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Floor Debate
January 31, 2018

[LB51 LB93 LB96 LB105 LB157 LB193 LB198 LB256 LB275 LB299 LB377 LB480 LB518
LB589 LB614 LB695 LB710 LB743 LB758 LB821 LB1001 LR306 LR307]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the eighteenth day of the One Hundred Fifth Legislature, Second Session. Our chaplain today is Father Gary Coulter from Our Lady of Good Counsel Retreat House in Waverly, Nebraska, Senator Geist's district. Would you please stand.

FATHER COULTER: (Prayer offered.)

SPEAKER SCHEER: Thank you, Father Coulter. I call to order the eighteenth day of the One Hundred Fifth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

SPEAKER SCHEER: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

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

CLERK: Mr. President, your Committee on Enrollment and Review reports LB93, LB96, LB105, LB193, LB198 and LB614 as correctly engrossed. Series of hearing notices from the Revenue Committee, the Judiciary Committee, the Government, Military and Veterans Affairs Committee, all signed by their respective Chairs. Senator Baker has selected LB710 as his priority bill. And I have a confirmation report from the Nebraska Retirement Systems Committee. That's all that I have, Mr. President. (Legislative Journal pages 481-483.) [LB93 LB96 LB105 LB193 LB198 LB614 LB710]

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

CLERK: Mr. President, LB589 on General File, a bill by Senator Crawford. (Read title.) Senator Crawford has presented her bill, Mr. President, on January 23 and again on 25. There are committee amendments from the Judiciary Committee. I do have a series of amendments to the

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committee amendments, Mr. President. (AM438, Legislative Journal page 695, First Session, 2017.) [LB589]

SPEAKER SCHEER: Thank you, Mr. Clerk. Senator Crawford, would you like to take a few minutes to refresh our memory on LB589? [LB589]

SENATOR CRAWFORD: Thank you, Mr. President, and good morning, colleagues. LB589 is a bill that is designed to provide added scrutiny when we have children who are in our justice system who have been victims or witnesses of violent crime, victims of sexual abuse or serious physical abuse or neglect, or have witnessed a violent crime, or are found in a drug-endangered environment, or have been recovered from a kidnapping. And this bill is supported by the Nebraska Alliance of Child Advocacy Centers, Nebraska Attorney General's Office, Nebraska Department of Health and Human Services, Nebraska County Attorneys Association, Nebraska Court Improvement Project, the Nebraska CASA Association, and Nebraska Association of Social Workers. You'll see we have an amendment to really focus the bill in on the protections for the children and so I hope we get a chance to talk about that amendment. The original bill had a high burden of proof to be able to depose a child and the amendment that I have to the bill then really focuses on protections, protective order...recommending protective orders that can be put in place to protect these children who are in this intimidating deposition environment, often without...and without counsel and the importance of making sure that that is an environment where we're protecting children from added trauma and making sure we're getting good, truthful statements out of that process. Thank you, Mr. President. [LB589]

SPEAKER SCHEER: Thank you, Senator Crawford. Senator Wayne, would you like to refresh us in the opposition? [LB589]

SENATOR WAYNE: Yes, Mr. President. Real quick, the issues are, I believe this bill is unnecessary as in the courts can already do and offer all the protections that is offered underneath this statute. And there's issues with as far as the high burden of proof, as Senator Crawford mentioned, and including some constitutional issues that I have that could be raised which we'll discuss here more today. With that, good morning, everyone. We'll have a great debate, I think. Thank you. [LB589]

SPEAKER SCHEER: Thank you, Senator Wayne. Mr. Clerk. [LB589]

CLERK: Well, Mr. President, now I have amendments to the committee amendments. Senator Crawford, I had AM1574 and AM1674 with notes you wish to withdraw those. Mr. President, Senator Crawford would move to amend the committee amendments with...you know, Senator,

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I'm sorry. These aren't to the committee amendments, are they? So the committee amendments are pending, Mr. President. That's what I have. [LB589]

SPEAKER SCHEER: Okay. Thank you, Mr. Clerk. Senator Ebke, would you like to refresh us on the committee amendment? [LB589]

SENATOR EBKE: Thank you, Mr. President. The committee amendment is very simple. It just adds the provision of a court-appointed special advocate and the potential for use of a therapy or service animal as part of the deposition procedure. Thank you, Mr. President. [LB589]

SPEAKER SCHEER: Thank you, Senator Ebke. Senator Hilgers, you're recognized. [LB589]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise in support of LB589, and again appreciate Senator Crawford bringing the bill, as well as her thoughtful and collaborative approach over the last couple of days. And I appreciate the comments made by Senator Wayne and the dialogue we've had with Senator Wayne and Senator Chambers and others. And I thought, as I reflected on our debate the other day, I thought that it might be helpful to sort of take a step back and focus a little bit on procedure, but really talk about the deposition process in general. I think everyone understands what a deposition is. It's a testimony taken under oath. But I think it would be helpful to walk through how you get a deposition, and then also the deposition process when you're actually sitting there being deposed and how those two processes can really lend themselves to the type of abuse that then is being mitigated through LB589. So the way that you get a deposition, Senator Wayne and I had this conversation the other day, but the way that you typically get a deposition is you do one of two things and they're essentially the same procedure. You either, if it's a party, you serve what is called the notice. And the notice is, it has the person who is to be deposed. So if I want to depose Senator Wayne, it would be addressed to Justin Wayne. And it would have the time of the deposition, the date of the deposition, the location of the deposition. It would say that this is going to be under oath, under penalty of perjury. It would say that it's going to be recorded by a court reporter. It might say that it's going to be recorded by a videographer. And so I would have that deposition served on the person that I wanted to depose. Now, sometimes that person is a party, in which case we would call it a notice, and sometimes it's not a party, and in that case we would serve a subpoena. Now, thanks to Senator Ebke's bill last year that this body passed and the Governor signed, that process for serving a subpoena is actually functionally equivalent to serving a notice. In other words, signed by an attorney as an officer of the law, served on the other side, and there is a notice filed with the court typically. So the court has something on its docket that would reflect that this has been served, but it's very important to realize that the notice filed with the court typically is something the court would not on its own act upon. Courts act on motions. They don't act on notices. A notice helps make the record clean and ensures that the docket is

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comprehensive as can be. But the courts, they are overworked and overburdened and these aren't the things that they pick up and say, aha, there's a deposition notice, let me look at this. Senator Wayne...they want Senator Wayne's deposition, so I need to get involved. Courts don't get involved as a general rule. There might be some exceptions, but generally that's the case. So one of three things can happen when you get one of these deposition notices in. And I'm talking...the context of this conversation, I'm talking about in the normal course, in other words, when you have an adult. So what happens is you could either do one of three things. One thing is you could just show up at the deposition. Date and time, you're there. You might negotiate a different day, doesn't work for you, you've got work, so you do a different day. That's one thing. So it shows up. And I want to talk about what that deposition process looks like. The other thing is you could potentially file what's called a motion to quash. Now, I mentioned courts act on motions, they do. And a motion to quash is a motion that essentially says, judge, I think you ought to quash this. Now, in all practical effect, you do not see very many motions. And the reason is, is for a couple of reasons. One is the party who is actually a part...the other side, the other side who is...there's a party asking for the deposition and then there's the other party. That party typically has very narrow grounds to move to quash a deposition, very narrow. So you don't see them actually serving motions or filing motions very often. Now the other individual or entity that could file a motion to quash is the person receiving the deposition originally, so in my example, Senator Wayne. Senator Wayne could say, well, I want to file a motion to quash. Those aren't instances...you don't see that very often either. And the reason is because to file a motion to quash, frankly, one, you have to know of your rights, and if you're not represented by an attorney, you may not fully understand that you have the right to file a motion. Two, it's expensive. [LB589]

SENATOR WILLIAMS PRESIDING

SENATOR WILLIAMS: One minute, Senator. [LB589]

SENATOR HILGERS: Thank you, Mr. President. Three, it's costly. It's expensive, costly from a time perspective; and fourth, it's uncertain. You could lose the motion and then you're back to where you were originally. So what you find is, people don't file motions very often. The third thing that could happen is you just don't show up. And in that case what happens is courts have significant contempt power. They have significant abilities and many tools in their toolbox to ensure that you show up for your deposition. They could fine you, for instance. They could haul you into court and scold you, as another example. In rare cases, they even have the power to throw you into jail. So for an adult who received this, what more often than not happens is they show up for their deposition. Now for a child in this instance, the child is not typically represented. They might have counsel, but they probably don't. Now, we're not in the...the defendant has counsel because the defendant has a constitutional right as a... [LB589]

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SENATOR WILLIAMS: Time, Senator. [LB589]

SENATOR HILGERS: Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Hilgers. (Doctor of the day introduced.) Return to debate. Recognize Senator Chambers. [LB589]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, those who have followed the torturous course of this bill will be aware of the fact that there have been amendments offered, amendments to amendments, and arguments given both for and against the bill. I do not think that because of what we're dealing with it will be possible to take just one discrete element and argue our way through that. There will be an interrelationship among and between all of the parts that go into taking these depositions. Because of the nature of the subject, I do not expect most of the senators to pay attention. It's not because they have anything against me or anybody else. It's not the kind of subject that reaches out and catches people's imagination. But here is something that needs to be made clear with what we're talking about. Project Harmony is the operation in Omaha that will take these depositions. Project Harmony is an arm of law enforcement. They work with the police department. The police department can feed questions. They can watch what is said. And through all these amendments, there is nothing that limits the number of times that Project Harmony, with the police or the prosecutor, can talk to this child. They can massage the statement that the child is going to give. They can have the child videotaped, and then if that doesn't come across the way they want, they can scrap that and take another videotape. And they can continue until they get what they want. There is nothing that indicates if a multiplicity of videos are taken that all of them must be made available to the other side. Were that to happen, you would see conflicting statements. Children and adults are not going to talk about the same thing over and over if it's not clear in their mind in the first place without making some contradictory statements. If it happens on the witness stand, whoever the lawyer is representing that person can, by means of a series of questions, illicit what is actually intended. But when you freeze what is to be presented by this child in that one square where that videotape is taken, there is not a fair chance to build a defense. I don't know that there is anybody who is more contemptuous toward those who harm children in any way, harsh, unnecessary language, shaking them, slapping them or, as teachers agree, putting a seven-year-old child in handcuffs and leading that child off by a cop, and teachers supported it. This is why I don't like Senator Groene's bill. He wants to blanketly say teachers are people with common sense, but they're not. And I'm not going to say that blanketly means that no teachers have common sense. But this puts not a thumb on the scale of justice; it puts the palm print of the law enforcement machinery on the scale. There is something in one of these amendments that says that if a judge is approached, the judge can restrict the subjects that are to be discussed and so forth. Well, suppose one of these discussions is proceeding and the child says something that ought to be pursued, but that was not specifically allowed by the judge to be pursued. No questions can be

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asked. No judge, no lawyer, no person can anticipate in advance what a child is going to say or even another adult. [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR CHAMBERS: So this is one of those kind of pieces of legislation that I will oppose. I'm surprised that Senator Hilgers is supporting it when it is, in effect, dealing with the law and rewriting it. If he went to a halfway decent law school, he heard them say hard cases make bad law. You don't take one case that was an aberration in and of itself and change all of the law to accommodate that case. In my opinion, when you have a system of depositions which has been in place for--and I'm exaggerating--eons, then to come with these different groups who work primarily with law enforcement and say we're going to change all of the law to accommodate them, it's not wise. Eighteen years old is far too old to include in the category of child for purposes of what we're talking about. I don't know where Senator... [LB589]

SENATOR WILLIAMS: Time, Senator. [LB589]

SENATOR CHAMBERS: Oh, thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Chambers. Senator Wayne, you're recognized, or excuse me, Senator Crawford, you're recognized. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President. And I just want to clarify a few points. We did just confirm that the forensic interview, that there is one forensic interview that is conducted and want to also talk just a little bit about what that process is like. It's important to recognize that that forensic interview happens as quickly as possible after the incident has been identified. And so it's important that the forensic interview, you try to conduct it as soon as possible to try to reduce any outside influences that may be...that may have any influence on the child, again, to try to make sure you're getting to the truth of the matter and allowing the child to talk about the situation in an age appropriate way. And again, the...it is the case that over 70 percent of these cases where we have forensic interviews, the child is 12 or younger. So we do have many of these situations with very young children. And I'll get to the age in a moment. I don't want to right now, just focus on that videotape deposition. It's also the case that the videotaped deposition is, we require by statute, that those individuals conducting the interview have national accreditation. And so we by statute have determined the accreditation that we think is critical for those interviewers. And it is the case that they are required to only ask questions that are age appropriate. There is peer review of their interviews, as interviewing skills as well, to try to make sure that they are asking questions that are age appropriate. And we have talked to people in incidents where there have been requests by law enforcement to ask a particular question and

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they have refused, saying, no, that's not appropriate, that's not age appropriate question to ask in this incident. So I wanted to clarify some of those points about the forensic interview that happens at the beginning. It is one interview, unless there are new allegations. It is done as quickly as possible, as soon as the child has come forward to report an incident, and it's done by nationally certified interviewers who are trained to be neutral and trained to ask age appropriate questions to the child to try to identify those...identify the story...the incident as clearly as possible. So I will come back to this question about 18 years old. Now, the bill as amended takes out the burden of proof to obtain a deposition, and so that means...so we really are focusing in the part of the bill that talks about some protections that are critical. And I just want to remind us that, as the Legislature, we recognize that minors who have been victims and witnesses to violent crimes should be afforded these protections. And it was in 2012 that we thought it was important to extend the work of the CACs in the forensic interviews to cover kids up to 18 years of age. Previously it did just go to 16 years of age, but we as a body determined in 2012 that these...this forensic interview process was critical and it was important to include those children from...who are 17 and 18 years old in those protections and in our protections for sex trafficking victims. And so, LB589 aligns with those changes we have made in 2012 and the changes we've made in our sex trafficking statutes to try to make sure that these protections for depositions are in place as we're pursuing those sex trafficking crimes, and as we're making sure we're creating a justice system where we have protections and attention to the special protections that might be necessary for minors. Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Crawford. Senator Wayne, you're recognized. [LB589]

SENATOR WAYNE: Thank you, Mr. President. This has been an interesting bill and an interesting negotiation. As the amendment comes up, I initially told Senator Crawford that I might be okay with, or could be okay with it, I don't think I had any heartburn. And then last night I started thinking about a practicing attorney and what that means. And so, I just want to talk a little bit about what Senator Hilgers testified...or talked about which is the process. But let me tell you how the process would be changed even if the amendment offered by Crawford was adopted by this body. So this morning, I called a few Douglas County judges, or bailiffs, to see how long it would take for me to get in if I had to make this motion. One judge, I'm approximately, depending on a half hour to an hour evidentiary hearing, I'm anywhere between 60 to 70 days out. Another judge, I could get in between 30 to 45. But the standard is between 30 to 45 if we're looking at a half hour hearing or an evidentiary hearing that lasts for an hour. So

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the issue is now if I am representing a criminal defendant, I have a Sixth Amendment issue. The Sixth Amendment guarantees people a right to a speedy trial. Well, if I file a motion, I now tolled that right and I don't know what I'm tolling it for, whereas if I file that motion, I file a motion to suppress and I stop the clock on a speedy trial, I know why I'm doing it. But I'm stopping the clock for my client on a speedy trial by filing this motion for a deposition of which could be helpful or could not be helpful. So I'm advising my client, we're going to waive your Sixth Amendment right or basically stop your Sixth Amendment right for an unknown answer to a deposition. I would never advise my client that. The Sixth Amendment speedy trial guarantees a right to a speedy trial and the only time that I ever tell my client to waive that, or delay that, is in two cases. One, where they're offered diversion, or two, where we have a motion to suppress. I don't know if I have a motion to suppress because I first got to take a deposition. So now, I'm delaying this for almost up to a year, maybe longer. The other issue I have is the age limit, as Senator Chambers talked about. The reason that's important is, we've already allowed children, minor children underneath our current statute, 29-1926, that if a child is a victim or a witness, they don't even have to participate in the trial as long as we do a video deposition. But the key in that statute is the child's age is 11 years old. So now we're creating two different standards for what a definition or what a deposition is required for, a 11 years old or 18 years old. And me as a trial attorney, I don't know which one is better or which one is worse, but I think at the end of the day, our statute is clear on the purpose of a deposition is to make sure that we can find out information. Now, if the heart of this bill is behind the damage that repeating the story or telling the story again causes the victim or the witness, that the damage caused by repeating it over and over, then why aren't we limiting the prosecution from asking these same questions? Why aren't we eliminating law enforcement from asking these same questions? The only person we're eliminating in this process is defense counsel. And defense counsel has a statutory and a constitutional duty to make sure that their client has a fair trial. So again, if we're really concerned about the damage this could cause, then the county attorney should only get one shot. And that should have to go before a court. The law enforcement officer should have to get a subpoena... [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR WAYNE: ...to have that interview and that should go before the court. If we're going to make everything go before the court, I would like to hear from at least the Supreme Court and the judicial branch of how much this is going to bog down, because I will tell you that every juvenile case this will be delayed if they do a forensic interview. And I have been told over and over and over, a right delayed is a right denied. Justice delayed is justice denied. And that is essentially what we are going to do is deny justice to many people by delaying their right to a fair trial, to a speedy trial, and to the defense attorney who has all...at least all of the information to put on a good defense. Thank you, Mr. President. [LB589]

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SENATOR WILLIAMS: Thank you, Senator Wayne. Senator Hilgers, you are recognized.
[LB589]

SENATOR HILGERS: Thank you, Mr. President. Good morning again, colleagues. Picking up sort of where I left off and where I want to go with this, and it may take me at least another time on the mike to sort of explain my comments, but I want to explain sort of how this adversarial process currently works, both in getting a deposition and then in the deposition arena itself. And then how that system is not set up to protect children going through that system. And then I want to talk about how Senator Crawford's original bill helps draw the line to help protect children and then how this amendment, which I'm strongly in favor of, I think helps balance the needs of the child with some of the concerns that have been raised by our colleagues. So before..on my last time on the mike, I was saying that there are some safeguards to protecting yourself from a deposition in the first place, but they're not often used. And for a child to sort of understand and internalize the rights that they have without an attorney, and in many cases they wouldn't have one, we would expect and have seen that that bar is very low, or that is an uncommon occurrence for a child to be able to quash a deposition. So now we've...for children getting the deposition, it's easier, there's fewer safeguards. Now in the deposition process, which I think is really critical to this entire thing. So if you've never been in a deposition and you wouldn't have been in one unless you're an attorney who defended or took a deposition, or have been deposed before, they can be fairly intimidating for an adult. You walk into a room, and in that room there is a court reporter. There might be some other individuals who are parties to the case. There might be multiple attorneys that are there, that are present. It might be videotaped. So you walk in. You know, the attorney taking your deposition sort of sits there. They might be kind of friendly, but it's not set up to be conversational. It's adversarial. And the first thing you do is you raise your hand and you say, well, everything I say is going to be under oath, under penalty of perjury. And the attorney starts asking you a lot of questions. Now despite the conversational nature of a particular attorney, the friendliness of an attorney, it is inherently adversarial. And...but there are guide posts. You can't just ask any question or do anything you want. You can't, for instance, just ask a deponent, the witness, for their cell phone. You can't ask them intimidating or harassing questions. You can't try to bully them. You can't ask them the same question over and over and over and over again. And anyone who has been in an instance, even if it's not in a deposition, in which they're trying to elicit information from somebody and they're not giving it to you the way that you would like to hear the information, you could get frustrated and emotions can run high, and it can be very, very intense. And so this process, even when it works well, is limited, but the sort of the pressure inherent with it can cause lots of hostility and lots of problems. Now there's no judge in a deposition. There's no jury in a deposition. There's only one sheriff that can help enforce that boundary. That sheriff is the attorney representing the witness. If the attorney asking the questions asks for something that they're not entitled to, hey, tell me the privileged communications you have, that attorney, the other attorney, will shut them down. If the first attorney asks them very personal, irrelevant, embarrassing details of their personal life, that

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attorney will shut them down. If they harass them, intimidate them, bully them, there is a sheriff there to say, no, no, no, you can't do this. And in some cases, not often, but in some cases they can actually shut the deposition down. Now I want to be very clear about how this process works with a child. If they don't have a counsel, they are there unprotected. There is no sheriff. Think about that: 10-year-old child, 15-year-old child in a deposition, no one to protect them. Now, it is true that in some cases the prosecuting attorney will be there. Well, the prosecuting attorney in most cases will be there, and in some cases that prosecuting attorney may, in fact,... [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR HILGERS: ...object or try to call off the deposition, absolutely. And maybe in most cases when that happens, the prosecuting attorney does. But what's critical here is the client, the prosecuting attorney's client is not that child. Prosecuting attorney's client is the prosecuting authority, the state or the county. They have no attorney-client relationship to protect the child, to protect the witness. And so they have no obligation to stand and protect the child the way that the child's attorney would. And so as I said it last week, there are many...I think even despite the pressures of these, inherent in these depositions and despite the fact that these children are not defended often by counsel, maybe in many cases these depositions run, go without these kind of issues. But we have heard enough anecdotal stories from prosecuting attorneys and others that this happens. And the children are not...they're not protected. They don't know their rights. So we have, in my view... [LB589]

SENATOR WILLIAMS: Time, Senator. [LB589]

SENATOR HILGERS: Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Hilgers. Senator Chambers, you're recognized. [LB589]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Hilgers a question or two. [LB589]

SENATOR WILLIAMS: Senator Hilgers, will you yield? [LB589]

SENATOR HILGERS: Yeah, of course. [LB589]

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SENATOR CHAMBERS: Senator Hilgers, we are talking in the context of this bill about criminal prosecutions. Somebody has been charged with a crime against a child. Is that basically what you understand that we're talking about here? [LB589]

SENATOR HILGERS: Yes, that's my understanding, Senator Chambers. [LB589]

SENATOR CHAMBERS: Okay. Now, whether the child is the purported victim or witness, the prosecutor is going to be at any conversation that child has, which is formalized, with a defense attorney, or would you disagree with that? [LB589]

SENATOR HILGERS: When you say formalized, if you mean in a deposition, I would assume... [LB589]

SENATOR CHAMBERS: Yes. [LB589]

SENATOR HILGERS: ...the prosecutor would be the...yes, correct. [LB589]

SENATOR CHAMBERS: Yes. [LB589]

SENATOR HILGERS: Yes. [LB589]

SENATOR CHAMBERS: And that prosecutor is going to be very protective because the prosecutor wants to win the case and is not going to allow, without objection, a certain course to proceed. And let's say you have a defense attorney who is not going to be reasonable, will not listen. Then the prosecutor is in a position to go to the judge and point out the way this is proceeding and saying, this should not go on. In other words, when that prosecutor is there, that defense lawyer is not free to just do anything he or she chooses to do. [LB589]

SENATOR HILGERS: I would disagree that that happens all the time. The prosecutor is not representing the child. The prosecutor may, Senator Chambers, in most cases do what you suggest. But what we're hearing is that it doesn't happen in all cases. And they're not equivalent to an attorney representing that child. [LB589]

SENATOR CHAMBERS: You are going by what prosecutors tell you,... [LB589]

SENATOR HILGERS: Not just prosecutors, no. [LB589]

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SENATOR CHAMBERS: ...because defense attorneys say something different. So that's why I don't want to set the defense bar against the prosecutor's bar but, rather, look at the law as it pertains to depositions generally. We're being asked to do something that I think is totally inappropriate by setting that age at 18. That's way too high. If you say something like 12, then we're discussing it in a different way. I do not think that an 18-year-old is as vulnerable as a 12-year-old. And we're also talking about witnesses. Eighteen-year-olds may have had the kind of life experiences that teach him or her how to lie as well as a cop. And cops are trained to lie. They are trained to lie, and courts have told them that when you're interrogating somebody, you are allowed to lie. You need not tell the truth. You can make up stories. You can say that an alleged co-defendant flipped on you and said you did this, you said that, and it's totally false. Courts allow it. And the courts have said they allow it. So the prosecutors are not reliable people from my point of view. I will ask you this question because I'm not going to pursue that other...my time will run out as yours tends to run out. If this bill is not enacted, cannot these advocacy groups go to the court and make an appeal in terms of how a deposition ought to be conducted with a child? [LB589]

SENATOR HILGERS: Well, first, they have to know that it's happening. Assuming they know, potentially, but a lot of times I would imagine those groups don't have standing to intervene. But I think the key question is they don't...there is no reason why they would know the deposition has been scheduled. They wouldn't be entitled to notice, in other words, I think, Senator Chambers. [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR CHAMBERS: Well, how do these advocacy groups get involved? The police usually ask them. Isn't that true? [LB589]

SENATOR HILGERS: The police or law enforcement officials at the beginning of a matter, I would imagine. [LB589]

SENATOR CHAMBERS: Okay, thank you. We're looking at an arm of law enforcement, and from things I've said in the past I am distrustful of law enforcement. There is a cop who is now on the force in Omaha who got, in effect, kicked off the Lincoln Police force, and now he's there. Some cops who had been...run afoul of the rule in Lincoln Police Department against excessive force, one was bounced, another one chose to quit, and they got a job with the State Patrol. And I objected and said, when you have these kind of people, you're going to create a culture of violence where it's accepted. Now we're looking at cases since then, where troopers have been violent. One used the butt of a rifle to hit somebody. [LB589]

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SENATOR WILLIAMS: Time, Senator. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Chambers and Senator Hilgers. Senator Pansing Brooks, you are recognized. She waives her opportunity. Senator Crawford, you are recognized. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President, and thank you, colleagues, for this important debate. Again, I want to emphasize that the bill, as amended, really stresses the importance of these protective orders and emphasizes the importance of allowing those...recommending those protective orders be put in place when a child is deposed. Now, it argues that the judge should consider the age of the child and so fully expect that a judge would treat, in considering the extent and depth of the protective orders, a 12-year-old would be seen as different than an 18-year-old. I do want to also come back to the point that Senator Wayne mentioned about the depositions for a trial. Now it is the case, we have in statute 29-1926, we have a process in statute when a child is under 12, that allows...would allow for a videotaped deposition in place of the court appearance. However, we have not had a chance to hear that anyone has ever been successful in petitioning for that. Now, another important difference that I want to stress is the difference between your constitutional right at trial and what we're talking about with this bill, which is pretrial discovery. So, what we have in statute currently that uses 12 as the cutoff is when we're talking about restricting the ability of someone to be able to cross-examine a witness, which is an important constitutional protected right. There is no corresponding constitutional protection or right to these discovery depositions. So, the discovery deposition is not even allowed in federal trials. It's not allowed in 39 other states. So it is the discovery tool that is allowed in Nebraska, again, even though it is not allowed in 39 other states or in federal cases, and is also not allowed even in Nebraska when it is a misdemeanor case. And in many of these sexual abuse cases, when you've got a 16- or 17- or 18-year-old, we actually have a gap in our law that makes those cases not felony cases already, which is an issue that we were addressing with a different bill. And so it's important to recognize that clarity, that what we're talking about with LB589 is pretrial discovery. It does not intrude on the right of someone to confront their accuser, the constitutional protected right. The deposition statute we have in place that uses 12 as the line is when it is talking about that key constitutional right that's protected and for that right considering it should be very rare when that right is limited in any way. And again, motions to try to put that in place have not been successful in any case. What we're talking about with LB589 is pretrial discovery and emphasizing that if a deposition is used in pretrial discovery, with a minor, that we are attentive to the fact that there may already be discovery materials in the forensic interview that need to be considered so that we're not asking questions that we already have answers to, and also recognizing that when a deposition is necessary that we are putting protections in place... [LB589]

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SENATOR WILLIAMS: One minute. [LB589]

SENATOR CRAWFORD: ...or asking for protections to be considered to be put in place and identifying what some of those protections would be. At this stage at LB589, we are putting in place recommendations for the judge to consider. We're not requiring all of these protections to be put in place. We're saying as a body that protections for this child are critical. These are some of the protections that we as the Legislature think are important to consider when that victim or witness to these violent crimes is in this intimidating deposition situation. Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Crawford. Senator Morfeld, you're recognized. [LB589]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I rise in support of the bill as it was originally introduced, but I also rise in support of the pending amendment that I know will be coming. I think that the amendment strikes the right balance for both the child survivor and then also for the rights of the defendant and the individual being accused. As many of you know, this is an issue that I experienced personally as a child, so I understand the trauma that comes along with some of these experiences and then also reliving some of these experiences. I think the amendment that Senator Crawford is proposing and that I have reviewed will be able to strike that right balance while requiring a motion, but not yet putting together that high standard that I know Senator Wayne and Senator Chambers are concerned about. And with that, I would yield the rest of my time to Senator Hilgers if he so chooses. Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Morfeld. Senator Hilgers, you're yielded 4:05. [LB589]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Morfeld, for the time. We've talked about sort of the procedure leading to a deposition and how this, when applied in this circumstance we were dealing with children, it will have a high likelihood of leading to that deposition. And we've talked, I think, in detail about the deposition process itself and how adversarial it can be, how the fact that there is no judge, there is no jury, and that the only sheriff in town that would have the obligation to defend the child would be the child's attorney and in many cases, or too many cases, those children are not represented by counsel. And we talked a little bit about Senator Chambers' point is that in some cases the prosecutor might stand up and help, but I think at the end of the day, as this system is currently applied to children, what we are finding are cases in which those children have no representation in that deposition and no functional protection against intimidating questions, harassment, abuse. So putting aside reliving the incident, I mean, that the trauma of just asking a normal...answering a normal question as to

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that experience is very traumatic. But putting that experience into an adversarial deposition process I think very much heightens the pain and trauma that the child experiences. So Senator Crawford's bill, LB589, as originally introduced, basically made two functional changes to help protect the child, both of which I was comfortable with, both of which I supported. The first change is to require a motion. You'll recall we talked about the fact that as the current practice stands, you don't have to go to the court first. So there is no gatekeeper essentially when you want a deposition of a child. So the first thing that LB589 does is it would require you to go to a gatekeeper. The second thing that it does is that it would also flip the burden. So now you can...it's very permissive. A defendant can get the deposition for the most part unless someone files a motion to quash. LB589 would flip that burden and say, if one of these forensic interviews has already occurred, the burden...that the presumption is, defendant, you cannot get that deposition at all unless you show that there's some additional information that you really need. Now, I've listened very closely, I know if Senator Crawford did as well, to many of the comments and criticisms of that second piece, that burden piece of LB589. That might be too restrictive on defendants' ability to have their ability to get these depositions in discovery. And so while I supported...I do support LB589 as originally introduced, I want to talk now about Senator Crawford's amendment because I think the amendment that Senator Morfeld mentioned in his comments I think strikes just the right balance. And the key to the amendment is to understand that it keeps the first piece of Senator Crawford's...the original bill, LB589. In other words, it still requires a defendant to get a...to file the motion to go to court. [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR HILGERS: Thank you, Mr. President. Still requires the defendant to go to court. But instead of flipping the...it doesn't change the burden. In other words, it doesn't say, as the original bill says, that you don't get it, defendant, unless you can make some heightened showing that you really, really need it. Now it says, the court can grant it. The court can let you have it. But the key to this is that LB589 provides some guidepost for the court to consider when this type of motion is filed. So if a defendant files this motion, and I'll briefly...I'll have to stop my comments in a second, I'll come back to finish them on my time on the mike and answer, I think respond to some of the objections made by my colleagues. But this motion...actually, Mr. President, I'll just stop there and I'll come back on my time. [LB589]

SENATOR WILLIAMS: Thank you, Senator Morfeld and Senator Hilgers. (Visitors introduced.) Senator Hilgers, you're recognized again and this is your third time. [LB589]

SENATOR HILGERS: Thank you, Mr. President. So, the first thing that the amendment does is it requires the motion to be filed. So it does pull in that gatekeeper, which I think is very, very important. The second thing it does, it helps guide the court into some of the considerations and

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factors that the court can consider, and I think this is really important. The court may consider these factors, but the court doesn't have to. The court also might issue a protective order if it decides to, but it doesn't have to either. So the first...on page 1 of the amendment, lines 25 through 27, that lays out the fact that a defendant has to file a motion, and then on page 2 of the amendment, starting on line 5, it talks about what the court can do. Now, the court says on line 6, or the bill...the amendment says the court "shall" issue any protective order, and that "shall" sounds sort of mandatory. But what it says is, shall issue any protective order that justice requires. And that "justice requires," that language does a lot of work there. In other words, it provides the court a tremendous amount of discretion to determine what justice does require. Maybe justice doesn't require any protective order at all. Now, then it goes on and all of this is discretionary. The protective order may, may provide, on line 9, for instance, that the deposition be taken only at a specified time, that it be limited in scope, that a guardian ad litem or victim advocate be present, that the defendant not physically be there to intimidate the child. All of these things the court consider provides a framework for the court's decision. None of it binds the court. None of it tells the court what exactly it has to do, but this is a special consideration. It provides some special consideration for the court to apply in this instance. So ultimately what the amendment does is it says we will balance the rights of the defendant to get these depositions, but we are going to put in a gatekeeper. So now the court is the sheriff. The court is there to say, you know what, I do want an attorney there. You know what? This is a five-year-old child and we really need to have some special protections. Or the court might say, you know what, this is a 17-year-old child and I don't think I need to do anything special here. But it puts it within the hands of our very capable judiciary to make that determination. So I think it strikes the right balance. I strongly support that amendment and I would encourage you all to vote green on the amendment. Now, there has been a number of objections raised by Senator Chambers and Senator Wayne and I'll try to address a few of them here now, in no particular order. Senator Wayne mentioned that maybe this would undermine a defendant's right to a speedy trial, and I think he mentioned that it might take up to a year. I don't think the math pencils out quite the same way. I think if you file a motion, typically in Nebraska courts, you can get heard within a month, maybe four or five weeks. You could still try to plan for a deposition pretty shortly thereafter. So you're talking about maybe two months. There is no reason you couldn't do that within the current discovery period. It might end up in some delay. I certainly would concede that. But I don't think it reaches the level of egregious delay that would really undermine a defendant's right to a speedy trial under our constitution. Another argument, objection that was made from Senator Chambers was regarding the multiple times that Project Harmony could have these type of interviews. And as I at least interpreted Senator Chambers' argument, and he can correct me if this was a misinterpretation, it's that the prosecuting attorney and Project Harmony can sort of do this as many times as they would like and sort of get the testimony that they would want. All that evidence...if that was the case, the defendant still has the right to get all of those...all of the videotapes and they could ask them those questions on the stand. So that may be the case, but the prosecutor has significant reasons not to do that. Our system is set up so it

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doesn't...isn't gamed that easily. Certainly, Senator Wayne said that it would require some extra work. That I concede. It would require some extra work because you now have to file a motion. I think that's justified in this case, given the... [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR HILGERS: Thank you, Mr. President...the significant protections of the child, children...significant interest of the child, children of interest here. And one other point: Senator Chambers said, you know, hard cases make bad law and I agree. It's a very famous saying in the law and I completely concur with Senator Chambers. I don't think that's the case here. This isn't an instance where we have just heard one really bad story and decided that we need to change the entire system. What we have heard I think pretty consistently from a number of individuals, prosecutors as well as child advocacy groups, is that there are a number of cases where these children aren't protected. And we know that to be true given the processes I've outlined. The process is set up not to ensure that children are protected. They may be in some cases or most, but it's the process does not guarantee it. And what Senator Crawford's bill would do and why I urge a green light on the amendment and LB589 is it would provide some real protection for the children while still providing some safeguards for the defendants and their ability to defend themselves and have due process. Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Hilgers. Senator Chambers, you're recognized and this is your third time. [LB589]

SENATOR CHAMBERS: Mr. President, members of the Legislature, when I down through the years would fight against the death penalty, I would tell people that a hippopotamus is able to consume an entire bushel basket full of fruit and other items in one gulp. But not being a hippopotamus, I cannot not only not consume a bushel basket of apples, I cannot consume an apple in one gulp, so I have to take it a bite at the time. And using that analogy, I was able to persuade the Legislature to not allow executions of anybody when the crime was committed below age 18 and also the mentally disabled. Two items, two categories, before the U.S. Supreme Court acted, this Legislature led the way in banning execution of people fitting within those categories. This bill is the bushel basket. I'm not going to try to strike everything, or change everything where I think there should be a change, with one amendment. So I'm going to take it a bite at the time. I would like to ask Senator Hilgers...well, maybe I ought to ask this question of Senator Crawford. [LB589]

SENATOR WILLIAMS: Senator Crawford, would you yield? [LB589]

SENATOR CRAWFORD: Yes. Thank you, Mr. President. [LB589]

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SENATOR CHAMBERS: Senator Crawford, since this bill is going to cover the waterfront whether a person is a purported victim or witness, are you willing to lower the age from 18 to 12? [LB589]

SENATOR CRAWFORD: Well, the...we didn't lower the age to 12 in part, again, recognizing the importance that we...the important work that we've been doing in trying to protect those minors who engaged in sex trafficking who were over the age of 12. So, however, I am...that has been an important reason to keep the age at 18, also because we are allowing this discretion. But I am...so that's why we were keeping the age higher is that we took out that burden of proof. [LB589]

SENATOR CHAMBERS: Well, Senator Howard...I meant, Senator Crawford, the problem is when you're looking at one compartment where you're trying to do something in the law and you go through every room in the building and says we're going to change everything over here for this one item, why don't you make the age 18 in the area of the law where you're concerned, namely, sex trafficking? What you have done working with these agencies is to say, across the board even where the age ought not be 18, we're going to leave it at 18 there because we're trying to get trafficking dealt with over here. We have to use...and that's all I'll ask you at this point. [LB589]

SENATOR CRAWFORD: That's fine. [LB589]

SENATOR CHAMBERS: We have to use some nuanced thinking. And if they are going to dig their heels in, I'm going to dig my heels in on this bill and we're going to take the full six hours on it, because Senator Crawford is trying to do something. She is working with a lot of people outside this Chamber, the prosecutors, these advocacy agencies. And I am, in the same way that I was concerned about the law under that prairie dog bill, not just the prairie dog, the law, to say that 18 is a desirable age when you're fighting sex trafficking, therefore, you make 18 apply across the board in every other case where 18 should not be the age. [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR CHAMBERS: These agencies are going to insist. They're going to dictate to you all. And they can try to dictate to me, but there's a price for the Legislature to pay. These prosecutors come in here and say, do it this way, and you do it. Then I might say and some of the rest of us, do away with mandatory minimums. They say "H" no. We don't have to give up anything because we control the Legislature. I'm going to offer an amendment to reduce the age from 18 to 12. And when they show that they're unwilling to be reasonable, then I'm going to adopt an attitude like theirs and I will use this bill to discuss the aspects of my prairie dog bill which relate

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to the total disrespect for private property rights, the undercutting of due process because somebody doesn't like prairie dogs. In this case... [LB589]

SENATOR WILLIAMS: Time, Senator. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Chambers and Senator Crawford. Senator Pansing Brooks, you are recognized. [LB589]

SENATOR PANSING BROOKS: Thank you, Mr. Chair. I am rising, number one, on the last discussion of this bill I made a comment about the fact that I made a mistake in that I voted this out of committee as an act of friendship and kindness. And I felt at the time that this bill needed additional work and I was highly concerned and most of the people in the committee felt that it wouldn't get to this point. Then kindly, Senator Crawford has worked significantly on the bill to create amendment that is a lot better, a lot better. It isn't perfect, but it's better. And this is such a difficult issue and I'm hearing it from all of my colleagues within the body. Unfortunately, I have a number of friends calling me saying, well, you support children, why aren't you supporting this? Those friends are getting one side of this story and that's the problem with this. The new amendment has a part that concerns me. It says that the, quote, the scope of the deposition may be limited to certain matters as designated by the court. That's concerning and I'll tell you why. I'm going to read you a quote from a letter from Thomas C. Riley, Douglas County Public Defender. He wrote, giving the power of the court in all cases to dictate in advance which matters are to be covered in a deposition halts the defense's ability to adequately represent their client as it is hard to anticipate what a child may say during an inquiry. A spontaneous utterance not anticipated by any party would not be allowed to be pursued if the court ordered only certain topics to be covered. This provision ties the hands of counsel and is an unrealistic imposition upon a deposition, which is a dialogue with the child. The purpose of a deposition is discovery. That is to determine if there are defenses to the allegations. To limit discovery is to unconstitutionally limit a defendant's right to a fair trial. Unquote. So, again, this is a very, very difficult issue. Senator Crawford talked about, well, we're looking at the right to confront on the stand, and as Senator Wayne has discussed, it's...that's very damaging for the child. If you're going to start questioning the child on the stand in public, that's much more onerous on that child than in a room with maybe a guardian ad litem present, the attorney asking the questions. The defendant doesn't have to be there. That's...questioning them in the courtroom is very difficult and dangerous. And meanwhile, we've been working hard to deal with the sea change in our laws which is to increase penalties on human trafficking. That increase in penalties on human trafficking has an effect on the defendant's charged. So we've raised penalties and now we want to limit access to those against whom they've been charged. That's not what our system protects.

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Our system allows people to confront. And, yes, I'm hearing stories behind the glass of overzealous criminal defense attorneys who badger a child and make them cry. And we know about... [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR PANSING BROOKS: Is that time? [LB589]

SENATOR WILLIAMS: One minute, Senator. [LB589]

SENATOR PANSING BROOKS: Thank you. So we know about...we know about overzealous prosecutors, we know about overzealous criminal defense attorneys. There are bad actors in every profession. But what we have to do is protect the child and we have to protect the rights of those accused. It's a very difficult issue and it's very difficult to wander this issue on the floor of the Legislature. But I appreciate Senator Crawford's passion towards protecting children and I hope that those in the community can understand how torn we are on this very serious issue. Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Pansing Brooks. Senator Krist, you're recognized. [LB589]

SENATOR KRIST: Thank you, Mr. President, and you look good up there. You're doing fine. Good morning, colleagues, and good morning, Nebraska. If you look at the committee statement, and I hope that you do, you will see that there was one person who voted nay to not send it out of committee and that was Senator Chambers. There were two of us that were present and not voting, Senator Hansen and myself. Now, as much as you can look at me and my track record over ten years in this Legislature, and as much as I have stood up for juveniles and kids, I weigh as Lady Justice weighs the other side of this weight, which is imagine yourself as an adult with charges that have been brought against you and lack of discovery, or the discovery that would set you free, instead of send you to jail for 100 years. Because that's what we're talking about here: actual court cases, actual discovery that led to actual bad people going to jail for 115 years that should have gone there, no question. But the discovery is all about justice. So if we limit the discovery, as much as we'd like to protect those children, we limit justice. And that's why I have been on the opposite side of the fence with some of those people behind that glass and some of those people around Nebraska that I've worked so hard to make sure that juvenile justice is changed for the better in the state of Nebraska. I would also say that if you really want to worry about defending a child, then let's make sure that every child has a lawyer in the room with them, no matter where they are in the state of Nebraska, no matter where they are. It should not be justice by geography. Every child should be defended at every point during the process. This is

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one of those things in western Nebraska, those folks who have been against Senator Pansing Brooks's bills for the last several years, saying, oops, our kids don't need it, they've got parents. They're represented by parents and we're going to use our judges. This is one of those situations where, unless that child is represented...and the argument was made, the big, bad person who is interviewing them during the interrogation process is not looking at the best interest of the child. Then put a lawyer in the room to defend them no matter what. So I want not to make this about anything else than what it is. LB589 should not have come out of committee in its present form. Any amendment for me that does anything that reduces the discussion and discovery to protect both the adult who is being charged and the child, no matter what we do, does not satisfy my concerns. I'll only speak once on this. I just believe it's so important both to the adult and to the child that discovery tell the story and that an independent judiciary weighs out what's best for those two involved, or three, or four. That's where I stand. Thank you, colleagues. [LB589]

SENATOR WILLIAMS: Thank you, Senator Krist. Senator Wayne, you're recognized. [LB589]

SENATOR WAYNE: Thank you, Mr. President. The issue here is the discretion of the court for me. Because there are so many different scenarios that what Senator Hilgers said blanketly on the mike is just not true. In juvenile court, which these would apply to, when a child is removed from the court and this is the area that I practice in, in fact I'm supposed to have a two o'clock hearing today that I can't go to, but when a child is removed from the home they are now in the custody of DHHS. And when we go to every court hearing, they are represented by counsel. So there isn't a deposition in juvenile that will happen without their attorney signing off on it anyway, because we have to provide them notice. In the criminal proceeding, if they are a victim, the notice goes to the prosecutor. If the prosecutor refuse to object, that's an issue with the prosecutor. But at anytime during a deposition, in fact, I've got up and walked out of several depositions where I thought the attorney was being a little too aggressive. And I said, you know what, we can continue this later, take it up with the judge. That is the role of the attorneys. So I hear Senator Hilgers talk quite a bit about nobody is there protecting the attorney. I talked to a couple others...or protecting the child. I heard a couple other people say, well, nobody is there protecting the child. But yet this body won't approve attorneys for juvenile kids who are in the juvenile system. So we're talking about a kid reliving a traumatic event, but that's not what this case is all about, or this bill is about. It's about any witness. So, we need an attorney to protect them, we need a judge to protect them. But when a child commits something as a juvenile which stays on their record, because here's...let me give you the secret. It's never sealed. If you committed an offense as an adult, it shows up at your sentencing and they use it against you. So it's never sealed. But yet we won't approve an attorney for a child at the juvenile. So the simple answer to this, and I'm offering a compromise right now for this to go forward. If the issue is nobody is there to protect the kids in the room, then let's give them right to counsel right at the beginning of the forensic interview. Because let me tell you something. If I represent a kid, I'm not sure if I want that kid going through a forensic interview without me hearing the questions

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because that kid might do something to incriminate themselves too. So let's give right to counsel at the immediate point where police says, you know what, we need to conduct a forensic interview, or CPS says we need to do a forensic interview. Let's give them right to counsel then. I'll add that amendment. And I expect your support, Senator Hilgers, no matter what the cost is, because this is undoubtedly a cost. If I have to file a motion for every deposition, and let's just talk about how broad this is, it doesn't have to be in the criminal case in which the kid is a witness or a victim. The way this is written right now, it can apply ten years later as long as they're under 18. So something could have happened when the kid was four, did a forensic interview. The kid is now 17 and is truant from school or something else. Now I have to file a new motion. Or it's a custody dispute in a divorce. I have to file a new motion which is completely unrelated to what may have happened because this is so broadly written. It's too broad. There is no limitations on when this forensic interview does not apply. It applies indefinitely between zero and 18 years old. So it could be a criminal proceeding in which I have a witness that I want to interview, but because they did a forensic interview which I did not know about, I have to now file a motion so every conversation with the prosecutor is going to be, is any of your witnesses, have they had a forensic interview? You got to go figure that out because I don't want to be... [LB589]

SENATOR WILLIAMS: One minute. [LB589]

SENATOR WAYNE: ...in violation of the law, because then I can get a bar complaint. This is too broad, but there's a fix. Let's just give them all right for counsel. So every time I can contact that kid's attorney, whether it's related or not, to file a motion for a forensic interview. So when they commit a crime earlier and I have to defend them, or they rob somebody and I have to go after the victim and say, hey, you know I got to find out what happened, I got to file this motion for a forensic interview, although it happened 14 years ago and it's unrelated to the crime at hand. That's an undue burden, not only for the state because the state is going to pay for it, because I'm going to be court appointed, because I'm going to make sure I bill for it. This is an undue burden and it's too broadly written. This would apply to any child, any witness under 18 who conducted an interview, whether it's related to the subject matter or not. And that is a fatal flaw. And in constitutional law we call it fatally overbroad. [LB589]

SENATOR WILLIAMS: Time, Senator. [LB589]

SENATOR WAYNE: Thank you, Mr. President. [LB589]

SENATOR WILLIAMS: Thank you, Senator Wayne. Senator Crawford, you're recognized and this is your third time. [LB589]

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SENATOR CRAWFORD: Thank you, Mr. President. Colleagues, I want to urge you to support the committee amendments to this bill, as I think we'll be coming to a vote on those, and continue the dialogue on the bill itself. And I appreciate the concerns that people have raised about trying to make sure that we have a balanced approach and being careful and attentive to unintended consequences. And so, I will check on Senator Wayne's concern he just raised to address that in a future turn. For right now, I just want for the record to identify the consistency argument more carefully about the age. And that is the Nebraska statute 28-728 creates...is what we used when we created these forensic interviews of the Child Advocacy Center and identified the type of children to which the forensic interviews were to be conducted. And I also want to assure you that we have an ability to conduct these interviews and they are...there are satellite offices or offices that conduct these interviews for these child victims or witnesses in all 93 counties. And it...but it is the narrow restriction in terms of who gets the forensic interview. There are children who are 3 to 18 years of age and alleged to be victims of sexual abuse, or serious physical abuse or neglect, or have witnessed a violent crime, or found in a drug-endangered environment, or have been recovered from a kidnapping. And all of the provisions in LB589, as it is or as it is amended, only apply in those instances where we are talking about these children in those narrower specific instances. So we're talking about an age, but also then talking about the restriction on the kinds of victims or...victim or alleged victim or witness and the situations in which they have been found. And again, as a body in 2012, we moved the line up for the conduction of these forensic interviews from 16 to 18. We felt it was important to have that line there for including these children in this forensic interview process. The bill itself identifies what needs to be considered when offering a discovery deposition when we have conducted the forensic interview. And so the consistency is the consistency of attending to who has access to the forensic interview, and then what are the steps or conditions that we put in place when someone has had that forensic interview for the discovery deposition. And again, the amendment takes out a burden of proof that was raised as a concern, and the amendment keeps in place part of the original...the bill that was a part of the hearing and conversation, which is recommendations of protective orders that may be put in place to protect that child. Would I rather that every child have an attorney from the beginning of the process? Absolutely. Part of the effort is deciding and determining what are steps that are appropriate next steps to take in terms of trying to provide protections. We may then determine that there is one particular protection that has been particularly effective that we may want to come back and identify as the key protection that should be available to all. At this point, it's leaving the discretion so that we do recognize that there are differences in the different...there are differences that vary by age... [LB589]

SENATOR LINDSTROM PRESIDING

SENATOR LINDSTROM: One minute. [LB589]

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SENATOR CRAWFORD: Thank you, Mr. President...in this range, and recognize the ability to recommend and emphasize the importance of identifying protective orders where needed, then allowing those to be put in place and allowing that to be part of the adversarial process in determining what those protection orders should be. Thank you, Mr. President. [LB589]

SENATOR LINDSTROM: I'm sorry. Could you repeat that, Senator Crawford? [LB589]

SENATOR CRAWFORD: Oh, I just...thank you, Mr. President. [LB589]

SENATOR LINDSTROM: Thank you, Senator Crawford. Senator Hansen. Senator Hansen waives. We'd like to recognize the Speaker for an announcement. [LB589]

SPEAKER SCHEER: Thank you, Mr. President. We've reached the time where this is time limited out for the first half of General File and we will return to it once support is provided. With that, we will move on to the next item on the agenda. [LB589]

SENATOR LINDSTROM: Mr. Clerk for announcements.

CLERK: Yes, Mr. President, thank you. Hearing notice from the Natural Resources Committee, and from the Education Committee. Senator Hughes would like to print an amendment to LB275. I have a confirmation...and Senator Chambers an amendment to LB589. Confirmation report from Health and Human Services. Senator Ebke has selected LB299 as her priority bill. And Enrollment and Review reports LB377 as correctly engrossed. (Legislative Journal pages 483-484.) [LB275 LB589 LB299 LB377]

Mr. President, moving on, LB256, a bill introduced by Senator Briese. (Read title.) Introduced in January of last year, referred to the Urban Affairs Committee, advanced to General File. There are committee amendments, Mr. President. (AM452, Legislative Journal page 628, First Session, 2017.) [LB256]

SENATOR LINDSTROM: Senator Briese, you're recognized to open on LB256. [LB256]

SENATOR BRIESE: Thank you, Mr. President, and good morning, colleagues. I bring to you today my LB256. LB256 is a bill to allow communities to adopt vacant property registration ordinances. LB256 is a budget-neutral effort to give communities across our state another tool in their toolbox to address the housing shortage many of them face. And, yes, the housing shortage is handicapping growth in many communities across Nebraska. A 2016 State Chamber survey showed that over 70 percent of respondents indicated their communities faced a housing

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shortage. But in the face of this shortage, housing vacancy rates across rural Nebraska often exceed 10 percent. Municipalities across our state find themselves bearing the cost of properties that remain vacant for extended periods of time. These costs often include the potential for increased crime and vandalism. Vacant properties can drive down housing values, but most importantly, in areas of housing shortage, vacant properties represent unrealized economic growth. Because of this, I was approached by local economic development officials who asked for another tool to allow their community to address the issue of these vacant properties. They wanted a way to encourage and incentivize the occupation of these properties. Historically, nuisance laws have been used to address abandoned and blighted property but have limited application in addressing vacancy. I researched the issue, found that many jurisdictions across the U.S. have turned to vacant property registration ordinances to reduce the incidence of property vacancy. Because Nebraska is a Dillon's Rule state, the ability of many of our municipalities to adopt these ordinances rests with the Legislature. And that is why I bring this bill before the body to allow our municipalities to adopt vacant property registration ordinances as they see fit and to set some parameters for these ordinances. I ask for your support in this endeavor. I do note there is a committee amendment and I'll speak to it after Senator Wayne presents that amendment. Thank you. [LB256]

SENATOR LINDSTROM: Thank you, Senator Briese. As the Clerk stated, there are amendments. Senator Wayne, you're now recognized. [LB256]

SENATOR WAYNE: Thank you, Mr. President. To Senator Briese's point, this bill clarifies what authority cities currently have. And there was some confusion, so I do want to thank Senator Briese for bringing all the parties together and making sure they came out with a good committee amendment. And so, AM452, is a white copy amendment that makes a number of changes to the bill. First, the amendment provides that the act does not apply to cities of the metropolitan class, i.e., Omaha, or cities of the primary class, i.e., Lincoln. Both Omaha and Lincoln already have existing authority under their city charters to establish vacant property registration ordinances. Second, the amendment clarifies that a VPRO under the act may only apply to buildings located within the city or the village corporate limits. Third, the amendment provides that a VPRO under the act shall exempt vacant properties that are advertised in good faith for sale or lease. Fourth, the amendment provides that the property owner have the right to prior notice of and appeal adverse decisions by the municipality or the VPRO program administrator with notice sent by certified mail. Fifth, the amendment provides that the VPRO administrator may designate another individual or conduct inspections of vacant properties. Finally, the amendment provides that provisions of the act are supplement to and in addition to any existing state laws relating to vacant property so the bill does not negate any existing VPRO programs which have already been clearly established under other sections of state law. Again, I want to thank Senator Briese for his work on crafting the amendment and getting all the

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interested parties together and I would ask for a green vote on AM452. Thank you, Mr. President. [LB256]

SENATOR LINDSTROM: Thank you, Senator Wayne. Senator Blood, you're recognized. [LB256]

SENATOR BLOOD: Thank you, Mr. President. I rise today in support of Senator Briese's bill. I'm not sure I do support the amendment yet, but I want to stand in support of Senator Briese's bill. I speak from a municipal background where we in Bellevue did start a vacant properties committee, and we were able to move some legislation forward during that period of time. Also worked with the League of Municipalities in the city of Omaha to create the Municipal Land Bank Act. LB1029 was one that spoke to Bellevue. Being the oldest city in Nebraska, we do also have some of the oldest infrastructure. But one of the things I want to remind people and why this bill is important is the effects that it has when it comes to vacant property and the budgets of municipalities. It affects the fire department, the building and health department. It depreciates the values of homes and businesses. It reduces the amount of property taxes that are coming into the coffers. It attracts crime and it is a huge drain on municipalities' resources. So I say, well done, Senator Briese. This is long past due and I think it's going to save taxpayers a lot of money when people take the initiative to move this forward. Thank you. [LB256]

SENATOR LINDSTROM: Thank you, Senator Blood. Senator Bolz, you're recognized. [LB256]

SENATOR BOLZ: Thank you, Mr. President. I do appreciate where this bill is coming from. And as someone who has actually followed local public health ordinances, I appreciate the positive impact that some of these strategies can have in community health. But as I read this bill, I see more government involvement, additional ability to authorize fines, opportunities for local communities to encourage to require property owners to submit to inspections and make changes to their personal property. And those changes to property may even increase that individual's property value, and, therefore, their property tax level. And so, I'm not going to vote in support of this bill at this point. I'm going to listen and learn and understand. And I'll be watching closely where folks land, because to me, I see opportunities for more fees and fines, more requirements on property owners, and a concern that those requirements will lead to increased valuations and increased property taxes. So I'm going to take a pause on this one and listen to the debate, but wanted to raise those concerns for the body's deliberation. Thank you, Mr. President. [LB256]

SENATOR LINDSTROM: Thank you, Senator Bolz. Senator Briese, you're recognized. [LB256]

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SENATOR BRIESE: Thank you, Mr. President, and thanks for the nice comments here. At risk of repeating some of what Senator Wayne said, I'll address the ordinance and address some of the issues that this amendment takes care of. I do note the bill applies to cities of the first and second class and villages. Lincoln and Omaha both indicated that they have similar mechanisms in place that they feel serve them well. This bill as amended would simply authorize, does not require communities to drop VPROs. They may design it to apply to commercial buildings or various classes of residential buildings or both. If the municipality chooses to adopt one of these ordinances, owners of vacant property subject to the ordinance shall be required to register the property with the city within six months of vacancy. The ordinance may require the payment of a registration fee six months after registration, and may require payment of supplemental fees thereafter. Those fees may encourage, or may escalate to encourage utilization of the property. The ordinance must provide an exemption for property offered in good faith for sale or lease. It may provide for exemptions for many other categories, but basically whatever the local leaders deem is an appropriate exemption. The bill as amended provides for a right to notice and appeal of adverse decisions. A VPRO under this bill as amended may provide for inspection of the property, may provide for fines for failure to comply. The bill provides that any unpaid fees and fines shall become a lien on the property but junior to prior liens. And, colleagues, there's no one size fits all to the issue of the housing shortage, but this bill as amended will give our municipalities another tool in the toolbox to address the shortage faced in many areas of our state. And I do note that many of the components of this bill are components that are contained in the Omaha and Lincoln ordinances. For example, those ordinances contain provisions allowing inspection, provisions providing for a registry. Those ordinances require payment of fees. They provide that unpaid fees become liens. Again, Lincoln and Omaha feel that their ordinances serve them well and they testified in support of this bill. And we can talk about growing our state all we want, but let's make sure and give our communities the tools they need to help them grow. I believe it's a fiscally conservative approach to the issue. It works in a budget-neutral manner. We're not sending somebody a check. It's permissive, not requiring towns and villages to do anything. It adheres to the concept of local control. This bill as amended was supported in committee by economic development folks and the League of Municipalities. It was voted out of Urban Affairs on a 7-0 vote. I believe it's sound policy and I would ask for your support. Thank you. [LB256]

SENATOR LINDSTROM: Thank you, Senator Briese. Senator Schumacher, you're recognized. [LB256]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. In the past I spent I think, I added it up, 100 years as village and city attorney for little cities and villages. And this is a problem. But it's not as easily solved as it looks to be. The way it used to be solved when there was a dilapidated building back in about 1990 or so, they'd call the fire marshal. They'd say look it, this building is a eyesore. It probably has electrical wires inside, it's in danger of being

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burnt up. Why don't you just issue a fire marshal's condemnation? And the fire marshal would issue a condemnation letter and eventually what ended up happening is the fire marshal sell the property, condemn it, and the state come in and remove the property. Then we got into the era where states didn't have money. And the fire marshal says, nope, nope, too expensive, sometimes these things have asbestos in it, whatever, just keep me out of the picture. And so, you have the problem of these properties, and no real good way to solve them. I look at what the definition, the bottom-line definition of vacant property is, and that is a property that has a circumstance or condition reasonably indicating that the property is not occupied for residential purposes--most all buildings are not occupied, particularly if they're on main street--or being used for the operation of an unlawful business. Well, what is that? If I have a...if I store my seed corn in that building, is that enough, even though rats are running in and out? Is that vacant? If I'm just holding the building for real estate speculation, is that vacant? Those kind of questions I don't think the bill has adequately addressed yet and, if we would pass this, requires some work. Senator Briese, would you yield to a question or two? [LB256]

SENATOR BRIESE: Yes, I would. [LB256]

SENATOR LINDSTROM: Senator Briese, would you yield? [LB256]

SENATOR BRIESE: Yes. [LB256]

SENATOR SCHUMACHER: Okay, thank you. Let's suppose that the city...well, first of all, I guess the general gist of this is if there's a vacant piece of property and it makes it on to the naughty list, that you basically fee them to death, is that it? [LB256]

SENATOR BRIESE: No, we're not here to write these ordinances for these communities, so they can develop these ordinances however they see fit. They can require a fee. They don't have to require a fee. They can make the fee any amount. It can be a recurring fee, it can be an escalating fee, but it could just be a one-time fee. So it's up to the community. [LB256]

SENATOR SCHUMACHER: Well, as a practical matter, the only way it works is if you fee them to death, because if it's a one-time fee, you pay the fee and then you get to keep your vacant building. So the practical matter, it enables a community to fee them to death. Now suppose now a piece of property runs up a big, big fee. Okay. And the owner is sitting in California or maybe across the street and saying, what the heck, the property wasn't worth that much anyway, I was just holding on to it, thinking maybe the place next door would want to buy it, but I'm not going to fight them. Okay. And at that particular time, what happens? Big bill on the property, it's sitting there vacant, what comes next? [LB256]

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SENATOR BRIESE: That fee becomes a lien on the property. That lien can be foreclosed upon by the city. [LB256]

SENATOR SCHUMACHER: And so, now we're back in the same position as we are with the nuisance ordinance. The city has got to hire a city attorney. They don't want to pay city attorneys, I know. And they've got to take the building to court. The owner isn't liable, just the building, right, just the land? Is that correct? [LB256]

SENATOR BRIESE: That would be correct. [LB256]

SENATOR SCHUMACHER: Okay. So the owner is not liable. So the building is a worthless building. They take it into the court for foreclosing... [LB256]

SENATOR LINDSTROM: One minute. [LB256]

SENATOR SCHUMACHER: ...and that's kind of a big procedure to foreclose on something. Take it into court to foreclose it and nobody bids because who wants to bid on an old building filled with asbestos or insecticides or whatnot, so the city gets stuck with it. And so this is not a real easy solution because the city doesn't want to pay for the attorney and doesn't want to get stuck with an asbestos or chemical problem, and so we haven't solved much. And I recognize the need, but I don't see how this solves anything other than putting title in the city's name. And probably if the city would have asked the owner, they would have signed a quitclaim deed and give it to the city because it's not worth the aggravation. So I'm not quite sure what we're accomplishing here. I'll listen to the debate, but I'm still not sold. Thank you. [LB256]

SENATOR LINDSTROM: Thank you, Senators Briese and Schumacher. Senator Briese, you're recognized. [LB256]

SENATOR BRIESE: Thank you, Mr. President. And I appreciate the comment, Senator Schumacher. And you indicate that it doesn't accomplish a whole lot. In the situation you described, yeah, probably doesn't accomplish a whole lot, but in a lot of other situations it can. Economic development folks have asked for this. The League supports this. Folks on the front line of economic development obviously feel the need for this or they wouldn't ask for it. And I, for one, am hesitant to tell them they are wrong in asking for it. Again, there's no one size fits all, there's no easy solution. This is simply another tool in the toolbox to allow them another avenue to address this issue. And Senator Bolz earlier mentioned about the...or you brought up the fees also, Senator Schumacher, and Senator Bolz talked about the fees, additional fees and costs to landowners. But in addressing the issue of vacant property, any approach we use involves a cost,

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but typically a cost to the taxpayer. And that's kind of what we're trying to avoid here. You know, there's other alternatives we can talk about. We can talk about condemnation by the city on some of these properties, but condemnation requires just compensation. We can talk about nuisance abatement, but oftentimes the cost of abating a nuisance rests on the taxpayers. Land banks, they require funding. Grant dollars typically come out of taxpayers' pocket. Is Senator Williams here? [LB256]

SENATOR LINDSTROM: Senator Williams, will you yield to a question? [LB256]

SENATOR WILLIAMS: Yes, I would. [LB256]

SENATOR BRIESE: Thank you, Senator Williams. Do you recall last year's LB518? [LB256 LB518]

SENATOR WILLIAMS: Yes, I do. [LB256]

SENATOR BRIESE: And what did that bill do? [LB256]

SENATOR WILLIAMS: LB518 recognized that we have a shortage of work force housing in rural areas of our state and it created a grant program so communities could apply for matching funds to create work force housing. [LB256 LB518]

SENATOR BRIESE: And where did the dollars for the grant program come from? [LB256]

SENATOR WILLIAMS: They came from the Affordable Housing Trust Fund, dollars that were there that were not being used, and so we took, I think it was, seven million or eight million of those dollars to use for that grant program. [LB256]

SENATOR BRIESE: And where did those dollars...how were those dollars generated originally? Was it the documentary stamp tax? [LB256]

SENATOR WILLIAMS: Yes, it is. [LB256]

SENATOR BRIESE: And so essentially there was a tax or a fee being utilized to address the issue of the housing shortage across Nebraska. That's essentially what that bill would have done, correct, or what it did do? [LB256]

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SENATOR WILLIAMS: That is what that bill is doing. The Affordable Housing Trust Fund has built thousands of homes across our state over a period of time, but this was unused money that is going to now be used in a way to build work force housing across our state. [LB256]

SENATOR BRIESE: Thank you very much, Senator Williams. But the point from that discussion is that, you know, virtually anything you do to address housing vacancy can cost money and it's typically taxpayers' money that is involved here. This bill would require the payment of fees, fees by the owners, which will hopefully incentivize the occupancy of those premises saving taxpayer dollars. So like I said earlier, it's a fiscally conservative approach to the issue. And I believe it's a good approach, it's a solid approach, and it's not going to address...it's not going to be a cure-all, that's for sure. But again, it gives the communities another tool in their toolbox to address these issues. Thank you. [LB256]

SENATOR LINDSTROM: Thank you, Senators Briese and Williams. Senator Schumacher, you're recognized. [LB256]

SENATOR SCHUMACHER: Thank you, Mr. President. Will Senator Briese respond to a couple of questions? [LB256]

SENATOR LINDSTROM: Senator Briese, would you yield? [LB256]

SENATOR BRIESE: I will. Yes, I will. [LB256]

SENATOR SCHUMACHER: Once...the owner doesn't owe the bill, just the land. And if the owner doesn't pay the bill, the city can foreclose on it. Am I correct so far? [LB256]

SENATOR BRIESE: Well, I probably misstated that earlier that the owner wouldn't be liable, because the city can impose a fine for unpaid fees. And to me, that denotes personal responsibility. [LB256]

SENATOR SCHUMACHER: So it is a fine for unpaid fees? [LB256]

SENATOR BRIESE: If the city so chooses. [LB256]

SENATOR SCHUMACHER: And the city just does that, or does the city have to take somebody to court to impose a fine? [LB256]

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SENATOR BRIESE: As per the statute, there would be a fine as per the statute. [LB256]

SENATOR SCHUMACHER: And where is the criminal provisions in here that...or would the city have to adopt an ordinance then making this a crime to have a building that has visible deterioration? [LB256]

SENATOR BRIESE: They would have to make unpaid fees under the vacant property ordinance, presumably a misdemeanor, or be a municipal offense, I should say. [LB256]

SENATOR SCHUMACHER: Would they have to do this for all their unpaid fees? [LB256]

SENATOR BRIESE: Pardon? [LB256]

SENATOR SCHUMACHER: So they would have to do this for all their unpaid fees? [LB256]

SENATOR BRIESE: I don't know about that. [LB256]

SENATOR SCHUMACHER: Is that kind of punishing somebody for debt? [LB256]

SENATOR BRIESE: No, I don't know the answer to that. [LB256]

SENATOR SCHUMACHER: But let's assume they go through foreclosure. Okay, they've got a little fee you got to pay. They go through foreclosure, because the owner isn't going to clean this thing up. Whose nickel is that on? [LB256]

SENATOR BRIESE: That will end up being on the taxpayer. [LB256]

SENATOR SCHUMACHER: Right. And suppose it's full of asbestos and they got to take it away. Whose nickel is that on? [LB256]

SENATOR BRIESE: That's going to be on the taxpayer. [LB256]

SENATOR SCHUMACHER: Okay. So we've got this building that's basically all we're doing is condemning it, is it...bottom line. [LB256]

SENATOR BRIESE: In the situation you described, that could be the result, yes. [LB256]

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SENATOR SCHUMACHER: Okay. So it's not necessarily that it's a free lunch, right? [LB256]

SENATOR BRIESE: Yeah, I think we've all learned long ago there's no such thing as a free lunch. [LB256]

SENATOR SCHUMACHER: Well, we agree, we agree. But we keep trying to find one, don't we? One of the...you mentioned that the economic developers want this. So what if, if they decide they'd like to have main street cleaned off on one side and there's some buildings there and almost every building, even almost a new building, is in a situation where there's some type of deterioration. I think the language is visible deterioration. I mean a gutter is hanging loose or something. Does this basically take a landowner and put them in a position of being pressured to sell this property to developers for maybe less than what he would want to sell, create a great aggravation just to help the developer out? Where is the protection from an owner if the economic developers are just a bit on the aggressive side? [LB256]

SENATOR BRIESE: The protection would be with your local governmental officials. It's up to the local municipality to adopt and develop these ordinances as they see fit. This is all about local control. We're not telling them to do anything. This is entirely permissive here. [LB256]

SENATOR SCHUMACHER: So three out of the five guys on the local village board, or gals on the local village board, can basically turn the heat up on somebody's property and just make it a real pain unless they yield to the economic developers. [LB256]

SENATOR BRIESE: Well, if that's the case they could easily get voted out of office next time around. [LB256]

SENATOR SCHUMACHER: Right, but in the meantime they've got a two- or four-year term, I suppose. Thank you, Mr. President. Thank you, Senator Briese. [LB256]

SENATOR LINDSTROM: Thank you, Senators Briese and Schumacher. Senator Blood, you're recognized. [LB256]

SENATOR BLOOD: Thank you, Mr. President. I rise again in support of Senator Briese's bills and would actually ask if Senator Schumacher would yield to a question. [LB256]

SENATOR LINDSTROM: Senator Schumacher, would you yield? [LB256]

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SENATOR SCHUMACHER: Yes. [LB256]

SENATOR BLOOD: Senator Schumacher, are you familiar with how most municipalities deal with vacant properties that have issues as what you just mentioned? [LB256]

SENATOR SCHUMACHER: Most of them say we don't want to get involved in that and it sits there on main street in most of our towns. [LB256]

SENATOR BLOOD: All right. Well, it's been my experience that there is a procedure, and usually somebody, say the building inspector or somebody from the planning department, will come and give them warnings and say, we want you to fix that gutter, we want you to not board up your windows but to replace those windows. They receive many, many, many warnings frequently over years and years. So the person that owns that property has ample opportunity to fix that property before it becomes an issue that the city council will take up and discuss. And we have had that happen in Bellevue. And I can tell you that it's never been an issue that a developer came in and said, hey, let's bring the hammer down, let's make sure that they take care of this property; they don't, let's take it in front of the council. It's a matter of, hey, here are liens that have been placed on the property because the city has had to come up and clean it up. The city has had to come and repair something. The city has had to come and remove the debris. And then the person not only has refused to fix it but has refused to pay any liens. And then the city has few choices except to tear down the property, which of course is a cost to the taxpayers; or take over the property, which rarely happens; or to utilize resources such as the land banking. So I understand your concerns. But speaking from experience and having sat on that council, it's very frustrating to municipalities because the process is so long and the people can continue to not do anything and continue to ignore all warnings and continue to ignore all liens, and ultimately it comes down to the taxpayers. [LB256]

SENATOR SCHUMACHER: Is that a question? [LB256]

SENATOR BLOOD: The first part was the question and now I'm just answering it. (Laughter) So I appreciate you. I would yield the rest of my time to Senator Briese.

SENATOR LINDSTROM: Senator Briese, you're yielded 2:25. [LB256]

SENATOR BRIESE: Thank you, Senator Blood, I appreciate that. And again, you know, it's easy to minimize what we're trying to do here, to point out flaws in it, to nitpick at the bill. But again, we're trying to set up parameters to allow these municipalities to adopt these bills as they see fit. It's a budget neutral...or excuse me. It's a fiscally conservative way of doing it. We're not sending

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anybody a check. You know, we sent...you know, we put that grant in place last year. We voted...I think we voted that out of here 49 to nothing. We all supported it; it was a good bill. I cosponsored it. But in this situation...if money grew on trees, we wouldn't be here talking about this today. Money doesn't grow on trees. We need to find ways to help our communities address the housing shortage across rural Nebraska and this is a fiscally conservative way in which we can help address that shortage. Thank you. [LB256]

SENATOR LINDSTROM: Thank you, Senators Schumacher, Blood, and Briese. Senator Groene, you're recognized. [LB256]

SENATOR GROENE: Thank you, Mr. President. I support LB256. We have an instance in North Platte, we have the grand old hotel, the Pawnee, was the center of the social life for North Platte for decades around the railroad town. It is owned been an LLC called North Platte Assisted Living. It was closed down, been sitting vacant for three years, going on three years. The taxes have been purchased by...because they haven't been paid. City officials, the fire department, have been trying to find out who owns that hotel. It is an LLC registered with the Secretary of State that hasn't paid its fees, its organizational fees for the last couple of years, so really nobody owns it, but somebody owns it. There's no contact. The register of the LLC at the Secretary of State do not answer their phone. Two of them have deceased, and we're sitting with a hotel that's a fire hazard that we have developers want to redevelop it. Never say never, but I'd like to see historical tax credits used for it. It could be the redevelopment that we need. TIF could be used in the center of our downtown. The city has no way to contact anybody who has a key to the front door. We need some type of tools to give local cities that can force a court action or something, somebody to step forward and provide a key to the front door for the fire department to do an inspection. Private property, yes, but somebody has to own the private property. In our case, redevelopment of our downtown is being held up for three years until the property goes on the courthouse auction for back taxes. Is that good? No. So if this would in anyway put pressure or allow my city, one of my cities, North Platte, to force somebody to step forward and say, we own this, we are responsible for the building, for the windows, for the taxes. There's nobody. There's flaws in our LLC laws, folks, also, when people can only hide behind them but also disappear behind them. So I fully support Senator Briese and Senator Wayne's amendment. We need more tools to force people to take responsibility for personal property. Thank you. [LB256]

SENATOR LINDSTROM: Thank you, Senator Groene. Seeing no one else in the queue, Senator Wayne, you're recognized to close on AM452. [LB256]

SENATOR WAYNE: Thank you, Mr. President. I urge you to vote green for no other reason as a historic moment just happened. For those who don't know what that historic moment was, Senator Groene and the League agree on a bill. (Laughter) So that should say that Senator Briese

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has did tremendous work in bringing the parties together, making sure that the realtors, the bankers, and the League and Senator Groene, all are on the same page. So with that, I urge you to support green. [LB256]

SENATOR LINDSTROM: Thank you, Senator Wayne. The question is, shall the amendment to LB256 be adopted? All those favor vote aye; all those opposed vote nay. Have you all voted that wish to? Please record. [LB256]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB256]

SENATOR LINDSTROM: Returning to LB256 as amended. Seeing no one else in the queue, Senator Briese, you're recognized to close on LB256. [LB256]

SENATOR BRIESE: Thank you, Mr. President. Colleagues, I'd ask again for your green light on this bill. We're not sending anybody a check; it's budget neutral. Folks on the front lines of economic development obviously feel the need for this tool. It will help communities maximize their housing stock. It's a fiscally conservative approach that will help us to grow our state and it will allow local control, giving communities the option of enacting these ordinances and flexibility in how they want to design these ordinances. Thank you, again, and I'd ask for your green light. Thank you, Mr. President. [LB256]

SENATOR LINDSTROM: Thank you, Senator Briese. The question is, shall the advancement... [LB256]

SENATOR BOLZ: Record vote. [LB256]

SENATOR LINDSTROM: Mr. Clerk, there has been a request for a record vote. The question is the advancement of LB256 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted that wish to? Please record. [LB256]

CLERK: (Record vote read, Legislative Journal page 485.) 40 ayes, 0 nays, Mr. President, on the advancement of LB256. [LB256]

SENATOR LINDSTROM: LB256 advances. Mr. Clerk, we'll proceed to General File, LB157. [LB256 LB157]

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CLERK: LB157 is a bill originally introduced by Senator Friesen. (Read title.) The bill was introduced in January of last year, referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. I do not have committee amendments, but I do have other amendments to the bill, Mr. President. [LB157]

SENATOR LINDSTROM: Thank you, Mr. Clerk. Senator Friesen, you're recognized to open on LB157. [LB157]

SENATOR FRIESEN: Thank you, Mr. President. I'm here to introduce LB157 and urge you to advance the bill to Select File. LB157 would amend provisions of the Nebraska Prepaid Wireless Surcharge Act. It relates to the collection of the surcharges paid when customers purchase prepaid wireless telephones. Currently, two surcharges are administered by the Public Service Commission, the wireless E-911 surcharge and the Telecommunications Relay System surcharge, are collected at the point of sale. LB157 would provide that the third surcharge, the Nebraska Universal Service Fund surcharge, would also be collected at the point of sale by the retailer. The bill will allow retailers, whose association favored and testified in favor of the bill at the hearing, to retain 3 percent of the Universal Fund surcharge to cover the fees paid to credit card processors, just like they do for the other surcharges. It also creates a new and improved annual remittance process for small retailers that collect less than \$1,000 in surcharges in a year. It allows them to remit on an annual basis instead of a monthly basis. You know, some of those checks that came in were \$1.50, \$1.12 a month and it was a burden on their reporting process, I feel, to send in that kind of a small amount as a fee. So, Public Service Commission has estimated a negative fiscal impact on the Nebraska Universal Service Fund if this bill passes. Its fiscal note is based on the retailers 3 percent fee and the .5 percent that goes to the Nebraska Department of Revenue for their administration of the program. However, most wireless companies don't break down remittances by prepaid and postpaid services. The PSC really has no way of knowing whether it is currently collecting all that it is owed in the prepaid phone transaction. Other states that have passed similar legislation have seen increased transparency and I believe this bill could actually increase Universal Service Funds because of the higher certainty that the money will be remitted. When we changed the E-911 fee to point-of-sale collection, the PSC estimated a loss of \$40,000 due to fees retained by the Department of Revenue and retailers. However, revenue actually increased by almost \$400,000 during the next fiscal year. I believe LB157 is good policy and hope you advance it to Select File. [LB157]

SENATOR LINDSTROM: Thank you, Senator Friesen. Mr. Clerk. [LB157]

CLERK: Mr. President, Senator Friesen, I have AM1693 as your first amendment, Senator. (Legislative Journal page 479.) [LB157]

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SENATOR LINDSTROM: Senator Friesen, you're recognized to open on your amendment. [LB157]

SENATOR FRIESEN: Thank you, Mr. President. What AM1693 does is just clarifies some language in there and it inserts the words "rate of the." And it's just clarifying language to make sure we understand what those fees mean. It's very simple, cleanup language. [LB157]

SENATOR LINDSTROM: Thank you, Senator Friesen. Senator Hilgers, you are recognized. [LB157]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I just want to speak briefly on this bill. I voted against LB157 in committee, and the reason that I did so was because of the potential negative impact that it would have on Universal Service Fund collections. I will vote green today, and the reason is that the parties are attempting to work through a compromise that would help mitigate that impact and would help reach a resolution on this particular matter, or this bill. And so I've agreed to vote green today, but I reserve...I will withhold my vote on Select File and on Final Reading depending on the outcome of that compromise. And if no compromise is reached, I will take another look at the bill and reserve the right to go back and vote red again. So on General File, I did want to clarify it because there were a couple of us who voted against this in committee. I'm going to vote for it today and those are the reasons. Thank you, Mr. President. [LB157]

SENATOR LINDSTROM: Thank you, Senator Hilgers. Senator Schumacher, you are recognized. [LB157]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. It occurs to me that this probably is a good time for some of you to learn what is it we're talking about when we talk about the Nebraska Universal Service Fund. It's been one of my favorite subjects. I must confess defeat. The phone lobby is just too powerful. But maybe sometime in the course of your service here, you will have a chance to critically look at this particular fund. Just what is it? How much money does it collect? It has the highest rate of any such fund in the nation. It's varied between 40 to 70 million dollars over time. And here's a little bit of its history. Back in, I think it was like the late '90s maybe, the local landline companies, and there's about 40 of them in the state, they saw the handwriting on the wall. Cellular phones were emerging, the Internet was emerging, and they were dead ducks. And they knew they just couldn't adapt without a big subsidy. So what happened? They came to the Legislature very, very cleverly and said, would you allow us to assess each other to help the poor, rural phone companies out? Do you want to know how poor? Ask the Public Service Commission for the April 30 report they have to file and just see how poor they are. But let's let the phone companies work this out between the bigger

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phone companies in the metro area and these poor, little guys. And the Legislature said, fine, let the phone companies work it out back and forth. And then the Public Service Commission said, oh, by the way, the phone companies don't have any money to work this out. We're going to assess a fee of 6.95 percent on the consumers to give the phone companies the money to give to the poor, rural phone companies. All right. If you look at the fiscal note on this, you see the 3 percent amounts to about, I think it was, \$35,000 I think. Anyway, you do the division, It's \$10 million that's supposedly brought in just from these kind of sales we're dealing with here. I'm unclear whether or not that's new money or if that is old money. But at any rate, it's a huge amount of money. And who pays it? The consumers, the businesses, the industries in basically the urban areas and principally Omaha and Lincoln. It is a major tax. And because it's a major tax, it's distributed out very generously to the local phone companies. What happens is that they have plenty of money. And if you go to the Nebraska Accountability and Disclosure Commission, maybe if you go to some of your own campaign records, you will see that it's very liberally distributed to legislative candidates and to gubernatorial candidates and to political parties. It is not needed. We have cellular service. We had a whole bunch of providers that were put out of business because who wants to compete with a subsidized provider? We have a situation where cable companies are now delivering to any kind of urban area or even town area service over cable facilities. They don't get much, if any, of this money. This is a humongous subsidy to archaic local phone companies... [LB157]

SENATOR LINDSTROM: One minute. [LB157]

SENATOR SCHUMACHER: ...who happen to just have a darn good spiel to tell to the Legislature back in the late '80s or in the late '90s. We've spent over a billion dollars trying to promote broadband in Nebraska, something that could be done very efficiently by the local power companies, but we won't let them do it. You, in this bill, and there's nothing wrong with the bill, but the idea of the Universal Service Fund and this huge funding for this boondoggle exists. If we were smart, we'd authorize the public power companies to do it, the rest in rural areas, and we'd cut out this subsidy which has to be a drag on economic development in our urban areas, a 6.95 percent surcharge tax on business activity. [LB157]

SENATOR LINDSTROM: Time, Senator. [LB157]

SENATOR SCHUMACHER: Thank you. [LB157]

SENATOR LINDSTROM: Thank you, Senator Schumacher. Seeing no one else in the queue, Senator Friesen, you are recognized to close on AM1693. Senator Friesen waives closing. The question is, shall the amendment to LB157 be adopted? All those in favor vote aye; all those

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opposed vote nay. There's 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. [LB157]

CLERK: 23 ayes, 1 nay to place the house under call. [LB157]

SENATOR LINDSTROM: 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 Bolz, would you please check in. Senators Watermeier, Morfeld, Geist, Kuehn, Vargas, Wishart, Briese, Smith, Scheer, Larson, and Linehan, the house is under call. Senator Friesen, would you like to take call-in votes? [LB157]

CLERK: Senator Watermeier voting yes. Senator Bolz voting yes. Senator Scheer voting yes. [LB157]

SENATOR LINDSTROM: Record, Mr. Clerk. [LB157]

CLERK: 26 ayes, 0 nays on adoption of Senator Friesen's amendment. [LB157]

SENATOR LINDSTROM: The amendment is adopted. Mr. Clerk. Raise the call. [LB157]

CLERK: Mr. President, Senator Friesen would move to amend with AM1718. (Legislative Journal page 486.) [LB157]

SENATOR LINDSTROM: Senator Friesen, you're recognized to open on your amendment. [LB157]

SENATOR FRIESEN: Thank you, Mr. President. So as we were going through the bill again and looking at language, we found an error in how things were worded and it talks about "the inverse of" in how it calculates the percentage. And I guess here's a point that maybe I would like to make about our Fiscal Office. It seems everyone missed this and so this change will get the bill back to where it should be, but the fiscal impact would have been quite a bit different if this language would have stayed in there. And again, the fiscal note, no one seemed to catch this until today. So, I would appreciate your support of this correction in how we fix the formula. Thank you, Mr. President. [LB157]

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SENATOR LINDSTROM: Thank you, Senator Friesen. Senator McCollister, you're recognized. [LB157]

SENATOR MCCOLLISTER: Thank you, Mr. President. Good morning, colleagues. In another life, 2008, I ran for the Public Service Commission. What most of us don't realize is our USF fees are second highest in the entire country, second highest, and that's a bunch. I think we pay in the neighborhood of 25 percent of a bill is the Universal Service Fund and some other related fees. And I think in the long term we need to take a good look at those Universal Service fees because, you know, even though that may generate \$35 million, we still have a significant number of areas that aren't covered as well as it should be. And so I'm looking for a fix on that. I'm looking that we at some point address that issue because rural areas need broadband just as much as the urban areas. Thank you, Mr. President. [LB157]

SENATOR LINDSTROM: Thank you, Senator McCollister. Senator Albrecht, you are recognized. [LB157]

SENATOR ALBRECHT: Thank you, President. Can I ask a question of Senator Friesen? [LB157]

SENATOR LINDSTROM: Senator Friesen, would you yield to a question? [LB157]

SENATOR FRIESEN: Yes, I would. [LB157]

SENATOR ALBRECHT: I noticed that this didn't come out unanimous out of your committee. Can you speak to why there were three nays? And one of the opponents would have been somebody from the rural area where I live, so I guess I'd just like some clarify on why they were not on board. [LB157]

SENATOR FRIESEN: I think the biggest reason was the negative impact of the fiscal note. They saw it as damaging to the Nebraska Universal Service Fund, and I can't speak for them, but that was the theme that I remember during the discussions was the impact of the fiscal note. And I do disagree with that fiscal note, but it is what it is. [LB157]

SENATOR ALBRECHT: And is there any lawsuit pending at this time? [LB157]

SENATOR FRIESEN: Well, that's part of the negotiation here is the wireless companies do have a lawsuit that they have placed a stay on. At the current moment, we're working to clarify some

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things, but if that lawsuit is lifted, it would save the Universal Service Fund a lot more money than what we're talking about here. [LB157]

SENATOR ALBRECHT: Okay. Thank you. Thank you. [LB157]

SENATOR LINDSTROM: Thank you, Senator Albrecht and Senator Friesen. Senator Schumacher, you're recognized. [LB157]

SENATOR SCHUMACHER: Thank you, Mr. President. Senator McCollister raised a good issue. The whole game of this was supposed to be initially to keep like 96 or 97 percent of the people connected to their local landlines. Go back and even read this bill, read the statute, that's the purpose of the Universal Service Fund. We know that people drop off landlines one right after another right now, so it's been another failure in keeping 96 percent of the people connected. But with reference to rural broadband which is trying...is how it's trying to be massaged, rural broadband may actually be hindered by the Universal Service Fund, because as long as you have an extra 40, 50 million coming into your group of 35, 40 little phone companies, you have...and that subsidy gives you an edge over some of your competitors, you're not going to bust your rear end trying to hurry on and bring broadband to those communities. You're going to carry this out as long as possible. It's free money, basically coming from Lincoln and Omaha. And it is a disincentive to the deployment of broadband in rural areas at a rapid pace. It is a dysfunctional thing that grew out of the fact that in olden days you had a central office that had a strand of wire going out to the various farmsteads and houses. Initially it was a shared wire so it was party lines. And there was a whole bunch of these little phone companies that sprung up. And then you had Mabel sitting in the central office and when you wanted to make a long distance call, if you remember, I think it was Andy Griffith's show, she plugged the wire in to the long distance wire and that's how you made the call. And she radioed ahead or signaled ahead to the next long distance operator, hey, route this one to New York City. That is an archaic mechanism. It's called a switch network, it's not a packeted network, but this is what is underlying here. And, you know, bless you if any of you take on this cause because it is something that needs reformation. And if you do, you will find the Transportation Committee really, really, really, really, really, really, really lobbied to kill your bill. But it is something where in a time of shortage, if we are wasting 30 to 50 million dollars of these assessments, which we could put a stop to and, instead, call them a communication tax and put it into our General Fund. But we're wasting that money right now on a highly inefficient system that is really hard to study. There's indications of Performance Audit Committee was going to study it, but I'm not sure whatever happened to that result. The study didn't get too deep. This is money talking. The bill is good. Supposedly they're supposed to submit this money anyway. But this idea of this Universal Service Fund being a special sacred cow that's subsidized, and I challenge any of you, if you got time to kill, to go request of the Public Service Commission those April 30 reports that every phone company has got to submit. Now, they'll initially say, oh, it's privileged, it's confidential--it

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was submitted on yellow paper, that's how you show it's confidential--and we can't tell you. But there is no basis for that confidentiality. [LB157]

SENATOR LINDSTROM: One minute. [LB157]

SENATOR SCHUMACHER: And you certainly deserve to see who you're subsidizing and who you're giving and how profitable they are, this 30, 40, 50 million dollars a year to billion dollars over time. This is one of the things that if there were reformation, if there were reform, should be looked at. Thank you. [LB157]

SENATOR LINDSTROM: Thank you, Senator Schumacher. Seeing no one else in the queue, Senator Friesen, you're recognized to close on your amendment. [LB157]

SENATOR FRIESEN: Thank you, Mr. President. Again, the amendment is just a fix to the current language. I will say that the Transportation Committee will have a bill coming out dealing more with the NUSF Fund, but I will disagree with Senator Schumacher in that Universal Service Fund does go to more things than just rural broadband. It also subsidizes low-income phone service in all municipalities and it can only be used really outside of the city limits in those last mile service of broadband. And so when you're talking last mile, you're not going to have companies fighting over those because there is no economic sense to go out there whatsoever. And without some sort of subsidy, there will be no broadband expansion in those last mile areas. So we can have that discussion on another bill. Again, this bill just clarifies again the formula on how we divide up the money on the formula and make it correct. Thank you, Mr. President. [LB157]

SENATOR LINDSTROM: Thank you, Senator Friesen. The question is, shall the amendment to LB157 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB157]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Friesen's amendment. [LB157]

SENATOR LINDSTROM: Now return back to LB157. Senator Bostelman, you're recognized. [LB157]

SENATOR BOSTELMAN: Thank you, Mr. President. I also voted no on this in committee. And I would just like it for the record to be known that at this point in time on General File, I will support the bill. There are negotiations, things that are happening. And I want to make sure that

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as it stands right now, that I will vote green on this bill, and that we'll see how it comes back up on Select File and see how the negotiations, things that are happening with this bill, how those come out. But right now, I will vote green on the bill and that is the reason why. Thank you. [LB157]

SENATOR HOWARD PRESIDING

SENATOR HOWARD: Thank you, Senator Bostelman. Seeing no one else in the queue, Senator Friesen, you're recognized to close on LB157. He waives closing. The question before the body is LB157. All those in favor say aye...vote aye; all those in favor (sic--opposed) vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB157]

CLERK: 32 ayes, 0 nays on the advancement of LB157. [LB157]

SENATOR HOWARD: LB157 advances. Items for the record? [LB157]

CLERK: Thank you, Madam President. Enrollment and Review reports LB758 as correctly...or excuse me, to Select File with E&R amendments. Have a motion to withdraw LB821 by Senator Hughes. That will be laid over. Hearing notice from Natural Resources Committee, confirmation hearing notice. And two new resolutions: Senator Clements, LR306, LR307; both will be laid over. That's all that I have, Madam President. (Legislative Journal pages 486-488.) [LB758 LB821 LR306 LR307]

SENATOR HOWARD: Thank you, Mr. Clerk. Next bill.

CLERK: Madam President, LB480 was a bill originally introduced by Senator McCollister. (Read title.) Introduced on January 17 of last year, referred to the Banking, Commerce and Insurance Committee. The bill was advanced to General File. There are committee amendments, Madam President. (AM566, Legislative Journal page 704, First Session, 2017.) [LB480]

SENATOR HOWARD: Senator McCollister, you are welcome to open on LB480. [LB480]

SENATOR MCCOLLISTER: Thank you, Madam President. Good to see you up there. I want to thank Chairman Lindstrom and my fellow members of the Banking, Commerce and Insurance Committee for their unanimous vote to advance LB480 to General File. I would also note that there was no opponent testimony at the hearing for this bill. I introduced LB480 last year at the request of Douglas County Board of Commissioners. This bill is a reintroduction of a bill, LB341 by Senator Howard in 2015. Competing priorities that year prevented the bill from being

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advanced to the floor. As introduced, LB480 would curb escalating healthcare costs for those who are incarcerated in the county correctional facilities. This would only apply to individuals with private health insurance and only for the time period before the disposition of their case. LB480 would not prohibit the insurance carrier from canceling coverage after a policyholder is convicted of a crime. If an individual is found guilty, their health insurance cost would become the full responsibility of the political subdivision in which the sentence is to be carried out. The fiscal note suggests that any impact would be slight. Since current law does not prohibit cancellation of these policies while criminal charges are pending, we don't know how many times existing policies may have been canceled. Not surprisingly, the Douglas County correction staff believe that only a small number of criminal defendants have private health insurance. By prohibiting cancellation while the charges are pending, LB480 would make it possible to retain the benefits of private health insurance coverage for an unknown number of cases. LB480 would allow counties to reduce spending on jail inmates' healthcare and repurpose the dollars saved. Ultimately, county taxpayers are paying for inmate healthcare during their period of incarceration. It seems a simple matter of fairness for private insurers to continue existing healthcare coverage for an inmate prior to conviction. I'm grateful to the committee counsel, Bill Marienau, for crafting the committee amendment AM566 and support the improvements it made to LB480. Thank you. [LB480]

SENATOR HOWARD: Thank you, Senator McCollister. There are committee amendments pending. Senator Lindstrom, as Chair of the Banking, Commerce and Insurance Committee, you're recognized to introduce them. [LB480]

SENATOR LINDSTROM: Thank you, Madam President. The committee amendments to LB480 become the bill. They restructure and tighten up provisions of the bill as introduced. The amendments would provide that health insurer may not cancel the coverage of an insured who is in temporary custody on the basis of such custody, or deny coverage of any medical service or supplies covered by the policy and received while the insured is in temporary custody if such services or supplies were provided to the insured by an employee or contractor of a jail who meets the credentialing criteria of the health insurance policy. To provide for better clarity, the amendment set out four definitions: health insurance policy, jail, pending disposition of charges, and temporary custody. Temporary custody would mean being in the custody of a jail pending disposition of charges. Then pending disposition of charges would mean the time up until the sentencing would not include any time after sentencing may occurred due to appeals. The amendments would provide that insurer shall pay claims for covered services or supplies provided by an out-of-network healthcare provider to an insured who is in temporary custody in the amount that is not less than 100 percent, instead of 115 percent, of the Medicare rate for the services or supplies. The amendments would provide that the insurer may cancel coverage or deny coverage for services or supplies provided to an insured who is incarcerated or imprisoned after the disposition of charges. This is essentially a reaffirmation of current law. Those are the

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committee amendments. I would urge the adoption and then the advancement of LB480. Thank you, Madam President. [LB480]

SENATOR HOWARD: Thank you, Senator Lindstrom. There is an amendment to the committee amendment. Senator McCollister, you are recognized to open. (AM1603, Legislative Journal page 396.) [LB480]

SENATOR McCOLLISTER: Yeah, thank you, Madam President. AM1603 to committee amendment AM566 would simply change the operative date to 2019 rather than 2018. [LB480]

SENATOR HOWARD: Thank you, Senator McCollister. Seeing no discussion in the queue, Senator McCollister, would you like to close on the amendment? He waives closing. The question before the body is AM1603. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB480]

CLERK: 30 ayes, 0 nays on the adoption of the amendment to the committee amendments. [LB480]

SENATOR HOWARD: The amendment is adopted. We're back to the committee amendment. Seeing no members wishing to speak, Senator Lindstrom, you're welcome to close. Senator Lindstrom waives closing. The question before the body is the amendment to LB...the committee amendment to LB480. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB480]

CLERK: 30 ayes, 0 nays on adoption of committee amendments. [LB480]

SENATOR HOWARD: The committee amendment is adopted. Moving back to LB480. Seeing no one else in the queue, Senator McCollister, you're recognized to close. He waives closing. The question before the body is the advancement of LB480. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB480]

CLERK: 30 ayes, 0 nays, Madam President, on the advancement of LB480. [LB480]

SENATOR HOWARD: LB480 advances. Next item, Mr. Clerk. [LB480]

CLERK: Madam President, LB51, a bill by Senator Schumacher. (Read title.) Introduced on January 5 of last year, referred to the Revenue Committee, advanced to General File. There are

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Revenue Committee amendments pending. (AM267, Legislative Journal page 708, First Session, 2017.) [LB51]

SENATOR HOWARD: Senator Schumacher, you are recognized to open on LB51. [LB51]

SENATOR SCHUMACHER: Thank you, Madam Chair, members of the body. Before I get to...directly to the opening, I would like to point out that this is LB51, has nothing to with area 51. That's in Judiciary Committee this afternoon. The other thing is my mother has been watching this, and she's been complaining. And she said all I ever see when I turn on the TV is Senator Chambers. How come you never talk? So after this morning, maybe I won't have to listen to that complaint for a while. This bill was brought at the behest of no one, and it is a very simple bill. It comes from my days as county attorney. When you have taxes that are unpaid on a piece of property, what happens is that the county says, anybody who wants to pay these taxes, and they do this in a formal kind of procedure after some advertising, you come in and you can buy these taxes at what they call an auction, even though it isn't much of an auction because there's no bidding. You just get your turn in line to buy the taxes. And when you buy the taxes, you pay the taxes, and you get a certificate that says you own the taxes, and after a respectable period of time, I think it's like three years, you can go after the person who owns the land because you really have a first mortgage of a tax on that land. And you get 14 percent interest on your money. Where else can you get 14 percent interest on a first mortgage today? Hardly at all. Well, why is it 14 percent? It's 14 percent because it went up from less than 11 percent to 11 percent in like 1981. What was happening is people were using the tax sale interest as a bank. Interest rates at the banks were 14, 15, 16 percent. And so you would be better off not paying your taxes and pay the county 11 percent than going down to the bank and borrowing money at 16 percent to pay the county off. And so there was some abuse being built up. What happened, they raised the rate to 14 percent to try to stave that off. Now that interest rates have dropped way down, well, there's just a big bonus there. A few years ago I tried to say, okay, let's just lower the 14 percent to a more reasonable rate, more in line with what a first mortgage would be, plus a little bonus for the aggravation. The problem with doing that was that this 14 percent number is referenced in a bunch of other statutes as an interest rate on things in those particular statutes. And I bit off more than I could chew because a lot of the people who were affected by...had nothing to do with tax rates, but maybe like workmen's comp rates and things like that. So this bill is reasonably simple. It tries to bring in line the fact that there may be some properties that are marginal, very, very few from my experience, but that you need 14 percent, be able to start out at 14 percent. But there are a lot where this 14 percent is one heck of a bonus. So this allows for a bid-down procedure where there's a number of people that show up at one of these auctions and it starts at 14 percent and the county treasurer acting kind of as the auctioneer says, does anyone want to bid less? You can have it, if you bid less. And they can take it down, with the committee amendment, in increments, I think, of a half a percent. Yes, I want it for 13 percent. Somebody else says, I'm happy with it for 12 percent. And they bid it down until there's no more

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bidders. It's kind of finding where the free market sets the price for the tax sale certificate. The spread between whatever it sells for and the 14 percent goes to the county. That way, we don't mess with the 14 percent number that's referenced in a bunch of other statutes unrelated to taxes. Very simple principle: It uses market forces to determine the fair rate of interest between multiple bidders. If there's only one bidder, they'll probably go for 14 percent; but if there's two, we can find the market rate. And then it contributes a bit of property tax relief by the spread on the interest between what it sells for and the 14 percent. That's the proposition before you. It would probably save a little property tax money, bring a little funds into the county, and let property...or let the interest rate float with the market. I'd ask for your support on LB51. Thank you. [LB51]

SENATOR LINDSTROM PRESIDING

SENATOR LINDSTROM: Thank you, Senator Schumacher. As the Clerk stated, there are committee amendments. Senator Smith, as Chair of Revenue, you are welcome to open on AM267. [LB51]

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. LB51 was advanced with the committee amendment on a vote of 6-2. AM267 is an effort to address concerns from NACO and, of course, to eliminate some of the conspiracy theories that follow in LB51. The amendment strikes language allowing for a bid down for the amount of taxes due to purchase a tax sale certificate. It also clarifies the bid-down process for interest on such transactions. That's all that the amendment does to improve the nature of the bill, and I ask for your green vote on AM267. Thank you, colleagues. Thank you, Mr. President. [LB51]

SENATOR LINDSTROM: Thank you, Senator Smith. Seeing no one else in the queue, Senator Smith, you're...Senator Smith waives closing. The question is, shall the amendment to LB51 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted that wish to? Record, Mr. Clerk. [LB51]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB51]

SENATOR LINDSTROM: Returning to LB51 as amended, Senator Williams, you're recognized. [LB51]

SENATOR WILLIAMS: Thank you, Mr. President, and good morning. You know, Senator Schumacher has a great opportunity that some of us don't have each year, or each day, and that's

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driving back and forth to Columbus and we've always accused him of using that time to come up with a lot of ideas. And I'm glad your mother may be watching today because you might get to speak for a long time on this bill. Those ideas, of which there are a lot of them, you know, every once in a while there's a good one in there. This isn't one of them. Many of us have had an opportunity to deal with tax sales in our communities from the banking side and what I will virtually guarantee you will happen if we adopt this proposal is we will be eliminating a number of the potential buyers that we have now in our communities that are using this opportunity to buy and own this property eventually. There are large companies in our state that operate and are designed for the business of buying for-sale tax certificates like this. They will have the ability to bid these down and consequently it will be my feeling that they will end up owning a majority of them. But on those properties that are really important for a community, those properties that we were talking about with Senator Briese's abandoned property bill and some of those, those aren't so prime properties. And I would suspect that those people wanting to make money in the large sense won't be as active in that bidding process. In our county, when you attend one of these meetings, they use a round robin kind of system of everybody picks a number and if you're number one, two, three, they start going around the table when they go down the properties. Yes, you can pass on a property, but it's pretty well-known that if you're going to pass on a property, there may be a price to pay later. So people, when their property...when their number comes up, they bid and they accept that property. And I use bid loosely because, as Senator Schumacher said, it is 14 percent. There is not a bidding down of that process. I think we are taking a system that is currently working and trying to fix something that doesn't need fixing. And we oftentimes look for solutions to problems that don't exist, and this is one of those. I would encourage each of you to think hard about this and look at your county and how it is functioning. And if there is a problem, if there's a problem, we can look at fixing it. If there's not a problem, let's move on to another day. Thank you, Mr. President. [LB51]

SENATOR LINDSTROM: Thank you, Senator Williams. Senator Friesen, you're recognized. [LB51]

SENATOR FRIESEN: Thank you, Mr. President. When this bill came before Revenue, we listened to the testimony and most of it made sense to me. I had never participated in that process or knew that...how the process worked and I think Senator Williams described it very accurately. And I did support the bill coming out of committee and now I will be having reservations on that move. I've recently, you know, after it passed out of committee, I've been contacted by numerous individuals who as a part-time supplement to their business would go around the counties nearest them and participate in these tax sales. And they've kind of created a sideline business doing this. And they know the properties. They're willing to take those properties. And if they end up with them, they improve them and they move them on to the market, do what they need to do with them. But they've been doing this for a number of years. And there is a whole circle of these people that do this all over the state and it is kind of a sideline business to numerous other small

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businessmen, I will call it. So I'm a little hesitant to break up that process. It seems to be working. I don't know if anyone can calculate the fiscal note that would be to counties that would give them some more money, but I do think if these large banks do come in and be able to bid on these properties and bid the interest rates down, they're only going to pick those prime properties that they're interested in, and the rest of them will be left for someone else to pick up. And by pushing these other people out of the market, and in the way Senator Williams described it, you are expected to take that property when it comes your turn in the round robin process they use. And so, I'm a little reluctant, you know, to support something like this knowing...not knowing what's going to happen to those small operators that were doing this. And of those properties that are not the most desirable properties, what will happen to those and how will that be handled? And those are some of the questions I have. And so I think the process had been working really well. And now we are going to limit it to more of the larger banks that have the ability to buy that interest rate down. So with that, thank you, Mr. President. [LB51]

SENATOR LINDSTROM: Thank you, Senator Friesen. Mr. Clerk for announcements. [LB51]

ASSISTANT CLERK: Mr. President, an amendment to be printed from Senator Kolterman to LB743. Name adds: Senator McDonnell to LB695; Senator Morfeld to LB1001. (Legislative Journal pages 488-489.) [LB743 LB695 LB1001]

Mr. President, priority motion: Senator Watermeier would move to adjourn until Thursday, February 1, at 9:00 a.m.

SENATOR LINDSTROM: You've heard the motion to adjourn. All those in favor say aye. All those opposed say nay. We are adjourned.