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Floor Debate
May 14, 2013

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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 seventy-seventh day of the One Hundred Third Legislature, First Session. Our chaplain for today is Pastor Mark Ashton of Christ Community Church in Omaha, Nebraska, Senator Kolowski's district. Please rise.

PASTOR ASHTON: (Prayer offered.)

SENATOR GLOOR: Thank you, Pastor Ashton. I call to order the seventy-seventh day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections.

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

CLERK: Mr. President, I have no messages, reports, nor announcements at this time.

SENATOR GLOOR: Thank you, Mr. Clerk. The Chair recognizes Speaker Adams.

SPEAKER ADAMS: Thank you, Mr. President. Members, I was reminded this morning when my staff handed me this picture, "No Late Night Soup For You," that I probably ought to make an announcement about scheduling for this week. It would be my intention today that we will run 6:00-6:30, depending on how things go this afternoon. Tomorrow, depending on how budget things go, we may have to stay a little later. So I'm just giving you a little heads up that's a possibility for tomorrow night. Okay? Thank you, Mr. President.

SENATOR GLOOR: Thank you, Mr. Speaker. We now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, the Legislature last evening left LB543. That bill was originally introduced by Senator Chambers. (Read title.) There was pending legislative...or

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excuse me, AM1367 is offered by Senator Coash. I do have other amendments to the bill, Mr. President. I have received a priority motion. Senator Chambers would move to bracket LB543 until May 21, 2013. [LB543]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Chambers, you're recognized to open on your motion to bracket. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, we know where everything is on this bill. I'm going to offer a cloture motion around 11:00. Any cosponsor could do that. I've never offered a cloture motion. I've never voted for one. But when there's what I consider dirty work to be done and it involves my bill, I will do it. I will not farm that out to anybody else. I'm going to withdraw this motion at some point, but there's some things I'm going to read into the record. So many of my colleagues have enjoyed regaling us with bloody cases involving people on death row, so I'm going to join in this morning. Argument is not going to get us anywhere. So let me get started. Deborah Seberger died July 1, 1997. She was doused with gasoline by Francis Seberger and set afire. So badly was she burned that one of her breasts and a badly charred leg were amputated despite which she died on July 1, 1997, from the burns sustained. A three-judge panel in Sarpy County sentenced the murderer to life imprisonment. This second case that I'll read from you, the date, May 22, 1999. On that date the body of Sandy Schnabel was found beneath a rear wheel of a burning minivan near a barn on the family's farm. An autopsy revealed she was alive when the fire was set. The Yutan community was stunned. Mark Schnabel was charged with first-degree murder after investigation established that he had beaten his wife brutally while three children, ages nine, six, and four, were in the house, and then he staged the "accident" as a cover-up. Sandy Schnabel's skull was fractured in two places and several ribs were broken. Nearly 300 blood spatters were found in three rooms of the Yutan house. Schnabel was allowed to plead no contest to a reduced charge of second-degree murder and a plea bargain, which means that by now he's out. Over the 1998 Labor Day weekend in Omaha, Necdet, N-e-c-d-e-t, Canbaz, C-a-n-b-a-z, who had threatened to kill Debora Peralta and her family, carried out part of this threat when he chased the screaming woman down the street near her home and shot her twice in the back of the head when she fell. Convicted by a jury of first-degree murder, he was sentenced to life imprisonment. On the night of November 1, 1980, Allen V. Hardin drove his car from the yard into his wife's bedroom where she was in bed with her six-year-old daughter from a previous marriage. He then shot her four times with an automatic pistol. Tried for first-degree murder, he was convicted of second-degree murder. That was in the World-Herald April 17, 1981. April 23, 1990, Maurice L. Scott brutally beat Eva Christine Healfenbein--for the sake of the transcribers, H-e-a-l-f-e-n-b-e-i-n--to death with a coffee table leg and the metal buckle on the end of a belt. She died from loss of blood due to scalp cuts and internal bleeding. A three-judge panel sentenced...found the beating to have been prolonged, especially brutal, especially atrocious, and especially cruel. That's the language that justifies a death sentence. The victim suffered broken ribs on both

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sides of her body and the force of the blows was so intense as to leave indentations from the belt buckle and the table leg upon the body of the victim. Nevertheless, the panel sentenced Ditter, the killer, to life, although he was convicted of first-degree murder. In June 1981, Renae Isherwood strangled the four-year-old son of her boyfriend and was charged with first-degree murder. Speaking bluntly, the sentencing judge found, quote, the intent to kill the boy is beyond question. The very nature of the strangulation goes beyond the mere impulse. The decision was made to kill and it was over a period of time. The judge accepted the result of a plea bargain and allowed her to plead guilty to second-degree murder. July 17, 1981, John Baker murdered his parents. Pursuant to a plea bargain under which the prosecutor promised not to recommend the death penalty, Baker pleaded guilty to the reduced charge of second-degree murder. October 9, 1984. Relatives found the body of Cheri, C-h-e-r-i, Veland in the bedroom of her home. And this next is for those who love blood. Although she had been stabbed more than 40 times, her killer was convicted of second-degree murder, stabbed more than 40 times. He's probably out now. April 27, 1984, 84-year-old Lena Saylor, S-a-y-l-o-r, was found dead in her bed, smothered with a pillow. This is another case of murder for hire. The victim was the grandmother of James Saylor who is charged with first-degree murder for hiring Michael Sapp. This is for the record, Mr. President. I appreciate that, but there's no interest on the floor. I'm interested in the public seeing it and to let you know what I'm talking about, some people are here from Singapore who want to talk to me about trying to get the death penalty taken away in that country because they said it's one of the harshest in the world. They're aware of the work that I've done. They listened yesterday and they want some pointers from me. I wonder how many of those who are for killing people have been contacted by foreign visitors. And among other things he said, people around the world look to America for moral leadership, but they're not getting it on the death penalty. And if anybody wants to read the e-mail, they're welcome to do it. I don't make these things up. And you show me the e-mails you get saying they endorse your attempt to have people killed. But continuing with this, Saylor was charged with first-degree murder for hiring Michael Sapp to kill her, so that Saylor could obtain \$25,000 he believed he would inherit. Sapp also was charged with first-degree murder. Pursuant to a plea bargain, Saylor pleaded no contest to second-degree murder, and Sapp pleaded guilty to manslaughter, the plea bargains. In 1986, for those who are aware of the fact that Carey Dean Moore is on death row for having shot two cab drivers, in 1986 triple...in a 1986 triple murder by shooting, David Jacob was charged with three counts of first-degree murder. Pursuant to a plea agreement he was allowed to plead to three reduced charges of second-degree in exchange for testimony against an alleged accomplice. Senator Schumacher and others have mentioned how a person sometimes more culpable than the one who gets the top sentence will get a break because he won the race to the prosecutor to snitch. Although the sentencing judge in this case warned that Dominguez' life sentence should never be commuted because he would always be a threat to society, he was allowed to escape the death penalty by pleading guilty to first-degree murder pursuant to a plea bargain. In May 1985, Dominguez brutally

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battered Ruth Anderson Keeney, K-e-e-n-e-y, to death with a board, inflicting massive head injuries. How about those that somebody talked on the floor...I think it was Senator McCoy, about somebody being too dangerous to be left alive. The sentencing judge said this man was too dangerous to ever get out again, but the prosecutors allowed a plea bargain, so he did not get a death sentence. That shows you all the baloney that's cast around here. They ought to be working with Senator Karpisek in his meat market. Oh, but he has a higher quality of meat than the kind that's produced around here.
[LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CHAMBERS: Continuing, December 1986, Kevin Ward shot and killed Donna Bayer who had allowed him to live in her home. Pursuant to a plea bargain, he pleaded guilty to the reduced charge of second-degree murder. I won't start any more now, Mr. President, because my time is up. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers. Members, you've heard the opening on the motion to bracket. Senators in the queue include Krist, Lathrop, Brasch, Christensen, Wallman, Karpisek, and others. Senator Krist, you're recognized. [LB543]

SENATOR KRIST: Good morning. Thank you, Mr. President. Good morning, colleagues, and good morning, Nebraska. I do want to make a statement because I was in the Chair yesterday during the debate on FA77. Some of you have asked me why I voted no, just not a no vote but no. Very clearly, I want to make sure that you understand. First of all, I did not consider that amendment germane, and I was surprised that someone didn't bring it up. Secondly, the wording of that amendment was precarious to me because it implied that the state was going to perpetrate the abortion. So that's why and I just wanted you to know for the record that being a pro-life guy, I respect Senator Carlson. He's been very deliberate and very consistent in his votes to support life from birth to natural death...sorry, conception to natural death. And so I wanted to applaud his effort, but that's why I voted no. Secondly, yesterday, before I went in the Chair, I brought up some issues about the federal government's jurisdiction, and they have a penalty...a death penalty and they use it. So in the case of wanting a death penalty in the state of Nebraska, we could very easily bring in the feds on any number of the charges or statutes that reside in the U.S. Code and I gave that to you as a handout yesterday for you to review. I will stay...I remain consistent. LB543 is indeed a repeal and I will vote to repeal if we get to that point. I hope we get to an up or down vote. I am concerned at this point that we will not get to an up or down vote on this very important issue, but so be it. That would be my intent. Thank you, Mr. President.
[LB543]

SENATOR GLOOR: Thank you, Senator Krist. Senator Lathrop, you are recognized.
[LB543]

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SENATOR LATHROP: Thank you very much, Mr. President. Colleagues, good morning. There are a great number of arguments you could make for or in support of LB543, and it has become clear after yesterday that two things are true. One, there's enough votes on this floor to repeal the death penalty, and two, a filibuster will prevent that vote from ever taking place. And so, Senator Chambers this morning will make a record. It's important to make a record because as the Supreme Court reviews the death penalty, and whether it is or is not cruel and unusual punishment, that is an incremental process. It will not happen overnight, but it will happen gradually. It will happen as more states repeal it for whatever reason. And the standards of decency in this country will ultimately result, as I said yesterday, in the Supreme Court concluding that the death penalty is cruel and unusual punishment. I talked about some statistics yesterday, 260 convicted of first-degree murder since 1973. What we oftentimes say, and I heard it probably 40-50 times yesterday, these are the worst of the worst, they're heinous, they're terrible. Sure they are. I stipulated to that. Senator Chambers would stipulate to that. Everybody who is in support of LB543 would stipulate to that. What you're going to hear this morning, and this is probably the last time I'm going to talk, but what you're going to hear from Senator Chambers is, murders that happen in this state equally as heinous as the people who are on death row, but they didn't get the death sentence. And it goes to the arbitrariness of this form of punishment. Two hundred and sixty murders, convictions of first-degree murder since 1973, thirty-three times the death penalty has been imposed. Only half the time they get vacated. Three of those sentences have been carried out. Just as many people die waiting for their execution, 1 percent. And so what you'll hear today from Senator Chambers, and I'm going to yield him my time here in a second, is some of those worst of the worst that never got the death penalty. And the point is, on top of all the other arguments, it's arbitrary. Senator Aguilar was a state senator from Grand Island and he sat right where Senator Bloomfield is. And when this argument came up every year, Senator Aguilar would stand up and talk about a case that happened in his district and it was horrible. And I don't know if Senator Chambers will get to it or not, but it was horrible. And it leaves you to wonder, it leaves you to wonder, colleagues, when does this happen and when doesn't it happen. Two hundred and sixty people convicted of first-degree murder, only thirty-three of them got the death sentence. Half of them have had them vacated. And only 1 percent or less of the 260 convicted of first-degree murder actually get put to death. That's the problem with the death penalty and it is illustrated by the record Senator Chambers will make this morning. And with that, I will yield the balance of my time to Senator Chambers. [LB543]

SENATOR GLOOR: One minute twenty-two seconds, Senator. [LB543]

SENATOR CHAMBERS: Because...thank you, Senator Lathrop. Thank you, Mr. President. Because there's such a small amount of time, I won't embark on reading another case, but I will tell you this. Since Starkweather was put away, three people

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have been executed. Two of the three were black. So when...I don't know if it was Senator Kintner or whoever said that race does not have a part to play and that a greater percentage of white people are executed, that's false across the country anyway, but we're not apparently interested in being factual. But that's what I want you to be aware of. Two of the three executed in modern times were black and practically all of these cases I'm reading to you today were white people. And some of them were from the rural areas where some of the staunchest supporters of the death penalty come from because their people, when they commit vicious crimes, are not sentenced to die. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senators Lathrop and Chambers. Senator Brasch, you are recognized. [LB543]

SENATOR BRASCH: Thank you, Mr. President. Good morning, colleagues. I rise this morning in response to the dialogue, in response to the horrific murders that Senator Chambers has read and to comments on the floor here. Our responsibility is jurisprudence to make sure that justice is served and that the punishment is punishment that is right for the crime. And when we've read...when he read about the murders that had occurred, I felt obligated and a sense of calling to stand up and read an article that was printed last year by the Journal Star, and it's a story that says: 10 years after the Norfolk bank robbery, a time to remember. And there's a photograph of Sue Staehr and she's a survivor of the 2002 Norfolk bank robbery and she hopes the victims who are killed are remembered on their tenth anniversary of the robbery. And I quote: Because I was there, I don't want people to forget them. And because I talk to people and they don't realize, and they don't remember, it makes me kind of sad. The story reads, Sue Staehr hasn't spoken publicly about what happened in Norfolk's US Bank branch September 26, 2002. She is telling her story now because she wants people to remember, not what happened to her as a witness to the violence so close to her that her husband could smell gun powder on her clothes as he hugged her later that afternoon, but the employees and customers saw how senselessly they died that day. Really to tell you, I don't know if I could tell you the names right now of the people who did it because I think you try to forget the actual event, but I want to remember the people that were there, she said. The people are Lisa Bryant, 29, of Norfolk; Lola Elwood, 43, of Norfolk; Jo Mausbach, 42, of Humphrey; Samuel Sun, 50, of Norfolk; and Evonne Tuttle, 37, of Stanton. I also pulled up the obits and stories. Lisa was a mother. They're mothers, they are sisters, they are daughters, they are cousins, they are grandparents. They are human beings that were lost violently and senselessly that day. I'll continue reading. I think a lot about them during church and I think about them at events. Like when I go to a wedding, I think how Lola didn't get to go to her daughter's wedding. Sam didn't get to go to his sons' graduations, those kinds of things. I think that I'm lucky that I got to go to mine, she said. And so she wrote a remembrance to those who remain and to those who died. She remembers. It was a day like any other day. Coworkers and customers were going about their routines. Breakfast was served, kids

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dropped off at schools, errands run, and hugs and kisses shared. For Staehr it was another day away from her Lincoln home, the second day traveling to work as a US Bank internal auditor. She was glad, she said, to be visiting her coworkers. At my first day at the branch, I caught up on Lisa's honeymoon trip, Sam's newly-taken-on duties as a coordinator of the teller line, and Lola's need to take a break from work... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR BRASCH: I'm asking you. I will not continue reading, but remember the people who live, that justice has to be served and it has to merit the murders, these lives and futures lost forever. We have that responsibility of jurisprudence. The argument that we'll just lock them up and forget about them. They're gone. Poof! They're not gone. They are forever. And these children, these grandchildren, these mothers, they're lost, they're suffering, they're in pain, they're in agony. I do not support LB543. And I ask you, colleagues, jurisprudence, our duty, justice. Thank you. [LB543]

SENATOR GLOOR: Thank you, Senator Brasch. Senator Christensen, you're recognized. [LB543]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know there's a nice little quote here. It says: If we want to abolish the death penalty, let our friends and murderers take the first step, Alphonse Karr, French novelist, nineteenth century. It's so true. What we need to do is get these crimes to stop and I feel like we're trying to treat a symptom instead of taking care of a situation. But we continually hear about all these cases prior to 2003. Now I believe, if I'm correct, we put a proportionality filter in 2003. Would Senator Lathrop yield to a question? [LB543]

SENATOR GLOOR: Senator Lathrop, would you yield to a question from Senator Christensen? [LB543]

SENATOR LATHROP: Yes. [LB543]

SENATOR CHRISTENSEN: Senator Lathrop, did we put a proportionality filter in 2003? [LB543]

SENATOR LATHROP: You know, I know we've talked about. I don't know that we have a true proportionality provision in there because I don't believe the sentence of a death...a death sentence involves or that process, Senator, involves a comparison to what...a comparison to those who have not been given the death penalty. So I'm not sure what the language is that may have been inserted in 2003, but I can tell you this, that the court in sentencing doesn't go through all of the cases you'll hear Senator Chambers talk about today that...where there's been a first-degree murder and the person has not been given the death sentence. [LB543]

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SENATOR CHRISTENSEN: But I thought in this filter that...proportionality filter in 2003, to do a death sentence case they had to compare with some others that had been given the case, is that not so, or should I ask Senator Chambers, or...? [LB543]

SENATOR LATHROP: You know what, ask Senator Chambers. I think he'd have a better idea. But I can tell you, I don't think that happens or never would take place. Way too many of these people convicted of first-degree murder are not given the death sentence and they've done things just as bad or worse than some of the people that are on death row. [LB543]

SENATOR CHRISTENSEN: Okay. Would Senator Chambers yield to a question? [LB543]

SENATOR GLOOR: Senator Chambers, would you yield? [LB543]

SENATOR CHAMBERS: Yes, I will. [LB543]

SENATOR CHRISTENSEN: Senator Chambers, I think you heard the question. [LB543]

SENATOR CHAMBERS: Yes. [LB543]

SENATOR CHRISTENSEN: Proportionality filter. Could you explain that to me? [LB543]

SENATOR CHAMBERS: In 1979, I think it may have been, I did get a bill passed, LB711, which then Governor Exon vetoed, and the Legislature overrode his veto. I had put into that bill that the Supreme Court would compare all criminal homicides that had been committed since the death penalty was reinstated in 1973, regardless of what was charged, regardless of the sentence, to make sure that similar circumstances in similar cases would arrive at a similar result. I had used as a guidepost words from the state Supreme Court in a case against a guy named Charles Simants where they said, the court does not have...Nebraska does not have the proportionality statute that Georgia has which says all homicides shall be compared regardless of whether it was first-degree murder, regardless of whether a death penalty resulted. I put that language from that case into the bill. When the bill was reviewed by the Supreme Court, unfortunately, it involved the case of a black man. The Supreme Court said, and the Chief Justice Norman Krivosha dissented, that LB711 could not be enforced by the court as it was written. They would not compare the cases that did not result in a death penalty. [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CHAMBERS: The only cases they would compare are those where the

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charge was first-degree murder and a death sentence was imposed. The Chief Justice said, that is not a comparison, you're taking things that are already the same. It's obvious that the bill intended to have those cases where the death penalty was not imposed even though the circumstances were similar. So, for Senator Christensen's question, such a law still is on the books and the court is still in a position where you could get different judges and they would enforce that law according to the language that is in it. But a proportionality review currently is on the books, the Nebraska Supreme Court has decided it would not follow the words of that law. [LB543]

SENATOR CHRISTENSEN: Thank you, Senator Chambers. Thank you, Senator Lathrop. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Christensen and Senator Chambers. Senator Wallman, you're recognized. [LB543]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I have been hearing a lot about the perpetrators of the crime, not much about the victims. And so, first place, we have a hard time funding mental health issues in our schools. And where does it start? And some of these children are troubled and maybe a family member would know or a school knows or a sheriff knows, but it's hard to make a case when there's plea bargaining. Folks, you're plea bargaining. We aren't talking about the victims here. The victims are double punished with these appeals and all this things and how many people get the death penalty, one point something percent? So what's the justice in that, folks? And I'd yield the rest of my time to Senator Chambers. [LB543]

SENATOR GLOOR: Four minutes, Senator Chambers. [LB543]

SENATOR CHAMBERS: Thank you, Senator Wallman. Thank you, Mr. President. I have to make a correction. A person called my office and pointed out that in 2006, I did vote for cloture. There was a bill, LB1024, and Senator Raikes was the introducer of the bill. I have profound respect for Senator Raikes. I supported the bill, so I will accept what the caller said because it's likely that I would have voted for cloture on that bill, but I've never made a cloture motion. Now, I'm going to continue and I want the record of this debate to show concrete cases where they demonstrate the randomness, the arbitrariness, the freakishness of how the death penalty is administered in Nebraska, and plea bargains are engineered by the prosecutors. But continuing, November 1, 1975, 63-year-old Joseph Shonka, S-h-o-n-k-a, was shot to death by his wife, 34, who was charged with first-degree murder. Pursuant to a plea bargain, she pleaded guilty to the reduced charge of second degree and was sentenced to ten years. January 1, 1977, Thomas Freeman...and I knew this lady. Her children came to the barbershop. January 1, 1977, Thomas Freeman stabbed Rachel Past 13 times and slit her throat while her daughters, seven and nine--little girls got haircuts in those days, they still might--while her daughters, seven and nine, were in the home and heard her screams.

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He was convicted of second-degree murder. October of 1976, penitentiary inmate Thomas Rahls stabbed another inmate to death. Originally charged with first-degree murder and serving 23 years for robbery and manslaughter, he was allowed to plead guilty to manslaughter and got 10 years. And that gets to the lie to what these people in here are talking about in terms of somebody who is a prisoner killing somebody and getting the death penalty. The death penalty was in place. The prosecutor let him plead to a plea bargain by which he got ten years. Continuing, in June 1977, Christine Duryea, D-u-r-y-e-a, Welsh was killed by William J. Welsh, III, her policeman husband, who shot her six times, three times in the head, three in the side and right arm. Originally charged with first-degree murder, he eventually was convicted of manslaughter. [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CHAMBERS: In May 1976, Richard Hander shot and killed Howard Drayer, D-r-a-y-e-r. Originally charged with first-degree murder, he was allowed to plead guilty to second-degree murder pursuant to a plea bargain. I believe that was in Laurel, Nebraska. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers and Senator Wallman. Senators in the queue: Karpisek, Hansen, Chambers, Carlson, Pirsch, Lautenbaugh, Janssen, and others. Senator Karpisek, you're recognized. [LB543]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I went home again last night and did a little soul searching again and still came back to my original feeling of not being able to support LB543. But on a little bit lighter note, I did dream about making hot dogs all night, even though I haven't had my meat market for almost five years, so that might have been some of the baloney that Senator Chambers was talking about. I do hope that we get to a vote on this. I think we need a vote. People need to know, we need to send a message one way or another. And although I do not...will not support LB543, I know that Senator Chambers is trying to make a record and I would like to yield the remainder of my time to Senator Chambers. [LB543]

SENATOR GLOOR: Three minutes fifty-eight seconds. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Karpisek. July 10, 1978, Anita Barnett was shot to death by her husband, David Barnett. The autopsy report listed 22 wounds, and 12 bullets were recovered from her body, meaning he had to reload his weapon. Originally charged with first-degree murder, he was allowed to plead guilty to the reduced charge of second degree pursuant to a plea bargain. September 2, 1997, Michael McLemore stabbed Marcella Torres more than 50 times and stuffed her body into the trunk of her car. Although finding justification for the death penalty after McLemore was convicted of first-degree murder, Judge Gerald Moran, correctly applying the principles of LB711, said the circumstances of the murder were

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similar to other first-degree murders in which life was the sentence. Among the examples he gave were the case of Nichole Witherell convicted in the death of a Bellevue man stabbed more than 50 times, and the case of Asa Carter who raped and suffocated a nine-year-old girl. This was a lower court judge who applied LB711 and ruled against the death penalty. But that was not what the Supreme Court was doing. On September 13, 1991...1999, Arlan, A-r-l-y-n, Ildefonso shot her retired...the retired Reverend Carr Hume, 82, in the face with a hollow-point bullet, killing him. Ildefonso claimed to be angry with his girlfriend and that shooting somebody was the only thing that could make him feel better. Convicted of first-degree murder, the judge said, as he imposed a life sentence, that Hume's murder was the most cowardly, senseless crime to come through his courtroom. "You have surpassed anything I have ever seen." Hume's relatives requested the judge to spare Ildefonso's life, so not every family who suffered, whose relative died in a vicious murder, is pushing for the death penalty. Continuing, such a request was ignored in the case of Native-American Randolph Reeves who languishes on death row. And before I run out of time, because I may not get a chance to speak again and there will be no closing given on this motion because the speakers will probably carry to the point where I'll not be allowed to close. Other than Medicaid,... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CHAMBERS: ...all the motions for cloture were supported, even by people who did not support the underlying bill. And those people on those votes comprise a sufficient number to defeat a cloture motion, but they voted for cloture, then voted against the bill. I'm going to make the cloture motion. Obviously, I'm going to vote for it and we'll see what will happen. But whatever vote is taken today, whether the cloture vote is successful or is not, it will not be the end of this issue. It will not be the end of the ramifications for how this issue is resolved. I do not believe that the arguments made against the death penalty were heeded. [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers and Senator Karpisek. Senator Hansen, you're recognized. [LB543]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I stand in opposition to...not the bracket bill but the amendment, AM1367, and the underlying bill that we're talking about. I was 11 years old when Starkweather went through the state on his killing spree. And we talk about whether the death penalty is a deterrent or not, 11 years old, it was a deterrent. And that's not changed. I may not be a lawyer, I'm a rancher, and I think a pretty good one. I'm not a lawyer, not a very good one. But I am

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an observer, observer from childhood through high school, college, and my career in ranching and working with livestock. Believe it or not, there's a lot of similarities in livestock and human actions. I think that's probably why we get along so well. Charles Starkweather went through his killing spree from December 1 to January 29, killed 11 people. He was...the last person he killed was in January, January 29. The trial was in Lincoln, in Lancaster District Court, and found guilty on May 23 of 1958. Went through some appeals, several appeals that we talked about yesterday that Senator Seiler mentioned that we cannot do away with those appeals. They're in the law. You know, whether they cost money or not is not important and I certainly agree with what Senator Seiler said yesterday. Starkweather was executed June 25, 1959, about a year and a half after the events that occurred with his trip across Nebraska and into Wyoming. It was swift justice then even though the appeals came. And I just wonder how many of the people...and it was a jury decision to execute Starkweather. I just wonder how many of the trials that Senator Chambers talks about were, the choice of execution or not execution, were done by juries. I know that in 2002 it changed to a judge's decision rather than the jury. But, you know, we've been told in here over and over and over by Senator Chambers that if you're...not necessarily not a lawyer, but you know we sit in here and we're not very dang smart. But we do have feelings and the feelings I had when I was 11 years old was a feeling of terror that I can't erase from my memory. Years after that, you know, people were still talking about, you know, you do something bad enough, the state's going to take you in and execute you. It was a huge deterrent. Now we don't execute anyone even though when you study other states, especially Texas, they do their execution with lethal injection and they use their death penalty a lot. Not that far to Texas. Maybe those drugs are available in Texas. Some of these crimes that are committed are terrible and Senator Chambers is going over them today. I thought yesterday we weren't going to talk about the crimes, we weren't going to talk about the details of the crimes, but he wants that on the record now. You can put on the record that I think the death penalty is a deterrent. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Hansen. (Visitors introduced.) Returning to debate, senators in the queue: Chambers, Carlson, Lautenbaugh, Janssen, Crawford, Coash, McCoy, and others. Senator Chambers, you're recognized. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Continuing, around November 11, 1999, Michael Blair murdered his ex-girlfriend and her two sons. Joshua, eight, was found in an upstairs bedroom with his throat cut and his mouth gagged with a sock. The body of Matthew, five, was down the hall next to his mother. His throat had been cut. Victoria Huffman, 33, had been stabbed in the heart. Pursuant to a plea bargain under which the prosecutor who pushed for life imprisonment rather than the death penalty, Blair pleaded guilty to three counts of first-degree murder and three weapons charges. He was sentenced to life. February 14, 1999, two days after a shootout in which he wounded two law enforcement officers near Sutherland, deputy sheriff and a state trooper, Texas fugitive, Charles E. Moses, Jr., shot Robert Sedlacek to death and

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spread a blanket of terror over western Nebraska until he was apprehended. Pursuant to a plea bargain agreed to by the Sedlacek family that would spare the man the death penalty, Moses pleaded no contest to the reduced charge of second-degree murder and use of a firearm to commit a felony, plus two counts of assault and two counts of being...of using a firearm to commit a felony in connection with wounding the two officers. There was a case, and I won't read the gory details. In April 1977, Ricky Roewert, R-o-e-w-e-r-t, killed Henry Hernandez with a knife and beheaded him. Although pleading guilty to first-degree murder, he was sentenced to death. There are additional cases, but I want the record to show these cases that occurred in Nebraska where, based on plea bargains and in at least one case a three-judge panel, atrocious murders were committed and no death penalty was imposed. The U.S. Supreme Court said in the case where they struck down all death penalty cases in 1972, that when you have an extremely harsh penalty and it's imposed very irregularly and in a spotty fashion, there's a presumption that arbitrariness is involved. They also pointed out that a penalty that society is willing to see inflicted on the poor, the unpopular, and racial minorities would not be accepted if it was imposed on the population as a whole in the same manner. Courts have pointed out that contrary to things that people like Senator Hansen and Senator Lautenbaugh and Senator Harms will say, the courts presided over by judges who handle numerous death penalty cases, and who read numerous studies and they were part of the record, deterrence does not occur as a result of the death penalty and that's been down through the years. And these would be in cases where a court would impose the death sentence. They would quickly say, it is not going to be a deterrent, it has not been a deterrent, it is not a deterrent. So when these people have to hold on to something which has been totally discredited to justify their position on the death penalty, they don't have a good basis for it and they know it. But regarding the cloture motion that I will offer, I would like to get the 33 votes, obviously. [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CHAMBERS: But I have been down this path so many times, and I'm prepared to continue walking this path, that if the 33 votes are not there, the world does not end for me. Senator Lautenbaugh said he's willing to give up the rest of the session. Well, brothers and sisters, in order to be accommodating, I'm willing to take the rest of the session or whatever portions of it I feel are necessary or proper under the circumstances. But at this point, I believe that there should be a vote for cloture so that there can be a vote on this bill. Several senators have said, those who oppose the death penalty, let your constituents see what your position is. [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR CHAMBER: You said time? [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

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SENATOR CHAMBERS: Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Carlson, you are recognized. [LB543]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Senator Chambers in his opening on the bracket motion said the world looks to the U.S. for moral leadership and doesn't get it on the death penalty. The world doesn't get it on abortion either. Now many of us don't believe that the death penalty is necessarily cruel and unusual punishment. And several of you have referred to the Good Book and I'm going to do it because it says in Romans that we are to obey the laws because if you don't, the government doesn't wield the sword for nothing. Now how do we get that capital punishment should be illegal from that passage? If you can convince me of that, I would change my mind. I just don't see it. I do believe from a practical standpoint that the efforts of Senator Chambers have stopped the death penalty in Nebraska already. He wants to complete the process and eliminate any possibility of the death penalty being carried out in Nebraska. He has every right to do that. Now, if successful, the worst of the worst, the guiltiest of the guilty, the most undeserving of the most undeserving, the vilest of the vile will never be given the ultimate penalty they deserve. I admire his unending energy to achieve the repeal of the death penalty. And so we who call ourselves pro-life must come back next session with a strong effort to protect the defenseless, innocent, unborn in our state. The Supreme Court determined that the right of abortion is not absolute and it must be balanced against the state's legitimate interest in protecting both the health of the pregnant woman and the developing human life. And I believe that this protection should begin when a heartbeat can be recorded and definitely determined in the mother's womb. Such legislation would put an end to action such as those of killers who make millions from mid- and late-term abortions, actions which are terribly cruel and unusual. When abortion stops, when that cruel and unusual punishment is ended, when the innocent, helpless lives are protected in our society, I am much more ready to agree with Senator Chambers in his efforts to eliminate the death penalty, but not until then. Thank you. [LB543]

SENATOR GLOOR: Thank you, Senator Carlson. The Chair recognizes Senator Lautenbaugh. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Let me say at the outset, I appreciate Senator Carlson's comments but I've always found it offensive to relate the issues of abortion and capital punishment to each other. I've always really, really found ridiculous the argument that how can you be pro-life and favor the death penalty? Well, how can you be pro-freedom and favor incarcerating people? It's very simple. Babies are innocents. I believe we shouldn't kill them. People who commit murder, capital murder, deserve the death penalty. It should be meted out.

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It's that simple. There's no contradiction there whatsoever. I heard this morning that it's perfectly clear the proponents of this have 26 votes; they do not. There were 26 votes against a bracket motion yesterday, 2 or 3 of which I know don't support the bill. So there are not 26 votes in favor of this. We've heard again a bunch of distracting discussions about how, well, there's a bunch of first-degree cases and they sound just as heinous as the ones that have received the death penalty, why didn't they? Folks, you're being...well, they're trying to confuse you with this stuff. We have aggregators and mitigators. All of these cases are not alike so every first-degree case is not eligible for the death penalty. That's why we have the aggregators and the mitigators and then the prosecutor must weigh the evidence and see if there are any witness problems, and see if there's a likelihood of getting a conviction. And you have to factor in the percentages and then you have to look ahead of who is on the panel. In one case they looked ahead and saw one of the three judges on the panel said, I will never vote for capital punishment, in his testimony before...I think it was another judicial panel, a legislative panel, so they didn't seek it. So you run a risk of being misled when you sit here and start comparing one first-degree case with another and say, why was it not charged as a capital or why was it not pursued as a capital case? Every case is different and the variables are myriad and we could stand here all day, I could ask those who are trying to make this case, well, do you know who the witnesses were in this case? Were they of the same nature and quality? Was there DNA in this case? Was there not DNA in this case? Were there only eye witnesses in this case? Was there a video in this case? They're all different. And when you sit here and say the system is manifestly injustice because this case came out differently than this case, you either don't know what you're talking about or you're endeavoring to mislead, if you do know what you're talking about. And that's what's happening here. Similarly to say that the feds could prosecute all these capital cases so we don't need to worry about it, is simply untrue. There has to be a federal nexus before the federal prosecutors can step in. And more to the point, Eric Holder, the current Attorney General, has said he will not pursue capital cases in states that don't have capital punishment without a waiver from the state. So they've had to seek a special waiver in Massachusetts because of the bombing. And I think we can agree, those bombers deserve the death penalty. And now I understand we have an amendment out there that is not going to make this repeal, if it happens, retroactive. So we're saying that the 11 on death row could deserve it but nobody else is going to. I don't accept that. I simply don't accept that. And I think it's a particularly lazy form of federalism to say, it's okay, we can stand down from our obligation because the feds can come in and prosecute and invoke the death penalty, leaving aside the fact that it's also blatantly false. And as is the case with so many popular outrages these days, the clamor... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR LAUTENBAUGH: ...against the death penalty has risen while the actual legitimate concerns regarding the accuracy of its imposition have declined. And we see

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this often in other issues, but the just cause for outrage over the death penalty has increased, even as it has become more reliable. It sounds unbelievable, but it's undoubtedly true. DNA evidence, video evidence, better presentations, more skeptical jurors, and whatnot. We have less reason to doubt the fairness of the death penalty today as it's being imposed today and yet we now are trying to repeal it. And if you think it is true that there is not adequate review of these cases, I have an amendment in that we're never going to get to that deals with the Commission on Public Advocacy and that is something that we funded to provide defense... [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Janssen, you're recognized. [LB543]

SENATOR JANSSEN: Thank you, Mr. President and members. And I see several children up in the balcony and would remind their sponsors that we are discussing the death penalty in very graphic detail today, just as a reminder. Some names were brought up this morning and sadly I know some of them personally. Mark Schnabel, I don't know him personally, but I knew an energetic volleyball coach from Yutan High School. For a while after college, I was a broadcast communications major. I worked up in Sioux City for a while in television and then came down to Wahoo and covered the Yutan volleyball team. And they went to state. That's the last time I talked to Sandy Schnabel and then she resigned from her position at Yutan High, kind of abruptly, early 40s, won a state championship in 1992, went to state seven additional times with a small town school, added a lot to the school. So that does resonate with me and I did check and Mark Schnabel still is in prison today. I was listening on my way home last night to KFAB, it's called the Chris Baker show and he was discussing what we did down here yesterday and continually today. And for the record, I kind of came in late on the show, obviously, we got done late. But he had said...and I believe he's from Texas, said that he favors the death penalty but since we're not using it in Nebraska, why even have it, get rid of it. Paraphrasing, but I think that's kind of where he was at with it. So callers were calling in, weighing in on both sides, much like we do here, and one caller called in, I took particular note of. Said we need to keep it. She said why keep it, it costs so much. He said we need to keep for one reason in my opinion. This is one caller, mind you. We need the leverage. We need the leverage when somebody murders somebody, they're taken into custody and we say, well, we've got the death penalty or we got first-degree. Yeah, I know I've abducted your son and your son or your child, your daughter might still be alive, but we have nothing to bargain with. You're getting life in prison regardless. Or, all right, we'll relent on the death penalty, the family has relented, the prosecutor has relented, you just tell us maybe where the remains are at so the family can get closure. Closure, that's important. I don't think that's something

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that many of us have thought about. Can you imagine being in that situation as a family member not knowing where your child is at? Not knowing, and you have this suspected murderer, most likely murderer sitting there that says, look I've got nothing to gain from this, and look murderers are cowards, let's face it. They are cowards by their very nature. Murderers are cowards and they will cave if they've got something to gain or lose. They fear death. They kill people but they fear death. That's why they kill probably. And if you say, I'm going to kill you, the state, or we'll let you spend your life in this prison where you can play softball, handball, whatever you want, and I've seen it and it does happen, they'll relent, and they'll tell you where the remains of your loved one are at. They'll tell you other crimes they've committed. They'll give closure to other families. That is why, if for no other reason, we need to keep the death penalty in Nebraska... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR JANSSEN: ...because I can't say it enough, murderers are cowards. Cowards will cave. And if we can hold the death penalty over their head, they might tell you someday where you're loved one is at. Maybe where your live child is at. Unfortunately, I have a personal experience with that. A very good friend of mine in high school was murdered, stabbed 42 times, ran over in a parking lot in Omaha, not only stabbed 42 times, ran over afterwards as if that wasn't enough, by two individuals. And one additional individual that helped cover it up. That family had to make a decision when they sat with the prosecutor. Do you want to go for life... [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR JANSSEN: Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Janssen. (Visitors introduced.) Senator Crawford, you're recognized. [LB543]

SENATOR CRAWFORD: Thank you, Mr. President. Colleagues, over the past few hours we've had many discussions of the death penalty, especially in the abstract. We've discussed notions of justice. What does a death or heinous murder require? Is it appropriate for the state to take a life if security can be maintained by lesser means? And what do we owe to victims' families? I did not talk about these abstract death penalty issues very much when I was asking people to send me here. I wasn't asked about them very often, but every day, at almost every door, I did talk about my commitment and my expertise to bring to discussions here in the Unicameral questions about how policies actually work in practice. We would discuss the importance of having people in Lincoln who would consider how the decisions made in this Chamber actually play out on the ground as they are implemented by real people in our communities. I'm convinced that this is the message that resonated the most and ultimately the reason

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that I was sent here. Colleagues, I'm convinced that if we look at how the death penalty operates here in Nebraska, that it simply does not work to promote justice and that the flaws are not ones that can be reformed away. What does having the death penalty in Nebraska mean really? We have had three executions since 1973 and it's questionable when another execution may occur. If you think executions are important for justice, you have to face the fact that they are not happening. Having the death penalty on the books is not leading to the death of those accused of heinous crimes and it is not giving families closure as they have so courageously testified here in the Capitol. If you feel that the state taking the life of another means...when other means of security are possible is unjust, three deaths are three too many. It is not possible really to honestly say that we can speed up or reduce appeals while protecting the integrity of our justice system. The multitude of appeals comes from the complexity of death penalty cases created in large part by our effort to fix the racial disparity problems and arbitrariness of the death penalty that caused it to be overturned in the '70s. If you reduce appeals, you increase the problems of innocent victims and the problems of discrimination and arbitrary sentencing. In reality, the death penalty comes with multiple issues in sentencing and thus multiple decisions to be appealed. You cannot reform appeals or arbitrary sentencing out of the death penalty. Some have suggested that DNA or video technology could eliminate the possibility of error or the need for multiple appeals. However, this is not the case in reality. Technology does not eliminate the elements of human error or human fallibility. DNA evidence can be planted or misplaced just as blood evidence and other types of evidence have in earlier years, could be corrupted by air or malfeasance. I've had the personal experience of having a family member wrongfully incarcerated. We found out later that he was almost a victim of evidence planting. We do not like to think about this human element in our criminal justice system but we cannot eliminate it. In fact, here in Nebraska we recently had a county crime lab with documented irregularities. Moreover, even if you could identify a set of modern cases where you've been able by some means to clearly rule out error in terms of guilt...in terms of guilt of an act of murder, you would still have human performance and human judgment at play in determining those aggravating and mitigating circumstances, instructions to the jury, and jury decisions among other steps. In reality, you cannot eliminate... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CRAWFORD: Thank you...discrimination or arbitrariness in those steps by reform. Even if it were possible to somehow make sure that you had no mistakes in establishing guilt or sentencing in death penalty cases, the death penalty still poses the threat to justice in practice even here in Nebraska. The reach of the death penalty extends beyond those on death row. Even if those 11 people are on death row here in Nebraska are not there wrongfully, still in Nebraska we've had miscarriages that occur because the death penalty is on the books. Ninety-five percent of the cases in which DNA is used to exonerate individuals wrongfully convicted of a wide variety of crimes

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have occurred in states where the death penalty is legal and can be used to coerce confessions. This is true of the six cases here in Nebraska which have been exonerated just recently. Colleagues, the injustices of wrongful convictions that trace back to death penalty, extend beyond the hundreds of cases of exoneration in death row cases. Just having the death penalty on the books... [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR CRAWFORD: Thanks...can corrupt justice even for non-death-penalty cases. Thank you. [LB543]

SENATOR GLOOR: Time, Senator. Thank you, Senator Crawford. Senator Coash, you're recognized. [LB543]

SENATOR COASH: Thank you, Mr. President. Colleagues, yesterday I asked a couple of questions at the beginning of my opening and I didn't ask these out because for any other reason that I want the answers to these questions and I want them from the people who are adamant about keeping the death penalty. And here are the questions. Do you think the death penalty is going to be carried out? I have not heard the proponents of keeping the penalty say, yes, if we keep this we think that this will be implemented. And if you do think it's going to be implemented, when? We have a record, colleagues, of three executions in 40 years. That is not a good record. I want to know how long we'll have to debate this, without an execution, before people will start to say, you know what, we're not going to execute anybody, so let's stop talking about it. How much debate do we have to have over years before we decide that this isn't the policy that makes sense for our state? Senator Brasch said justice has to be served. How is...how is it justice when the sentence is not carried out? The people on death row are getting away with it because we cannot execute the sentence that has been handed down for them. How is three executions in 40 years justice? I haven't heard the answers to that question. I heard some members say that we should reform the system. Not one person has said how we should do that. And we've got a lot of competent lawyers who serve today and have served, and don't you think if there was a way to speed up the system, that would have been brought? There's a reason we can't speed up the system and it's not our reason, it's the Supreme Court of the United States' reason. They put a three-tier system in place. That's not our call. Senator Janssen talked about we need this for plea bargain reasons. I would ask Senator Janssen to read the transcript of the hearing on LB543. I asked that very question to the Omaha city prosecutor. I said, do you use this for plea bargain? He said, no, we cannot do that. So if you're hanging on to the death penalty for the reason that you want to be able to use it as leverage, you can't do it. Even a person who would like to use the death penalty said, that's not a reason. We can't use this for plea bargain. It's in the transcript. And finally, Senators, yesterday we had an amendment that linked it to abortion and that caused some debate. I'm against abortion as well. And I heard a couple of colleagues say, you know what, if we

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could eliminate abortion, I'd be fine with eliminating the death penalty. I agree with that. I'm with you there too. But I would ask my colleagues, are we going to lead by example here? Are we going to say, well, I don't get my cookie, so you don't get yours. Let's be statesmen about this. Let's lead by example. I think that's what the people send us here to do. With that, Mr. President, I will yield the balance of my time to Senator Chambers. [LB543]

SENATOR GLOOR: One minute, Senator Chambers. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I don't know if I have enough time to get this out, but Senator Lautenbaugh was the best witness for my side that I could have. He mentioned to you a judge who would never vote for the death penalty, prosecutors who see they can't get a conviction, yet these cases would merit the death penalty pursuant to the law. So he's pointing out things built into the system itself that prevent the death penalty from even being sought in cases where prosecutors believe it should be. The judge cannot be removed, the prosecutors are going to continue to be prosecutors, and those are defects in the system itself, and that's what the U.S. Supreme Court has said but you can't get it through the...members of the Legislature I said I had a reason for that motion. I now withdraw that bracket motion. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers. Seeing no objection, so ordered. Mr. Clerk. [LB543]

CLERK: Mr. President, Senator Ashford, would move to amend Senator Coash's amendment with AM1380. (Legislative Journal page 1339.) [LB543]

SENATOR GLOOR: Senator Ashford, you're recognized to open on your amendment to the amendment. [LB543]

SENATOR ASHFORD: Thank you, Mr. President. Specifically, AM1380 to AM1367 strikes Section 7 of the...of AM1367. And Section 7 reads, "In any criminal proceeding in which the death penalty has been imposed but not carried out prior to the effective date of this act, it is the intent of the Legislature that such penalty shall be changed to life imprisonment without possibility of parole." And, obviously, what this amendment does is strike that language. So quite simply, the intent for this LB543 to become retroactive would be deleted from the statute if this passes. I think everybody fully understands what that means. It means that the Legislature is, from a policy perspective, is, if this bill passes, and I hope it does, we'll be looking prospectively to cases in the future. Let me comment on a couple of things as well that I was going to comment on it when...on the motion to bracket. The Judiciary Committee is made up of conservatives, more progressive members, moderate members, and we don't take this issue lightly. When we have had this issue before us, we are presented with all of the evidence, all of the

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information that we've talked about on the floor. We, in fact, in my case as Chair, we...I attempt to look at whether or not there is any overriding reason or any persuasive reason why we would keep this penalty of death on our statute books. And I've thought about over the years other options and I think they've been talked about on the floor, whether treason, for example, should be an exemption and that the death penalty should apply to acts of treason or acts of killing a prison guard, those kinds of options that could be presented in a bill that would be presented to the floor. And those kinds of amendments have been tried. I know back years ago we thought about the prison guard exception. It was debated on the floor. But then again, as Senator Chambers has suggested...as Senator Chambers has suggested, cases where a prison guard has been murdered have resulted in a ten-year sentence for that perpetrator. So when we bring this bill out here, we realize that these are very heinous, very difficult cases, We realize, as Senator Brasch has suggested, that the perpetrators have disrupted to such a significant degree the lives of families that it's almost unmentionable. We get it. We get it. Our goal, I think in the committee, is to give to you...and all these bills we give to you, whether it's mandatory minimum sentences or whether it's defining crimes, whether it's any of those things, they're very difficult issues. And we give you those issues after having gone through all this balancing act that we're talking about here on the floor. We don't want to be easy on somebody. We're not suggesting to the body that we be easy on these perpetrators. But in our view as a committee, and each one of the committee members has spoken on the floor and I think has voiced their opinion on these bills, but we are attempting to come up with policy that will make the public safe, that will make every single resident of the state of Nebraska safer. The simple fact is that the homicide rate in Nebraska goes up and it goes down, and then it goes up again and then it goes down again, and then it goes up again. The death penalty has been in effect during all that time. We cannot find, and we have looked at years and years of evidence, seven years of hearings, many, many years of hearings before the seven years that I've been back here, to try to find some sort of nexus that would say that if we have the death penalty, our public is going to be safer. And it doesn't exist. Senator Nelson read some statistics from some study and we've looked at some of those studies. There are couple out there that suggest some sort of deterrent value, but they are so vastly outnumbered by studies that give the opposite conclusion. We are not proposing to this body that we be easier on criminals. We aren't easy on criminals in the state of Nebraska. We have mandatory minimum sentences. We have life imprisonment without parole. We're not setting these people free by this bill. They are going to be in prison for the rest of their lives. They are going to be incarcerated for the rest of their lives. What we are saying in this amendment--and I'm going to give the rest of my time to Senator Chambers--what we are saying in this amendment, we are attempting to address the concerns of some of the senators who have raised prior cases and are concerned about those cases. And what we are suggesting, I am suggesting, in this amendment is that those, as a body, we are not taking a stand to suggest that this law would apply to them, and it would be up to the courts to make that decision, much as it is in the juvenile justice area when we changed the sentencing for juvenile justice and for juveniles who have committed IA

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felonies. So I think this debate has gotten into some sort of a...the guys that are for, the women that are for this bill are somehow for criminals; somehow we want to make criminals easier, somehow we want to forgive what they've done. If I could wave a magic wand, as Chair of the Judiciary Committee, and send out a bill that would stop the violence, I'd do it. I'd do it. I think Senator Murante has made one of the most salient arguments of all when he said, I'm not there yet, I don't see it. And that's really where the committee is. We don't see what the deterrent value is. We don't see why this bill should not pass at this point. So with that, Mister...how much time do I have left? [LB543]

SENATOR GLOOR: Two minutes fifty seconds. [LB543]

SENATOR ASHFORD: Senator Chambers, I'm sorry. I thought I had more time to introduce the amendment but... [LB543]

SENATOR GLOOR: Senator Chambers, 2 minutes 50 seconds. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Senator Ashford, thank you. He thought he had more time; I thought there was less. Members of the Legislature, there are things that I would like to say but don't have the opportunity. I didn't turn my light on because I will not be reached anyway, but on the issue that this amendment deals with it matters not, in my opinion, what the Legislature says. It can express a wish or an intent that those currently on death row would have their sentence reduced to life without possibility of parole. The court is going to look at the entire real estate and decide what ought to be done in the given cases. It will be up to the defense lawyers for the individuals to do whatever it is they think they can do to have the life of their client spared, and they have been successful to a marked degree up to this point. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers and Senator Ashford. (Visitors introduced.) Members, you've heard the opening on AM1380. We return to floor debate. Senator McCoy, you're recognized. [LB543]

SENATOR McCOY: Thank you, Mr. President, members. I think this is an interesting part of the discussion because it was one of my arguments when I asked the original Coash amendment yesterday, I believe it was AM865, to be divided. This particular section, which I believe was the original Section 21 of AM865, was one of the sections that I believed needed to be a separate amendment. This is a fairly big issue. As the members will recall with LB44, which was juvenile sentencing, a few weeks ago, I don't believe, as I went back and checked that file, and Senator Ashford can correct me if I'm wrong, I don't believe we ever talked specifically in the form of an amendment or the bill about retroactivity for juveniles, but we did talk about it a lot on the floor. This is a fundamental part of this. This is why yesterday I said, to me, you cannot divorce the two

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issues of those who are on death row and looking forward prospectively as a Legislature, because we're talking about retroactivity within LB543. So I think this is a fundamental, important piece of the discussion and one that I wish we could have had earlier had we not had several bracket motions by proponents, supporters of LB543, that we've had to work through. I think this is a fundamental part of the discussion I'm glad finally, at 10:30 in the morning, that we're having. With that, I'd yield the remainder of my time to Senator Lautenbaugh. [LB543 LB44]

SENATOR GLOOR: Senator Lautenbaugh, 3 minutes 17 seconds. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And I appreciate Senator Chambers quoting me favorably, but I think he misunderstood the point I was trying to make and that is very simply this: Each case is different. So it is not a defect in the system that a prosecutor can decide that there may be evidentiary issues with a certain case that would otherwise be worthy of capital punishment. A witness could die. A witness could disappear. A witness could be shaky and uncertain. A witness could have a problematic history. There could be a lack of DNA evidence. There could be a video that somehow is not probative or is destroyed or I could go on and on and on. Those aren't flaws in the system. That's part of prosecutorial discretion. And the fact that prosecutors can exercise discretion does not make the death penalty flawed. You can argue that you don't like the way they exercise discretion or you think they exercise it in an improper way, but that's not a systemic flaw written into the system. That's a beef you have with a particular prosecutor or prosecutors. But evidentiary issues are what they are and they exist to some extent in every case. And if they don't exist in a case and the aggravators are there and the mitigators are not--listen to all the caveats I'm having to throw in here--if there are no evidentiary issues and the aggravators are present and mitigators are not, then it is a proper death penalty case. And to say that you look at the panel that's going to be reviewing it and you know there's a judge that's never going to vote for it, that is not a flaw in the system. That's a flaw in the judge who will not apply the law. That judge is flawed. That judge is gone. I think Senator Chambers was instrumental in making sure that judge is gone. He was not a systemic flaw; he was just a flaw. So I don't want to be misunderstood. I certainly was not trying to make Senator Chambers' case and I don't think I did. But getting back to what I was getting at before, we are being told... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. We are being told that now is the time to do away with capital punishment, just when its use seems to be more reliable than ever in our history. We've been given sort of misleading testimony from the Death Penalty Information Center that 102 innocent men have been released from death row since 1972. But the vast majority of these weren't innocent at all but were merely wrongly convicted on technical grounds. That's different from saying a person is

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innocent of the crime. Similar games have been played with studies showing racial disparities in the application of the death penalty. Many of these can simply be dismissed by noting the racial disparity among criminals. The rest, showing harsher penalties for murders of white victims than black, can be written off by the fact that disproportionately white suburbs tend to impose the death penalty more reliably, while some urban prosecutors and juries tend not to. [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senators in the queue: Christensen, Ashford, Murante, Johnson, Scheer, Bloomfield, and others. Senator Christensen, you're recognized. [LB543]

SENATOR CHRISTENSEN: Thank you, Mr. President. Yeah, I was wondering when this comment would come: DNA can't be trusted because it can be planted. If you believe that then you can't overturn a death penalty case or any other case based on DNA because it could be planted there also. Sad part is, it comes down to what you believe. The truth is DNA could be planted. Truth is someone could wrongfully be released, wrongfully accused because of it. But if you're going to remove everything that you have, then you're going to have nothing. You might as well remove all laws. As I said yesterday, if you don't trust anything then because people still speed you're going to remove the speed limits? Because people have wrecks, you going to get rid of cars? I mean, where do you stop? You can literally go after it. You know, it's one of the fallacies, and everybody says it can't be changed because it's the Supreme Court's fault or lawyers' fault or whoever you want to point it at, but the fact is the slow response to justice is the biggest problem we have. Ecclesiastes 8:11 even says it itself: Because if the sentence against an evil deed is not executed speedily, the heart of the children of man is fully set to do evil. It is so true. Everyone says it can't be changed. I can't believe that no one can come up with a way to change it. Generally, it comes down to the fact people don't want to being more of the issue. You know, we've heard people lead by example. We have to overturn this one and hope that we overturn abortion. I happen to support the death penalty and I do support getting rid of abortion. But face facts: Right now it ain't going to happen. One or the other may, but one may not; both may not. You know, it's easy to make statements that one has got to change first. I would hate to make that deal, because the more I've studied this, and I can thank the people in the lobby for making me dig into the scriptures on it, I won't change my mind. I'm fully rooted now. It's clear in scripture and I'm going to stand there. But I want to go back and talk a little bit about the proportionality that I visited with Senator Chambers about earlier. If I understood him correctly, he said that Supreme Court was ignoring it. And you know, I went out, talked to the Attorney General's Office about it and they said, well, they're not ignoring it, and obviously, because if they were, there would be somebody

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challenge their case in court because of it. He says it is used. He said it is something that they can't avoid. And... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CHRISTENSEN: ...I think...thank you, Mr. President,...I think it's obvious we have not had a court case challenge because it wasn't used. And I believe Senator Chambers said it was on the books. So I don't think that that was a...unless I misunderstood him. I was hoping to have more time to yield him. But I don't think that was a good argument on that end. And if he wants the last 30 seconds, he can sure have it. [LB543]

SENATOR GLOOR: Senator Chambers, 30 seconds. [LB543]

SENATOR CHAMBERS: Mr. President, members of the Legislature, thanks for your show of goodwill, Senator Christensen. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers and Senator Christensen. Senator Ashford, you're recognized. [LB543]

SENATOR ASHFORD: Thank you, Mr. President. In a few minutes, we're going to have a cloture vote on this bill, I suspect. And I implore this body to keep this bill alive. We...in our committee, we must deal with the cards that we're dealt. We must deal with the cards that we're deal. And the facts are indisputable that the three people that have been executed since 1973 is not enough of a reason to involve the system, criminal justice system, in these appeals the way that we do, the exonerations or at least the appeals that have been successful, the numbers of people that were on death row that are not, that Senator Lathrop has gone over. We have to look at, as we do on all these other bills, and we're told this on the floor all the time by members, look at, look at what's before us. If there's another way to do this, then let someone bring the bill to do it, but we have this bill in front of us right now. We aren't executing anybody. We're not going to execute anybody, as Senator Coash has suggested. I implore this body to keep this bill alive so that we can get over to Select File with something that is good policy, and it is critically important to our state. With that, Mr. President, I would give the rest of my time, if he so desires, to Senator Chambers. [LB543]

SENATOR GLOOR: Three minutes thirty seconds, Senator Chambers. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Now that I know that Senator Christensen has been talking to people in the Attorney General's Office, I understand the misinformation he was given. But in order not to take time on the mike, I will get Senator Christensen the case where the Nebraska Supreme Court said that if they were going to enforce that law as it's written, they would declare it unconstitutional because it

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would interfere with the discretion of the jurors and the prosecutors or something like that. I'll show him that case. And the other day he had said that he believes in punishing people with the same kind of death that they inflicted on other people, because he believes in an eye for an eye. And in the New Testament, Jesus said: You've heard it said by them of old time an eye for an eye and a tooth for a tooth, but I say he that smiteth thee on the one cheek, offer him the other also. So he got rid of the eye for an eye, tooth for a tooth. But like the Bible, people either misread cases or don't read them at all. The frustration that people have, who inform themselves on issues where there is concrete information, arises when they must deal with people who don't know the facts, who have not read those cases, who have not seen the trends of the court, where even the U.S. Supreme Court has said that the death penalty has been steadily eroded throughout the history of this country. The number of offenses carrying the death penalty has been reduced. It reached a point where only murder and rape, then they did away with rape and now only murder, that there cannot be a mandatory death sentence. All of the changes that the courts have ordered have shrunk the impact and reach of the death penalty. And as Senator Lathrop pointed out, through an act of attrition or process, the death penalty will be struck down by the courts. Nebraska was the last state to have the electric chair, and I made sure of that by defeating every lethal injection bill. And the chair was struck down because it was...Nebraska was the last state. Being the last state to hold on to barbarism is not something of which people should be proud. Nebraska should try to lead. It's difficult to get an entire state or the majority of a Legislature to move in a forward direction... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR CHAMBERS: ...but that's what I intend to try to do. Did you say time? [LB543]

SENATOR GLOOR: One minute, Senator. [LB543]

SENATOR CHAMBERS: Oh, thank you. I've tried to do that. I've nibbled away at the death penalty. Those who are mentally challenged, which is the terminology we'll use now, cannot be executed. Anybody who is under 18 at the time the crime was committed cannot be executed. Subsequent to this Legislature doing that, the U.S. Supreme Court took those positions also. The Nebraska Legislature led the U.S. Supreme Court and the nation because there was somebody here who wanted to see a state move forward, despite the fact that I feel in many ways it is backward. But as long as I'm here, I'm going to try to be a force for forward movement. I will not give up. And I thank Senator Ashford for this time and I do hope we'll get the 33 votes. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Johnson, you are recognized. [LB543]

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SENATOR JOHNSON: Thank you, Mr. President. Takes a long time to get in the queue on this one here. I was going to speak on several things, but I think most of us have decided where we're going to be. In the last 15 minutes, I've been polled dealing with the anticipated vote for cloture. About a couple weeks ago I was at the mike and talked to you about my position on cloture. I think we have an obligation to vote. That's where I stand as far as voting for cloture or voting against it. I think we need to...we're here to vote, we're here to state our position. I probably this morning am not one on either side because I said I will vote for cloture, based on the principle we need to vote, but I will vote against the bill. I'm not going to go into all the details of the death penalty and whether it should be or shouldn't be. Evidently we can't or we haven't tried to fix the corrections side of it. Maybe it can't be. And if it goes to the U.S. Supreme Court, we have a bigger challenge. But right now I'm just going to speak on my position on cloture. As I stated before, I was part of a group that was called the 17 and I'm no longer part of that group. I still believe we need to vote. Thank you. [LB543]

SENATOR GLOOR: Thank you, Senator Johnson. Senator Scheer, you're recognized. [LB543]

SENATOR SCHEER: Thank you, Mr. President. I rise to talk in relationship to two things. First of all, there has been discussion about the victims, and victims will remain victims the rest of their life. The fact that someone makes an appeal or not on a case does not negate the fact that they are going to continue to be victims. Anyone that has ever lost anyone realizes that every time you celebrate or don't celebrate that birthday or that anniversary or that Thanksgiving or Christmas or Easter or family reunion, that it's obvious that that person is not there. That moment that event comes back to haunt those people for the rest of their lives. Regardless if an appeal is ever made in the case, someone is never going to become a nonvictim. It will be with them the rest of their life. We need to do more for victims. Part of that is making sure that we do provide a punishment and that the punishment is handed out in a timely manner. Doesn't have to be expedient but it should be timely and it should be fair. And as far as I can tell, we've got the fair part down. We just haven't got the timely part down. You know what, Senator Chambers had talked about this shrinking pool of people that are eligible for the death penalty. Would seem to me that because that pool has shrunken, those that we are only looking at are truly those that deserve the ultimate punishment the most. Those are the people that we're talking about. Those are the people that are on death row that don't question the fact of their guilt. They fully understand what they did and they have been convicted and sentenced to lose their life for the crime that they committed. We need to remember that the crime was not against the victim. The crime, the capital crime of murder, is against society. There is a victim. There is a victim in every offense, regardless if it's embezzlement, a car accident. Every incidence has a victim. Murder has a victim or victims. But the crime is against society and our society has a commitment to punish those for those offenses. I have experienced the horrific deeds

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that people can do in a very short period of time. I have purposely kept the details and the items out of those that have shaped my thoughts on this matter. They shape mine. They don't shape others perhaps, but they certainly do shape mine. I look forward to the finalization of this discussion. It has been a very thoughtful, in-depth discussion. It has been a very civil discussion. And I appreciate all of those that have participated in this discussion. It is a difficult decision. It should be a difficult decision. None of us should... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR SCHEER: I'm sorry? [LB543]

SENATOR GLOOR: One minute, Senator. [LB543]

SENATOR SCHEER: Thank you, Mr. President. None of us should take lightly the push of either a red or green button in a decision like this. This truly is one of the more important votes that you'll make. Finances we can fix. Policy we can fix. But this is a policy decision that has long-lasting effects. Yes, and I'm sure Senator Chambers will bring something back again next year and again after that if he's not successful. But just because something is not used does not make it a right thing to have. It almost appears to me that we probably have the perfect system, as Senator Schumacher has stated, because we have a death penalty, it is available, but if we're not using it the threat of it is still there. So perhaps we ought to leave well enough alone and take heed to the risk of removing it. [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR SCHEER: Thank you, Mr. President. [LB543]

SENATOR GLOOR: Senator Bloomfield, you are recognized. [LB543]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good morning, colleagues. Senator Coash, and I'm probably paraphrasing here, said no one has suggested a method to change the process. I don't believe that to be right. I've heard several suggestions on how we could change the process. I've heard the idea that maybe we should go to video or DNA only. I don't have a problem with that. I've also heard that we maybe should limit appeals so that we get things done more quickly. I don't have a problem with that. I don't believe they ought to be limited to one or two, but at some point there should be an end to what is now an endless appeal system. There are many things and there have been many suggestions that would improve our system here. I do not believe that we should do away with the death penalty as a deterrent. Say what you will about whether or not it is a deterrent. I, like Senator Hansen, remember well Charles Starkweather. I was in grade school at the time. Since that night in 1959 when he was

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removed from the living, none of us have feared death from Charles Starkweather. He has been permanently deterred. And with that, I would yield the rest of my time to Senator Janssen. [LB543]

SENATOR GLOOR: Senator Janssen, 3 minutes 7 seconds. [LB543]

SENATOR JANSSEN: Thank you, Mr. President, members. And thank you, Senator Bloomfield, for the time. Senator Coash mentioned that check the transcript when I said that I was listening to KFAB the other day that somebody called in and said, well, it's a deterrent because it's a plea bargain. He said, well, if you check the transcript, you can't plea bargain that. I say that's wrong. Last I checked, you're not sworn in, you're not under oath when you're in those committee hearings, and I can't say what that certain prosecutor does or doesn't do, but that looms over regardless. Maybe they can't bargain with it legally, maybe they can't, but make no mistake about it, the attorneys for that person, the convicted, is definitely reminding them that the death penalty is out there. It needs to stay there because it is a deterrent. And let me tell you about a family that, I started this story, that had to deal with this. Prosecutor came to them after their child, somebody whose parents educated me, whose family befriended me, I grew up with, one of my very best friends, she called me her brother, was stabbed 42 times, ran over by two people and one person that helped them cover it up. I had to actually go...two days later I met up with the father and brother of this person because they just wanted to get away from it all. They said, we want to go golfing; we just want to get away from it all. Meanwhile, they're dealing with prosecutors. They wanted to get away from it all because the prosecutor is saying, do you want the death penalty, do you want us to pursue the death penalty, because we can't guarantee you, we don't know who actually murdered this beautiful person; we don't know who did it. There was two there. One is blaming the other; the other is blaming the other. [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR JANSSEN: You can go with the death penalty for one and then the other one gets off on a second degree and is out in so many years. That's a decision that somebody should make, some family, at that point in time? Think about it. It's a tough decision but it's a bargaining chip. Sad to say, but it is. In the end, even though they believe in the death penalty, and I'm certain they wanted the death penalty because I just texted the brother of the victim this morning, so I am certain, they relented and said, we want them both in prison for the rest of their lives. That's fine, but it was the death penalty that led to that. Keeping the death penalty in place got both of those guys, neither one of which, which would cross the fingers at each other--you did it, he did it, you did it,... [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

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SENATOR JANSSEN: ...you had better look. Time? [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR JANSSEN: Thank you very much. [LB543]

SENATOR GLOOR: Thank you, Senator Bloomfield and Senator Janssen. (Visitors introduced.) Returning to discussion, Senator Nelson, you're recognized. [LB543]

SENATOR NELSON: Thank you, Mr. President, members of the body. Senator Coash has asked, why doesn't someone tell me why we can't get rid of the death penalty because we can't carry it out? I think the answer is simple. We've gone through a very lengthy process in the cases of the 11 people that are on death row, all three phases gone through. The jury has made a decision; the other factors are considered, the mitigators, the aggravators; and then penalties have been imposed. Just because we haven't been able to carry those out is no reason to do away with the death penalty. Sooner or later, regardless of what you hear on this floor, it will be done. Texas doesn't seem to have any problem in carrying out its sentences of execution. My recollection is that they've had about 34 over the past several years. And when Senator Ashford stands here and says again and again we bring this out to the floor, it's with the impetus of doing away with the death penalty. I ask you, why doesn't the Judiciary Committee hold an interim hearing of some sort or bring in people to testify on some of the ways that we can improve the system? So that if there is any injustice that's been carried out, which I doubt, after all these procedures, let's take a look at that. Year after year after year we have to consider the question of doing away with the death penalty when we ought to be looking at ways to improve our system so that if the death penalty is imposed that it be carried out. Senator Krist gave us 40 different occasions on where our federal government can impose the death penalty. I want to suggest to you that the death penalty is very alive and well. Our Supreme Court, it's been suggested, will eventually say that we'll do away with the death penalty because of cruel...they'll consider it cruel and unusual punishment. I don't think so. I don't think that's going to happen. I don't think the people will permit it. Certainly the citizens of Nebraska want to retain the death penalty in the event that it needs to be used. If we're talking about the reasons that executions have not been carried out, in my opinion, it's because of all the appeals that have been filed. They may or may not be frivolous. But we have the public advocate, we have public defenders, excellent public defenders who are very adept at bringing appeals, and I guess that's all right. It's costly but, as I said before on the floor, we have the means to pay for it and it's a very, very small percentage of what we pay for our correctional system. And if the 11 are still sitting on death row, it's the same thing as they're there for a life sentence. They're still costing us money. They will cost us less money, if you want to look at it from a cost purpose, if an execution takes place. At this time, there are a couple of other things that I could quote, but as far as the deterrence, which I believe there is deterrence, and I don't think the study that I quoted is out of date

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at all. It was very exhaustive. But at this time I think I will relinquish the remainder of my time to Senator Lautenbaugh if he has any...what I think will probably be the final words before maybe we come to a vote. [LB543]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Senator Lautenbaugh, you have 1 minute and 15 seconds. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Nelson. Interestingly, Senator Nelson made some of the same points that I would have liked to make and will make briefly. It is not the case that we have anyone on our death row that is not guilty and entirely deserving of the death sentence. You have not heard that. It isn't true. It is also not the case that we do not provide adequate defense here in Nebraska. Our public defenders in Douglas and Sarpy particularly are very, very, very competent, no one denies that, beyond competent. And the Commission on Public Advocacy provides defense other places, other counties, provides postconviction relief and other postconviction motions, I should say, throughout the state. No one is rushed through this process. No one's conviction goes unrevisited, unexamined. This process is fair. This process is just. It is not arbitrary. The facts of each case differ. This is a just penalty. It should be maintained and I think it is our job as a society to actually mete out this most serious penalty... [LB543]

SPEAKER ADAMS: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SPEAKER ADAMS: Senator Conrad, you're recognized. [LB543]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. Friends, I think that we've heard a lot of misinformation and scare tactics and good examples of why we don't "crowdsource" constitutional rights. And I'm going to go through a few points that have been brought forward just to make sure that the record is clear. People have said, well, why don't we focus on reform; can't somebody come up with ideas for reform? Again, Senator Coash has mentioned, I've mentioned many aspects that are requisite to the length of time and number of appeals are governed by a considerable body of constitutionally based case law in this regard and, of course, the constitution itself from which that emanates. Secondly, other states have tried the reform process and there is no way to create a foolproof death penalty. Look no further than the examples in Maryland in 2009 that attempted to reform its death penalty by limiting application only to cases where there was biological evidence or videotaped evidence linking a defendant to a murder, or a videotaped confession. In reality, it did not solve the problems with the death penalty in Maryland. It made most of the system more broken than ever. While well-intentioned, the evidentiary restrictions are not foolproof. It

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increased cost, arbitrariness, ambiguity, impact. It did nothing to address racial or geographic disparity. It added to the burden borne by victims' families and the taxpayers, and created additional layers of litigation, appeal, and uncertainty, each step which carries a price tag. No reform is foolproof and that is why you see, even with more evidence than we've had in any time in our history, states are moving away from capital punishment. They are not running towards it. Six states in six years abolished. We've heard from folks that we should just procure the drugs from other sources or other states. Again, it's not that simple. In Nebraska, we have a clear protocol governed by statutory framework. Nebraska has attempted to procure the drugs requisite to carry that out from an Indian company. The provision of those drugs has been challenged. They obtained a new supply from a Swiss company under false pretenses and that is currently subject to litigation. In fact, the federal government has asked Nebraska to surrender those drugs, which expire in December. They have refused. That is subject to litigation and it is not coming to an end in time for our supply, which expires in December, to have any sort of resolution. It's been mentioned by some that we should utilize the death penalty as a bargaining chip. That is questionable at best and, in fact, has been rejected by Nebraska's top prosecutor. It calls into question the voluntariness of the confession or information provided and is borderline coercion, and puts at jeopardy a conviction. Give me a break. Opponents have also put forward blatantly false information in regards to the innocence factor and said, well, there's bad information on the Death Penalty Information site about who has been exonerated in terms of innocence and who has been let go in terms of a technicality. Again, colleagues, I challenge you to check the methodology. That statistic is based upon a very strict criteria demonstrating a showing of innocence in order to be on that list. It is not about people who have gotten off on technicalities,... [LB543]

SPEAKER ADAMS: One minute. [LB543]

SENATOR CONRAD: ...and that's 142 people nationwide that were, indeed, innocent. So we can have passionate debate about this. We can have deeply held beliefs and values. But we have to be accurate when it comes to the facts. Thank you, Mr. President. [LB543]

SPEAKER ADAMS: Thank you, Senator Conrad. Senator Schilz, you're recognized. [LB543]

SENATOR SCHILZ: Thank you, Mr. President. And I'd yield my time to Senator Lautenbaugh. [LB543]

SPEAKER ADAMS: Senator Lautenbaugh, you're yielded 4 minutes and 50 seconds. [LB543]

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

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agree with Senator Conrad we should be accurate in what we put out here at the mike, so I'm hoping she would note that the statistic I cited was from the Death Penalty Information Center regarding the alleged 102 innocent people on death row, not the Innocence Project people that she referred to in trying to demonstrate that I was incorrectly citing my figures. Something I did not point out earlier that I should have and that we've kind of danced around on this topic is that there is a federal death penalty that is utilized, does exist. I think we were told erroneously yesterday that, well, the feds could come in and use the death penalty in Nebraska so why do we need it? That's not the case, excepting in I think the bank robbery up in Norfolk it could have been used but not in many other regular state crimes, I would argue. But there is a working federal death penalty. And I know many of you that are talking about supporting this bill have said, well, then perhaps what we should do is...well, we can't have our death penalty because there's just no way to do it. But at the federal level somehow there is a way to do it. So it is my hope this bill is defeated. And it is my hope that those of you who share that concern and say that we can never use the death penalty that you will join me in figuring out why the federal system is able to invoke the death penalty and why we are not, and to help modify our system to make it function as the federal system does. I stand here completely and totally ignorant of how they differ and why one works and one doesn't. So when I say I want to study that and know, I don't come at it with any preconceived notions. I don't know how they differ. But I do know that ours is mired in inaction at this point, but I don't think it has to be that way. And I don't want to step away from this penalty, which I believe is just in certain, very narrowly specified circumstances, which does not make it arbitrary, mind you. It just makes it proper in certain very specific circumstances. I don't want to step away from that just because some other states have. I don't want to have it just because some other states do. I want to have it because, as I stand here, I think it's a just penalty. I think there are people in Massachusetts who are now happy that there is a federal death penalty applicable for what happened in Boston recently and there may be a recognition that some things are just so horrific and some people are just plain deserving of no longer being among us. And that doesn't mean being confined in prison with the possibility of harming other inmates and whatnot, at our expense, for life. Some people have earned the ultimate sanction that the state can mete out and it should be delivered, and that doesn't make it arbitrary or unjust if it doesn't happen every day. It shouldn't happen every day. And again, I don't think you can have it both ways, as the opponents of capital punishment have here in Nebraska. You cannot consistently throw up road blocks. And I've mentioned the fact that there is a competent...I keep using the word "competent" and that is, you know, damning with faint praise. There is a more than competent defense bar, whether we're talking about the public defender, Tom Riley, in Douglas County, or the Lancaster Public Defender, whose name escapes me, or by reputation the attorneys at the Commission on Public Advocacy. [LB543]

SPEAKER ADAMS: One minute. [LB543]

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SENATOR LAUTENBAUGH: And...but some of those individuals, not the public defenders, go beyond advocacy to the point of clogging up the system with motions perhaps that might not even have a lot of merit to them. And then at the same time, some of the same people come around and say, well, gee, the system is so clogged up with motions we can't go forward, this penalty can't be invoked. I think it is proper to have vigorous appellate review because we do not want to make a mistake in a capital case, which no one has said we have in Nebraska, by the way. That's necessary. I don't think it's proper to file motions for the sake of clogging the system and then say, see, the system doesn't work, it's clogged, we should do away with the system. And I think that's part of what we're seeing here. Similarly, with the difficulties in getting the execution drug, manufacturers have been pressured by anti-death-penalty advocates and now we're told, well, see, nobody wants to make the drug, you might as well do away with the death penalty. [LB543]

SPEAKER ADAMS: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SPEAKER ADAMS: Senator Lautenbaugh, you are next in the queue. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I did not expect to get to me. There's a point at which I think we all have an obligation to stand our ground. If you believe this is just, there's a point at which you should take a little offense at the system being gamed when passionate anti-death-penalty advocates organize. And I wish I was one of those individuals who had time to spend all of my time organizing and e-mailing and pestering my elected officials. And I don't mean to belittle it by saying "pestering," but there just seems to be a cadre of an activist...cadre of activists out there, maybe a class of activists out there and that's their occupation. And they pressure the manufacturers of these drugs: You cannot manufacture this drug anymore because it could be used for capital punishment. And then we're told, well, see, you might as well do away with the death penalty because you can't get the drug anymore. And if we try to come up with another protocol, we're stymied in doing that because people don't want us to actually carry out this penalty. And then we're told, see, you might as well do away with the death penalty because you can't carry it out. The penalty is just in certain circumstances and should be used in certain circumstances. And I don't think...I don't think we should give in when people on the one hand prevent us from fixing the penalty and on the other hand say but, see, I think it's broken, we should do away with it. There's a point at which, I hope, we all decide to stand our ground, and this is one of those points. I believe, I believed when John Joubert was executed, it was the right thing to do. I believe when "Walkin Wili" Otey was executed, it was the right thing to do. I believe when Michael Ryan is executed, it will be the right thing to do. I believe when Carey Dean Moore is executed, it will be long overdue and the right thing to do. I won't shed a tear and I won't mourn, except for the passage of time. Maybe that's what I'll

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mourn for. I cannot have sympathy for these men on death row. I told the story yesterday of the attorney who tried to explain that these were just men who made a mistake. I can't accept that. They have forfeited their right to be part of the human race and I believe for their heinous crimes they should be put to death. And I don't say that lightly and that's not easy to say, but I'm standing my ground on this. And if you believe that, too, then this is a time to stand your ground. Don't let us constantly be evolving in a certain direction, as we heard yesterday. Some things are bedrock to us, I hope. Some things are worth standing on. I've always been very clear on this one and I'll continue to stand on it. Thank you, Mr. President. [LB543]

SPEAKER ADAMS: Thank you, Senator Lautenbaugh. Mr. Clerk, you have a motion on the desk? [LB543]

CLERK: Mr. President, I have a priority motion. Senator Chambers would move to invoke cloture, pursuant to Rule 7, Section 10. [LB543]

SPEAKER ADAMS: It is the ruling of the Chair that there has been full and fair debate afforded to LB543. Senator Chambers, for what purpose do you rise? [LB543]

SENATOR CHAMBERS: I would ask for a call of the house. [LB543]

SPEAKER ADAMS: 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. Record, Mr. Clerk. [LB543]

CLERK: 44 ayes, 0 nays, Mr. President, to place the house under call. [LB543]

SPEAKER ADAMS: 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. Senator Burke Harr, please record your presence. Senator Burke Harr, please. Senator Chambers, how would you wish to proceed? [LB543]

SENATOR CHAMBERS: Roll call vote. [LB543]

SPEAKER ADAMS: There has been a request for a roll call vote. Members, the first vote is the motion to invoke cloture. Mr. Clerk. [LB543]

CLERK: (Roll call vote taken, Legislative Journal page 1342.) 28 ayes, 21 nays, Mr. President, on the motion to invoke cloture. [LB543]

SPEAKER ADAMS: The motion fails. We raise the call. Items for the record, Mr. Clerk? [LB543]

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CLERK: Mr. President, I do have some items. I have a new resolution. Senator Krist offers LR191. It's a study resolution that will be referred to the Executive Board. The Government, Military and Veterans Affairs Committee, chaired by Senator Avery, reports LB364, LB504, and LB534 to General File with amendments attached. Mr. President, Enrollment and Review reports LB6, LB242, and LB265 as correctly engrossed. (Also, Senator Smith has amendments to LB225 and LB225A, and a notice of hearing by Natural Resources Committee, Legislative Journal pages 1342-1345.) [LR191 LB364 LB504 LB534 LB6 LB242 LB265 LB225 LB225A]

SPEAKER ADAMS: Mr. Clerk, do you have a motion on the desk? [LB553]

CLERK: Mr. President, pursuant to the veto and the veto message from the Governor, Senator Nordquist would move that LB553 become law notwithstanding the objections of the Governor. [LB553]

SPEAKER ADAMS: Senator Nordquist, you are recognized to open on your motion. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. I ask the body for their serious consideration of overriding the Governor's veto on LB553 and LB553A. I just want to put into perspective where we're at in our state with our pension plans. In 2008, our school employee system had a market value of assets of \$6.5 billion. In fiscal year 2009, that \$6.5...\$6.6 billion of assets was down to \$5.3 billion and has grown since to \$5.9 billion in 2010; \$7.2 billion in 2011; and about \$7.3 billion, almost, in 2012. It's a deep hole for us to climb out of when we're talking about the pension plan for our school employees. And a similar trend, obviously, took place with our judges' plan and our State Patrol plan. The fact of the matter is, right now, according to our actuarial analysis, we have \$9.6 billion of accrued liability for everyone that is in the system now; \$7.4 billion...\$7.3...\$7.4 billion of assets, that's the actuarial value of assets, leaving us an unfunded actuarially accrued liability of \$2.2 billion. So no matter what we do to this plan going forward, that's going to be there and we have to pay for it one way or another. And the way we pay for it, we...right now we use a method called the level dollar. We divide that \$2.2 billion up, much like your mortgage, over 30 years and pay a level payment. What most systems use is a percent of pay. So it would be like if your mortgage was tied to your pay and as your pay increased you paid a greater share...or you paid a greater amount on your house, but it would still stay the same percentage of your income. That's the one thing we do under this bill. But that's a very short-term fix. It gives us breathing room today, but it pushes off our liabilities into the future. Says we'll pay for them down the road. Well, I wasn't willing to go to that point unless we brought in long-term benefit reductions to offset that pushing of the liability off. And that's what LB553 does. It addresses that \$2.2 billion liability that we ultimately as a state have. The courts have interpreted that's our burden to carry. And we either can do it ourselves or

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we can work with our partners, who have been great partners to work with, to address it. And that's what we did. We sat down with them. They said, we're willing to keep our contribution rates up almost at 10 percent; they went from 7.28 percent just a few years ago to 9.78 percent; 2.5 percent of their salary...additional 2.5 percent of their salary is going to their retirement plan, almost a 28...about a 28 percent increase in their contribution rate. The schools are matching that. And they're going to continue that into the future as far as we need to, to fund this plan. They said, you know, it's time for the state to step up. The Governor brought me a bill two years ago to raise those contribution rates up. The state didn't put anything in at that time, because we were facing a billion dollar budget shortfall. We really didn't have anything to put in. Well, now it's time for us to meet our obligation and step up, and that's what we've done under LB553, raising the state's share from 1 percent to 2 percent. Again, the teachers are contributing an additional 2.5 percent of their salary; the schools are contributing 2.5 percent of the teacher salary; the state is going to be contributing 1 percent of that to fund this plan. If we do nothing, you take that \$2.2 billion, much like your mortgage, you have interest costs over the 30 years. At the end of the 30 years, if we do nothing, we have a \$3.6 billion of cumulative contributions that we're going to have to make. Under LB553, depending on market performance, we will actually be on the plus side, a surplus between \$400 million and a billion dollars. Down the road, if things are that good, we can certainly pull back on everyone's contributions, potentially; but that's a long ways off. That's the long-run. In the short-run, the fact of the matter is, if we do not pass LB553, we have a \$48 million contribution that is required by law July 1, \$48 million. We have nothing in the budget for it right now. You add the Patrol and the judges in there, it's actually \$52 million. In year two, we have a \$60 million required payment on July 1, 2014. We have \$20 million in there. That would bring that down to \$40 (million). So over the next biennium, and I think Senator Mello could probably attest to this, if we do not override this veto, we have a bill of \$88 million that we have to find somewhere in the budget. The budget is up right after this, so we'll have to get to work if that's the case. We'll either have to pull it out of the Cash Reserve and spend that money, money we should be setting aside, or we will have to not pass A bills or reduce revenue; \$88 billion that by law we have to pay. And just think about this if you were in this situation and what would you do if the state said to you, we promise you these benefits but we don't really want to come up with the money we owe this year, or maybe next year. We're not sure. Let's push it off, add to the liability. Oh, but in year two or year three we want you to come and negotiate with us; we want you to pay more. We want you to pay even more now because we didn't want to pay in year one and year two. We put all that on the liability too; now you need to come and do your share. Folks, I'm not an attorney, but I think that certainly would run afoul with the court rulings that have come down on the contractual right of pensions here. We can't skip out on the bill and then go to the plan members and say, ah, you need to pay now. Skipping out on the bill is what's got cities like Omaha in trouble; it's got states like Illinois in trouble. We can't do that; we don't do that in Nebraska. I think Senator Carlson, last time on the mike, talked about a article that was in The Wall Street Journal about a year or two ago

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that we circulated on the floor. It showed Nebraska by far, when you consider pensions and debt and everything, was by far the lowest in the country. That's the place we need to be. By skipping out, all we're doing is going to put ourselves in a worse position. There's one other aspect that we haven't talked about on the debate of this bill and that's...it's kind of technical, but it's about the government...Governmental Accountability Standards Board, GASB. They're implementing new rules because of concern over pension obligations around the country; new rules that affect credit worthiness of both states but now also municipalities, political subdivisions like school districts. There's a great potential that if we skip out on our pension obligations, that is going to start to affect the credit worthiness of our state but also the school districts who are members of our plan. That means additional costs for them when they want to do bonding. This is something that new standards are coming into affect to tighten down on this. They want political subdivisions and states and municipalities to grab the reins on these pension plans and actually address the shortfall. We'd much rather spend this \$20 million a year that we're contributing to this on something else. I think we all would have a list of priorities that we'd like to spend it on. But this is an obligation. It's an obligation we have to meet and I'd appreciate your support of the override. Thank you. [LB553 LB553A]

SPEAKER ADAMS: Thank you, Senator Nordquist. You've heard the opening. Senator Janssen, you're recognized. [LB553]

SENATOR JANSSEN: Thank you, Mr. President, members. And when LB553 initially came forward, I did not support it. In fact, I believe, like many other people, I was present and not voting on that bill. I believe it had 34 votes to pass and needed more debate. And I'm thankful that we get the opportunity to have a little bit more debate on this issue and discussion about the retirement system, because it really does mean a lot. And the teachers work hard and they were promised something and we need to decide where it was at, what are we obligated to. Are we getting unrealistic numbers forecast or not? What is that based on? And I think that was brought up...touched on loosely when we talked about this earlier and this will give us a chance to delve a little bit deeper into that to make a decision on this, decide if we should move forward with this or not and in fairness to the taxpayers, and, of course, the educators out there. And with that, I will yield the balance of my time to Senator Larson. [LB553]

SPEAKER ADAMS: Senator Larson, you're yielded 3 minutes and 50 seconds. [LB553]

SENATOR LARSON: Thank you, Mr. President. Senator Nordquist stood up on his opening and emphasized that we need LB553 or we will bust the state's budget and need to contribute...I just heard him say, \$88 million, I think is what he said on the mike, to the defined benefits plan. Obviously, this assumes that the Legislature will not take any further action to address the pension liabilities. First, the only change in the plan that takes effect in 2013-14 is the change in the amortization's method from a level dollar to a level percent of pay. We can still make that change in another bill. Starting

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the second tier of benefits for new hires after July 1, 2013, does not affect the current actuarial funding liabilities. The actuary stated on November 20, 2012, to the Retirement Committee that creating a second tier of benefits, changes under a new tier, take a long time to take effect so you get a small but increasing savings over time. Enacting the change in a amortization method will activate, what I understand, roughly about the \$48 million required by the three defined benefit plans to give more time to examine the issue. The Legislature should take additional time over this interim to hear from all sides on this issue and bring a bill in the 2014 Legislative Session enacting long-term changes to the defined benefit plans that will address future liabilities. I heard Senator Nordquist stand up and talk about the administration wanting to maybe come and talk in two or three years and then they can negotiate. Colleagues, I've said it a number of times, the rate that the teachers are at now, 9.78, they agreed to come up to and they were supposed to go down in 2017...2016...one of those...2017, I think, and the state came from .7 to 1 and they were supposed to go down as well. Under LB553, the unions and the Retirement Committee negotiated that the teachers stay level at that 9.78, but the state doubles from 1 to 2. [LB553]

SPEAKER ADAMS: One minute. [LB553]

SENATOR LARSON: So the state is doubling what they pay from the last negotiation that the union made with the Retirement Committee and the teachers are staying level. Now I have...I see the school boards and the NSEA sent out this letter, and the administrators, that they all support this. I have a father that's a teacher, he doesn't join the union, and a mother that's on the school board. So this does...I get it, this affects me...or affects my family. I hear about these issues a lot. But to the current teachers, they're still all going to be on defined benefit plans. Now is the time, if we don't address real sweeping change and make hard decisions, what I'd say, next year we're going to continue to have this problem in five years, ten years. [LB553]

SPEAKER ADAMS: Time, Senator. [LB553]

SENATOR LARSON: Thank you. [LB553]

SPEAKER ADAMS: Senator McCoy, you're recognized. [LB553]

SENATOR McCOY: Thank you, Mr. President. Would Senator Nordquist yield, please? [LB553]

SPEAKER ADAMS: Senator Nordquist, would you yield to a question? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR McCOY: Thank you, Senator. I'm going to ask a question, I think I asked

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you, I think, on General File, as I recall, and that is, and I think you gave me the answer that it would cost \$400 million to...or it's been estimated it would cost \$400 million to look at moving to a hybrid or cash balance system. Is that...does that...do you recall that number? Is that...did I remember you correctly? [LB553]

SENATOR NORDQUIST: Yeah, that was a short-run number. I have the...actually just looked at this, between...well, over the same 30-year time period we're looking at, just to refresh people's memories, we spent about \$30,000 two years ago on a 30-year model that we continue to use, the administration has access to it, for our current plans and also the opportunity to look at what would it cost to change to a defined benefit plan. Over a 30-year period here, we would still have a billion dollars of excess needed payments to make a transition to a cash balance plan, where under LB553 it is less than that. [LB553]

SENATOR McCOY: So between when I asked you that question on General File and now, that number to move to a cash balance or a hybrid plan, if I'm understanding you correctly, over the long-run is going to cost over a billion instead of \$400 million? Am I understanding you correctly? [LB553]

SENATOR NORDQUIST: That's right. When I...I didn't have these notes in front of me when I spoke before and I think that was a ten-year number that I was citing before, but over the same time period that we're talking about with LB553 it would be a billion dollars...right at a billion dollars. [LB553]

SENATOR McCOY: And so that...and that's over the next 25 year, is that? [LB553]

SENATOR NORDQUIST: Between now and 2038, yep, that's right. [LB553]

SENATOR McCOY: Okay. What are those numbers? Who came up with those numbers, Senator Nordquist? [LB553]

SENATOR NORDQUIST: They came out of the model that the actuary created for us...that the administration has access to. [LB553]

SENATOR McCOY: And did that actuary look at any other changes that could be made along the way in order to...let's just assume that number is correct. That's, I suppose, an awfully big assumption if that is the number. Did that actuary look at any other things that could be done along the way, Senator Nordquist, that could lessen that amount if we were to go to a cash balance or a hybrid system? [LB553]

SENATOR NORDQUIST: The only...I don't know what you could do to lessen that amount except promise a lower guaranteed rate of return than what we do for our state employees. That would be the only way you could possibly reduce it; because,

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essentially, that billion dollars is what's left over of the \$2.2 billion obligation because we're not paying enough on the \$2.2 billion that we currently owe. So we still, even after making the transition, we still have an additional billion dollars of that \$2.2 (billion). About \$1.2 (billion) of it gets, if I'll call it, cross-subsidized away, but a billion of it is still remaining and that's what...that's where the actuarially required contributions cumulative of a billion dollars come in. [LB553]

SENATOR McCOY: But surely there must be other things that could be done, Senator. I know moving to a cash balance or to a hybrid system, there are other entities across the country that have done that. Surely there are other ways. I don't believe any state, any public entity that I'm aware of has come up with, I mean that's a pretty big number... [LB553]

SPEAKER ADAMS: One minute. [LB553]

SENATOR McCOY: Surely there would have to be other ways that...other things that could be taken care of in order to lessen that burden. [LB553]

SENATOR NORDQUIST: Well, I would just say, Senator McCoy, some states don't have the same legal precedent we do. Our courts have interpreted it to say we cannot change benefits of current employees. So if you cannot change benefits of current employees, we have a \$2.2 billion hole that has to be filled one way or another. So if you take new employees out and put them in a cash balance, you still have that hole to fill in one way or another. Other states may be able to change benefits of current employees. I know there are other states that are able to, but we're not. So this is the hand we're dealt and we have to address the \$2.2 billion unfunded liability. [LB553]

SENATOR McCOY: I'll have additional questions at a later time. Thank you, Mr. President. [LB553]

SPEAKER ADAMS: Thank you, Senator McCoy. Senator Mello, you're recognized. [LB553]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I rise in support of the override motion for a variety of reasons, one being that...I've had a number of members come up to me since this letter came out yesterday saying, well, if we don't do this, what happens? The Governor's Office is telling us we just don't have to pay it. We just don't have to do it. We can do another bill and take care of it. Well, I draw everyone to the Rule Book, Rule 5, Section 15 that specifically lays out that a Retirement bill can only be introduced in the first 10 days of the session in a 90-day session. Furthermore, no bill for which an actuary study is necessary to determine the cost of such study-proposed changes shall be enacted until an actuary study has been conducted and the results reported to the Legislature. Colleagues, I don't know what bill

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Senator Larson is referring to, but I don't...I sit on the Retirement Committee. There are no other bills. And for there to even be a concept of trying to add an amendment to some other bill, one, would necessitate a public hearing. It would necessitate an actuary study which...we have 13 legislative days left. So for the Governor or anyone else in his letter or anyone else on this floor saying we have other options, read our rules, see how many days left we have, and explain to me what other Retirement bill that's been introduced this year in the 90-day session which we can do this in. That's the first item. There is no other option. The Governor's Office knows this. They were very vague in their letter saying, pass some bill, pass something to make this happen. There is no other option. Now that brings me to my second point, colleagues. I read this on Select...or on...when we, ultimately, passed the bill on Final Reading, just to clarify, I think, what Senator McCoy's questions were, as is Senator Larson's. Statutorily section 79-966.01, the last sentence of that statute states, "If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the School Employees Retirement Act, the actuary shall determine the added contributions required to be paid by the State of Nebraska that constitute the difference between the actuarially required contribution rate and the rate of all other required contributions." Failure to override the Governor's veto on LB553, colleagues, leaves us with roughly a \$98 million hole in our budget. The Fiscal Office agrees. That's why I have an amendment here, drafted in the mainline budget. If we don't override the Governor's veto, we, ultimately, have to change the amount we appropriate in the mainline budget bill to fund our statutory obligation laid out in that statute. I don't know what information or what statutes the Governor's Office is reading from, but we have to pay this, colleagues. You can't just say, well, we won't pay it; we'll come back and deal with it next year. If you read our rules, you can't even introduce a bill next year to change our retirement system. They know that. And if they don't, they should know that. This is a rule that is set from 1997 on, colleagues. Beyond the fiscal hole that, essentially the Governor's veto leaves us, the Governor's letter also refers to we should study this long-term issue. Well, granted the Governor for the first time in his administration did not introduce a bill to deal with our pension obligations; did not come to the table or offer any feedback when Senator Nordquist and the interested parties approached him about getting feedback. But second of all, Senator Nordquist mentioned it, the Retirement Committee invested roughly \$30,000 two years ago to purchase software for NPERS so they could do 30-year modeling. We could look at making changes in contribution rates or benefit reductions and see what that is over a 30-year period to give both the Governor's Office, to give all 49 legislators, and the public at large, the taxpayers, so to speak, as the Governor refers to everyone... [LB553]

SPEAKER ADAMS: One minute. [LB553]

SENATOR MELLO: ...the same ability to look at these models. I don't know why the Governor hasn't utilized that service that we, essentially, provided appropriations for, but I know our Retirement Committee has. In regards to a study, Senator Smith mentioned

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on Final Reading, the Retirement Committee did a study on defined benefit plans in relationship to cities and municipalities. We also did an interim study, ultimately, in looking at our entire defined benefit plan looking at making changes to cash balance plans. So we've done studies, colleagues, we do them every year as a committee. To make, what I would argue as an offensive remark saying that the Legislature isn't looking out for taxpayers, that they don't have a seat at the Retirement Committee or any other committee's table is beyond offensive, actually, and the Governor knows it. I look forward to hearing arguments of why we shouldn't do this, because this is the only thing we can do, frankly, this moment in time to balance our budget. And at the end of the day, it's the only long-term solution that's been provided this Legislature this year or any... [LB553]

SPEAKER ADAMS: Time, Senator. [LB553]

SENATOR MELLO: ...year in the last five. Thank you, Mr. President. [LB553]

SPEAKER ADAMS: Senator Krist, you're recognized. [LB553]

SENATOR KRIST: Thank you, Mr. President. Good morning again, colleagues, and good morning, Nebraska. I rise to try to take a deep breath, take a half step back, and take a look at really what's at stake. This is a motion to override. It should not be taken lightly. I would point out though that in my time here and for the entire time that this Governor has been in office, he has submitted a bill to the Legislature to do just exactly what Senator Nordquist and Retirement have done on their own. This is a historic moment. For the first time in his administration, he has not submitted a bill to do what Senator Nordquist is trying to do and what he vetoed. Now I find it interesting, and I know that this has already been quoted, but I would ask you in terms of whether or not...and again, this is not...I don't take these overrides lightly, but by statute we're supposed to do this. Section 79-966.01 provides that, "If the actuarially required contribution rates exceeds the rate of all contributions required pursuant to the School Employees Retirement Act, the actuary shall determine the added contributions required to be paid by the state of Nebraska that constitute the difference between the actuarially required contribution rate and the rate of all other required contributions." That's law. So we're saying, no, don't override the veto, let's violate the statute? How does that work? How does it work when the Legislature condones the fact that we're in violation of the statute? Now I heard Senator McCoy and Senator Kintner and Senator Larson, because I happened to be presiding the night and listening to everything that was going on, say, surely you jest. Well, I'm not Shirley and I'm not kidding. Surely, there must be another answer. There is another answer; that's why I submitted LR191. It says very specifically, and you can look at your gadget, we will look at this; we will study this during this next year. We will see if a defined contribution plan is the way we want to go forward. But, colleagues, listen, listen to this. Without the people on the front end of this helping to pay for what the people have already earned on the back end of

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this, we're going to spend a lot more money making that up. You can't take the whiteboard approach and wipe it out and start over again. You've got to study the differences and take your time and make the difference. The people who are coming in on the front side need to be offered something, but maybe it's not defined. Maybe that's not part of it. We would be in violation of the statute if we did not go forward and override the veto. Now I'd love for somebody to get up on this mike and say we can change that statute right now, but your vote will be counted, there will be a record. And if you're voting not to do the override, you're in violation of the statute. That's how I read it. Thank you, Mr. President. [LB553 LR191]

SPEAKER ADAMS: Thank you, Senator Krist. Senator Burke Harr, you're recognized. [LB553]

SENATOR HARR: Thank you, Mr. President, members of the body. It's too bad the Governor can't be in here today because I looked at his press release. In his letter he says: the Governor is proposing passage of a short-term resolution for retirement plans of public employees, State Patrol employees, and judges while investing time and thoughtfulness in a study to developing a long-term sustainable and comprehensive retirement policy for the state that is responsible to the taxpayers. Well, I'm not sure how he plans to do that. It is impossible. You can't pass part of this bill and not the other part. If you want the short-term policy that the Governor says he wants, then you got to vote to pass this bill. And then if you want the long-term study that the Governor says he wants, guess what, nothing prevents you from doing that. Nothing prevents some long-term changes being made. But we can't just throw the baby out with the bathwater. And as near as I can tell, the majority of his problem is with our teachers, which is too bad. These are hardworking individuals. Especially this time of year, no one wants to be in the classroom; the kids are atrocious. But we're also...this is about State Patrol and this is about our judges. And Senator Lathrop is up after myself and I think he'll probably talk to the judges. The judges have no other way of recourse; they can't come here and lobby. But they're willing to give more money of their own salary. They're asking for a pay raise. We're throwing away their pay raise. Let's remember, folks, we got to keep up with our pay raises. If not, we're going to end up with the situation we're in where when we ask for a pay raise it's a hundred percent and the voters say you're not worth a hundred percent pay raise. My own secretary voted against my pay raise for that reason. She says she gets 2 or 3 percent a year and we shouldn't ask for a hundred percent. Well, that's all the judges are asking for is 3, 4, 5 percent a year to keep it up with inflation. And if we don't keep up with inflation on those judges, we're not going to get well-qualified candidates. We already have individuals who more than not make a sacrifice in salary to become a judge because they believe in public service just like we do. But we are only part-time. We have time to have other jobs; a judge can't. And now we have our teachers. Our teachers are our future. That's what we invest in. That's where we want is our children. I keep hearing we got to have better schools. Well, you can't have better schools if you don't have better teachers. They're the secret sauce that

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make our schools better. We have an election in Omaha today to help improve our schools. And that's great, because a great school board helps to make a good school because they make the policy. But...and the superintendent enforce that policy and the teachers act out that policy. And if we don't take care of our teachers, we're going to lose them. We're already losing them in western Nebraska. You look at Chadron, they all go, more or less, to Wyoming because there's more money for those teachers. But if we can say, hey, we'll take care of you in your old age as you took care of our children, maybe they'll stay. But now we're telling our teachers, yeah, no, we're not going to fix your problem. We're going to kick the can down the road, another theme of this body this year it seems. We have a solution to a problem. You may not like that solution, but we can fix that. We all agree on the short-term fix. [LB553]

SPEAKER ADAMS: One minute. [LB553]

SENATOR HARR: Thank you, Mr. President. We can fix a long-term problem going forward, but what we can't do is close our eyes and just hope it better. It's not legal and it's not right. Thank you. [LB553]

SPEAKER ADAMS: Thank you, Senator Harr. Senator Lathrop, you're recognized. [LB553]

SENATOR LATHROP: Thank you, Mr. President; colleagues, good morning. I support the motion to override and I want to give you my thoughts on it. I stand here oftentimes...I stand here oftentimes and I say we are a separate branch of government. We are a separate branch of government; there's one guy who is a different branch of government, who has just vetoed one of our bills. And you might think, especially if you're new, maybe he knows something I don't know. Maybe he did that because we didn't think of something that he thought of and then you read his veto message and you say, maybe he's right, you know, maybe he has thought of something I haven't or we missed. Nope, that isn't it. We are a separate branch of government and this is a play for all of the money that is sitting there for revenue bills and for A bills. This guy could have put a bill in to deal with the retirement. Did not, no, none, nothing, not one of his guys that come here and tell you his version of what policy should be put a bill in. This is a play for the money that we have earmarked for revenue bills and for A bills and it's going to take it all. And you can be complicit in that. You can defer to a different branch of government and let him win at this and take the money that we are going to use for revenue bills for the policy our committees, our senators have worked on, because that's what this is. And what's the argument? Do we have...we're going to spend \$88 million over two years we don't need to spend because he thinks maybe we should study it again? You know, every time this year we have a bill that people that sympathize with the different branch of government want to filibuster, they stand up and say, well, I think they have a better idea in Arkansas and we should look at that for a couple of years; let's not do anything. Or maybe we should look at other forms of

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retirement bills. Maybe there's a different retirement system, and you know what, we didn't talk about that enough when this thing was filibustered so I'm not going to vote for it. Let's spend that \$88 million we don't need to, let's not get the sacrifice from the teachers they're willing to make, and let's let the Governor have his way. Well, guess what. We can end the session after this one because we're not going to have any money for the revenue bills the Revenue Committee has worked on or any of the other policy that we've worked on that involve an appropriation, because it will be gone. And if you stand with the Governor on this veto, you will be complicit in that and you will have neutered a different branch of government--us. We have led on this issue. The only proposal for this issue involves sacrifice from the educators. We cannot stick our head in the sand. We cannot not stick our head in the sand on this one and spend \$88 million over the biennium for no reason than to support somebody who had no leadership on the issue, nothing, not one bill, not one bill, not one idea. [LB553]

SPEAKER ADAMS: One minute, Senator. [LB553]

SENATOR LATHROP: Now he says, put a bill in before the session is over. Impossible. It is cynical. This message is cynical. And you ought to see it for what it is. It's a grab for every dollar that we would use on policy from the Revenue Committee and every other committee that's here to try to make good policy. Don't buy into this. Don't buy into this. This is cynical. It's a cynical grab and the only argument you're going to hear today is we haven't had enough debate; no one has talked about a different idea, because no one has another idea. No one else is leading on this. Senator Nordquist and the Retirement Committee have presented you with a solution; it's the only solution. And the absence of the solution...the absence of the solution is an \$88 million undertaking that is completely unnecessary. [LB553]

SPEAKER ADAMS: Time, Senator. Mr. Clerk for messages. [LB553]

CLERK: Mr. President, Senator Avery offers LR192, LR193, and LR194, all calling for interim studies; all will be referred to the Executive Board. I have an amendment to be printed to LB543 by Senator Lautenbaugh. Name adds: Senator Bolz and Smith would like to add their names to LB505. (Legislative Journal pages 1346-1347.) [LR192 LR193 LR194 LB543 LB505]

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

SPEAKER ADAMS: You heard the motion to recess. All in favor indicate by saying aye. Opposed? We are in recess.

RECESS

SENATOR GLOOR PRESIDING

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SENATOR GLOOR: Good afternoon, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. 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. 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 then proceed to the first item on this afternoon's agenda.

CLERK: Mr. President, when the Legislature recessed, pending was Senator Nordquist's motion with respect to LB553. That motion being that the bill become law notwithstanding the objections of the Governor. [LB553]

SENATOR GLOOR: Members in the queue when we recessed: Sullivan, Karpisek, Hadley, Harms, Carlson, Nordquist, McCoy, and others. Senator Sullivan, you are recognized. [LB553]

SENATOR SULLIVAN: Thank you, Mr. President, and good afternoon, colleagues. I stand in support of this motion to override LB553 and certainly all the time and effort that the Retirement Committee put in to arrive at this piece of legislation. I think that they have done a good job of involving lots of entities involved. And to that end I'd like to ask Senator Nordquist a couple of questions if I could. [LB553]

SENATOR GLOOR: Senator Nordquist, would you yield? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR SULLIVAN: Senator Nordquist, references have been made to the actuarial study that was done. If you could refresh my memory just a bit as to when that was done. And I think Senator Mello mentioned that it was a \$30,000 cost, but what was the time frame of that study? [LB553]

SENATOR NORDQUIST: Well, thank you, Senator Sullivan. So every year we have had a actuarial study done on our plan which is best practice. A lot of plans don't do annual actuarial studies, but we have those conducted. They're taken as of the end of the fiscal year every year, which is June 30, and we usually receive those studies in November. And we have a public hearing every year to receive those studies, hear from the actuary, and that's conducted on a yearly basis. Two years ago, as part of an interim

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study, we paid about \$30,000 to ask our actuary to develop a 30-year model to project forward, to look at changes we could make to our defined plan on the contribution side, on the benefit side, and look at moving, potentially, to a cash balance and the impact that would have on required contributions to the plan. [LB553]

SENATOR SULLIVAN: Now you mentioned that this was presented in part through the public hearing. So I would imagine in that process as well that other stakeholders had the opportunity to weigh in on that. Am I right? [LB553]

SENATOR NORDQUIST: That's right. Every year we have the...as I said, the actuarial studies that come back. And then also we had the bill hearings on this bill, as well as cash balance bills that were introduced. I would say in the discussion about the taxpayers not being represented at the table, one of the testifiers on this bill that came forward was the Lincoln Independent Business Association. They brought an idea that said, we think school employees should have to work 20 hours, not 15 hours, but 20 hours to be a part of this plan. We looked into it and said, you know, that's an idea we can put into this bill. And it's in the bill and it's from the Lincoln Independent Business Association Group that brought that forward. [LB553]

SENATOR SULLIVAN: Is it fair to say also that even though this brings us to a certain point in time and meets our obligations and helps us not only in the short term, but the long term as well, are you done studying this? [LB553]

SENATOR NORDQUIST: No, absolutely not. We will have an interim study introduced again this year. We will have the actuarial hearing in November. And, you know, we're going to continue as part of the new...we're actually...the state will be hiring a new actuary starting at the beginning of the next fiscal year. And part of that contract required that actuary, everyone bidding on the actuarial services contract, to present a 30-year model. So we're always now going to have that 30-year model going forward where we can look at changes to the plans. And I think...and all of the groups, of the school groups, the school boards, administrators, and teachers, sent a letter to the Governor a couple of months ago when this bill was still pending in committee saying, look, we know that things can change and we are willing to make future changes as needed. [LB553]

SENATOR SULLIVAN: Thank you, Senator Nordquist. You know the thing...I know you and your committee have put a lot of time, effort, and consideration into this and I, as I said, stand in strong support of it. But it's not the end of the story. You will continue to work at this and study it and changes will be forthcoming in the future. [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR SULLIVAN: But the thing that strikes a chord with me is that this a

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contractual obligation that we have to meet. And the other thing is, it's just the right thing to do. I was talking to my husband last night and telling him this was going to be one of the topics and he asked a few questions about it and he said, hmm, I'd like to have a retirement package like this. And I said, Mike, what does your daughter do? Well, she's a teacher. Yes, and what do you always say about your daughter, the teacher? Well, I always say that, you know, we entrust so much responsibility to these teachers taking care of our kids and look at what we pay them. Yeah, Mike, that's right, and this is the least that we can do for our teachers. So again, I stand in strong support of LB553. Thank you. [LB553]

SENATOR GLOOR: Thank you, Senator Sullivan. The Chair recognizes Senator Karpisek. [LB553]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Ever since we got the veto letter from the Governor, I've had quite a few members come up and say, is this really true? Does this really need to happen? Yes, it really does need to happen. The money needs to come either through this or we'll have to find the money somewhere else. Now I understand that we can put it into the budget bills coming up, but this was the way to work it out. And it will...we'll lose this much money in our budget if we don't do it. I think that the teachers have come to the table and we've worked things out. None of us exactly like it. They don't like to put more money in, neither do we. But statutorily this is the problem. Senator Sullivan was just talking about the teachers; and it is a good retirement plan. It is a very good plan. However, I don't think that their reimbursement is very good, their pay. We could argue about that, I'm sure, all day, but isn't it...wouldn't you want to give the teachers a good retirement? Most of those people, a lot of times, stay where they've taught. Some come here, but that's only the Speaker. But most of them will stay where they're at and retire there and spend that money. So I know that's not the point of this. But I just think that we need to do this; it's been through the committee. I don't remember a lot of angst over this at the committee level. Maybe I'm wrong. I tend to zone out a little bit, maybe, on the retirement bills. But I think that we absolutely need to do this, not for just because but we need to. So if anyone doesn't believe it, I'm here to tell you we do. And if somebody is saying we don't, I'm sorry, I can't agree with that. And I would like to yield the rest of my time to Senator Mello, please, Mr. President. [LB553]

SENATOR GLOOR: Senator Mello, 2 minutes 21 seconds. [LB553]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And I look forward and appreciate, I think, the dialogue that we're continuing to have on this bill in the sense of being able to explain more about our retirement system, I would say our entire retirement system. This deals with the school employees and, I would remind people, the State Patrol as well. The State Patrol is also incorporated into LB553 which expands the amount of money we would have in a budget shortfall if LB553 is not

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overridden. But two points: one, once again, I'd like to hear more information from those who support to sustain the Governor's veto is how are we going to actually do something else this year in relationship to retirement issues as laid out in the Governor's letter? What bill has been introduced in the first ten days that can be used to do this? And, obviously, the only way that it could even be considered is there would have to be something that hasn't been done regarding retirement bills since this rule has been established, which is try to suspend the rules, colleagues. It's the only way this could possibly even be approached, and it has never been done regarding a retirement bill, let alone on day 77 of a 90-day session. The second component, I mentioned and Senator Krist did as well, statute 79-966.01. I don't need to repeat the whole statute that I keep... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR MELLO: ...that I've read before or Senator Krist mentioned, but a colleague of mine on the Appropriations Committee asked me, simply, we don't have to pay this. If this doesn't pass, we don't have to pay. Colleagues, statutorily you can't require a Legislature to appropriate money. That is true with anything. But as it lays out in this statute, we have a state obligation to pay this system at some point. If it's not today with LB553, it will be in LB195, the mainline budget, because as Senator Nordquist mentioned, our bond ratings will start to change based on accounting standards. And he can give you more information from a conservative publication that shows that is what has to happen so we can get a true picture of our liability as states. I'd urge the body to think strongly about this. [LB553 LB195]

SENATOR GLOOR: Time. [LB553]

SENATOR MELLO: Thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Mello. Senator Hadley, you're recognized. [LB553]

SENATOR HADLEY: Mr. President, colleagues, anytime we have a vote on a veto, I take it very seriously because I know the Governor has looked at things closely and tried to make a case, and it's up to us to decide whether it's a good case or not. Would Senator Larson yield to some questions? [LB553]

SENATOR GLOOR: Will you yield, Senator? [LB553]

SENATOR LARSON: I'll do my best. [LB553]

SENATOR HADLEY: Senator Larson, I'm not picking on you, but I think you were one of the first ones to speak, basically, on this when we had the original bill. Do you agree

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that the rules are correct; that the budget bills must...or the retirement bills must be in the first 10 days of the 90-day session and have an actuarial plan? [LB553]

SENATOR LARSON: You mean introduced like the other bills that... [LB553]

SENATOR HADLEY: That's right, in that section, Rule 5, Section 15. [LB553]

SENATOR LARSON: Yeah, every bill is introduced...I mean, obviously, you can introduce a shell bill or whatnot and then move through. I think that's how we do TEEOSA and other ones. But, yes, I agree with that. [LB553]

SENATOR HADLEY: So if we're to override...or not override the Governor's veto, would we have to suspend the rules to come back to deal with this yet this session? [LB553]

SENATOR LARSON: I'm not sure if there is another bill in Retirement Committee that could be sent out to the floor. So we could, obviously, suspend the rules to introduce another one, but there might be somebody else that has a retirement bill. I don't sit on that committee, so I'm not sure if we'd have to or not. [LB553]

SENATOR HADLEY: Okay, but the second part of that, it does have to have an actuarial study; so if we don't have the actuarial study, then we would have to suspend the rules. At least that's my interpretation of the rule. [LB553]

SENATOR LARSON: And if that's the case, then, yes, we would. [LB553]

SENATOR HADLEY: The second question, and I've heard both sides of this, but I...statutorily I have heard that we have to make this payment. And I've had other people say, no, we don't have to make the payment. Your thoughts...are we statutorily obligated to make this \$48 million payment July 1? [LB553]

SENATOR LARSON: You know, I know that we appropriated the money in the second year in LB553, so I guess in terms of whether or not we have to make the payment this year or if we can introduce that shell bill...you know, bring another bill on, that changes what is then statutorily, then I think we can do that. But I would say it's my understanding that if we don't change something with another bill we might have to make that payment statutorily. I'd have to double-check on that for you, Senator. [LB553]

SENATOR HADLEY: Okay. And the third, I guess I went back and I looked at the committee statement. There were three or four groups in pro for this bill, two neutral, and no one else. Do you have any idea why the executive branch didn't introduce anything in the budget package or come in and oppose this bill in the Retirement Committee? [LB553]

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SENATOR LARSON: I have no idea why the administrative branch did that. I'm not a member of that branch. [LB553]

SENATOR HADLEY: Okay. Okay, thank you, Senator Larson. The last thing I'd like to mention, it talks about the taxpayers of Nebraska being at the table. If you look at one of the groups that testified in favor of this bill was the Association of School Boards. The school boards are not an appointed group. They're our direct link to the voters when it comes to education issues. When we talk about property taxes in education, we talk about school boards. When we talk about curriculum, we talk about school boards. [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR HADLEY: You know, they came in and testified on this bill in favor of it. To me, they're the direct link to the taxpayers. Their amount that they have to pay goes up. But yet they were willing to come in. So I guess I'd like someone to explain to me, are the school boards direct links to taxpayers or are they just looking out for teachers and not the taxpayers? Thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Hadley. Members in the queue: Harms, Carlson, Nordquist, McCoy, Kolowski, Schumacher, Davis, and others. Senator Harms, you're recognized. [LB553]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of LB553 and the override of the Governor. Colleagues, we have a serious issue here. And if you don't believe what we're telling you, Kathy Tenopir is sitting right over here. She has the background and the knowledge in regard to the issues we're going to have in regard to the health...this insurance issue, this retirement. And if you don't understand it, and we're not being very clear here, visit with her so that you understand what the impact is here. I can tell you right now that we will have to...if this fails, we will have to automatically make a transfer of about \$98 million into this project. Ninety-eight million dollars, you might as well forget about any A bills; you might as well forget whatever you've got sitting out there, because there's not going to be funds there. And if you have to take it out of reserve, you have to remember that when it comes out of reserve, each year it has to come out of reserve. And in long term, you're not going to have any money left. This is an issue that we have to address. There is no way we can get around this. We need to fund it. And then if you want to study to look at other ways that we might try to deal with this, fine. But I can tell you now that the people that are in this program will keep this program. The new people coming in, you can probably change. And if you want to challenge the other side of it, it's going to cost you millions of dollars because you're going to be in the court system. Colleagues, you don't want to walk there. What kind of a message are we sending to our teachers. Whether this is the right

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retirement plan, I have no idea because I didn't create the plan, you didn't create it. It's something that has happened. So I would urge you to support this and it will give us the opportunity to get this hole filled so we can then take another look at this retirement. I'd like to yield the rest of my time to Senator Adams, please. [LB553]

SENATOR GLOOR: Senator Adams, 3 minutes 4 seconds. [LB553]

SPEAKER ADAMS: Thank you. Thank you, Senator Harms. Members, this is a double-edge sword for me. I'll be very candid with you. I am the recipient of defined benefit retirement. Yet I will tell you that two years ago when we were trying to work through state aid and retirement issues and we put retirement aid through the aid formula and we fused money into it, I was very concerned about the vitality of the system, still am. And Senator Nordquist will recall that at some time in early fall, late summer, I invited him to my office and some of the school folks and said, what are we going to do? What are we going to do? And, you know, they've come up with a plan. Perfect? Huh, if it was, we wouldn't be having this debate. Short-term fix, long-term fix, you pick your poison, but they've given us something. They've given us something here. And it definitely a beginning point. Now do I have concerns? I have concerns because I'm a recipient and I have concerns because I want the system to remain vital and I don't want school boards and taxpayers and the state of Nebraska, and for that matter the teachers that are contributing to be constantly in a bind over this. You know what I think this really comes down to? Defined contribution. Like it, don't like it. It's the battleground. Well, here we are; we've got it, like it or not, we've got it. And we have obligations. [LB553]

SENATOR GLOOR: One minute. [LB553]

SPEAKER ADAMS: And I don't know that turning our back on this or trying to carve this piece or that piece out of this partial solution does anything, really does anything. I like defined benefit because I'm the recipient; but I also see problems. And it's pretty clear to me after listening to all of those folks and Senator Nordquist and his legal counsel and others, you can't just suddenly take a knife and cut the thing and say, there, we've withdrawn from our obligations, we don't need to do much more, now we're off the hook. We are on the hook. And this is an attempt to fix it right or wrong. And I think we ought to stay with that fix. Thank you, Mr. President; thank you, Senator Harms, for the time. [LB553]

SENATOR GLOOR: Thank you, Senator Harms and Speaker Adams. (Visitors introduced.) Continuing with debate, Senator Carlson, you're recognized. [LB553]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. In a minute I'm going to ask Senator Nordquist some questions. And I'm really trying to figure out where I am on this. On the sheet that was handed out, without LB553 the

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state is obligated by law to pay the current actuarially required contribution of \$48.1 million by July 1...or on July 1, I understand that. And LB553 makes the immediate plan changes to modify the monthly retirement benefit received for new school employees, and when I ask Senator Nordquist to the microphone, I'm going to ask him if he knows by not doing this...just even in the next year, how much we lose by not doing this for the next year. [LB553]

SENATOR GLOOR: Senator, would you yield? [LB553]

SENATOR CARLSON: No, I'm not ready for him yet, excuse me, Mr. President. I'm just giving him some warning what I'm going to ask him. Point three, LB553 increases the total amount school employees will contribute, I understand that. And then LB553 saves the state \$88.6 million and I need some more clarification on that and will be asking. Now I'd like to see if Senator Nordquist would yield. [LB553]

SENATOR GLOOR: Senator, would you yield? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR CARLSON: Senator Nordquist, the teachers are contributing 9.78 percent. I think that's correct. [LB553]

SENATOR NORDQUIST: That's right. [LB553]

SENATOR CARLSON: And they were going to go down to 8.28 percent...or 7.28... [LB553]

SENATOR NORDQUIST: 7.28 percent. [LB553]

SENATOR CARLSON: ...7.28 percent. Instead they're going to stay where they are. So I don't know what...we can call that an increase that they're willing to accept. I had it figured out at 8.28 (percent), so I'm off. But it's probably 40 percent or something that they're willing to accept. However, we're going to go from 1 percent contribution to 2 percent which is...if I give them the benefit of the doubt of figuring from 7.28 (percent) up to 9.78 (percent) what increase that is. Then we need to go back down to .7 percent for the state because we were going to go down to .7 (percent), now we're up to 2 (percent), which is almost a 300 percent increase. So both of these involve pretty substantial increases. [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR CARLSON: You'd agree with that. [LB553]

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SENATOR NORDQUIST: That's right. [LB553]

SENATOR CARLSON: Now let's take the...and, of course, I think you know and I believe we all understand in here that if there is some kind of a shell bill that can be brought in and we need to suspend the rules in order to incorporate the \$48.1 million that has to be paid by July 1, that's possible, even though it's not preferable...may not be preferable. But let's go to the...let's go to the \$88.6 million that would be saved, saves the state \$88.6 million during the upcoming biennium, because we're on the biennium budget that otherwise be required by law. And I know you've done this, and those of us that are in, we're in and out and you may explain this, and I don't hear it, so I'm sorry. I've been in your shoes and it's kind of uncomfortable, but tell me how we save \$88.6 million. [LB553]

SENATOR NORDQUIST: Well, the key piece of that is the change in the amortization method that reduces the amount we pay up-front. So if you assume we have \$2.2 billion obligation, we divide that up into 30 level payments, much like your mortgage, and you pay a piece once a year for 30 years. What we're changing is now we're saying that instead of you paying the same amount every year, you're going to start paying based on your salary. So as, if we assume your salary grows,... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR NORDQUIST: ...which we assume over the long term teacher salaries will grow, that that payment will grow with it. So all we're doing is shifting off some of the payment until later. That's why I don't like just doing that alone because all we're doing is skipping out on the bill this year and saying the guys down the road will take care of it. [LB553]

SENATOR CARLSON: All right. Now if we go this other direction, suspend the rules and get the \$48.1 million back in the budget so that it can be paid out on July 1, then in looking at the points here, it gets down to the savings then is really what we wouldn't save on the new hires from July 1 to September 1. Would that be true? [LB553]

SENATOR NORDQUIST: If we...if...are you saying we do the amortization change or we don't do the amortization change? Do we pass the separate bill? [LB553]

SENATOR CARLSON: Well, I'm talking about the \$48.1 million. So I guess that means we do the amortization change. [LB553]

SENATOR NORDQUIST: Yeah, we do the amortization change and we don't do the other components of the bill... [LB553]

SENATOR GLOOR: Time, Senators. But, Senator Nordquist, you're next in the queue.

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[LB553]

SENATOR NORDQUIST: Well, I'll go back to Senator Carlson's Q&A in a minute. There's a few points though that I want to get across. This idea of doing it next year, folks, that's what...that's what Washington has been doing with Social Security, is we'll handle it next year. But next year...we'll be able to come up with some agreement now, let's just...we don't need to pay the obligation this year, let's come up with a new accounting method, skip out and then we'll come back and we'll solve it next year. That's not okay with me and it shouldn't be okay with anyone who is fiscally responsible in this body. Secondly, we talk about who is paying here. Two years ago we raised contribution rates on teachers. The Governor's letter says we have this great tradition of addressing the pension shortfall together. Two years ago we raised contribution rates on teachers and districts. You know how much the state put in? Nothing, because we were in a bind, we were in a billion dollar budget shortfall. But those groups out there didn't fight us; they said, we understand. We have one plan member group right now, the State Patrol, that is suing us over increased contributions. Those people out there working on this bill aren't. They're good partners, remember that. Secondly, so now we're saying under this bill we have a \$2.2 billion obligation to address. It's a state obligation according to court rulings. Are we going to pay for it all? They're willing to come to the table again. They're saying, to address that \$2.2 billion we're willing to employee contribute 2.5 percent more of my pay, districts are going to match that, combined over 25 years, almost \$2.2 billion. The state's share, about \$500 million. The state over that time period is contributing 18.6 percent of the money to address this. So I think if the Governor wrote those words of a tradition of working together to address this and the state, whose obligation it really is, contributes less than 19 percent to address it, I think we're coming out on a pretty good deal here. They're contributing over 80 percent; the districts and the teachers are contributing over 80 percent to address this. And you know what. If they want to be like the State Patrol and take us to court, court precedent has been laid out. And I'm not going to speak about it on the mike, but you can read the court precedent. You can talk to legal counsel here about the court precedent when it comes to the contractual rights of these and our obligation as a state. It's time for us to step up and address this in a comprehensive manner and that's what this bill does. Senator Carlson, I don't know how much we have left, but I'd be happy to continue questions with you. How much time do we have left? [LB553]

SENATOR GLOOR: Two minutes twenty seconds. [LB553]

SENATOR NORDQUIST: All right. Senator Carlson, if you'd like to ask me, continue with your questions. [LB553]

SENATOR GLOOR: Senator Carlson. [LB553]

SENATOR CARLSON: Yes, thank you, Mr. President; thank you, Senator Nordquist. So

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as I was finishing, I said it looks to me like the real difference here in whether we suspend the rules and put money in the budget that way, or whether we go through and override the veto on LB553, is the difference in cost between the new hires on July 1 and September 1. If we don't override the veto, that savings is out, correct? [LB553]

SENATOR NORDQUIST: That's right. [LB553]

SENATOR CARLSON: And do you know what that amounts to if we just say for one year? So it would be that amount between July 1 and September 1. [LB553]

SENATOR NORDQUIST: That, I just talked to legal counsel and Fiscal Office and they think we'd have to have a specific actuarial study for it. And the cost savings isn't really in one year. It's when those, obviously, those employees that start this year would get to the end of their career and start drawing on benefits and they would have higher benefits than if we enact LB553. That's where the cost is. So we're really not going to see a lot of cost savings for...until we're down the road quite a ways. So...but it would take a separate study to address that. I will just say that... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR NORDQUIST: Oh, go ahead. I will just say that, total we have...if we add up all the required contributions over the next 30 years and do nothing, it's \$3.6 billion. The state and this plan would bring in, through state contributions and teacher contributions, about \$2.6 billion. So on some rough math, and I would have to consult with the advisors over here, but I think that savings of lower benefits over the next 30 years probably equates to the remainder of that, which would be about a billion dollars of savings. [LB553]

SENATOR CARLSON: Mr. President, how much time? [LB553]

SENATOR GLOOR: Twenty seconds. [LB553]

SENATOR CARLSON: Okay. Thank you, Senator Nordquist. [LB553]

SENATOR NORDQUIST: Thank you. [LB553]

SENATOR GLOOR: Thank you, Senators Nordquist and Carlson. (Visitors introduced.) Returning to debate, senators in the queue: Kolowski, Schumacher, Davis, Krist, Dubas, Wallman, Nelson, Campbell, and others. Senator Kolowski. [LB553]

SENATOR KOLOWSKI: Thank you, Mr. President, fellow Senators. I'm also, as Speaker Adams has said, a user of the divine...divine (laughter)...defined benefit plan, and I guess it is rather divine also sometimes, Senator Adams, as we look at that. But

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we're both users of that plan. And with the Speaker's 30-some years in education, and I had 41 years in the same, when you look at what we're talking about as far as the starting salary for young teachers starting in any district from between 30...probably \$35,000 salary in districts around our state. Compare that with people taking jobs in other occupations and locations in business and industry and insurance, perhaps a law degree, moving in that direction, farming or ranching, technology, or higher education, all of those are many of the options that our teachers could have gone to. But their dedication to education, teaching our young people in their future was one of the major directions that they have moved on and secured the necessary qualifications to take a job in Nebraska. The point that this program is for not just educational employees but also for the judges and the State Patrol is extremely important that we keep that in mind as well. The teacher education institutions in Nebraska such as UNL, UNO, UNK, Midland, Doane, Peru State, Chadron State, Wayne State, Concordia, College of St. Mary, Creighton, just to mention some of the ones that grant degrees in the teaching profession in our state, are all trying to do the very best job they can. And those of us who were spending our careers and our lives, I spent over 40 years searching for, interviewing, and hiring those best and brightest future teachers to be in our Nebraska schools. If you heard a loud sucking sound around the borders of our state in the last day with the letter that we received from the Governor, it probably came from the vacuum in each of those states that would love to pick up the very best of our teacher candidates and bring them to their states and let them teach and have their careers in their states without casting a doubt about a teaching career as young people have their candidacy coming from one of those colleges or universities in our own state where we would like them to become employed and to live and to work in Nebraska. I've been to P-16 meetings, as our Speaker has, dealing with the educational issues across the spectrum in Nebraska. We have a Governor who says he wants to be the education Governor. That doesn't seem to prove true when we see the directions of what we've been receiving and hearing from that particular office. I find this to be an embarrassing lack of executive leadership and I'll stop with that and give the remainder of my time to Senator Nordquist, please. Thank you. [LB553]

SENATOR GLOOR: One minute ten seconds, Senator Nordquist. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. One point I want to get across, I've heard some people say, well, the 8 percent assumed rate of return is too high. And I don't completely disagree with that. And that's why, even with a 7.75 rate of return, this puts us much more in line to be able to meet our obligations there. And that is the advice that is coming from the Nebraska Investment Council. The Governor has appointed every member of the Nebraska Investment Council. The president is Gail Werner-Robertson of GWR Wealth Management in Omaha. There's a professor of finance, Richard DeFusco from the University of Nebraska; John Dinkel from Dinkel Implement in Norfolk; John Maginn of Maginn and Associates in Omaha; John Conley from Conley Investment Counsel in Omaha; State Treasurer Don Stenberg is a

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member, ex officio member; as is the director of the Public Employees Retirement Board. Those are the experts that the Governor has appointed. This 8 percent rate of return or 7.75, it's not something I or my committee or anyone is pulling out of their hat. [LB553]

SENATOR GLOOR: Time, Senator. [LB553]

SENATOR NORDQUIST: It's on their advice. Thank you. [LB553]

SENATOR GLOOR: Thank you, Senator Nordquist. Senator Schumacher, you're recognized. [LB553]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This is as sobering a thing as I've seen since I've been down here the last two and a half years. Let's start out with something fundamental. If you have an expense of \$10,000, 20 years into the future, and you have an 8 percent discount rate, you should be able to make that expense work by putting about \$2,100 in the bank. Likewise, if the discount rate is only 5 percent, you're going to have to put about \$3,700 in the bank. Looking at it reversed from the income side, if you put \$10,000 away now and hope it grows at 8 percent, you're going to have \$46,000 in 20 years. But at 5 percent, you're only going to have \$26,000. The magic is in the interest rate that you select and the fact that it compounds. Now there's a sheet in the Retirement Systems' report that shows currently, pretending the world is at 8 percent, that we have a \$9 billion worth of liabilities and \$7 billion worth of assets, a total shortage of around \$2 billion. However, if you apply the 5 percent rate, which is what we're using on our revenue estimates, which I still think are too high, suddenly that liability goes to \$16 billion and the value of assets drops to \$4 billion, those assets being the stream of revenue from the local contributions, the teachers' contributions, and whatever is in the kitty. That's \$12 billion short, a \$10 billion spread. Folks, I think we have a huge, huge problem with how we're going to finance this. And if we were feeling rich a little while ago, we're wrong. This is tremendous expense. Now whether we think we can deal with it with cutting out the cost-of-living increases, think that's fair to the teachers? Or saying to the new people, you get a rotten deal, but you pay just as good as the old deal, that's not fair to them. We do not have a good handle on the magnitude of this problem. And because we do not have a good handle on the magnitude of this problem, we are pretending that somehow by passing LB553 we won't be kicking the can down the road. Well, this can is as big as a bucket and it's filled with concrete and we're going to stub our toe either way. There is a mechanism, but we haven't yet debated it or haven't thought about it, where we can suspend the rules, we can kick the can a foot down the road until next year and try to come up with a solution, but there may not be a solution. This problem is not going to go away and it's going to get worse no matter which way we approach it. I think we need to look at the possibility of a rule suspension and moving it down the road just a little bit, but I'm not quite sure I'm ready to go there. On the other hand, if we

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take...if we just simply ride LB553, then what is the incentive for the system to do anything but pretend to breathe a sigh of relief and wait three or four years until everybody is back at the trough here saying, you know, the new actuarial thing...I mean, we were expecting 8 percent... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR SCHUMACHER: ...and the report says we've got .8 of 1 percent. It was off by a factor of 10. So you know, we're going to need another bite at the apple and another bite at the apple. This is never ending when you deal with compound interest. There is an option, whether it's a good option is hard to say just yet, but we have a heck of a liability that we've taken on. We may not have much squirm room, but we have, I think, calculations that are just totally, totally optimistic that somehow 8 percent...we can discount our bills by 8 percent and count our income by 8 percent compounding, and we're just leading ourselves to fantasy world. This is a tough one, folks. Thank you. [LB553]

SENATOR GLOOR: Senator Krist, you're recognized. [LB553]

SENATOR KRIST: Good afternoon, Mr. President, colleagues, and Nebraska. If I were inclined to run for a bigger office, and I haven't ruled it out, I would adopt Governor Heineman's mantra: We don't spend money we don't have. But I would add to that: We don't break contracts with our citizens. This is a contract with our teachers, with our unions. It needs to be carefully changed, it needs to be studied. Again, I refer you to your gadget and look for LR191. It does not take into any account that we say we normally...we normally study this every year. It directs the Retirement Committee to study the options and move forward. We have a defined benefits plan problem in Omaha. It's huge. And I have listened to the Governor and this body speak about that defined benefit plan and say, shame on you, you people in Omaha have allowed this to happen, conservative mayors, conservative Republican and Democrat mayors, who have allowed that contract to happen. Do I think defined benefit plan is the way to go? I think Senator Schumacher said it best. It is a bucket of concrete and if we kick this can down the road, we won't have a toe to speak of. We need to override the Governor's veto. We need to do what's right. We need to not spend money we don't have. And we don't need to break contracts with the citizens of Nebraska, particularly the teachers. This is from my superintendent...mine...this is from the superintendent at the Bennington School systems that I represent: From 2005 to 2012, the employee/employer rate has been increased through three separate pieces of legislation. In 2004, the employee rates were 7.25 of compensation; the current employee rate is 9.78 percent. This results in an increase in the retirement contribution of approximately \$100 per month for an employee making \$47,500. That's a lot of money for somebody making \$47,500. I quote again: The school employers and school employees have endured consecutive increases in retirement contribution rates due to

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economic circumstances and the state's inability to contribute more. We stepped up to the plate...this sounds familiar, this is what Senator Nordquist was trying to tell us for the entire session. I quote: We stepped up to the plate when times were tough. Now we're asking the state to meet its obligations and pay more on behalf of Nebraska schools/ESU employees. I think that says it all. I think we're on a road, truly an awakening, as Senator Schumacher tells us over and over and over again, to analyze where we are going. And if we feel like we're rich, we should look in the mirror and analyze where we really are. The defined benefit plan that we have in Omaha needs to change. And there's an election today, maybe, to solve that. The defined benefit plan for the state employees might have to change, might have to be altered. That is the study that this Governor has stood up and said time and time again, I want you to study it and I want you to change it. That is LR191. That is our opportunity to go forward. But what we need to do today is be true to our contract. Not everything is a whiteboard approach. Not everything can be wiped away and started over with yesterday. We don't spend money we don't have; we don't break contracts with our citizens. Thank you,... [LB553 LR191]

SENATOR GLOOR: One minute. [LB553]

SENATOR KRIST: ...Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Krist. Senator Dubas, you are recognized. [LB553]

SENATOR DUBAS: Thank you, Mr. President. As I was looking through my research on pensions, this is the one sentence that really jumped out at me as I was trying to wrap my brain around it. Pension obligations are contractual rights and as such must be funded. I don't think that gives us any wiggle room there. And if we are going to make changes for future employees down the road, those need to be done with a great deal of thought, consideration as to, of course, the financial impact to the state, to the employees, and the employers, but especially the message that we may be sending to future employees. And so with that, I would yield my time to Senator Nordquist. [LB553]

SENATOR GLOOR: Senator Nordquist, 4 minutes 15 seconds. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. I was off the floor visiting with some members about questions they had, and certainly always willing to do that. I did catch parts of Senator Schumacher's comments about this...whether or not this is a fix or not. I certainly am not standing here saying today that we are going to project 30 years into the future and say this a lock, stock guarantee that this will bring our pension plan into balance. We have models, they're just that, they're models. But the fact of the matter is, we have a \$2.2 billion obligation that doesn't go away that we have to pay for. We have a couple of options. We can take the fiscally irresponsible

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approach and do some accounting maneuvers and push it down a couple of years and say let the future Legislature and maybe a future Governor handle this issue; I'd rather spend that money on something else today. We could take the approach of saying, well, we're not going to change the plan; we're just going to pay what we owe according to the actuaries. That's the responsible thing to do. I remember on this floor just a few years ago people talking about the Omaha how...what a situation Omaha was in with their police and fire pensions and we had interim studies. I think Senator Smith introduced an interim study to look at it. And the reason they're in that fix is because they didn't pay their obligations. And here we are today thinking about not paying our obligations and we were chastising them just a few years ago. The third option is to bring everyone together and come up with a solution. And that's what we've been working on now for probably about eight months. Knowing that we had \$108 million short-term obligation, a \$3.6 billion long-term obligation, we came together with all the interested parties, we had public hearings, public groups who didn't have a stake in it came and testified, like the Lincoln Independent Business Association. We had multiple hearings. The Governor's staff sat in the hearing room the entire time and we said we're all going to do our part. The teachers and the administrators said, look, you've raised our contribution rates 2.5 percent of our pay, the districts are matching that, just two years ago. We're going to struggle to go any higher than that. But they said, we'll take the sunset off, we'll continue to contribute that amount until this plan is put on the right track. They said, we're willing to take lower benefits for new hires. People have asked me, why didn't we do Rule of 90. We looked at Rule of 90, moving from Rule of 85 to Rule of 90. But actuarially, extending from three years to five years and the COLA change account for more than the Rule of 90 change did. And we had districts say, if you start making teachers work longer, we're going to have to pay them a few more years at their higher salary versus hiring new teachers at a lower salary. That has an impact on our budget,... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR NORDQUIST: ...has an impact on our personnel. So those are decisions that went into this policy. And then the state, knowing that the courts have interpreted that this is our obligation, we said, we'll do our part. We'll contribute 18 percent towards this obligation long term so we don't have to handle the entire load ourselves, \$20 million dollars a year until this plan gets on the right path, and I'm hopeful. You know, we had a market return year-to-date so far, the fiscal year ends at the end of June, of 14 percent. That is...that was at the end of April, that number, so the last couple of weeks have been equally as good. Hopefully, you know, we may be able to pull back on these increased contributions in coming years. But this is the responsible plan to take to plan going forward knowing we have this obligation and putting this money aside,... [LB553]

SENATOR GLOOR: Time, Senator. [LB553]

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SENATOR NORDQUIST: ...saying we have to meet this obligation. Thank you. [LB553]

SENATOR GLOOR: Thank you, Senator Nordquist. Senator Wallman, you are recognized. [LB553]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. This is quite a conversation again on responsibility, kicking the can down the road, or the bucket. And it's retirement funds, investment funds. You never know quite for sure where they're going to be. And we can be optimistic or pessimistic, but we have to pay attention to what we sign as contracts, teacher obligation, law enforcements, all these people. At one time or another we signed a contract when we hired them...or they signed a contract. So we should pay attention here and I strongly vote to override...to vote to sustain this bill because it's a good bill. And they worked hard on it, a lot of input on it, lots of time in the summer on it. And at some time or other we have to trust our committees that they did the right job and had the right information. And thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Wallman. Senator Nelson, you are recognized. [LB553]

SENATOR NELSON: Thank you, Mr. Speaker, members of the Legislature. This is an interesting conversation. I think I was absent one time when it was said that there were no bills brought before the Retirement Committee that would address the situation. I presented two bills to the Retirement Committee this session, LB638, which took the school employees retirement to a cash balance system for new hires after July 1, 2014. I also had a second bill, LB639, which moved the judges and the State Patrol into the state employee cash balance system beginning July 1, 2014. That would be for new hires. And there was a hearing on that. It was after the hearing on LB553. I give the committee credit, they listened, but they indefinitely postponed both of my bills. I think it's important and I can't agree with Senator Schumacher more about the magnitude of this problem and what we have to do. And that's why I spent quite a bit of time trying to bring myself up to speed on the retirement systems and how they work and what we could do to get started. And it's still my firm belief that the best thing we can do is to go to a cash balance system for new hires; figure that out, perhaps using Senator Krist's LR191 resolution and handling it that way, but it needs to be done. The thing I want to point out and I think the paramount thing is that the only change in the plan, in this plan, LB553, that takes effect in 2013-14 is the change in the amortization method from level dollar amount to level percent of pay. In one fell swoop the Retirement Committee changed the complexion and they saved us \$88 million and Senator Nordquist acknowledges that. We have a saving of \$88 million in the next biennium. So where do we need to come up with \$48 million out of the budget? It's already there. We're not proposing that we change that. The Governor likes that, he says in his letter, he said it was a good idea. What we are proposing is that we do an amendment here, if we

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override this bill, and I hope that we do not do that. But if we don't override it then let's put an amendment in; let's retain what the committee did to save us the \$88 million. The problem with the rest of it, which really ought to go and which we really ought to study, is it's down the road. It will take a long time before we see anything there. A representative from the actuary stated at the hearing in front of the Retirement Committee on November 20, the changes under a new tier take a long time to take effect, so you get small but increased savings over the time, so, and that's part of the transcript. Enacting the change in the amortization method will alleviate the \$48 million required by the three defined benefit plans to give more time to examine this issue. So we ought to take the additional time over the interim to hear from all sides on this issue and decide how we want to go forward. I have to tell you, and I think I already mentioned this, I went to a meeting in Chicago a couple of weeks ago and I talked with a member of the House of Representatives from the state of Illinois. They're in a dire situation there, and they're at the point where they're going to have to reduce their defined benefits. You call that breaking a contract? That's breaking a contract. I don't know where we're breaking a contract here with the proposal that the sunset not take effect and that the teachers continue to pay 9.8 (percent) for the next two years. They'd already agreed to that. There's no reason to change there. We've got that money coming in. The Governor also is not going to bother... [LB553 LB638 LB639 LR191]

SENATOR GLOOR: One minute. [LB553]

SENATOR NELSON: ...the \$20 million in the budget. One minute? [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR NELSON: Thank you, Mr. President,...leaving that there. So if we leave things alone, if we override the Governor and we pass this bill, we're going to be obligated to another \$20 million and we're going to be obligated \$40 million for the next 25 years that are coming out of the taxpayer. That is not what we should be doing. We need to take a better look at this. In my mind, we need to go to a cash balance system or a hybrid of some sort that gets us away from the defined benefits. Senator Kolowski, Senator Adams both agree that something has to be done. Well, let's do what we have to do. Let's save the \$88 million. Let's not do anything more with the rest of it. Let's take a look at that at interim hearing, let's get input from everybody, from all parts of the table, and let's go with that. So I stand in opposition to the override bill that we have here. Thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Nelson. Senator Campbell, you're recognized. [LB553]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. The Legislature, through its committees, has conducted a thorough review and met

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requirements of the statutes and we are now asked to overturn that work, at what I believe would be a great cost to Nebraska's taxpayers, and without a single alternative proposal that had been looked at and without a reasonable means of addressing this year if this veto is sustained. The Legislature saw a problem and faced it head-on, just exactly what our constituents expect. We can live up to our contributions we negotiated. We can begin this year. We can keep faith with those with whom we negotiated. What would have been the hue and cry if in this place nothing had been put forward? A failure to face a problem, to begin looking at that problem would even be more egregious. And I would urge your support of LB553 and yield the remainder of my time to Senator Nordquist. [LB553]

SENATOR GLOOR: Senator Nordquist, 3 minutes 30 seconds. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President. Thank you, Senator Campbell, for those comments. Would Senator Nelson yield to a question? [LB553]

SENATOR GLOOR: Senator Nelson, would you yield? [LB553]

SENATOR NELSON: Yes, I will. [LB553]

SENATOR NORDQUIST: Thank you, Senator Nelson. I just want to get your position clearly on the record here. So your position would be not to fund our pension obligation this year, rather just to use the amortization accounting method to push off our obligation. Is that right? [LB553]

SENATOR NELSON: Yes, it will save us...by doing that, it's going to save us the \$88 million in the next biennium by changing that amortization to the level pay. [LB553]

SENATOR NORDQUIST: Thank you, Senator. Do you think it was appropriate for the city of Omaha not to pay its obligations on police and fire pensions? [LB553]

SENATOR NELSON: No, not appropriate. [LB553]

SENATOR NORDQUIST: Well, do you think it's appropriate then that the state not pay our obligation? [LB553]

SENATOR NELSON: Well, Senator, I mean, your proposal is going to save us money and it's kicking the can down the road just a little bit. We have a temporary fix, if I understand it here, just by changing this amortization which, as I understand it, was recommended by the actuary as a way to go. [LB553]

SENATOR NORDQUIST: The temporary fix though is coupled with long-term benefit reductions. That's how we bring our plan into compliance and bring our plan back into

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balance. If we just use the short-term fixes, we're going to run into a problem like the Omaha pension plan, like Social Security, like all of these plans that don't fund their obligations when the actuaries tell them they need to fund it. Thank you, Senator Nelson. Folks, I just want to reiterate, the obligation is not going away even if we were to make the transition to a cash balance. What you do is you segregate out the new employees and you say they're going to have their own separate accounts. All of their contribution is going, essentially, into their account and not going...any of it, none of their contribution is going to pay toward the \$2.2 billion obligation that we have in this pension system. So where does that money come from? It's either got to be made up by market returns, which I don't think anyone is going to say we're going to outperform our 8 percent rate of return by \$2.2 billion over the next 30 years, or it's got to be made up with state taxpayer dollars or contribution rate increases, which we know the legal challenges there. [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR NORDQUIST: Or we keep this plan whole, we reduce benefits for new hires. We keep contribution rates up and the state contributes also. And that collective approach reduces the long-term obligation in this pension plan. Thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Campbell and Senator Nordquist. Senator Scheer, you're recognized. [LB553]

SENATOR SCHEER: Thank you, Mr. President. I rise to discuss what the problems have been. And I've listened the better part of today about everyone's comments. And everyone is correct in their own mind so that means that no one has a clear definition of what the problem is. We have a system that for the last five years has not had any growth; a pension is based on growth and the funding should come out of the growth of the funds, not the payment into the funds. And so we've been eating the capital up for the last four or five years and that's thrown it upside down. I don't necessarily like what we have in front of us, but it is a solution. I'm willing to support LB553 because it puts \$20 million into the system. I'm not concerned about that because, believe me, folks, that's not the last amount of money we probably will put into that system. However, saying that, I do know that they look at the actuarial returns and so forth each year as part of their...of the Retirement Committee. But I would ask you to look at other programs that may be available in conjunction with that, because continuing to look at what we have without looking at others sometimes clouds our vision. There will have to be changes made regardless if we keep our current program or we switch to something else. But there are others that have faced the same problem within the state and have found different and unique ways to facilitate some type of change or adjustment so that their systems remain vibrant and viable for the rest of their employees to participate in through the rest of their careers. We are not going to break our commitment to those

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people that have already retired. We're going to continue to provide those funds for those people that have served the state in various capacities. But those that are going into the system, and perhaps some of those that are already in the system, may very well see some changes, just like all of us are going to be seeing changes in our retirements. I don't think any of us think that what we're looking at for our retirement and Social Security, certainly if you're under 50, believe that's probably what you're going to receive. That's just a fact of life. Things have changed. So I will support LB553 because I think it's an end...a way to the end, but not necessarily the best solution long term. It does get us down the road; that can is full of cement and we are going to break a couple of toes by pushing it down this year. But I've had commitments by both Senator Nordquist and Senator Mello that the committee will continue to look at alternative ways that we can provide a retirement program for the employees of the state, both new and existing, and I will take them at their word. But needless to say, we can't keep doing the same thing we're doing and expect different results. It will not happen. We cannot expect to have an 8 percent return on our investments. That's probably not going to happen. But by doing this we at least put some money into it. We have the money to put into it this year; we should utilize it for that. If we don't utilize it for that, chances are it will probably get spent on something else. Maybe it goes in the Reserve. I don't know. I haven't been around that long. But at least we've had an open and really fruitful discussion on this on more than one occasion. So I again will support LB553. But having said that, that is for a one-year extension... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR SCHEER: Thank you, Mr. President,...a one-year extension of our current program, and I would hope that we would find some different alternatives other than what have been presented this year to the body. I will wait till next year in interest to see what might be able to be presented at that time. Thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Scheer. Senator Karpisek, you're recognized. [LB553]

SENATOR KARPISEK: Question. [LB553]

SENATOR GLOOR: Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed say nay. Have all voted who care to? Record, Mr. Clerk. [LB553]

CLERK: 24 ayes, 3 nays to cease debate. [LB553]

SENATOR GLOOR: The motion does not carry. Continuing with debate. The motion failed, we continue with debate. Senator Karpisek...Senator Janssen, you are recognized. [LB553]

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SENATOR JANSSEN: Thank you, Mr. President. I appreciate that. And I appreciate the debate. I was going to rise to object, but I'm glad I did not have to. This is a very important issue and one that I'm gaining a greater and greater understanding of. Senator Nordquist just spoke on the mike while I was off the floor and gave me some information that I did not previously have, and I appreciated that. So this not being an area that I'm on the committee of or something that I get a chance to hear about daily, I appreciate this, this discussion, and hope it continues at least for a little longer. It is a big obligation and it's something that we do need to discuss fully. I'm not a recipient of this. I know several that have spoke, several on this floor have spoke, stand to benefit from this, and so that's a little disturbing. I'm not sure if conflict of interests were put in or not, and that's not for me to tell. I don't know. But I just want to hear more about this before the final decision is made, and I'm glad that that last motion did not pass. And I'll yield the balance of my time to Senator Larson. [LB553]

SENATOR GLOOR: Senator Larson, 3 minutes 45 seconds. [LB553]

SENATOR LARSON: Thank you, Mr. President. I think it's evident, and we heard Senator Nelson talk, that changing the amortization schedule is something that should and needs to be done, and LB553 actually is doing that the right way. The question is, is everything else in LB553? And we've heard a lot in terms of skipping out on our pension obligations and kicking the can down the future. LB553 is just another temporary fix. Senator Nordquist is right. If we went to a cash balance or a defined contribution, we would have to fund that as a state. And it wouldn't be easy, but it would be the right thing to do if you really want a true retirement fix in the state of Nebraska. Otherwise, we're going to continue to be on defined benefit plan, because it's too hard to invest in what's right. And every...or subsequent Legislatures will continue to deal with this problem in terms of we're short, we need to come back, we need to up the state's contribution, we need to change the teachers' contribution, we need to do X, we need to do Y. It will be hard switching, if Senator Nelson's bill came out of committee. We would have to find that money in the budget and continue, probably phase it in. I'm not a super expert on retirement. I have a rudimentary knowledge of it. Phase it in and we would have to pay to ensure that. But what we'd be paying for in this first 30 years would be that my children, grandchildren wouldn't have to be paying for later. They won't have that issue of the defined benefit plan. Now I know that the teachers' union is working on this and I mentioned earlier that my father is a teacher and he'll be on the defined benefit plan, because any current teacher will be there. I think we have to ask our questions...ourselves the question, how long do we want to continue this? How long do we want to do temporary fixes? Do we want what I see...and other members will disagree. [LB553]

SENATOR GLOOR: One minute. [LB553]

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SENATOR LARSON: They'll say the defined benefit plan is the way to go for the future, and we'll hear that from the teachers' union as well. But what's the right thing to do? Invest a little more in our future in terms of switching to that defined contribution, cash balance, whatever it may be? Or continue the problem, kick the can down the road a little more? Senator Nordquist is right because that's what this does. That's what any defined benefit plan will continue to do is kick the can down the road a little more for the next generation to deal with it. Thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Larson. Senator Carlson, you are recognized. [LB553]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. And I would like to address Senator Nordquist, if he would yield. [LB553]

SENATOR GLOOR: Senator Nordquist, would you yield to questions from Senator Carlson? [LB553]

SENATOR NORDQUIST: Yes. [LB553]

SENATOR CARLSON: Senator Nordquist, let's go back to the \$2 billion...\$2.2 billion hole that you referred to. And I think you said that that's going to be, under present projections, that's what it would be in 30 years. Is that correct? [LB553]

SENATOR NORDQUIST: We...so we pay...we pay it off over 30 years right now of level payments. That's...so we...so our amount we put towards our plan every year includes enough to pay the benefits that are earned that year plus the payment towards that unfunded liability. So it should be...if, you know, everything turns out the way the actuary assumes, it would be paid off in 30 years. [LB553]

SENATOR CARLSON: Okay, let me ask it a little bit different here. I understand we have about 26,000 teachers in the state of Nebraska. [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR CARLSON: And we hire about 2,000 new ones every year. [LB553]

SENATOR NORDQUIST: Uh-huh. [LB553]

SENATOR CARLSON: Now under LB553, new teachers after July 1, hired after July 1, would come into a little bit differently defined benefit plan. Is that true? [LB553]

SENATOR NORDQUIST: That's correct. Their... [LB553]

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SENATOR CARLSON: And... [LB553]

SENATOR NORDQUIST: I'm sorry. [LB553]

SENATOR CARLSON: And why is it different? [LB553]

SENATOR NORDQUIST: Their benefits will be a different tier. So they're going to contribute the same amount but they're going to, when they retire, they would receive benefits based on a different calculation. First, instead of they're using their three highest years of salary, they're going to use their five highest years of salary. So that will bring down that number that's used for the equation. And then their cost of living, instead of it going up...having a floor, a minimum, of 2.5 percent cost of living, it's a 1 percent cost-of-living adjustment. So that lowers how fast those benefits compound into the future. So all 2,000 of those new hires at that time that would be hired, for the rest of their lives they're going to be in the higher benefit category that we currently have, not the new lower benefit category. So it doesn't save us much up-front, but in the long run it's going to be a pretty penny. [LB553]

SENATOR CARLSON: All right. Now I understand that because we're talking about 2,000 new teachers hired in the next year that will go into this different formula and it requires an increased contribution on their part. But I understand the five years instead of three years and the cost of living is lower. Yes, that puts a different responsibility on the amount of money that's necessary to fund that. But I think...and I don't know how you can get this. I think if we understood how much difference over 30 years the 2,000 teachers for this next year would make under that new formula, it would be good information, because it's got to be a lot of money. But we don't know... [LB553]

SENATOR NORDQUIST: Yeah. [LB553]

SENATOR CARLSON: ...what it is and I don't know that you know anybody that can calculate that. [LB553]

SENATOR NORDQUIST: Yeah, without going back to the actuary, it would be pretty tough to calculate. But if you think about, you know, if it's 2,000 teachers and their...even if their monthly benefit is lowered by \$100 a month over the course of their lifetime, that turns into a lot of money over the course of the lifetime of those 2,000 teachers that we would miss out in this first year without enacting this bill. [LB553]

SENATOR CARLSON: All right. I think, regardless of the outcome of this vote, if we have it today, which I hope we do, that we need to look very seriously at the, what do we call it, the formula of 85, the rule of 85, and maybe looking to change that, because if that went to the rule... [LB553]

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SENATOR GLOOR: One minute. [LB553]

SENATOR CARLSON: ...of 90...one minute? If that went to the rule of 90, that makes a difference, too, doesn't it? [LB553]

SENATOR NORDQUIST: That is, that is, and we looked at that. We have the ability to forecast that out in our model. And as I said, the change of the three-year to five-year with COLA more than offsets the savings of the rule of 90. And like I said also, there's...when you go to...when you make teachers work longer you're adding costs for districts, because then they have older teachers with more seniority and you pay them more. They have those people working rather than bringing on new teachers at a lower salary. So it kind of shifts additional personnel costs onto districts too. [LB553]

SENATOR CARLSON: So the biggest effect was changing three years to five years in terms of calculating average earnings. [LB553]

SENATOR NORDQUIST: Yep. [LB553]

SENATOR CARLSON: Okay. All right. Thank you, Senator Nordquist. It continues to be an interesting debate because this is an important and very, very important vote. Thank you. [LB553]

SENATOR GLOOR: Senator Nordquist. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President. I think Senator Larson talked about moving to the cash balance. I think that we would have to fund that move. And I think we need to be clear here. We can set up a cash balance and all employees, starting tomorrow, their money goes into their individual account. It's all professionally managed by the state, much like our defined benefit plans are managed. The issue is the liability in the current plan. There's no way to eliminate it. There's no way to wash it away. And that's why even if we make the transition to a cash balance, in the next fiscal year we would have, even if we made the decision today, we would have \$35 million...well, actually, these numbers are before the poor investment return, the 1 percent investment return last year, so they would be even higher today. But in out years, in year '17 you're looking at \$60 million of additional state contribution; \$70 million in 2018; \$68 million in 2019; \$66 million in 2020. That's on top of everything we're contributing now. So even if you made the transition to a cash balance, you're going to be paying a significant amount more in actuarially required contribution from the state because now you no longer have anything subsidizing that old obligation. All of your new money is going over here. There's nothing going in over here. It all falls on the state. That's the issue we ran into, and it came to us pretty clearly. You're not going to be able to make this transition until you pay down that liability somehow. And that's what we're trying to do under LB553, paying down that liability with a three-pronged approach, higher contribution

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rates, lower benefits, and the state picking up its contribution. That's the only way we're going to get there. That's the only way long-term we're ever going to be able to look at a cash balance plan, because we are not able to skip out on that \$2.2 billion unfunded liability. With that, Senator, I would yield the rest of my time to Senator Lathrop. [LB553]

SENATOR GLOOR: Senator Lathrop, 2 minutes 30 seconds, Senator. [LB553]

SENATOR LATHROP: Oh, thank you. And I maybe want to follow up on what Senator Nordquist said about making the conversion from a defined benefit to a defined contribution. And Senator Smith, after we got done with the CIR reform a couple years ago, put in an interim study and we went down and we were looking at it more in the context of Omaha's \$500 million shortfall in their plan. And a lot of people during that debate on CIR said we need to switch to defined contributions. And the reality is, the reality that we learned in that hearing was that you have to come up with the money, that \$500 million. If we said...you can't just turn the switch and say we're going to go to a defined contribution plan and then all of a sudden it happens. You have to come up, in Omaha's case, with \$500 million. So those of you that think that this isn't the solution, the solution is to go to a defined contribution plan, let me tell you, you got to write a check when you do that. We can do that, but right now the people that are working are helping to pay the benefits of the retirees, because our defined benefit plan is not fully funded, right? So while I appreciate that we're here on a veto override, and that brings up the broader question of retirement benefits, when you stand up and say the solution is to go to a defined contribution where everybody puts money into a pot and then they get the money out of the pot when they retire,... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR LATHROP: ...plus interest that it's made, that all sounds good. But we still, the state, the sponsors of the defined benefit plan still have to write a check for the deficiency. That's what happens when you don't take care of the problem. The deficiency gets bigger and the opportunity to switch to a defined contribution plan gets further and further away from you. It becomes more and more unrealistic. And the conversation today isn't even realistic. It may be good academically and it may be a good goal to get to, but you're not going to be there until you're prepared to make up the shortfall. Now ours in the state plans is not as great as, for example, Omaha. And you can go to Illinois, California, some other places where they're way out of whack, right? But it's not responsive to our debate today to say we need to be a defined contribution plan, because we can't get there. [LB553]

SENATOR GLOOR: Time, Senator. [LB553]

SENATOR LATHROP: Thank you. [LB553]

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SENATOR GLOOR: Thank you, Senator Lathrop. Senators in the queue: Davis, Schumacher, Bolz, Lathrop, Price, Nelson, and others. Senator Davis, you are recognized. [LB553]

SENATOR DAVIS: Thank you, Mr. President, members of the body. I would just rise to urge that the body support LB553 in the override. Senator Larson, a few hours ago, talked about the state funding this aspect of the increase and the fact that the local taxpayers, the teachers are not doing so. You know, let's look back and remember that for the last couple years the school districts and the teachers kicked in part of the revenue to help us out when we didn't have the revenue. And so in a lot of way, this is a payback of sorts to them, not in a way that's different from the fact that the government, the Governor essentially made an arrangement with the University of Nebraska with regards to tuition increases and taxes. So, you know, it's a big issue and it's a complicated issue, and we need to go forward with it. But you know the money has to come from somewhere and if we're going to really take the state out of it, we're going to have to get the money from the teachers and from the local school districts. And I would remind especially the rural people in the room that the only place rural school districts get their tax money is from property taxes. So it's essentially going to be a shift to property taxes. I don't think that's what anybody really wants in here. I'm just going to reiterate a few things I said the last time I was on the mike here on this issue a couple weeks ago. There was no opposition to this at the hearing. We had lots of good testimony on it. I understand it's an unpalatable solution, but it's a solution that we have to address and we have to deal with. To talk about the return on investments, I think if you go back and you get to some historical data, you'll find out it isn't nearly as bad as you might think. If you go back to 1929 and bring it up to 2012 the rate of return is 8.8 percent; from 1932 to 2012 it's 11 percent; '87 to '12 is 10.6 percent; '92 to '12 is 9.6 percent. We get into the bad periods from 2007 on, when we were in the Great Recession. So we've had a 2.6 percent return from 2007 to '12. Remember, we had a big trough in there where the returns were way down. From the bottom of that trough until today, we have a return of 13.8 percent; 2012, a return at 10.1 percent. Some people say we're going to have a 16 percent return this year. So you know, we are likely to get back to more normal rates of return. Let's not be doom-and-gloomers forever in here. If we have to come back to this issue in a couple years, I'm sure we'll do it, and we'll find maybe a better solution. I'm not opposed to looking at anything else, but at this late date it seems to me counterproductive to be tossing in something else and saying, well, we'll just try this one, as a panic mode. Senator Bolz pointed something out to me a little bit ago. She said there are a lot of people in this room that wanted to protect retirement income, but there are people in the room that don't seem to want to contribute to that. And I just would like the body to think about that a little bit. With that, I would urge the body pass the bill. Senator Price had asked me for a little time and I'm going to give the rest of my time to Senator Price. Thank you. [LB553]

SENATOR GLOOR: Senator Price, 1 minute 50 seconds. [LB553]

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SENATOR PRICE: Thank you, Mr. President. Thank you, Senator Davis and members. In thinking about what's before us and listening to the debate, what we can do and what we're willing to do are the discussion for myself. We can do. We can override or we can sustain. If we sustain the veto, we can cut the first half of this bill into a shell bill. We can pass it. We wouldn't have the \$48 million liability. We'd have the same liability that we have with the current bill under LB553. What we would be doing is we'd be kicking the can down the road to have to be addressed, and we would grow the group of...the population that we'd have a burden to over time, because new teachers would be hired. The question for me at first was... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR PRICE: ...do we have as a group the constitution, the fortitude to take the necessary steps, necessary steps once we did that? I don't know that we do. I don't know that if we sustain this veto that the body has that fortitude to do what's necessary, particularly on the seventy-seventh day of a ninety-day session, with everything else that's in front of us. I appreciate that the majority of the proponents or the folks involved in this have kept a level tone of debate and have been respectful, and I look forward to hearing more of the same as we move forward. Thank you, Senator Davis. Thank you, Mr. President. [LB553]

SENATOR GLOOR: Thank you, Senator Price. Senator Schumacher, you are recognized. [LB553]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Overestimate your revenue, underestimate your expenses, and you're sure to go broke. And that's what we're doing in all these calculations. Nevertheless, we are where we are. Even if you use the overestimate your revenue and underestimate your expenses calculation, you come up with we owe, and the full faith and credit of this state has apparently pledged, \$2 billion. Play some more accurate or perhaps what I think is more realistic calculation on the numbers and we owe \$10 billion, a full biennium's worth of tax revenue on this particular program. That's not going to change. Whether we change compensation programs, whether we change the rate of contribution, it's not going to change. We owe a tremendous amount of money. I think sometimes folks think I overexaggerate when I say that the paradigm of the age of leverage changed on September 15, 2008, and the world would never be the same. It won't. To expect a 16 percent rate of return on investments, to expect an 8 percent rate of return on investments in an economy that maybe will grow at 2.5 percent, 3 percent is not realistic. At the same time, we have to back up in the big picture. This is why this gets so terribly complicated. The property taxpayer is the one who is on the line also to come up with some of this shortage. To the extent we try to finagle a way the state doesn't pay the bill, then in order to make these commitments we've got to collect it from the

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property taxpayer or we've got to collect it from the new teachers. And we're saying to the new teachers, guess what, guys, you're going to pay more and get less. That probably is not fair if we're really committed to the idea that we should have quality education. And a few weeks ago we were preaching about how bad it was that Lithuania was ahead of us in some test score. We need to reevaluate how we raise revenue, reevaluate where we spend it, realize that our retirees are going to be a tremendous source of need of revenue in the future, because they haven't been saved and they don't have the full faith and credit of the state of Nebraska to back their retirements. Things are repeatedly going to get very, very tough. I think there was some wisdom in what Senator Price said. Unless we are prepared to go the full route, override...or not override the veto, suspend the rules, pass a gutted-out bill, and kick the can a foot or two down the road, then we probably need to not override this veto. But how we hold everyone's feet to the fire when it's so easy just to forget from one moment to the next, from this year, next year, and think we've bought three years' worth of time until we have to face the music of reality, instead of \$20 million a year we may be owing \$80 million or \$100 million a year to this program. I don't know how we keep people's feet to the fire and that's still bothering me. Because if we don't override this veto, there's going to be a temptation to just plain... [LB553]

SENATOR GLOOR: One minute. [LB553]

SENATOR SCHUMACHER: ...space things off and go out and worry about something else, because we put a fire out temporarily. I know Senator Krist has got a resolution. How much faith you put in resolutions and studies I'm not sure. It may be a route to go. But we have a serious vote coming up here and no clear solutions other than we know we owe somewhere between \$2 billion and \$12 billion to somebody. Thank you. [LB553]

SENATOR GLOOR: Thank you, Senator Schumacher. Chair recognizes Senator Bolz. [LB553]

SENATOR BOLZ: I call the question. [LB553]

SENATOR GLOOR: Question has been called. Do I see five hands? [LB553]

SENATOR JANSSEN: (Microphone malfunction) Objection! [LB553]

SENATOR GLOOR: There can be no objection. That's the reason we vote, Senator. The question is, shall debate cease? All in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB553]

CLERK: 27 ayes, 8 nays to cease debate, Mr. President. [LB553]

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SENATOR GLOOR: Debate does cease. Senator Nordquist, you're now recognized to close on your motion to override. [LB553]

SENATOR NORDQUIST: Thank you, Mr. President and members. Appreciate the thorough discussion we've had on LB553 this entire session. I think this bill has combined for more hours of discussion than probably all of the retirement bills over the last...certainly since my time as the research analyst and as Vice Chair of the committee and then the last two years as Chair. So I appreciate the interest that the body is taking in these issues. Senator Schumacher mentioned the interim study. As I said, we always have an interim study where we hear the actuary's reports. Prior to it being presented to us, it's presented in an open meeting to the Public Employees Retirement Board. All of that information of the report is based on information that comes out of public meetings with the Nebraska Investment Council. Any senator that wants to attend the Investment Council meetings, the Public Employees Retirement Board meetings are more than welcome to. My staff always attends. Also, any member that wants to attend any interim studies of the Retirement Committee, we invite you to come sit up with us and ask the actuary questions, ask any of the plan members questions about these plans. That is always an open invitation going forward. What we have before us are a couple options. If we don't...if we do not override this veto, the choices are to do as the Governor proposed, which is just the amortization method. I would contend that all that does is push off the liability till another time for somebody else to pay. That's what happened in Omaha when they went from 70 percent funded to 40 percent funded in their police and fire. They didn't want to pay their bill. Right now we're about 77 percent funded. I don't think we should start going down that road. That's what's happened in Washington with Social Security, which the funding level I think last I saw was around 40 percent, 50 percent, in that area. We don't want to go down that road. We pay our bills in Nebraska. So our options then are to, if we don't override, to put the money in the budget to pay for it. How we come up with that money, it will be either out of the Cash Reserve or we'll have to make...or we'll have to not advance A bills. Or we override the veto on LB553. Again, the purpose is to address the long-term obligation, the \$2.2 billion unfunded actuarially accrued liability that we owe, that we've promised to everyone who's in the system today. It's a promise the state has made. It's a contractual obligation we have. It's a bill we have to pay. We can either pay it all ourselves, which, as I said multiple times, the courts have interpreted it is the state's obligation. We can pay it all ourselves or we can move LB553, where the state contributes about 18 percent or 19 percent of the additional money to pay that obligation, where the schools and the employees each contribute about an additional...they contribute each about 40 percent toward the total new funding to meet that obligation. This is a partnership. And I think these groups also should be commended for coming forward, not having the knock-down-drag-out fights that we've seen in other states over pension issues. But they've come forward, bargained in good faith, put a lot on the table for their members, and are willing to move forward with this plan that puts us on a much better path. But we will continually monitor this. Every year we will have an actuarial study. We will have a 30-year model at our

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discretion. If senators want to look at other alternatives going forward, that certainly is an option and we will continue to study that. So with that, Mr. President, I would ask for a call of the house and ask for my colleagues to support the override. [LB553]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Thank you, Senator Nordquist. 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. Record, Mr. Clerk. [LB553]

CLERK: 44 ayes, 0 nays, Mr. President, on the motion to place the house under call. [LB553]

SPEAKER ADAMS: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. All present and are accounted for. Members, this motion requires 30 votes. The question is, shall LB553 become law notwithstanding the objections of the Governor? All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LB553]

CLERK: (Record vote read, Legislative Journal pages 1348-1349.) 32 ayes, 1 nay, Mr. President, on the motion that LB553 become law notwithstanding the objections of the Governor. [LB553]

SPEAKER ADAMS: The motion is adopted. Next item on the agenda, Mr. Clerk. [LB553]

CLERK: Mr. President, Senator Nordquist would move that LB... [LB553A]

SPEAKER ADAMS: I'll raise the call, yes. [LB553A]

CLERK: ...LB553A become law notwithstanding the objections of the Governor. [LB553A]

SPEAKER ADAMS: Senator Nordquist, you are recognized to open on LB553A. [LB553A]

SENATOR NORDQUIST: Thank you, Mr. President, members. LB553A needs an override also. It's two components. I guess if it isn't overridden it isn't the end of the world, but the two components are small amount to reimburse the Public Employees Retirement Board for actuarial studies that were conducted on the plan, and also some IT upgrades for calculating the benefits changes that are encompassed in LB553.

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Thank you. [LB553A LB553]

SPEAKER ADAMS: Thank you, Senator Nordquist. Members, the floor is now open for debate on LB553A. Senator Janssen, you are recognized. [LB553A]

SENATOR JANSSEN: Thank you, Mr. President. And as per the rules, "objection" was not appropriate. However, as I was told, "point of order" would have been to continue debate on this. And I really didn't have much left on it other than some questions, a couple questions for Senator Nordquist to kind of clarify some information which will probably help with the next vote, at least for me. And if he would yield, I would appreciate that. [LB553A]

SPEAKER ADAMS: Senator Nordquist, would you yield to a question? [LB553A]

SENATOR NORDQUIST: Yes. [LB553A]

SENATOR JANSSEN: It was mentioned in committee, and this is the first I heard of this, that while I've heard of the rule of 85, I believe I even know how that came about, but we talked about raising it or you guys talked about raising it to 90. And the reasons for doing that or not doing that were? That's a question. I'm sorry. [LB553A]

SENATOR NORDQUIST: Well, we looked at the actuarial impact on it compared to the changes we did make. We looked at several other changes and the impact wasn't that great. We talked to the groups about their preferences. And the main issue that we kind of steered away from making that change was school districts saying the longer you...you know, if we need to keep these individuals on for them to get their retirement, if they don't retire at a younger age, we keep them on for an additional two, it would be two and a half years, even though we're adding five years to the rule, because the rule is years served plus your age. So if you go another two and a half years, your age increases another two and a half years, so that adds up to that additional five. But they're saying we would have to keep employees on most likely at...they would work longer and, therefore, we wouldn't hire newer employees at a lower salary, so it increases our personnel costs. [LB553A]

SENATOR JANSSEN: Thank you, Senator Nordquist. And if I...now would that be the same situation if...I went to Logan View High School, a rural district. And then somebody hits the rule of 85, because I saw this. I had new teachers, freshly minted, if you will, that came to me in private industry looking for jobs because they couldn't find jobs because people weren't retiring. I think we all are very aware of the recession we were in and still are in. Now what I saw, and maybe you could speak to this and how it impacts the retirement, were teachers retiring from smaller communities and then moving on to OPS or LPS, and how would that apply to this overall? [LB553A]

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SENATOR NORDQUIST: Well, OPS is the only district in the state that has a separate retirement plan. And actually it's something we'll probably do an interim study on this year because I have interest in ultimately combining those, because one of the reasons being that teachers can retire from either plan and move to the other plan if they were hired. And they would...to get vested you have to have ten years of service in the plan. So if they retired at, say, 55 and worked to 65, they could get benefits on the other...in the other plan. Now based on the benefit calculation formula, it's not like they're going to get two full retirement benefits, but they would be able to draw a pension out of each plan. [LB553A]

SENATOR JANSSEN: I appreciate that, and that was something I was wondering, I was trying to grasp through this whole debate. And that's the reason for my objection, if you will, which should have been a point of order, because I wanted to get that out for the record and find out and basically let a lot of people know that they're...when they're new students and they're coming out, why they're not finding jobs a lot of times are that this is happening and it's the reality. And I don't begrudge anybody for wanting to continue working or where they want to work, but it is a reality and I'm glad that the Retirement Committee has acknowledged that. [LB553A]

SPEAKER ADAMS: One minute. [LB553A]

SENATOR JANSSEN: Thank you, Mr. President. That's all I have. [LB553A]

SPEAKER ADAMS: Thank you, Senator Janssen. (Visitors introduced.) Senator Nelson, you're next in the queue. [LB553A]

SENATOR NELSON: Thank you, Mr. President, members of the body. I was not able to speak again. I did have a couple points I wanted to make and some questions to ask of Senator Nordquist. But let me begin by saying that when...now that we're considering the financial part of it, looking at the fiscal note here, and I will direct this question to Senator Nordquist, if he will yield. [LB553A]

SPEAKER ADAMS: Senator Nordquist, would you yield? [LB553A]

SENATOR NORDQUIST: Yes. [LB553A]

SENATOR NELSON: We are talking about the amortization, change of amortization from a level dollar amount to the level percent of pay. Correct? [LB553A]

SENATOR NORDQUIST: That's right. [LB553A]

SENATOR NELSON: That's what your bill does. And I see in the fiscal note really the only way that the State Patrol and the judges were affected by your bill was that they

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were included in that, the changeover. Is that correct? [LB553A]

SENATOR NORDQUIST: That's right. We do have a separate bill that addresses some of the components... [LB553A]

SENATOR NELSON: All right. [LB553A]

SENATOR NORDQUIST: ...in the judges' plan. [LB553A]

SENATOR NELSON: Okay. Otherwise, no effect in any other way, just the amortization was changed and applied to them as well as to the teachers' plan. As I mentioned before, I presented a couple bills that were working us toward going over to a cash balance plan, and you have indicated you're going to have another interim study. I want to ask you this. Is the Retirement Committee serious about looking at a cash balance solution to this for new employees, new hires? [LB553A]

SENATOR NORDQUIST: Serious, I think...I certainly think that's an option. I think there are challenges with that option that we've discussed on the bill, on LB553. It's not as easy as a slam dunk. It literally would take...with this bill we have \$20 million a year. The actuary shows over the next 30 years you would probably have to pay about three times that a year, two to three times that a year to do the cash balance change. So it has a tremendously much higher cost. But we have the software that's available to model it. We are...you know, we can, if you're interested in bringing that issue forward to our interim study hearing that we have over all of our plans, we would certainly make time for you at the hearing and any testifiers you'd want to bring in. So I think it's an option we should continue to look at. But, like I said, until we pay off the liability in the current plan, it's tough to make that transition. [LB553A LB553]

SENATOR NELSON: Thank you. My understanding of the cash balance plan, you seem to interpret it as setting up a new tier and just a separate thing for the new hires. Actually, cash balance plans create a hypothetical account for the employees and, in reality, the contributions all go into the same pool. Isn't that correct? [LB553A]

SENATOR NORDQUIST: That's right, Senator Nelson. If you'd let me, what I'm saying is if you're a new employee coming in and you're contributing 9 percent of your pay and the school district matches that, that money gets into the hypothetical account and all 18 percent or 19 percent of pay goes into that hypothetical account then. Nothing goes towards the other piece. Under a defined benefit, when we reduce the benefits for new hires, there's some excess of their contribution that helps us pay off the liability. But under a cash balance, you don't have any kind of subsidization of the old plan and that's where it would all fall on the state then. [LB553A]

SENATOR NELSON: I don't...thank you, Senator. I don't agree with that. The current

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employees are paying into a pool. The new hires pay into the same pool, and that pool can go to fund the defined benefits that we owe the current employees, right? [LB553A]

SPEAKER ADAMS: One minute. [LB553A]

SENATOR NORDQUIST: But you still have to pay all of the benefits for the old hires and the hypothetical account is...I'm a...I filed a conflict of interest statement. I am a vested member of the state cash balance plan because I was a legislative staffer. I have...I get a monthly statement every month that says I have the money I put in, the state match, and the investment return on that. That's my money. None of that can go help pay, if you're a former teacher, none of that can go help pay your benefits. [LB553A]

SENATOR NELSON: All right. All right. [LB553A]

SENATOR NORDQUIST: That's got to be paid for some other way. [LB553A]

SENATOR NELSON: Thank you. Thank you, sir. I guess I want to point out that the Kansas legislature, in May of this year, passed a bill creating a cash balance for new employees, and Kansas elected to take the cash balance route as both a cheaper alternative and a more effective way of reducing unfunded liabilities. And, Senator Nordquist,... [LB553A]

SPEAKER ADAMS: Time, Senator. [LB553A]

SENATOR NELSON: Is that time? [LB553A]

SPEAKER ADAMS: Yes. [LB553A]

SENATOR NELSON: Thank you. [LB553A]

SPEAKER ADAMS: Senator Lautenbaugh, you're recognized. [LB553A]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And someone was just saying, maybe it was viewer mail or something, that, Senator Lautenbaugh, you haven't spoken about the rules yet today. So under the rules, it is possible to introduce a bill. I'm referring to Rule 5, Section 4(c)2, "A standing or special committee may request that the Legislature consider introduction of a bill. A vote of three-fifths of the elected members of the Legislature shall be required for such bill to be introduced, and a copy of the statement of intent for such bill must be placed on each member's desk before introduction of the bill is voted upon." I'm not suggesting we do this, but I'm just pointing out it's in the rules. You don't need to suspend the rules. You just need to follow the rules if that's what you have a mind to do. Before I start doing "I'm

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Just a Bill" or anything like that, I will yield the rest of my time to Senator Nelson, so he can finish his thought. [LB553A]

SPEAKER ADAMS: Senator Nelson, you are yielded 3 minutes and 55 seconds. [LB553A]

SENATOR NELSON: Thank you very much, Senator Lautenbaugh, members of the body. I simply wanted to finish by saying that Senator Nordquist said he is a member of a cash balance plan for the state employees under NPERs. And amazingly enough, back in 2003, where we went over to the cash balance plan for those employees, the defined contribution members' one-time option, they transferred, one-third of them transferred back in 2003. Another third transferred again in 2007. Somehow the state of Nebraska and all these employees managed to make the transition. I don't, to the best of my knowledge, the state of Nebraska did not have to come up with a huge amount to subsidize that or to pay the defined benefits or the other benefits that needed to be paid. So I think it can be done. And I think that we need to be serious about this. Senator Schumacher is serious, Senator Carlson. I think all of us need to be serious about this. We need to take a close, hard look at this during the interim study and come up with a way that everybody contributes. It's not necessary for the taxpayer, in addition to what we already have, to keep funding this and taking care of any additional amounts that have to be done. We have to look at a plan. If other states can go to the cash balance and we've done it for a lot of our state employees, it's a way to go. And we're going to have to do that to get out from under, in the future, the problems that we have in funding defined benefit plans, whether it's by a cash balance plan or a hybrid plan. And I intend to continue to work on that and I hope that the Retirement Committee in their hearings and in the interim study, whoever does that, will keep an open mind on this and actually move forward in that direction. We simply, like other states, cannot afford to keep on with defined benefits. Thank you very much, Mr. Speaker. [LB553A]

SPEAKER ADAMS: Thank you, Senator Nelson. Senator Nordquist, there are no other senators in the queue. You are recognized to close. [LB553A]

SENATOR NORDQUIST: Thank you, Mr. President and members. I'll just close and respond to Senator Nelson's comment there about how we made the transition to a cash balance plan in 2003. Well, that's because we weren't transitioning from a defined benefit plan, which is, interestingly, most states now are trying to make the transition to get away from the liability of their defined benefit plan. We had a defined contribution plan for state members and we decided at that point that that wasn't a good enough retirement for them. Their benefits were being eroded by poor investment decisions. Amazingly, most people are not good investors of choosing their investments. So you say here's a defined contribution account, we're going to give you some money; you pick between these 12 options; how you do it, that's up to you; good luck. And we saw poor investment results and we saw people at their end of their careers retiring with little

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money in their accounts. And you know what happened to them? A lot of them wound up using other social benefits. When they had no assets, they relied on Medicaid for nursing home care. We had adult former state employees on food stamps because they didn't have a sound retirement. That's what happened to them. So that's why, Senator Nelson, we just made a simple transition from a defined contribution to a cash balance. There was no obligation because the workers took all the brunt of the poor investment performances before and were left with little. The state ended paying for a lot of it on the back end. Again, this bill, LB553A, simply is a small appropriation to handle the costs that were associated with the actuarial studies and the IT changes to calculate new benefits under the provisions of LB553. With that, I would ask for a call of the house and a vote in support of LB553A. [LB553A LB553]

SPEAKER ADAMS: Thank you, Senator Nordquist. Members, there has been a request to place the house under call. Question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB553A]

CLERK: 36 ayes, 0 nays, Mr. President, to place the house under call. [LB553A]

SPEAKER ADAMS: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Lautenbaugh, would you check in, please? All members are accounted for. This motion requires 30 votes. Question is, shall LB553A become law notwithstanding the objections of the Governor? All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LB553A]

CLERK: (Record vote read, Legislative Journal pages 1349-1350.) 38 ayes, 1 nay, Mr. President, on the motion that LB553A become law notwithstanding the objections of the Governor. [LB553A]

SPEAKER ADAMS: The motion is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the certificate that reads that LB553 and LB553A have been returned to the Governor with his objections thereto, and after reconsideration having passed the Legislature by the constitutional majority, have become law this 14th day of May 2013. I raise the call. [LB553A LB553]

SENATOR COASH PRESIDING

SENATOR COASH: You have items, Mr. Clerk?

CLERK: Mr. President, I do. Pursuant to the President's signature on the certificates, communications from the Clerk to the Secretary of State regarding the transmittals of LB553 and LB553A. New resolutions: LR195 is by Senator Brasch; LR196, Senator

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Brasch; both those will be laid over. And I have an amendment from Senator Cook to be printed to LB366, Mr. President. And that's all that I have. (Legislative Journal pages 1350-1352.) [LB553 LB553A LR195 LR196 LB366]

SENATOR COASH: Thank you, Mr. Clerk. We'll now proceed to the next item on the agenda, Select File budget bills.

CLERK: Mr. President, Select File. Senator Murante, LB196, I have no amendments to the bill, Senator. [LB196]

SENATOR COASH: Senator Murante for a motion. [LB196]

SENATOR MURANTE: Mr. President, I move to advance LB196 to E&R for engrossing. [LB196]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB196 is advanced. Next item, Mr. Clerk. [LB196]

CLERK: Senator, with respect to LB197, I have E&R amendments pending. (ER98, Legislative Journal page 1276.) [LB197]

SENATOR COASH: Senator Murante for a motion. [LB197]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB197]

SENATOR COASH: Members, you've heard the motion. The question before the body is, shall the E&R amendments be adopted? All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB197]

CLERK: I have nothing further on LB197. [LB197]

SENATOR COASH: Senator Murante for a motion. [LB197]

SENATOR MURANTE: Mr. President, I move to advance LB197 to E&R for engrossing. [LB197]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB197 does advance. [LB197]

CLERK: Mr. President, with respect to LB195, Senator, I do have E&R amendments first of all. (ER99, Legislative Journal page 1332.) [LB195]

SENATOR COASH: Senator Murante. [LB195]

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SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB195]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB195]

CLERK: Senator Chambers would move to amend with AM1321. (Legislative Journal page 1282.) [LB195]

SENATOR COASH: Senator Chambers, you are recognized to open on AM1321. [LB195]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. The amount involved here is \$18,000. It would go to the Indian Commission so that they could hire a full-time person. And I think this is really an amount that could be categorized as peanuts in terms of the size, but in terms of its importance, it is extremely more than peanuts. Out in that corridor, if you ran through this wall on my right-hand side, you'd see various people in the Nebraska Hall of Fame represented by statuary and sculptures. One is of Standing Bear, a very proud, regal-appearing and he actually was, chief of the Ponca Tribe. This is what is on the bronze plaque accompanying his image: Standing Bear, 1829-1908, Ponca Chief symbol for Indian rights, "I found a better way." "An Indian is a person within the meaning of the law." Judge Elmer Dundy 5-12-1879, and at that time Standing Bear was 50 years old. It goes on to say, "elected to the Nebraska Hall of Fame 1977, sculpted by Ted Long, Nebraska Hall of Fame Commission." When he was inducted into the Hall of Fame, he would have been 148 years old. That was a very important case because it proclaimed officially that Indians are human beings under the law. The case involved a writ of habeas corpus. The Poncas had been forcibly taken to Oklahoma and Standing Bear's son had died during a famine because the tribe did not have the wherewithal to support themselves, so about half of the tribe died. He had promised his son that he would bury him near the homeland in Nebraska. When he returned, Chief Standing Bear, with 65 others, the word got back to the administration in Washington, D.C., and they were ordered arrested for disobeying the order of the white man to stay in Oklahoma. General Crook at Fort Omaha had been ordered to return them to Oklahoma immediately. But when he heard the conditions under which they were living, he was outraged and he refused to do so. He had talked to a fellow who was editor of what is now the World-Herald and a lawyer. And they filed a writ of habeas corpus that resulted in the trial at which the declaration was made by the judge that I read. This trial and that declaration is known throughout the world by people who understand and study history. The head of the Indian Commission is a member of that tribe, officially enrolled with the Ponca Tribe in Nebraska. In the World-Herald today is an article, "Indian remains from 1883 are sent home to Michigan." There is a federal bill calling for the repatriation of Indian remains and burial goods so that they can be properly buried. Bones which are

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found in museums, at universities, any other public building will be turned over to the tribe, if they can find the tribe. They would start by going to the family. If they couldn't find the family, then the tribe, and an appropriate burial would be undertaken. That federal law was modeled after the first law of its kind passed in this country, and that law was passed by the Nebraska Legislature. And I'm too modest to tell you that I'm modest, but I was the introducer of that law. And it took a lot of battling with the then head of the Nebraska Historical Society. There were members of the Legislature who did not see the need for it. Senator Labeledz was in the Legislature at that time and what brought her over was when we were discussing how Catholics may be buried. And she had mentioned that she would want her rosary and there was a ring that meant something to her. And I said, well, Senator Labeledz, suppose somebody dug up the graves of Catholics and they didn't want the bones. But all of these things they might call artifacts or burial goods would be taken. And they would be used as artifacts or however a person who took them. She said a light went off in her brain and she supported the bill and others did, but it was extremely difficult to get it done. And that bill became the model for the federal legislation which will result in what I'm going to read to you about. Now I cannot pronounce the names of these tribes so I will butcher the names but I will try: Mount Pleasant, Michigan, Associated Press, "The remains of 11 Native Americans, including two sets that were housed at the University of Nebraska State Museum, will be buried in a Michigan cemetery this week. A ceremony will be held Friday for the burial of the remains at the" and then it gives a name, "Ancestral Cemetery on the Saginaw Chippewa Indian Tribe Reservation, which is near Mount Pleasant. 'It's always an honor and a privilege to take care of our ancestors,' said Charmaine Shawana, a member of the Saginaw Chippewa Indian Tribal Council. 'I have been taught these very well may be your own relations.'" Then it goes on to mention the people who will be involved in that. The comment that these could very well be your own relations carries a great amount of weight to people who have been displaced, treated like subhumans, have their land stolen, pushed on a piece of unsuitable ground for anything other than starvation. And the head of the commission that attempts to address the ongoing problems of these people is a Ponca and trying to address these problems. I want to help. I want to persuade the Legislature to help. Eighteen thousand dollars is not a lot of money. This money will not be squandered. It's a pittance. Had I known what their situation is, I would have sought more. I think that this money should be appropriated. One thing Nebraska is known for, in addition to a football team, is Whiteclay; and I don't even have to detail the problem there. But I handed out an article where I was interviewed by a reporter from the Pope's radio station who came from Rome, not to interview me, but she knew about me before she came. She was to cover a rally at the Pine Ridge Reservation, and I had been invited to speak there, as I am often invited to various things, and I spoke. And she wanted the interview. When Whiteclay is known around the world or in other parts of the world and in other parts of the country for the horrendous alcohol problem, that is not something of which this state can be proud. Not many weeks ago a negotiator from the Justice Department's branch in Kansas came to Nebraska to try to work something out as far as the Whiteclay

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situation goes. I would never beg like this for myself, never. [LB195]

SENATOR COASH: One minute. [LB195]

SENATOR CHAMBERS: And I don't want to feel that I'm begging for this pittance. But if to help people who need it, who are entitled to it, who should not have to beg, who should not have to have anybody beg on their behalf, I will beg. So I'm asking that this amendment be adopted. This \$18,000 is not a budget breaker. Rather than just put an image of Standing Bear, rather than just have us talk about the tragedy of Whiteclay, this is a small thing that we are doing, but it's something we can do. And I'm asking that we do it. Thank you, Mr. President. [LB195]

SENATOR COASH: Thank you, Senator Chambers. Members, you've heard the opening to AM1321. The floor is now open for debate. Senator Mello, you are recognized. [LB195]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Unfortunately, as I spoke with Senator Chambers on General File, I have to respectfully stand in opposition to his amendment, AM1321. But I do so by giving Senator Chambers a sincere thank you and an appreciation for the way he's handled this amendment. Senator Chambers filed this amendment on General File and which there were a significant number of other amendments that were filed to the mainline budget bill and which, in conversations that myself and other committee members had with Senator Chambers, we asked him if he could give us a little bit more time to talk with the Fiscal Office and the Indian Commission to see if there were other technical changes that could be made within their budget authority to allow what Senator Chambers wants to do in his amendment. Unfortunately, through the work that we did in the multiple meetings and conversations there is nothing further the Appropriations Committee do in a technical nature in regards to what is needed to ensure that a full-time position would be filled within the Indian Commission. So with that, more than anything else, this is obviously I've had to stand respectfully in opposition to other amendments that colleagues have brought. But I really do want to offer the body a sincere thank you to Senator Chambers for working with the committee on this, understanding that we had a significant number of issues to deal with on General File. He made an accommodation of saying that he would bring this back on Select File so it could be more spotlight on this issue. This commission is extremely unique. I saw in the queue Senator Price and Avery will also speak greatly to the importance of what the Indian Commission does and how they're very unique in comparison to the other state commissions. So with that, thank you, Mr. President. [LB195]

SENATOR COASH: Thank you, Senator Mello. Senator Avery, you are recognized. Senator Avery, you are recognized. [LB195]

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SENATOR AVERY: Thank you, Mr. President. I rise to support what Senator Chambers is trying to do. You all remember we went through a very painful budget evaluation and reduction process a couple of years ago known as the LR542 process. And the Commission on Indian Affairs actually suffered rather significantly under that process. That agency comes under the jurisdiction of the Government, Military and Veterans Affairs Committee, and I can tell you that the committee did not propose reducing the budget of that agency lightly. It was a difficult decision. That agency is run by some of the most capable people in state government. It does work that is often overlooked and undervalued. And I believe that they have been understaffed for a long time, and it's time that we do something to help them. Senator Chambers is right. They probably ought to get more than the \$18,000 that he is recommending. But they don't ask for much, but they are cooperative. During that LR542 process, they didn't complain. They said we are quite willing to do our share. At one point, they were facing actual elimination. And I had a bill to combine them with the Latino Commission. That was not a very popular bill and, fortunately, we didn't have to go down that route. But I can tell you that this is a worthy commission and this proposal is modest, but it is important. And I hope that you would join me in supporting it. Thank you, Mr. President. [LB195]

SENATOR COASH: Thank you, Senator Avery. Senator Price, you're recognized. [LB195]

SENATOR PRICE: Thank you, Mr. President, members. I rise today to talk about, and if you still have your budget books...can I get a gavel, please? If you still have your budget books, I'd encourage you to turn to page 75 and I'll spin a small yarn. Just as Senator Avery said, there was a motion to combine the Latino Commission and the commission under discussion now, the Indian Affairs one, and I was sitting as the Chair, and one of the things I noticed that was stark and startling was if you look at the funding line, and we don't have to go back, if you look at the funding line for the...I don't...not code agency but subline 68 at the top of the page, you'll see \$178,681; as you go over a little further you'll see it's a 5 percent increase. If you flip the page over to the top of the next page, you'll notice we keep relatively the same numbers, but it's an 11.9 percent increase. So what does that tell you? It tells you that Senator Mello and the Appropriations Committee, who I talked to, had done their level best to raise the funds that are going to the Indian Commission to the same level that we are giving to the Latino Commission. We had to have over about a 6.9 percent increase to bring them up on par, and it's not really on par. And I've always thought that it was shortsighted at best, egregious otherwise, that we had one commission funded at a higher rate than we did the others. Six percent is an incredible number when you look at what they get done with the few folks and how hard they go out and they find grant money to sustain the office. I have been out on trips to the reservations. I have gone out with the children when they have their day when they do things. I go out there, I meet with them. I try to be available. Great things are done. But when you look at the book and you see we had to raise it 11.9 percent just to bring them on par with another agency, it shows that

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we've been shorting them for a good period of time. I don't think it's right. I don't want the Latino Commission to be lowered. But when we're talking the dollars we're talking for one-half of a person to come and work in that office, there's only two people. Now you all understand the Native American situation, I'll use that word for lack of a better grasp of the English language, but to say they are sovereign people with a federal status within our state, this isn't an easy thing to navigate. So when we do our part to fund the commission so they can do their part to reach out to their citizens, who are also our citizens, and I would also tell you that of all the people that served and who are decorated and such in the military, the Native American population makes up about 25 percent of them. They are the largest sector. It is an incredible thing that they have done for our country. It is an incredible thing they have done for our state. But in this discussion I would support it. I'm not sure how we get it done, but more than just bring them to equal, but we have to do more to invest so that we get that return. [LB195]

SENATOR COASH: One minute. [LB195]

SENATOR PRICE: And I support the amendment, but also I wanted to give my personal gratitude and appreciation to the Appropriations Committee for doing what they did to even bring them up to being on par. Thank you. [LB195]

SENATOR COASH: Thank you, Senator Price. Senator Campbell, you're recognized. [LB195]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. I want to lend my voice to...in support of what Senator Chambers is attempting to do here. And I want to mention three different things that are really not connected but do show the importance of what we are trying to achieve through the Indian Commission. Several years ago we addressed the support staff and the needs of this center in a bill by Senator Loudon. And at that point, we made some reduction in that bill with the hope that we could increase support through grants. And I have to say, colleagues, that we went into that thinking, yes, they could do that and then it became the toughest time in all the world to find grant money during the recession. And also it's very tough to sustain any grant money year after year after year when you're looking at a position like this. So I would hope that the colleagues that were here at that point remember that discussion because our intent was really to see a full-time position here. My second point is that the Health and Human Services Committee held a hearing this summer in Macy to address and to take a look at the needs of child welfare of our Native American families. And we learned a great deal in that hearing. It was well attended--well over 100 people came. And I would have to say that as a follow-up to that--and I see Senator Coash has returned to his seat so he no doubt will want to talk about this--but he has already spoken with me about how we can follow up between the Health and Human Services Committee and perhaps the Indian Affairs as well as the Judiciary, and I'll let him talk about that. My third point is that we have a bill that will be on Final Reading, LB269,

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which would add a tribal representative to the Children's Commission, which certainly was a part of what I think the HHS Committee learned when we were in Macy. All of this is to illustrate that we are seeing great activity here and a commitment out of several groups to really make the Indian Commission a positive force for the changes that we may need to make in the coming several years. So I would hope that you would recognize that awareness of the issues and certainly issues involving children and their needs may be slightly different in a Native American family. So please give good consideration to Senator Chambers' proposal. I think it has great merit. Thank you, Mr. President. [LB195 LB269]

SENATOR KRIST PRESIDING

SENATOR KRIST: Thank you, Senator Campbell. Senator Chambers, you are recognized. [LB195]

SENATOR CHAMBERS: Mr. President, while Senator Price was speaking, I thought of a song I think a little group--I don't know if they are from England--but they call themselves Paul Revere's Raiders or something like that. And I'm not going to try to sing it, but some of the words: They took the whole Cherokee Nation, locked us on that reservation, took away our native tongue, taught their English to our young, the beads we used to make by hand are nowadays made in Japan. Although I wear a shirt and tie, I'm still a red man down inside. And it went on. But the idea is that you can be stripped of everything. Just to try to survive, you debase yourself and you will beg for your family. And while getting something that will help your family, you lose your sense of personhood, you lose your sense of manhood. And psychiatrists will tell you that that will cause a person's psyche to break apart, disintegrate, and then all kinds of psychological problems develop because that sense of self is gone. There is no "their" there. So this little bit is not going to solve any of the kind of problems that I'm talking about. But it will create in that office the opportunity to do a bit more than is being done now. They used to have an office in Scottsbluff. These small agencies are cut off and deemed expendable so that insults, the degradation that took place will continue. There might be ceremonies. Senator Seiler and I were both just agreeing that that Standing Bear case is one of our favorite cases. It was profound in what it did. But you reach a point where ceremonial recognition is not enough. Having a football team called the Chiefs means nothing except an insult. People say I can't understand why Native Americans are upset that the Washington...the NFL Washington team is called the Redskins or the Braves. And then the ones who are doing it say, we mean to compliment you. Well, if you want to compliment me, ask me what will compliment me. Don't take words that are degrading and that you have created, put it on me and say I should be complimented. During the time in the '60s when there were many demonstrations involving black people and some well-meaning white people and Jewish people, white people would come to me because my name was known. They'd say, what do you want to be called? I say, what do you mean? Do you want to be called

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Afro-American, African-American, Black, colored? I said, call me Ernie. I understand you're talking to me. Call me my name; don't use an adjective. They will say the Negro, one person, the Negro was to embrace 33 million black people in America. I was always the astonishingly articulate, black militant firebrand. That is not really a feel from what I'm trying to get us to do here but just saying that dignity is more than a word. And dignity has a greater meaning to those who have been deprived of their dignity. And it shouldn't be in 2013. [LB195]

SENATOR KRIST: One minute. [LB195]

SENATOR CHAMBERS: But that's all I'll have to say on this and thank you, Mr. President. [LB195]

SENATOR KRIST: Thank you, Senator Chambers. Senator Ashford, you're recognized. [LB195]

SENATOR ASHFORD: I don't want to...thank you, Mr. President. I don't want to prolong the discussion and maybe Senator Chambers would like some time, but I do want to recall briefly the debate on the Native American remains that we had when I was here. And it was really one of the most sterling debates and discussions we had. And I do remember quite well when Senator Labeledz decided to vote for the bill because it was an important moment in that debate. It was not an easy issue for the body, but it was the right thing to do. And it did make national and I think even international news when we did that. It's interesting to talk about that case. I have a friend, a boyhood friend whose I think great-grandfather was the federal judge, Judge Webster, in that case. And I think Senator Seiler was reminding me that the lawyer...Standing Bear's lawyer was Poppleton, who became a mayor of Omaha or had been a mayor of Omaha and has a street named after him. But in all seriousness, this is a very important issue. I thought Senator Price gave a very nice comment about it, as did everyone else that spoke on this. And Senator Campbell related the debates we had over the budget and the small amount of money that we were able to come up with to deal with some of these issues. In the end of the day after all my years here, I think what I will be saddest about is the fact that we have not been able to address Whiteclay in the manner that I think most of us or all of us would like to have done. I've been there and most of us have been there. It's a sad, sad state of events, state of affairs. I don't know what to do. The last time I was there I left thinking I just don't...that we have some...Father Merkel, who is the president of Creighton Prep, no longer the president, but he had a very active group of youngsters at Creighton Prep who actively worked with the Native American population at Whiteclay and worked on that issue and has...and probably still does. But it will be something that I will regret that in all my years here that...and all of the discussion about Whiteclay and we know that we need to do something about it, and every time we tried to come up with something rational in our committee and other committees that we could...where we could make a difference, we haven't been able to do that. And it's very

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sad. But thank you, Senator Chambers, for bringing us this amendment. We should vote for it. I, of course, normally follow Senator Mello and it was with some trepidation that I would stand here and actually suggest that I would vote for something that Senator Mello opposes, but I do support this. And, Senator Chambers, I don't know if there's any time left, but I would be happy to... [LB195]

SENATOR KRIST: Senator Chambers waives. Thank you, Senator Ashford. Senator Dubas, you are recognized. [LB195]

SENATOR DUBAS: Thank you very much, Mr. President. I stand in support of Senator Chambers' amendment, AM1321. I'd like to echo just a little bit what Senator Campbell said in regards to the issues surrounding Native American children and in the foster care system. And we do have some significant issues in relation to that subject. And I am a member of the State-Tribal Relations Committee and was at that hearing last summer when we heard from, you know, a variety of speakers. And the ones who touched me the most were those Native American young people who talked about their experience in foster care. And because of the circumstances surrounding the Native Americans' definition of family, it is not the same type of definition that we put towards family. And so how they fit into the foster care system really does create problems. And so I think...I believe that by putting another person in the Native American Commission will allow them to continue to be very involved in this circumstance, as well as many others that they deal with on a daily basis. When you talk about a government agency doing less with...more with less, this particular group of people certainly comes to mind. They have to do a lot that, you know, deals with the federal government and helping their citizens understand what their rights are and what things are available to them, and they just do an outstanding job. Judi is...I can't imagine a better advocate than Judi gaiashkibos for what she does for her Native American citizens. You know, Senator Chambers in his comments has talked a lot about Chief Standing Bear and I have introduced a resolution that the Natural Resources Committee will be having a hearing on I believe next week commemorating that trail, the Chief Standing Bear Trail, and hoping that the Legislature will be supportive of the work that is going into that trail because that is a part of our history. And it may not be a part of our history that we're always really proud of, but when you don't learn from history, you're doomed to repeat it. And I think there is still so much that we have not learned from in regards to Native American history in our state and how we behave and how we do things in this state in regards to our Native American population. So while Senator Chambers said this won't be the ultimate solution or solve all the problems that our Native American population are struggling with, this will certainly give the Native American Commission just that much more ability to advocate for our state's Native population. And I encourage the body to support AM1321. [LB195]

SENATOR KRIST: Thank you, Senator Dubas. Senator Karpisek, you are recognized. [LB195]

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SENATOR KARPISEK: Thank you, Mr. President and members of the body. I, too, stand in support of the amendment by Senator Chambers. The General Affairs Committee has worked on the Whiteclay issue a couple of times. And as Senator Ashford says, when we think maybe we have an idea or we have something we could do, it usually doesn't work the way we hope. I've been there a couple of times and they want help, but they don't always like our solutions. And I don't blame them. I understand completely. It is a tough situation. There's other places in the state, too, that could really use some help through the Indian Commission to have a little bit more there. So I do absolutely support this. I don't think it's a lot of money. It's probably not enough money, but I think it can really help the situation. And if Senator Chambers would like the remainder of my time, I would yield it to him. [LB195]

SENATOR KRIST: Senator Chambers waives. Thank you, Senator Karpisek. Senator Davis, you're recognized. [LB195]

SENATOR DAVIS: Thank you, Mr. President, members of the body. I, too, stand in support of AM1321 of Senator Chambers' position. I come from the Sandhills, and you know, you will be working through the Sandhills on occasions and come across Indian artifacts and things, and it always is a reminder of times gone by. But in working with Judi gaiashkibos on some issues this year and am so impressed with the abilities that she has and the work that she does, Indian child welfare issues are a huge problem for us and going to be an increasing one as we have more Native Americans in my district. And, of course, Whiteclay is the black eye of my district. In some respects, it is the one thing that draws the attention of the national media to our state on a very regular basis and something that eventually I hope we can find a solution for. But one thing the body does need to know is that issues are heating up at Whiteclay as time goes on this summer. I'm hopeful that they're not going to be serious, but we've seen some demonstrations there. We have some needs in the 43rd District that are significant, and I believe that this will help us smooth things over a little bit maybe and give us some support there. So I support the amendment. Thank you. [LB195]

SENATOR KRIST: Thank you, Senator Davis. Senator Coash, you're recognized. [LB195]

SENATOR COASH: Thank you, Mr. President. Good afternoon. Members, I stand before you in support of the amendment. I also serve as your representative as Chair of the State-Tribal Relations Committee, and that's a fairly new committee to the Legislature. It was formed I believe in 2006, and the intent of that committee was to assure that there were a group of senators who were charged with a task of understanding issues that faced the Native American community in our state, of making policy recommendations, and informing the Governor of what's going on with regard to those issues. And my and several other of you serve on that committee. And I want to

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take this opportunity to tell you one of the things that's going on within the Native American population. And by the way, colleagues, when we talk about this, sometimes people think we're talking about people who live on our reservations, and that's not the only case here. There are many more people--men, women, and children--who are Native American who do not live on a reservation within the borders of our state. But I want to tell you what's happening right now, and this is the focus of the committee's work and one of the reasons that I support this amendment. Early this year we got a report called the Kids Count report and it gathers a lot of data with regard to the status of children in our state. And we've talked about it in a lot of different forums about how children in our state are more likely to be pulled out of the home and spend the night somewhere elsewhere than their home comparatively to the other states. And it's not a record that we need to be proud of. It's a record we need to improve. So if you're a kid in Nebraska and your family is struggling, you got a pretty good chance comparatively to find yourself sleeping someplace else, somewhere around 48th in the nation. Now if you're a kid in Nebraska who happens to be Native American, your likelihood of being pulled out of your home is double that of your non-Native American peers. Think about that for a second. We've got a population of children who are twice as likely to be pulled out of their home. That's something that we need to pay attention to and it's something the committee has taken a look at, and we've been working with Senator Campbell and the Health Committee, Senator Ashford and the Judiciary Committee to get our hands around this problem because it is a big problem. And I illustrate that to say that we've got a responsibility, not only to these children but to all the kids. And part of what the commission does that AM1321 is trying to address is help us with that problem. And so for that reason, I urge the body's support of AM1321. Thank you, Mr. President. [LB195]

SENATOR KRIST: Thank you, Senator Coash. Senator Price, you're recognized. [LB195]

SENATOR PRICE: Thank you, Mr. President. I'll be brief. I wanted to follow up with what Senator Coash had to say there. What's important is the Indian Child Welfare Act which is the legislation both at the federal...at the federal level and then you have the Nebraska Indian Child Welfare Act, NICWA, very complex set of statutes that deal with a very complex problem. And I wanted to say the Health and Human Services had their study and their meeting at the reservation this past summer, and what was interesting to note was the HHS group as a whole and the individuals who testified there said that approximately two weeks prior to the hearing or less is when the one, the single, the only individual who is ICWA certified, the professional, was elevated out of the dungeons up to a level where she could be of more use. And it is my sincere hope that the promises or the assertions made at that committee hearing have been followed through. A couple of weeks ago I was looking at a bill that was getting ready to come up that dealt with child welfare issues and it popped the memory in my mind about that meeting and the interim hearing. And when I looked on the computer and I went to HHS, I looked at the PowerPoint of their hierarchy, their organizational chart, and I did

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not see a reference to the ICWA specialist at the level I had expected to see. As a matter of fact, I saw no reference, not a dotted line, not a vaporous little hope, doesn't mean it isn't there. But I think it would add to the credibility and to what is proposed and said by the HHS entity that the idea and the laws contained within the statutes of ICWA would be observed and that we would have an ICWA specialist sitting at a high enough level within HHS to address the various issues Senator Dubas and others have brought up about the definition of family. The propensity for these children to be removed from their homes is staggering. And I'd hope that with the extra dollars that we're talking about appropriating here in AM1321 we can also help to address that from the other side of the fence because it is right to do so. Thank you, Mr. President. [LB195]

SENATOR KRIST: Thank you, Senator Price. Senator Bloomfield, you're recognized. [LB195]

SENATOR BLOOMFIELD: Thank you, Mr. President. The hearing we had at Macy was a hearing that I requested through HHS, and I was very pleased with the turnout of not only the senators but the people that came to that hearing. I think, you know, we've talked about breaking a glass when we're reaching for something; and I think we maybe put a crack in it that day. There were a lot of eyes opened, including mine to some degree. I have been on the Indian Commission committee since my first year here before I represented Thurston County where the Omaha Tribe and the Winnebago Tribe are located. I think we've made some progress on this. We've got a ways to go. And I will be asking for your support on Senator Chambers' amendment. Thank you. [LB195]

SENATOR KRIST: Thank you, Senator Bloomfield. Seeing no one else in the queue, Senator Chambers, you're recognized to close. [LB195]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I had stated that I wouldn't have anything more to say on the bill and it's not on the bill. But since the Nebraska Indian Child Welfare Act was mentioned, that was one of my pieces of legislation, too, many years ago. Some of you have only seen me opposing things that I don't like. But if you go back and look, you'd see that there are many things I've supported. And this is one that I appreciate the help that has been given in terms of the words, and I think...I shouldn't call her by her first name, but Judi, because I always do, will have a chance to get the transcript and at least read what was stated, maybe share these comments that were made by the senators with others who in the tribes are disheartened. And it might lead to a bit of cynicism on the part of people who are saying, will they do things in the future? And when she presents that message to me, I'll tell her that I'll be here when the future becomes the present; and more than is being done now will be attempted at that time. Thank you, Mr. President. I will ask for a call of the house and a machine vote. [LB195]

SENATOR KRIST: There's been a request for a call of the house. All those in favor,

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aye; opposed, nay. Please record, Mr. Clerk. [LB195]

CLERK: 35 ayes, 0 nays, Mr. President, to place the house under call. [LB195]

SENATOR KRIST: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator McGill, Lathrop, Janssen, Kintner, Christensen, Smith, Hadley, Larson, Schilz, and Carlson, please return to the Chamber. Senator Carlson, Senator Schilz, Senator Larson, Senator Hadley, Senator Smith, Christensen, Lathrop, please report to the Chamber. Senator Schilz, please report to the Chamber. Senator Chambers, all those are present or accounted for. How would you like to proceed? [LB195]

SENATOR CHAMBERS: Machine vote. [LB195]

SENATOR KRIST: Machine vote. You've heard the closing on AM1321. The question is, shall the amendment to LB195 be adopted? All those in favor, aye; opposed, nay. Have all those voted that wish to? There's been a request for a record vote. Please record, Mr. Clerk. [LB195]

CLERK: (Record vote read, Legislative Journal page 1353.) 36 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment. [LB195]

SENATOR KRIST: The amendment is adopted. Mr. Clerk. Raise the call, please. [LB195]

CLERK: Mr. President, Senator Mello would move to amend with AM1325. (Legislative Journal page 1334.) [LB195]

SENATOR KRIST: Senator Mello, you're recognized. [LB195]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. AM1325 makes a series of technical changes to the mainline budget bill, LB195. While the purpose of each of these changes can be found within the language of the amendment, I'd like to draw the body's attention to two of those changes, which may appear substantive in nature but are not. The third item in AM1325 would reduce the General Fund appropriation for TEEOSA by approximately \$5.6 million in fiscal year 2013-14. This change is not a reduction to the amount of TEEOSA aid but, rather, a reflection of the increased insurance premium tax receipts which are used to offset General Fund dollars in TEEOSA. The technical amendments of this nature are generally done each long session once the insurance premium tax receipts have been confirmed, and a similar adjustment was made in a deficit appropriation bill for fiscal year 2012-13. The

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sixth item in AM1325 would reappropriate the unexpended General Fund appropriation provided in the deficit bill for the new state airplane. Given the body's action on LB194 last week, this change will allow the appropriation to carry forward into the fiscal year 2013-14. I'd urge the body to adopt AM1325 to LB195. Thank you, Mr. President.
[LB195 LB194]

SENATOR KRIST: Seeing no one in the queue, you're recognized to close, Senator. Senator Mello waives closing. You've heard...the question is, shall the amendment to LB195 be adopted? All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB195]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Mello's amendment.
[LB195]

SENATOR KRIST: The amendment is adopted. [LB195]

CLERK: Senator Murante, I have nothing further on the bill, Senator. [LB195]

SENATOR KRIST: Senator Murante for a motion. [LB195]

SENATOR MURANTE: Mr. President, I move to advance LB195 to E&R for engrossing.
[LB195]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. Passed. Mr. Clerk. [LB195]

CLERK: Mr. President, LB198. Senator, I do have Enrollment and Review amendments. (ER100, Legislative Journal page 1332.) [LB198]

SENATOR KRIST: Senator Murante for a motion. [LB198]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB198]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. Motion passes. [LB198]

CLERK: Senator Mello would move to amend with AM1323. (Legislative Journal page 1333.) [LB198]

SENATOR KRIST: Senator Mello, you're recognized. [LB198]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. AM1323 makes three technical changes to the capital construction bill, LB198. The amendment

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corrects a drafting error in the intent language appropriating funds for the two state college construction projects, corrects a dollar amount in the cash fund lapse for the Game and Parks Commission, and corrects the program numbers listed for the university Veterinary Diagnostic project. I'd urge the adoption of AM1323. Thank you, Mr. President. [LB198]

SENATOR KRIST: Thank you, Senator Mello. The floor is now open for debate. Seeing no one in the queue, Senator Mello, you're...waives his option to close. The question is, shall the amendment to LB198 be adopted? All those in favor vote aye; opposed, nay. Have all those voted that wish to? Record, Mr. Clerk. [LB198]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Mello's amendment. [LB198]

SENATOR KRIST: The amendment is adopted. [LB198]

CLERK: I have nothing further on the bill, Mr. President. [LB198]

SENATOR KRIST: Senator Murante for a motion. [LB198]

SENATOR MURANTE: Mr. President, I move to advance LB198 to E&R for engrossing. [LB198]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. LB198 advances. Mr. Clerk. [LB198]

CLERK: Mr. President, LB199. Senator, I have Enrollment and Review amendments first of all. (ER101, Legislative Journal page 1332.) [LB199]

SENATOR KRIST: Senator Murante for a motion. [LB199]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB199]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. Advanced. [LB199]

CLERK: Mr. President, Senator Coash would move to amend with AM1232. (Legislative Journal page 1270.) [LB199]

SENATOR KRIST: Senator Coash, you're recognized. [LB199]

SENATOR COASH: Thank you, Mr. President. Good afternoon, colleagues. I am pleased to introduce AM1232 to the budget bill. And if you'd like to find a place where

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you can get a committee statement on this bill where you can look is LB504. LB504, here is how this shakes out. I needed a...I had LB504 in front of the Government, Military and Veterans Affairs Committee. It was a bill dealing with cash funds of the Indian Commission. Although I did...the bill was advanced 8-0, I did not have a place to or a way to move this forward until the budget bills came out. This bill fits with the budget bill because it had to do with the cash fund...a cash fund under the commission. I want to be very clear that this amendment does not add any money to the budget, does not change...it does not ask for more money, it does not reduce any money. It simply gives some different parameters under an already established cash fund. So I'm going to begin my statement here with a little bit of background of where AM1232 came from. It starts back in 2010. This Legislature, with my support, passed LB1002, which was a bill introduced and prioritized by Senator Loudon. This bill, in it, included a \$25,000 General Fund appropriation and created a new fund to be administered by the Indian Affairs Commission and distributed to applicants which are political subdivisions, including tribal governments that are within 30 miles of an Indian reservation. Such subdivisions could not have a municipal government and must have less than 6,400 inhabitants. Those very narrow parameters ensured that only one area near Whiteclay could apply for such funds. Those funds under that bill could be used for healthcare, economic development, and law enforcement activities. These restrictions on distributions of the funds have proven to be too limiting. So two years later there is still \$22,500 left in the fund, and they are unable to spend this given the present restrictions. AM1232 simply seeks to expand the eligible applicant pool for these funds from the Indian Commission. As stated, currently eligible applicants include political subdivisions within a 30-mile radius of an Indian reservation that lacks a municipal government in a county of less than 6,400. This amendment strikes that and opens the applicant pool to include political subdivisions within 60 miles of any Indian reservation or tribal government and to include...excuse me, within 60 miles of an Indian reservation or a tribal government. As I mentioned earlier, currently such subdivisions may spend the funds on healthcare, economic development, law enforcement needs. This bill expands that to include education. Finally, AM1232 repeals the part of the statute which states that the commission needs to hold a public hearing for each of the applicants. With that, colleagues, I would urge your advancement of AM1232. Thank you, Mr. President. [LB199 LB504]

SENATOR KRIST: Thank you, Senator Coash. The floor is now open for debate. Those wishing to speak: Senators Mello, Avery, Pirsch, and Davis. Senator Mello, you are recognized. [LB199]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. It's unique that the Appropriations Committee normally would oppose changes to our budget document of any of the bills that we have brought forward and discussed. But in learning more about Senator Coash's amendment, which it is not a budgetary-related amendment, it's a change essentially in statute for a cash fund to allow the Indian

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Commission more flexibility for funding that we...an appropriation that we actually reappropriated to them in our budget, it just gives them more flexibility. As we've come to find out, the bill was actually voted out 8-0 of the Government Committee. And it was unique that it was referenced to the Government Committee because really it was dealing with a change in a cash fund, which most of those pieces of legislation are referenced to the Appropriations Committee. So in reviewing what Senator Coash's amendment is, which it's the equivalent essentially of LB504, voted out unanimously by the Government Committee, has no fiscal impact to the budget at all. It simply provides flexibility for the Indian Commission for them to utilize the funds that we reappropriated from the original LB1002 bill that we passed two years ago. So with that, I can respectfully urge the body to adopt AM1232. Thank you, Mr. President. [LB199 LB504]

SENATOR KRIST: Thank you, Senator Mello. Senator Avery, you're recognized. [LB199]

SENATOR AVERY: Thank you, Mr. President. As Senator Coash indicated, this bill did come before the Government Committee and was advanced on an 8-0 vote. We did, however, add a modest amendment to it that made nonprofit organizations eligible applicants to this money. Also we specified that the commission can spend the money from the fund themselves, provided it is on programming for healthcare, economic development, law enforcement, and/or education. The changes we felt would make it possible for the Indian Affairs Commission to partner with a nonprofit organization to put on a leadership camp for the Native youth near Whiteclay. There is a plan to do that, and we felt that was a worthy cause so we included that in the amendment. I urge you to adopt this. It is a bill that the committee felt was worthy of your attention. And I'm glad that Senator Mello is willing to let it be attached to LB199. Thank you. [LB199]

SENATOR KRIST: Thank you, Senator Avery. Senator Pirsch, you're recognized. [LB199]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Avery might yield to some questions. [LB199]

SENATOR KRIST: Senator Avery, will you yield? [LB199]

SENATOR AVERY: I will. [LB199]

SENATOR PIRSCH: Thank you. So did your...you had a committee amendment. Did that replace Senator Coash's original language? [LB199]

SENATOR AVERY: No, it just modified it. [LB199]

SENATOR PIRSCH: Could you just briefly succinctly tell me again what it did, your

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amendment? [LB199]

SENATOR AVERY: It added nonprofit organizations as eligible applicants to this money. It also enabled or authorized the commission to spend the money from the fund themselves. Under the original legislation, the funds had to be in grant form. It could be spent by the grantees. But the authority to spend the money themselves was dependent on their spending it only on programming for healthcare, economic development, law enforcement, and/or education. We also made sure that it was possible for the commission to use this to partner with nonprofit organizations for a specific purpose such as a leadership camp for Native youth. [LB199]

SENATOR PIRSCH: Okay. Thank you very much. So, Senator Coash, would you yield to a question or two? [LB199]

SENATOR KRIST: Senator Coash, will you yield? [LB199]

SENATOR COASH: Yes. [LB199]

SENATOR PIRSCH: The original LB1002, that was Senator Louden who introduced it a couple of years ago. Is that correct? [LB199]

SENATOR COASH: Yes. [LB199]

SENATOR PIRSCH: And that was...what was his original aim of the bill? I know it was amended down to a \$25,000 one-time allocation. But do you remember what his original intent was? [LB199]

SENATOR COASH: I do, Senator Pirsch. Senator Louden's original bill as introduced carved off some money from alcohol sales for use in the region where the alcohol was sold. And that was the green copy. The copy that got amended struck that language and instead Senator Louden, and with the majority of the Legislature's support, was able to appropriate \$25,000 in General Funds to this cash fund under various parameters. That money moved over. In two years they haven't been able to spend it because those parameters have been too narrow and too inflexible. And so my bill... [LB199]

SENATOR PIRSCH: Broadens that out. [LB199]

SENATOR COASH: ...is intended to broaden that out. [LB199]

SENATOR PIRSCH: Okay. So right now there is a 30-mile...again, within the original bill, LB1002, it was a city that had less than 6,400 inhabitants and you had to be within 30 miles of what? [LB199]

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SENATOR COASH: You had to be within 30 miles of an Indian reservation, and it couldn't have a municipality, less than 6,400...it was a way of writing it so that only the area around Whiteclay, Nebraska, could be the recipient of that. [LB199]

SENATOR PIRSCH: Okay. And could you tell us, because this was kind of contrived purposefully for that purpose, why they weren't able to digest \$25,000 towards this? I mean \$3,000 were utilized out of \$25,000? [LB199]

SENATOR COASH: That's correct, Senator Pirsch. I can tell you why they didn't...weren't able to. One, there's a local effort part of the bill where somebody who applies for this money has to show an effort. Unfortunately, one of the applicants was law enforcement in that part of the country, and they were not able to...they applied, were able to use some of that money for overtime for law enforcement. However, at the end of the exercise they didn't have any other officers that they were willing to use overtime for, so they did not request for or receive... [LB199]

SENATOR KRIST: One minute. [LB199]

SENATOR COASH: ...the balance of the funds that they requested. And since then, they have not asked for any money and no one else has either. [LB199]

SENATOR PIRSCH: Okay. I appreciate...what...by expanding another 30 miles, because under your bill the radius is now 60 miles, which city or municipality do you hope to...what's the new plan? [LB199]

SENATOR COASH: Well, we're expanding it out to 60, but we're also striking the language that makes it Whiteclay specific so this can be used by entities around a tribal...a reservation in any part of the state, not just that part of the state. [LB199]

SENATOR PIRSCH: Okay. Do you have specific perhaps grantees then in mind who said, yes, we could utilize this money in a productive way? Have you looked into that? [LB199]

SENATOR COASH: Yeah, Senator Avery touched on this. There's a couple of educational initiatives around different tribes across the state that could use this money for some leadership training for Native youth and... [LB199]

SENATOR KRIST: Time, Senators. [LB199]

SENATOR COASH: Thank you, Senator. [LB199]

SENATOR PIRSCH: Thank you. [LB199]

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SENATOR KRIST: Thank you, Senator Coash, Senator Pirsch. Senator Davis, you're recognized. [LB199]

SENATOR DAVIS: Thank you, Mr. President, members of the body. Of course, I represent the Whiteclay area. I visited with Senator Coash extensively about this earlier and rise in support of it. I don't really have any comments to make about it. I think the body has pretty well explored the reasons why the money wasn't expended at Whiteclay. There are other issues and concerns that we need to deal with, with regard to Whiteclay, but I don't think there's any realistic possibility that this funding will be used there. And since it's already been allocated and already sitting there, I support the amendment. And with that, I would give the rest of my time to Senator Coash if he'd like it. [LB199]

SENATOR KRIST: Senator Coash, 4:23. [LB199]

SENATOR COASH: Thank you, Mr. President. Thank you, Senator Davis. I'll just try to answer the balance of Senator Pirsch's question. The original bill or the law as it sits now is narrow enough that the only area of our state that can apply for these funds is an area 30 miles from Whiteclay. They can still apply for it. We're not excluding that area. We are just expanding it not only...just a little bit further to 60 miles, but also to other Indian reservations across our state. And the other thing that we're doing that's giving a little more flexibility is there was a provision in the current law that makes for a public hearing here at the Indian Commission. And if you think about where some of our reservations are, especially those that are close to Senator Davis' district, it's pretty cost prohibitive to come all the way down to Lincoln for a hearing when you might be only asking for a thousand bucks or so. And so that's kind of narrowed it. So there are still checks and balances. There's still an application process. The commission still has to approve the project. But we are trying to open up the flexibility of this program so that we can do some good with the funds that are there. Thank you, Mr. President. [LB199]

SENATOR KRIST: Thank you, Senator Coash and Senator Davis. Senator Kintner, you're recognized. [LB199]

SENATOR KINTNER: Well, thank you, Mr. President. Senator Coash, can I ask you a few questions? [LB199]

SENATOR KRIST: Senator Coash, will you yield? [LB199]

SENATOR COASH: Yes. [LB199]

SENATOR KINTNER: Just you may have answered this. I've been in and out of conversations trying to catch this. What problem or challenges are we attempting to

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solve here? [LB199]

SENATOR COASH: Senator Kintner, do you mean the problem that I'm trying to accomplish with the amendment or the problem that the original bill was trying to accomplish? [LB199]

SENATOR KINTNER: The amendment. [LB199]

SENATOR COASH: The amendment, okay. The amendment takes a fund that is very hard to get at because of the restrictions put in the current law from LB1002. And so the problem that I'm trying to get at, at AM1232 is to remove some of those restrictions so that more entities can apply for the grants of this money so that the process is not as burdensome as it is now. And then hopefully, you know, this Legislature decided this year not to put any more money into that fund, but it is still there. And it's kind of in a safe where nobody can get at it because there's only one area of the state that can take advantage of it and there's a very narrow purpose that can be used. And I'm expanding the areas of the state that can take advantage of it. And in addition, I'm expanding the purpose for which it can be used. [LB199]

SENATOR KINTNER: What restrictions will remain on how it can be used? [LB199]

SENATOR COASH: Well, current law says it can only be used for healthcare initiatives or law enforcement initiatives. AM1232 expands that to include education initiatives. So anything that falls under education will be included. The other piece of that, I mentioned this earlier, is that there will no longer need...there's still an application, still an approval process, but we are removing the public hearing process because that has become a barrier as well. [LB199]

SENATOR KINTNER: Who can access the funds? [LB199]

SENATOR COASH: Right now you have to be, under the...if the amendment is adopted, it will be an entity within 60 miles of an Indian reservation in our state, which is a larger pool from 30 miles, and it will be any Indian reservation, not just one in Whiteclay. So any...and in our bill, a nonprofit can partner with the commission or a political subdivision can access the funds as well. [LB199]

SENATOR KINTNER: Sounds good to me. I'll yield the remainder of my time to you. I know you probably don't need it, but it's yours if you want it. [LB199]

SENATOR COASH: I'll waive. Thank you, Senator Kintner. [LB199]

SENATOR KRIST: Thank you, Senator Kintner and Senator Coash. Senator Pirsch, you're recognized. [LB199]

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SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Coash would yield to a few more questions. [LB199]

SENATOR KRIST: Senator Coash, will you yield? [LB199]

SENATOR COASH: Yes. [LB199]

SENATOR PIRSCH: So the area in which we're targeting now these monies, albeit limited monies, which was originally to solve part of the problems up around Whiteclay in particular, are now generally, under this bill, would be generally available to any of the four Indian reservations in the state? [LB199]

SENATOR COASH: That's correct, and any political subdivision within 60 miles of the Indian reservation. [LB199]

SENATOR PIRSCH: Okay, so...and so it's most likely this money probably will not be spent near Whiteclay then, correct? [LB199]

SENATOR COASH: Senator Pirsch, that's not necessarily true. The Indian reservation near Whiteclay is still eligible to access these monies. The reality is, though, they've had three years to do so and only tried once and only taken half the money that they were entitled to because they were unable to fulfill their responsibilities under that. And so the idea behind this amendment and the original bill is to utilize those monies for, frankly, Native American kids within our own borders. And so that was my intent of bringing this bill and subsequently this amendment. [LB199]

SENATOR PIRSCH: Right. And I'm just asking, but they're repurposed by you in this bill in a way that would not...it seems unlikely if they've not, as they had exclusive jurisdiction of the dollars over the last couple of years and were unable to use more than \$3 (sic), it seems unlikely that they're going to now be able to utilize that more heavily in the way that they have in the past. [LB199]

SENATOR COASH: Well, it is possible, Senator Pirsch, with the addition of education that now that they can use the monies for education that they will find a partner in that area that will...and Senator Avery mentioned this. They would like to use it for education but they're unable to unless we adopt this amendment. So it's possible that we could see that in the future. [LB199]

SENATOR PIRSCH: Should there...and I appreciate that. Should there be a preference given in the language here so that we said to the extent, under the new larger parameters, that the area, that census tract around Whiteclay should have preferential treatment as opposed to the other... [LB199]

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SENATOR COASH: I don't think so, Senator Pirsch. I think we allow the commission, under the leadership of the executive director, to prioritize the needs of Native American kids in our state. And I think that that office is capable of sorting through any...if there's a variety of applications, I think under the mission of the commission they will decide where best those monies are spent. And I'd like to leave that in their hands. [LB199]

SENATOR PIRSCH: Do you think because essentially the original purpose of what the Legislature did two years ago is apparently the legislation crafted just wasn't going to do it or be usable, does it make more sense to give the then at least general discretion to the commission, to the commission to use for whatever purposes they deem most...for instance, that last bill that we just had in terms of adding an administrator. Would this be about the right amount of money to approach what was identified as the top or I assume that was the top request of the commission in terms of helping in that area? [LB199]

SENATOR COASH: Actually, that was the only request of the commission. So...and I think what we're doing now is good, Senator Pirsch. We're establishing a record and then I think that will be used in the commission's decision-making process as to how to allocate these money. [LB199]

SENATOR PIRSCH: Yeah, but this wouldn't...the way this amendatory language isn't broad enough to give the Native...that commission the authority to use the funds to hire an administrative assistant. [LB199]

SENATOR KRIST: One minute. [LB199]

SENATOR COASH: No. This does not...you're correct, Senator Pirsch. This bill has to do with the funds that are already there. It does not give the commission any ability to hire any kind of administrative staff. That was part of Senator Louden's original bill but was struck by the time it got to Final Reading. [LB199]

SENATOR PIRSCH: Okay, thank you. [LB199]

SENATOR KRIST: Thank you, Senator Pirsch and Senator Coash. Senator...okay, seeing no other senators in the queue, Senator Coash, you're recognized to close. [LB199]

SENATOR COASH: Thank you, Mr. President. Thank you, colleagues, for the questions. I'll just briefly restate what this amendment does and what it does not. What it does not do is add more money. What it does is expand the flexibility of an already-created cash fund to include education as an entity that...or as a focus for this fund. It also expands the areas of the state that are eligible for application. And that's one thing I want to make sure members are clear is that you have to apply and you

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have to make a good case to the commission and you have to say this is why I want this money and this is the good that I want to do with this money. And the commission will now...continues to have discretion on whether or not to allocate those monies. So with that, Mr. President, I would urge the body to adopt AM1232. Thank you. [LB199]

SENATOR KRIST: Thank you, Senator Coash. You've heard the closing to AM1232. The question is, shall the amendment to LB199 be adopted? All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB199]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of Senator Coash's amendment. [LB199]

SENATOR KRIST: The amendment is adopted. Mr. Clerk. [LB199]

CLERK: Senator Mello would move to amend with AM1353. (Legislative Journal page 1335.) [LB199]

SENATOR KRIST: Senator Mello, you're recognized to open. [LB199]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. AM1353 amends the funds transfer bill, LB199, to designate the State Treasurer as the state officer to make certain transfers among specified funds rather than the State Building Administrator. I'd urge the adoption of AM1353. Thank you, Mr. President. [LB199]

SENATOR KRIST: Thank you, Senator Mello. No one in the queue, Senator Mello waives closing. The question is, shall the amendment to LB199 be adopted? All those in favor vote aye; all those opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB199]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Mello's amendment. [LB199]

SENATOR KRIST: The amendment is adopted. [LB199]

CLERK: I have nothing further on the bill, Mr. President. [LB199]

SENATOR KRIST: Senator Murante for a motion. [LB199]

SENATOR MURANTE: Mr. President, I move to advance LB199 to E&R for engrossing. [LB199]

SENATOR KRIST: You've heard the motion. All in favor, aye. Opposed, nay. It is advanced. Mr. Clerk. [LB199]

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CLERK: LB194, Senator. I do have Enrollment and Review amendments. (ER97, Legislative Journal page 1333.) [LB194]

SENATOR KRIST: Senator Murante for a motion. [LB194]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB194]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. Adopted. [LB194]

CLERK: Senator Dubas would move to amend with AM1395. (Legislative Journal pages 1354-1355.) [LB194]

SENATOR KRIST: Senator Dubas, you're recognized. [LB194]

SENATOR DUBAS: Thank you very much, Mr. President. As I stated when we had this discussion and debate on General File, I would take the comments and suggestions that were brought forward during that discussion and return with a Select File amendment and that is what AM1395 is. It directs the Legislative Council to contract for an independent study that will evaluate our state's needs for an airplane and determine the best way to meet those needs. Senator Krist and I worked with Senator Mello and the staff in the Fiscal Office then to determine if we could take that proposed appropriation of...I think it was around \$2.1, \$2 million, somewhere in that range, and somehow put that money aside until the study is completed and the recommendations were brought forward. But we kept running into a little bit of concern or question on whether, once the money has been appropriated, we could put qualifiers on that money in the way it can be spent. There was that little issue about the separation of powers. And so, we've decided the best way to go is not to, you know, put that appropriation out there, that we will wait for the recommendations to come back from the study with a very clear understanding that what that study will do, what that study will recommend, we will be coming back next session with the intention of putting those results into place. And so, we decided the best way to go is with just directing the Legislative Council to contract for this independent study. It's my understanding that the Legislative Council will be able to handle the cost of this study and be able to move forward from there. [LB194]

SENATOR KRIST: You've heard the opening. Those wishing to speak: Senator Price, you're recognized. [LB194]

SENATOR PRICE: Thank you, Mr. President. Would Senator Dubas yield for a question? [LB194]

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SENATOR KRIST: Senator Dubas, will you yield? [LB194]

SENATOR DUBAS: Yes, I will. [LB194]

SENATOR PRICE: I didn't mean to choke you up, Senator Dubas, I know it can happen. I wanted to ask, did I hear correctly that we will have no appropriation identified, fenced, or otherwise available to act on the study's decision? [LB194]

SENATOR DUBAS: That's correct. As I said, we just ran into some...kind of some gray areas, some murkiness about once...typically once we've appropriated money, then it's there to be spent. And so not knowing what the study will come back, I mean, we were appropriating a very specific amount of money for a very specific purchase. And so, as I worked with Fiscal in how do we kind of put that money away in a sock drawer until we see what that study comes back with its recommendations, it just was not clear about the best way to do that. And as I said, once money is appropriated then that agency usually has the ability to go out and spend it. [LB194]

SENATOR PRICE: Thank you, Senator Dubas. I don't discount that that was the counsel of...that was given to Senator Dubas, but I am concerned that we're being told that we have no ability to put dollars towards a program and have that acted on. If we wanted to put...I would think that if we wanted to put an amount of dollars to a program, when they put it to a program, they're held accountable. It's not about a separation. We do that, we give money, and we appropriate money all the time to different things. That does not get consumed or obligated...it gets obligated, but not spent at the initial month. We don't pay all of our bills at the beginning of the fiscal year. We pay bills throughout the year. So my concern added on top of that is, if the decision of this study comes down to say the best deal the state could have got was to get the plane that was proffered by the Foundation, well, that probably will have sailed, because we're not going to be back. We won't appropriate dollars again until sometime at the soonest, I would suspect, having to have layovers and introductions, we wouldn't be securing an aircraft until sometime in February at the earliest, most likely not until the end of the session. I don't believe that the individuals in the Aeronautics Department and those individuals who in the business of doing the transfer of equipment and items have misrepresented the quality of the aircraft that they have to offer. The question was whether we have the policy in place and if we wanted to execute the dollars against the policy. But by doing this we've definitely said one thing that...well, we haven't said definitely, but we have definitely said that we won't be able to commit dollars to this until much later and it may be much more expensive. And I think that is a bit shortsighted. And I will, after I get off the mike, go over and talk to somebody in the Appropriations area to say...to have a clarification of that so that I have a full understanding, not because I'm wedded to this aircraft, not because I'm wedded to the idea that we have air travel available in this capacity. [LB194]

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SENATOR KRIST: One minute. [LB194]

SENATOR PRICE: Thank you, Mr. President. But more so to say, we're being told we can't...we cannot commit or obligate dollars to a program. It's troubling because I think we do obligate dollars to programs and we give them the latitude and we give them instruction. So, with that, I will yield the balance of my time and go seek some more information. Thank you, Mr. President. [LB194]

SENATOR KRIST: Thank you, Senator Price and Senator Dubas. Senator Nelson, you're recognized. [LB194]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have some questions for Senator Dubas. [LB194]

SENATOR KRIST: Senator Dubas, will you yield? [LB194]

SENATOR DUBAS: Yes, I will. [LB194]

SENATOR NELSON: Senator Dubas, it was my understanding it was your representation that we could get a study done very soon so that we could act on this during this session. Is that not possible anymore? [LB194]

SENATOR DUBAS: I mean, I can't guarantee that it can be done. It's my understanding once someone is contracted with, it can...there should be short turnaround time, but I can't guarantee that it could be done in time to meet this...meet our time line right now. And I don't believe I ever said that I could guarantee that. [LB194]

SENATOR NELSON: Well, perhaps, but I...the implication was that we should hold off on this and not appropriate the money until we had a study and that it could be done and should be done. And if it's going to be done by the Executive Committee, yes, then I guess we're at their mercy as far as when they're going to get around and ask that the study be done. And then we're at the mercy of someone who says, I can't do it, I can't do a complete study for...any earlier than in a period of five or six days. So I think...I think the upshot of this is that we're running out of time and it can't be done. And what is it now then that...I've just got to look at the amendment because it wasn't in my file. And what again is the problem with putting the money in a special fund so that we could act on it yet this session? [LB194]

SENATOR DUBAS: As I had conversations with the Fiscal Office in trying to determine where does this money go once it's appropriated, typically once we have appropriated money, that agency has the ability to spend that money. And so saying, no, you can't spend the money, we're appropriating it but, no, you can't spend the money, there just was some gray area about separation of powers here between the Legislature

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appropriating and then saying, no, it can't be spent. And we are appropriating a very specific amount of money for a very specific purchase. And not knowing for sure if the study would come back with that recommendation, where would...you know, where does that leave that money? [LB194]

SENATOR NELSON: I guess...thank you very much, Senator. I have no further questions. Well, I do have a question. Why can't it be held in the Cash Reserve? [LB194]

SENATOR DUBAS: Again, as I had those conversations with the Fiscal, I think that we could. But the question was, once it's appropriated, can we tell them, no, you can't spend it? [LB194]

SENATOR NELSON: So can our Executive Committee be authorized to go ahead with the purchase if they determine that the study is positive and this is a good feasible purchase? [LB194]

SENATOR DUBAS: We did look at language saying that, but the questions that were raised, I guess I decided to go this way rather than having that done because I wasn't comfortable with the concerns that were raised about the separation of powers issues. I mean, I'm certainly willing to explore that, but I was...as we were working on this and the concerns that were raised by Senator Mello about just putting that money out there and not knowing for sure what we're going to do with it. [LB194]

SENATOR NELSON: Where is the separation? I guess you're implying that the executive branch is involved. [LB194]

SENATOR DUBAS: Once we have appropriated money, so we've put that \$2.2 million or whatever the actual figure is, we've appropriated it, but now we're telling the executive branch that they can't spend it until a study is done. [LB194]

SENATOR NELSON: Say that again. We're telling the executive branch that they can't spend the money once we've appropriated it? [LB194]

SENATOR KRIST: One minute. [LB194]

SENATOR DUBAS: Correct. [LB194]

SENATOR NELSON: All right. Thank you, Senator Dubas. [LB194]

SENATOR KRIST: Thank you, Senator Nelson and Senator Dubas. Senator Hadley, you're recognized. [LB194]

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SENATOR HADLEY: Mr. President and colleagues, I yield my time to Senator Mello. [LB194]

SENATOR KRIST: Senator Mello, 4:50. [LB194]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Thank you, Senator Hadley, for yielding me your time and I will be yielding Senator Hadley my time when I'm finished. Hopefully I can clarify, colleagues, a little of the Q&A that Senator Price and Senator Nelson just had with Senator Dubas. The Legislature as a whole, over the objection of the Appropriations Committee on General File, adopted Senator Dubas' amendment which struck the funding for, in the deficit bill, for the state aircraft. So right now there's no funding for state aircraft or appropriation for it in the Select File version of the budget bill. As I mentioned on General File, and ask Senator Dubas, if her amendment passes, it would be better for the Legislative Council to do this study in regards to what would be the best options for transportation air...via aircraft or air travel and not ask the Department of Aeronautics to do it. Because obviously, if the body adopted her amendment, there's a mistrust in regards to what the Department of Aeronautics gave the Appropriations Committee of what we used to put it in our preliminary budget or our final budget, I'm sorry. So Senator Dubas and others said, okay, if this passes, we will change it from the Department of Aeronautics doing the study to the Legislature doing the study. The questions that Senator Price and Senator Nelson asked, which I have an amendment on the Cash Reserve bill after LB194, since we struck the funding for the state aircraft with Senator Dubas' original amendment, in talking with the Fiscal Office, we simply can't appropriate money to the Department of Aeronautics and say, don't spend this until we come back at some point in the future after we do a separate study and tell you how we want you to spend it. That is a separation of powers issue. Once we appropriate money to an agency, they have the ability to spend that on the first day, if need be. So it's not a question of looking at options. Ideally, that was the first option that we all, I think, explored once Senator Dubas' amendment passed, was is there a way to keep money available depending upon the outcome of the study. The dilemma is, once the study comes back, the Legislature needs to act on this study and we will not be in session. So, there will not be legislative action to take once this study comes back because Senator Dubas' amendment to the main...to the deficit bill, does not say, we will go with whatever option this study says is the best. It simply says, we're going to do a study to look at different options. That is the path that essentially the Legislature has taken when they adopted Senator Dubas' amendment. So the issue of saying, why are we striking money or why don't we put money in a separate pot, colleagues, essentially if we move forward as is and adopt Senator Dubas' amendment, which is simply changing who does the study from the Department of Aeronautics to the Legislative Council, the Legislature will have to come back next year after the study is released and take action on it. That's the only way you can do this without crossing the separation of powers issue that's fairly clear in regards to how the Legislature appropriates money and how the executive branch

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decides to spend that appropriation. We can't tell the Department of Aeronautics, you're not going to spend this money until we tell you to spend it, on whatever we choose to tell you to spend it, at a point in the future. We can't do that. We could ask the Governor's Office to do that, but even then that's a murky...that's a murky water we would be, I think, entering into to ask them not to spend an appropriation, waiting until the Legislature makes a determination, ideally probably first to the Executive Board, then to the entire Legislature, of what people think is the best option for state air travel. I'm sorry this is so confusing and, obviously, if we would have just simply adopted the Appropriations Committee proposal... [LB194]

SENATOR KRIST: One minute. [LB194]

SENATOR MELLO: ...we wouldn't be in this predicament. But I appreciate Senator Dubas spending the time with the Fiscal Office of trying to look at options to make this study work. But the reality is to do a study. The only option that is available is to do the study. We can't appropriate money for some other future aircraft until you get a study back and the Legislature, not simply the Executive Board, makes the determination of what do we want to appropriate and for what purpose. That's the way we do all appropriations and, ultimately, you can't change that based on a study that may give results when we're not in session during the interim. I hope that, hopefully, clarifies a little bit of where we've traveled with this and ultimately what's in front of us with Senator Dubas' amendment. Thank you, Mr. President. [LB194]

SENATOR KRIST: Thank you, Senator Mello. And, Senator Mello, you're recognized. [LB194]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I'd yield my time to Senator Hadley. [LB194]

SENATOR KRIST: Senator Hadley, 4:50. [LB194]

SENATOR HADLEY: Mr. President and members of the body, would Senator Dubas yield to a question? [LB194]

SENATOR KRIST: Senator Dubas, will you yield? [LB194]

SENATOR DUBAS: Yes, I will. [LB194]

SENATOR HADLEY: Senator Dubas, does this, since the Foundation, this whole thing was predicated upon looking at the Foundation plane, this effectively means that if they follow through that their plane will not be available for sale. Is that correct? [LB194]

SENATOR DUBAS: That would be my assumption. [LB194]

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SENATOR HADLEY: Okay. You know, I have to sit there and say \$2 million. We're appropriating \$47 million for a veterans' home out in Grand Island. Maybe we should have DHHS bring the plans to us to approve. Maybe we ought to...well, the Governor drives, I think, a Chevy Suburban. Maybe we ought to have which car he drives. That...maybe we ought to find out which car would be best for him to drive or whether maybe a hybrid would be better for him to drive. Or maybe, I don't know what the bus service is in outstate Nebraska, maybe it would be cheaper to have him take the bus. I'm just saying we're getting down into the weeds. We have a Department of Aeronautics that kept a plane, that kept the plane, provided the pilots, serviced the plane, knows the plane, they're charged with buying planes for the state of Nebraska. That's...they're charged. That's what they're supposed to do. And we're going to sit here...we sat here and said, oh, no, we don't want you doing that. I think it's a legitimate argument to say, should the Governor have a plane or not, and we just up or down on that. I tried to make a case. I came from South Dakota where they had five planes that they could use. But, so we decided now we're going to...we'll do a study and we'll come back next year and we'll probably argue again next year. Jiminy Christmas, we seem to argue, you know. What are we afraid of? That somebody is, you know, somebody going to try to cheat us? That seems like what it is. I just...I guess I...it seems like the smaller dollar amount, we...Senator Coash, we were down to, what, \$25,000 that we were having a lot of people speak on? Seems like the lower the amount the more we could talk about. Maybe we should have a...I'm being a little facetious, but we'll have a rule that it's got to have seven digits in the number before we can talk about it or eight digits. I'm just sorry, I can't imagine the state of Nebraska not allowing its Chief Executive Officer to have access to a plane, plain and simple. They've come to us with one that was researched out by the organization that we've given the power to do it and we said no. Thank you, Mr. President. [LB194]

SENATOR KRIST: Thank you, Senator Hadley. Senator Price, you're recognized. [LB194]

SENATOR PRICE: Thank you, Mr. President, members. I did go over there and speak with individuals from the Appropriations Committee, their committee counsel, and they pretty much, as Senator Mello alluded to and Senator Dubas said, said once we appropriate the dollars we could give some guidance but not a lot. But once we would appropriate the dollars to that agency, they could spend the money and execute the dollars. I would think that they would do it in a prudent and proper manner because of the level of number of eyes on the project, so to speak. But now, in the bright sunshine of this day, as opposed to the other evening, and after listening to Senator Hadley, I'm mindful of the animated cartoon, Aladdin, when Aladdin kind of snookered, snookered the genie out of one of the three wishes and all of a sudden he pops up and he has this little look feeling very sheepish. Because I have to stand here and feel...and tell you, I feel hoodwinked in a way, not necessarily a malicious and intentional, but I feel

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hoodwinked. I understood that we we're going to be able to, hopefully, have this discussion and give direction and allocate dollars to bring to fruition this air travel. But now in hindsight as we look at it, no, we're not. The policy decision will be...we just had a conversation an hour ago about kicking cans down the road, and we're kicking it, kicking it into the next year. And I, for one, stand here in chagrin under what has been...what has transpired and feel backed into a corner in a way. Thank you, Mr. President. [LB194]

SENATOR KRIST: Thank you, Senator Price. Senator Nelson, you're recognized. [LB194]

SENATOR NELSON: Thank you, Mr. President and members of the body. May I ask Senator Mello a question, if he will yield? [LB194]

SENATOR KRIST: Senator Mello, will you yield? [LB194]

SENATOR MELLO: Yes. [LB194]

SENATOR NELSON: Thank you, Senator Mello. In Senator Dubas' amendment, she struck the amount that we had appropriated for the plane. [LB194]

SENATOR MELLO: On General File, yes. [LB194]

SENATOR NELSON: Yes. Well, that was by her amendment. [LB194]

SENATOR MELLO: On General File, yes. [LB194]

SENATOR NELSON: Yes, yes, all right. [LB194]

SENATOR MELLO: Not this amendment. [LB194]

SENATOR NELSON: What if we had not done that? What if we had left the money there? [LB194]

SENATOR MELLO: Well, ultimately, if we would have left the money there without striking the amendment and simply added the study, we would have been appropriating money to the Department of Aeronautics to purchase an aircraft while at the same time doing a study to make the determination of what we think should be the best option the state goes forward on in regards to air travel. [LB194]

SENATOR NELSON: So, we're in the same fix, one way or another, whether we struck the appropriation or whether we left it alone. [LB194]

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SENATOR MELLO: I think the difference, and this was part of the dialogue that a couple senators, Senator Krist, Senator Dubas, had asked me when they put Senator Dubas' amendment in, is for them not to strike the funding for the aircraft that we put in the budget, but require a study at the same time, it defeats the purpose. Because once we appropriate that money, the Department of Aeronautics could spend it the first day they get it. We do not have control over that appropriation once we make it and it becomes law. And so, obviously, against the wishes of the Appropriations Committee proposal, an amendment was drafted and supported by the body to strike the overall funding for the aircraft and to do a study instead. So, there is...that was the decision that, ultimately, the body chose to go on. And Senator Dubas' amendment here simply changes, based on the request that I made on General File that if her amendment was to be adopted, that the Legislature does the study and not the Department of Aeronautics, because there seems to be a feeling of mistrust in regards to what the Department of Aeronautics provided the Appropriations Committee that we used to make that decision. [LB194]

SENATOR NELSON: All right. Is it your opinion then that if we had appropriated the money and despite the language of intent that the Department of Aeronautics would have gone ahead and bought that plane? [LB194]

SENATOR MELLO: There is nothing that stops them from doing that. [LB194]

SENATOR NELSON: But is it your opinion they would have done that? [LB194]

SENATOR MELLO: Well, ultimately, Senator Nelson, I can't speak on behalf of the Director of the Department of Aeronautics or the Governor's Office. If we make an appropriation for them to purchase a state aircraft, simply what Senator Dubas' amendment was, was intent language. So... [LB194]

SENATOR NELSON: Thank you, Senator Mello. I do, I have a measure of trust in our government and in our executive branch and in the Department of Aeronautics. I simply want to state for the record that they gave an excellent presentation and I was satisfied with it. For some reason there was an element of distrust. Why, I don't know. It will be interesting to see what happens, but I do know this. We've lost the opportunity, in all probability, to get a good plane for \$2.1 million. It may be that there will be others available. It may be we'll buy a brand new plane for about a million and half dollars more. That's okay. But I think we made a mistake here. I think we should have gone ahead, in my opinion, and authorized, and let the chips fall where they may. Thank you, Mr. President. [LB194]

SENATOR KRIST: Thank you, Senator Nelson and Senator Mello. Senator Kintner, you're recognized. [LB194]

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SENATOR KINTNER: Well, thank you, Mr. President. You know, what I think would be the worst thing is if we do this study, it comes back and says, yeah, we need an airplane and we end up buying a new plane for \$5 or \$6 million when we could have had one for \$2 million or \$2.2 million. And boy, I would cry if I had to make that vote. But anyway, I did want to add one thing today that maybe it's a little bit off the topic, but that wouldn't be the first here if I did that. This day in 1804, Lewis and Clark departed on their famous journey. They came right through my district, they came through our state, and it's right after United States doubled its territory with the Louisiana Purchase. And even before they did that, President Jefferson started to put together this journey by Meriwether Lewis and William Clark. He was an Army captain, Clark was, and the expedition went on for, with 45 men and went on for the better part of two and a half years before it came back to Washington, D.C., bringing back a wealth of information on a largely unexplored region and about what was...what eventually became the Oregon territory on the West Coast. And it all started on this date in 1804. And I think, you know, we don't talk about our history enough, we don't recognize our history enough. I wanted just to take a minute or two to recognize that this was a very important day and it did touch Nebraska. Thank you, Mr. President. [LB194]

SENATOR KRIST: Thank you, Senator Kintner. Senator Bloomfield, you're recognized. [LB194]

SENATOR BLOOMFIELD: Thank you, Mr. President. I stand in support of AM1395. I've heard several of our senators now question Senator Dubas. She may have brought the amendment. The majority of us voted for it. I'm one of them. I think we need to go ahead with this study. If, in fact, the university's airplane is gone, ladies and gentlemen, there are other used airplanes around if that's what the decision comes back from the study. My own personal opinion is that we're still better off looking at the new plane. That's what the study will prove. So, I will be supporting AM1395. Let's get the study done. Let's decide whether or not the state needs to own a plane and then let's follow where the study leads. Thank you. [LB194]

SENATOR KRIST: Thank you, Senator Bloomfield. Senator Scheer, you're recognized. [LB194]

SENATOR SCHEER: Thank you, Mr. President. Would Senator Mello yield to a couple of questions, please? [LB194]

SENATOR KRIST: Senator Mello, will you yield to a question from Senator Scheer? [LB194]

SENATOR MELLO: Absolutely. [LB194]

SENATOR SCHEER: Thank you, Senator Mello. A little confusion on my part and

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perhaps some of the others. I'm just curious, if this is going to be delayed, can you describe the process where now if the Foundation does sell the plane to somebody else in the interim period, what will the Governor's usage be? Does he have funding somewhere in his budget or someplace else that would provide for charter flights as we had talked about earlier, or how will his transportation be taken care of during the interim? [LB194]

SENATOR MELLO: Right now the state currently owns one...two planes. One, the Cheyenne, is probably the more usable plane that the Governor and other state officials utilize outside of the University Foundation's plane. So right now the state has a lease that ends June 30 with the University Foundation at \$10,000 a month to lease the University Foundation plane. The pathway that we're moving in relation to Senator Dubas' amendment on General File and ultimately the slight change she has on AM1395, is, the state, the Department of Aeronautics will have to renegotiate that lease with the University Foundation or at least try to in light of the study that Senator Dubas' amendment asks the Legislature to do. There has been roughly...and I'll get the exact figure from Fiscal Office, but we appropriated additional cash fund authority out of the Department of Aeronautics for them to utilize for maintenance and repair of the King Air depending upon it being purchased. That cash fund authority is still available to them even though the funding from the Cash Reserve to purchase the plane was stricken on the General File bill, LB194. So the department has sufficient cash fund authority to charter flights outside of utilizing the state's other existing plane, the Cheyenne, to get us ultimately through, I would say, January, where depending upon the outcome of this study, the Legislature, hopefully in conjunction with the Governor and the executive branch, will come to some solution of what needs to be done in regards to state air travel moving forward. [LB194]

SENATOR SCHEER: So from...if I, just want to rephrase so my understanding is correct, so we have not dry-docked the Governor as of July 1. There is funds available both to fly the other plane. And from my understanding, that's probably not as practical in some instances for longer flights because of weather. I don't think it...is it pressurized, by the way? [LB194]

SENATOR MELLO: Senator Scheer, I'd have to look through some of my notes in regards to more details specifically about the Cheyenne itself. I simply know the Governor utilizes the Cheyenne. He utilized it, I know, last week when we were having the budget debate to travel across the state. So I know it's utilized. I don't know that I would say the specific details of the plane, but I know it's utilized by a variety of state agencies. [LB194]

SENATOR SCHEER: Okay. No, I sort of got my question answered and I believe the answer would be, yes, it's pressurized. [LB194]

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SENATOR MELLO: It's pressurized. [LB194]

SENATOR SCHEER: So, that does give a safety factor for the Governor in his flight as well. So with that, I'll turn the rest of my time to the President. Thank you. [LB194]

SENATOR KRIST: Thank you, Senator Scheer and Senator Mello. Seeing no one else in the queue, Senator Dubas, you're recognized to close on your amendment. [LB194]

SENATOR DUBAS: Thank you very much, Mr. President. I certainly do understand the concern and disappointment that some members have expressed. I certainly thought very much that we would be able to keep this appropriation somehow put aside until we knew what direction we were going and I worked very hard over the last several days trying to figure out ways to make that happen. I worked with Senator Krist, worked with Senator Mello, and other members in the Fiscal Office. So in no way did I ever try to lead anybody astray or say something that I wasn't intending on following through. But just as we kept moving forward, there were just more questions than answers as far as how we were going to be to keep that appropriation separate for what we wanted to do in the future. I think it's also a good lesson on the intricacies of our state budget and it's not as simple as, you know, striking an amendment here and putting a new one up in another place. There are a lot of moving parts to our budget, and in visiting with the Fiscal Office and how they have to make all these numbers balance and work and come out so that we have the green sheet every day to look at, where we're at and where we're going. So, you know, it's certainly the importance of budget debates, that's where we do our work. But it also is a good example of thinking you might be able to do something, but then when you really get into the nuts and bolts of it not being able to go the direction that you had really intended to go. So, you know, I'm in my seventh year as a state senator and I still continue to learn about the intricacies of putting together a responsible state budget. So while I am sorry that I wasn't able to carry through on what I was hoping to carry through in this amendment, I still firmly believe that a study will give us a very good indication of...I didn't hear anybody say during General File debate that they don't think we need to have some type of air travel for our state agencies. I didn't say that myself. It's just, what is the best plan? How do we move forward in the best way? Was it a used plane? What kind of a used plane? Is it a new plane? You know, what does a new plane look like? Is it a lease option? There are a lot of things out there that we just didn't get answers to. And it's unfortunate that early, early in the budgeting process when the Appropriations Committee asked the Department of Aeronautics to do a study...I'm not necessarily questioning the information that they brought forward to the Appropriations Committee. But to do a real detailed analysis, an independent study that everybody can take and sift through and generate questions from that study, would have been very helpful and we might not be where we're at today as far as making a decision on what is the best purchase as far as air travel for our state elected officials. So I would appreciate your support for AM1395. Thank you. [LB194]

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SENATOR KRIST: Thank you, Senator Dubas. You've heard the closing for AM1395. The question is, shall the amendment to LB194 be adopted? All those in favor vote aye; all those opposed, nay. Please record, Mr. Clerk. [LB194]

CLERK: 25 ayes, 0 nays on the adoption of the amendment. [LB194]

SENATOR KRIST: The amendment is adopted. [LB194]

CLERK: I have nothing further on the bill, Mr. President. [LB194]

SENATOR KRIST: Senator Murante for a motion. [LB194]

SENATOR MURANTE: Mr. President, I move to advance LB194 to E&R for engrossing. [LB194]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is adopted. Mr. Clerk. [LB194]

CLERK: Mr. President, LB200, no Enrollment and Review. Senator Mello would move to amend with AM1346. (Legislative Journal page 1333.) [LB200]

SENATOR KRIST: Senator Mello, you're recognized. [LB200]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. AM1346 amends the Cash Reserve Fund bill, LB200, to strike the transfer from the Cash Reserve Fund to the General Fund for the purchase of a new state airplane. Since the body struck the appropriation for the airplane in LB194 last week on General File, this transfer is no longer needed for this current biennial budget process. As I just mentioned on Senator Dubas' amendment...of her previous amendment that was adopted last week on the deficit bill, based on the outcome of what happens with this study of air travel done by the Legislative Council, next year ultimately we would come back, depending upon what that study says we need to do, and look to transfer the money from the Cash Reserve for the air travel similar to the way we did it this year. But because we won't be able to get that study and be able to act on it as a body prior to the end of sine die this year, it's something we'll ultimately we'll have to do the first of next year when we reconvene in 2014. So with that, body, I'd urge the adoption of AM1346. [LB200]

SENATOR KRIST: Thank you, Senator Mello. The floor is open for debate. Seeing no one in the queue, Senator Mello you're recognized to close. Senator Mello waives closing. The question is, shall the amendment to LB200 be adopted? All those in favor vote aye; opposed, nay. Have all those voted that wish to? Record, Mr. Clerk. [LB200]

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CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Mello's amendment. [LB200]

SENATOR KRIST: The amendment is adopted. [LB200]

CLERK: I have nothing further on the bill, Mr. President. [LB200]

SENATOR KRIST: Senator Murante for a motion. [LB200]

SENATOR MURANTE: Mr. President, I move to advance LB200 to E&R for engrossing. [LB200]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It's adopted. Mr. Clerk. [LB200]

CLERK: Mr. President, the next bill. Senator Murante, I have no amendments to LB536. [LB536]

SENATOR KRIST: Senator Murante for a motion. [LB536]

SENATOR MURANTE: Mr. President, I move to advance LB536 to E&R for engrossing. [LB536]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It's adopted. Mr. Clerk. [LB536]

CLERK: Senator, LB483. I do have Enrollment and Review amendments pending. (ER80, Legislative Journal page 1114.) [LB483]

SENATOR KRIST: Senator Murante for a motion. [LB483]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB483]

SENATOR KRIST: You've heard the motion. All in favor, aye. Opposed, nay. It's adopted. [LB483]

CLERK: I have nothing further on LB483, Senator. [LB483]

SENATOR KRIST: Senator Murante for a motion. [LB483]

SENATOR MURANTE: Mr. President, I move to advance LB483 to E&R for engrossing. [LB483]

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SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It's adopted. [LB483]

CLERK: LB483A, Mr. President. Senator, I have no amendments to the bill. [LB483A]

SENATOR KRIST: Senator Murante for a motion. [LB483A]

SENATOR MURANTE: Mr. President, I move to advance LB483A to E&R for engrossing. [LB483A]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is advanced. Mr. Clerk. [LB483A]

CLERK: Mr. President, LB623. Senator, I have no amendments to the bill. [LB623]

SENATOR KRIST: Senator Murante for a motion. [LB623]

SENATOR MURANTE: Mr. President, I move to advance LB623 to E&R for engrossing. [LB623]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is advanced. Mr. Clerk. [LB623]

CLERK: Senator, LB583. I do have Enrollment and Review amendments. (ER81, Legislative Journal page 1139.) [LB583]

SENATOR KRIST: Senator Murante for a motion. [LB583]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB583]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is adopted. [LB583]

CLERK: I have nothing further on the bill, Senator. [LB583]

SENATOR KRIST: Senator Murante for a motion. [LB583]

SENATOR MURANTE: Mr. President, I move to advance LB583 to E&R for engrossing. [LB583]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is advanced. We will be passing over LB66. A motion has been filed against LB66. Mr. Clerk. [LB66]

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CLERK: Mr. President, LB93. I do have Enrollment and Review amendments. (ER93, Legislative Journal page 1236.) [LB93]

SENATOR KRIST: Senator Murante for a motion. [LB93]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB93]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is adopted. [LB93]

CLERK: I have nothing further on LB93, Senator. [LB93]

SENATOR KRIST: Senator Murante for a motion. [LB93]

SENATOR MURANTE: Mr. President, I move to advance LB93 to E&R for engrossing. [LB93]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is advanced. Mr. Clerk. [LB93]

CLERK: LB93A. Senator, I have no amendments to the bill. [LB93A]

SENATOR KRIST: Senator Murante for a motion. [LB93A]

SENATOR MURANTE: Mr. President, I move to advance LB93A to E&R for engrossing. [LB93A]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is advanced. [LB93A]

CLERK: LB410, Mr. President. Senator, I do have Enrollment and Review amendments. (ER95, Legislative Journal page 1258.) [LB410]

SENATOR KRIST: Senator Murante for a motion. [LB410]

SENATOR MURANTE: Mr. President, I move to adopt the E&R amendments. [LB410]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is advanced (sic). Mr. Clerk, [LB410]

CLERK: Senator, I have nothing further on LB410. [LB410]

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SENATOR KRIST: Senator Murante for a motion. [LB410]

SENATOR MURANTE: Mr. President, I move to advance LB410 to E&R for engrossing. [LB410]

SENATOR KRIST: You've heard the motion. All those in favor, aye. Opposed, nay. It is advanced. Mr. Clerk. Items for the record, Mr. Clerk? [LB410]

CLERK: Thank you, Mr. President. I have amendments to be printed: Senator Ashford to LB561; Senator Krist to LB563. Senator Chambers, a motion to LB66. I have two new resolutions: LR197 by Senator Nordquist. That resolution will be laid over at this time. And LR198 is a study resolution which will be referred to the Executive Board. (Legislative Journal pages 1356-1363.) [LB561 LB563 LB66 LR197 LR198]

Mr. President, I do have a priority motion. Senator Schilz would move to adjourn the body until Wednesday morning, May 15, at 9:00 a.m.

SENATOR KRIST: You have heard the motion. All those in favor, aye. Opposed, nay. We are adjourned until 9:00 a.m. tomorrow.