0 nays on the motion to advance the bill. [LB1001]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB1001]

ASSISTANT CLERK: Mr. President, the next bill is LB972 which was introduced by Senator Ashford at the request of the Governor. (Read title.) The bill was read for the first time on January 12 of this year, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments. (AM2598, Legislative Journal page 1070.) [LB972]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Ashford, you're recognized to open on LB972. [LB972]

SENATOR ASHFORD: Thank you, Mr. President. I'm going to talk about the amendments which are coming up next because they are the bill. But before I do that, I would like to suggest that I think we've made great progress on YRTC this year--not enough progress but significant progress. And much of the credit goes to Senator Hadley who has not only been creative in his thoughts about how we deal with YRTC in an operational sense in an everyday sort of framework, but also thinking about the future of YRTC, the future of delinquent juveniles in our state. So I applaud Senator Hadley for his commitment to this issue. As the body may recall, the Governor recommended in LB972 that the employees of the YRTC be transferred from the Office of Juvenile Services to a division of the HHS to the Department of Corrections. And it was a suggestion worthy of discussion and analysis. I think that as we've heard on this floor this year that there have been and it has been an increase over the last few years of incidents involving juveniles, involving youth, and involving staff at YRTC, that cause anyone who looks at the situation great pause. And the Governor took this issue up and I appreciate his commitment to the YRTC issue. The committee looked at the option of...the Judiciary Committee looked at the option of transferring the YRTC facility to the Department of Corrections in some great depth. We had several meetings. Obviously we had a public hearing, talked to various stakeholders, and had long conversations with the Governor's Office and the Department of Corrections. And the conclusion I believe we all came to was that at this point in time that the Corrections Department was not the appropriate agency to head the YRTC facility in Kearney, and there are many reasons for it. The most critical reason I think is that YRTC is a treatment facility for wards of the state who for one reason or another have been adjudicated as delinquent. And as you recall, our prior conversations, the number of young delinquents or young juveniles who have been adjudicated as delinquent and sent to YRTC in any given year is approximately 500 juveniles. We looked at the situation and determined

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that the appropriate place for now is to place those juveniles at YRTC with OJS. However, it was also the belief of the committee that the Department of Corrections has expertise in the area of security, certainly, in keeping order in a facility where you bring lots of individuals, young people, together who have been adjudicated for violating some criminal statute of some kind, and that it is important that the Department of Corrections play a role at YRTC. So in this amendment we are asking that the Department of Corrections provide training to the employees of YRTC; that they provide that training on an ongoing basis; and they report to the Legislature next year on the results of that training. Though this may seem just a de minimus sort of solution, I think not. I have a great deal of faith in the Department of Corrections, generally, and in Bob Houston, specifically. The committee I believe was convinced that Bob Houston, as director of the Department of Corrections, can bring to bear an appropriate cadre of personnel to work with OJS at YRTC to monitor the situation there and to provide adequate training and follow-up. So I think this is an important piece and it is part of the committee amendment. The other...and in that regard, the last time we talked about this issue we talked about the younger juveniles, the 12- and 13-year-olds who were at YRTC, for the most part not committing serious criminal offenses but minor offenses, that were mixed in with the older boys, the older population. So the committee amendment does provide that the 12- and 13-year-olds may not be placed at YRTC at all, period, and that other options be available for them. That in our view is important. The third piece of the committee amendment--and this really was quite a significant concern of Senator Hadley, of Kearney, the staff there, the community in general, and the county attorney in Buffalo County: What happens when you have a juvenile who excessively misbehaves, and what do you do? Well, what we didn't want to do is place them in a situation where they were going to be convicted potentially of a felony, and then, you know, they get into a worse situation than they were when they were in the treatment facility. So what we've asked OJS to do is to report each incident to the judge of the court who has sent the juvenile to YRTC so that there can be an immediate follow-up with the judge, and if there need be some other plan or treatment plan implemented for this juvenile, that it be done immediately--not six months away or 90 days hence or let the situation get out of hand. Again, these are the kinds of things that potentially could have been done anyway, but it's important that we legislate this to make clear to everyone at Kearney involved that the judge is going to be involved with that juvenile on an ongoing basis. Fourthly, though not in this amendment, the Appropriations Committee did a very significant thing, I believe, in appropriating \$900,000 for 18 additional staff at YRTC. These staff will make a significant difference. There will be staff there that will work with the juveniles in their living quarters during their school time, and...but, in addition to that, there will be mental health professionals. Anyone who goes out to YRTC will immediately see the need for ongoing mental health care. And a part of that cadre of 18 staff will include mental health professionals, and it will, I believe, make a significant difference. And the Appropriations Committee was supportive of that idea and we appreciate that. The remodel or restoration or whatever you want to call it of the dorm facilities at YRTC, I still believe is a necessary step,... [LB972]

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SENATOR GLOOR: One minute, Senator. [LB972]

SENATOR ASHFORD: ...but it's going to take some additional work and study to decide what best to do. The World-Herald had it absolutely right this morning in its editorial when it said that the answer to this problem, this issue, is to keep these children closer to home, keep them in their home wherever possible. And that's the direction we need to go. That's the direction we need to go so that in the next five years hopefully YRTC can be totally phased out. I think that's...or changed significantly from what it is today. Again, thank you to everyone who's worked on this. These are not insignificant initiatives. These are not insignificant initiatives. And I believe what we have done here, in conjunction with all the other changes that have gone on with child welfare, we are getting at it. We are getting at the continuum. We are starting from the earliest situation... [LB972]

SENATOR GLOOR: Time, Senator. [LB972]

SENATOR ASHFORD: ...to the most difficult situation. Thank you, Mr. President. [LB972]

SENATOR GLOOR Thank you, Senator Ashford. (Visitors introduced.) As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, your opening did cover those amendments, is that correct? [LB972]

SENATOR ASHFORD: It did. I don't know, do I have some more time? [LB972]

SENATOR GLOOR: Yes, you have. [LB972]

SENATOR ASHFORD: I just very briefly...(laugh). I'll turn off my light then because you don't want to...but I will add one thing if I might. The other critical component to the YRTC reform is LB985. And LB985 is Senator Krist's bill and it transfers the OJS juveniles who have been adjudicated as delinquents from OJS to the probation. And already, in Douglas County, there has been a project of this kind going on for two and a half years. We've seen a dramatic decrease in out-of-home placements as we have asked the probation department to work with each individual juvenile who has been adjudicated. In LB985, which calls for a transfer of around \$9 million from HHS to probation, we are adding the Scottsbluff, the 12th Judicial District; and the North Platte judicial district, the 11th Judicial District, which includes McCook and Lexington and Ogallala. In that bill we've expanded the probation program to those districts. And hopefully in the next biennium we can complete the task of transferring these young juveniles out of OJS to probation. The probation officers who are now working with these children are, in Douglas County, and who also work with these juveniles throughout the state, have a direct and a much more...well, certainly a much more direct

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relationship in working with the courts to monitor how these juveniles are doing. And the money that is used for the services for these juveniles tends to stay in the community and to reimburse community-based services, as these children, for the most part, stay in their homes and are not sent into, certainly, in some cases, areas outside their places outside the state that are very, very expensive. The cost of a juvenile remaining in their homes while they're going through a period of probation, dealing with the probation department, is 5:1 less than it is if you send them outside their homes. In Douglas County, 83 percent of the juveniles in the pilot who have been adjudicated as delinquent remain in their homes. That is a dramatic shift from what it was when those children were in OJS. I believe that the judges who, in Douglas County, certainly, and in talking to the judges in North Platte and Scottsbluff and the other communities in those districts are unanimously supportive, as are the county attorneys and other judicial officials. Unanimously supportive of having these delinquents, children, who have been adjudicated as delinquents, these juveniles stay with probation. There is no need to have an OJS worker and a probation officer working with these juveniles. So it is, as we go through the rest of these juveniles bills, LB985 in particular, we must, must pass LB985. It must pass. It must be implemented in the 11th or 12th District. Because if we do that, and in the next two years move it across the state, I think the argument for dramatically changing YRTC can be made and that there will be many fewer young people that will need the YRTC facility on an ongoing basis as it has done in the past. So the only caveat I would give here is that the passage of LB985 is absolutely critical to the future of YRTC in Kearney. Thank you. [LB972 LB985]

SENATOR GLOOR: Thank you, Senator Ashford. Members, you've heard the opening on LB972 and the Judiciary Committee amendment, AM2598. We now move to floor debate. There are senators wishing to be recognized: Hadley, Louden, and Wallman. Senator Hadley, you are recognized. [LB972]

SENATOR HADLEY: Mr. President and members of the body, I stand in full support of the bill and the underlying amendment. I certainly want to thank the Judiciary Committee: Senator Ashford, Senator Lathrop, Senator Coash, Senator Council, Senator Burke Harr, Senator Larson, Senator Lautenbaugh, and Senator McGill. They did yeoman work on this. They certainly got ahold of the problem. They understand the concerns that were at YRTC-Kearney, and somewhat to YRTC-Geneva, and they've come up with a start to a workable solution to solve those problems. So I really appreciate their help. You know, there's an old saying about throwing the baby out with the bath water. What we wanted to do and what I think they've done is to make sure that those youths that can really be served by going to a place like Kearney are served. The last thing we want to do is send a youth to Kearney and turn them out, back more as a hardened juvenile back on the streets. And I think this bill goes a long ways to try to help those kinds of youth. In talking with the head, the CEO of YRTC, she talked to me about the 80/20 rule. Eighty percent of the youths that come to Kearney are helped by their time at Kearney. It's the 20 percent that we have concerns with. The 20 percent

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are what we're always looking at. I think this bill, this committee amendment, indicates a gradual shift in the approach that is being suggested with (inaudible) the status of treatment of those individuals whose actions may subject them to the juvenile justice system. There is a recognition that not all individuals are suited to the rehabilitation services that can be provided under the Nebraska Juvenile Code. Two clear examples of individuals meeting these criteria are individuals under the age of 14 and those individuals that have been found by appropriate action not amenable to rehabilitative services. I think that's important. We're taking those younger youth, taking them out of the environment with the 16- and 18-year-olds. Secondly, those youth that have shown by their actions that they don't belong there should not be there. The Judiciary Committee establishes criteria that will make an individual ineligible for placement in the YRTC: persons under the age of 14, and the youth meets certain requirements of the statute. County attorneys are advised to take into consideration whether or not the individual has been previously committed to a YRTC and the outcome of the previous period of commitment. We don't want people who had problems in YRTC to get out and then be sent right back there again. The CEO of the YRTC is now required to report instances where an individual who has been placed in a YRTC facility commits an assault on an employee of the facility or another juvenile, escapes or attempts to escape. The required report shall be sent to the committing court and the county attorney of the county in which the committing court is located. The report may be offered into evidence at any hearing conducted pursuant to this section. The language of the amendment requires the Office of Juvenile Services and the Department of Correctional Services to collaborate with regard to the training of all employees and the safety and security of the Youth Rehabilitation and Treatment Centers. The statute will require information of this joint action to be reported annually. Again I want to thank Senator Ashford and the committee. I want to thank the Governor for proposing this bill. I want to thank all of the staff at YRTC who have worked hard to help us understand the concerns that they have. I want to thank the Appropriations Committee that did come up with the funding for the additional staff. That will be very important. We will certainly keep an eye on this as we go forward, and if there are further concerns as time goes on I'm sure we will be back to talk with you later. Thank you, Mr. President. [LB972]

SENATOR GLOOR: Thank you, Senator Hadley. Senator Louden, you are recognized. [LB972]

SENATOR LOUDEN: Thank you, Mr. President and members. As I look over the amendment which becomes the bill, I needed some questions clarified. I was wondering, would Senator Ashford yield for questions? [LB972]

SENATOR GLOOR: Senator Ashford, would you yield? [LB972]

SENATOR ASHFORD: Yes. [LB972]

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SENATOR LOUDEN: Yeah. As I noticed on your amendment there, you've raised the age to 14 years, and then I see where they're going to change it from the Office of Juvenile Services to the Department of Correctional Services. Now that, I presume involves, the way I read it, the Kearney facility and the Geneva and the one in Omaha. Now who...the Department of Correctional Services takes over the operation of those facilities is the way I understand the bill. But what happens to these ones that...these children that are under 14? Do they stay in the home or do they...is there another facility someplace that they go to, or how are they handled? [LB972]

SENATOR ASHFORD: Senator Louden, and I apologize for not being more clear in my introduction, but we are not moving YRTC to the Department of Corrections. We're retaining it in OJS. The original bill, you're right, the original bill placed this over into the Department of Corrections. We're not doing that. [LB972]

SENATOR LOUDEN: Okay. [LB972]

SENATOR ASHFORD: But your question is a good one. The 12- to 13-year-olds, for the most part there are minor offenses committed. And what we are hopeful is that...well, not only hopeful. What we're asking the courts to do is to...and they're not...they're a small portion of the 150 or so that are at YRTC at any given time, only a handful--but that's statewide--so that they be retained in their homes or in their communities or put into another facility, other facilities. We do not have any other state facility though, so there is no other YRTC-like facility for 12- and 13-year-olds. [LB972]

SENATOR LOUDEN: And those younger ones then would stay in the home-type situation. [LB972]

SENATOR ASHFORD: That would be the goal. Yes. [LB972]

SENATOR LOUDEN: Okay. Unless they've been...according to the amendment, unless they've been at a rehabilitation or treatment center before, or something like that,... [LB972]

SENATOR ASHFORD: Correct. [LB972]

SENATOR LOUDEN: ...then they would be... [LB972]

SENATOR ASHFORD: Correct. [LB972]

SENATOR LOUDEN: Yeah, I see. And then the amendment does away with the changing it from the one correctional facility to the other. [LB972]

SENATOR ASHFORD: Yes. [LB972]

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SENATOR LOUDEN: Yeah. Okay, thank you, Senator Ashford, and thank you, Mr. President. [LB972]

SENATOR GLOOR: Thank you, Senator Louden. Senator Wallman, you are recognized. [LB972]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Ashford yield to a question? [LB972]

SENATOR GLOOR: Senator, would you yield? [LB972]

SENATOR ASHFORD: Yes. [LB972]

SENATOR WALLMAN: I noticed there were a few opponents on this, like Voices for Children. What was their concern on this? [LB972]

SENATOR ASHFORD: Oh, my. (Laugh) Actually a good question. And Voices for Children has been involved with us throughout this discussion, and I don't want to speak for them, but I believe that they are supportive of the changes that we're making, and that the opposition that they did have for the bill I think has for the most part been erased. [LB972]

SENATOR WALLMAN: Thank you, Senator Ashford, and thank you, Mr. President. [LB972]

SENATOR GLOOR: Thank you, Senator Wallman. The Chair recognizes Senator Coash. [LB972]

SENATOR COASH: Thank you, Mr. President. I think Senator Ashford and Senator Hadley have pretty much covered the technical aspects of the amendment which does become the bill. What I wanted to add to this, and I know Senator Ashford talked about this but I think it's important that it be restated, that the Judiciary Committee feels that what is indicated in the amendment is not the end of what we need to do to improve the YRTC and its place in the continuum of services for children. Senator Wallman had asked about the opposition to parts of this bill, and I think I can explain a little bit more where that came from. It could have been perceived that by moving YRTC to Corrections we were giving up on the treatment aspect of what YRTC was supposed to do. And I don't think that was the intent but it certainly is a valid concern. It could have been perceived that through the discussions--and none of this ended up in the amendment--but we had talked about how do we end the OJS involvement with these kids; that that could have been perceived as giving up on kids. And the Judiciary Committee is committed not to do that, and Senator Krist's bill may be a big part of that.

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What we have left here is a process where we've got two entities with very different areas of expertise working together. We've got the Corrections Department working with HHS not to provide punitive measures to the children who need treatment but to provide technical assistance on how best to manage the risks of serving children in the setting that they're being served in. So what I believe we have is a really good mix of the right people doing the right thing. And we've got HHS providing the habilitation and the treatment; we've got Corrections as a player in helping manage the environment safely. Our budget that we've passed includes more staff to provide for that, because you can't...you can have all the measures and security in place; if you don't have the personnel to implement it, you're not going to be very successful. The concern with LB972 and the various...and what you're seeing is reflected in the committee amendment is not where we started. There were many versions of this. And the concern was always, are we giving up on these kids; and is this language going to send the message that at some point a kid just can't be served or treated successfully and kept safe? And I think that was the nature of a lot of the opposition. And so the committee listened to that and we decided that this is the first step, but it's not the last step, colleagues. We've got a ways to go. We need to see how the new personnel that's being implemented, how successful that is. What we are finding out is it's starting to yield some results with safety. The committee amendment, by changing the age, is going to be a big step. But, in closing, colleagues, I want us...and I'll say this every opportunity that I get: There has to be options for children. There has to be options for their service to keep them safe. The options are best served in their home so that they don't have to become wards of the state. [LB972]

SENATOR GLOOR: One minute. [LB972]

SENATOR COASH: And we have to make sure that we are putting the right service in the right place. And we will...colleagues, we will do much better by doing that way before we have to serve them in a place like YRTC. Kearney-YRTC, Senator Campbell said when we talked about this issue earlier, has a place in the continuum of services; it's part of the larger plan. I'm not going to disagree with that. But we have to continue to focus on that front end and we have to continue to focus on how we make the decision that a child is best served outside of their home in a place like YRTC, and then we can use YRTC for what it was meant to do which is to treat those children who need to be treated outside of their home. With that, I would urge the body to adopt the committee amendment and the underlying bill. Thank you, Mr. President. [LB972]

SENATOR GLOOR: Thank you, Senator Coash. Seeing no additional senators wishing to speak, Senator Ashford, you're recognized to close on the Judiciary Committee amendment. [LB972]

SENATOR ASHFORD: Thank you, Mr. President. Let me conclude by just leaving you with this message: This Legislature has done more for kids than any Legislature I've

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been seeing or been involved with, and that goes back to 1982. This is a group of people who from when we came back six years ago decided we are tired of the violence. We're tired of kids not going to school. We're tired of kids going to YRTC and acting out. We're tired of what happened at safe haven with kids that did not get the proper mental health treatment. And this Legislature will...in my view, every single member of this Legislature has committed themselves to children, and it is going to be historic in my view. And every single person in here must be proud of that accomplishment, because it is a major accomplishment. This is a small piece of that effort. We have the leadership of Senator Campbell. We've had Senator Howard here for eight years who spent her career dealing with children, trying to get them adopted out so that they could have a place to live and a place to be. We all were sort of embarrassed for a little while about safe haven because all these children were being dropped off and they were 16 years old. Well, why was that? There was some...there were gaps in our system. But what did we do? We didn't run away from that as a Legislature. We said we're going to fix this because Nebraska is better than that. We can do it; we can do it; we can do it. So instead of being like we always are in Nebraska, a little self-effacing, because that's the nature...we're all Nebraskans, we're all self-effacing, because all these other places have, you know, mountains and big cities and...but we're Nebraskans and we're self-effacing. But we are the best, and we're going to be the best dealing with children. Five years from now, ten years from now, we're not going to have 4,400 kids as wards of the court. We're not going to have 16,000 cases going through child advocacy centers because of child abuse. It's not going to happen because we're going to stop it. We are going to make this state an example of what it means to be a loving state. This is big stuff. This is bigger stuff than anything we do. And this...every single member in here, in my view, and I've served with a lot of people, I am so proud to be a part of a body that cares so much about children. And every single member in here has stood up for children, every single solitary one. Whether it's drunk driving, whether it's drugs, and Senator Harms talking about kids, it doesn't matter who. I could go through every single member here has made...whether it's parents, Senator Brasch concerned about parents and families and making sure that young girls are making the right decisions. I could name every single one of you have made significant contributions. So, in conclusion, again I just appreciate the effort of the Judiciary Committee throughout their entire six years working on these issues. I appreciate Robert Bell's efforts for the Governor on this particular bill; obviously Senator Campbell; and, you know, just everybody else that is so committed to making life better for children in the state of Nebraska. Thank you, Mr. President. [LB972]

SENATOR GLOOR: Thank you, Senator Ashford. Members, you've heard the closing on the Judiciary Committee amendment. The question is, shall the committee amendment to LB972 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB972]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of committee amendments.

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[LB972]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB972 to E&R Initial. Senator Lautenbaugh, you are recognized. Senator Howard, you are recognized. [LB972]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I want to just take an opportunity to thank Senator Ashford for the work he's done for the youth in our state. He's really been tireless in advocating for them and I sometimes think back all the years that I've known him that we've worked together on issues, and I think the time that he spent working in the Housing Authority as the director made a definite impact on him in terms of seeing youth that were not attending school or that were having serious family problems that at that time he really didn't have any way to address. And now he's down here with us and he's working tirelessly on these issues. I went over to him awhile ago and urged him to look again at the amendment that we had had on the floor regarding this issue. The funding for the improvements at the Kearney center, \$1.8 million, which compared to money we spend, really isn't that much. But this money would have put in air conditioning for these boys who are sleeping on steel cots in the dead of summer. I don't know how many...I'm thinking it's 32 a dormitory-style room, which is an incredible number of troubled kids in a too-hot space on a summer night. I'm going to yield the rest of my time to Senator Ashford if he would like it to just say a few words on that. I know he's hesitant to go in that direction, but I would encourage him to do it. [LB972]

SENATOR GLOOR: Three minute 30 seconds, Senator Ashford. [LB972]

SENATOR ASHFORD: Thank you, Senator Howard, for those kind words, and I would just urge the advancement of the bill. Thanks. [LB972]

SENATOR GLOOR: Thank you, Senator Howard and Senator Ashford. There are no senators remaining in the queue. Senator Ashford, you're recognized to close on the advancement of LB972. Senator Ashford waives. Members, the question is the advancement of LB972 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB972]

ASSISTANT CLERK: 37 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB972]

SENATOR GLOOR: The bill advances. Continuing with General File, senator priority bills. Mr. Clerk. [LB972]

ASSISTANT CLERK: Mr. President, LB804 was introduced by Senator Lautenbaugh. (Read title.) The bill was read for the first time on January 5 of this year, referred to the

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Judiciary Committee. That committee reports the bill to General File with committee amendments. (AM2268, Legislative Journal page 971.) [LB804]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Lautenbaugh, you're recognized to open on LB804. [LB804]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I introduced this bill this year. It's commonly referred to as the castle doctrine, although it varies from state to state. It has undergone a substantial committee amendment. I'd like to thank the committee for working on it and for Senator Fulton for prioritizing it. And really there's no point in referring to the green copy at all because it has been completely replaced and very much changed. And so I'm just going to talk about the committee amendment, and Senator Ashford can, as Chair of the Judiciary Committee, can add whatever he sees fit. Simply put, what this bill does now, there are several justifications for use of force set forth in the criminal law, meaning that you won't be prosecuted if you fit within one of these exceptions. This bill amends a section of the criminal law to state that, and I quote: The justification defenses provided for under Sections 28-1406 to 28-1416 shall be available in any civil action for assault and battery or intentional wrongful death and, where applicable, shall be a bar to recovery. All we're saying here, simply put, is that there are certain exceptions in the criminal code where use of force is authorized and you will not be charged for using force to defend yourself, self-protection, protection of others, protection of property, with all within certain parameters. This makes it clear that those same defenses are applicable in civil actions for intentional assault and battery or intentional wrongful death. It is not what is traditionally described as the castle doctrine anymore. I was asked by the media about this the other day in light of some national events, so to speak. But this really...the underlying bill would not have applied to that situation, certainly. The facts were very different it appears. And more to the point, the amendment which becomes the bill certainly has nothing to do with anything like that. It is very simple, very straightforward, just transferring some of these defenses that are available in criminal proceedings to civil proceedings as well, in certain circumstances. I would be happy to answer any questions you might have, and I would ask you to support both the committee amendment and the underlying bill. [LB804]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair of that committee, you're recognized to open on the Judiciary Committee amendments. [LB804]

SENATOR ASHFORD: Thank you again, Mr. President. Senator Lautenbaugh has described the amendment adequately. Just for clarification, Nebraska has a castle doctrine law which is significantly different from the Florida law that's been in the news, the stand your ground law, where an individual does not have the duty to retreat outside

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of their business or their home. In Nebraska, we have had, do have, as Senator Lautenbaugh indicated, a self-defense law commonly called a castle doctrine law which allows--and have had for some time--allows individuals to protect themselves in their home and in their business without a duty to retreat if they're in fear of bodily harm. So just to clarify that. And otherwise, Senator Lautenbaugh has most adequately described the amendment and I'd urge that it be adopted. Thank you. [LB804]

SENATOR GLOOR: Thank you, Senator Ashford. Members, you've heard the opening on LB804 and Judiciary Committee amendment AM2268. We now move to floor debate. Senator Fulton, you are recognized. [LB804]

SENATOR FULTON: Thank you, Mr. President, members of the body. I'll just speak briefly. It's been touched on already what this amendment does, what it does for our statutes, to our statutes. And I did make this my priority bill, and AM2268 embodies a compromise, an accord that was stricken between parties. And so I just take this opportunity to extend thanks to the Judiciary Committee, to Senator Ashford, to Senator Lathrop, Senator Lautenbaugh, and other members of that committee. I think this is a worthy compromise and I support AM2268. I'll just stop there. Thank you, Mr. President. [LB804]

SENATOR GLOOR: Thank you, Senator Fulton. The Chair recognizes Senator Ken Haar. [LB804]

SENATOR HAAR: Mr. President and members of the body, I wonder if I could ask Senator Lautenbaugh a couple questions. [LB804]

SENATOR GLOOR: Senator Lautenbaugh, would you yield to questions from Senator Haar? [LB804]

SENATOR LAUTENBAUGH: Yes, I will. Just to help me understand so I can explain to other people, when can you use deadly force as self-defense in Nebraska? [LB804]

SENATOR LAUTENBAUGH: Well, Senator, the sections of law dealing with that are 28-1406 through 28-1414, and there are multiple, multiple sections with multiple, multiple caveats and exceptions for the Criminal Code currently. I could go through those rather than just referencing them to you. Section 1407 deals with choice of evils, 1409 deals with self-protection, 1410 deals with the protection of others, 1411 deals with the protection of property, 1412 deals with law enforcement, 1413 deals with use of force for someone who is specifically charged with the care and safety and discipline of others. So all of those exceptions currently exist in the criminal law. And again, each one is a section that has multiple caveats as to when it applies and when it doesn't. All this bill is doing as amended with the committee amendment is saying that that also applies in a civil action for wrongful death or assault and battery. [LB804]

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SENATOR HAAR: Okay. Well, of course, the Florida case has been in the news a lot. Could you contrast Nebraska versus Florida? I don't know if you've been following that story or not. [LB804]

SENATOR LAUTENBAUGH: I'll be honest, I've been following the story but I'm unaware of the specifics of the Florida law, the stand your ground law. I don't think...well, I don't have much of an understanding with it, I'll tell you up-front...or of it, I'll tell up-front. But I don't think it really has anything to do with what we have in existing law per se or what we are trying to do today, which is extend it to civil liability as well. I mean I just think it's very different but I am not well-versed enough on the Florida statute to be able to tell you exactly how. [LB804]

SENATOR HAAR: Okay. I appreciate that. Senator Ashford, could I ask you? [LB804]

SENATOR GLOOR: Senator Ashford, would you yield? [LB804]

SENATOR ASHFORD: Yes. [LB804]

SENATOR HAAR: You seemed to have mentioned the Florida case a little bit. Could you go into that some more and contrast it to Nebraska? [LB804]

SENATOR ASHFORD: Yeah. And I rarely do I know...I don't know that much, but I...rarely do I know anything more than Senator Lautenbaugh, but in this case I might know a little bit more, only because I've read the accounts of the Florida case. The stand your ground legislation, there are about 11 states, Florida was the first one that passed such a law under Governor Bush's administration. And the purpose of the law apparently was...it's a self-defense statute. But what it does is it expands the sort of halo of area where an individual can utilize lethal force; in effect, use a gun to defend him or herself if put in a dangerous position. There is no duty to retreat or to...and that also...Senator Lautenbaugh is correct that every case is different. But generally, when you're outside of your area, your property, your home, your business, you are...what you are asked to do given a situation where there is something, you know, some activity going on that puts you in some degree of fear, is that you're asked to retreat or try to get out of the situation...what the...before you use lethal force to defend yourself. And that's what was changed in Florida and 11 other states, and that's the stand your ground. Basically you can act as in lieu of a law enforcement officer... [LB804]

SENATOR GLOOR: One minute. [LB804]

SENATOR ASHFORD: ...and the...well, one can make whatever value judgment they want to make. But it does give to the average citizen, who in many cases is not trained, almost law enforcement powers. In fact, in some cases, more than law enforcement

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powers, because, for example, shooting Trevor (sic--Trayvon) in Florida probably would not have been what would have been done by a police officer under the circumstance. [LB804]

SENATOR HAAR: Okay. Thank you very much. [LB804]

SENATOR GLOOR: Thank you, Senator Haar. Senator Nelson, you are recognized. [LB804]

SENATOR NELSON: Thank you, Mr. President and members of the body. I have a question or two for Senator Lautenbaugh if he will yield. [LB804]

SENATOR GLOOR: Senator Lautenbaugh, would you yield? [LB804]

SENATOR LAUTENBAUGH: Yes, I will. [LB804]

SENATOR NELSON: Thank you, Senator. Just a question about the wording here on the amendment, which I'm sure you're familiar with. I don't get involved as an attorney in criminal law, but I'm a little puzzled on the basis of your description of what's involved here in the castle doctrine. What is meant by intentional wrongful death? I understand wrongful death. And let's say we have a situation where someone is advancing against you. You stand your ground, which I guess you can do under the castle doctrine. [LB804]

SENATOR LAUTENBAUGH: Yes. [LB804]

SENATOR NELSON: And you decide to defend yourself, and you wind up what would be considered an assault but maybe an unintentional death of the person if you hit the person, they fell and struck their head or something like that, and died. Where does the intentional? Can you describe that and what situation that covers? [LB804]

SENATOR LAUTENBAUGH: Well...and I'll be honest. Senator Lathrop and I have had a discussion about this, and I may bring him into this at some point as well, but our thinking was, in crafting this amendment, was that if you're not talking about intentional then you must be talking about some kind of negligence action. And intentional would be intending to shoot someone and shooting them. Negligent wrongful death would be--I'm mixing up my possible crimes here--intentionally killing someone would be an intentional act. Negligently somehow would be negligent, not intentional. It's our belief that the exceptions would arguably be arguable in a negligence action as, you know, was your conduct reasonable or not. These are the things you would state anyway. [LB804]

SENATOR NELSON: So if a lawyer was going to file a lawsuit, he would want to file it

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under the intentional--the wording there, then, "intentional wrongful death"--because it would make a difference in the amount of damages or what you could prove? [LB804]

SENATOR LAUTENBAUGH: Not necessarily the amount of damages, but just the theory of facts, I mean, or what you'd have to be pleading and what you think you can prove. I mean "intentional" is always worse than mere negligent, if you can prove it. So... [LB804]

SENATOR NELSON: So if we're saying that you had a gun and used that, that that qualifies more as an intentional act, intent is involved? [LB804]

SENATOR LAUTENBAUGH: Well, not necessarily. Having the gun per se wouldn't be intent or, necessarily, intentional versus negligent. It would depend on the other facts. [LB804]

SENATOR NELSON: But...thank you. But it's your feeling, then, that using the same wording here as used in the criminal statute is where we want to go. [LB804]

SENATOR LAUTENBAUGH: It will provide defenses in the civil actions that we set forth there, yes. [LB804]

SENATOR NELSON: All right. Thank you, Senator Lautenbaugh. Thank you, Mr. President. [LB804]

SENATOR GLOOR: Thank you, Senator Nelson and Senator Lautenbaugh. Senator Council, you are recognized. [LB804]

SENATOR COUNCIL: Thank you very much, Mr. President. And good afternoon, colleagues. I appreciate Senator Haar raising the question as to what the intent of LB804 is and how does it compare to the law that's in question in Florida. And I think it's very important, because what the public sees is what the title of a piece of legislation is. And the title of this is "Change provisions relating to justification for use of force." So it's important that the record reflect what's actually at issue with LB804 and what the...those who are viewing understand what's going on here. And Senator Ashford did refer to the fact that Nebraska's use of deadly force law is not the same as the Florida law. And it should be noted, however, that on three prior occasions legislation has been introduced in an effort to remove that duty to retreat from current Nebraska law. Had that succeeded, situations similar to the situation presented by the Trayvon Martin tragedy could occur, had that kind of amendment of our justification for use of deadly force been changed, because the issue clearly, and this is my opinion, as I see it, under our law, Mr. Zimmerman had an opportunity to safely remove himself from that situation and thus, under Nebraska law, would not have the benefit of a defense of self-defense. And under Florida law, there is no duty to retreat. So the issue in that action, in my, again,

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opinion, is whether or not Mr. Zimmerman was in reasonable fear of imminent bodily injury or death. And I would submit that the facts militate against that finding, in my opinion. When you call the police, and the police tell you to stop following someone, and you proceed to follow that someone, then, in my opinion, you're not operating under any sense of fear. And I would question and do question the Florida authorities not pursuing charges against Mr. Zimmerman. But this bill did not seek to alter the current justifications for use of deadly force, including lethal force, in Nebraska. If you look at the committee statement, I was present and did not vote on this bill as amended because I, quite frankly, don't see the necessity for the change. And I always have problems when we remove decisions that we have placed in the purview of judges and juries and we substitute our judgment for the judgment of those judges and juries. And that's essentially what occurs with AM2268. Under the amendment, current provision of that statute is being stricken. And that current... [LB804]

SENATOR GLOOR: One minute. [LB804]

SENATOR COUNCIL: ...language says the fact that conduct is justifiable under Sections 28-1406 to 28-1416--and those are all of the different justifications for self-defense--"does not abolish or impair any remedy for such conduct which is available in any civil action." So what that means is if someone used deadly force against...Person A used deadly force against Person B, Person B's family files a wrongful death action, under current law that family could file a wrongful death action and seek to recover. What the amendment actually does is say, okay, family of Person B, you can file a civil action for wrongful death, Person A can argue justifiable use of force, but if it was justifiable under those sections, there's no recovery. [LB804]

SENATOR GLOOR: Time, Senator. Thank you, Senator Council. Are there other senators wishing to be recognized? Seeing none, Senator Ashford, you're recognized to close on the Judiciary Committee amendment. [LB804]

SENATOR ASHFORD: Thank you, Mr. President. And, again, under Nebraska law, in the...what we know about the Trayvon Martin case, had that...an individual, seeing something that was suspicious, in this case to the individual who was in the neighborhood watch, under Nebraska law his duty would be to inform the police and to get away from the situation, not to address it directly, as was done in this case. So under Nebraska law, that, as Senator Council absolutely is correct in saying, would not be able to avail himself of the defense under the castle doctrine law or the law of self-defense in Nebraska. But what we're doing here is only a very small aspect of all of this, is we are...though important. And what we're suggesting or saying in this amendment, that if there is a lawsuit, civil lawsuit, brought, arising out of circumstances involving self-defense, use of a firearm or some other weapon to defend oneself, that person who defends himself or herself would be able to avail himself or herself of the criminal defenses that would be available to him or her if there was a prosecution under

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criminal law. So it's really clearing up any ambiguity that exists in the law now and giving, sort of in an odd way, giving a defendant in a criminal case more, you know, the ability to use these defenses and not be able to use them in a civil case, which didn't make any sense to us. So that's the reason for the amendment. Thank you. [LB804]

SENATOR GLOOR: Thank you, Senator Ashford. Members, the question is, shall the committee amendments to LB804 be adopted? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB804]

ASSISTANT CLERK: 35 ayes, 1 nay on the adoption of the committee amendments, Mr. President. [LB804]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB804 to E&R Initial. Senator Council, you are recognized. [LB804]

SENATOR COUNCIL: Yes, thank you again, Mr. President. I voted in opposition to the amendment, and I will vote in opposition to the underlying bill as amended. I think the entire body needs to know that this is, again, not the first time legislation of this type has been presented, reviewed, discussed, and considered by the Judiciary Committee. In other iterations of this piece of legislation, it was represented that the issue that was sought to be addressed was to prevent someone who had used deadly force which the criminal authorities had found to be justifiable, to prevent that person from being subjected to civil action. Well, if you read the amendment...the bill now as amended, it doesn't prevent anyone from filing a civil action. So if that was the objective of this bill, this amendment that was just passed does not accomplish it, because the bill still says, shall be "available in any civil action." So the defense is now and will be available whether or not LB804 is advanced. What is sought to be accomplished here is that if someone were to bring a civil action for wrongful death and the defendant raised a justifiable defense and it complied or met the requirements of justifiable defense as set forth in 28-1406 to 28-1416, it says it will be a bar to recovery. So it doesn't prevent the filing of a civil action. The intent, clearly, is to prevent a recovery. Well, that raises questions in my mind, because the existing law clearly made a distinction. And I think there was a reason for a distinction between a criminal use of the self-defense and a civil use. Under existing law, any prosecution based on conduct which is justifiable, justification is an affirmative defense. Current law with regard to the civil side says that the fact that conduct is justifiable does not abolish or impair any remedy for such conduct which is available in any civil action. So if there's a lawsuit filed and the defendant raises a self-defense argument, I submit to you that the judge, if it's tried to a judge, or a jury, if it's tried to a jury, is absolutely capable of determining whether any remedy should be available in that situation. I mean, it doesn't serve any purpose of reducing any demands on the justice system, because the amendment doesn't say you are barred from bringing a civil action. It says you are barred from recovery if you bring a civil action. Well, again, the testimony we've heard over the last four years on other

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efforts related to this legislation... [LB804]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB804]

SENATOR COUNCIL: ...is that individuals who have by criminal standards been found to be justified in the use of force don't want to have to be subjected to a civil action. Well, colleagues, AM2268 doesn't alter that fact. So if it doesn't alter the fact, I submit to you that this is an intrusion into judicial authority, and whether or not an individual can or should not recover in a civil action should be left to that judicial authority, either in the form of a decision by a judge or a jury decision. And for that reason, I would urge the body to vote against LB804 as amended. [LB804]

SENATOR LANGEMEIER: Thank you, Senator Council. Seeing no other lights on, Senator Lautenbaugh, you are recognized to close on LB804. [LB804]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I will agree that this is not a bill that goes as far as some would like and covers all possible circumstances. I do think it does provide some measure of comfort for people who use justifiable force and are concerned about facing civil liability for certain intentional acts. I think it's fairly straightforward, and I would urge you to vote green for it. Thank you. [LB804]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. You have heard the closing on LB804. The question before the body is, shall LB804 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB804]

ASSISTANT CLERK: 37 ayes, 2 nays on the motion to advance the bill, Mr. President. [LB804]

SENATOR LANGEMEIER: LB804 does advance. Mr. Clerk, LB1050. [LB804 LB1050]

ASSISTANT CLERK: Mr. President, LB1050 was introduced by Senator Cornett. (Read title.) The bill was read for the first time on January 18, referred to the Committee on Revenue. The committee placed the bill on General File with no committee amendments. [LB1050]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB1050. [LB1050]

SENATOR CORNETT: Thank you, Mr. President and members of the body. LB1050

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represents a new way for Nebraska to increase sales tax revenue, through the recruitment to the state of procurement companies that will consummate their purchase of goods in this state. These companies are typically organized as subsidiaries or affiliates of other corporations, and they purchase goods for resale to the affiliated corporations, which then consume the goods in the operation of its business. Purchases of those goods currently are being consummated elsewhere. I'm going to...this is a fairly complex bill, so I'm going to go through it slowly. So if you have any questions, please feel free to ask when we're done with the first part. The bill grants the authority, first, to the Department of Revenue to contract with firms that will recruit companies to locate in Nebraska their subsidiaries or affiliates responsible for purchasing goods or for the use of the operation of the companies' business. It is purely discretionary. The department is not required to do this. In fact, it may only elect to enter into such contracts if the Governor first determines that the contract is in the best interest of the state, based on the amount of new sales tax revenue it would generate for Nebraska. I want everyone to understand: we are not changing any tax laws that are currently in existence in the state of Nebraska. All we are doing is enabling language that allows the state to contract for new sales tax. The contract may include a rebate as an incentive to the firm, paid from a portion of the sales tax generated on new sales that result from this effort. This only applies to state sales tax, and there would be no impact on local jurisdictions. The new sellers would be subject to all of the reporting, auditing, enforcement, and confidentiality provisions that apply to other sellers in the state. The state cannot contractually waive any of these requirements under the contract. The department would be required to report annually to the Legislature on success of the number of programs, providing information about the numbers of contracts entered into, the total taxable sales generated by the contract, and the total tax dollars generated for the state. The bill anticipates that a major component of this arrangement would be set forth in the contract, but it does not set certain parameters for that contract. For example, the bill defines "new taxable sales." This is done to ensure we are incentivizing only new sales. Sales already occurring in Nebraska would not be swept into this incentive. It provides for the initial term not to exceed 20 years. That doesn't mean that you have to enter into a contract for 20 years, but that it cannot exceed more than 20 years. That ensures this is truly a long-term arrangement for the state, so the state has greater certainty about its revenue source. It also protects the state against companies that might attempt to cross-shop, by coming to Nebraska initially but then looking for another state that might offer a higher incentive. I know that is one of the arguments that you will hear, is that these laws are being enacted in other states and that these companies will look at bidding...getting states to bid against one another. Historically, those issues have been covered in the contract. The bill provides the state law barring the state from entering into a percentage or contingency contracts do not apply here. The intent is that the costs of this program come out of new tax dollars generated by it only. That inherently makes it a contingency fee arrangement, and this waiver is then needed. The bill provides that there is no need for a public bid. Public bids are not needed, because this is not an exclusive, one-service-provider situation. There are a number of companies

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that do this type of incentive work throughout the country. In discussing this bill with several of my colleagues, I have heard about lawsuits generated in California. I would like to take a little time to discuss this issue. A number of states, including California and Illinois, permit local jurisdictions to enter into these types of rebate arrangements with regard to local sales tax, so intrastate not interstate. There have been some disputes among the cities in these states over where the sales transaction actually occurs. Their argument in these lawsuits is situs, where the sale occurs. That would not apply to what we are doing in Nebraska, because the Department of Revenue determines the sales occur in the state of Nebraska. In fact, comparing the California lawsuits to what we are doing in Nebraska is a little like comparing apples to oranges: it's not the same thing. California law allows cities to enter in these bid...what turn out to be bidding wars between cities. But it is not the issue. The issue is where the sale occurred. The rebates in those states are not the issue. In Nebraska, we will not be impacting local sales tax at all. We are not changing anything related to the sales tax laws. Again, we already have the laws in place in the state of Nebraska under our tax code for this to occur. What we are doing here is enacting enabling legislation that allows the state to enter into these contracts. The Department of Revenue will make a determination whether these procurement processing companies, as to whether these transactions are taxable in the state or not. This is a bill that, if the state chooses to enter into a contract, will generate new revenue for the state. It is no different than what we do already under the incentive programs. You will hear that this bill will be stealing sales from other states. Ladies and gentlemen, we do that now. The difference here is under our incentive programs and our Advantage programs. A lot of times we rebate 100 percent tax liability. Here the amount that is rebated is negotiable. There will be an amendment following that addresses concerns from the Department of Revenue and puts additional belts and suspenders on the bill to make sure this is only a profitable venture for the state of Nebraska. With that, I urge your support of the bill and would be happy to answer any questions. [LB1050]

SENATOR LANGEMEIER: Thank you, Senator Cornett. Mr. Clerk, for a motion. [LB1050]

ASSISTANT CLERK: Mr. President, Senator Cornett would offer AM2181. (Legislative Journal, page 976.) [LB1050]

SENATOR LANGEMEIER: Senator Cornett, you are recognized to open on AM2181. [LB1050]

SENATOR CORNETT: Thank you, Mr. President. AM2181 would make four changes to the original bill. These changes were made with the assistance of the Department of Revenue. The first simply explains how the new tax revenue will be allocated to the state's transportation fund. It simply provides that, for the purpose of the allocation required by Section 77-27,132, the net new tax revenue generated by this program will be the amount used to determine the allocation. Second change is intended to ensure

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that the state never pays, I repeat, never pays an incentive on sales that are already occurring in this state. This amendment therefore provides that the contract cannot be entered into under this arrangement unless the Department of Revenue first certifies that it will not result in a net reduction of sales tax revenue to the state. So before we can enter into one of these contracts, the Department of Revenue has to determine that all of this will be new revenue, that we are not actually undercutting revenue we are already receiving. So, again, only new revenue, with a guarantee that this will generate new revenue. The third and fourth changes are related. Both are designed to protect the state in the event the incentive that has been paid under this program is subsequently determined to have been paid in error. The first of these changes calls for amending the bill to require an escrow account. Under this provision, the state would be authorized each month to retain 10 percent of the new sales tax dollars generated as a result of this contract and to hold that money in an escrow for a period of 36 months. You have all heard on the floor this year the fact that a lot of times municipalities don't expect a sales tax rebate or are unprepared for that rebate. Hence, we have set an escrow account, with 10 percent of the revenues going into that. This would be...they would be required for the 36-month period to correspond with the state statute of limitations on sales tax refunds. This would be a rolling period for the life of the contract. So on Month 37 we take out the first month, out of the escrow account. But we're putting Month 37 into the escrow account. So there's always 36 months' worth of revenue, 10 percent, in that escrow account. One month will roll off and be released from the escrow account, and 37th month will roll into the escrow account. Under the section of these changes, the bill would further be amended to give the state the authority to offset any incentives that have been determined to have been paid in error against any other incentives remaining to be paid under this agreement. So if in one month we determine that we paid out too much money for an incentive, the next month it can be deducted, so the state doesn't lose money. If an incentive is paid and is later found out to have been paid in error, the first course of action the state would have is to simply offset, as I've explained, that amount against the incentives that are due under the contract for the next period. If that is insufficient or if no incentive remains to be due as of the end of the life of the agreement, then the state would have the escrow account to fall back on. I would ask for your support on AM2181. It defines the bill further, and it puts in place needed guarantees for the state. In regard to being able to return money to the state through the escrow account and to have money there to pay out the incentives based on the escrow account, it also puts into place that this is only new revenue generated, that we cannot dip into the revenue that we already receive, that we can only contract to bring in new revenue to the state. With that, I urge the body to support AM2181. [LB1050]

SENATOR LANGEMEIER: Thank you, Senator Cornett. You have heard the opening on AM2181 offered to LB1050. The floor is now open for discussion. Those senators wishing to speak: we have Senator Hadley, Schumacher, and Heidemann. Senator Hadley, you're recognized. [LB1050]

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SENATOR HADLEY: Mr. President, members of the body, I stand in support of the bill, LB1050, and the underlying amendment. When we first heard this bill in Revenue, we did have some concerns about it. But I think those concerns were answered. I think Senator Cornett has done a good job of getting answers to those concerns. One of the concerns deals with the fact, is this kind of...I don't want to call it unethical, but is this kind of a right way to do business? Well, Nebraska is one of the few states that allows passage of title to be the event that triggers the sales tax. I think there are six or seven states that do this. So what this bill does is take advantage of our statutes to try and increase the income for the state of Nebraska. I think that's very appropriate. We do that a lot when we're dealing with the Advantage Act and such as that. We set up statutes to try and get business from other states. I think this is the same concept. Some of the safeguards that are built in: I think one of the most important safeguards is that you...this is a contract that both the Revenue Department and the Governor must enter into. This is not an automatic contract; this is not something that the state has to do. If, in the best interest of the state, the Governor and the Revenue Department determine this is not something the state should do, they do not have to enter into it. You know, we're constantly looking for funding. I think this is one way to do it. It is totally legal. The company that brought this bill is just one of the companies that enters into it. But I looked the company up; it is one of the third-largest worldwide tax consultant companies, with offices around the globe. So this is not a fly-by-night type of proposition. So I would hope that you will listen to Senator Cornett as she continues to explain the bill. I think it is a good bill. I think it's a chance for Nebraska to pick up legal funds for the state of Nebraska. And with that, I would yield any remaining time to Senator Cornett, if she wishes to use it. [LB1050]

SENATOR LANGEMEIER: Senator Cornett, 2 minutes 40 seconds. [LB1050]

SENATOR CORNETT: Thank you very much. This is an important bill for the state. Last year, under the LR542 process, Speaker Flood gave us the task as committee Chairs to find ways to cut the budget but also to find new ways to generate revenue. I found a way to generate revenue. This is new revenue for the state. This is not a new idea. We are not changing, and I repeat, because this is a misunderstanding, we are not changing current tax law. All we're doing is allowing or enabling the state to enter into the contract. The contract terms are negotiable. That is determined by the Department of Revenue and then approved by the executive branch what is best for the state. This type of a company would come and locate probably outside of a metropolitan area or a city, because they will take advantage of the lower tax rate in the county. But they don't have to; it can be inside the city. They will set up a business, a procurement company. And from the one company that we have heard from, they will be talking about 60 new jobs, approximately 60 new jobs, all of them very well paying, well over our state average. This is a no-lose situation for the state of Nebraska. It is all new revenue generated for the state, new jobs generated for the state, and new infrastructure in a

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building, for the state. With that, I thank Senator Hadley for his kind comments. He has worked with me on this bill, and I appreciate his help. Thank you. [LB1050]

SENATOR LANGEMEIER: Thank you, Senator Cornett and Senator Hadley. Senator Schumacher, you're recognized. [LB1050]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Seventeen eighty-nine, Congress Hall, Philadelphia, Pennsylvania: We the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this, the Constitution of the United States of America. Two thousand twelve, the Norris hall, Lincoln, Nebraska: LB1050. This is not a complex piece of legislation. It's dirt simple. Here's how it works. A middleman company has deals with clients, and it agrees that it's going to be the purchasing agent, procurement agent, and buy stuff that these clients would use. And this stuff would normally be taxed in another state at, presumably, 5.5 percent or higher. The procurement company sets up a little shop here. And we've heard the number 60. They'll start out at 6, maybe they'll ramp up to something more, but essentially a boiler room, where transactions are entered in to a computer. Now, under a quirk in our particular law that exists now, the transaction is treated as taken here, even though the stuff never hits the state. Now, our sister states, because we're engaged in a more perfect union, say: You know, if you paid tax in Nebraska, we're not going to hassle you with taxing you a second time in the big sister state; we will take your tax receipts, so to speak, for granted and consider the tax paid, even though you move the stuff here and the stuff is delivered here to begin with. Now, the entire reason for this has nothing to do with business. This boiler room exists for one reason only: to make believe we were in the middle of the transaction and assess our tax. Well, how does this work, then? Why would somebody go through this? Very simple, this provides for a new great version of the Cornhusker kickback. You see, this company, the middleman, is going to expect to get kicked back a commission. Now, one would think when you pay a commission, you at least get half. No. They want on the order of 85 percent, and historic evidence has been 85 percent. We get 15 percent of the transaction. We cost our sister state \$6.66--God, that's an odd number--and we make \$1. Billion dollars in sales, \$55 million, they get \$47 million, we get \$8 million, until the sister states start cracking down and taking retaliatory action. I know for a fact the governor's office in New York is watching this today, because New York may be a target state. That's going to impact our relationships with those states. And those states are not dummies. Those states are going to have very bright attorneys that are going to look at how they can get back at this raiding party that we are hiring to raid their treasuries and take advantage of their good nature and their comity to us as a sister state. This will have consequences. And it may have more far-reaching consequences than tax. I would just bet you that they're going to hire some pretty sharp lawyers to look at whether or not they can get back at us for the entire \$55 million, because we might be the only ones solvent if the middleman kind of turns into an evaporation. And we may

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have to pay that back at some time, should those bright lawyers cook up a cause of action. It's not entirely a free lunch. I circulated a piece of paper regarding the situation with local governments. Note: That local...California has put an end to that practice by local governments, even though some of the towns involved have got a big headache with lawsuits involved, and they say: Well, gee whiz, we thought it was a no-lose proposition. Folks, I listen to Senator Avery sometimes on the gambling things, and he reads from Paul Samuelson's book about this gambling makes nothing, it creates nothing. Well, I can argue with him about that, but I can't argue with him on this on this. This is making nothing. This is merely a raiding party that we are conducting for as long as it lasts on a sister state's treasury. [LB1050]

SENATOR LANGEMEIER: Time. [LB1050]

SENATOR SCHUMACHER: Now...Thank you. [LB1050]

SENATOR LANGEMEIER: Thank you, Senator Schumacher. Senator Heidemann, you're recognized. [LB1050]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. The discussion so far has been informative to me. I will say that I'm a little bit uneasy about LB1050, and I have questions that I still need to be answered to me. I was wondering if Senator Cornett would be open for some questions. [LB1050]

SENATOR LANGEMEIER: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: I'd be happy to. [LB1050]

SENATOR HEIDEMANN: You stated that this is a no-lose situation for us, is that correct? [LB1050]

SENATOR CORNETT: I believe it is, yes. [LB1050]

SENATOR HEIDEMANN: How many other states have done this? [LB1050]

SENATOR CORNETT: There are other states currently in the process of passing legislation like this. Part of the contracts that the companies have entered into usually say that they will not bid against...one state against the other. [LB1050]

SENATOR HEIDEMANN: How long...I mean, if this was a no-lose situation, why haven't we or any other states done this before? [LB1050]

SENATOR CORNETT: This is a rather new practice. It started out with cities, as Senator Schumacher and myself have both brought up. And California became a little

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bit of the battleground for that. But, again, it wasn't the incentive...the rebate. The rebate was not the issue. It was the cities suing one another over situs, where the sales occurred. [LB1050]

SENATOR HEIDEMANN: I mean, that makes me a little bit uneasy with what...I mean, why can't that happen from state to state then? If it happened city to city, why won't it happen state to state? [LB1050]

SENATOR CORNETT: Because the sale would occur in Nebraska. It would not be determining whether...which city the sale occurred in. Beyond that, if the sales tax in another city was higher than the sales tax here, we collect that and remit that to them. So if we collect at 5.5 percent and their sales tax is 7 percent, we collect and remit that to them, because we are a member of streamlined. [LB1050]

SENATOR HEIDEMANN: Now, you stated--and I don't know this--we are a state of point of origin, or how did you state...? [LB1050]

SENATOR CORNETT: We...I did not say we were a point of origin. That was what, I believe, was printed in the paper. We have a title transfer law that says, when the sale occurs in Nebraska the tax will be collected in Nebraska. [LB1050]

SENATOR HEIDEMANN: Okay. You stated that a state will probably get into...or it can't be more than a 20-year contract, right? [LB1050]

SENATOR CORNETT: It says, up to 20 years, yes. And that is part of what would be negotiated between the Department of Revenue, the executive branch, and the company, just as the percentage of the turnback would be negotiated. [LB1050]

SENATOR HEIDEMANN: Are we as the Legislature giving up a little bit of our right as far as setting tax rates because now we're letting the administration actually say that we're going to do it for 85 percent or 80 percent or 90 percent? Isn't that giving away some of our power as the Legislature? [LB1050]

SENATOR CORNETT: Actually, the Legislature does not have the ability to enter into contracts. Only the executive branch has the ability to enter into a contract. I had someone comment that was actually pretty funny that that would...that would be a great business incentive for the lobbyists, if we allowed the Legislature to enter into contracts. [LB1050]

SENATOR HEIDEMANN: So what stops another state--if they sign up with us that we give back 85 percent--another state coming in and say: We'll do it at 90 percent? [LB1050]

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SENATOR LANGEMEIER: One minute. [LB1050]

SENATOR CORNETT: Again, as I said, there's nothing that would stop that. But the contracts historically have been negotiated that the company will not bid us against whichever...they...whatever they locate at, they will not bid against...cause another state or company to bid against them. So that would be in the contract. [LB1050]

SENATOR HEIDEMANN: So once they sign with Nebraska, they can't sign with anybody else. [LB1050]

SENATOR CORNETT: No, they can have other businesses in other states, but they cannot get into the bidding wars that we're currently engaged in. [LB1050]

SENATOR HEIDEMANN: And you're 100 percent for sure that would never happen. [LB1050]

SENATOR CORNETT: I'm 100 percent sure that our Department of Revenue would enter into a contract that would be beneficial to the state of Nebraska. [LB1050]

SENATOR HEIDEMANN: You talked about...I get a little bit worried; I heard Senator Schumacher talk about if we ever have to pay this back. Is there any possibility that another state would challenge this and say... [LB1050]

SENATOR LANGEMEIER: Time. [LB1050]

SENATOR HEIDEMANN: ...no, we don't. Thank you, Mr. President. [LB1050]

SENATOR LANGEMEIER: Thank you, Senator Heidemann. Senator Pahls, you're recognized. [LB1050]

SENATOR PAHLS: Good afternoon, Mr. President, members of the body. Senator Cornett, the other day when I made a comment to the public, let's go out and find all kinds of unique ways, I was thinking a tax exemption. Well, this could probably fall under a category like that. I'm telling you, this sounds good. I listened to Senator Schumacher, and this brings up, though, visions of Enron, AIG, a number of companies that literally have gone away, mortgages that were wrapped together and nobody knows who owns their mortgages. It almost sounds too good to be true. And I know...and I read the newspaper article and the other sheet of information provided to me, and it...I can see where this makes sense. But the reason why I would think that...as I read this article here, it says we are one of at least seven states that allow sales taxes the way we do. So we actually would be in competition with only six other states then. [LB1050]

SENATOR LANGEMEIER: Senator Cornett, would you yield? [LB1050]

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SENATOR PAHLS: Thank you. Thank you. [LB1050]

SENATOR CORNETT: Any state can go in and change their tax laws so they could enter into these types of arrangements. The states that currently have this type of sales tax transaction on the books, yes, immediately. But any state can change their point of sale. The other thing that I'd like to bring up is this only affects the states that are not members of Streamlined Sales Tax. So these are states that are already not collecting the sales tax and remitting it to the state of Nebraska. So if we are in a streamlined state, this bill does not apply to them. [LB1050]

SENATOR PAHLS: Okay, so...and there are approximately...the last time I went to one of those summer sessions on streamlined...conferences, I think we had around 30 states in that. I don't know if there are more than that now. [LB1050]

SENATOR CORNETT: No, there's actually 26 states. [LB1050]

SENATOR PAHLS: Twenty-six, yeah. [LB1050]

SENATOR CORNETT: And if all states would collect sales tax and were members of streamlined, we wouldn't need this bill. This bill would go away. [LB1050]

SENATOR PAHLS: Yes. Yes. But there is an...somewhere there's an uneasiness...and I don't know, maybe...I have a feeling it's possibly too good to be true. That's the concern I have in the...are you promoting "too good to be true"? [LB1050]

SENATOR CORNETT: I am not promoting "too good to be true"; I am promoting a way to generate sales tax revenue, if, if the state of Nebraska chooses to, because this is only enabling language. So if the state can negotiate a contract that is only in its best interest and only generates new revenue, then, yes, it is a benefit to the state. [LB1050]

SENATOR PAHLS: Okay. And the argument that Senator Schumacher gave about we actually, in some ways, we...I know you're saying we do this...but this seems really like we're truly robbing another state. I understand our incentives. The problem is, is that everybody is giving incentives, and we are getting ourselves up against a wall. [LB1050]

SENATOR CORNETT: I wouldn't necessarily disagree with that. My friend Senator Raikes and I used to debate about this constantly. He always said: In a textbook world, you don't need incentives. We don't live in a textbook world. We are in competition every day with every state in this Union for our well-being. The bills that we have already passed on the Legislature this year or are in the process of passing will directly affect the revenue for every state that the companies we are trying to attract are coming from. We do this every day in this state, just in different forms. [LB1050]

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SENATOR PAHLS: Well, do you feel, like, maybe, perhaps we're like a yo-yo? [LB1050]

SENATOR LANGEMEIER: One minute. [LB1050]

SENATOR PAHLS: Each state is going up and down because of the outside groups that are influencing...you're just saying we need to get on the bandwagon. [LB1050]

SENATOR CORNETT: We need to look out for the state of Nebraska, ways to expand our tax base and fund our state. [LB1050]

SENATOR PAHLS: Okay. You have no worries about, like, what happened in Wall Street, all of the deals that were going...they seemed too good to be true. [LB1050]

SENATOR CORNETT: These are all companies...that the procurement company would locate in the state. [LB1050]

SENATOR PAHLS: Yes. [LB1050]

SENATOR CORNETT: They are contracted with other companies for purchasing. If they don't make sales tax, then they don't remit sales tax to us, but we don't lose anything. That is part of the belt and suspenders that I put into the bill, is that we do not lose. [LB1050]

SENATOR PAHLS: Okay. Just name one company that you have a good idea that may... [LB1050]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Time, Senator. [LB1050]

SENATOR PAHLS: Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Pahls. Senator Brasch, you are recognized. [LB1050]

SENATOR BRASCH: Thank you, Speaker. And good afternoon, colleagues. I do rise in support of LB1050 and AM2181. LB1050 provides another great opportunity to grow our tax base, to bring in opportunities. We need opportunities. Those opportunities bring jobs and do help reduce our tax burden. We need new revenue to help build our communities and our wherewithal. In our district I have met people that have jobs because of incentives. In Blair, Cargill...during the floods I met so many people. Where do you work? Cargill. Cargill. You heard other companies. Since 2006, because of an

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incentive act in Nebraska, we have brought in over \$7.67 billion, with a "b," investment; 19,819 jobs through 285 companies that have come here. I have a list of all those companies. And they're not just Lincoln and Omaha companies. They're in our district; they're in many other districts and rural communities as well. We welcome opportunities. In listening to the testimony and seeing the committee statement here, it merely authorizes the Tax Commissioner, again, to enter into a contract with a procurement processing company. And that procurement processing company will be offered a rebate in exchange for a tax...for a tax rebate. And that's only determined to be done, by contract, if it is in the best interest of the state of Nebraska, if the Governor determines it's in the best interest. And they base that determination on new taxable sales that would be generated as a result of a contract. This is used solely to induce those companies to locate in Nebraska, resulting in significant new sales tax revenue. It is clearly outlined on what the restrictions are, what the expectations are. There is a contract. A company may not be able to bring itself to Nebraska if it does not meet all our guidelines and the opportunities brought before us. I do believe we'll have the greatest vetting and scrutiny before a contract is entered into with the Department of Revenue. I will yield any remaining time here to Senator Cornett. Thank you. [LB1050]

SENATOR GLOOR: Senator Cornett, 1 minute 45 seconds. [LB1050]

SENATOR CORNETT: Thank you, Senator Brasch. There's a couple of points that I would like to make. Currently there is no legal authority for one state to challenge another in regard to sales tax. Secondly, Senator Schumacher made it sound like in California they eliminated these incentives. But they eliminated a number of incentives but specifically kept these types in their code. Government Code 53-084.5 specifically allows for this type of contracting for cities. With that, I thank Senator Brasch. [LB1050]

SENATOR GLOOR: Thank you, Senator Brasch and Senator Cornett. (Visitors introduced.) Senators in the queue: Cornett, Ken Haar, Council, McCoy, Schumacher, Pirsch, and others. Senator Cornett, you are recognized. [LB1050]

SENATOR CORNETT: Thank you. I know this seems like a new concept. Senator Schumacher was very dramatic in his opening, reading the Preamble of the Constitution. You can obviously tell he's an attorney, and I'm more of a numbers person. But the fact is this is a way to generate new revenue for the state of Nebraska. The company, whoever we contracted with, would locate in the state of Nebraska; they would hire people; they would employ them in the state of Nebraska; and they would generate sales tax revenue for this state. If the states, every state was paying into Streamlined Sales Tax or collecting the sales tax that they currently are not, we would not need something like this. I've heard repeatedly on this floor: Why aren't we collecting on Internet sales? Because each state determines whether they collect or not. This is a way for Nebraska to collect sales tax revenue. We've made sure that all of the belts and suspenders, all the safeguards, are in place, that this is only new revenue,

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that it does not affect our current tax base. Before we can enter into a contract, it has to be determined by the Department of Revenue that we do not lose money on this. The terms of the contract are set in a negotiation process. Senator Schumacher says 85 percent. That isn't set in stone. It is what is negotiated between the procurement company and the state of Nebraska. We have provisions in it that we do not ever run short with the escrow account. We have provisions in the bill, with the amendment, that make sure that after the contract ends, that if there is money still that needs to go back to the state of Nebraska, we have the escrow account. What we are trying to do here is find a new way to generate revenue and think outside of the box for the state of Nebraska. Yes, other states are looking at this type of legislation. Yes, other cities are currently doing this. I would appreciate your support on the amendment and the underlying bill. Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Cornett. Senator Ken Haar, you're recognized. [LB1050]

SENATOR HAAR: Mr. President, members of the body, my grandson Andrew has a statement, and it just sort of goes like this: This is just wrong. And it doesn't feel right. It doesn't feel right. It feels shady. We're not getting our sales tax; we're getting somebody else's sales tax. And, gee, maybe we can be one of the first ones, and then the percents are going to keep going down and down. And so I think in the end it's just going to amount to, you know, we've helped somebody else pick Senator Schumacher's pocket. It kind of feels that way, and that's how I react to this. I don't believe I can support this bill. It just doesn't seem right. And then I have some real issues with transparency in here. I have a question for Senator Cornett. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: I'd be happy to. [LB1050]

SENATOR HAAR: I'm sorry to put my back to you. [LB1050]

SENATOR CORNETT: Oh, that's...it would be pretty hard to talk facing me. [LB1050]

SENATOR HAAR: Yeah (laugh). So in terms of transparency: the Governor and the Revenue Department make the deals, the contracts; do we get a detailed report of which businesses are participating in this and which are getting the tax breaks, because...? Well, just leave it that way. [LB1050]

SENATOR CORNETT: There will be...if you look at the bill, there will be a detailed report issued to the Legislature every year in regard to the amount of money that is collected and is rebated, which is what we do with the incentive programs right now. I would have to check if we would...we would know each company we're contracting with,

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but I don't think that we would have a breakdown of what the sales of each company would be, because that would be part of the provisions that...the...I can't think of the word...noncompetitive, nondisclosure agreements. But we will get a detailed amount of how much sales tax is collected, how much sales tax is rebated each year, and the companies that they're contracted with. Matter of fact, the state, in these contracts, has the right to refuse contracting with a company if they have a moral or ethical issue with that organization. [LB1050]

SENATOR HAAR: Okay, and that's, I guess, my problem with the whole bill: that it doesn't seem morally and ethically okay. And the transparency thing is really important to me too. I mean, we may see some lump sums in this particular company; we're going to see how much sales tax they collected from Nebraska and then how much got kicked back to them. And I assume the companies themselves who are dealing with this are going to get some kind of kickback. It just seems like we'll do anything for money right now, and I don't think that's right. Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Haar and Senator Cornett. Senator Schumacher, you are recognized. [LB1050]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. Senator Cornett, will you yield to a question? [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR SCHUMACHER: What other states have passed this enabling legislation? [LB1050]

SENATOR CORNETT: None have passed it. It is currently, I believe, in the legislature in Louisiana. [LB1050]

SENATOR SCHUMACHER: Thank you. It is currently in the legislature in Louisiana. Louisiana is a bicameral legislature. And it is stalled. What did we hear a minute ago? We heard that historically the contract contains this and that and this protection and whatever. Folks, we're history. There's another name for that in this context. It's called "guinea pig." Not "prairie dog" but "guinea pig." Might end up like a prairie dog. We are the first to consider hiring, for a 85 percent, give or take, commission, raiding parties to raid the financing mechanisms of our sister state. This is not new jobs. This is not new factories. This thing makes nothing, but populates a basement with six people on computers to execute trade transactions. Sounds a lot like Enron. Read the statute, talking in terms of affiliates and middlemen and confidentiality. Why confidentiality? Why is there no requirement of the corporations and the volume of money that they are

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moving through this state set forth in that report? That report consists of two numbers. Why? So the other states that we're getting to can't find out as easily. We are shrouded in confidentiality. Wow. This would make a pretty good Ocean's Eleven movie. Forty-seven million dollars on a billion dollars in sales. We get \$8 million; somebody gets \$47 million. Who, what when, where, we don't know. But somebody. And you know what's available in that \$47 million? Juice. That's a lot of cash. Let me tell you, some of it's going to end up back in the political system, one way or another. Because as part of the political system you get three or four of these states that bite on this: they're not married to us; we're married to them for up to 20 years. They play against each other. Oh, we start out at 15 percent; well, somebody else will give them 14 percent; we'll do 13 percent. And we'll have an auction to the bottom. All that while we're raiding our sister states, and they are getting unhappier and unhappier with the state of Nebraska. And if somebody gets unhappy enough--and California was one that was mentioned--what if all of a sudden some of the products of Nebraskans get some kind of a jacked-up rate because, well, all states that Nebraska would be a class of don't meet some environmental standard? There's all kinds of retaliatory actions that bright lawyers somewhere can think of that have nothing to do with sales tax but could really goat us. And we would deserve every goat they can give. This is nothing more than an authorized, state-sanctioned raid on our sister states, not for business, just for cash. I've got another way to raise money: if you rob somebody in a sister state and come here, we won't extradite you. That works. You give us 50 percent. [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR SCHUMACHER: Yes, this is not a textbook world. But our constitution is an awful good text. And it prescribes a certain level of decency between the sister states. And buried in that decency is talk that we will give full faith and credit to the actions of our sister state. And I suspect, in this context, no federal judge is going to feel overly sympathetic to the Nebraska raiding parties and that you can take language like that in the constitution, along with probably a few other federal statutes, and combine it into a cause of action for \$55 million times however many years or how many other things that we do this. And we may well be finding ourselves here settling a lawsuit because the procurement companies turned out to be ghosts. [LB1050]

SENATOR GLOOR: Time, Senator. [LB1050]

SENATOR SCHUMACHER: Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Pirsch, you are recognized. [LB1050]

SENATOR PIRSCH: Thank you, members of the body. I am on the Revenue Committee. I did vote to advance this for...to the floor. And I can tell you I do appreciate

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Senator Schumacher and his concerns that he's bringing forward here today with respect to something...I guess the argument is akin to an economic arms race, with respect to these type of entities. And this is a novel, a new industry, I think, these purchasing companies. I don't see how this industry is going to go away. When you look at the theories behind it, aggregating purchasing power works. You know, that's why there's a...there is a benefit to being a Walmart. You have, under Robinson-Patman Act, a tremendous ability to, when you purchase in mass, obtain a lower price. And so that's kind of an economic factor that I don't know that we can change in the United States. And so I think that we're kind of on the dawn of these industries of companies, which we can't...I mean, they can exist in any state if they don't like the environment here. So I agree with you in the abstract. I certainly don't like it. But I don't know that our jurisdiction is such that we'd be able to keep such a race between states from occurring. And so I wonder, as with the 50 states and being that this is a new kind of creation, if we don't take a look at it...and I do appreciate the debate, and I'm going to keep listening. But are we really going to expect that none of the 50 states...and again, the kind of parallel of racing to the bottom, you know, is certainly well taken. But there will be Nebraska purchasers who will...companies who are going to be looking only at the factor of purchasing services at its lowest cost. And so, you know, at some point in time, are we not going to have to address this issue, whether we're on kind of the forefront of the trend of the creation of these type of entities or if we're on the tail end, in which case we may be at a decided economic disadvantage. So I think it's appropriate that we have this discussion here today. Again, you know, it seemed to me that but for the creation of this bill, these purchasing companies are not going to locate...and I grant you, this is a shell, it seems to me. But they do have the ability to exist, these companies, in whatever state they want to. And so I can't see a way around that. I, you know, appreciate all the statements that, you know, Senator Schumacher brings forward, and, you know, he's right on a certain level. I just can't see a way around, you know, how would we substantively be able to change and guide the actions of 49 other states. So with that, I would, you know, I'll keep listening to the discussion, and I'd yield the balance of my time to Chairman Cornett. [LB1050]

SENATOR GLOOR: One minute, Senator Cornett. [LB1050]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Senator Schumacher must have been misinformed on Louisiana in regard to his comment that it's stalled in the legislature. The legislature just convened March 12, and the bill is sponsored by the revenue chairs of both the house and the senate and the speaker and is supported by the governor as ways to generate revenue for the state of Louisiana, because they have the same title passage law that we have. Possibly...I don't know if the bill was introduced last year in Louisiana; it sometimes takes awhile to get a bill moving. But it seems to have support of the people that are chairs of the revenue committees in that state. With that, I thank Senator Pirsch for yielding me the remainder of his time. [LB1050]

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SENATOR GLOOR: Thank you, Senator Pirsch and Senator Cornett. Senator Heidemann, you are recognized. [LB1050]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I do appreciate the discussion and the debate on LB1050. I'm still not quite there yet, by any means. I was wondering if Senator Cornett would yield to some more questions. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: Yes, Senator Heidemann. [LB1050]

SENATOR HEIDEMANN: Is there any liability for the state, that if another state says, no, we don't recognize that you paid this sales tax in Nebraska, we don't think that's legitimate, we're going to make this company pay that sales tax back to us. Is...? [LB1050]

SENATOR CORNETT: It is my understanding from legal counsel that, no, there is no ability for them to do that. And if you maybe indulge me for a minute, the states that we would be doing procurement from on sales tax--again, I want to repeat--are states that are not members of Streamlined Sales Tax. They are not collecting sales tax that should be collected and remitted to the state of Nebraska, and they're counting it for their state. They're...these are...if everyone, like I said, collected and remitted sales tax, this bill would not work. [LB1050]

SENATOR HEIDEMANN: Because I was under the understanding that, I mean, this bill only works if we're at 5.5 percent and another state is higher. [LB1050]

SENATOR CORNETT: No, it would work either way. [LB1050]

SENATOR HEIDEMANN: So a state could be at 4 percent, and this procedure would work there too, even if we're at 5.5 percent. [LB1050]

SENATOR CORNETT: I would have to double-check before I answer that emphatically. I don't want to be wrong on the record on that. But I will double-check. [LB1050]

SENATOR HEIDEMANN: Because I don't know why they would want to pay 5.5 percent if they only have to pay 4 percent. That's just... [LB1050]

SENATOR CORNETT: They would probably want to do that, because with the incentive, like under the incentive programs, we rebate or remit or eliminate a portion of the tax. Under our Advantage Act, a lot of times companies have no tax liability once

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they've achieved credit. So if we entered into this type of contract, the companies would, with the incentive, would probably be paying less than in a state that did not have this title passage and had not entered into one of these contracts. [LB1050]

SENATOR HEIDEMANN: Now...and I was a little bit busy in some side conversation, but you talked about putting money in escrow. And if there is no liability for the state in any way, why do we need to put money in escrow? You talked about 10 percent, and where did you come up with the 10 percent figure? Why is 10 percent good? Why not 5 percent? Why not 20 percent? [LB1050]

SENATOR CORNETT: Those were recommendations made by the Department of Revenue to make sure that if we ever overpaid one month, that there would be money there to...or if we had a refund coming that was more than we thought it was going to be, we would always have money there to pay for that refund. It also allows us to have a safety net at the end of the contract period that, if there had been an overpayment, that we would just take that out of the escrow account. [LB1050]

SENATOR HEIDEMANN: Why would there ever be an overpayment? [LB1050]

SENATOR CORNETT: That would be, probably, due to a, I hate to say it but, a mistake or a correction that needed to be made from the Department of Revenue. [LB1050]

SENATOR HEIDEMANN: Is this company eligible for anything under LB312, Nebraska Advantage? [LB1050]

SENATOR CORNETT: I don't believe so. And we are not talking about one specific company. There is one specific company that I've been working with, but there are a number of companies that do this type of legislation. [LB1050]

SENATOR HEIDEMANN: So you're for sure that if we do this, they wouldn't also be eligible underneath LB312 or Nebraska Advantage. [LB1050]

SENATOR CORNETT: If they are, I would be happy to look at an amendment on Select File to make sure that they would be excluded from... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR CORNETT: ...any further Advantage acts. [LB1050]

SENATOR HEIDEMANN: I listened when Senator Brasch stood up and she talked about incentive. I can't quite get there with this. Is this an incentive, or is this actually something else? [LB1050]

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SENATOR CORNETT: It is my belief that it is an incentive. I was actually...originally had it drafted as another tier in the Advantage Act, because we are incentivizing a company to come here, make sales inside the state, and rebate or refund, just like we do under the Advantage and Super Advantage and the original LB775. The difference is, under those, there are a lot of times when we have no sales tax revenue from them, and we remit property tax and a whole number of other taxes, including taxes at the local level. This guarantees net new tax gain for the state of Nebraska. [LB1050]

SENATOR HEIDEMANN: And I'm about running out of time, but I'm going to ask you this question... [LB1050]

SENATOR GLOOR: Time, Senators. [LB1050]

SENATOR HEIDEMANN: ...and probably put my light back on. Thank you, Mr. President. [LB1050]

SENATOR GLOOR: Thank you, Senator Cornett and Senator Heidemann. Senator Lathrop, you are recognized. [LB1050]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I would like Senator Cornett to yield to some questions, if I can. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR LATHROP: Senator Cornett, maybe you went through this before I...when I wasn't in the Chamber, but I'd like to ask some questions just so I understand the basic, the very basic piece of this, and then maybe I'll turn my light on and get further into the detail. But, generally speaking, we are a target for this particular type of business because we are a "title passage law" state. [LB1050]

SENATOR CORNETT: Correct. [LB1050]

SENATOR LATHROP: Is that right? [LB1050]

SENATOR CORNETT: Correct. [LB1050]

SENATOR LATHROP: How many...of the 50 states, how many are a "title passage law" state? [LB1050]

SENATOR CORNETT: It's either 7 or 8. [LB1050]

SENATOR LATHROP: Okay, so a small number, is that right? [LB1050]

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SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: And what that means is when...that the sales tax is imposed when title to the property, whatever it might be, passes to the consumer? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: Okay. So these people want to come here because we have that particular type of tax structure. And if we pass this statute, we will have a business that will come into Nebraska, and will they then serve as an agent for a large corporation that's buying stuff? [LB1050]

SENATOR CORNETT: The...yes. And it will probably be multiple large organizations. The company that has been working on this bill is just one of a number of companies that do that. But these types of companies represent Fortune 100, Fortune 500 telecommunication companies. They're all very large companies that they represent. [LB1050]

SENATOR LATHROP: Okay. And the people that would be employing this group or one of these groups...and I'm not singling out the people that are here pitching this right now; I just want to get the... [LB1050]

SENATOR CORNETT: Um-hum. [LB1050]

SENATOR LATHROP: ...the basic understanding of the structure. Are they going to...they will be...do they become purchasing agents for the company that wants to buy something? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: And the company that wants to buy something would use this service because they'll end up paying a smaller sales tax than wherever they're paying their sales tax right now. [LB1050]

SENATOR CORNETT: Correct. [LB1050]

SENATOR LATHROP: And that happens because once this outfit sets up an operation, they negotiate with our Department of Revenue, that when they run stuff through Nebraska that's not run through Nebraska right now, they're going to pay less than whatever our sales tax is. [LB1050]

SENATOR CORNETT: They will pay the full amount of the sales tax. And then whatever... [LB1050]

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SENATOR LATHROP: Whatever Nebraska's rate is. [LB1050]

SENATOR CORNETT: Right. And then... [LB1050]

SENATOR LATHROP: What is it, 5 percent? [LB1050]

SENATOR CORNETT: 5.5 percent. [LB1050]

SENATOR LATHROP: 5.5 percent. [LB1050]

SENATOR CORNETT: And then they will have negotiated a turnback of that full amount. [LB1050]

SENATOR LATHROP: Back to the company. [LB1050]

SENATOR CORNETT: Back to the company, yes. [LB1050]

SENATOR LATHROP: Okay. So if I can create a hypothetical situation, we have a company in New York that wants to buy some widgets. [LB1050]

SENATOR CORNETT: Widgets work. [LB1050]

SENATOR LATHROP: And they don't have anything to do with Nebraska; they're buying them from somebody in California. They're going to call up a guy in Nebraska that will set up shop under this bill and have that person be the purchasing agent, buy stuff from California for the New York company. And the advantage to the New York company doing the buying is they're going to get a rebate off of 5.5 percent from Nebraska. [LB1050]

SENATOR CORNETT: Correct. And if the sales tax in the state that they're purchasing from is higher than the 5.5 percent, that difference between our 5.5 percent and what their sales tax rate is will be remitted to the state that the widget is purchased from. [LB1050]

SENATOR LATHROP: Okay, so there might be something in it... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: ...but certainly we're taking a good deal of revenue, in my example, from California. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

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SENATOR LATHROP: Right? We are...the money that we're going to get and share with the middleman here... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR LATHROP: ...is money that would otherwise be going to California. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: Does any of the widgets from California on their way to New York land in Nebraska at all, or is this all done on a computer? [LB1050]

SENATOR CORNETT: It could be either way. They could land in the state of Nebraska, or it could be done just via computer. [LB1050]

SENATOR LATHROP: But in my example, they want them in New York and they're selling them in California, they're not stopping in Nebraska. [LB1050]

SENATOR CORNETT: Not necessarily, no. [LB1050]

SENATOR LATHROP: Okay, so it's all done in some kind of a computer-generated transaction or a couple of phone calls. [LB1050]

SENATOR CORNETT: Phone calls, computer, I...yes. [LB1050]

SENATOR LATHROP: Okay. And for the New York company that's doing the buying, they would be paying taxes in California; the advantage to them is that we are going to let them pay 5.5 percent in Nebraska, some of which we're going to give them back until we get to a low enough rate that this is a big deal to them in volume. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: Okay. And the guy who's in the middle, the one who wants to come here to Nebraska to set this up... [LB1050]

SENATOR GLOOR: Time, Senators. [LB1050]

SENATOR LATHROP: ...they're getting a cut. [LB1050]

SENATOR GLOOR: Thank you, Senator Cornett and Senator Lathrop. Senators in the queue: Sullivan, Adams, Brasch, Ken Haar, Heidemann, Schumacher, and others. Senator Sullivan, you are recognized. [LB1050]

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SENATOR SULLIVAN: Thank you, Mr. President. This has been educational, to say the least. There's a part of me that says, "Gee, this sounds almost too good to be true." So that's why I need to ask some questions of Senator Cornett, if she would yield. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR SULLIVAN: Thank you, Senator. First of all, a little bit about the contract and the negotiations that take place. You said that it will be something that's done with this entity and the Department of Revenue and the Governor, and it will be negotiated for the best interests of our state. What are they looking at in terms of the best interests? [LB1050]

SENATOR CORNETT: Well, the first thing that the Department of Revenue, by the bill, is required to do is determine that there will be a net advantage to the state: first of all, that we do not lose any current sales tax that we are collecting and that we will increase our sales tax base with this. Other areas they look at the contract in is the percentage of turnback, and there is a wide range of that, depending on the procurement company. Senator Schumacher is right, some of those contracts are entered in at 85 percent, some are entered at 80 percent, some are less, some are more. [LB1050]

SENATOR SULLIVAN: So there's no parameters in terms of that percent rebate. [LB1050]

SENATOR CORNETT: That is negotiated between the Department of Revenue or the executive branch and the procurement company. [LB1050]

SENATOR SULLIVAN: Explain to me a little bit, in the amendment, about this new tax revenue. And it says, will be allocated to the state's transportation funds. Tell me a little bit more about that; I don't quite understand and follow your explanation. [LB1050]

SENATOR CORNETT: That has to do with Senator Fischer's bill last year that was passed. [LB1050]

SENATOR SULLIVAN: Right. [LB1050]

SENATOR CORNETT: So we're saying, and we'll just use a round number, if \$100 is collected, that, before any rebate occurs, that her roads bill gets its quarter-cent. So the quarter-cent comes off the net rather than the... [LB1050]

SENATOR SULLIVAN: Okay. [LB1050]

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SENATOR CORNETT: I'm sorry, it comes after the net rather than the gross. [LB1050]

SENATOR SULLIVAN: Okay. And then we're creating this escrow to cover any errors that might occur. What are the chances of these errors occurring? [LB1050]

SENATOR CORNETT: Well, every month, in the incentive programs that we have, you know, a city might get a notification that they had been paid too much. And then the next month they don't get any sales tax back. So we're not talking about large errors; that's why it's only 10 percent. That number was the number that was recommended by the Department of Revenue. And they also put in the 36-month period, because that is the maximum that you can look back on sales tax liability. So at the end of the contract period, there is money sitting there to make sure that if there needs to be a payout to the state of Nebraska, that we have money there to cover it. [LB1050]

SENATOR SULLIVAN: Granted, we're venturing into, apparently, new territory here. Is this something, if we go forward on this, do you anticipate more companies being interested in coming here? [LB1050]

SENATOR CORNETT: I anticipate that this will generate interest from these procurement companies. That was my point in bringing the bill. But, again, this is only enabling legislation. This doesn't guarantee that we contract with any company. [LB1050]

SENATOR SULLIVAN: And then, finally, I'm looking...as I said, you know, this sounds almost too good to be true. So tell me, in your estimation, truly, what's the downside, or what are we risking to gain this? [LB1050]

SENATOR CORNETT: Monetarily, we're not risking anything. That is why we put in the safeguards in the bill. It is a new concept. Like I said, Louisiana is looking at this legislation also and has started that process, as of March 12. [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR CORNETT: The states that are not members of streamlined, that are not remitting sales tax to us now, are probably going to be concerned about this bill, but no more concerned than the states that we enacted some of our legislation in regard to large datacenters, or no more so than California was when our Governor went there to try and attract companies. We, as a state, are in the business of trying to recruit businesses. [LB1050]

SENATOR SULLIVAN: I know it makes us a little uncomfortable to venture into new territory like this, but it's certainly, at the very least, worth a discussion and our attention.

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Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Sullivan. Senator Adams, you are recognized. [LB1050]

SENATOR ADAMS: Thank you, Mr. President and members. I feel compelled, being one of the no votes out of committee, to say something. And, honestly, I don't know what to say. I don't. When I taught school...and I'm sure if you went back and asked some of my colleagues, they would accuse Adams of being the old fudd, because, boy, if there was some new trend coming along, I'd say, "Nope, I'm ducking down and getting out of the way." There's something about this change that I didn't like. Now, the reason I say that to you is because I want to put things into context. Maybe this is a good idea, and maybe Adams voted no because he's reluctant to go along with new things. But I cannot stand here at the mike today and clearly articulate a good fiscal reason, tax reason, why I'm opposed to this, with one possible exception, one possible exception. One of the things that concerned me, from a policy standpoint, was that portion of the bill that allows the executive branch to negotiate with a procurement company the level of turnback. And my point is this. We have Nebraska Advantage Act, and we have all kinds of things that we have put in place to determine the level of sales tax or personal property tax or income tax credit turned back to companies if certain things are met. That is, to me, a legislative prerogative and not an executive prerogative. In this particular bill, we enable this to happen. The executive branch, whoever is occupying that office, would negotiate with a procurement company for the level of turnback, whether it's 80 percent or 85 percent or 55 percent, whatever it's going to be. And I have no doubt that whoever is in the executive branch and whoever is negotiating this contract will look after the best interests of this state. That's not my point. My point is, isn't that a legislative prerogative, to decide what that number is going to be? It is on everything else that we do. That is the only point that I can articulate to you why I voted no on this. It doesn't feel right to me, and I can't say why. And you could call me to the mike 100 times between now and 5:30 and I honest to goodness can't tell you anything more than that. And this is the second year on this bill. I've sat on the Revenue Committee, and I've listened. I understand; I get it; I see how it works. And maybe I'm just slow at going along with change. Thank you, Mr. President. [LB1050]

SENATOR GLOOR: Thank you, Senator Adams. Senator Brasch, you are recognized. [LB1050]

SENATOR BRASCH: Thank you, Mr. President. And thank you again, colleagues. Just a couple things I wanted to address, when we were being called "guinea pigs." I like it when we were called "pioneers." If you look around the Capitol, you'll see murals of pioneers, people who traveled despite all odds, all dangers, all unknown, to come to Nebraska for an opportunity. I like to be called pioneers. Perhaps it's okay to be number 1. We like the thought of being number 1 in athletics. And now we're being accused of

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stealing businesses? Well, what about recruiting businesses? I even think we recruit football players from other places. It's okay to take here and there and offer, you know, a chance, you know, to be here. And then when we talk about, you know: what are we doing, I don't quite understand. DAS, Department of Administrative Services, I believe they have a procurement process, where they take bids and they look and they do purchasing. And I see these companies as also a collective of sorts, an ESU, where they get...you know, in one place they have a headquarters, you know, a very attractive opportunity where they would bring Fortune 100, Fortune 500 companies here to make the best of Central Time, all the assets, the work ethic. And you know, talking about that job in a basement somewhere: you know, there's a wonderful, in Wisner there, basement business that is working with real estate companies across the globe. The salaries are excellent. I think they started with 8, and I believe they're up to 20 or 25 people. Beemer, Nebraska, also has an opportunity. You have to start somewhere and look at the possibilities. If you say, "we can't," well, we will not. And I do hope that we are willing to compete nationally and globally in a world of technology and opportunity, especially in our rural communities, where these businesses can complement our peaceful landscapes and our beautiful scenery. But again, I do support LB1050 and AM2181. And I believe that our Revenue Department and our Governor would truly act in the best interest to bring in new money. And I can't stress that there are stipulations; it must be new business. And I yield the remaining of my time to Senator Cornett, if she'd like it. [LB1050]

SENATOR GLOOR: Two minutes 5 seconds, Senator Cornett. [LB1050]

SENATOR CORNETT: Thank you very much. I just again wanted to stress a couple of points. This is enabling legislation that allows us to enter into one of these contracts. I heard Senator Heidemann's comments in regards to the percentages and the fact that we might be giving the executive branch too much power. The difference with this is the tax law already exists that allows this. We are putting enabling legislation for a contract, and the Legislature, unfortunately, does not have the ability to contract. We looked at that a number of different ways trying to figure out how we could do that. And that was...my original intent was trying to look at placing this under the Advantage or Super Advantage to find a way to do that. And it was just not a workable draft of the legislation. Some of the other concerns that I have heard were... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR CORNETT: ...that we are giving the Tax Commissioner, rather than the Governor, the right to contract. But if you look at the amendment, it has to be approved by...the Tax Commissioner or the Department of Revenue determines that this is a net gain for the state, and the plan has to be approved by the executive branch. With that, I thank Senator Brasch for her yielding me her time. [LB1050]

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SENATOR GLOOR: Thank you, Senator Cornett and Senator Brasch. Senator Ken Haar, you are recognized. [LB1050]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Cornett a question, if I could. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR HAAR: Could a Nebraska company, let's say, buying a bunch of computers, then go to this company and avoid paying Nebraska sales tax? [LB1050]

SENATOR CORNETT: No, because part of it is it has to be new companies only, new revenue. So if you're talking about an existing company inside of Nebraska, I don't believe they can under the language. [LB1050]

SENATOR HAAR: No. But if there was a brand new company that's coming in--and we're trying to recruit new companies all the time. So if a new company, and let's say it's some kind of big datacenter, and they would purchase their...they'd have to purchase equipment which we could charge Nebraska sales tax. They're a new business. Could they go to this company and avoid paying Nebraska sales tax? [LB1050]

SENATOR CORNETT: Again, Senator Haar, one of the questions that was asked earlier was, could one of these companies utilize both the Advantage Act or Super Advantage Act and this? I don't believe they can but I'm waiting for an answer back on...from legal counsel on that. If they could, I will be happy to offer that as an amendment on Select File. But if we're talking about bringing that type of company to Nebraska with this, we're talking about a Fortune 100 or a Fortune 500 company, and I would think that we would welcome them if they were excluded from using any other type of incentive. [LB1050]

SENATOR HAAR: Well, see, I...this is just again my personal opinion, but if somehow a Nebraska company could avoid Nebraska sales tax by going to this company that's going to get a kickback on Nebraska sales tax, that would really upset me. And, of course, that's exactly how New York is going to feel and California and so on and so forth. It just seems to me...the mental picture that comes to me are lawyers sitting in some smoke-filled room inventing these exotic financial instruments that brought the country down in 2008. And it seems to me that some lawyers have gotten together or somebody and figured out a neat way to avoid paying sales tax, and they're going to use Nebraska to leverage that. And I think if it looks like a duck and quacks like a duck, it's a kickback and we shouldn't be part of it. Thank you. [LB1050]

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SENATOR GLOOR: Thank you, Senator Haar. Senator Heidemann, you are recognized and this is your third time, Senator. [LB1050]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I was wondering if Senator Cornett would yield to a couple of questions. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield to questions from Senator Heidemann? [LB1050]

SENATOR CORNETT: Yes, Senator Heidemann. [LB1050]

SENATOR HEIDEMANN: As I was sitting there listening to debate, I picked up the sheet of paper that Senator Schumacher, I believe it was, passed out, and it talks about litigation with, I believe, cities. And I might have alluded to this question before, but there are no other states that are doing this right now. And if you get one state, two states, three states doing this, you're confident that another state then that is being affected by these three states' decisions won't come back and file some kind of a lawsuit because of loss of revenue. [LB1050]

SENATOR CORNETT: It is my understanding that they cannot do that currently, that that is not allowed. The collection of sales tax is determined by each state. And the case that Senator Schumacher handed out actually did not have to do with the rebate but it had to do with what's called situs in regards to where the sales occurred. [LB1050]

SENATOR HEIDEMANN: I'm just trying to think of a bigger picture. And if we do this and it affects another state, and they lose \$10 million or \$20 million and we gain that \$10 million or \$20 million, and we give 85 percent of it back to this company, if you were Governor of that state how would you feel? [LB1050]

SENATOR CORNETT: Well, Senator Heidemann, California does that to us every day and we have had no recourse on that. An example: California imposes a sales tax on every penny of goods that is purchased from the state of Nebraska and remits none of it to us, and there's never been grounds for us to do anything about that because they are not a member of streamlined. [LB1050]

SENATOR HEIDEMANN: Is there anything legislative we could do to correct that maybe? [LB1050]

SENATOR CORNETT: No. [LB1050]

SENATOR HEIDEMANN: Okay. [LB1050]

SENATOR CORNETT: The only thing that could correct that would be change at the

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federal level. There has been a bill for a number of years, it has still not gone anywhere and I don't foresee going anyway, called the Main Street Fairness Act, which would say that sales...Internet sales and sales, that if the sale is made in one state by somebody from the other state, the sales tax would have to be collected and remitted. That's why companies such as Amazon remain in these states that are not members of streamlined, because they collect sales tax and they do not remit the sales tax to the state it was purchased from. [LB1050]

SENATOR HEIDEMANN: Do you ever get a bad feeling about something and you couldn't quite figure out why? [LB1050]

SENATOR CORNETT: I could make a joke and say your budget. (Laughter) [LB1050]

SENATOR HEIDEMANN: Do you know what I'm saying though? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR HEIDEMANN: I have that feeling about this bill. Why is that? [LB1050]

SENATOR CORNETT: It is new, and I think that anytime people are approached with a new concept that...particularly in regards to taxation, that it makes them uncomfortable. What I did with this was try and put all of the security checks in place to bring everybody's level of comfort up. Senator Sullivan brought up a good point: What if they are only here for a while? Well, we have the contract to fall back on, on how long they are here. What if they do not make the sales that they said they would? We've lost nothing. That is the point. We've put in that we lose nothing on this because of the contract and the certification... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR CORNETT: ...that it only has to be new net sales. [LB1050]

SENATOR HEIDEMANN: You will look between...if this bill actually advances, between General File and Select File to make sure that they're not eligible for Nebraska Advantage Act, and if they are you will put an amendment on stating that they cannot be. [LB1050]

SENATOR CORNETT: I most assuredly will. [LB1050]

SENATOR HEIDEMANN: Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Heidemann. Senator Schumacher, you are recognized and this is your third time, Senator. [LB1050]

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SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. To highlight the situation in Louisiana, you may recall last year we saw this bill already. It was a partisan attempt to move it along with, what would they call it, the data-mining bill? And then we ended up pulling it back off and rejecting it last year and brought back again this year. Same situation in Louisiana. The Louisiana situation, there were some amendments, an attempt to move it through last year using vehicles like that. They refiled it again this year. It's got two houses in Louisiana and looking isn't good. Senator Haar raised an interesting question. He said can Nebraska stuff that we would normally get tax on in Nebraska beat the system? I think I figured out a way it can. Let's say California is a target state. It buys ten x-ray machines at \$3 million apiece, and they get a Nebraska sales tax paid receipt. We give them an 85 percent kickback and the machines are shipped to California. You notice in the bill it talks of affiliates. Well, if one of those machines then is shipped back to Nebraska later on for use in Nebraska, we don't get any sales tax. They got a sales tax paid receipt on that particular machine already. It might be a way you can beat a little sales tax. But I got a question for Senator Cornett, if she would yield. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: Yes. I'm sorry. [LB1050]

SENATOR SCHUMACHER: Okay. Senator Cornett, right now we're looking at possibly some out-of-state procurement companies coming in and doing this, but what if the home kids wanted to play? What if our cities wanted to put together a 501(3) something or another, a nonprofit corporation, and they be the procurement company? Would that work? [LB1050]

SENATOR CORNETT: They would have to contract with the state of Nebraska. The Revenue Department would have to determine that it was only in the benefit of the whole state of Nebraska, and the Governor would have to approve and negotiate that contract. [LB1050]

SENATOR SCHUMACHER: Okay. Thank you, Senator Cornett. I would think certainly the Governor would think the homeboys and our cities who would be making part of the kickback would be better than having some out-of-state outfit take the money. So let's see how Nebraska plays on the world stage. Our cities ban together and they form the "Save Your Sales Tax" nonprofit corporation, and they get approval from the Tax Commissioner to get a kickback. Eighty-five percent of the sales tax now goes to them and their clients. Now they start running ads in The Wall Street Journal and the L.A. Times and The Miami Herald, and they say: Hey, beat sales tax legally; buy your purchases through the Nebraska municipal purchasing agent or whatever. And, wow, right there, full-page ad. Should work, shouldn't it? How long do you suppose that's

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going to last? Maybe we could even do this on a lower level and, you know, those magazines in the newspaper racks where you can...the Globe or whatever they call them with the little ads about how you can beat taxes legally. We could get by pretty well there, too, with this same kind of thing. This is not industry. This is not business. This is simply a way to take \$6.66 out of the pockets of taxpayers someplace else, and temporarily, until we get balled up with... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR SCHUMACHER: ...ourselves, put it in our pocket, and we look really bad in the process. We are, yes, the first to do it, and in this context more guinea pig than pioneer. You know, maybe when it comes to vote on this we should shift the buttons around so that the red button is a yes vote, because we, in essence, are launching missiles, the first missile in another race-to-the-bottom war. Nobody else has launched missiles yet on this one. We want to be there? We want to cheat another state out of its tax revenue? Think we're going to be immune? Think government, think the people of the United States of America are going to be better off if we launch this new thermonuclear tax war? Why would we? We got plenty of money. I think we've heard that. [LB1050]

SENATOR GLOOR: Time, Senator. [LB1050]

SENATOR SCHUMACHER: Why would we stoop to this new low? [LB1050]

SENATOR GLOOR: Time, Senator. [LB1050]

SENATOR SCHUMACHER: Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Schumacher. Senators remaining in the queue: Nelson, Lathrop, Burke Harr, Langemeier, and Cornett. Senator Nelson, you are recognized. [LB1050]

SENATOR NELSON: Thank you, Mr. President, members of the body. I cannot be nearly as demonstrative as Senator Schumacher is, and I just want to comment on what he had to say. Why can't we be first out of the chute and what's wrong with being a guinea pig as long as there's no downside? This is not a race to the bottom; this can be a race to the top. Whatever is wrong with being competitive and trying to come ahead of the other states? I also take exception...I don't take exception to his comments but I take exception to what Senator Haar said, and he was talking about his unease here, thinking that all of these concepts are conjured up by lawyers sitting in smoke-filled rooms. Why are lawyers taking the rap for this if there is a rap? I mean it's stockbrokers, people coming up with arbitrage and bundling and things of that sort. So I don't like for us to stand up here and place the blame for anything that might possibly go wrong on

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lawyers. I do have some questions for Senator Cornett, if she would yield. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: I would. [LB1050]

SENATOR NELSON: Senator Cornett, you've entertained a lot of questions today. And if I can set you at ease, I'm rising pretty much in support of your bill. I do have a question here, and let me say, you know, I don't like change either, but I don't see much downside to this. One question I want to ask here, as Senator...Steve here (laugh)... [LB1050]

SENATOR CORNETT: Senator Steve? [LB1050]

SENATOR NELSON: ...Lathrop, Senator Lathrop, I'm sorry, mentioned we're a title passage state, right? Okay. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR NELSON: And I think you've said that we're one of seven. All right. [LB1050]

SENATOR CORNETT: It's seven or eight. I would have to check on that. [LB1050]

SENATOR NELSON: Seven or eight, okay, but we are taxing here. Then, if I get my...we assess a tax at the site of the transaction. [LB1050]

SENATOR CORNETT: Correct. [LB1050]

SENATOR NELSON: All right. Are we going to be locked into this? Are we going to be able to change our tax structure and policies later on down the road if we decide this is not the best way to tax? Do you have any comment about that? [LB1050]

SENATOR CORNETT: We will have entered into a contract based on the percentage of turnback, a percentage of sales, so this would not restrict us from either raising or lowering our sales tax rate at the state level, if that's what you're referring to. [LB1050]

SENATOR NELSON: But in the event if we changed our tax structure so this wasn't a benefit to this procurement company, I suppose there's an out for either the state or for them? [LB1050]

SENATOR CORNETT: I'm sure both the state and the procurement company are money savvy enough to include that in the contract. [LB1050]

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SENATOR NELSON: All right. I'm looking at the fiscal note, and I realize that your amendment has changed some things here, but it makes the comment, for example, states where the property is delivered may deny credit for sales tax paid to Nebraska by determining that the sales were not properly sourced in Nebraska. In that event, the purchasing companies may seek a refund of sales tax paid to Nebraska. Now that could be a downside. Do you have a comment on that? You talk, I think, about streamlined sales tax collection. Does that involve any...why do you say that other states would not be able to make that determination and continue to try to tax the procurement company in their states? [LB1050]

SENATOR CORNETT: That is part of the reason we have set...are setting up an escrow account, is that if something is determined not to have been sourced in Nebraska. But the way the structure is in regards to tax, if it is purchased in Nebraska with our title passage, it would be sourced... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR CORNETT: ...in Nebraska. That is why California, because they are a point-of-origin state, is able to keep our sales tax or keep all the sales tax for items purchased from Nebraska. [LB1050]

SENATOR NELSON: All right. And final question: The assumption is, since there's no hold harmless, is that the procurement company would keep any rebates, and this would result in a negative fiscal impact. Have we addressed that? [LB1050]

SENATOR CORNETT: The Department of Revenue, before they enter into the contract, the first thing they determine is that there would be no negative impact to the state. So the rate that they contract, that rebate rate, would be based on the fact that it is all new sales, that we're not taking any of our sales tax base away, and that the refunds do not exceed the amount collected. A lot of times under the Advantage Act and Super Advantage, no tax is paid. [LB1050]

SENATOR GLOOR: Time, Senators. Time, Senators. Thank you, Senator Nelson and Senator Cornett. Senator Lathrop, you are recognized. [LB1050]

SENATOR LATHROP: Thank you. I would like to ask Senator Cornett some questions, if I may. [LB1050]

SENATOR GLOOR: Senator Cornett. [LB1050]

SENATOR CORNETT: Yes, I'd be happy. [LB1050]

SENATOR LATHROP: Senator Cornett, when we last...when I ran out of time, we were

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going through my hypothetical with a purchaser in New York and a seller in Colorado or, pardon me, in California, and what you said was a company in Nebraska, without ever physically touching the product, can purchase it. Because they're doing it from a terminal in Nebraska, that becomes the point of sale. [LB1050]

SENATOR CORNETT: The title passage has to occur in Nebraska. It has to be purchased from the state of Nebraska, yes. [LB1050]

SENATOR LATHROP: And that can be done on a computer. [LB1050]

SENATOR CORNETT: It could be done over a phone, it could done on a computer, however the company generally does sales...purchases. [LB1050]

SENATOR LATHROP: And the stuff never has to come through Nebraska. [LB1050]

SENATOR CORNETT: No. [LB1050]

SENATOR LATHROP: Okay. Here is...maybe to get to the point that Senator Schumacher was trying to make, I want to ask a question and that is if Louisiana is, as you suggest, going to do this or if they do this, all right, right now this looks like a great deal if we're the only state in the Union that does it. But what if Louisiana passes this very same statute? We have the statute. What's stopping a firm in Columbus, Nebraska, or in Omaha from using an outfit in Louisiana, that does this very same thing, to order things from California? It's done by the...one of these outfits in Louisiana who negotiates the deal down. They've now paid the sales tax, and I put that in quotes, paid the sales tax in Louisiana and the stuff shows up in Nebraska, and now they're...instead of paying Nebraska sales tax they've paid Louisiana sales tax, most of which went back to the procurement company. [LB1050]

SENATOR CORNETT: The... [LB1050]

SENATOR LATHROP: Do I have that right? Is that a realistic scenario? [LB1050]

SENATOR CORNETT: I will have to look to see if Louisiana is a streamlined state because this only affects... [LB1050]

SENATOR LATHROP: Okay, let me just use a state that's at the same place we're at and not a streamlined state, because that's who they're...that's what they're picking, right? [LB1050]

SENATOR CORNETT: If they are not a streamlined state, yes, that would be the states that this would affect the most. [LB1050]

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SENATOR LATHROP: Okay. So if we get to a state where another one of these is set up, it's not a streamlined state, they could literally have Nebraska companies using somebody in that state where...that passes another one of these statutes, and Nebraska companies stop paying sales tax in Nebraska and they're paying it to...in a state, a foreign state, that never even sees the products. They just have a guy on a terminal or on a phone and the sales tax isn't even...the whole sales tax isn't even going to that state. Most of it is going to the procurement company. Is that about right? [LB1050]

SENATOR CORNETT: It is, but let me give you a hypothetical situation back. If we do not pass this in the state of Nebraska, and Louisiana does, we are at a net loss totally. [LB1050]

SENATOR LATHROP: And that's where we get to... [LB1050]

SENATOR CORNETT: Senator Schumacher's point. [LB1050]

SENATOR LATHROP: ...my friend Schumacher's nuclear arms race. It really is sort of a standoff, isn't it? [LB1050]

SENATOR CORNETT: Well, it... [LB1050]

SENATOR LATHROP: If nobody does it, we're okay. If we're the only people that do it, we're okay. But as soon as two people do it, we're going to lose revenue from existing companies that are paying sales tax in Nebraska that want to use this scheme that's been set up in another state to avoid Nebraska tax. Is that true? [LB1050]

SENATOR CORNETT: It is, but it is no different than what is occurring now with Internet sales on the states that do not collect it from streamlined states. So all of the sales that are made in Nebraska to states that are not members of streamlined, they never remit a dime of sales tax to us. [LB1050]

SENATOR LATHROP: I get that that's a problem. [LB1050]

SENATOR CORNETT: That's a huge problem. [LB1050]

SENATOR LATHROP: I get that it's a problem, but I also appreciate that as soon as two states do this, as soon as somebody follows our lead on this,... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR LATHROP: ...they can literally start pulling Nebraska sales tax to a foreign state, and most of that tax is going to go to the procurement company and not even to

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the state that's pulling the sales tax away from Nebraska. [LB1050]

SENATOR CORNETT: I see your point and I will look into that. [LB1050]

SENATOR LATHROP: Okay. Thank you. That's all I have. [LB1050]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Burke Harr, you are recognized. Senator Ken Haar, and, Senator, this is your third time. [LB1050]

SENATOR HAAR: Third time. Mr. President, members of the body, first of all I'd like to apologize to all lawyers. Actually, some lawyers...lawyers are some of my best friends. I should have said politicians sitting and inventing, because that's what the public thinks about us. I won't say much more. This just sort of morally offends me because we're taking...we're really...we're taking, we're taking, we're taking because we're afraid somebody is going to be taking us, and it goes on and on. And if my kids would have used this kind of argument, I'd have tried to give them some kind of moral lesson. Thank you. [LB1050]

SENATOR GLOOR: Thank you, Senator Haar. Senator Ashford, you are recognized. [LB1050]

SENATOR ASHFORD: Senator Cornett, if I...I just need to ask... [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR ASHFORD: Senator, I just...and maybe this is covered in the bill and I may...should have looked first, but if a company in Columbus sells a farm building to a farm in Nebraska through a procurement through Ryan, what happens? [LB1050]

SENATOR CORNETT: We cannot...they cannot do that with the fact that they cannot enter into contracts with companies that are currently existing in the state of Nebraska. [LB1050]

SENATOR ASHFORD: So, okay, so the seller...if a seller is in Nebraska, they can enter into a contract with that seller if they're selling to someplace else. [LB1050]

SENATOR CORNETT: They could...if other states enact this legislation, they could enter into an agreement with a procurement company in another state, yes. [LB1050]

SENATOR ASHFORD: But if this company that comes to Nebraska, and it has a relationship with a large manufacturer in Nebraska, they can't enter into a contract with a large manufacturer in Nebraska? [LB1050]

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SENATOR CORNETT: That is currently existing in Nebraska. It has to be only new sales. [LB1050]

SENATOR ASHFORD: Okay. So the manufacturing company that's selling farm products would have to be a company outside of Nebraska. [LB1050]

SENATOR CORNETT: Yes. It has to be new...only new generated sales tax. So, for instance, ConAgra could not enter into an agreement with the procurement company for a rebate of their sales tax. And just, if you would indulge me for a moment, in one of the drafts of the bill, multiple drafts of the bill, we had protection language against them utilizing Advantage or Super Advantage or any other incentives, and it seems to have been left out on this draft. I went back and looked through and I will include that on Select File. So that would be another protection against that. [LB1050]

SENATOR ASHFORD: And I thought Senator Adams made a great point. This is new and one of the new things in this and that I want to be very careful about is using turnback, even the term turnback, when we're giving sales tax back to a private entity as opposed to a governmental entity. I realize it's a different kind...and I'm not...I mean I'm serious because I think that I know this is different and maybe there's another term for it. [LB1050]

SENATOR CORNETT: I was going to say, it was just the common nomenclature that I figured everyone would understand. [LB1050]

SENATOR ASHFORD: I understand the... [LB1050]

SENATOR CORNETT: ...but I understand it is different. [LB1050]

SENATOR ASHFORD: I get the point. I just...we've got to be...that's a point of caution. But just so I...one more time, if a Nebraska manufacturer cannot utilize this, a procurement company in Nebraska, at all. [LB1050]

SENATOR CORNETT: Not if they currently are existing in the state of Nebraska, no. [LB1050]

SENATOR ASHFORD: Okay. So...but if a new company comes in to Nebraska to manufacture something, could they sell products in Nebraska and take advantage of this procurement? [LB1050]

SENATOR CORNETT: Well, now here's the thing about that, is these companies that use procurement companies are all Fortune 100 and Fortune 500 companies, and they would most likely be better served applying for credits under the Advantage Act or the Super Advantage Act, because those include sales tax both at the state and local level,

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property tax, and credits for employees. [LB1050]

SENATOR ASHFORD: But it's not that company that I'm...I'm more concerned about the tax revenue that Nebraska gets. So if a new...if we're making a deal and we're only getting 1.5 percent, or whatever happens, and this...so it's not the manufacturer that's...or the seller that's bothering me. It's the state of Nebraska getting the tax. But if someone comes into Nebraska and creates a business in 2012 or 2013,... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR ASHFORD: ...uses this procurement company to sell a product, can they do that and will this deal happen then? I mean can that procurement company take advantage of that new company? [LB1050]

SENATOR CORNETT: That is something I will have to check. I believe, looking at it, that only in basically a perfect storm could they. They'd have to be a totally new company to the state of Nebraska that would be only new net revenue, and most likely those companies would be large enough that they would not look at this type of incentive, that they would use our Advantage or Super Advantage. And I'm going to include the language on Select File that says either/or. [LB1050]

SENATOR GLOOR: Time, Senators. Thank you. Senator Carlson, you are recognized. [LB1050]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd also like to address some questions to Senator Cornett, if she would yield. [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield to questions from Senator Carlson? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR CARLSON: Senator Cornett, this has been an marathon for you and I'm sorry, but I'm listening to questions that are being asked and it triggers some questions in my mind. This would allow the Tax Commissioner to enter into a contract in which such company agrees to locate its business operations in this state. Now does that restrict them from locating business operations in any other state? [LB1050]

SENATOR CORNETT: No. Matter of fact, there are 17 or 18 of these companies. They will...if they...they can enter into these contracts...the procurement companies can enter into these other contracts in other states, but part of the negotiation is that they will not get into bidding wars with the other states. [LB1050]

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SENATOR CARLSON: I'm sorry? Say that... [LB1050]

SENATOR CORNETT: Part of the contract historically has been that they will not get into bidding wars, so they will not go to Louisiana, say you need to come down on your percentages because we are...we have this percentage in Nebraska. This is what they've done at the city levels. [LB1050]

SENATOR CARLSON: Okay, it sounds like it's maybe an understanding but it's not contractual that... [LB1050]

SENATOR CORNETT: No, it would be contractual. [LB1050]

SENATOR CARLSON: Wouldn't be contractual. So then I'm on page 2 and: A contract entered into this section may be...include as an incentive. So that's the percentage that's decided upon, whether it's 80 percent or 85 percent or whatever that's... [LB1050]

SENATOR CORNETT: Page 2 of the amendment or page 2 of the bill? [LB1050]

SENATOR CARLSON: Of the amendment,... [LB1050]

SENATOR CORNETT: Thank you. [LB1050]

SENATOR CARLSON: ...starting in line 11. Now just for purposes of example, then let's say that the percentage agreed to is 80 percent, so they're going to get 80 percent of the sales tax that's collected. They get back 80 percent and we keep 20. But there isn't anything that...and our sales tax is 5.5. So another state has a 5.5 percent sales tax. There's nothing in this contract that would keep them from going to that other state with 5.5 percent sales tax and working an agreement where they got 85 percent instead of 80. [LB1050]

SENATOR CORNETT: That is, from my understanding, you can do that in the contract, plus the term of the contract for the state would be set out. So if they enter into a contract with the state of Nebraska, they can do that up to 20 years. So that contract just doesn't go away if they enter into one of these in another state. [LB1050]

SENATOR CARLSON: No, but if they enter into one in another state that's more advantageous to them, they'd simply stop selling from Nebraska. [LB1050]

SENATOR CORNETT: Purchasing from Nebraska. [LB1050]

SENATOR CARLSON: Yes. [LB1050]

SENATOR CORNETT: Not selling; they're purchasing. [LB1050]

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SENATOR CARLSON: Yes. [LB1050]

SENATOR CORNETT: But... [LB1050]

SENATOR CARLSON: In other words, our business flow, sales tax flow is going to stop because they're picking up 85 percent in another state rather than 80. Why wouldn't they just do it in the other state? I think I understand that. [LB1050]

SENATOR CORNETT: Yes. But again, we do not lose anything if they choose to do that. [LB1050]

SENATOR CARLSON: We don't lose anything. We just don't gain anymore after a certain point once they stop conducting business in Nebraska. Now a contract entered into may not exceed an initial term of 20 years. But really, whatever that is, whether it's 20 years or 15 years, that doesn't prevent them from doing really whatever they want to do... [LB1050]

SENATOR GLOOR: One minute. [LB1050]

SENATOR CARLSON: ...during that period of time, does it? [LB1050]

SENATOR CORNETT: That would be spelled out in the contract saying the number of...you can spell that all out in the contract. We actually wrote a very, very extensive, in-depth bill, and basically tried to write the contract into the bill. And you can't...you can't do that really. We talked about the number of years, the minimum number of companies, all sorts of things. You can spell out in the contract how many years they have to be here and whatever other safeguards you want inside that contract. It is a negotiation between the state and the procurement company. [LB1050]

SENATOR CARLSON: Okay. So it might be possible to negotiate a contract for ten years and saying to them in that contract, you can't go anyplace else for ten years, you've got to do all your business here. If we can do that and they can agree to it, then that's okay. [LB1050]

SENATOR CORNETT: If they agree to it, that's okay. It's a contract. [LB1050]

SENATOR CARLSON: Okay. And if we don't do that, then... [LB1050]

SENATOR CORNETT: Then the state, if they don't feel comfortable, doesn't have to enter into it. [LB1050]

SENATOR CARLSON: Okay. All right. Thank you, Senator Cornett. [LB1050]

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SENATOR GLOOR: Thank you, Senators. Senator Pahls, you are recognized. [LB1050]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator Cornett, would you yield, please? [LB1050]

SENATOR GLOOR: Senator Cornett, would you yield? [LB1050]

SENATOR CORNETT: Yes, Senator Pahls. [LB1050]

SENATOR PAHLS: Okay. Thank you. And I do not have the transcript of the hearing so I'm going by some of the papers that are in front of me. It says that this is attractive because we are one of at least seven states that allow sales tax to be levied at the site of the sale rather than at the location of the delivery. So there's a small group of states, six or seven or eight, that we'd be in competition with. [LB1050]

SENATOR CORNETT: You know, yes, and I'm glad you are actually asking these questions because on the next bill coming up we're going to be dealing with a number of these underlying issues, whether you're a title passage origin state and a number of other issues on how sales tax is collected in different states based on their sales tax laws. So what you are saying, yes, we are in competition with those seven other states currently, but all the states could change their underlying sales tax structure. [LB1050]

SENATOR PAHLS: Right. But you're telling me that we only have 26 in the streamlined group. The rest of the states haven't decided to get into that group, because we should have all the states in that. If they saw this, they could see that organization as an effective way of dealing with taxes. Or are they selfish? [LB1050]

SENATOR CORNETT: They're selfish. California has no trouble, and neither does Oregon, keeping our sales tax for sales that are from Internet sales. That's why they don't join streamlined sales tax. [LB1050]

SENATOR PAHLS: And that's apparently around 20-some-odd states do not belong to that compact, I should... [LB1050]

SENATOR CORNETT: Twenty-four states do not belong and 26 states do. And the 24 states that do not belong are where you see your large Internet companies and your large companies that do these types of transactions, so they collect sales tax currently that is due to other states. [LB1050]

SENATOR PAHLS: Then I...this is a question I had when I first started going to some of those meetings. Why do we stay in the streamlined compact or that organization? [LB1050]

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SENATOR CORNETT: Because it is beneficial to us in that the states that are members of streamlined collect and remit to us every month the amount collected. We do not have large companies that do Internet sales. I'm sure that if we did that you would see bills to remove us from streamlined. [LB1050]

SENATOR PAHLS: Okay. So in other words, that is to our benefit to belong to...and I'm use the word "compact." [LB1050]

SENATOR CORNETT: Yes, it's a compact that we have to remain in compliance with. [LB1050]

SENATOR PAHLS: Okay. Here's...right, I found that out when dealing with sales tax exemptions. Let me ask you this. I see the name Ryan. How many Ryans are out there? [LB1050]

SENATOR CORNETT: That was a question someone asked earlier. I know of 17 or 18 large procurement companies that do this type of work. I don't know the exact number. It's probably upward of that. Ryan is just one of the companies that we have dealt with. [LB1050]

SENATOR PAHLS: Okay. Right, and I thank you for that information. So in other words, if we do pass this legislation, there will be multiple companies trying to deal with this. [LB1050]

SENATOR CORNETT: There could be multiple companies that come to the Governor or the Tax Commissioner and say, we would like to set up a procurement company in the state of Nebraska. And that is actually to our advantage because then we're able to negotiate a better rate. [LB1050]

SENATOR PAHLS: So in other words, let's say Ryan, they want an 85/15; the next one may say 75, because they'll be competing with themselves. They're doing...they'll be doing to themselves what they're doing to us right now, all the states. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR PAHLS: Okay. Thank you. [LB1050]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senators. Senator Lathrop, you're recognized and this is your third time. [LB1050]

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SENATOR LATHROP: Senator Cornett, please yield to questions. [LB1050]

SENATOR COASH: Senator Cornett, will you yield? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: Senator, I want to be clear, because maybe, when I was listening to Senator Carlson's questions, I think we might be missing a point. When this gets set up and one of these outfits comes to town, they're not going to pay the 5.5 percent rate to Nebraska. That's the first thing that gets negotiated in this deal, is it not? In other words, they say to Nebraska, we can bring in that ABC company from New York, but...and you can charge them 5.5 percent but you're going to have to send half of it back to that company. [LB1050]

SENATOR CORNETT: I can't say that that would necessarily be one of the first things. It would probably be one of the first. [LB1050]

SENATOR LATHROP: And it's...but it's... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: ...part of this process. [LB1050]

SENATOR CORNETT: Yes, without a doubt. [LB1050]

SENATOR LATHROP: In other words, they don't pay 5.5 percent in Nebraska. They pay...well, they pay the 5.5 percent and then they negotiate with our Governor, right? [LB1050]

SENATOR CORNETT: Or the Tax Commissioner or... [LB1050]

SENATOR LATHROP: Okay, the Governor or the Tax Commissioner. [LB1050]

SENATOR CORNETT: That is a question we went back and forth on. [LB1050]

SENATOR LATHROP: Let's say the executive branch,... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: ...to keep it simple. And they say, well, we can bring all this business in here, but instead of 5.5 percent we're going to have to give them back 3.5 percent. So the sales tax that actually comes in here is 2 percent, for example. [LB1050]

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SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: There are no parameters on how low that can go. It could go down to a half a percent. [LB1050]

SENATOR CORNETT: The... [LB1050]

SENATOR LATHROP: It might not make sense... [LB1050]

SENATOR CORNETT: It wouldn't make sense at that point, but yes. [LB1050]

SENATOR LATHROP: Okay. But there, as Senator Sullivan asked, there are no parameters on how low we can go, our Governor could go, in negotiating how much of the 5.5 percent we're going to remit back to the company that's using the procurement outfit. [LB1050]

SENATOR CORNETT: You know, Senator Lathrop, if you could find a way under our constitution that the Legislature could set that percentage of a contract rate, because we don't have the authority to contract, I would be happy to look at that because that's a concern we have had. [LB1050]

SENATOR LATHROP: Okay. I'm just making sure because... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: ...Senator Carlson's questions seemed to suggest that he thought the whole 5.5 percent is coming in here, minus what we pay. [LB1050]

SENATOR CORNETT: No. [LB1050]

SENATOR LATHROP: And the other thing that gets negotiated in here is how much of the tax, let's say that it's now 2 percent after the rebate, how much we actually get to keep and how much we have to pay the procurement company we're going to set up here, because they get to keep an amount that is negotiated, some percent. [LB1050]

SENATOR CORNETT: No. That is a contract negotiated between the procurement company and the company they're procuring from. They negotiate the contract based on what the turnback will be, if I'm not...I believe. Then they turn it back to the companies that have made the purchase, and they have a contract with those companies in regards to what their fee is. [LB1050]

SENATOR LATHROP: So the fee is between... [LB1050]

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SENATOR CORNETT: Is part of... [LB1050]

SENATOR LATHROP: ...the buyer and the procurement company. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: And that can be 85, 95 percent of what they save that company. [LB1050]

SENATOR CORNETT: That is a contract issue between the procurement company and the company they have contracted with. [LB1050]

SENATOR LATHROP: Okay. So the negotiation that's happening is how much is the buyer going to pay in Nebraska sales tax. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: And if we're down in...if we have one of these outfits in Louisiana, they can pit them against us. Is that true? In other words, they say to Louisiana, you know what, in Nebraska we're paying 2; if you get to 1.75 percent we'll use you, we'll run all of our business through you and not Nebraska. [LB1050]

SENATOR CORNETT: You know, it was my understanding that they don't generally do that, that that's part of the contract procedures when (inaudible). [LB1050]

SENATOR LATHROP: But if it's...okay, let's...in my example I'm using the same company. What if it's a different procurement company and they call that buyer and say, you're paying 2 percent in Nebraska; I set this business up... [LB1050]

SENATOR COASH: One minute. [LB1050]

SENATOR LATHROP: ...in Louisiana and I'll do it for 1.5? [LB1050]

SENATOR CORNETT: Well, then if... [LB1050]

SENATOR LATHROP: I'll get you...I'll get you 1.5 percent. [LB1050]

SENATOR CORNETT: Then it comes to the agreement or contract that the procurement company has with the company they're procuring from, because they enter into contracts. [LB1050]

SENATOR LATHROP: But you would agree we have no control over that. [LB1050]

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SENATOR CORNETT: No, we have none. [LB1050]

SENATOR LATHROP: Your legislation doesn't require that the procurement company and the buyer have a long-term relationship to... [LB1050]

SENATOR CORNETT: No. [LB1050]

SENATOR LATHROP: ...go through Nebraska. [LB1050]

SENATOR CORNETT: I don't think...I do not think we could...I do not think we could legislate... [LB1050]

SENATOR LATHROP: I don't think we could either. [LB1050]

SENATOR CORNETT: ...telling a company... [LB1050]

SENATOR LATHROP: I don't think we could either but... [LB1050]

SENATOR CORNETT: ...who they can contract with. [LB1050]

SENATOR LATHROP: I don't think we could either. But I think it illustrates... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR LATHROP: ...when people...when we don't have parameters and we can't bind the buyer to stay and continue to use Nebraska, it brings up the concern Senator Schumacher had, which is as soon as a second state does this then we have a problem. I have another question... [LB1050]

SENATOR CORNETT: Sure. [LB1050]

SENATOR LATHROP: ...and that is the taxpayers in Nebraska, do they get to know what's happening in all this? Is all this transparent? [LB1050]

SENATOR COASH: Time, Senators. [LB1050]

SENATOR LATHROP: Thank you. [LB1050]

SENATOR CORNETT: Yes, to answer quickly. [LB1050]

SENATOR COASH: Thank you, Senators. Senator Council, you're recognized. [LB1050]

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SENATOR COUNCIL: Thank you very much, Mr. President. And I've been listening intently to the debate on this bill, and a number of the questions I've had have been addressed in some form or fashion during the debate. But I still have a couple of questions remaining, if Senator Cornett would yield. [LB1050]

SENATOR COASH: Senator Cornett, will you yield? [LB1050]

SENATOR CORNETT: I would be happy to. [LB1050]

SENATOR COUNCIL: Thank you, Senator Cornett. One of the questions I have has to deal with the section of the amendment that speaks to the Governor's determination of whether the contract is in the best interest shall be based on the new taxable sales that would be generated as a result of the contract. Where does that data come from? [LB1050]

SENATOR CORNETT: The Department of Revenue. [LB1050]

SENATOR COUNCIL: And what does the Department of Revenue base that on? [LB1050]

SENATOR CORNETT: They look to, one, determine if it is a company that is already a Nebraska company. They will look at the sales of the company, who they're talking about bringing to the state. Generally, these procurement companies, as I have said, deal with Fortune 100, Fortune 500, and telecommunication companies, and we're talking about a large, large dollar amount or volume of sales. So they will look at the companies that they're talking about bringing here, vet them out, make sure they're not currently collecting sales tax from them in the state of Nebraska, and determine or project what they feel will be the amount that is collected from them. [LB1050]

SENATOR COUNCIL: Okay. So is the assumption that the procurement company would present information to the Department of Revenue showing the companies that they have entered into these agency relationships with? Because the way I read the bill, the only way that there could be a credit or the turnback is that the actual purchaser has to be... [LB1050]

SENATOR CORNETT: Has a physical location in the state of Nebraska. [LB1050]

SENATOR COUNCIL: ...has a physical location in the state. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: So now the procurement company has a physical location in the state, so they are ostensibly serving as agents, and is that how the title... [LB1050]

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SENATOR CORNETT: I believe so, yes. The procurement company will set up the procurement company, and then people that represent the companies will work with the procurement company and have an actual, physical residence in the state of Nebraska. [LB1050]

SENATOR COUNCIL: Okay. So XYZ major Fortune 500 company has what the bill defines as a purchasing manager company. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: And that purchasing manager company has to have a physical presence in Nebraska. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: So the purchasing procurement company somehow houses all of these purchasing management companies and then brokers the purchases for them. [LB1050]

SENATOR CORNETT: Correct. [LB1050]

SENATOR COUNCIL: Okay. So that's how title transfers,... [LB1050]

SENATOR CORNETT: Transfers, passes. [LB1050]

SENATOR COUNCIL: ...passes in Nebraska because it...and it only does that if the purchasing management company is affiliated with the ultimate procurement company. [LB1050]

SENATOR CORNETT: Yes. They actually have to have physical location in the state of Nebraska. [LB1050]

SENATOR COUNCIL: Okay. I mean Goodyear. [LB1050]

SENATOR CORNETT: Goodyear. [LB1050]

SENATOR COUNCIL: ...it hasn't been mentioned,... [LB1050]

SENATOR COASH: One minute. [LB1050]

SENATOR COUNCIL: Goodyear. Goodyear is one of the procurement purchasing company's clients. [LB1050]

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SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: And Goodyear has an affiliate that's called Goodyear purchasing management company. [LB1050]

SENATOR CORNETT: Sure. I don't know what they would call it exactly, but yes. [LB1050]

SENATOR COUNCIL: Okay. Okay. And the only reason I'm doing it, because those are the terms that are defined in the bill,... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: ...and I'm trying to sort through who these entities are. [LB1050]

SENATOR CORNETT: Well,... [LB1050]

SENATOR COUNCIL: There's a defined term "affiliated company," there's a defined term "procurement purchasing company," and there's a defined term "purchasing... [LB1050]

SENATOR CORNETT: Agent. [LB1050]

SENATOR COUNCIL: ...management company." [LB1050]

SENATOR CORNETT: Manage, yes. [LB1050]

SENATOR COUNCIL: Okay. And as I understand how this works, the procurement management company...the procurement purchasing company is who the state would enter into a contract with. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: And they would come and say, we have agreements where we act as agent for these ten purchasing management... [LB1050]

SENATOR COASH: Time, Senators. [LB1050]

SENATOR COUNCIL: Is that time? Thank you. [LB1050]

SENATOR COASH: Time, yes. Senator Brasch, you're recognized. [LB1050]

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SENATOR BRASCH: Thank you, Mr. Speaker. I would like to yield my time to Senator Cornett. [LB1050]

SENATOR COASH: Senator Cornett, 5 minutes. [LB1050]

SENATOR CORNETT: Thank you. Senator Council, why don't you go ahead with your line of questioning so we can...and we both have our lights on to finish this. [LB1050]

SENATOR COASH: Senator Council, will you yield? [LB1050]

SENATOR COUNCIL: Absolutely. Okay, and that's what...and so that I can get this scenario painted, so they come and they say, state of Nebraska, we represent these ten purchasing management companies who are affiliated with these ten major industries or companies. Am I correct so far? [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: And they say currently these companies are purchasing their goods and services from various places around the country. And they're being hit with, you know, in some places, sales taxes where they purchase them, sometimes sales taxes where they actually receive it, and they would like to be someplace where the sales tax is going to be assessed upon...at the place of purchase. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: Okay. So what they would present to the Department of Revenue would be some record of quarterly, semiannual, or annual purchases made by these companies that they represent? [LB1050]

SENATOR CORNETT: Yes. And it actually goes more in depth than that. One of the standard components of these contracts is the state has the right to refuse any one of the individual companies if they wish to, so they don't have to take all of the companies that a procurement company has or represents. And I'll give you a good example. If...and this was the example that was used for me. If it is a company that...maybe a large company that deals in adult literature, and the executive branch isn't comfortable with giving them a sales tax rebate, they can be excluded as one of the companies. So they go over, they vet out the companies, who they are, what the projected sales tax return would be. [LB1050]

SENATOR COUNCIL: Okay. And then ostensibly those figures represent purchases that would now be made from Nebraska... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

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SENATOR COUNCIL: ...as opposed to where they're currently being made. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR COUNCIL: Now Senator Heidemann asked a question, and I apologize, I was out of the room, that had to deal with what if one of the ten companies that the procurement purchasing company says we represent is receiving some other tax incentive in Nebraska. What language is there in the bill that protects against that? [LB1050]

SENATOR CORNETT: Actually, Senator Council, I made a mistake. It was in one of my multiple drafts and it was something we discussed and it was in the last draft before the draft I submitted, that it included language that excluded any company from utilizing any other type of credit. So if you fall under the Advantage, Super Advantage, LB775, you could not do this, and if you do this you cannot apply for Advantage, Super Advantage, or any other incentive program offered by the state of Nebraska. And I will be offering that amendment on Select File. That was a mistake on my part. [LB1050]

SENATOR COUNCIL: Okay. And then Senator Schumacher asked the question, so procurement purchasing company A comes, negotiates a transaction, and I guess I must insert this little aside. I know that everyone appreciates the level of trepidation associated with executive branch and contracting. [LB1050]

SENATOR COASH: One minute. [LB1050]

SENATOR COUNCIL: I know that's been discussed so I'll put that over here. But the negotiated deal is 80 percent returned. I mean that's the deal they negotiate, that the state of Nebraska will return 80 percent. [LB1050]

SENATOR CORNETT: That is part of the contract. They can negotiate what that percentage of return is. It could be 80, it could be 70, it could be 50. [LB1050]

SENATOR COUNCIL: Right. Right. [LB1050]

SENATOR CORNETT: Whatever that is part of that contract. [LB1050]

SENATOR COUNCIL: Okay. So but let's assume for the sake of this exchange that it's 80 and one of these other...is it 24 states who can...that can do this now? Fourteen? [LB1050]

SENATOR CORNETT: There are eight states that have title passage laws similar to Nebraska. There are 26 states that are members of streamlined, and there are 24

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states that are not members of streamlined. [LB1050]

SENATOR COUNCIL: Okay. So the only advantage of this type of legislation are to the eight state who have this, who have title transfer sales... [LB1050]

SENATOR COASH: Time, Senators. Time. [LB1050]

SENATOR COUNCIL: Am I on my light now? No. [LB1050]

SENATOR COASH: Senator Bloomfield, you're recognized. [LB1050]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good evening, colleagues. Senator Schumacher and Senator Lathrop both discussed the possibility of getting into a race to the bottom with opposing companies doing this. I would at least like to be in the race rather than to just be ripped off by the people that have already reached the bottom. Let's get our share while the getting is good, if that's what this is going to take. Let's not be left alone while everybody else, the seven or so that can do it, are gouging our state sales tax. Let's be among those that finally Nebraska reaps some of the benefit. And I would yield the rest of my time to Senator Cornett, if she'd like it. [LB1050]

SENATOR COASH: Senator Cornett, 4 minutes 10 seconds. [LB1050]

SENATOR CORNETT: Thank you very much. To follow on the line of what Senator Council had said she put over in the other bucket, I don't know if she's still on the floor, Senator Council had said that she put over in another bucket the uncomfortable nature of the executive branch being the one that negotiates this contract. The executive branch is the only branch...well, the judiciary branch can contract for certain things, but the legislative branch cannot contract. It is currently the only means that the Governor can is through...I mean the Governor has to be the one that contracts or the executive branch is the one that contracts. This is enabling language. This does not say that we have to contract with anyone. It doesn't say that we have to contract with a specific company. It doesn't change our underlying tax structure. What this basically does is allow, because we have a percentage of the sales tax going back, it's considered like a contingency fee, so that is what basically the language in this bill does, is allow...enables us to enter into that as a state, into that type of agreement. It puts all of the safeguards in place that this is only new tax revenue. It puts into place the clawback provisions. It puts into place the escrow so we cannot come out short. It puts into place provisions when the end of the contract is, where if we are owed money that we take it out of the escrow account. It puts provisions into place, if there is an overpayment to one of the procurement companies, then we pay them less the following month. If Senator Council has further questions, I'd be happy to yield my time. [LB1050]

SENATOR COASH: Senator Council, 2 minutes 15 seconds. [LB1050]

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SENATOR COUNCIL: Thank you, Mr. President, and thank you, Senator Cornett, because it's fortuitous that you're yielding time (inaudible) because my question is, because of the level of comfort, is there a way to enable a procurement company to do that which this bill is designed to do without entering into a contract? Because we enable businesses to take advantage under the Advantage Act. We enable businesses to take advantage of the datacenter. I mean so can we craft enabling legislation that provides the procurement company with whatever level of comfort without the necessity for the contract? [LB1050]

SENATOR CORNETT: I don't see how. We have worked with those concepts for a couple of years now. The problem is no business really wants to operate without a contract, and the contract also puts into place a lot of the safeguards. Under the Advantage Act, they have to hit certain requirements to receive their tax incentives, which a lot of times are more than we're talking here, matter of fact, the majority of the time. But in that legislation we have clawback provisions, but there is no guarantee that those companies have to achieve attainment. They just don't get their tax incentive at that point. There's no guarantees that they have to stay in the state because they just then have...whatever they've been paid in incentives would get clawed back. This gives the procurement company and the state the reassurance that this is a stable relationship. [LB1050]

SENATOR COUNCIL: Okay. But that gets back to a point that I heard Senator Schumacher make. I mean it could be a stable relationship, but if they find a better deal in another state there, as I understand there are no minimums or... [LB1050]

SENATOR COASH: Time, Senators. [LB1050]

SENATOR COUNCIL: Thank you. [LB1050]

SENATOR COASH: Thank you, Senators. Senator Price, you're recognized. [LB1050]

SENATOR PRICE: Thank you, Mr. President and members of the body. I rise in support of the concept we're talking about here and the amendment. What's important for me in considering this legislation, Nebraska has a very small population to land area ratio, roughly 1.8 million people in the 17th largest state. When we look at our roads and the situation we're in there, when we look at the various infrastructure needs throughout the state, I believe it's incumbent upon us to look for ways to create new revenue streams, if necessary. And in this, we're not trying to levy a new tax. We're not here to levy new taxes and no one wants it, but if we can create a new industry, a new business model, and we need to vet that business model and we need to discuss this more, but in looking at this new business model, if it's something that we can become first in line for, so to speak, I mean wouldn't we have liked to have had a larger presence in the IT

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manufacturing of integrated circuits and chips? Wouldn't it be nice to have that in our background or, as in some other states, where industry begins and then it flourishes and that state reaps the benefit of that? I think that would be fantastic. We've come through this economic period that we have from these past couple years thankfully and blessed by our agricultural industry. We've come through with prudent practices in what we do for taxing and paying our bills and not getting leveraged in a bad way. And now we have before us an opportunity for a new industry, and I want to be sure that the body has the time to investigate this and explore this more. And I want to support this on to the next level and on to Select, and I want us to keep an eye on it after we enact this legislation, should we do so. Just as they were speaking about the Advantage and the Super Advantage and the clawbacks and provisions there, when I look at this and we've heard numbers about the percentages of a contract. But what I heard was those numbers haven't been written down, nor have they been negotiated. We don't...if this is a new industry, we don't have to give up as much as I've heard that we may give up. When it's new, you define the rules. And I believe that's what we should do. We should investigate this and not be so quick to surrender. That's what I'll be listening for as we move forward on this bill. Again, the opportunity for new industry to create revenue stream I think is something we need to give due consideration to. I also believe that with a new revenue stream, if we don't do this and something doesn't get funded, we only have ourselves to blame because we let something slip by. Wouldn't you have liked to have got in on Microsoft a long time ago? That would have been pretty good. And the final part about that is when we pass...should we pass this legislation, the Legislature doesn't bed down and go away. We're going to be back here next year and every year thereafter. [LB1050]

SENATOR COASH: One minute. [LB1050]

SENATOR PRICE: And the legislation...I plan to be...hopefully I'll be here and others will be here and other senators will stand at these mikes and they will look at what we have done, and if it has caused harm or injures our economy then they will take the necessary steps. We saw that with the safe haven, as we were talking about earlier today. Our actions do not occur in a vacuum. We don't go home at the end of the session at sine die and nothing further is done. I believe that senators will look at our actions, find them to be prudent, and if it's otherwise we'll take the necessary steps to rectify whatever needs to be fixed. That's what I believe in and that's why I will support AM2181 and the underlying bill, LB1050. Thank you, Mr. President. [LB1050]

SENATOR COASH: Thank you, Senator Price. Senator Pahls, you're recognized. [LB1050]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator Cornett, I'm not going to ask you a question right now. I want you to be listening, if at all possible, to see whether I'm telling the truth. And this is what I...because you heard these words

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in front of the committee, because I was a little bit suspect of, okay, Ryan as a company. So I said, well, what kind of company are they? And you did give us some indication what they are. They say they have 900 employees worldwide and operate procurement offices in three other states, so already they have three other states, and their chief operating officer said that the company was also looking at two other states which to locate an office. So right now it appears to me, through what they...their dialogue with a reporter or the committee, is they're a large company, they already are in three states and they're looking for two states. That's sending a message to me. We said earlier they were not in any states. Would you explain that to me? [LB1050]

SENATOR CORNETT: Yes. Actually Ryan is one of the companies and is the one that I've been working with on this bill, but again, like I said, there's a number of companies that do this. Ryan is I believe the largest tax firm in North America. They are also in Canada, Puerto Rico, Singapore, England. So they do this not just in the United States but globally. What they are already doing in other states is the city, the intrastate turn...or in deference to Senator Ashford, the sales tax rebate. They're doing that in other states but they do it intrastate. [LB1050]

SENATOR PAHLS: Okay. So intrastate, at least three apparently, but they're looking for two additional states to do what you are proposing, is my understanding. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR PAHLS: So we are on the cusp. If this is good, we are on the cusp of something really new. [LB1050]

SENATOR CORNETT: We are on the cusp of something new and probably the first step forward in this area. [LB1050]

SENATOR PAHLS: Okay. And so they've been dealing at the city or county level already in states. [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR PAHLS: And have they...I know we've discussed this a little bit. I'm just trying to get some clarification. The results have been great, mixed, or what, or do you know? [LB1050]

SENATOR CORNETT: There have been good results in regards to...for the benefits of the cities. The only state where there has been issues has been the state of California, and it did not have to do with the sales tax rebate. It had to do with what's called situs or where the actual sales transaction took place. [LB1050]

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SENATOR PAHLS: Okay. Okay. So I understand that and I know you did discuss that earlier. Well, what intrigues me a little bit is are they basically guaranteeing up to a million dollars a year if this would go through? That's what I'm reading in the paper. These are their words. [LB1050]

SENATOR CORNETT: Actually, the numbers that I have heard from the different procurement companies would exceed that by millions. [LB1050]

SENATOR PAHLS: So a million, okay, \$50 million would be a relatively... [LB1050]

SENATOR CORNETT: Modest. [LB1050]

SENATOR PAHLS: ...modest term. Okay. So I'm telling you that this does look like a pot of gold. I'm looking for the rainbow to go with that pot of gold, though. This is my issue. [LB1050]

SENATOR CORNETT: The rainbow would probably be the contract. [LB1050]

SENATOR PAHLS: Good one. Good one. Well, here's the other thing, too, as I'm reading. They deal with Tyson, Swift, Chrysler, and Warner Brothers already. [LB1050]

SENATOR COASH: One minute. [LB1050]

SENATOR PAHLS: Thank you...already. Are those the type of companies that you envision that's going to be brought...this will bring to Nebraska? [LB1050]

SENATOR CORNETT: That is only a very small number of the types of companies that they deal with, and, yes, that is exactly the type of companies I'm talking about. [LB1050]

SENATOR PAHLS: Okay. The last time around I said give me an example of a company. I know these are... [LB1050]

SENATOR CORNETT: You ran out of time. [LB1050]

SENATOR PAHLS: Thank you. Do you have any idea of a company? I mean in their trying to motivate us, have they mentioned a company? [LB1050]

SENATOR CORNETT: They have mentioned a number of different companies, yes. I have them in my notes. But like I said, the type of companies that they deal with are only Fortune 100, Fortune 500, and telecommunication companies. So you're talking about the largest companies in the country. [LB1050]

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SENATOR PAHLS: Okay. And one more thing that I read... [LB1050]

SENATOR COASH: Time, Senators. [LB1050]

SENATOR PAHLS: Thank you. [LB1050]

SENATOR COASH: Thank you, Senators. Senator Cornett, you are recognized.
[LB1050]

SENATOR CORNETT: Senator Pahls, I will yield you my time so we can continue.
[LB1050]

SENATOR PAHLS: Yeah. Well, I do have...thank you...I have one question. We know that the chamber, Nebraska Chamber of Commerce, is a dedicated group to the state of Nebraska, especially in the area of business and industry. Now they are backing this.
[LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR PAHLS: Do you know, have they talked to you, because I'm reading one of their lobbyists in the paper said that this is the way to go. Are they doing that just because they're sort of caught up in the moment? Have they vetted this organization?
[LB1050]

SENATOR CORNETT: Yes, we have been talking to all concerned parties for over a year now, actually it's been well over a year. The State Chamber, the Department of Economic Development when Richard Baier was there. We have talked with different companies involving this. We've worked with the Department of Revenue to make sure, through all of our drafts, that we protected the state of Nebraska. It has been a long vetting process. [LB1050]

SENATOR PAHLS: Okay. So what I'm...correct me if I'm wrong. What I'm hearing from you, that the organization that's supposed to be the forefront in the area of business for the state of Nebraska is endorsing this, and you believe that they have investigated this enough that we're not going up to, and I'm using the word loosely, like up the river without a paddle. [LB1050]

SENATOR CORNETT: Particularly with the safeguard amendments placed in this that we cannot enter into a contract where we would come out at a loss. The only way that we can enter into a contract is if the Department of Revenue shows us a net gain.
[LB1050]

SENATOR PAHLS: Okay. So basically, the reputation of the chamber of commerce is

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actually on the line to some degree. [LB1050]

SENATOR CORNETT: If you want to put it that way. I hate to put...(laugh), yes.
[LB1050]

SENATOR PAHLS: Well, no, but I'm saying if they're really saying this is the way to go and we've all said that this is something relatively new and we're unsure about it, and if they're backing this with, indeed, with words and indeed by vetting this, that's telling me... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR PAHLS: That they're willing to state their reputation is what you're telling me.
[LB1050]

SENATOR CORNETT: Well, I think anytime an organization supports something, they should do their due diligence to make sure because their reputation is on the line when they support something. [LB1050]

SENATOR PAHLS: Okay. One more question. The Department of Revenue? [LB1050]

SENATOR CORNETT: The Department of Revenue has acted as the department in regards to they are not in favor...they have not given me an opinion whether they're in favor or against the bill. They have simply been helping me draft it in a way that we protect the state of Nebraska. [LB1050]

SENATOR PAHLS: Okay, right. They're doing what they should be doing,... [LB1050]

SENATOR CORNETT: Yes. [LB1050]

SENATOR PAHLS: ...not telling you what to do... [LB1050]

SENATOR CORNETT: No. [LB1050]

SENATOR PAHLS: ...but make sure that all the i's are dotted and t's are crossed.
[LB1050]

SENATOR CORNETT: And they're not telling me whether they think it's a good idea or a bad idea. They're just saying if we do this, this is the way we need to do it. [LB1050]

SENATOR PAHLS: Okay. Thank you, Senator, for your time. [LB1050]

SENATOR COASH: Thank you, Senators. Mr. Clerk, you have items? [LB1050]

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CLERK: I do, Mr. President, new A bills. (Read LB891A and LB928A by title for the first time.) Senator Karpisek, an amendment to LB1122, Senator Cook to LB825; Senator Campbell offers LR610 to be laid over; and a confirmation report from Health and Human Services. (Legislative Journal pages 1196-1199.) [LB891A LB928A LB1122 LB825 LR610]

SENATOR COASH: Speaker Flood for an announcement.

SPEAKER FLOOD: Mr. President, I don't have an announcement. I'm just ready for my bill.

SENATOR COASH: Okay. Thank you, Speaker Flood. Members, as the agenda has stated, we will now move to the 5:30 portion of our agenda. Mr. Clerk, LB1115. [LB1115]

CLERK: Mr. President, LB1115 is a bill originally introduced by Senator Flood. (Read title.) The bill was introduced on January 19 of this year, referred to the Urban Affairs Committee, advanced to General File. There are committee amendments, Mr. President. (AM2495, Legislative Journal page 971.) [LB1115]

SENATOR COASH: Thank you, Mr. Clerk. Senator Flood, you're recognized to open on LB1115. [LB1115]

SPEAKER FLOOD: Good evening, Mr. President, members. I'm pleased to introduce LB1115. First, let me say that I appreciate the work Senator McGill and the Urban Affairs Committee has put in on this bill and the compromise that has been worked out between the League of Nebraska Municipalities and the jurisdictional utilities. The utilities, the league, and staff from the Public Service Commission sat down several times over the last couple of weeks with legislative staff, and the result of their work is the Urban Affairs Committee amendment that will follow, AM2495, which becomes the bill. Let me back up a bit and frame this issue for you. In July of 2007, my hometown of Norfolk lost a potential 200-plus jobs; 200 jobs that could have helped defray the loss of our packing plant in 2005, 200 jobs that would have helped reverse the declining student enrollment in our school system, and 200 jobs that would contribute to the economic opportunity in our community of 24,000. The reason the soy processing plant went elsewhere: our natural gas supply was inadequate. The gas company simply tallied up what it would cost their company to build the extra infrastructure, and by gas company I mean the company providing the supply through a pipeline, and it would have cost them extra to loop the line and add extra compression. Obviously, as a start-up company, the soy plant could not afford the \$10 million-plus of additional expense simply because they wanted to be in Norfolk. I wish I could say that five years later we're in a better position, but we aren't. And Norfolk is just one of several

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communities around the state facing a natural gas capacity issue. I've had e-mails from North Platte, I've talked to people in Seward, I've talked to people in York, I've talked to people across this state, and natural gas is needed for industrial development. And let me tell you something. If you take a map today and show it to me, I will draw circles around the areas of the state that don't have adequate capacity for economic development. And in 20 years, if we don't act on this, those areas will not see the job growth, will not see the industrial expansion that areas that have adequate natural gas have. To put Norfolk's situation in perspective, through the Kinder Morgan pipeline we have between 22,325 and about 27,000 MM B.T.U.s a day. The transport capacity of the Northern Natural pipeline in Sioux City is around 480,000 MM B.T.U.s per day. The challenge is plain to see. The committee amendment, which becomes the bill, provides an answer. At the heart of this amendment is an agreement between a city or cities and the utility. Section 11(2) of AM2495 provides guidance for what may be included in an agreement relating to rural infrastructure development. This provision is nonprescriptive. It lists 11 items that may be included in a rural infrastructure development agreement. It does not mandate that any of the items be part of the agreement. It also does not limit what might be in such an agreement. Other terms and conditions, of course, may and likely will be part of the agreement. The purpose of this section is to give city administrators and others guidance as to the types of matters they should be thinking about when considering a rural infrastructure development. In other words, what is necessary to make sure a new business the city is courting gets the gas it needs, especially when the city's natural gas system is at or near capacity? It's a checklist or guideline for city administrators. The list will let the city administrator know what he or she should be thinking about, and I'm going to pick a few items from the list here. The city administrator needs to think about who needs to be at the table. In Norfolk, the local gas company, the jurisdictional utility, was brought into the discussion too late and it caused problems for the project. The list says that once a city begins to consider a project contemplated by this legislation, the city should think about bringing the local utility and others into the discussions. What other cities and gas utilities might be affected? Should a city collaborate with other cities to get a line built to add capacity? It's obvious that these pipelines supply many cities. Are there other cities that could benefit from additional capacity? What's the potential for enhancing demand? Let's have the city and the utility put their minds together to think beyond a particular business the city may be courting at that time. What other industry might we attract with additional gas capacity? Let's use our imaginations in ways to increase demand. Let's look ahead for other economic development projects. Another key issue, what the city administrator needs to consider, how will the project be paid for? That's a no-brainer, and this section gives some ideas for possible funding sources and mechanisms. As I've said, Section 11(2) is a nonprescriptive and nonexhaustive list of things a city administrator can be thinking about and discussing when it comes to putting together and negotiating an agreement to add natural gas capacity where it's needed. The bottom line is, this problem will not solve itself. From Albion to Norfolk and on to Wisner, we have to, in northeast Nebraska, think about how we're going to put together the funding to build a

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loop in the line to serve communities like Lindsay, Nebraska. Lindsay, Nebraska, is home to Lindsay Manufacturing, hardworking, American jobs in northern Platte County that need natural gas, the pork plant in Madison, businesses in and around Norfolk. If Nucor Bar Mill was looking at communities right now to put a mill into my community and it had not done before, they couldn't locate there because it would be cost-prohibitive. Rural Nebraska is worth fighting for. There are outstanding opportunities in rural Nebraska and we need to take steps. This bill sets up a system. It sets up a framework. The heavy lifting will have to be done by the cities, but we need to find ways to get natural gas into rural parts of Nebraska, and the Columbuses of the world are not exempt, neither are the North Plattes. We need to develop our natural gas infrastructure, and we need to do it in a way that is responsible to ratepayers, responsive to communities, and ultimately done in a way to make sure that we can attract the industry we need and want in rural Nebraska. Again, I want to thank Senator McGill, and, in fact, her entire committee who listened to the testimony and are ready to go to bat on this issue. Thank you, Mr. President. [LB1115]

SENATOR COASH: Thank you, Speaker Flood. As the Clerk has stated, there is an amendment from the committee. Senator McGill, as Chair of Urban Affairs Committee, you're recognized to open on AM2495. [LB1115]

SENATOR MCGILL: Thank you, Mr. President and members of the body. As Speaker Flood stated, this is really a critical issue for rural economic development in our state. And I'd like to thank him for bringing this bill to the committee, and for the involvement of my committee members; my research analyst, Laurie Holman; Speaker Flood's staff; and then the folks with the jurisdictional utilities, the League of Municipalities, and the Public Service Commission, for the many meetings that they sat through to try to work out a compromise on this issue so we can get to the heart of getting natural gas to areas in the state that currently don't have it. Speaker Flood did a good job of talking about much of what's in the amendment, so I'll just add a few more details about the substance of the amendment. For instance, it adds permissive language to allow cities to use the LB840 plan, which has been approved by the voters in that city to dedicate funds for rural infrastructure development to bring greater natural gas capacity to their city. That's one of a variety of funding mechanisms that could be used to help pay for this infrastructure development. The jurisdictional utility would be required to file their proposed rural infrastructure surcharge tariffs with the Public Service Commission in a manner consistent with the proposed rate increases negotiated in the agreement with the electing city or cities prior to undertaking the new rural infrastructure development. The Public Service Commission has oversight in this new development, and the utility is required to file the agreement they have entered into the city, a map of the underserved area, and the payment of costs, including proposed rates for customers in the electing city or cities with their proposed surcharge tariffs, among other things. The amendment also limits the jurisdictional utility's ability to recover their costs for the new development to only the customers in the electing city who are benefiting from the development and

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live in the city that entered into the agreement with the utility. So if it's for Norfolk, it's those folks who are paying for this development and not folks in other areas. The Public Service Commission's involvement is limited, as the rural development process is outside of the Natural Gas Act's regulatory scheme, but they do have the authority to initiate a public hearing and determine whether the rural surcharges reflect the actual costs of the development once each year. There are also protections for the ratepayers, as a refund is required if it is determined that they have overpaid for the infrastructure development. So that's a little bit more about this amendment and what the bill ultimately will do if this amendment is adopted. Once again, I thank everyone for their support in helping to make this happen and I urge your advancement of the amendment. Thank you, Mr. President. [LB1115]

SENATOR COASH: Thank you, Senator McGill. Mr. Clerk, you have an amendment to the committee amendment. [LB1115]

CLERK: I do, Mr. President. But, first of all, Senator Flood, I have AM2546. I understand that's to be withdrawn. [LB1115]

SPEAKER FLOOD: Yes, it is. [LB1115]

SENATOR COASH: So withdrawn. [LB1115]

CLERK: Mr. President, Senator Flood would move to amend with AM2651. (Legislative Journal page 1184.) [LB1115]

SENATOR COASH: Senator Flood, you're recognized to open on AM2651. [LB1115]

SPEAKER FLOOD: Good evening again, Mr. President, members. AM2651 is technical in nature. It cleans up a couple of references. It has been agreed to by all the parties that I mentioned earlier. Thank you. [LB1115]

SENATOR COASH: Thank you, Senator Flood. Members, you've heard the opening to LB1115, the committee amendment, and the amendment to the committee amendment. The floor is now open for discussion. Those senators wishing to speak: Senators Loudon and Hansen. Senator Loudon, you are recognized. [LB1115]

SENATOR LOUDON: Thank you, Mr. President, members of the body. Well, when it comes to doing something for rural infrastructure, I'm always quite interested. Would Senator Flood yield for questions? [LB1115]

SENATOR COASH: Senator Flood, will you yield? [LB1115]

SPEAKER FLOOD: Yes. [LB1115]

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SENATOR LOUDEN: Well, as I look at this, Senator, I mean this brings back memories of the old days when we had rural electrification associations formed up, and you started out there by putting rural electricity in areas that the electrical systems that furnished power to the cities didn't want to serve because it was costing them too much. But the way this is set up, as you bring those pipelines in, there will be an extra surcharge on those customers that this pipeline brings in. In other words, those customers are going to be paying for the pipeline. Is that correct? [LB1115]

SPEAKER FLOOD: Well, that's one part of the equation. The reality is that you can't use the surcharge to really pay for what will be the improvement. The heavy lifting will have to be done by the community, through LB840 funds, through economic development grants, through CDBG grants, through different types of utility money already collected by the city. My original idea was to bring an NPPD-like approach to this. The problem is that, you know, FERC regulates the interstate pipelines and the state doesn't have much of a regulatory grasp on what happens with these interstate pipelines. This does allow, if a community decides, if the community of Gordon or Chadron or Alliance or wherever decides that we have a natural gas issue, that they can go to the Public Service Commission, if there's agreement in the city, and say we want this to be considered for an assessment in our area to help defray the costs of the infrastructure. So, yes, that's one way that this bill attempts to do this. It is not prescriptive. It is at the will of the communities. But if I can, and I know I'm on your time, let me tell you what happened in Norfolk. Is that okay? In 2007, when we found out we didn't have the gas we needed to bring in the soy plant at 6,000 decatherm a day, we scrambled to try and figure out how do we get the LB840 program going, how do we get the infrastructure built, and we didn't have a fast-track method to put a plan together. And ultimately, these lines get built if there are jobs and opportunity coming to the community, and the community has to want this. So this doesn't set up any process other than an opportunity for a community to come in and say, we need this and this is our plan and this is how we're going to fund it. [LB1115]

SENATOR LOUDEN: In other words, it gives them the opportunity to pay more than the regular going rate. It's a special surcharge in order to bring that gas line in. Well, yeah, we had the same trouble in Alliance at one time. They wanted to look at an ethanol plant and they didn't have big enough gas lines to bring it in. And the gas lines in western Nebraska there, they were put in over 50 years ago and I don't think they're over probably four inches around, and some of them are laying on top the ground up there along Highway 20. And there isn't enough gas lines to bring in any development that would use a significant amount of natural gas. What I'm wondering is would this by any way bring in any way that a new gas line could run, say, down Highway 2 to pick up some of them smaller communities all up and down Highway 2 and where there isn't...how would we fund that? I mean there would be...everybody would have to pay that surcharge in order to fund it or would somebody...where do you go first to get the

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money to put the gas line in to start with, I guess would be my question. [LB1115]

SPEAKER FLOOD: Well, the first place... [LB1115]

SENATOR COASH: One minute. [LB1115]

SPEAKER FLOOD: ...the first place you look is an LB840 program. The challenge with Highway 2, and it's really a sad story, if you look at the map of Nebraska the area that I think you're referencing has absolutely no access to natural gas. And, long term, that is a very big problem. If counties like Blaine and Thomas and Arthur and across that, from western to eastern Nebraska, the central portion of the state want to get natural gas in there, this would be one of many opportunities to try and address it. But let's be honest, you'd have to have a pretty big economic development prospect on the line somewhere in there that would be buying a lot of natural gas to spread those costs out over a number of years. You're right. [LB1115]

SENATOR LOUDEN: Well, the problem would be if you get too big of a developer then you have to have too big of a line and you have to travel it for too long of a distance. I mean, I understand that. You need a source user... [LB1115]

SENATOR COASH: Time, Senators. [LB1115]

SENATOR LOUDEN: ...but... [LB1115]

SENATOR COASH: Time, Senator. [LB1115]

SENATOR LOUDEN: Okay, thank you. [LB1115]

SENATOR COASH: Thank you, Senator Louden and Senator Flood. Senator Hansen, you're recognized. [LB1115]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I appreciate Senator Flood's work on this project. It's not only the rural areas but also some of the towns, cities along the Platte Valley that are having problems with this too. It's not really a problem. It's understanding what happens when a town the size of North Platte expands. And we're certainly not facing that now, but it's a slowly growing town. When you drive into North Platte, you don't see the cranes in the air like you do when you drive into Lincoln and Omaha. It's growing but it's slow, painful growing. And I was wondering if Senator Flood was available for a couple of questions. [LB1115]

SENATOR COASH: Senator Flood, will you yield? [LB1115]

SPEAKER FLOOD: Yes. [LB1115]

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SENATOR HANSEN: Thank you, Senator Flood. We're talking about mostly rural infrastructure here in the northeastern part of the state. We have a little bit of a problem in North Platte where the rural meets the city limits. And does LB1115 talk about within a city limit and maybe in some new development along the outskirts of the town? [LB1115]

SPEAKER FLOOD: Oh, I think it would. I mean cities, I think the situation you reference is inside the zoning jurisdiction of the city of North Platte. [LB1115]

SENATOR HANSEN: Correct. [LB1115]

SPEAKER FLOOD: It's fairly close. I think cities recognize...certainly in my town, there's a lot of our industry that's right outside of the city limits in the northeast part of town. That creates a lot of jobs and opportunity for people that live inside the city. The city of Norfolk or the city of North Platte could go to bat to try and increase the natural gas capacity for folks. Yes, I think this would be helpful. [LB1115]

SENATOR HANSEN: Okay. And one other question would be, what does the Public Service Commission...what is their role in this? [LB1115]

SPEAKER FLOOD: Well, their role in this, if a city decided they wanted to address or tackle their natural gas issue, the city could essentially enter into an agreement with the jurisdictional utility, which would be like a Black Hills Energy or SourceGas, and they could petition the Public Service Commission to...it's right here, "the commission may initiate a proceeding and conduct a public hearing to determine whether the rural infrastructure surcharge of a jurisdictional utility reflects the actual costs of the rural infrastructure development." So basically a Black Hills Energy could say, you know, to loop this line it's going to be \$5 million. The city of Norfolk is coming in with \$3.5 million. We're going to come to the table with \$1.25 million or \$3 million or \$1 million or \$2 million, and we're going to, over five years, assess customers that benefit from this for the improvement, and then we're going to...the PSC will make sure that whatever that improvement is, is the actual cost, and there's no extra profit built into that. [LB1115]

SENATOR HANSEN: And so the city should get reimbursed over a period of time. [LB1115]

SPEAKER FLOOD: Well, the city would...I think what my bill envisions is the city is going to have to be a partner to go to the table with their own money. But the Black Hills of the world would be able to recover their infrastructure...the money that they give to a Kinder Morgan to loop the line essentially through a surcharge that they charge their customers that benefit. [LB1115]

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SENATOR HANSEN: Thank you, Senator Flood. I think it's just a matter of getting everybody at the table at the same time, getting everybody on the same page, and making these expansions in infrastructure that all towns, no matter what size they are, are going to need sooner or later. Thank you, Mr. President. [LB1115]

SENATOR COASH: Thank you, Senator Hansen and Senator Flood. Senator Sullivan, you're recognized. [LB1115]

SENATOR SULLIVAN: Thank you, Mr. President. And thank you, Senator Flood, for working on this legislation. If you're going to expand natural gas capacity to Madison County, I can only think that potentially it's going to help if there are business expansion opportunities in Pierce County to the north of it. So I think this is a good thing, but just a couple questions. In terms of the definition of underserved and unserved areas, what is the definition there? Is it kind of like a chicken and egg thing? If there's a desire to develop business but there's no capacity, is that what meets the threshold for underserved, or what is it exactly? [LB1115]

SENATOR COASH: Speaker Flood, will you yield? [LB1115]

SPEAKER FLOOD: Yes, I will. On page 2 of AM2495, an unserved or underserved area means an area in this state lacking adequate natural gas pipeline capacity to meet the demand of existing or potential end-use customers as determined by the jurisdictional utility presently serving the area. Unserved or underserved area does not include areas within a city of the primary or metropolitan class, which is basically a Lincoln or Omaha. The chicken or the egg analogy you used is very fitting because we have enough natural gas to heat the homes in the Norfolk area except we actually have several businesses that are on interruptible service, so when it gets really cold we have people that were without gas 21 times last year. Lindsay Manufacturing was shut down 21 times last year. Now they choose to pay a different rate for interruptible service, but I think what we're hearing now is they want the uninterruptible service because, obviously, there's a different cost with propane. So that's unserved and underserved. [LB1115]

SENATOR SULLIVAN: Thank you. And then, as I understand it, what you're setting up here is outside the Natural Gas Act. So my question is on the fiscal note, the last paragraph where it says: The Public Service Commission notes that its no fiscal impact assessment assumes that not all three jurisdictional utilities will become exempt under Section 5. If this occurs, the PSC would lose the vast majority of its budget for carrying out the act and would be unable to operate. I don't know, could you explain that to me? [LB1115]

SPEAKER FLOOD: Well, I think that only applies for...this is only for the infrastructure, and I'm going to get some help from Matt here, but what we're talking about here in this

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bill only affects situations where there's an unserved or underserved area and they want that extra money to come in to build the line. That's where it exempts it from the Natural Gas Act, but there's still some protections in checks and balances built into it. We'll do a little checking and I'll get back to you. [LB1115]

SENATOR SULLIVAN: Okay. Thank you. I appreciate this input and I look forward to advancing this legislation. [LB1115]

SENATOR COASH: Thank you, Senator Sullivan and Senator Flood. Senator Wallman, you're recognized. [LB1115]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Thank you, Speaker Flood, for bringing this. We have lots of pipelines in my district and that brings economic development, and they're good people to work with. And it costs money to build a new pipeline. And whatever you can help the pipelines out, as well as help the communities, that would be good. Thank you, Mr. President. [LB1115]

SENATOR COASH: Thank you, Senator Wallman. Senator Louden, you're recognized. [LB1115]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Flood yield for questions again? [LB1115]

SENATOR COASH: Senator Flood, will you yield? [LB1115]

SPEAKER FLOOD: Yes. [LB1115]

SENATOR LOUDEN: Well, on page 2, Senator Flood, Section 3, a Local Option Municipal Economic Development Act, what is that? And that's what a city that has been authorized to utilize funds pursuant... [LB1115]

SPEAKER FLOOD: That's an LB840 program. [LB1115]

SENATOR LOUDEN: That's that LB840. They can use LB840 money then to... [LB1115]

SPEAKER FLOOD: Yes. [LB1115]

SENATOR LOUDEN: ...to do this? And then again on page 10, "A jurisdictional utility is not required to proceed with rural infrastructure development in an unserved or underserved area unless required to do so under an agreement with an electing city or cities." In other words, a town or city of some sort has to initiate this process in order to force those utilities to do that. Is that what that says? [LB1115]

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SPEAKER FLOOD: Right. And the reason we required that is it shows the commitment from the local area to come to the table and to address the issue. [LB1115]

SENATOR LOUDEN: Okay. But a utility can't go out on its own and offer to serve some of these areas and some of those towns, or towns, villages or whatever in that area, and put that pipeline in and then go ahead and be able to charge this surcharge? [LB1115]

SPEAKER FLOOD: Well, not under this act, no. [LB1115]

SENATOR LOUDEN: Okay. That's what I mean. But it has to be initiated by some city or village, or it says city or cities, I guess. Now what size? It has to be any incorporated town can do that or...? [LB1115]

SPEAKER FLOOD: Right. [LB1115]

SENATOR LOUDEN: You know... [LB1115]

SPEAKER FLOOD: A city of the first or second class or village, so everything but Omaha and Lincoln. [LB1115]

SENATOR LOUDEN: Okay. We wouldn't have any problem then in the rural areas for towns to go ahead and initiate something like that. [LB1115]

SPEAKER FLOOD: No. [LB1115]

SENATOR LOUDEN: Okay. Well, thank you, Senator Flood. Something like this certainly won't hurt. I think it's a beginning because when I look at this and look back at the days when we had REAs got started this is kind of the beginning of something like that, and hopefully somewhere along the line we can improve it so that these gas companies will continue to serve people. And it could be such a thing, now that there's getting to be more plentiful natural gas, may be the time that we have to move on something like this to help get gas lines out into more of these rural areas, because without a cheap energy source you usually don't get much development as far as any kind of manufacturing or value adding to a product. Thank you, Mr. President. [LB1115]

SENATOR COASH: Thank you, Senator Louden. Senator Schumacher, you're recognized. [LB1115]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Someone suggested I should suggest the Universal Service Fund, but it's too late in the day to have that much fun. (Laughter) I compliment Senator Flood on introducing this. It's an effort to address a very serious problem. You can't grow industry, you can't develop

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capital, you can't employ people unless you have an ability to invest in the proper infrastructure and to organize money to try to get that investment made. Roads are proper infrastructure, as are natural gas pipelines. And my district is one area that never believed it wouldn't have enough capacity because we probably never anticipated such things as ethanol plants and large steel production facilities that use a lot of natural gas. This is a mechanism to try to see if we can use to get money together to build that particular infrastructure, and I wanted to rise just briefly and not consume too much more time today in complimenting Senator Flood and endorsing LB1115. Thank you. [LB1115]

SENATOR COASH: Thank you, Senator Schumacher. Seeing no other lights on, Senator Flood, you're recognized to close on AM2651. [LB1115]

SPEAKER FLOOD: Thank you, Mr. President. This is the technical amendment. It harmonizes the references. Thank you. [LB1115]

SENATOR COASH: Thank you, Senator Flood. Members, you've heard the closing to AM2651. The question before the body is, shall AM2651 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1115]

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Flood's amendment to the committee amendments. [LB1115]

SENATOR COASH: AM2651 is adopted. We return to discussion on LB1115 and the committee amendment. Seeing no other lights on, Senator McGill, you're recognized to close on AM2495. [LB1115]

SENATOR MCGILL: Thank you, Mr. President and members of the body. This is simply the amendment that will become the bill. And I'd like to thank everyone involved, once again, for their hard work in getting this compromise in place. Thank you. [LB1115]

SENATOR COASH: Thank you, Senator McGill. Members, you've heard the closing to the committee amendment, AM2495. The question before the body is, shall AM2495 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1115]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB1115]

SENATOR COASH: AM2495 is adopted. We return to discussion on LB1115. Seeing no lights on, Speaker Flood, you're recognized to close on the advancement of LB1115. [LB1115]

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SPEAKER FLOOD: Thank you, Mr. President. You know, I want to tell you at the committee hearing on this, the Urban Affairs Committee really needs to be complimented, because a number of folks that sit on that committee come from Omaha and Lincoln, and they were complete ladies and gentlemen to everybody from the rural areas that came down to testify. And in the discussion it was basically an appeal from rural Nebraska to mostly urban senators to please help us set up a process to unjam the logjam. And let me tell you, not only did Senator McGill and her legal counsel step forward, but Senator Krist, Senator Coash, and others presented themselves to me the next day and said, what do we need to do to help rural Nebraska on this issue? And as somebody that lives in the rural part of the state, I want to tell you I appreciate it. This is not going to solve our problems overnight. It sets up a framework. The heavy lifting will have to be done by the communities; but there is a process in place, when we pass this law, to make that happen. Thank you, Mr. President. [LB1115]

SENATOR COASH: Thank you, Senator Flood. Members, you've heard the closing to LB1115. The question before the body is, shall LB1115 advance? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB1115]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB1115. [LB1115]

SENATOR COASH: LB1115 does advance. Items, Mr. Clerk. [LB1115]

CLERK: Thank you, Mr. President. Enrollment and Review reports the following bills correctly engrossed: LB782, LB810, LB863, LB965, LB995, LB1039, LB1130, and LR373CA. New A bill: Senator Krist offers LB998A. (Read LB998A by title for the first time.) And Senator Schumacher, amendments to LB970 to be printed. That's all that I have, Mr. President. (Legislative Journal pages 1199-1202.) [LB782 LB810 LB863 LB965 LB995 LB1039 LB1130 LR373CA LB998A LB970]

SENATOR COASH: Thank you, Mr. Clerk. We will go to the next bill on the agenda, LB1020. [LB1020]

CLERK: LB1020 is a bill by Senator Nordquist. (Read title.) Introduced on January 17, referred to the Education Committee for public hearing, advanced to General File. There are committee amendments, Mr. President. (AM2045, Legislative Journal page 566.) [LB1020]

SENATOR COASH: Thank you, Mr. Clerk. Senator Nordquist, you're recognized to open on LB1020. [LB1020]

SENATOR NORDQUIST: Thank you, Mr. President and members. I'd first like to start by thanking the Education Committee for their work on this and thanking Speaker Flood for choosing it as one of the Speaker priorities. LB1020 is an effort to support the

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schools in addressing the unmet health needs of our state's children and to build upon the great success you've seen so far in two of our state's school districts with school-based health centers. Specifically, the bill creates a grant program administered by the Department of Education to fund capital construction start-up costs for school-based health centers. To apply for the grants, school districts must be able to demonstrate long-term financial sustainability of the school-based health centers, and must demonstrate a relationship with the sponsoring healthcare facility. Under the bill, priority will be given to school districts located in areas designated as health professional shortage areas, medically underserved areas, or designated as medically underserved populations under state or in federal law, or with a majority of students eligible for free and reduced-price lunch. To be eligible to receive the grant under this act, a school district must come up with the 50 percent matching funds for the school-based health center obtained from any source available to the district, whether that be through private fund-raising or potentially other grants. If within a five-year window, the school district uses it, creates the facility, but no longer uses it as a school-based health center, they would have to repay. Under the amendment it changes it so they would have to repay either the Education Innovation Fund or the General Fund, I believe. The amendments...as originally introduced, the bill was \$200,000 a year from the Education Innovation Fund. I think Senator Adams will speak to the amendment that the committee came up with which is \$100,000 from the Education Innovation Fund and \$100,000 from the General Fund for a two-year period. The act would sunset at that time. It would give us an opportunity to evaluate where we're at, the successes of this act, and what changes would need to be made. The bill stipulates that 90 percent of the funds has to be awarded to the districts and 10 percent or less can be used for administration. Also, any unspent money would return to the original sources. And as currently drafted, there is an E clause on the bill to allow schools to begin to plan for these grant applications and allow NDE to put the processes in place to administer the program. Fundamentally, the issue is that kids, if they're not healthy, they can't learn. By bringing health services to where children are, we know that we can help these children get the healthcare they need, help working parents get their kids the healthcare that they need. School-based health centers in a variety of studies have been associated with a reduction in absenteeism and tardiness; improved grade point averages; increased likeliness to stay in school; reduced asthma-associated hospitalizations and inappropriate emergency room utilization; reduction in Medicaid expenditures related to inpatient drug and emergency room use; and increased access to care. Seventy-one percent of students with a school-based health center have seen a healthcare provider in the last year, which is higher than those without. This bill I believe I brought for you today because I think we need to expand the reach of these in the state. Senator Gloor, in his previous career, was kind of the godfather of school-based health centers in our state. At Grand Island, when he was the CEO of the hospital, they had a great partnership for a school-based health center in the Grand Island High School that continues today, I think 12 years later. Recently, in Omaha Public Schools, we just cut the ribbon on a seventh, the first high school in Omaha, at Northwest High.

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We've had...last school year we had six elementaries...or five elementaries and one middle school that had these services. And in Omaha, and I believe in Grand Island, and Senator Gloor could probably speak to that a little bit better than I could, certainly the hospital plays a major role in Grand Island. In Omaha we have great philanthropic support that's been able to help fund the construction of these facilities. And for me, it's about allowing other districts in the state that maybe don't have quite the resources that we do in Omaha, or be as lucky as Grand Island to have such a great community partner, that maybe this would be enough to help them meet that 50 percent...to be 50 percent of the construction. And once you have the facility constructed and it meets, you know, medical standards of construction and all the start-up costs associated with it, you can work on the delivery model and partner with healthcare providers in the community to make it financially sustainable. But the costs, the big cost is getting, you know, converting some school space that's not used in many of the schools in Omaha. Teachers gave up their teacher-staff lounges to be constructed into school-based health centers. So it takes just that initial getting over the hump and then we can truly get kids the healthcare that they need. So with that, I'd appreciate your support of the bill, the committee amendment. And then I have in partnership between my office and the Education Committee staff, there is an amendment to the committee amendment with a couple more clarifications. Thank you. [LB1020]

SENATOR COASH: Thank you, Senator Nordquist. Members, you've heard the opening to LB1020. As the Clerk has stated, there is an Education Committee amendment. Senator Adams, you're recognized to open on AM2045. [LB1020]

SENATOR ADAMS: Thank you, Mr. President and members. Senator Nordquist has already made reference to the committee amendment. The essence of the amendment is this: that the grant program would terminate June 30, 2014. And initially, if you look at the fiscal note you will see that there's a General Fund appropriation of \$200,000 each year. The committee amendment would change that to a \$100,000 General Fund appropriation each year, and another \$100,000 would be taken from the lottery funds that are set for education. That's the committee amendment, Mr. President. [LB1020]

SENATOR COASH: Thank you, Senator Adams. Mr. Clerk. [LB1020]

CLERK: Mr. President, Senator Nordquist would move to amend the committee amendments with AM2365. (Legislative Journal page 1163.) [LB1020]

SENATOR COASH: Senator Nordquist, you're recognized to open on AM2365. [LB1020]

SENATOR NORDQUIST: Thank you, Mr. President. AM2365 accomplishes the same thing as the committee amendment. What our office just worked with fiscal...or with the Education Committee staff to clean it up just a little bit. The Fiscal Office pointed out that

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it's inappropriate to transfer General Funds to a cash fund, so we used language suggested by the Fiscal Office to appropriate the General Funds. It was also the intent of the grant program to ensure that state funding was used for that purpose, and we had the five-year kind of look back where it would have to be pulled back. But now that we're sunsetting the act, the fund, the Coordinated School Health Fund will no longer be there. So, therefore, this bill makes sure that it comes back to repay the Education Innovation Fund because we would be sunsetting the act after two years of operations. Again, just a pilot to see where we're at. So that fund would no longer be there to transfer the money back. Thank you. [LB1020]

SENATOR COASH: Thank you, Senator Nordquist. Members, you've heard the opening to LB1020, the committee amendment, and the amendment to the committee amendment. The floor is now open for discussion. Senators wishing to speak: Senators Louden and Adams. Senator Louden, you're recognized. [LB1020]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Adams yield for questions? [LB1020]

SENATOR COASH: Senator Adams, will you yield? [LB1020]

SENATOR ADAMS: Yes, I will. [LB1020]

SENATOR LOUDEN: My first question is, do they have to be an equalized district in order to partake of this? [LB1020]

SENATOR ADAMS: No. [LB1020]

SENATOR LOUDEN: Any district can. And then in order to...I mean, when you divide up \$100,00 for healthcare between, what, 293 districts or something, is everybody going to be able to get enough to do anything of any value? And what is it they're trying to do that probably between your school lunch program and your on-board nurse and a few others don't already cover? [LB1020]

SENATOR ADAMS: You know, Senator, I'm going to answer part of it and then I might direct you over to Senator Nordquist. Two hundred and forty-nine school districts, this money isn't going to help all of them. There's no way in the world. Half of them, doubt it. Much, much smaller percentage than that. And in terms of how the money would be used, I think Senator Nordquist is better informed at how the money would be used; so I would defer that question to him, if you don't mind. [LB1020]

SENATOR LOUDEN: Very good. Would Senator Nordquist then yield for a question? [LB1020]

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SENATOR COASH: Senator Nordquist, will you yield? [LB1020]

SENATOR NORDQUIST: I'd be happy to. [LB1020]

SENATOR LOUDEN: Okay. What do you intend to do with this \$100,000 that you're going to divide up a hundred...or 249 ways, or something like that, if possible? What I'm wondering is, is this something that there's only going to be one or two school districts that would take advantage of or be able to take advantage of to do anything? Because when it comes to healthcare, I mean, a hundred bucks doesn't go very far. [LB1020]

SENATOR NORDQUIST: (Laugh) That's right. So, yeah, let me...so essentially what we've got is \$100,000 a year out of the Education Innovation Fund and \$100,000 a year out of the General Fund, so \$200,000 each of two years. School districts would have to write a grant application to NDE and they would have to get approved for the money. You're right, it's probably going to be a handful a year at most. The bill says school districts have to come up with about half...with at least half of the money outside of this fund. So in Omaha, ours have been pretty well done and probably bigger than needed. A school-based health center costs about \$100,000 to renovate space. So then you're talking...if we're only matching 50 percent of that, you're talking about \$50,000 could be used out of this for one district. So you're talking maybe about four districts a year for each of the two years. Maybe, you know, maybe the costs, some districts probably wouldn't spend that much. So I'm thinking anywhere from four to eight districts a year could...you would have. I don't know how many would apply to NDE but... [LB1020]

SENATOR LOUDEN: But what I'm wondering is, is there's Health and Human Services. Are we pushing some social issues on to the school system again? Because in order to do this, they're going to have to set up some type of a clinic in their school, and it would have to be more than just a cot down in one of the rooms like a lot of these schools have for some kids that get a little bit sick or something like that. I'm wondering where you're going to be able to go with this. And when you start offering healthcare, then you have to have probably some healthcare specialists. [LB1020]

SENATOR NORDQUIST: Sure. [LB1020]

SENATOR LOUDEN: I mean, you're going to have to have at least a physician's assistant or perhaps a doctor on board in order to do this. So I'm wondering if the money would be better spent if we put it into the CHIPs program or some of our other Health and Human Services that go ahead and identify these children and send them to a doctor someplace rather than trying to put it through a school health center of some sort. That's my concern. [LB1020]

SENATOR NORDQUIST: Sure. Well, you're right in a number of respects. First, this would just be for construction of the space. [LB1020]

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SENATOR COASH: One minute. [LB1020]

SENATOR NORDQUIST: And I'll turn my light on; we can continue our conversation...for construction of the space. And then the school would also, as they give their grant, they have to show who they're partnering with. And how these typically work in all other states and here in Nebraska--in Grand Island it's partnering with the hospital, in Omaha we partner with our federally qualified health centers--the school district renovates and provides the space. Sometimes that's funded by private donations or maybe through this program or other grants. And then they partner; they sign a legal contract with some other healthcare provider to come in and provide the services. So the school at that point, all they're doing is providing the renovated space in their building. The provider takes on, typically, the risk of providing the services. And they will bill insurance if kids have insurance. [LB1020]

SENATOR LOUDEN: Will this take the place of a school nurse? [LB1020]

SENATOR NORDQUIST: They usually work hand in hand. It may reduce the workload of the school nurse a little bit, but usually the school nurse can't prescribe medications, can't, you know, do tests for... [LB1020]

SENATOR LOUDEN: Well, you won't be able to prescribe medication to those kids unless you have the parent's consent or somebody like that, will you? [LB1020]

SENATOR COASH: Time, Senators. Thank you, Senators. [LB1020]

SENATOR LOUDEN: Thank you. [LB1020]

SENATOR COASH: Senator Adams, you're recognized. [LB1020]

SENATOR ADAMS: Thank you, Mr. President and members. If you look at the committee report you'll probably see, I don't remember, but how many of us voted against it; maybe I was the lone guy that voted against this. I need to explain why, and it's going to sound repetitive: the lottery money. We're grabbing on to it again. And, you know, we had this discussion a few weeks ago about a bridge program bill that Senator Mello had brought. Now, here we are again grabbing some more of that lottery money. And I think before you vote here, you have to consider two things, a minimum of two things. First of all, should we be using this lottery money for this?--and I say no; and then, secondly, is the money going to be used in a fashion for a program that you think is a valuable program? So I really think you have two things to look at. And I don't like to always be up here harping about here goes some more lottery money, here goes some more lottery money. But, you know, if I had my choice we might take some of this and put it into our scholarship programs that we have for dual credit courses or the one that

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we have for Pell-eligible students. And that's a priority decision that I would make rather than this. It doesn't mean that this is a bad idea. I just don't want that lottery money to continue to be the low-hanging fruit when something needs to be funded. That's the essence of it. Thank you, Mr. President. [LB1020]

SENATOR COASH: Thank you, Senator Adams. Senator Nordquist, you're recognized. [LB1020]

SENATOR NORDQUIST: Thank you, Mr. President. I'll just continue my dialogue here with Senator Loudon. A few questions off the mike that I'll go ahead and, you know, just clarify and then we can...he can continue with questions. First, yeah, in Grand Island, in Omaha, first day of the school year or at the beginning of the school year, before a kid can utilize one of these, they have to get parental permission. It has to be on file that, you know, would be...that would protect from the school...or would include their insurance information. Typically, when the kid comes in, they first see the school nurse. The school nurse says, oh, Johnny, you have something more than I can do; all I can do is give you an aspirin or check you for head lice or something like that; I'm going to send you over to the school-based health center. They go in and they can get checked for pinkeye, earaches, asthma. Usually they're staffed by a physician assistant or a nurse practitioner, a mid-level provider that can prescribe medication so they're able to do that. A nurse practitioner can't do that. And really this is about access. You know, I agree with Senator Loudon. You know, maybe...you know, the CHIP program could use more resources. But if a kid is on CHIP and they're from a low-income working family, it's often that those parents are working jobs that they're just not able to get away from in a timely manner. Our primary care physicians are often, you know, sometimes several days to get in to an appointment. So this is about getting kids timely access. You know, you can get treated for pinkeye and be back in the classroom the next day, or asthma. In Omaha, at the beginning of the last school year, we passed a law a couple of years ago that required a second varicella vaccination; and in Omaha there were 17,000...a week into school, 17,000 students in OPS that didn't have the second varicella vaccination and were a few weeks away from being excluded from school. Those kids would have missed class time and not been allowed to go to school. And again, many of these kids are from working families that can't get access or don't have time to take off of work. So they were able to get those immunizations in the school-based health center in a timely manner and keep them in the classroom. So that's what this is about. Again, it's not going to be every school. This doesn't work for every school. It doesn't fit every school. Not every school is going to have an all-day fully staffed...or an all-day clinic. So maybe...in some locations maybe it will be a few hours, a few hours in the morning each day a week when the local practitioner would come into town or would come into the school and be there to address issues that arise that morning so they have timely access. So it's worked well in Grand Island. It's been very successful in Omaha the last year. And this funding, hopefully, will encourage a few other districts. I know...I've had conversations...I know Lexington has been very

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interested; other districts in the metro area. Lincoln has very briefly discussed it. So I think this is an opportunity for other districts to be able to set one of these up. And again, it's getting over that hurdle of the up-front costs, and then you can work out a financial framework with the partnering organization to provide those services. And Senator Louden, if he has any additional questions, I'd be happy to kind of yield him the rest of my time to ask any other questions. [LB1020]

SENATOR COASH: Senator Louden, you've been yielded 1 minutes 12 seconds. [LB1020]

SENATOR LOUDEN: Thank you, Mr. President, and thank you, Senator Nordquist. I guess what I wonder about this is where it will eventually lead to, because when we do something like this, you're going to have to set up... [LB1020]

SENATOR COASH: One minute. [LB1020]

SENATOR LOUDEN: ...a clinic or something like that in that school; and then that's one more issue that your school has. I know it's a good idea and there's some of these kids that don't ever receive some of these benefits, but at the present time the dentists go all out through...they come out to western Nebraska and they do dental work on those; they take two or three days. And other school nurses and teachers and various ones during the course of the year identify kids that need some of this special attention. But I'm wondering if there's enough here to do what you're trying to do, and what you're trying to do is possible to get done, if you know what I mean. And this is my concern with that. And when we start setting it aside, why, it sounds...it's a good idea and it's humanitarian and there's children that no doubt need it, but I don't know if we can get from here to there. Thank you, Mr. President. Thank you, Senator Nordquist. [LB1020]

SENATOR COASH: Thank you, Senator Nordquist and Senator Louden. Senator Price, you're recognized. [LB1020]

SENATOR PRICE: Thank you very much, Mr. President. I'm reading over this copy and the amendments, and I had a couple of questions for Senator Nordquist if he would yield. [LB1020]

SENATOR COASH: Senator Nordquist, will you yield? [LB1020]

SENATOR NORDQUIST: Yes. [LB1020]

SENATOR PRICE: Thank you very much, Senator Nordquist. So if I've got this right, we've got a sunsetted bill that's going to give us a couple of years for schools to apply for grant money to refurbish a location that's conducive to the delivery of services that you envision in these medical clinics. [LB1020]

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SENATOR NORDQUIST: That's right. [LB1020]

SENATOR PRICE: Okay. So what I didn't see here is what are the scope...and briefly, what are the scope of services that we're going to provide here? As you look for things, I'll rattle off a couple of concepts. I see if somebody got a splinter, or you said there could be some inoculations. Well, obviously, you're going to need someone to do that who is qualified. But what is the gamut of medical services that could be provided in a clinic like this? [LB1020]

SENATOR NORDQUIST: Oh, I will lead off with saying that my first year here, and I don't know if this is at all on your mind and I can address more specifically, but I'll start out so we don't go down this road at all. My first year here I passed a bill which opened up so these clinics could get Medicaid funding if they were in managed care. There was kind of a hurdle there and that was Omaha. Grand Island was able to continue theirs because they weren't under managed care at the time. In passing that bill, we specifically outlawed any providing of counseling, referring for a board of services, or prescribing/dispensing contraceptives. So those are off the table. I just want to get that out there. But you're talking any basic primary care services. These are PAs or nurse practitioners that are mid-level providers that are capable of doing just about anything that any other primary care would be able to do. In Omaha we're looking at doing some mental health services both through the nurse practitioners, who sometimes have mental health training, but maybe through another licensed mental health practitioner. In Grand Island, they've been doing that for a while, but that doesn't have to be a component. If you look nationally, some provide that, some don't. Some just focus on physical healthcare. So you're talking the immunizations...you know, the common things are immunizations, pinkeye, school physicals. We've had kids come in with things in their ear; and they have handheld vision screeners that if a kid is having problems in the classroom, that can be diagnosed in a quick manner, so. [LB1020]

SENATOR PRICE: Great. And I appreciate you leading off with the caveat so we don't go down a rabbit hole we don't need to go down. Now in looking at how we set this up, I did notice that to be eligible that you were going to have to have...under paragraph (ii) here, I guess it would be on page 3, the free and reduced lunches is a criteria by which you're going to have..."The majority of the district's students are eligible for free or reduced lunches." So an earlier line of questioning, when we talked about all the different schools, is there any school that you know of that doesn't fall under that moniker? [LB1020]

SENATOR NORDQUIST: I have a list here somewhere that... [LB1020]

SENATOR PRICE: Well, we can talk off the mike. In other words... [LB1020]

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SENATOR NORDQUIST: Yeah, I have a list of all the ones. I just want to note that says it's priority shall be given to school districts that are in medically underserved areas or free and reduced-price lunch. So that's just the priority. When the Department of Education gets all of them, they sort through; and if there are some priority schools that maybe don't hit the other marks, I would assume they would then go to the nonpriority list, so. [LB1020]

SENATOR PRICE: Well, we may be able to visit more about that later. Just because when you put that threshold on there... [LB1020]

SENATOR COASH: One minute. [LB1020]

SENATOR PRICE: Thank you...when you put that threshold on there, I think that does limit the pool of schools that are going to be able to apply into this. So that's something we can talk about. Because again, the idea being is, you know, we're getting services. And we're going to run out of time, but I have my light...but you can think about how are we going...how's the billing going to happen if you have someone who is on the SCHIP and someone who isn't? Now are you going to be turning away students who don't have the SCHIP but need to have treatment; and who is going to pay for that? That's my question I'll have for you in a minute. [LB1020]

SENATOR NORDQUIST: Sure. Sure. [LB1020]

SENATOR PRICE: And is there anybody else in the queue, Mr. President? [LB1020]

SENATOR COASH: Yes. [LB1020]

SENATOR PRICE: All right, then I'll wait until we have another time. Thank you. [LB1020]

SENATOR COASH: Thank you, Senators. Those still in the queue: Senators Council, Gloor, and Price. Senator Council, you're recognized. [LB1020]

SENATOR COUNCIL: Thank you, Mr. President. I want to thank Senator Nordquist for introducing the bill. I want to thank my colleagues on the Education Committee for advancing the bill to General File. I respect and understand the position of our Chairman, Senator Adams, and his concern about use of the lottery funds. I know that Senator Adams would confirm that there was a lengthy discussion about those funds and what kind of balances would be left if LB1020 was enacted. And when you look at what the amendments do in terms of sunseting the grant program, so you're talking about a total of \$400,000 being allocated to this program, only \$200,000 of which is going to come from lottery funds over the two-year period. My recollection, and Senator Adams or others can correct me if I'm wrong, that even after including Senator Mello's

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bill and the amount required to enact LB1020, we were still close to maintaining about a \$4 million balance in that Innovation Education Fund. And at that time, that number did not reflect any potential increase in revenue to that fund associated with the increase in the cost of a Powerball ticket. And I must add, with this week's jackpot under Mega Millions, we'll probably make mega millions, since it's nearly \$500 million; and I think the lottery data will show you that when the jackpot gets up to those ranges that there's an increase in purchases. So while I appreciate the concern that Senator Adams has expressed, I don't share the concern, particularly in view of the fact that there's a sunset on this grant program. Secondly, if you've not had an opportunity to visit one of these school-based health clinics, I would urge you to do so. I had the privilege, I guess it was about three weeks ago now, Senator Nordquist, to attend the grand opening of the seventh clinic in the Omaha Public Schools. It's the seventh school-based health clinic with the first one in a high school. And to talk to the students at that high school and the value that those students identified in having that health clinic there, two of the spokespeople talked about how accessing healthcare there in the building enabled them to reduce the amount of days of absence. And we've had a lot of discussion this year about attendance and in previous years about attendance and truancy. And I think the data that's being collected at the existing school-based health clinics will certainly support a conclusion that the existence of these clinics do reduce the amount of absences associated with treatable illnesses. Senator Louden was concerned about the cost of providing the services and the bill that Senator Nordquist alluded to that enables these services to be provided to children who are Medicaid eligible, SCHIP eligible, private insurance. [LB1020]

SENATOR COASH: One minute. [LB1020]

SENATOR COUNCIL: And, you know, quite frankly, if there's a small gap there, it was my understanding from talking to the federally qualified health clinic administrators that they're not going to deny service to any youngster who comes in. I also had the privilege of being at the opening of the first one which was an elementary school. And I can tell you that the school nurse, in collaboration with the medical providers at the health clinic, were very, very excited about the number of children who would not have been able to enroll in kindergarten, timely, but for the fact that they could obtain their immunizations right there at the school and missed no days of school; started kindergarten on time because they could receive their immunizations right there. So I would urge passage of the amendment to the committee amendment and the underlying bill. Thank you. [LB1020]

SENATOR COASH: Thank you, Senator. Senator Gloor, you're recognized. [LB1020]

SENATOR GLOOR: Thank you, Mr. President. The references to the Grand Island clinic put me in a position of needing to make sure I speak about a program that has been extremely successful even beyond expectations. This is a case where the school

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district itself approached our hospital and, through their school nurses, asked us to provide help for a variety of challenges they were faced with: as Senator Council and others have talked about, issues of immunization to get children enrolled. And by the way, unlike some of the examples being used here, this was at the senior high school which during the day ends up having 2,000 students under its roof. That makes it one of the largest high schools in the state of Nebraska. At that time, and this was in the mid-'90s, there was a shortage of adequate primary care physicians to take these students; and so getting them in to get immunizations could be a two- to four-week delay for them to get immunizations. That was only one piece of the puzzle. The others had to do with basic primary care services in trying to control the spread of things like pinkeye, influenza. It did affect absenteeism, has affected absenteeism, has improved basic care. Is used not only by students who might have a need because of their lower financial income, but also by students who have insurance, because of the convenience factor to the parents. There were issues that we dealt with that I hear in the discussion are the same issues that are being successfully or appropriately addressed: parental issues; making sure that there are release forms and that the parents are aware of what's happening and what's going on. Reproductive health issues. Those are always a concern, not something that these clinics are involved in or should be involved in. And, of course, as people are talking about financial issues, it's important to get them off the ground in a strong way, in a strong financial way. But I will tell you, and this clinic has been in existence now since around '97 or '98, so, you know, we're going on 15 years of experience with this clinic. The longer it's there, the stronger the financial support gets because it builds a broader base of support within the community of entities, individuals, organizations, not-for-profits, who see its benefit and are willing to come up with money. I have no doubt once these are started, most, if not all of them, will find those entities, organizations, or sugar daddies who are willing to support what becomes very clearly an important part of providing health services for students. It does affect absenteeism. It does affect health of the student populations that are out there. In Grand Island's case, it was so successful from a primary care standpoint that we spread into the whole arena of behavioral health and substance abuse, and have also moved that into the junior high level with one of the junior high schools--again, with great success. Some of the success stories have to do with the behavioral health program interrupting at least--and my time there ended about four years ago--but up to that point in time, at least two suicide attempts that were going to be undertaken by students. And because of the behavioral health counselors knowing that these were troubled students, they were able to intervene; in one case, even going to the student's home and interrupting the act in process. So we have a model to take a look at in terms of some of the concerns that are out there. And everything about the Grand Island Student Wellness Center has been a success, and I see no reason in the amendments and in the bill that we won't be able to see that emulated in other communities... [LB1020]

SENATOR COASH: One minute. [LB1020]

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SENATOR GLOOR: Thank you...in other communities across the state where that same need exists. Thank you, Mr. President. [LB1020]

SENATOR COASH: Thank you, Senator Gloor. Senator Price, you're recognized. [LB1020]

SENATOR PRICE: Thank you, Mr. President and members. Would Senator Nordquist yield? [LB1020]

SENATOR COASH: Senator Nordquist, will you yield? [LB1020]

SENATOR NORDQUIST: Yes, I'd be happy to. [LB1020]

SENATOR PRICE: All right, thank you very much, Senator Nordquist. Off the mike we did discuss and look at the list of schools, and we did notice there are probably some counties, particularly in Sarpy County, that could utilize this; but with so many schools competing for the priority, that we're going to visit later on and see what we can do with that, correct? [LB1020]

SENATOR NORDQUIST: Yes. [LB1020]

SENATOR PRICE: Great. [LB1020]

SENATOR NORDQUIST: Yeah, I think we can sit down and talk about that between General and Select. [LB1020]

SENATOR PRICE: Great. I appreciate it. Now to the point of the question I had, and Senator Gloor had been talking about this, so we're going to have some private entities also come in for matching. That too will impact the ability of perhaps a needy area. But they can't...and I'm thinking about what Senator Loudon was alluding to; you know, if you're in rural Nebraska and you have the need but you don't have someone stepping up meeting it, we're kind of at an impasse then, correct? [LB1020]

SENATOR NORDQUIST: Yeah, and kind of going back and forth, we looked at several models on what would be the best legislative approach to kind of spur these. And after talking to people who have done it in our state and other states, it's kind of...they said, you know, the start-up cost is the big piece. But you're right, number one, there probably...in some areas there probably just isn't the volume of traffic to come through to support; and so these aren't going to be perfect for everyone by any means. But you're right, there is an ongoing...sometimes an ongoing shortfall depending on how you structure it. How Grand Island...and then in Omaha they followed the Grand Island model where essentially you bill private insurance, you bill Medicaid, or any other health insurance. You try...I'm not sure in Grand Island. In Omaha, the way they did it, if

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someone is uninsured, they try to do a sliding fee scale. That's how the federally qualified health centers operate too, as if you're uninsured you have to pay a sliding fee scale. They try to collect on that the best they can. And then there probably will be a little bit of an operating shortfall; and that's up for...that would be up for that organization, whoever is operating it, to figure out. Maybe they can find private donations to fund that gap. Maybe they can find other efficiencies. I know in Grand Island it took the hospital foundation to get a little bit of that, fill a little bit of that gap. But it's manageable depending on how you structure it. In Omaha they're going to go to all days; I think Grand Island is all days. But some of these may, again, it may just be a couple hours in the morning would fit certain districts better than an all-day person there, so. [LB1020]

SENATOR PRICE: Great. Now, just to follow up, because I think you answered my follow-on question there in that there's a sliding fee and insurance and other methodology, as we say, revenue streams will hopefully make up all that difference. Now, are we sure that in this legislation that we've unencumbered the school districts from having a liability or from...? So we put this clinic up, we stand it up in the school; it's been operating for two or three years. An economic downturn, and they no longer can...the partners, the community partners can't come in; now it goes away. We're not going to encumber the schools or the districts with any type of bill, right? [LB1020]

SENATOR NORDQUIST: Well, we talked specifically about the dollars used here. But we could... [LB1020]

SENATOR PRICE: Well, exactly. That's what I said. I know we talked about the dollars used here... [LB1020]

SENATOR NORDQUIST: Yeah. The grant...it says in the grant that one of the criteria is they would have to show financial sustainability; but I do understand your concern. And I'd have to...I don't know that we have any language specific to that; but, if that is a concern, I would be happy to look at putting some language in there that, you know, obviously, we don't... [LB1020]

SENATOR COASH: One minute. [LB1020]

SENATOR NORDQUIST: ...want schools using their general operating funds to... [LB1020]

SENATOR PRICE: Well, and that goes right to the heart of my question is, I know when things work, that's good; but we just saw here over the past two years where people were making very tough choices. And if that became the tough choice, and a school district had bought some equipment and put some things in and had a person on contract, the severability of that contract and things predicated on the ability to pay, it

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has to be...and perhaps you have something that recertifies the ability to continue to finance it. Maybe that's an answer. [LB1020]

SENATOR NORDQUIST: And I'd have to look here, but we say that "Is seeking funding to support the establishment of a school-based health center as defined; is able to demonstrate a relationship with a sponsoring facility." So I think that the sponsoring facility isn't necessarily the school district; but that's a point that I would want to...we would want to get clarified, too, now that you bring that up. [LB1020]

SENATOR PRICE: Thank you. [LB1020]

SENATOR NORDQUIST: Yes. [LB1020]

SENATOR COASH: Thank you. And Senator Price, you are now recognized. [LB1020]

SENATOR PRICE: Oh, great; we can continue then. I wasn't sure if we were next. Again, in taking that in consideration here that something is going along and then it stops for whatever reason. We know how tough it is with school funding right now and everything else, and now all of a sudden to have a burden or a bill. And again, you don't have to get the answer at this very exact moment. We can talk about it off the mike. But I would like to consider that, that we make sure we have some, for lack of a better word, protections or fail-safes for the schools. And I think this is good for the students and the organizations all the way around. [LB1020]

SENATOR NORDQUIST: Great. Thank you. [LB1020]

SENATOR PRICE: Great. Thank you for that, very much. And with this discussion with Senator Nordquist, at this point in time I'm going to be able to support the effort that we have undergoing here, because I believe it...again, we've seen it demonstrated in Grand Island and in Omaha; and as long as we can address how other schools and the potential for the schools to be on the hook at an outyear position, I think this will be a model legislation going forward. Thank you, Mr. President. [LB1020]

SENATOR COASH: Thank you, Senator Price. Seeing no other lights, Senator Nordquist, you are recognized to close on AM2365. [LB1020]

SENATOR NORDQUIST: Thank you, Mr. President and members. Again, this amendment just makes a few changes to the committee amendment and was worked on with the committee counsel and the Education Committee. I'd appreciate your support of it. Thank you. [LB1020]

SENATOR COASH: Thank you, Senator Nordquist. Members, you've heard the closing to AM2365. The question before the body is, shall AM2365 be adopted? All those in

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favor vote aye; all those opposed vote nay. Have all voted who wish to vote? [LB1020]

SENATOR NORDQUIST: Mr. President. [LB1020]

SENATOR COASH: Senator Nordquist. [LB1020]

SENATOR NORDQUIST: I'd request a call of the house. [LB1020]

SENATOR COASH: There has been a request for a call of the house. The question before the body is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1020]

CLERK: 27 ayes, 0 nays, Mr. President, to place the house under call. [LB1020]

SENATOR COASH: The house is under call. Senators, please return to the Chamber and record your presence. Those unexcused senators please return. All unauthorized personnel please leave the floor. The house is under call. Senators Avery, Krist, Lautenbaugh, Senator Cornett, please check in. Senator Bloomfield, Senator Council, please return to the Chamber. The house is under call. Mr. Clerk, Senator Nordquist is accepting call-ins. [LB1020]

CLERK: Senator Howard voting yes. Senator Langemeier voting yes. Senator Cornett voting yes. Senator Cook voting yes. Senator Krist voting yes. Senator Larson voting yes. [LB1020]

SENATOR COASH: Record, Mr. Clerk. [LB1020]

CLERK: 26 ayes, 0 nays to adopt the amendment to the committee amendments. [LB1020]

SENATOR COASH: AM2365 is adopted. We will return to discussion of committee amendments. Are there members wishing to speak? Seeing no members, Senator Adams, you're recognized to close on the committee amendment. [LB1020]

SENATOR ADAMS: Very simply, colleagues, what the committee amendment does is to terminate this grant program June 30, 2014, and it changes the fiscal note from a \$200,000-per-year General Fund appropriation to a \$100,000 General Fund and \$100,000 out of lottery. That's the essence of the amendment, Mr. President. Thank you. [LB1020]

SENATOR COASH: Thank you, Senator Adams. Members, you've heard the closing to the Education Committee amendment. The question before the body is, shall AM2045 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

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[LB1020]

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of committee amendments.
[LB1020]

SENATOR COASH: The committee amendment is adopted. We return to discussion of LB1020. Seeing no members wishing to speak, Senator Nordquist, you're recognized to close on LB1020. [LB1020]

SENATOR NORDQUIST: Thank you, Mr. President and members. I greatly appreciate the discussion and the dialogue to explain kind of what these are. They are unique concepts, but there are...you know, we're over several thousand around the country now and growing. And Nebraska, we just opened our eighth one, Grand Island and Omaha. And with this I think we can reach other parts of the state and other kids who need those services. The dollars that we're utilizing partially out of the Education Innovation Fund, that's a fund that's been changed 26 times since its inception for new and innovative approaches to education, and I think that this follows right in line with that. I'd appreciate your support of the bill. Thank you. [LB1020]

SENATOR COASH: Thank you, Senator Nordquist. Members, you've heard the closing to LB1020. The question before the body is, shall LB1020 advance? All those in favor vote aye; all those opposed vote nay. Senator Nordquist. [LB1020]

SENATOR NORDQUIST: Mr. President, could I get a roll call vote in reverse order, please? [LB1020]

SENATOR COASH: Mr. Clerk, there's been a request for a roll call vote in reverse order. [LB1020]

CLERK: (Roll call vote taken, Legislative Journal pages 1202-1203.) 26 ayes, 5 nays, Mr. President, on the advancement. [LB1020]

SENATOR COASH: LB1020 does advance. I raise the call. The next bill, Mr. Clerk. [LB1020]

CLERK: LB1113 by Senator Flood. (Read title.) Introduced on January 19, referred to Judiciary, advanced to General File. I have no amendments at this time, Mr. President. [LB1113]

SENATOR COASH: Thank you, Mr. Clerk. Senator Flood, you're recognized to open on LB1113. [LB1113]

SPEAKER FLOOD: Thank you. Good evening, Mr. President and members. This

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adopts the Nebraska Uniform Power of Attorney Act which is based on the Uniform Power of Attorney Act that was drafted by the National Conference of Commissioners on Uniform State Laws and approved by that organization in 2006. The Nebraska Bar Association formed a study committee in '08, and the committee has been working toward the Nebraska Uniform Power of Attorney Act since then. Bill Lindsay, an attorney from Omaha, who is one of the nine members on the committee, testified about the Nebraska-specific portions of the bill at the committee hearing. For an overview of this bill, Sections 1 through 23 contain all the general provisions that pertain to creation and use of a power of attorney. Most of these provisions are default rules that can be altered by the power of attorney itself, but certain mandatory provisions in these sections serve as safeguards for the protection of the principal, the agents, and the persons who are asked to rely on the agent's authority. Sections 24 through 40, pages 22 through 46 of the green copy, provide default definitions for the various areas of authority that can be granted to an agent. Most of these definitions come from the Uniform Statutory Form Power of Attorney Act in 1988. However, the language is updated where necessary to reflect current transactions. Section 24 identifies certain areas of authority that must be granted with the express language because of the tendency of such authority to dissipate the principal's property or alter the principal's estate plan. Sections 41 through 42, pages 46 through 57 of the green copy, contains statutory forms that are designed for use by lawyers as well as laypersons. Step-by-step prompts are given for designation of the agent, successor agents, and the grant of authority. Section 42 contains a sample agent certification form. Sections 43 through 45, or pages 57 and 58, contain miscellaneous provisions concerning the relationship of the act to other law and preexisting powers of attorney. This has an operative date of January 1, 2013. With that, thank you very much for your attention and your consideration of LB1113. There is an amendment that is in process that we are working with the bar association and the bankers association on, and I envision that coming up on Select File. Thank you. [LB1113]

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SENATOR GLOOR: Thank you, Senator Flood. We now move to discussion. Senator Schumacher, you're recognized. [LB1113]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. Would Senator Flood yield to a couple questions? [LB1113]

SPEAKER FLOOD: Yes. [LB1113]

SENATOR SCHUMACHER: Senator Flood, there are probably lots and lots of powers of attorney that are stored up in people's safe deposit boxes and law offices. Are those grandfathered in? [LB1113]

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SPEAKER FLOOD: Yes, they are. [LB1113]

SENATOR SCHUMACHER: Thank you, Senator Flood. I have nothing further. [LB1113]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Wightman, you are recognized. [LB1113]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. If Senator Flood would yield to a question. [LB1113]

SENATOR GLOOR: Senator Flood, would you yield? [LB1113]

SPEAKER FLOOD: Yes. [LB1113]

SENATOR WIGHTMAN: Senator Flood, obviously this is going to be a big change, or it would so appear, as far as the volume of just looking through the bill. How is it going to affect...and I wasn't sure what your answer was to Senator Schumacher or what he asked, but will this preserve all powers of attorney? I think that's what you answered, wasn't it? [LB1113]

SPEAKER FLOOD: Yes. It's...if you look at page 7, Section 4, any power of attorney prior to the operative date, provided it was in compliance with the laws that existed at the time that it was created, will be grandfathered in and will remain in full force and effect. [LB1113]

SENATOR WIGHTMAN: Could you explain to myself and to the body, perhaps, what some of the major changes would be under this bill? [LB1113]

SPEAKER FLOOD: Where would you like to start? [LB1113]

SENATOR WIGHTMAN: (Laugh) Well, I was hoping you would start, Mr. Speaker. [LB1113]

SPEAKER FLOOD: Well, let me go ahead and organize... [LB1113]

SENATOR WIGHTMAN: What additional requirements would there be? Is it still going to be a notarized statement? If you used one of the old powers of attorney, would it be valid any longer or...? Say we had a healthcare power of attorney or an economic power of attorney along the lines that the attorneys have used in the past. [LB1113]

SPEAKER FLOOD: Senator Wightman, essentially this provides some protections and guidelines; but, you know, an existing power of attorney isn't going to see wholesale revision. As I recall, let's take for instance a gift paragraph. You know, right now, I think

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the Nebraska Supreme Court in a Reifenrath case held that an attorney-in-fact cannot make a gift of the ward's estate without the express authority. This deals with issues like the gifting of the ward's assets without express authority. It talks about some protections on gifts. I think, in my opinion, the gifting of the ward's authority has been a problem over the years. And this provides some safeguards on the ward's assets by the attorney-in-fact, kind of default provisions that are, in fact, mandatory. So let me sit down for a second and outline some other portions of the bill for you. If you have any specific questions, let me know. But, I mean, the bill is 61 pages. I don't know where you'd want to start. I could start picking out different things indiscriminately, but I'd be happy to do that if... [LB1113]

SENATOR WIGHTMAN: Just an additional question that perhaps would specify a little more. Largely, it just expands the areas that you can grant under the power of attorney, or at least that's a major part of the bill, is that correct? [LB1113]

SPEAKER FLOOD: Well, it governs in whole the way that an attorney-in-fact is paid or compensated by the ward and provides some protections for the ward as it relates to the compensation of an attorney-in-fact. And its durability is protected through different provisions in the bill if it's drafted correctly. It's durable unless expressly stated that it's not durable. [LB1113]

SENATOR WIGHTMAN: I'll review it a little more and save those probably until Select File when you're looking at the amendment. Thank you. [LB1113]

SPEAKER FLOOD: Thank you. [LB1113]

SENATOR GLOOR: Thank you, Senator Wightman and Senator Flood. Senator Louden, you are recognized. [LB1113]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Flood yield for questions? [LB1113]

SPEAKER FLOOD: Yes. [LB1113]

SENATOR LOUDEN: Since I'm not a lawyer mixed up in this, Senator Flood, what I'm wondering is what is the difference in this than what we did before for powers of attorney? Can you outline what some of the differences would be or what was put in here that we didn't already have when we were set up to be a power of attorney of another person? [LB1113]

SPEAKER FLOOD: Which table...which cocktail table on the deck of the Titanic would you like to talk about? (Laugh) There's a lot in here. Let's see here. [LB1113]

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SENATOR LOUDEN: Well, as I was looking here, now is electronic means and some of that, was that put in before when you were a power of attorney for somebody that you had control over using some of their electronic machinery, I guess, such as some of their perhaps computers that had their bank accounts on and that sort of thing? Was that in before, if you were a power of attorney? Could you do that and is that what this is...? [LB1113]

SPEAKER FLOOD: What page are you on? [LB1113]

SENATOR LOUDEN: Well, first page. Page 3, I guess, number 4, "Electronic means relating..." and that was... [LB1113]

SPEAKER FLOOD: Yes. [LB1113]

SENATOR LOUDEN: That's mostly the descriptions there that are all underlined. [LB1113]

SPEAKER FLOOD: Well, and some of that's new, in fact; because the last time we really got into this was in 1988, and obviously the transmission of powers of attorney by electronic means are different. But nothing changes in it, that you still have to have a signed notarized power of attorney. [LB1113]

SENATOR LOUDEN: Okay. [LB1113]

SPEAKER FLOOD: An electronic version would be valid now under the law. [LB1113]

SENATOR LOUDEN: Okay. And was it before or was it questionable? [LB1113]

SPEAKER FLOOD: No, it was not. [LB1113]

SENATOR LOUDEN: Okay. [LB1113]

SPEAKER FLOOD: One of the areas I'd like to call your attention to, Senator Loudon, would be Section 4 on page 7. You know, the durability of a power of attorney is provided unless it "expressly provides that it is terminated by the incapacity of the principal." And that's important, I think, as a big change because, you know, a validly executed power of attorney needs to survive the incapacity of a ward. Let's take for instance, Grandma or Grandpa, they execute a power of attorney in 2012; in 2017 Grandpa died, and Grandma is suffering from dementia. The durability then remains and provides her protection--although she may not see it that way under the condition that she suffers--past her incapacity. Which I think is an important express provision to have and it conforms us with what the National Conference of Commissioners on Uniform Law want to accomplish. [LB1113]

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SENATOR LOUDEN: Well, now the way I would read that as a layperson, and from (inaudible) cows and cabling hay, Section 4, "is durable unless it expressly provides that it is terminated by the incapacity of the principal." In other words, there could be a power of attorney, and that principal was taking care of his wife, and then you would have to put in there that it would be terminated in the power of attorney if something happened to that person, and then that would automatically revert to that person taking care of the dependent of that principal. Is that what that...do I read that correctly? Because the way you explained it to me, I don't know if that's exactly what that says. And it says, you know, "A power of attorney created after January 1, 2013...is durable unless it expressly provides that it is terminated by the incapacity of the principal." [LB1113]

SENATOR GLOOR: One minute. [LB1113]

SENATOR LOUDEN: And... [LB1113]

SPEAKER FLOOD: It's the incapacity of the principal or the ward. The person that wants the protection, the durability lasts beyond the (inaudible)... [LB1113]

SENATOR LOUDEN: Okay. Then how does that ward or that principal determine that it's to be terminated, if they're incapacitated, I guess, and have elected this power of attorney previously? I guess what I would say, as their health deteriorated, how would they be able to terminate that unless they put in there that if they...? It says in there "expressly provides." So that would have to be in the power of attorney when it was drawn up if they wanted to terminate that. [LB1113]

SPEAKER FLOOD: Right. You know, most of the time you use a nondurable power of attorney would be...for me, if I was...if a couple wanted to go on a cruise and they wanted to grant to their parents the ability to care for their children and be the children's power of attorney during the cruise... [LB1113]

SENATOR GLOOR: Time, Senators. [LB1113]

SENATOR LOUDEN: Thank you, Mr. President. Thank you, Senator Flood. [LB1113]

SENATOR GLOOR: Thank you, Senator Louden. Thank you, Senator Flood. Are there other senators who would like to be heard on this bill? Seeing none, Senator Flood, you're recognized to close on the advancement of LB1113 to E&R Initial. [LB1113]

SPEAKER FLOOD: Thank you, Senator Louden and members. I want to go ahead and just address his question there. He was interested upon...on the durability issue. Page 9, line 16, "If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is

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incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in writing or other record by..."; and then it lists a number of different ways you can do it: a licensed physician, the court, or an appropriate governmental official, that the principal is incapacitated. So there's two different ways to do that on page 9. If you have questions about the Uniform Power of Attorney Act, please see me between now and Select, and let's make sure that we get those questions and those answers on the record. We're not wholesale rewriting the Power of Attorney Act in Nebraska by and through LB1113. What we are doing is modernizing it, protecting the ward or the principal in situations that have arisen, and we're doing it the Nebraska way to conform to what our courts have looked at and decided. Gifting is a very big deal in powers of attorney. The durability has been important, and the method by which someone is compensated by the ward's assets is something that is spelled out for the first time. The other thing that you're going to find in this bill is a short form that walks a layperson step by step through the process of developing and executing a durable power of attorney. And that is something that is designed to help people in this state to take the steps necessary so that if Grandma or Grandpa or whoever becomes incapacitated, there's a way, a method, and a statutory framework to fill in the blanks; and I think the proposed form goes a long way in that direction. I'd ask for your advancement of LB1113. There will be an amendment on Select. And I'll work with Senator Loudon between now and then, and Senator Wightman, to answer any other questions they may have. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Flood. Members, you've heard the closing on LB1113. The question before the body is the advancement of LB1113 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1113]

ASSISTANT CLERK: 28 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB1113]

SENATOR GLOOR: The bill advances. Senator Flood, for a Speaker's announcement. [LB1113]

SPEAKER FLOOD: Thank you, Mr. President and members. I wanted to let you know that we're looking at 9 p.m. adjournment tonight. We are going to pass over LB1082. LB1082, it's later down on the agenda on the second page; it relates to police retirement. It's a bill from Senator Karpisek. So we will pass over LB1082; but we anticipate a 9 p.m. adjournment or thereabout. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Flood. Mr. Clerk.

ASSISTANT CLERK: Mr. President, with respect to LB745, it was introduced by Senator Fischer. (Read title.) The bill was read for the first time on January 4, referred

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to the Revenue Committee, placed on General File with committee amendments. (AM2073, Legislative Journal page 638.) [LB745]

SENATOR GLOOR: Senator Adams, you are recognized to open on LB745. [LB745]

SENATOR ADAMS: Well, thank you, Mr. President. And we have already had a first shot at this bill. And what I'm going to do to expedite things is on behalf of Senator Fischer is to get this thing going. This is a bill, as you well know, that would put a vote in place for cities in order to use occupation tax. But I think it would be of greater value now if we had a summary of the committee amendment and then the additional amendments that are forthcoming. [LB745]

SENATOR GLOOR: Thank you, Senator Adams. You may proceed with an overview of the committee amendment. I'm sorry, Senator Cornett, you are recognized to open on the committee amendment. [LB745]

SENATOR CORNETT: Yes, the committee amendment put into place restrictions in regards, excuse me, just put into place things that Senator Fischer felt made the bill more appropriate. I would be happy to answer questions on that. [LB745]

SENATOR GLOOR: Mr. Clerk. Members, you've heard the opening on the committee amendment to LB745. We now move to debate. Senator Krist, you are recognized. [LB745]

SENATOR KRIST: Thank you, Mr. President. I once again rise simply to talk about the cap that we want to impose on occupational taxes. It is from my perspective a limiting factor to continue to restrict the amount of capability that our cities have to bring taxable revenue into their cities. I understand the principle and I do understand Senator Fischer's comments from the opening and from our brief discussion that we have already had. But there were several points within the bill that I had discussed with Senator Cornett offline. One in particular was an intention, I believe, which would be considered to be a potential loophole. It allowed for...very specifically, the language allowed for an existing occupational tax that was set up with a special fund. That money was not going to go into a general fund. And in the example we used or we highlighted was the Lincoln arena. The Lincoln folks set a good example. They went out for a public debate, a public discussion, a public vote. And they approved the money for their arena. Now that money is taxed at a certain level and it goes into a special fund. Under the provisions of this amendment, which I understand replaces most of the LB745 text, it would be in my estimation, as I read it technically, possible for Lincoln to come back and raise that tax by 5 cents or 10 cents without a vote of the people because it exists right now and use it for any purpose, not just the arena or potentially adding onto the arena. So if the intent of this bill and the underlying...or the amendment and the underlying bill is to control any increase in occupational tax within a city or municipality then I would

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believe that that reference in the bill should be clarified. We appear to be grandfathering, in my estimation, those taxes that are there and not restricting them. Again, I don't agree with it in principle. I think we have restricted the capability for revenue producing from our cities enough at this point. But if that is indeed the case, that particular reference, which I think Senator Cornett is aware of, we should take a look at between General and Select, should it be voted on, because there is no...if it doesn't go into the general fund, if it's going to a fund that is a special fund at this point, there's no restriction that the cities should have to do that. Once again, I would point out that as much as we limit occupational taxes or taxes or the ability of a city or municipality to raise revenue, and we restrict those capabilities, we will indeed reach a point to force a city or municipality to its last resort, which is the most egregious of taxes in the Nebraska taxpayers' guidelines, and that's property tax. And I would hope anyone from Douglas County would stand up at this point and look at that as an option because it does indeed...I believe we're going down that road. And I came up a little quick, so I didn't have the reference in mind; but I will here, when I sit down, pull up the exact reference for a future time on the mike. Thank you, Mr. President. [LB745]

SENATOR GLOOR: Thank you, Senator Krist. The Chair recognizes Senator Avery. [LB745]

SENATOR AVERY: Thank you, Mr. President. When we discussed this the other day, I opposed it; and I did so for a number of reasons, one of which was my objection to what I termed or classified at the time or characterized as government by referendum. At some point, elected officials have to exercise their responsibility as representatives and not as delegates. But they are in fact representatives that exercise in their own good judgment on behalf of the people who sent them there as trustees. We have to be careful I think about how we tinker with the legitimate obligations of elected officials and restrict their ability to act on behalf of the people they represent in order to serve our interests. That's what we're doing with LB745, that's what we did last year with LB165, which I also opposed. I opposed LB165 in part because we had already stripped from the cities and counties their state aid, and then we were going to do, with LB165, additional damage to their ability to raise funds in order to meet their obligations. Since the late 1800s, municipalities in Nebraska have had the constitutional and the statutory authority to impose occupational taxes without a local vote of the people, and it's worked well. And what we did last year with LB165 was to say that this authority could no longer be exercised without a local vote on any occupation tax relating to telecommunication services and equipment. The restriction that we placed last year under LB165 only required a local vote if the municipality wished to exceed the maximum occupation rate of 6.25 percent. What we are suggesting with LB745 is even more restrictive than that. There was a comment made more than once in our debate the other day that occupation taxes are in fact sales taxes. That is technically not true, and in fact it is in a substantive way not true as well. Relatively few occupation taxes are imposed for a specific project. Occupation taxes, as opposed to sales taxes, are

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imposed on a business for the benefits of carrying out a business or carrying on a business, a trade, or a profession. Sales taxes, on the other hand, are imposed on the consumer. It is a transaction tax, and that is a fundamentally different kind of tax than an occupation tax. Occupation taxes are designed to partly offset the administrative or regulatory costs needed to continue business because of the ongoing revenue that is needed to regulate that business. So we need not to be confused by saying a sales tax is an occupation tax, an occupation tax is a sales tax; in fact, it is not the case. The occupation tax is partly used to offset the administrative and regulatory costs needed to administer and regulate the business. The occupation tax is in fact a tax on a business... [LB745 LB165]

SENATOR GLOOR: One minute. [LB745]

SENATOR AVERY: ...that in order to allow it to conduct its business. I would point out also that occupation taxes have been a traditional and necessary source of revenue for cities and villages for well over 120 years. Elected officials, elected officials, not government by referendum, but elected officials have responsibly exercised this authority without a state law requiring a local vote. I am interested in the amendments that have been filed. Some of these I will support, maybe not all of them. And maybe in the end I'll be able to vote for this if it's amended in the proper way; but, right now, I cannot. Thank you, Mr. President. [LB745]

SENATOR GLOOR: Thank you, Senator Avery. Senators in the queue: Wightman, Ken Haar, Cornett, and Krist. Senator Wightman, you are recognized. Senator Ken Haar, you are recognized. [LB745]

SENATOR HAAR: Mr. President, members of the body, I rise in opposition to LB745. And two really important principles for me come into play here. One is local control and the other is representative democracy. I was on the Lincoln City Council for eight years. And city council is about as close to the people as you can get. I got phone calls all the time. I took...knew a lot of the people in the district and so on. And my point is this: As we elect people, we elect people to represent citizens. I think if citizens were given the option on everything that comes up before the city that they could just go to their computer and vote, that they would turn it hands down because that's not how we work here. We don't have a personal democracy, we have a representative democracy. And I just see the more we do this kind of thing, that we're tying the hands of local officials who have been represented...who have been elected by their constituents to represent them and who know the areas. And I was just looking through the list of senators. For example, I've been to York, Nebraska, but I don't know exactly what the needs of that community are. Of course, I've been to Omaha many times. I don't know exactly what the needs of Omaha are. Lincoln I'm pretty familiar with. I've been to Holdrege a number of times. I can't tell you exactly what the needs of that community are. I've been to Imperial, Nebraska. Again, I don't know exactly what the needs of that community are

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and so on. So for me to try and say to those city councils, here's exactly what you can do--and that's what it's finally coming to is it's not only a mandate of what they have to do, but what they can't do--we're tying the hands of local officials to meet the needs of the communities. And none of the folks who serve on those city councils or county boards have gotten there except through election in their local position. So again, I'm voting against LB745. I think we need to give local officials the ability to make local decisions that fit their constituents because they are going to hear from them day in and day out. Thank you very much. [LB745]

SENATOR GLOOR: Thank you, Senator Haar. Senator Cornett, you are recognized. Senator Krist, you're recognized. Senator Cornett, you are recognized. [LB745]

SENATOR CORNETT: Thank you, Mr. President and members of the body. In response to some of Senator Krist's questions, we have had a discussion over the past week on that. If you look at the language of the bill, when it says "the general fund," if a...what...why the Revenue Committee put the language in place that we did was Senator Fischer and the Revenue Committee recognized the fact that a municipality, and we'll use Lincoln as an example, has enacted an occupation tax for the Lincoln arena. If they find they cannot make a bond payment or a payment for that project that they have specifically designated with an occupation tax, we wanted to make sure they had the authority to raise that without a vote of the people, since it had already been authorized and it is a budgeting issue. If the money is going into the general fund, though, that would be an issue that you'd have to go to a vote of the people to raise an occupation tax. Senator Krist has brought up some very valuable points on that, that there is no restrictions in the language that we have drafted for bad actors to raise an occupation tax for a specific project and then transfer the funds into the general fund. I believe that is something that Senator Krist will be addressing later. But the Revenue Committee put that in place to give the municipalities the flexibility for already existing projects. Thank you. [LB745]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Cornett. Senator Krist, you are recognized. [LB745]

SENATOR KRIST: Just to follow up with Senator Cornett. We've talked about it, so between General and Select my intention is to clarify the language and make sure that the money cannot be transferred out of the specific purpose that is was originally voted for by the taxpayers. And I appreciate your comments. I would yield the rest of my time to Senator Fischer, if she would like it. [LB745]

SENATOR COASH: Senator Fischer, 4 minutes 30 seconds. [LB745]

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SENATOR FISCHER: Thank you, Senator Krist. And thank you, Mr. President and members. I just wanted to clarify that Senator Adams has an amendment and it is AM2639 to the bill. This is an amendment that we have been working on over the four-day weekend, that we all enjoyed, with the League of Municipalities. We've reached an agreement with the League on this amendment and they are supportive of the amendment and then of the...which then becomes the bill. So I think if you pull it up on your gadgets to see Senator Adams' amendment, hopefully we can move forward and get to that amendment. And I thank the members of the League of Municipalities for working with us on this bill. I think it's a good piece of legislation. I know my office has received a lot of contact from people all across the state who are supportive of the legislation. I will also tell you that, you know, we're trying to work with the cities on this. The committee amendment addressed some of those concerns in allowing the cities to make those budgetary decisions when they have a project that's already in existence using occupation taxes. And if the revenue is not coming in, say, to pay for that water park, that a city can work and make those decisions on how to adjust the rate to meet their obligations. So I believe we have made a number of changes to this bill. Again, we worked this weekend in making changes that the League is supporting. So I would urge you to allow us to move forward to reach Senator Adams' amendment and then we can work on the bill. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Fischer. Those wishing to speak: Senators Lathrop, Hadley, and Council. Senator Lathrop, you're recognized. [LB745]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good evening. I have a fundamental problem with LB745, and we started to talk about it the other night and then we abruptly stopped talking about LB745, and I think that was either because we got to the end of the night or somebody thought we had some kind of an agreement or the possibility of an agreement. And let me just tell you where I'm at. The idea that we are going to legislate how the cities run their railroad is problematic. The people that live in these cities and villages vote for their city councilperson and their mayor. And they have an ability to throw them out of the office to which they've been elected if they don't like what they're doing. And for us to require a vote of the people and lower the threshold, but require a vote of the people for them to perform a function of their government, a function of administering the government at the city and at the level of the city and villages, I think is the wrong direction to go in. Yesterday, I think it was, or it might have been this morning because I'm losing track now that you've got me down here till late at night, we talked about LB950. That was yesterday. I think Senator Carlson and I may have had some conversation about LB950. We allowed the NRDs to impose an occupation tax to help pay for some of the Republican River water issues. We didn't require a vote of the people, and probably because, probably because they may not have approved it. (Laugh) But at some point the people that are elected to govern have to make difficult choices and then they have to answer the voters. And I don't think the situation or the circumstance is any different. And if we're going to amend

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LB745 and require a vote of the people on occupation taxes, we probably ought to do it to the NRDs, too, and require that the NRDs, before they can impose an occupation tax...or maybe we should make them put the continuation of an occupation tax to a vote of the people that are affected. It takes us to a place where we get away from the idea that the cities elect their city council and their mayor and they're in charge of running the place. And now we're being as little paternalistic by saying, no, no, no, that's not how you're going to do it; we don't trust you, city council; we don't trust you, Mr. Mayor or Ms. Mayor; we're going to have you submit this to a vote of the people. I appreciate...and I've looked at the amendment Senator Adams has offered, and I get what that does. It sets a threshold. But I'll make this observation: a city of the metropolitan class--Omaha, which is the only one--a million dollar limit; a city of the first class, half of that. Now a city of the first class is not half the size of the city of a metropolitan class. So if we used a city of the first class as sort of the standard, and we did this proportionately, the metropolitan class probably ought to be significantly higher than a million dollars. And this goes back to a point I tried to make the other night, which is, you know what, as a Legislature we probably haven't been good partners with our largest city, in my judgment. [LB745 LB950]

SENATOR COASH: One minute. [LB745]

SENATOR LATHROP: And with these kind of bills...pardon me? [LB745]

SENATOR COASH: One minute. [LB745]

SENATOR LATHROP: These kind of bills are problematic for the city of Omaha right now. We've taken away their city aid and we are...and maybe we'll take up this half-cent sales tax tomorrow; I don't know if that's going anywhere or not. But, you know, I think as a Legislature we should be working in cooperation with the city of Omaha--or the city of the metropolitan class--and not trying to frustrate their efforts to run their city. Let those people be accountable to their voters; let them run the city the way they need to, to raise the revenue. And if they're wasting money or raising revenue in ways that the people don't like, they'll be thrown out of office. And I think that's our guarantee or our assurance that they'll act responsibly. Thank you. [LB745]

SENATOR COASH: Thank you, Senator Lathrop. Senator Hadley, you're recognized. [LB745]

SENATOR HADLEY: Mr. President, members of the body, when I first came down here I had kind of philosophical questions about tax levies and limits and such as that. Would Senator Adams yield to a question? [LB745]

SENATOR COASH: Senator Adams, will you yield? [LB745]

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SENATOR ADAMS: Yes, I will. [LB745]

SENATOR HADLEY: Senator Adams, if I'm a school district, York, can I just kind of raise my levy to whatever I feel is necessary to fund the York schools? [LB745]

SENATOR ADAMS: You can within the lid that the state imposes on you by statute. [LB745]

SENATOR HADLEY: So there is an upper limit that the state does impose, is that correct? [LB745]

SENATOR ADAMS: That's correct. [LB745]

SENATOR HADLEY: And if we want to have an override on that, does that require a vote of the people? [LB745]

SENATOR ADAMS: Yes, it does. [LB745]

SENATOR HADLEY: It has to go to a vote of the people. Now in your role as a mayor did you have the ability to raise sales taxes to whatever level that you would want to? [LB745]

SENATOR ADAMS: No. The state imposed a limit, and we took it to the voters and the voters said 1.5. That was the state maximum. [LB745]

SENATOR HADLEY: That's it. Okay. And on the city, was there spending limits on the city as well as levy limits? [LB745]

SENATOR ADAMS: There was levy limits and spending lids, that's correct. [LB745]

SENATOR HADLEY: And the county that York is in, do you think the county officials had the same concerns with levy limits and spending limits also? [LB745]

SENATOR ADAMS: Be assured, both levy and spending lids. [LB745]

SENATOR HADLEY: Okay. I'm just trying to I guess make the point that people who say that we certainly need to have our elected officials make those decisions, I think we've got a lot of things that right now, for good reasons, that we put limits out there on cities, counties, and school districts. And I would recommend that if you want to find out the background, I think at least some of them came from Jerry Warner. And if you want to stop down and talk to Bill Lock about his philosophy of having spending limits and levy lid limits and such as that, and reasons for votes and such as that, you might sit down and talk to him about the philosophy behind it. So I guess my only point is, and I'm

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going to sit back and listen, but this is not a new concept of putting something up to the vote of the people or limiting local government's ability to tax their populace. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Hadley. Senator Council, you're recognized. [LB745]

SENATOR COUNCIL: Yes, thank you, Mr. President. Good evening, colleagues. I just think that the record needs to reflect that prior to any discussion of Senator Adams' proposed amendment to LB745 there's an amendment that I filed last week when this matter was first being debated that procedurally will have to be heard before Senator Adams' amendment. And I trust that the body would give favorable consideration to that. I don't disagree with what Senator Hadley just said about this body having exercised its authority in the past to set spending limits on various political subdivisions. And I may add to it: Oftentimes to the harm of those political subdivisions. I vividly recall being a member of a local school board when this body set a 0 percent spending lid, and we had to struggle to meet that lid and provide quality educational opportunities to the young people that we were tasked with providing services to. I, too, have a fundamental disagreement with mandating that local municipalities who have elected governing boards must submit basically their budgeting and finance decisions to a vote of the people. I can only speak for the city of Omaha because I'm familiar with the annual budgeting process and the impact that a requirement that any time there was a perceived need to raise additional funds or increase an occupation tax, that there would have to be a vote of the people, because that doesn't take into account the voting cycles and the cost of holding elections. I know last week we were discussing this. Someone made the point that, well, you know cities have city elections. Yes, they have city elections every four years and we have federal elections every two years, and they're not always on the same cycle; and there are years when there are no elections, and special elections would have to be held. Or there are times where the budget and the election, the budget preparation time and the regularly scheduled election primary and generals don't coincide, and special elections are required. Believe me, the voters are looking at what their elected officials are doing in terms of taxing and spending. And when those decisions don't meet with the approval of the electorate, they take action at the polls and remove those people who they don't believe are acting responsibly. Senator Adams has a bill that sets a level, a threshold for action by political subdivisions before the requirement for voter approval of a new occupation tax or increase in occupation tax goes into effect. Fundamentally, I have no objection to that concept. What I have objection to is the threshold that has been set for a city of the metropolitan class... [LB745]

SENATOR COASH: One minute. [LB745]

SENATOR COUNCIL: ...in the amendment that you'll hear from Senator Adams. And I

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must also add that I know that there was a lot of discussion that occurred last week after this bill was being debated, and at that time my amendment was on file; and at that time there was no effort to include me or the matters that were set forth in my amendment in those discussions. My amendment says and Senator Adams' says a \$1 million threshold before a municipality of the metropolitan class has to go to a vote of the people. The election alone would cost about a third of that amount. And so when you see my amendment, it will provide \$1 million or... [LB745]

SENATOR COASH: Time, Senator. [LB745]

SENATOR COUNCIL: Thank you. [LB745]

SENATOR COASH: Thank you, Senator Council. Speaker Flood for an announcement. [LB745]

SPEAKER FLOOD: Thank you, Mr. President. Good evening, members. There's more angst on this bill than I had anticipated, which is completely within a member's rights, and there's concerns about LB745. For that reason, I just want to put you on notice, and these things do happen at this point in the session, that 9:00 is not going to stay. My thought is we work to 9:00 if we get through this or some other bills. If this is still going, I would rather stay in tonight and work through this. If there's an effort anybody wants to make to try and find some common ground, I'm all for that. But I see us working past 9:00. And remember, the last minute that we'll be here is 11:59. And this is part of being in the Legislature at this point in the session with these types of issues. So let's settle in and find out where the issues are and see where we go. But we're going to be here for a while. Thank you.

SENATOR COASH: Thank you, Speaker Flood. Those still wishing to speak: Senators Wallman, Burke Harr, and Council. Senator Wallman, you're recognized. [LB745]

SENATOR WALLMAN: Good evening, fellow Nebraskans, fellow legislators. Here we are: taxes. Trying to tell our local cities and municipalities what they can do. Is it a good idea? Our school districts get tax money out of here and they also have lid limits. But we also require them to have curriculum, teachers, classrooms, facilities, and school buses, transportation, all these things. So I think that's a little bit different here. The cities have infrastructure, sewers, water, all these issues. And if I could ask Senator Lambert a question. [LB745]

SENATOR COASH: Senator Lambert, will you yield? [LB745]

SENATOR LAMBERT: Yes, I will. [LB745]

SENATOR WALLMAN: Thank you, Senator. As I know, you used to be mayor of a

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village or a town. Is there unexpected...you have to have set up, your city council and the mayor, taxation issues, what you have to make sure things get paid off. [LB745]

SENATOR LAMBERT: Sure, you have those responsibilities. And then you've got the things that come up, unforeseen things that you have to be prepared for also. [LB745]

SENATOR WALLMAN: Thank you, Senator. So, with Senator Council's amendment, I think this bill was friendlier. But it always bothers me that we try to run everything out of here. You know, the...and that's just the way it is. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Wallman. Senator Burke Harr, you're recognized. [LB745]

SENATOR HARR: Thank you, Mr. President, ladies and gentlemen, citizens of Nebraska. Well, as Senator Wallman said, here we go again. We're talking about taxes. And I think we're having a good conversation here about what we want our cities to do...well, excuse me, how we want them to tax. The issue is, what do we want our cities to do? Before we can address the issue of, is this tax proper or not, we have to decide what we expect our cities to be and do. Schools are easy. Senator Hadley brought up a good issue: they have limits. But there's also a limit on what they can do and what's expected of them. The city of Omaha is facing a billion-dollar sewer separation issue, no one denies that. It's a problem. The city of Omaha lost aid. We originally in the Legislature said, we will help you, cities and counties, because we've given you additional duties. Well, we'll help you until we won't is what it ended up being. We weren't very good on our word. We were in a tough situation and we pushed expenses down. And that's what we keep doing. To make our budget better we keep pushing expenses down on counties and cities, and they become the payors of last resort. And then we say...we judge them and say, boy, you aren't running your books very well. We're going to do even more. We're going to tell you how to run yourselves. Well, if we're going to tell them how to run themselves, why don't we just take them over? It might be easier and more efficient, instead of playing it out in the papers and passing legislation after the horse is already out of the barn. Occupation taxes are not a sales tax. They are a cost. It is a way to collect the cost of whatever that industry is within that municipality. Now you're going to hear compromise language later tonight. And while it's good for most cities, it's bad for one. And it's a real issue for one. And you might say, well, they need to get their house in order. Maybe so. But they need to get their house in order; we can't put their house in order. If we all of a sudden change what they can do, you're going to have a bonding issue. You're going to have a problem with Moody's coming in and saying, you know what, you guys don't tax properly; we don't like what you're doing; we're going to lower your bond rating. And then what happens? It's going to cost more to borrow money. Then what happens? Services fall. And we're also paying more for the same services than we were before, because we're paying more in interest. That's not smart. The fun...the easy thing is to sit there and try to dictate how

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other people should live. I get that. The prudent thing is to let those people govern themselves. And I believe those closest to the people are best able to govern. Your city council and your mayors, they're a lot closer to the people and responsible for running the city budget than we are from Sarpy County, from Arthur County, from any...you name the counties around Nebraska. We are dictating how Omaha is run. And that's probably not the best place to be doing it from: here in Lincoln. So while it seems like a fun and easy thing to do to limit occupation tax, there are consequences to the citizens of Omaha. And so I would ask as we go forward to really think about what the effect on bonds are, what the effects on services are, and what do we want... [LB745]

SENATOR COASH: One minute. [LB745]

SENATOR HARR: ...cities to do. Thank you. Do we want cities to collect to take care of bridges? Do we want cities to take care of roads, collect garbage? Because that's what we're going down. We need to figure that out and then we can figure out how they can best collect taxes. Thank you very much. [LB745]

SENATOR COASH: Thank you, Senator Harr. Senator Council, you are recognized. Senator Council waives. Seeing no other lights on...Senator Carlson, you're recognized. [LB745]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. In listening to this debate so far many of us in here would say that we are for a more limited federal government, we are for more limited federal spending, we're for smaller government. And we then have listened to some of the things that are policies that are in force in the state of Nebraska, one of those is school spending lids. And what I'm going to say about this is no reflection on Senator Adams or anybody on the Education Committee. But we have 95 nonequalized districts, school districts in the state and we're heading for 115 to 120. That's approaching half of all the school districts in the state. These nonequalized districts pay for 100 percent of their education out of property tax. But those same districts also pay sales and income taxes into the state. None of those taxes go back to the local schools because we've got spending lids. And even though this is America, those local districts that are nonequalized can't decide that they want to spend more money on education because somehow that's not fair. We had a proposal to eliminate the county inheritance tax from the state level. I think elimination of the county inheritance taxes should be decisions made by the counties and not the state. And I'm happy that that portion didn't end up as a part of our budget. We have already put into place that the NRDs can levy an occupation tax and they can set the rate. I think that's good. They are elected by the people. Cities have an occupation tax and I think they should be able to set their rate. Is there a risk of leaving control of that rate with the cities? Yes, there is. But in a future session we can take action if things get out of control and out of line. I don't like the position that cities can't handle the responsibility and therefore we must step in and control. I think that's a very, very

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serious matter. We need to think carefully about limiting what our cities can do that are governed by elected boards, elected councils. And so I'm continuing to listen to this debate, but very skeptical about some things that we think that we should do in order to put controls where they probably don't belong. Thank you. [LB745]

SENATOR COASH: Thank you, Senator Carlson. Senator Lambert, you are recognized. [LB745]

SENATOR LAMBERT: Colleagues, I'm hearing a lot tonight and I'm going to echo some of those thoughts. And I understand Senator Harr talking about Omaha, the CSO problem, some of the expenses they've got. I want to make anyone here that isn't aware of it, there's two cities in Nebraska that had to work with CSO problems. There's a town of under 7,000 that had over a \$5 million unfunded mandate that they've had to work through. So it's a problem. We have more and more things cut from us, more and more expected of cities; and we're going to put this on cities, that their elected officials can't rule properly, that we need to put decisions down for them. I don't believe that's right. Omaha's representatives have done a good job here tonight representing their city. But I still think citizens of each community in the state of Nebraska represent a...they elect a village board, a city council, a mayor, whatever, to make decisions for their cities. We don't have to go to a vote of the people all the time on things. It costs money, it takes time. And some of these things the elected officials are elected to take care of, and I think it needs to be done that way. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Lambert. Senator Gloor, you're recognized. [LB745]

SENATOR GLOOR: Thank you, Mr. President. Good evening, members. Senator Carlson brings up an interesting point that's worth reiterating, and that is, we like our local entities, we like our local elected entities. I remember reading not that long ago that Nebraska has more elected bodies of government than most states in the Union. We like our local control. And we're having a discussion here that would limit giving them one of the more necessary tools they need to have, and that is the ability to underwrite the functions they're supposed to carry out. That gives me pause. I also have to bring up a point of history that's not that far distant for this body, and that is the movement of the State Fair. The movement of the State Fair has proven to be successful for the state of Nebraska, for the community of Grand Island. It's been a feather in the cap for the legislative body that made a difficult decision. But one of the key components to that was Grand Island coming up with the dollars necessary to help with their share of the movement of the State Fair. Timing on opening the new State Fair didn't allow for Grand Island to wait for the next election cycle. And the costs associated with a special election would have been an added burden. As it was, Grand Island was appropriately able to undertake its financial responsibilities, did so, did so in a manner that I think was a judicious use of both its authority as well as the money that

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it allocated. And we all are the beneficiaries of that decision. Tying the hands of those entities is a concern of mine. And so I'll be interested as we continue this debate to see what we end up with, if we're able to end up with anything as a compromise that doesn't overly hamstring those elected entities that we love so dearly. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Gloor. Seeing no other lights on, Senator Cornett, you're recognized to close on the committee amendment. [LB745]

SENATOR CORNETT: Thank you, Mr. President, members of the body. As you can see, we are in some rather involved conversations under the balcony. What we would like to do, and this is unanimous with the people that have been discussing it, and obviously this is not everyone because not everyone has been included under the balcony, but what we would like to do, and both sides are being represented in this issue, is pass the committee amendment. Senator Council has stated that she is willing to withdraw her amendment, following this, as long as we are still in the negotiation process on Senator Adams' amendment, which will be coming up after that. In that amendment is where we are looking at finding compromise. But the first step we need to do is pass the committee amendment. And then we will move on to discussion to hear what the body's concerns are about Senator Adams' amendment. Senator Council is definitely withholding the right to refile her amendment, but she is an active part of the discussions. With that, I urge the body to support the Revenue Committee amendment and listen carefully to the debate on the following amendments. [LB745]

SENATOR COASH: Thank you, Senator Cornett. Members, you've heard the closing to the Revenue Committee AM2073. The question before the body is, shall AM2073 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB745]

CLERK: 27 ayes, 3 nays, Mr. President, on the adoption of committee amendments. [LB745]

SENATOR COASH: The committee amendment is adopted. Mr. Clerk, next item. [LB745]

CLERK: Mr. President, Senator Council, AM2566. [LB745]

SENATOR COASH: Senator Council, you are recognized to open on AM2566. [LB745]

SENATOR COUNCIL: Thank you, Mr. President. As you may have observed, there are some negotiations occurring right now to try to arrive at an agreed-upon methodology for determining when an occupation tax establishment or increase has to go to a vote of the people. In an effort to try to move that negotiation forward and conclude this matter,

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I am going to withdraw AM2566. And I still have AM2560 pending; correct, Mr. President? [LB745]

SENATOR COASH: AM2660. [LB745]

SENATOR COUNCIL: AM2660. [LB745]

SENATOR COASH: Correct. [LB745]

SENATOR COUNCIL: Thank you. [LB745]

SENATOR COASH: Without objections, so withdrawn. Mr. Clerk, you have another amendment? [LB745]

CLERK: Senator Adams, I have AM2575 with a note you want to withdraw. [LB745]

SENATOR ADAMS: That's correct. [LB745]

SENATOR COASH: So withdrawn. Next amendment. [LB745]

CLERK: Senator Adams, AM2639. (Legislative Journal page 1166.) [LB745]

SENATOR COASH: Senator Adams, you're recognized to open on AM2639. [LB745]

SENATOR ADAMS: Thank you, Mr. President, members. This is the amendment that Senator Cornett and Senator Council have referred to. The essence of this amendment is if we're going to ask cities to vote on occupation tax, then this amendment establishes thresholds for that vote, meaning then, that if the annual revenue that's going to be generated by a new occupation tax is below these thresholds, cities don't need to go to a vote; they don't need to go to a vote. But in the amendment, if the anticipated annual revenues from a new occupation tax are going to exceed the threshold, then it has to go to a vote of the people. I know it's in front of you, but for the record let me state the amounts. For cities of the metropolitan class, the threshold would be new revenues exceeding \$1 million; cities of the primary class--Lincoln--the revenues would be...they would have to go to a vote if they exceed \$750,000; cities of the first class would be \$500,000; second-class cities and villages, \$250,000 would be the number. This amendment also retains some of the committee amendment language which in effect also says that if a sales tax...or, excuse me, if an occupation tax is being used for a special project and the amount needs to be bumped...the amount of the occupation tax needs to be bumped up to make P&I payments, for instance, on that special project, that the city would not have to go to a new vote on it because the money is being committed to a special project: water park, as an example. Or very simply, from a technical standpoint, if a city wants to terminate an occupation tax early, they wouldn't

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need to go to a vote of the people. I think the people would be satisfied to have it come to an end. That in essence is the amendment. It establishes some thresholds and I think begins to move some of the discussions that we see happening. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Adams. Members, you've heard the opening to AM2639. Members wishing to speak: Senators Burke Harr, Hadley, and Mello. Senator Burke Harr, you're recognized. [LB745]

SENATOR HARR: Thank you, Mr. President, members of the Legislature. Is Senator Adams available? [LB745]

SENATOR COASH: Senator Adams, will you yield? [LB745]

SENATOR ADAMS: Yes, I will. [LB745]

SENATOR HARR: Thank you, Senator Adams. And I'm sorry to put you on the spot. I didn't get a chance to talk to you beforehand, but I think you can handle these questions. I think they're fairly simple. The numbers in your amendment, how did you come about with those numbers? [LB745]

SENATOR ADAMS: Went to the League of Municipalities and said, give me an idea for these thresholds. [LB745]

SENATOR HARR: And what did they tell you? [LB745]

SENATOR ADAMS: What you see in front of you. [LB745]

SENATOR HARR: Did they give a reason or a logic for those numbers? [LB745]

SENATOR ADAMS: Frankly, I should have an answer for you. I'm going to speculate, at least, that to some degree they've done some checking with cities. I know I checked with the cities in my district to see how those would work. I don't have any primary-class or metropolitan-class cities in my district though. [LB745]

SENATOR HARR: Okay. And I appreciate that. Again, sorry to put you on the spot. And if you look at the numbers per person, per citizen, of each one of those, ladies and gentlemen, you'll see that it's a lot more difficult for the larger cities to use this occupation tax than it is the smaller towns and principalities. And again, Omaha faces issues that other towns and cities across the state don't. It's not an excuse; it's just an explanation. And now we're turning around and limiting them to say Omaha can do less. And I don't want to make this an Omaha versus the world issue. But there is an equity and an equality issue. I think we as Nebraskans need to look out for the best interests of

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the whole state and not just your legislative district. I get that you represent your legislative district, but you also represent the state of Nebraska. If we handicap Omaha, which is a large portion of our state's economy, if we limit that, stifle the ability of that economy to grow, we stifle the whole state; and then it does have an effect on our taxes that we collect as a state. If you look, when the original restaurant tax that was passed in Omaha, it was passed at a time when we had a pension problem in Omaha, and we had a bond rating issue in Omaha. We've addressed half of the pension issue. The unions and the mayor came up with an agreement to address the other half. Unfortunately, the city council didn't vote for it; and so negotiations have restarted. Now whether that final outcome is better or worse than the original deal is irrelevant. What is important to realize is if Omaha didn't have the ability to use that occupation tax, its bond rating would have gone down. Its bond rating goes down, the cost to borrow goes down, and it's a spiral. The cost to borrow goes down, the more expensive it is, the more they have to raise taxes. The more you have to raise taxes, the bigger the problem you have. So...and we don't give them a great deal...we limit the ability of cities to tax. And the only option left is property taxes. And I think we all agree property taxes are high, very high in Nebraska. So this is a release valve; it's worked well. I know some don't like that their industry was used to hold up the finances of the city of Omaha, and that concern is very logical. But it's also logical that we need, the cities need, a release valve: an ability to raise taxes in a case of emergency--and that's what this was. So I know we're still working on an amendment... [LB745]

SENATOR COASH: One minute. [LB745]

SENATOR HARR: Thank you, Mr. President. I know we're still working on an amendment. I think it's important that we continue to work on this. I'm glad that we decided to work later than 9:00 so that we can have the time to hash out a deal and that I hope is beneficial for not just Omaha but for the whole state of Nebraska. Thank you very much. [LB745]

SENATOR COASH: Thank you, Senator Harr. Senator Hadley, you're recognized. [LB745]

SENATOR HADLEY: Mr. President, members of the body. Would Senator Adams yield to a question? [LB745]

SENATOR COASH: Senator Adams, will you yield? [LB745]

SENATOR ADAMS: Yes. [LB745]

SENATOR HADLEY: Senator Adams, I apologize for not talking to you first. But just a quick question. On these limits, they talk about that a tax above that amount would require a vote of the people. How would these...who would determine what the

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limit...what the tax is going to raise? Is that a city finance director, is that a council? How...I didn't see any mechanism in here for determining what the tax would raise. Is that something we would need? [LB745]

SENATOR ADAMS: You asked me a question, Senator Hadley, that I don't have an immediate answer to, other than that I would delve back into my prior experience. And you may agree that, just like with a sales tax or a property tax, you would expect that your city finance director or city clerk could project those numbers and make some of that determination. [LB745]

SENATOR HADLEY: I would guess that's the way it should be. And I don't know, maybe between...if we do reach some kind of an agreement, maybe that's something we could look at between General and Select, at least to put some kind of mechanism in there again so that somebody just doesn't say, well, I think it's going to raise \$200,000, and it raises \$2 million the first year, and went to a vote of the people. The second thing is that I can tell you a city of the first class experience, and that's Kearney, because about six months ago, oh, about eight or nine months ago, the city council in Kearney decided to put an occupation tax to a vote of the people. And it was for about a \$1.3 million food and beverage occupation tax--2 percent. And it was roundly defeated by the people, 65 percent to 35 percent. So, you know, we talked about limits. I can tell you, that at least from the Kearney standpoint, that you get much above \$1 million for a city of the first class, I think that most of the people would like to see that out there someplace as a vote. Lastly, I would say, looking at these numbers, I do certainly believe that the numbers for the primary class and metropolitan class I do believe are low in this amendment, and I do hope that the people will get together and be able to come up with something that is livable. Because I do think you need the flexibility, the cities need, for emergencies. What you don't want to have to do is to have to have an emergency election for a relatively small amount that you need right away. On the other hand, you don't want to have it so large that there is never an election, you know. And I think that's what we're trying to do at this point in time is to find that limit of where we feel it is important for the city or for the citizens to have that viewpoint. And lastly, I would go back, that we do have a perspective that we have put limits, this body has, rightly or wrongly, has put limits on a lot of things that we can do to the taxpayers in the state of Nebraska. And you can argue whether that's right or wrong, but I think Senator Carlson was exactly right: When you talk about the unequalized school districts out there, that we're saying we don't care what your resources are, this is what you can spend. You know, you can argue that from a very philosophical standpoint. So I hope that we can reach a compromise that protects the city councils' ability to act quickly and to raise amounts of money, yet on the other hand not abuse that privilege to the extent that it causes problems. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Hadley. Senator Mello, you're recognized. [LB745]

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SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Would Senator Adams yield to a few questions? [LB745]

SENATOR COASH: Senator Adams, will you yield? [LB745]

SENATOR ADAMS: Certainly. [LB745]

SENATOR MELLO: Senator Adams, in looking at your amendment there's a lot of good components in there I think that cuts to some of the issues that I think senators have raised in the sense of transparency behind occupation taxes, ensuring that occupation taxes are not utilized, so to speak, for almost an unwritten sales tax. But the one question I have...and just...and if you can simply say that if you don't have the answer, that's all right; I'll go find it--is how did we get to ultimately the proportionality or the threshold limits under your amendment from where we have a city of 5,000 residents at \$500,000 to a city of over 300,000 residents at a level of \$1 million? [LB745]

SENATOR ADAMS: Senator, as--and maybe you were out of the room--as I indicated earlier to a prior question that was somewhat similar to this, I simply asked the League of Municipalities to set some numbers, and these were the ones that they brought me. It's really that simple and, frankly, to some degree, that subjective. [LB745]

SENATOR MELLO: Okay. Thank you, Senator Adams, for that clarification. And, colleagues, I think as no doubt you heard Senator Cornett, Senator Council, and Senator Adams discuss, there's obviously a group of senators trying to find I think something palatable for I think the body in a sense that if we were to move forward with AM2639 as is, there's obviously I think a bit of concern from those of us who represent a city of the metropolitan class or a city of a primary class of the justification and the rationale behind how a city of 5,000 residents is essentially at half the dollar limit that a city of over 300,000 residents are at \$1 million. By no means, I think we're trying to find a number that ultimately at the end of the day can work for both a city the size of Beatrice as well as the size for the city of Omaha, the city of Waterloo, to the size of the city of Scottsbluff. You could throw out our friends in Elk Creek or Pawnee City. Either way, we're trying to find a way to make sure that there is some rhyme and reason, a rationale behind these dollar threshold limits for not just the city of the metropolitan class but also cities of the primary class, cities of the first class, second class, and villages. Because I think what we're looking for is a fairness factor. It's one thing to...I think we can find some agreement in regard to the transparency, wanting to ensure that ultimately that if we're going to see such a new sizable tax be instituted through an occupation tax, that voters have some say in that. But the underlying concern more than anything else is, what is that threshold? Because the example I use within the city of Omaha, the limit right now would forbid, obviously, something along the lines of the city's existing tax on rental vehicles, which brings in, give or take, roughly \$3.5 million.

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That's a concern in the sense of rental vehicles doing significant damage, so to speak, to the city's infrastructure and not having a way essentially to pay that infrastructure back through the use of the occupation tax. So that's just one example of trying to identify essentially something that's a realistic number, something that is reasonable in the sense of not an overarching or an outlandishly new high tax that voters wouldn't have a say in, because I think we can agree that's something that a variety of senators have expressed concern about, but trying to find that appropriate threshold that works, like I said, for cities of 5,000 residents to cities of 300,000 residents. That compromise we hope somewhere along the line we can find some time, hopefully, before the midnight hour. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Mello. Senator Krist, you're recognized. [LB745]

SENATOR KRIST: Thank you, Mr. President. And good evening, Nebraska and colleagues. I took a phone call in my office relayed to me from outstate Nebraska. And the gentleman: Thank you for participating in your government, in your Nebraska government. I appreciate that, and I take those kind of calls seriously. His comment was that I had made a comment on the mike earlier and said that we're forcing people into using property tax to fund programs. And he said it was his pet peeve. I can appreciate his opinion. I do agree that everyone needs to tighten the belts, essentially cutting services if you have to, and not continue to put the tax on the back of the taxpayers. However, however, I would say this: Senator Hadley is absolutely right, the proportion of tax or percentage of tax that we are recommending in this amendment is ludicrous. Let me use that word again: ludicrous. Omaha, if it's capped at \$1 million, they would have never been able to respond to the NCAA when they walked in and started talking about expanding and getting a contract for multiyear to have the College World Series come back. That's revenue, that's tourism. That's why the mayor is elected in the city of Omaha: to make those kind of decisions. And the occupational tax in different areas are extremely appropriate, and the tools that we continue to give them in order to make those decisions have to be appropriate. Senator Mello just talked about the damage that's done by taxis and by transient into Omaha. If you're anywhere in Nebraska and you have toured Nebraska at all, I would assume that you have come to the city. We have thousands of people that land at Eppley every day, they rent a car. If it weren't for the occupational tax we wouldn't be able to pay for the roads because Senator Fischer has said very clearly the infrastructure within the airport area is not necessarily something the Department of Roads is going to maintain. Who's left to do that? It's the city of the municipal class. So I'm a bit fired up in the fact that we would even allow the input that would say it was acceptable to put a cap on the city of Omaha, a city of the metropolitan class, at \$1 million. Ludicrous. I hope that they come back with some numbers so we can discuss some realistic numbers, and enable the cities, the elected officials in those cities, to make those smart decisions. And Senator Harr made a comment not too long ago, just a few minutes ago, that said Omaha has unique

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problems. So does every city, every township, every village around this state--except Omaha problems cost more money. In proportion they cost more money. So I'm speaking for Douglas County, I'm speaking for the city of Omaha, and I'm saying we have continued to cut their opportunity to raise revenue, and we are not asking them to make decisions about services or cut their belts. I am asking that we are serious about our consideration. If we are going to limit their ability to raise revenue, we need to be serious about giving them the proper tools to do such. Thank you, Mr. President.
[LB745]

SENATOR COASH: Thank you, Senator Krist. Senator Langemeier, you are recognized. [LB745]

SENATOR LANGEMEIER: Mr. President, members of the body, you know I've had an opportunity to think about LB745 for a while today and through my years of legislative history here. And I think I rise in opposition to LB745 for a number of reasons. First of all, with Senator Adams' amendment, is it high enough for my communities? Probably. But the reality is, is we've elected officials to do jobs. And on the state level our job is to give those elected officials tools, and I think we give them tools. An occupation tax happens to be one of those tools. Now can I say I'm thrilled with the way they've used the occupation tax and the way they've spent money? No, not at all. And Omaha seems to be the target here, the way they spend money. Do they need new leadership? In my mind, yes, they need new leadership. Do they need new leadership to spend money in a little different way? Yes, they do. And people move from Omaha, they move to Papillion, they move to Blair because they don't like these kind of fees and occupation tax. And that's your right. And we talked a lot about LB239 and people voting and how that's a constitutional right and how important that is. I think people need to understand that you just can't sit around and bitch about the occupation tax in your community and not go to the polls and vote. This is your opportunity to go to the polls, tell your city council members what you think, your mayor what he should be doing. And these communities then will have to make decisions. And so at this point I'm rising in opposition to LB745, because I think we have elected officials, we need to let them do their jobs. And if it's a job they're not doing, you don't cap it; you just take it away. You take the tool out of the toolbox if you really don't like this. But the reality is it's a tool, it's the way they finance their operations. Every community has expenditures, everybody wants a park. I shouldn't say that. A lot of people want parks, a lot of people want pools, and a lot of people want other things in a community. I happen to represent a county that in one year they went to a vote, they voted to build a nice pool, they voted to build a new jail, and they voted to build a new hospital. So I kind of told...and that all went on property tax. And so when I got calls from those individuals, I said, did you go vote? Well, this individual called and says, well, I didn't get a chance to go vote. It's tough to complain about your property tax when you don't go vote and you've just voted in three big expensive items. And so I remind people you have an opportunity to deal with this on the local level, and that's at the ballot box. Go vote in a new city council, go vote in a

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new mayor if you need to, and let them do their job. So at this point, pending whatever compromise comes out, I'm not supporting LB745 or any of the amendments. Thank you, Mr. President. [LB745 LB239]

SENATOR COASH: Thank you, Senator Langemeier. Senator Adams, you are recognized. [LB745]

SENATOR ADAMS: Thank you, Mr. President. While folks are talking, let me again reiterate what the amendment is going to do. The amendment becomes the bill. It establishes thresholds. And as the question has been asked of me several times: Are the thresholds the right thresholds? That's up to you. I have nothing scientific that would say this is the right number. The other thing that it does is to say that if a city already has an occupation tax that is going to a special project, and they need to adjust that rate, they can do so without a vote. In addition to that, if they want to terminate an existing occupation tax, they can do so without a vote. Creating these thresholds is the beginning of moving back towards recognizing the local autonomy that we want cities to have and at the same time trying to strike that balance that Senator Fischer has in her bill of some transparency and some citizen involvement on these issues. That's the essence of the amendment, Mr. President, and I will conclude with that. [LB745]

SENATOR COASH: Thank you, Senator Adams. Senator Nelson, you're recognized. [LB745]

SENATOR NELSON: Thank you, Mr. President, members of the body. I think it has been said before we're trying to come up with an acceptable agreement. And if I may talk with Senator Adams for just a moment. [LB745]

SENATOR COASH: Senator Adams, will you yield? [LB745]

SENATOR ADAMS: Yes, I will. [LB745]

SENATOR NELSON: Senator, you've been involved in cities, especially being as mayor of York. And would you yield to a couple of questions here? [LB745]

SENATOR ADAMS: Certainly. [LB745]

SENATOR NELSON: Could you just briefly recount from memory, if you know, what the various sizes are the various classes of city, what the range? [LB745]

SENATOR ADAMS: You know what, Senator, I don't know the exact ranges. But, for instance, you have the villages. And I think those villages run, I think the top end is somewhere around 800 to 1,000; then you go into second-class cities. And first-class cities I think begin at a minimum of 5,000. I don't have those in front of me, Senator.

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[LB745]

SENATOR NELSON: Would they go up to approximately 100,000? That's a first-class city? [LB745]

SENATOR ADAMS: Right. [LB745]

SENATOR NELSON: All right. And the next step up then was your cities of the primary class? [LB745]

SENATOR ADAMS: Primary class. [LB745]

SENATOR NELSON: One hundred thousand to 300,000, that's my recollection. [LB745]

SENATOR ADAMS: I believe that's right. [LB745]

SENATOR NELSON: And would that include the city of Lincoln then? [LB745]

SENATOR ADAMS: In Nebraska, that is the only primary-class city we have. That's correct. [LB745]

SENATOR NELSON: So then Grand Island and Hastings would, I'm assuming, be cities of the first class. [LB745]

SENATOR ADAMS: That's correct. [LB745]

SENATOR NELSON: And they, under your amendment, would be anything over \$500,000, is that correct? [LB745]

SENATOR ADAMS: In new occupation taxes if the anticipated revenue were over \$500,000. [LB745]

SENATOR NELSON: Okay. As mayor of York, you were included in that category I suppose. [LB745]

SENATOR ADAMS: Yes. [LB745]

SENATOR NELSON: Okay. Has York imposed an occupation tax? [LB745]

SENATOR ADAMS: Yes, they have, and I can quote the number for you; I think I'm close. I spoke with my predecessor just the other day. I think York generates a little less than \$300,000 in occupation tax. [LB745]

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SENATOR NELSON: All right. And so I think the contention then here is if...my understanding is that the League of Municipalities representing the cities suggested the figures that you have. [LB745]

SENATOR ADAMS: That's correct. [LB745]

SENATOR NELSON: Okay. But as probably has been already recited here, there's some thinking on the part of a number of our members here in the body that the figures presented for metropolitan and first-class cities are probably too low in light of (inaudible). [LB745]

SENATOR ADAMS: I think you could make a very good argument for that, Senator. [LB745]

SENATOR NELSON: Make a good argument with that, and I probably will do that. I just...thank you. Thank you very much, Senator. I just think I would have to say that as a little bit of background I know that the city of Lincoln has been growing. They can't be too far away from 300,000 right now. I don't know if they're going to move into the metropolitan class. But in Omaha, where we have 450 million going on up in the city itself, and over a million in the surrounding communities, we have a little bit different situation. And while we're working on these figures here I just want to state from my perspective and the perspective of other senators from the Omaha area, a million dollars, as presented here or suggested in the amendment, which I think is a very worthwhile effort and a good start, is simply too low for taking the matter to the voters. In the occupation tax...or let's take the restaurant tax, for instance. I think the income from that was in excess of \$20 million,... [LB745]

SENATOR COASH: One minute. [LB745]

SENATOR NELSON: ...and that's on an annual basis. So if we're talking about figures like that, and our overall budget is \$3.5 billion, then you're talking about at least 3 percent being over \$10 million, even 3.5 percent. So I think something in the range of \$8 million to \$12 million for the city of Omaha, and perhaps half of that for the city of Lincoln, getting as close as they are to a metropolitan class, would be much more in the range and much more acceptable from both a political and a philosophical standpoint as being the line drawn there where you have to take something to the voters if you're going to be in figures in excess of that. So with that, I will stop and I will continue to listen. And thank you very much, Mr. President. And thank you, Senator Adams. [LB745]

SENATOR COASH: Thank you, Senator Nelson. Seeing no other lights on, Senator Adams, you're recognized to close to AM2639. [LB745]

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SENATOR ADAMS: Thank you, Mr. President. I think discussions are ongoing, but we are at that juncture where if there's no one else in the queue, I will close on the amendment. The amendment in effect replaces the bill. What the amendment does is to say that if you're going to impose a new occupation tax and that occupation tax is going to exceed the amounts described in the amendment, and that would be for cities of the metropolitan class, \$1 million in annual revenues; primary class, \$750,000; first class, \$500,000; villages and second-class cities, \$250,000 in anticipated new revenues, there would have to be a vote of the people. In addition, this amendment would retain some portions of the committee amendment, and those would be, first of all, that if the occupation tax that's already in existence in a city and it's earmarked for a special project, and the city council believed that it needed to adjust the rates for that project--for instance, to continue to make P&I payments--they could do that without a vote. In addition, if they wanted to terminate the occupation tax they could also do that without a vote. That's the essence of the amendment, Mr. President. Thank you. [LB745]

SENATOR COASH: Thank you, Senator Adams. Members, you've heard the closing to AM2639. The question before the body is, shall AM2639 be adopted? All those in favor vote aye; all those opposed vote nay. [LB745]

SENATOR ADAMS: Mr. President, I would request a call of the house. [LB745]

SENATOR COASH: Thank you, Senator Adams. There has been a request for a call of the house. The question before the body is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB745]

CLERK: 27 ayes, 0 nays, Mr. President, to place the house under call. [LB745]

SENATOR COASH: The house is under call. Members, please return to your seats and record your presence. Those unexcused senators outside the Chamber please return and record your presence. Those unexcused personnel...those personnel who are excused please leave the floor. The house is under call. Senator Gloor, please check in. Senator Christensen, please return to the Chamber. The house is under call. Senator Avery and Senator Mello, please return to the Chamber. The house is under call. Senator Adams. [LB745]

SENATOR ADAMS: Mr. President, I'd accept call-ins. [LB745]

SENATOR COASH: Mr. Clerk, we are accepting call-ins. We are waiting for Senator Mello. [LB745]

CLERK: Senator Fulton voting yes. Senator Campbell voting yes. Senator Nelson voting no. Senator Hadley voting yes. Senator Lautenbaugh voting yes. Senator Avery. Is that

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a no, Senator? I can't...voting yes, excuse me. Thank you. Senator Avery voting yes. Senator Lathrop voting yes. Senator Cornett voting yes. Senator Harms voting yes. Senator Hansen voting yes. Senator Harr, Burke Harr, voting yes. Senator Nordquist voting yes. Senator Smith voting yes. [LB745]

SENATOR COASH: Record, Mr. Clerk. [LB745]

CLERK: 25 ayes, 5 nays on the amendment. [LB745]

SENATOR COASH: AM2639 is adopted. Raise the call. Mr. Clerk, you have another amendment on your desk? [LB745]

CLERK: Mr. President, Senator Council would move to amend with AM2660. (Legislative Journal page 1204.) [LB745]

SENATOR COASH: Senator Council, you're recognized to open on AM2660. [LB745]

SENATOR COUNCIL: Thank you, Mr. President. AM2660 now actually amends LB745 as it was amended with Senator Adams' amendment that just passed. And what AM2660 provides that in that schedule of threshold amounts above which a municipality would have to go to a vote of the people to establish or increase an occupation tax that's not tied to a specific project, AM2660 provides that for a city of the metropolitan class that the threshold amount would be \$1 million or 25 percent of that municipality's net sales tax revenue. That percentage is what is the subject of the discussions and negotiations that have been occurring. I stand before you, and as I indicated initially on this bill, fundamentally of the opinion that governing bodies of political subdivisions are capable and accountable to their citizenry for the decisions they make in terms of generating revenue. However, since it appears that the body is looking to provide some limitations and some lids that what we ought to be looking at in terms of cities of the metropolitan class that...and I'll just stand here and unequivocally say that \$1 million is absolutely too low a figure to condition the ability of a city to impose or raise an existing occupation tax without a vote of the people. If we look currently at the city of Omaha's budget, which is about \$350 million, about \$40 million of that represents occupation taxes. With a need to increase any of those by over \$1 million, to require a vote of the people, in my opinion, quite frankly, is absurd, particularly since those occupation taxes are in effect and have been in effect for a number of years. With the threshold levels set forth in LB745 in its current form, we in the city of Omaha would be in a position where the order of the day would be... [LB745]

SENATOR COASH: (Gavel) [LB745]

SENATOR COUNCIL: ...special elections rather than letting the elected governing body decide what is in the economic best interests of the citizens of the city of Omaha. So for

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those reasons I introduced AM2660. I think it better reflects the ability to enable a city the size of Omaha to make decisions regarding their finances without having to go to a vote of the people. I know that in the minds of many the 25 percent figure is too high. We're willing to look at a lower percentage or a set amount. But I will tell you that in my opinion that amount cannot be any less than \$10 million. And I say it cannot be any less than \$10 million because, by the actions of this body, last year, we removed \$3.4 million from the city of Omaha's revenue by virtue of the elimination of state aid to cities. We eliminated \$3 million from the city of Omaha's budget by eliminating the commuter wheel tax. We eliminated another \$3.4 million by depriving the city of Omaha of the ability to collect the wheel tax from residents within their three-mile zoning limit. So those three actions by this body deprived the city of Omaha of nearly \$10 million of revenue. So at a minimum, if the 25 percent of the net sales tax revenue of the city of Omaha is too high, then this body at a minimum should consider a flat threshold amount of \$10 million. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Council. Members, you've heard the opening to AM2660. Members wishing to speak: Senator Adams and Senator Wightman. Senator Adams, you're recognized. [LB745]

SENATOR ADAMS: Thank you, Mr. President. Senator Council, before you get away, would you yield to a question, please? [LB745]

SENATOR COASH: Senator Council, will you yield? [LB745]

SENATOR COUNCIL: Yes, Mr. President. [LB745]

SENATOR ADAMS: Senator Council, I don't mean to take you away from discussions that are ongoing, but as a matter of clarification and at the same time using some time so the discussions can continue, how did you arrive at the 25 percent of prior year sales tax? [LB745]

SENATOR COUNCIL: Senator Adams, as I stated earlier, for whatever reason I was not a part of the discussion that led to those numbers being developed. [LB745]

SENATOR ADAMS: Okay. [LB745]

SENATOR COUNCIL: And so the leadership of the city of Omaha proposed that percentage. [LB745]

SENATOR ADAMS: Okay. Do you happen to know what the prior year sales tax collections were for the city of Omaha? [LB745]

SENATOR COUNCIL: Yes, sir. It was...hold on just a minute...\$127 million. [LB745]

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SENATOR ADAMS: Okay, all right. And so that...and I think you even admitted on the mike that 25 percent of that amount is probably proportionately as high as that \$1 million in my amendment might be low. [LB745]

SENATOR COUNCIL: Correct. [LB745]

SENATOR ADAMS: Okay. And so what you're proposing here, and you correct me if I'm wrong, but what you're proposing, you and I are really not that far off in terms of principle, establishing a threshold. Would you agree? [LB745]

SENATOR COUNCIL: Well, what I indicated, Senator Adams, is I'm willing to consider that to move this. But fundamentally I don't see the need to impose a vote of the people on these types of financial decisions by local subdivisions. [LB745]

SENATOR ADAMS: Fair enough. And I think what you're saying and to some degree I'm saying the same thing, this amendment was designed to move things along, at the same time give back to cities some autonomy, and yet maybe meet the desire of whatever number of voters there are in here that wants to see some kind of cap put on it. Thank you, Senator Council, I appreciate that. [LB745]

SENATOR COUNCIL: Thank you. [LB745]

SENATOR ADAMS: It would be my opinion, as I've already stated, that I think that Senator Council and I are probably, at least in terms of this amendment, not that far off in what our intention here, and that is to find some common ground and to move this. Obviously, we don't necessarily agree on the amounts. She doesn't agree with the amount in my amendment of \$1 million, and I think 25 percent of \$127 million or whatever it may have been in sales tax revenue in the prior year is probably a bit excessive as well. If we can arrive at a benchmark here that is workable to cities, it would be my thought that we accomplish two things. On the one hand, we have given back to cities some autonomy with occupation tax. And at the same time we have imposed some limits on it, some transparency on it. And that probably would be a healthy point. Thank you, Mr. President. That's all I have to say. [LB745]

SENATOR COASH: Thank you, Senator Adams. Senator Wightman, you're recognized. [LB745]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I have to agree in large part with what Senator Carlson stated earlier during this debate. I have a philosophical difference with regard to limits imposed by the state on local governments. I have indicated that I will vote for LB745 at some level. I will not vote for it for \$1 million for cities of the metropolitan class. I think that is so far out of proportionality as to be

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almost ridiculous. Lexington would have a half-million dollars. It's a city of just barely over 10,000. If we looked at the first-class cities, I think in order they are Bellevue, Grand Island, and Kearney as far as population size. Kearney, being the third largest of the first-class cities, has a population I think of something over 30,000, maybe perhaps around 34,000. If we looked at proportionality, Omaha has something over ten times the population of Kearney. It seems to me that the threshold that we would allow without submitting it to...or requiring it be submitted to a vote of the people ought to be a minimum of \$10 million. So I agree with Senator Council there. I think if anything that's on the low side because we're talking about a number of first-class cities that go from 5,000 to approximately 55,000, I think would be the approximate population of Bellevue, Grand Island not far behind. So it seems to me there's got to be proportionality here if LB745 is even to be a valid talking point. And as I said, I will support it at some level. But anything short of \$10 million I think I will have a lot of hesitation in supporting as far as Omaha's threshold. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Wightman. Senator Council, you are recognized. Senator Council, there are no other lights on. Would you like to use this opportunity to speak or to close on your amendment? [LB745]

SENATOR COUNCIL: Mr. President, I would like to use this time to withdraw AM2660. [LB745]

SENATOR COASH: AM2660 is withdrawn. Mr. Clerk, do you have another item? [LB745]

CLERK: I do, Mr. President. Senator Krist would move to indefinitely postpone the bill. Senator Fischer, as the primary introducer, you would have the option to lay the bill over at this time. [LB745]

SENATOR FISCHER: Mr. President, I will take it up. [LB745]

SENATOR COASH: Senator Krist, you're recognized to open on your motion to indefinitely postpone. [LB745]

SENATOR KRIST: This motion is not put forth haphazardly. There is a list going around with those who are negotiating and the amount of money that we've actually used in terms of what we've done in the Omaha area. But I will tell you this, in a 90-day period the city of Omaha had to guarantee the College World Series that they were going to go forth and compete for a contract for a multiyear contract in the Omaha area. That stadium was built to the tune of \$165 million to \$180 million. During that negotiation the people who they elected in the city of Omaha had to sit down, pen and paper, pencil and paper, computer, and they had to decide what occupational tax in what area, in what part of the city, was going to go to fund these programs. So if we're going to put a

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proposed \$5 million cap on something, how then do we legally, legally allow city officials to negotiate for big businesses to come in? Let's micromanage it all to death. Let's just say you can only do \$2 million. It is not possible for us to look at all the contingency operations in a large municipal city of the municipal class like Omaha. I think that we should consider taking this back and looking at it all and designing, if it is our intention to put a cap on these things, take a look at a realistic cap. If we are having a discussion about a realistic cap, it would seem to me that for the Omaha area, in proportion, we would start with someplace in the \$20 million to \$30 million cap range. That would give them the flexibility to be able to plan. If that's not acceptable then I think we need to go back to the drawing board in committee and come out with a plan that is acceptable across the board. I don't do it in any malice towards Senator Fischer. But there comes a time when I need to stand up for my district, for my county, and for my city. And I have watched since 2009 a gradual decay of the tools that the city of the municipal class have in the state of Nebraska. And I have drawn a line in the sand tonight. I welcome your discussion. [LB745]

SENATOR COASH: Thank you, Senator Krist. Senator Fischer, as principal introducer of LB745, you are recognized for five minutes. [LB745]

SENATOR FISCHER: Thank you, Mr. President and members. Obviously, I stand in opposition to the IPP motion. As you know, Senator Adams, Senator Campbell, and I have been working with other senators from Omaha on trying to reach a number, dealing with Senator Adams' amendment, that we can all live with. We are close to reaching that number. And in just a conversation off the mike here with Senator Krist, he was saying that instead of \$1 million it needed to be \$20 million or \$30 million. Neither side in this negotiation has ever raised that high of a number. If you look at the occupation taxes that Omaha currently has, which would not be affected by this bill, but if you look at those occupation taxes there are only three of them that bring in over \$5 million now. So I think in my conversation with Senator Krist and the \$20 million or \$30 million, that's unreasonable, and, of course, then negates any way that we were trying to work with this bill in providing the citizens with a voice in voting on it. The purpose of the bill was to give the citizens in communities the right to express their opinion on an occupation tax. The Revenue Committee in our hearings and in discussions with occupation taxes believes that they are used more as sales taxes for the most part. Sales taxes have a limit on them for cities, 1.5 percent; occupation taxes don't. For example, in Omaha, an occupation tax on telecommunication services is 6.25 percent. With sales taxes it takes a vote of the people to implement a new sales tax in a city. For a sales tax that is used for economic development, it takes a vote of the people; it has to be for a specific purpose; and it also has a sunset date. When I've listened to people across the state of Nebraska, there is frustration out there with taxes, and all of you have heard that. That's why we've advanced a tax relief package this year. That's why we look at ways to cut spending. That's why we pass tax relief. There's a movement out there where people are upset. As I said earlier, we've worked in committee, we came up

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with an amendment from a suggestion that Senator Mello gave me, and we had that as the committee amendment. Last week, when we began discussion on this bill, the League brought in amendments; Senator Adams brought one over. We spoke to the League. Senator Hadley, Senator Adams, myself, we accepted that amendment. They needed to take it to their board. They did. Over the weekend we worked on that again, and that's the amendment you see from Senator Adams that he presented tonight and that we passed; it's supported by the League. They visited with their board, they visited with your cities. Omaha was concerned, the senators from Omaha; that's what we're trying to work on here. I didn't put the numbers in. I didn't put the \$1 million in for Omaha in the amendment, and that's what we're trying to work on to reach a consensus on just what that number should be. So I would ask you to oppose this... [LB745]

SENATOR COASH: One minute. [LB745]

SENATOR FISCHER: ...this amendment that has been filed to IPP the bill. Let us continue our work. I see Senator Cornett next to me here making notes. We are getting close to a number, and I would ask for your indulgence to continue discussing on the mike so we can continue working in negotiations. With that, I hope that you will hit your lights and debate this while we continue to discuss. And we will bring forward an amendment that we have agreed upon. Thank you, Mr. President. [LB745]

SENATOR COASH: Thank you, Senator Fischer. Senator Ken Haar, you are recognized. [LB745]

SENATOR HAAR: Mr. President, members of the body, I rise again in opposition to LB745 and I will support the motion to indefinitely postpone. I agree with my friend Senator Carlson and others that this is the wrong approach to government basically. To me the people that are closest, because I served on a city council in Lincoln, I know that that is the layer of government that is closest to the people. You know, it seems to me that the purpose of this bill really is to protect the people against their local governments. Well, then the question comes up, who protects the people against us in the Legislature? Should it be Congress? You know, the next highest level seems to be what we're looking for here to control the level beneath. Well, the people that are closest, the elected officials that are closest to the people of Lincoln, for example, are the city council members. They have to walk the streets, everyone knows their telephone numbers. They go to tons and tons of meetings. And that's where the responsibility lies. I think that this bill is an overreach of what the state Legislature should be doing. And again the question comes up, if we have to protect the people against their elected city officials, who protects the people against us? These decisions should be made by those closest to the people, and in this case it's the city council members. Thank you very much. [LB745]

SENATOR COASH: Thank you, Senator Haar. Senator Fischer, you are recognized.

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[LB745]

SENATOR FISCHER: Thank you, Mr. President and members of the body. As I said earlier, we are continuing the discussions, so I will just visit with you a little bit on the mike here while we are doing that off to the side. I can say we're getting close. When we look at occupation taxes it's a complicated issue as I've learned on Revenue Committee the last two years. And there are a number of occupation taxes that a variety of our cities implement. We're trying to get some order into that and to have more say by the voters in a community. Our group here to my left is growing. But, Senator Harms, would you yield to a question? [LB745]

SENATOR COASH: Senator Harms, will you yield? [LB745]

SENATOR HARMS: Yes, I would, Senator Fischer. [LB745]

SENATOR FISCHER: Thank you, Senator Harms. As you know, we're just having a conversation here on the mike as we continue to negotiate on the side. I was wondering, in the Scottsbluff-Gering area do you know if those communities have occupation taxes now? [LB745]

SENATOR HARMS: No, I don't believe they do. [LB745]

SENATOR FISCHER: They don't? [LB745]

SENATOR HARMS: I don't believe that they do, Senator. [LB745]

SENATOR FISCHER: Okay, thank you, Senator Harms. Senator Wightman; would Senator Wightman yield, Mr. President? [LB745]

SENATOR COASH: Senator Wightman, would you yield? [LB745]

SENATOR WIGHTMAN: I will. [LB745]

SENATOR FISCHER: Senator Wightman, I know you and I have talked off the mike about Lexington, and you had some concerns expressed by your city council there. Do you have occupation taxes in Lexington right now? [LB745]

SENATOR WIGHTMAN: We do have occupation taxes. [LB745]

SENATOR FISCHER: Can you tell me about those. [LB745]

SENATOR WIGHTMAN: Well, I can tell you some of them. [LB745]

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SENATOR FISCHER: Okay. [LB745]

SENATOR WIGHTMAN: Some of them have to do with...we even charge an occupation tax to our...and I don't know whether they call it an occupation tax with regard to our utilities. The city runs the utilities department, and there is an occupation tax on the theory that the city operates the lines, they own the lines, and that there ought to be something the same as...maybe not the same amount, but the same as another electric company would charge if they were in Lexington. So that's one of them. There are other occupation taxes as well. They charge an occupation tax to our cable TV system. As far as enumerating them, I don't know that I could tell you all of them by any means. But I don't think those two are the limit. [LB745]

SENATOR FISCHER: Do you know where that revenue goes to then that's generated by those occupation taxes? [LB745]

SENATOR WIGHTMAN: It goes into the city general fund. [LB745]

SENATOR FISCHER: So they use it for general fund expenses? [LB745]

SENATOR WIGHTMAN: Right. Now it stays with the utility department, so it doesn't go in monthly I don't think. It's I think paid over to the general fund maybe twice a year. And I'm not certain of that either, but I know it's paid over. And they have a set amount. [LB745]

SENATOR FISCHER: Do you know how much revenue that they generate? Do you have any idea on that? [LB745]

SENATOR WIGHTMAN: Well, it's fairly substantial I think. You know, I served on the city council for years. I haven't kept track with the rate of those taxes, but it was one of the three major sources of revenue, the sales tax being the largest, the property tax being the second, and the third being the occupation taxes. [LB745]

SENATOR FISCHER: Thank you, Senator Wightman, I appreciate that. As I'm looking around the Chamber, Senator Lautenbaugh has arrived. Senator Lautenbaugh, would you yield to a question? [LB745]

SENATOR COASH: Senator Lautenbaugh, will you yield? [LB745]

SENATOR LAUTENBAUGH: Yes, I will. [LB745]

SENATOR FISCHER: Senator Lautenbaugh, do you know about Omaha's occupation taxes? Can you tell us anything about those? [LB745]

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SENATOR COASH: One minute. [LB745]

SENATOR LAUTENBAUGH: Well, I know they exist. I know they cover a wide variety of topics. I know there are three people with their lights on if you have anything else you'd rather be doing. But, yeah, some are high and some are low. It kind of runs the gamut. [LB745]

SENATOR FISCHER: Do you know what they cover? [LB745]

SENATOR LAUTENBAUGH: Oh, I believe hotels, certainly cell phones. I think we've covered that amply. It's odd that I'd be drawing a blank on this, but I apologize I am. [LB745]

SENATOR FISCHER: Well, thank you, Senator Lautenbaugh, I appreciate it. I appreciate if you would hit your lights and take some time. I think we're getting close to an agreement here. And with that, I thank you, Mr. President and members. [LB745]

SENATOR COASH: Thank you, Senator Fischer. Senator Burke Harr, you are recognized. [LB745]

SENATOR HARR: Thank you, Mr. President and members. Thank you, Deb Fischer, for your words. And thank you for continuing to work on a deal. We are getting close. The question is just what that number needs to be. Senator Fischer read some numbers to you of what the occupation taxes get now. Unfortunately, I can't tell you because I gave her my one and only copy. But what I can tell you is these occupation taxes have been fundamental to the financial stability of the city of Omaha. It has...and I apologize, I need to grab my gadget. It has raised the city of Omaha, the restaurant tax alone next year is predicted, budgeted for 2012 to raise \$19 million to help stabilize the budget in Omaha; this year it's \$14.7 million. These taxes are very, very...well, it's not a tax--well, it's an occupation tax not a sales tax--are very important for the long-term stability of the city of Omaha. But in addition to being important for the long-term stability of the city of Omaha, they've also been very important for the short term. When that restaurant tax was first implemented, it was because Omaha had faced two problems. Number one, we had a pension problem with no end in sight. We were negotiating. Number two, we also had an issue with our bonds. And I said this before and I'll say it again: Ladies and gentlemen, bonds are the lifeblood of a city. I did LB902 this year because I realized the importance of bonds and having the ability to have tax-free bonds on LB902. Here we need the ability to have a low interest on...and have a high rating from Moody's. If that rating goes down, spending on interest on those bonds go up. The cost of interest goes up, the city has even less money. So we had to find a way, and it was very difficult; and I want to thank the restaurants for taking a large portion of the burden. I know they didn't want it. I know they're still fighting it, and we are all waiting to see what the Supreme Court does. But the fact of the matter is they took that burden on, and I don't think it's

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hurt them as badly as they feared, thank goodness. But that allowed us to keep our high rating from Moody's. By keeping that high rating, we were able to keep taxes down. So you can't just pull one string and think you solved the problem. There are many cards and many pieces to the puzzle. It seems easy to just say I'll put a limit on occupation tax. In reality, I don't think we can...we have a problem with that. Another issue is restaurants took this burden on themselves, and there was a recall and they led that recall. And it was probably the right thing to do, for the mayor to do it, and it was right for the restaurants to do recall. But the fact of the matter is, if we didn't...if we had a limit imposed at that time--I know it's academic--if we had a limit at that time, we would have had to spread that out. We would have set a limit on restaurants. We would have put an occupation tax on, I don't know, maybe alcohol, bartenders, maybe grocery stores, maybe... [LB745 LB902]

SENATOR COASH: One minute. [LB745]

SENATOR HARR: Thank you. I hear a lot of talk in the background so I'm hoping we're coming close to a deal, a compromise. But the fact of the matter is we have to...we would spread that out and there would have been a lot more unpopularity. And so I think while I understand Senator Fischer's concerns, these serve a very valuable, valuable purpose for the cities. Thank you. [LB745]

SENATOR COASH: Thank you, Senator Harr. Senator Krist, you are recognized. [LB745]

SENATOR KRIST: Thank you, Mr. President. Indeed the process does work. I believe that we have come to a compromise. Again, I did not file this amendment lightly, and I intended to go to the end with it. I will yield the balance of this time to Senator Cornett so she can describe the situation that we are at now. [LB745]

SENATOR COASH: Senator Cornett, 4 minutes 30 seconds. [LB745]

SENATOR CORNETT: Thank you, Senator Krist. I appreciate your collegial behavior on this bill. The first compromise is recognizing what the city of Omaha's normal occupation tax range runs from, which is \$3 million to \$6 million. We have set the new limit, which is getting drafted as a floor amendment, at \$6 million for the city of Omaha. The original number for Lincoln was based on half, because basically half the population of, so we are drafting the amendment at \$3 million for Lincoln. For our cities of the first class, recognizing Senator Bloomfield's concerns, we are going to \$700,000; and for our villages, we are increasing it to \$300,000. In that, we are retaining the components of the amendment offered by Senator Adams which allows an increase in the occupation rate of the...an increase in the rate of the occupation tax if it is for a special project. And again I will use an example. The city of Lincoln imposed occupation taxes for the arena. That went to a vote of the people. If they find that they are running short for their bond

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payment or need more money to pay off that indebtedness, they will be able to raise that rate, which is currently in the amendment we adopted, sufficiently to cover that payment. The city of Omaha has the restaurant tax, which is for the police and fire pension fund. If in the future they need to raise that, they would still be able to raise that. It does not limit them in creating an occupation tax under these dollar amounts without a vote of the people. So if the city of Omaha wanted to build a fire station or two or three fire stations, well, probably two, they could enact an occupation tax without a vote of the people up to that \$6 million point, which is the upper limit of their average occupation tax. With that, basically what we are waiting for is the floor amendment to be drafted. I would be happy to answer any questions in regards to this agreement or to explain occupation tax or how we have gotten to this point. Thank you. [LB745]

SENATOR COASH: Thank you, Senator Cornett. Those still in the queue: Senator Karpisek, Lautenbaugh, and Krist. Senator Karpisek, you are recognized. [LB745]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. At this time of the night, Senator Fischer said to hit your light so I thought I would accompany her, probably not accompany. I've taken my full dose of cold medication and an open mike, and I thought it would be a lot of fun for me to get on the mike. I thought if we're going to take a little time, we might as well, and I'll put in my two cents on occupation taxes. We've been down this road before about occupation taxes and my general dislike of them. And I think somebody asked if we had any in Wilber when I was mayor, and we did. The difference between what we have and what Omaha and Lincoln has is that ours are generally imposed on our citizens, only our citizens, such as cable, your cable hookup. What else did we have it on? I can't even think of any others but there was I think one other one. What I see on these things happening now is Omaha and Lincoln like them because they get all us who come in from out of town to pay their taxes for them. We come in to get something to eat, we have to pay another 2 percent. You want to go to a ball game in Omaha and stay overnight, you get a lodging fee. That's I think why I don't like them at all. If you want to do these, why don't you do them on your own people? Then see how well it goes over. That's why they want them all the time. It helps out with all of us coming in, getting things that we can't get back home. The one that really irritates me is the cell phone. I can't get my cell phone in Wilber. Anywhere I go to get one I'm going to pay an occupation tax. I don't like that idea. I don't think it's fair. But I guess what are you going to do about it? Every time we want to do anything...and I know I've heard, well, you drive on our streets and you do this and you do that; I think that we pay plenty when we come in taxes to make up for that. Have to go to the hospital in Lincoln, do something like that? There's a lot of taxes that go on that. So I think we pay more than our fair share when we come in and take up the beating on the roads if we take a taxi. I'm sure there's some sort of a tax on that too. The Speaker has given me the high sign that I've probably done enough damage and he's in the chair. Thank you, Mr. President. [LB745]

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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Members, due to Bill Drafting at this time working on the proposed compromise, the Legislature will stand at ease. The Chair would respectfully ask all members to remain in the Chamber and instruct the Sergeant at Arms to secure the rear doors. We will stand at ease. [LB745]

EASE

SPEAKER FLOOD: Members, it's my understanding that AM2676 has been filed with the Clerk. It's my understanding, Senator Krist, that you wish to withdraw your motion to indefinitely postpone LB745. [LB745]

SENATOR KRIST: Yes, sir, that's correct. [LB745]

SPEAKER FLOOD: Your IPP is withdrawn. Mr. Clerk. [LB745]

CLERK: Mr. President, the amendment will be available to the membership shortly. Senator Cornett would move to amend with AM2676. (Legislative Journal page 1204.) [LB745]

SPEAKER FLOOD: Senator Cornett, you're recognized to open on AM2676. [LB745]

SENATOR CORNETT: Thank you very much, Mr. Speaker. And as one of my colleagues just said, let's skip extolling the virtues of compromise and just get to the point. What this amendment does is leaves everything in place with the amendment we passed that was Senator Adams' amendment, all of the compromise in that with Senator Fischer and the Revenue Committee in regards to allowing a city for special projects to increase that occupation tax for those projects without a vote of the people. What we have done is changed the dollar amounts only in that amendment to address the concerns of our municipalities, from our largest to our smallest. On page 2, (a) For cities of the metropolitan class, we make the dollar amount \$6 million; (b) for cities of the primary class, we make it \$3 million; (c) for cities of the first class, we increase that amount to \$700,000; (d) and for cities of the second class and villages, we increase the dollar amount to \$300,000. I appreciate everyone's willingness on all sides to come to the table on this issue, and I will be happy to answer any questions on this amendment. But I urge the body to support AM2676 and the underlying bill. Thank you. [LB745]

SPEAKER FLOOD: Thank you, Senator Cornett. Members, you've heard the opening to AM2676. There are three members wishing to speak. Senator Mello waives his opportunity. Senator Wightman, you are recognized. [LB745]

SENATOR WIGHTMAN: Thank you, Mr. President. I made a rather bold, sweeping

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statement saying I wouldn't support anything less than \$10 million, and sometimes you have to back up on that. And I guess I will back up although I still think if we were going to be proportional \$10 million is probably the low end of what Omaha should be set at when we look at proportionality. But if Omaha is in favor of this, in the interest of moving along I will support AM2676. But I thought I shouldn't do that without some statement when I had made the earlier statement. Thank you, Mr. President. [LB745]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Krist, you are recognized. [LB745]

SENATOR KRIST: Thank you, Senator Fischer, for negotiating at the point that we are. Thank you, Senator Cornett, for helping in the effort. Let's vote green and go home. [LB745]

SPEAKER FLOOD: Thank you, Senator Krist. There are no other lights on. Senator Cornett, you're recognized to close on AM2676. [LB745]

SENATOR CORNETT: I waive closing, sir. [LB745]

SPEAKER FLOOD: Closing is waived. Members, the question before the body is, shall AM2676 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB745]

CLERK: 36 ayes, 2 nays, Mr. President, on the adoption of the Cornett amendment. [LB745]

SPEAKER FLOOD: AM2676 is adopted. Is there anything else on the bill, Mr. Clerk? [LB745]

CLERK: I have nothing further on the bill, Mr. President. [LB745]

SPEAKER FLOOD: There are no lights on. Senator Fischer, you are recognized to close on LB745. [LB745]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I thank the members for staying this late at night so we could work through this bill. I thank Senator Cornett, Senator Campbell, Senator Lathrop, Senator Council, Senator Nelson, and I can go on and on; but I thank all of the members who took an interest in this issue and worked together for the last two hours to get a compromise that we can advance. Thank you, Mr. President. [LB745]

SPEAKER FLOOD: Thank you, Senator Fischer. Members, you've heard the closing to LB745. Members, the question before the body is, shall LB745 advance to E&R Initial?

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All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.
[LB745]

CLERK: 38 ayes, 2 nays, Mr. President, on the advancement of LB745. [LB745]

SPEAKER FLOOD: LB745 advances to E&R Initial. Members, the original plan was to proceed through the Karpisek division with the exception of LB1082. In the interest of time and the fact that we will be back in tomorrow morning at 9 a.m., it is quite possible that we will be working into the evening tomorrow. I'll give you a better idea of our anticipated schedule and would remind members that this is the fifty-first day and we have a limited amount of time to complete the rest of our work this session. Thank you for everything that we did today. Mr. Clerk. [LB745]

CLERK: Motion to be printed to LB670. And a priority motion, Mr. President. Senator Bloomfield would move to adjourn the body until Thursday, March 29, at 9 a.m. (Legislative Journal page 1205.) [LB670]

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned.