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Floor Debate  
February 28, 2018

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[LB17 LB78 LB104 LB158 LB161 LB275 LB285 LB295 LB310 LB345 LB389 LB439A  
LB472 LB480 LB486 LB618 LB670 LB685 LB690 LB710 LB714 LB729 LB744 LB757  
LB758 LB773 LB822 LB833 LB841 LB869 LB873 LB913 LB931 LB935 LB936 LB983  
LB1009 LB1015 LB1040 LB1051 LB1078 LB1084 LB1089 LB1100 LR6 LR266 LR293CA  
LR318 LR329 LR330 LR331 LR332 LR333 LR334]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-fifth day of the One Hundred Fifth Legislature, Second Session. Our chaplain for today is Pastor Perry Gauthier, the Capitol Ministries of Nebraska here in Lincoln, Nebraska. He is a guest of Senator Clements. Please rise.

PASTOR GAUTHIER: (Prayer offered.)

SPEAKER SCHEER: Thank you, Pastor Gauthier. I call to order the thirty-fifth 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. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER SCHEER: Thank you, Mr. Clerk. And are there any messages, reports, or announcements?

CLERK: I have but one item. Senator Quick would offer a new resolution, LR329, that will be laid over at this time, Mr. President. And that's all that I have. (Legislative Journal pages 789-790.) [LR329]

SPEAKER SCHEER: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR318. Colleagues, the cupcakes this morning are in honor of Senator Bolz's birthday, which is tomorrow not today, and they were made by Senator Bolz's mother again this year. They are delicious, I'm sure, as they have been every year. So congratulations, Senator Bolz, for another year. Senators, a little clarification just

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for informational sake. The note on that no later than 10:45 we will be moving to LB935. Clarification, LB158 was reprioritized this year as a 2018 priority. That started the clock over so that meant that the LB158 will meet its three-hour threshold if indeed it gets to that time period. So it is just not necessarily meaning it will, but if it does get to that point we will move on then to the next bill on the agenda. Just wanted to clarify so that people understood where we were, and we will go from there. First item, Mr. Clerk. [LR318 LB935 LB158]

CLERK: Mr. President, LB158 is a bill by Senator Pansing Brooks, relates to appointment of counsel for juveniles and standards for guardians ad litem. Bill has been discussed, Mr. President. I do have committee amendments, I have an amendment to the committee amendments from Senator Pansing Brooks. However, I have a priority motion. Senator Groene would move to bracket the bill until April 18 of 2018. [LB158]

SPEAKER SCHEER: Thank you, Mr. Clerk. Senator Pansing Brooks, would you give us a quick review of LB158, please? [LB158]

SENATOR PANSING BROOKS: Yes, I'd be happy to. Thank you, Mr. President. Again, we have an amendment that isn't up there yet, because once the bracket goes down, that's the amendment that allows a dollar court fee to create the Juvenile Indigent Defense Fund, makes it so that counties don't have to pay for the attorney. The other thing is if the county attorney wants to put a youth in diversion, no attorney is required. We keep hearing that over and over, and you'll get a piece of paper that shows what the process is on once a charge is filed against a child. They can either dismiss it, they can put...and then no attorney is required, they can put them into diversion and then no attorney is required. But if you put it into...if you take it into the courts, then my bill would require an attorney because a child needs to make an informed--it's in our statutes--an informed, understandingly, knowingly, and voluntarily they can waive if they understand it and they know what they're being asked to do and they're voluntarily doing it. So we keep hearing that the child doesn't get to retain the right to waive, that's not true. The child can waive counsel at any point. And I would argue that if it's serious enough for the county attorney to put it into juvenile court where all sorts of possible consequences are available, which you will see on the sheet that's coming out, there needs to be due process and that child needs to understand what's going on. I have diligently listened to the concerns about the costs, and this will fund it to make sure the counties will not have an increase. And the only opposition when this bill came forward was from NACO, and with the amendment they are now on-board with this bill. Corey Steel and Elaine Menzel from NACO have been outside ready to answer any of your questions and I appreciate it. And I'm willing to go to a vote when you want, but we can continue working on this, too, if that's what people desire. Thank you, Mr. President. [LB158]

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SPEAKER SCHEER: Thank you, Senator Pansing Brooks. Senator Groene, I would allow you 2:00, but you have a motion in front of us. So I'll let you make your introduction to bracket motion and your concerns with the bill. Senator Groene to open on your bracket. [LB158]

SENATOR GROENE: Thank you, Mr. President. You have heard a lot of the argument yesterday. Some of you weren't here, talked to a couple in the hallway that didn't know what all happened yesterday. We killed this bill, it died last year. Nothing has changed. It was allowed to come back this year, I do not know why. There are a lot of good bills that could have been heard in this time. An amendment has been introduced which we haven't heard yet, which you heard Senator Schumacher say it's flawed. You also heard others say it doesn't bring in enough money to cause the problem. You have also heard that it burdens one or two counties to fund it. Some of you might have seen Senator Chambers and I have a conversation afterwards, a friendly conversation. First, I'm going to apologize to a few people back home. I helped behind the scenes with a judge. The agreement was back home that that stayed private. The judge had a good, distinguished record, he's now deceased and I will not comment on that further no matter what somebody else says or tries to point out. I made a mistake yesterday. I'm upset with...Senator Chambers and I are on the same side here. I'm very upset with the Chief Justice of our Supreme Court. When this first came up three to four years ago, a lot of judges out there that was appointed by our Governor or a Governor was reappointed by the people, many of them in a vote of reapproval, contacted some of us senators with concerns about this. After that happened and the bill was defeated three or four years ago, the Chief Justice silenced those judges. It wasn't their place to get involved in the legislative process. He has his assistant out there lobbying right now for this bill. That is not his place. He has the power to overturn our legislation, that is his power. He should not be lobbying for legislation. Tells the judges they can't do it, they lose their citizenship. They can't contact their senators with the knowledge they know, and then he has his man out there lobbying. That is wrong. That is wrong. I passed out a handout to you. I got my county commissioner to send me...look at it. Lincoln County Juvenile Court costs. Since six years ago, '11, '12, our juvenile court cost was in we're about the...I don't know what county we are. We're in the top ten populationwise. Our cost was \$181,153. In six years it's gone to \$628,000, a 347 percent increase. Our legislation has consequences. We added things like court-appointed for juveniles, guardians. We created juvenile housing costs because we eliminated contracts with private entities. Court-appointed counsel for parents. From \$181,000 to \$628,000. We don't have that big a budget, folks. You know, we can discuss like a college classroom, a government classroom at maybe Wesleyan, Lincoln, or Doane, in a Utopia world of you have rights. I live in the real world, and so do most of you. What sounds good in a classroom, what sounds good in a debate, is not reality. You have a right to deny counsel. This will take it away. For young people, by the way, we have told these young people that they are so intelligent, so wise, so knowledgeable that you don't need your parents' help. You don't need your parents' input. Your parents can't talk to you and convince you not to use a lawyer. They can't talk to the parents. But now we're turning around saying you're not smart enough to figure out if you want

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to plead guilty or not guilty or have an attorney or not. That's what we're saying here. Senator Lowe made a point and he got jumped on about parents and families. Are we pro-family or not? The judge knows. The judge knows when a family is dysfunctional, and he will appoint an attorney. This has huge cost. Nobody else is doing it but Kansas, and they did it back in 2007 when they hiccuped and had Beselius (sic--Sebelius) as governor and it went completely left in the legislature for a while. The people reacted and that's changed down there, but they're paying the cost. Probably part of the reason Kansas is in trouble. We have a property tax problem, folks. We have a tax problem and then we shrug our shoulders and tell yeah, we got a property tax problem. And then the next day we vote on stuff like this. We send a mandate down to the county. I regret...and if I'm still here within the next four years, we're going to overturn that bill we passed a couple of years ago, some of that legislation. I'm going to try. I'm going to give the rights back to the kids and the family and the local decisions in our juvenile courts. This is absolutely terrible, feel-good. Let's all sit around at a wine and cheese party and solve the problems of our youth, people who have never been there, never ran with those kids. I did when I was younger. But they know what's best. They're going to give them a lawyer, they're going to create another job program for lawyers. We don't have enough lawyers out there. Not criminal justice lawyers...criminal lawyers. The money is in estate planning, the money is in wills, the money is in civil actions. I think we have eight out there. Look at the one line here where it says public defender, this last year was \$54,000. Our public defender never handled juvenile cases before, he just did adult cases. We passed that a couple of instances where if the juveniles breaks probation, he has to have a lawyer. Guess what happened, folks? Fifty-four thousand dollars added to our budget in Lincoln County because of the bill we passed two years ago. It has consequences. Have you talked to yours, your county commissioners in Madison County, Buffalo County? Have you? And seen what your budget has done because of the good will of the senators here, the wine and cheese crowd, who sits around and talks what they're going to do for the youths in Nebraska, the poor kids. I said in the Education Committee before, I'm tired of the word poor, poverty. That's another term for bigotry. Used to be minorities they used, then they used immigrants, the liberal left. And then they used single parents. That all became politically "incorrect" and now it's poverty. If you're a poor kid, man, you got no chance. You're all lumped together. If you have a bit of fiscal conservative in you, if you have a bit of personal rights in you, if you just have a remnant of freedom in you, vote no on this bill. So somebody came around with a yellow card and said, oh, I'm going to save the children. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR GROENE: I'm going to pay for it. What do you think? Well, last year you didn't pay for it. Maybe. That's meaningless, folks. This debate is why we're here. If we want to go around with yellow cards then why do we show up here? We have a debate and there is a reason we have a debate on this. So now if Senator Chambers wants to attack me that I didn't do this or that or I listened to one of my staff, he can go ahead and do it. But I'm not going to take the bait. I'm

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going to stick to this issue today. We are affecting Nebraskans. We're not affecting our relationship with another person at a wine and cheese party that the lobby throws for us and other senators. We are affecting the lives of Nebraskans. You know why the lobby gets us all together? So that we start voting for each other instead of the facts. [LB158]

SPEAKER SCHEER: Time, Senator. [LB158]

SENATOR GROENE: Thank you. [LB158]

SPEAKER SCHEER: Thank you, Senator Groene. Senator Bolz, you're recognized. Senator Bolz, you're recognized. [LB158]

SENATOR BOLZ: Thank you, Mr. President. I wanted to add to the voices who are articulating the importance of counsel for juveniles. And my perspective comes from doing some work on a piece of legislation that looks at juvenile life without parole. And I think, like many other states, it's time for us to consider changing our policy that currently allows juveniles to serve a life sentence without parole. And one of the things that I wanted to add to the conversation about LB158 is some of the things that a juvenile might not know and might not understand through the court system. So one of the things that I think is important to remember is that sometimes the courts can take into consideration mitigating factors for a juvenile. Some of those factors include the person's family and community environment, the person's ability to appreciate the risks and consequences of their conduct, the convicted person's intellectual capacity, and the outcome of a comprehensive mental health evaluation. And all of these things for a juvenile may be considered in sentencing. But if a juvenile doesn't have the right counsel or the right guidance it's very challenging for them to know what factors to tell people about. One of the things that I thought was really compelling in terms of juvenile sentencing is some of the research around juveniles who do commit crimes. Many of them, more than 25 percent of the juveniles who are currently serving life without parole, were convicted of a felony or murder of accomplice liability, meaning that they're not the primary perpetrators of the crime, which reinforces the idea that juveniles are more susceptible to peer pressure. Nearly 80 percent witnessed violence in their homes, more than half witnessed weekly violence in their neighborhoods, and 50 percent have been physically abused and 20 percent have been sexually abused. Now, that's for juveniles who have been sentenced to life without parole. But I think it's important to recognize the juveniles who are engaged in the justice system are products of their environment. And their brains are still developing, they're less capable of long-term planning. And it's a bad combination of not only being developmentally in a place where they may not be able to make all of the good decisions either in the circumstances of the crime or in response to the court system, but colleagues, one of the things that I think is very important to remember about what we know about juveniles who are involved in the criminal justice system is that they don't have the same

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family support. Statistically we know that they come from families who aren't as stable as the family that I was fortunate enough to grow up in. So when we're talking about right to counsel, we're not just talking about rights within the court system. We're also talking about an individual's right as a young person to get support and guidance from their community as a whole. And when juveniles come from more difficult family backgrounds they may need someone else within the court system, counsel to help them make good decisions, to help them understand what's going on, and to help them articulate how the mitigating factors that can be considered in their convictions or their sentencing should be articulated and explained to those making those decisions. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR BOLZ: So I support Senator Pansing Brooks in her efforts to pass LB158. I think it is wise policy and I urge the body to advance this bill. Thank you, Mr. President. [LB158]

SPEAKER SCHEER: Thank you, Senator Bolz. Senator Schumacher, you're recognized. [LB158]

SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. I'm not sure if this works or not. It's an idea. It's a sunrise in the east idea as I'm driving in from Columbus. But it strikes me that we have a job to do here and that is solve a whole lot of problems. Let's think about some of those problems: we've got a cash reserve that is going south, heading the wrong way and unless some miracle happens it's going to continue to go the wrong way. Pretty soon it's going to get to a point where it could be a real headache for you; a real one. We've got property taxpayers who pretty consistently now have been complaining and probably with some merit. We've got a bill before us that deals with court-appointed attorneys and diversion programs, the cost of which with or without the bill fall on the counties and the property taxpayer. Why is it that we rely upon the counties to pay for criminal defense and for diversion programs? Because the laws being offended, unless there are some city ordinance, are laws we pass. Think about it. Say you're out in, oh, Keith County, a few miles from Denver or from Colorado where marijuana is legal. Chances are the good people of Keith County don't much care one way or the other, but we're the ones that made marijuana illegal. A state patrolman comes and picks up somebody for marijuana. A state-paid judge sits and tries the person charged and the person is sent off to a state-paid penitentiary or before a state-paid probation officer. Why is it that the property taxpayer gets stuck for the diversion program or for the cost of the attorney? Okay? We really...that's a state expense whether we like it or not. It only became a county expense because that's the way things evolve, because courts used to be truly county courts with county-elected judges, and the county boards must not have had a good lobbyist. So we've got a mechanism to pay for that. If we took over that obligation the counties could reduce their levies. Now, where

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can we get that money? This requires, would require maybe even the steam to override a veto, I don't know. Maybe the Governor would like this, but I don't know. But Senator Briese has a bill sitting in Revenue Committee that is a little rowboat loaded with a lot of cinder blocks. But there are some of those cinder blocks that are really...probably should be oared across the river. I mean, there is potential for different taxes. Just one of them is an outright bump in the sales tax. Another one is a cigarette tax, another one is a candy bar tax. All kinds of taxes, lots of cinder blocks. But there is revenue available. Can from this fabric that we have before us, all of which has had hearings...we've had hearings on the issue of court-appointed attorneys and diversion programs. We've had hearings on the issue of some sources of revenue. We've had hearings on the issue of the property tax problem. We've had hearings on all of these things. Can we take this fabric and make a garment out of it? Can we, by amendment to this or a similar bill--but I think this one is as good a candidate as any--can we... [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR SCHUMACHER: ...take over the obligation of court-appointed counsel and diversion programs, levy a tax to pay for them, free up some property tax money at the county level, and meet the needs of these kids to the extent they have needs for defense attorneys being appointed for a can of Budweiser? Can we put this all together and make a bill out of this bill that meets a lot of objectives? I wouldn't mind having a little discussion on that, pro, con, indifferent, because we have the tools before us, all of which have had hearings. We can knit this together and get some good out of this, rather than batting our head against the wall with force a versus force b. So I'd like to hear a little discussion if you think this is worth anything. Thank you. [LB158]

SPEAKER SCHEER: Thank you, Senator Schumacher. Senator Erdman, you're recognized. [LB158]

SENATOR ERDMAN: Thank you, Mr. Speaker, and good morning. I'd like to make a few comments about Senator Groene's bracket bill. I am in favor of the bracket. I visited with Senator Pansing Brooks yesterday and perhaps the day before, and I had contacted a couple of county attorneys back home and visited with them. And she asked if I had contacted any public defenders and I had not, and I told her I would do so. So I did. I contacted one public defender that's an elected official and I contacted some who are contracted. And to a person, including the county attorneys and the public defender...here is an e-mail I got back from them and it says: Usually when a juvenile comes to court they and their family decide whether they want a lawyer after being advised of their right to a counsel. If they don't want one, the right is waived. The way I read this bill, there will always be a court-appointed counsel and then they can decide if they want the appointment or not later after the appointment has already been made. It goes on to say: I can tell you I'm not a fan of this because we're spending money for court-appointed

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counsel that's not necessary. If a child is caught with a cigarette, he doesn't need a lawyer to guide him through the process and he doesn't want one. They go on to say that this provision would cost small counties an extremely large amount of money. Senator Groene passed out his information from his county on what they're paying for public defender. Our county is smaller than Senator Groene's, we have about 5,000 people. As a county commissioner, our cost for public defender was in excess of \$200,000. Through some deliberation and cooperation of the other commissioners we decided that we would see if we could put it out for public bids, and we did. We had three law firms submit bids. And what we used to spend over \$200,000 on, we're spending about \$95,000, so that helped us a lot. But those public defenders don't have time to do all these things and it's not necessary. Our county is kind of isolated and Senator Groene made a comment about we don't have a lot of lawyers, and that is a fact. And so most of our counsel either comes from Scottsbluff or some other community that's 30, 40 miles away. And so to get counsel there is expensive, and it costs the taxpayers money. Senator Schumacher made a comment about county commissioners not having a good lobbyist. Well, Senator Schumacher, the county commissioners have no lobbyists. NACO is an organization that represents all elected officials. NACO has about 1,400 elected officials that are not county commissioners, supervisors, and then they have 300 or 400 supervisors or county commissioners and they're all represented by one organization. So basically what you have is you have management and labor sitting around the table making a decision on what you want to support and what you don't. So it's difficult for the commissioners to have a lobbyist. They don't have one. But I can tell you right now these juvenile costs and the costs of the judiciary in the county is extremely expensive. In our county we spend probably \$700,000, \$800,000 a year doing things for the state of Nebraska. Because I asked my county attorney one day, I said, do you know of a person...has there ever been a person who broke a county law that was put in jail? And he said there has never been a person sat in Morrill County jail that broke a county law? Every law that was broken was a state law and when that person gets in jail and he gets sick or she gets sick... [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR ERDMAN: ...the county taxpayer pays for it. If they need an attorney and they can't afford it, the county pays for it. They pay for the prosecutor, they pay the judge, they pay all that. Senator Schumacher is right, it's the state's obligation to do that. And we used to, we used to back in the early 2000s we used to have a thing called jail reimbursement and they paid us I believe it was \$38 per day per inmate. That don't happen anymore. All of that was transferred to the county, and we continue to pay that. Senator Schumacher alluded to the marijuana in Colorado. We have counties out there by the time six months passes in their fiscal year they've used up all their money and they don't have any way to put these people in jail. And they just let them go because they can't afford to prosecute them. We have placed a burden on property tax that is unbearable, and this is just another addition to that. Please vote for Senator Groene's bracket motion. Thank you. [LB158]



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SPEAKER SCHEER: Thank you, Senator Erdman. Senator Lowe, you're recognized. [LB158]

SENATOR LOWE: Excuse me. Thank you, Mr. President. You know, I go back, as I was meditating this morning and thinking of why I ran for this office. And I ran for this office not because of myself, but because of my sons and my future grandsons and for their freedoms that we seem to be losing. And that is why I ran for the office, is because of their freedom. Freedom is not taken away in great big bites, freedom is not taken away in great big chunks, freedom is gnawed away very lightly. We lose it so we don't notice we're losing our own freedoms. And I believe that is what is starting here. We're losing our freedom to decide whether or not our children need an attorney. They are given an attorney by the state, not by our choice, but they are given an attorney. We don't choose that, it's not our freedom to do that. I support Senator Groene's bracket motion and I'm opposed to LB158. I'm also opposed to it by the cost of our...that comes down to our counties. Senator Groene made a great point on how it's grown his county costs by over 600 percent. Those are things that we did to our counties. But as I stand in front of our flag up here and I look at it, that flag has always meant freedom. Freedom to choose. Freedom to choose right or wrong. Freedom to choose religion or not. It's freedom. Freedom to choose an attorney or not. That's what we need to look at when we talk about this bill. This bill takes away our freedom to make a choice. Thank you, Mr. President. [LB158]

SPEAKER SCHEER: Thank you, Senator Lowe. Senator Friesen, you're recognized. [LB158]

SENATOR FRIESEN: Thank you, Mr. President. When I was first looking at the bill, and when we've talked about it the previous couple years, I guess I'm still...I'd have to be on the same page as I've been. I understand the portion if a juvenile was coming into the system alone and indigent, not knowing what to do. I think at that point a judge should appoint an attorney. And I think the process is there that they would. But again, if I as a parent, if my child gets taken into custody and put in the court system and they appoint an attorney, I now have no say in that. I can hire my own attorney to pursue the path I want to choose, but my child and his attorney don't have to listen to my advice or my attorney's advice. And in the end, I end up paying for two attorneys, one of them that I can visit with and one that I cannot. That troubles me as a parent. And I think this all goes back to a lot of our problems these days is parents don't know how to be parents. We have single-family house...single-parent households, they're struggling to make ends meet. And we no longer take responsibility for our kids' actions. And some of my peers when I was in high school, you could say the parents always stuck up for the child, it was always the teacher's fault, it was always the law enforcement official at fault, they're picking on my kid. And there is no personal responsibility. And at some point we have to teach our kids that when they make bad decisions there is a cost. And if you can just hire an attorney and get out of that problem and have somebody else pay the bill or work your way out of it because of a technicality in the law, you're not going to learn anything. And sometimes those choices that you make have serious consequences, sometimes they don't. But if we don't at some point in time

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start to accept more of that responsibility that we used to take for granted, it seems as though no one...it's always someone else's fault. We always blame someone for what happens. You get fired at work, it's someone's fault. It's not yours for not doing your job. You blame it on someone and the violence ensues. Again, no personal responsibility. So when I'm looking through the budget, and maybe somebody can address this at some point, but we have a Commission on Public Advocacy. I see here their operations is funded at \$1.2 million. Legal services aid is \$3.4 million. And then they have other numerous pieces of their budget. And I'm curious I guess where that money all ends up. I know we've talked about raising court costs before to raise money, but it seems like these funds seems pretty steep to me and I'm kind of curious as to where it goes. So I see the dollars that we budgeted there. I'm questioning I guess whether we need to raise the funds, but I am intrigued by Senator Schumacher's idea of turning it over to the state and have them accept responsibility. We are moving that way in other things, but now we've pushed...when we talk about probation and those costs, we pushed them down on the counties again. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR FRIESEN: And so when we look at, whether it's property tax relief or not, but immaterial in a way to me. I've never complained about my county's taxes and I still won't. But as we continue to pass laws that push more duties down onto the counties I think we need to keep in mind that maybe the state does need to start picking up the tab for some of these things. When we as a state decide that something is illegal, maybe that county wouldn't care one way or another, but they're going to enforce it. And so now the county, you know, maybe the state should be picking up the tab for that whole bill. I think it could be a good discussion yet. Thank you, Mr. President. [LB158]

SPEAKER SCHEER: Thank you, Senator Friesen. Senator Groene, you're recognized. [LB158]

SENATOR GROENE: Thank you, Mr. President. I want to take you back a little bit to what's going on now. None of these children they're talking about is "thrown" into jail. In my county it was like 109 out of 370 that went to court decided not to have an attorney. None of those are in jail, none of those got fined. Here's what a judge told me in rural Nebraska. Of those 370 or whatever it was total that come to court. The rich kid comes in with a \$5,000 lawyer, he gets probation or he's recommended to go back to diversion. The kid comes in that wanted an appointed lawyer, he's recommended for probation or he's recommended to go back to diversion. The kid comes in with no lawyer, he gets probation or he's recommended to go back to diversion. That's what's done now. If he comes in and the judge doesn't think he knows what he's talking about he gets appointed an attorney. We have good judges out there. We have a process, it's unique. When you think about how our Founding Fathers set up this country, it's amazing. I had

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dinner with my granddaughter, who's a Wesleyan student. She asked me questions, I had a good...she's in history and she asked me about federalism and how the Civil War played into the change of relationship between states, and the federal government, and how a republic democracy works. And we had a good discussion. And it made me think about today, why we're here. We have a judiciary, checks and balances. A judge position comes up, the Governor appoints it. Recommended first through a bar association, I think they go through some process and some candidates are given to the private industries involved, and then it comes and we approve it and the judge is appointed. I don't know if we approve them or not, I'm not on Judiciary. Do we, Senator Halloran, approve judges? We do. All right. And then every six years I think it is we get to vote. The people get a vote to see if we retain that judge. Think about how amazing that process is, how everybody is involved. And then we go into the courtroom. First we go into society. We have a judiciary system to protect the innocent, to protect the civilized society from the outliers who don't want to follow the rules. And we only take the rights away from "them" folks, freedom away from those folks when they infringe on ours. Walk into a courtroom and then you've got the choice to have an attorney or not, if you can afford it or not. So why do we need this bill? We have an amazing system set up in this country. Leave it alone. Do you know the one grievance that this country has when you lose your rights and your property? It's taxation. Taxation. Your property is lost, taken by the government forcibly. Because if you don't pay them your property is sold on the courthouse steps. We ought to always keep that in mind when we pass legislation, if we are going to confiscate people's property in the process through taxation. This is a terrible bill, and you know it. Somebody pointed out the same committee, and I'm going to give Senator Chambers credit here, Senator Howard, good senator, introduced bill LB714. [LB158 LB714]

SPEAKER SCHEER: One minute. [LB158]

SENATOR GROENE: That the court can give...a 16-year-old can ask to be declared an adult. Can be "emancipation," 7-1 it came out. Senator Chambers voted against it, he didn't think the 16-year-old apparently should be given all the rights of an adult. This same committee that brought this bill out said, yeah, they should. They should be able to acquire, convey in property and interest; the litigation and settlement of controversy, they ought to be able to do that; consent to their own medical, dental, and psychiatric care without parental consent, knowledge, and liability, "enrollment" in any school or college they want to, establishment over his or her own residence, all the rights an adult has. Same committee then turns around and says, no, that 16-year-old can't decide for themselves if they want an attorney or not. [LB158]

SPEAKER SCHEER: Time, Senator. Thank you, Senator Groene. Senator Pansing brooks, you're recognized. [LB158]

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SENATOR PANSING BROOKS: Thank you, Mr. President. Well, it's so hard with these extended debates because, generally, you let the people continue just talking. But then, as a lawyer, I'm also torn because it is quite clear that lawyers use the legislative record to look at what was in the mind of everybody and what was going on and I can't stay silent anymore. The misinformation, the misrepresentation of facts, I'm going to have to start setting the record straight on a lot of things. And it's, you know, we have lots of people standing up and claiming what they know and what they think they know, and this isn't necessary. And, you know, it's just grazing through the constitution. This isn't necessary, we handle it just fine. We handle our own just fine. I actually have one person say, don't worry, we handle our own. You in Lancaster and Douglas and Sarpy have, you know, way different problems. I would ask you in Lexington, Nebraska, where 82 percent of the kids are Hispanic, which are your own? So I'm going to start setting the record straight on a lot of different things. The Legislature in 2009 paid the National Juvenile Defender Center to come in and they had a group of people that looked at the courts in regards to juvenile justice. There was a national advisory board--I passed this out to you--there was a Nebraska advisory board filled with county attorneys and public defenders and all sorts of people that have knowledge of law and courts and have looked at all of this. And then they had a team of members that went out to courts across the state. Among their most significant findings they quoted In re Gault and the fact that the United States Supreme Court has extended the right to counsel to young people accused of crimes, and explaining that youth need "the guiding hand of counsel" to respond to the charges leveled against them and to navigate the complicated juvenile justice system. One of the main findings was excessive waiver of counsel. The right to counsel--and I'm quoting from the report--in delinquency proceedings is a constitutional right. Fundamental fairness requires that defense counsel is appointed early in a youth's case; has a meaningful opportunity to consult with the youth and investigate and test the strength of the government's case; explain potential short- and long-term consequences of a conviction; review the sufficiency of the case prior to the court's accepting a plea agreement; and is afforded facilities, including interview rooms or other private areas in the courthouse to hold confidential client meetings. I'm hearing, oh, well, this just isn't necessary. A constitutional right, we don't need to protect it with these kids. Buck up, pay for your crime. Too bad if you don't have the counsel and the ability to speak intelligently and advocate for yourself appropriately. The report in the executive part that I sent out to you said lack of zealous advocacy is one of the main problems. They went on to say there is little to no litigation of competency to stand trial, discovery issues, or Fourth or Fifth Amendment violations, preparation for adjudication and disposition hearings were rushed and characterized by minimal investigation. There were very few written pretrial motions. There are very few trials. There are very few appeals. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR PANSING BROOKS: Observers found and participants estimated that only a small fraction of Nebraska's delinquency cases for juveniles actually proceeded to an adjudication. The

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high rates of waiver of the right to counsel are accompanied by high rate of plea agreements. The vast majority of the juvenile cases are resolved by pleas. Usually at the detention hearing, usually unrepresented, and usually without the benefit of any legal advice, examination of discovery, or independent investigation. All of those things have to do with constitutional rights, my friends. But go ahead and say it's not necessary. And to claim that the counties are paying for it when we clearly have a method through a dollar increase in the court fees, Corey Steel has said that's correct, NACO has said they back off all opposition. Their first year they came in neutral because they felt they had a moral obligation to make sure that kids are represented and understand what's going on with them. Thank you, Mr. President. [LB158]

SPEAKER SCHEER: Thank you, Senator Pansing Brooks. Senator Halloran, you're recognized. Oh, excuse me. Mr. Clerk for... [LB158]

ASSISTANT CLERK: Mr. President, the Urban Affairs Committee will hold an Executive Session in Room 1022 at 10:00.

SPEAKER SCHEER: Thank you, Mr. Clerk. (Visitors introduced.) And now, Senator Halloran, you're recognized. [LB158]

SENATOR HALLORAN: Thank you, Mr. Speaker, colleagues. There are some presumptions on this bill that I'm not the only one that finds those presumptions troubling, but there are at least three presumptions that I believe are troubling. And that first one would be is that parents are assumed to be inept and universally can't be trusted to seek or refuse counsel for their child. Second one is, is that judges are equally inept and uncaring and will not advocate for a juvenile if it appears necessary for the juvenile to have counsel. And the third one is that the state knows better. The state knows better than the parents, the state knows better firsthand than the judge. I, like many of my colleagues, have sought counsel with our local judges and with our local defenders, prosecutors. And every colleague that I've spoken to on this issue that has done the same, has sought counsel from their local...have concluded the same thing: That the judge will...is at some level required initially to offer counsel. And as the proceedings mature, if it appears as though that juvenile needs counsel, that judge will interrupt the proceedings and offer counsel again. And if necessary, the judge will just mandate that they have counsel. So apparently the state knows better. I don't agree with that, I think parents know better. I think the judges can be and should be trusted or else something should be done to remove those judges. But in the meantime, if we don't have faith in the system that has been developed and been used successfully, then all we are doing is mandating something that is likely unnecessary. With that, I would yield the balance of my time to Senator Groene. [LB158]

SPEAKER SCHEER: Senator Groene, 2:40. [LB158]

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SENATOR GROENE: You know, mention was of diversion in Lincoln County. The second part of my handout was the most recent diversion numbers. There was 71 referrals from the county attorney, I'm assuming, and 62 were enrolled. And 19 were open cases, I guess. I guess they were all being considered. Where they were offered that, you can go to diversion. There isn't any cost on the first page I believe because we in rural Nebraska, the sheriff says you can come wash our cars, you can rake the lawn at a courthouse or take part in a public service somewhere, Goodwill or something. So there's really no cost, it's a good program, because we step up for our youth, try to influence them. But the charges that went to diversion was third-degree assault; third-degree assault felony 1; third-degree assault was 15, you'd think that was pretty bad and they would end up in jail; third-degree assault felony 1; burglary 1; distribution of a controlled substance 1; marijuana less than one ounce was 5; minor in possession, 7; minor in possession of tobacco 1; possession of paraphernalia 3; shoplifting 4; trespassing 1; theft 3; traffic offense 2; truancy 9; uncontrollable juvenile. I guess that's when the parent says, come and get them. Seems pretty average, what you would think that juveniles get in trouble doing. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR GROENE: The system works, folks. The system works. If a child wants to stay out of the system completely he can agree to go do some work, improve the community with diversion. If he doesn't want a lawyer, he can deny one. If he wants a lawyer, if he can afford it or not, he gets one. Senator Halloran pointed out if it starts going back...and the judge can appoint one, say you have to have one. Even if we get further into the hearing, he decides now you need an attorney, stops it there. This is feel-good. This is big, big, big, arrogant government coming into family's lives, coming into our local courthouses, coming into your checkbook when you write your property taxes and telling you, telling the citizens out there, you don't know. [LB158]

SPEAKER SCHEER: Time, Senator. Thank you, Senator Halloran and Senator Groene. Senator Schumacher, you're recognized. [LB158]

SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. You know, it's kind of interesting. We've only got 25 days left, I only have 25 days period. The Chamber is pretty much empty, at least I don't know if we even have a quorum present. And I'm wondering if this is the way that we should legislate. But I'll pick up where I left off. I didn't have time to talk about the plan which could be made out of this bill, and one reason I'll oppose Senator Groene's bracket motion, because there's potential here. Let's take some ideas from Senator Briesse's bill in Revenue and raise \$100 million, \$200 million. I think there's an amount that by piecing some of those pieces together could be raised. We take over from the counties the cost of indigent defense and these diversion programs. Tremendous relief to the counties. We take any excess and we put it toward the cash reserve. If you don't have a cash reserve and you get hit with some of the

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contingencies like having to address the prison issue or a drought or a sour economy that really is sour, not just normal, you're going to be hurting. You're going to be hurting bad. So build that up to the \$700 million figure. And then if there's excess money the Legislature will be in the good position of being able to decide should it be income tax, property tax reductions, or some type of sales tax exemptions. I think this is something that needs to be done or something very much like it. I'm immensely concerned that the cash reserve is being bled. And you're going to be in a world of hurt. We have a tool in Senator Briese's bill to raise some revenue, should we choose to do so. We have a mechanism in this bill to deliver fairly substantial property tax relief by taking over an obligation that the county has gotten stuck with. And it's gotten worse because we keep piling on new laws and new penalties and now procedures and new this and that that the county gets stuck with. And we're the ones requiring it. So there's a tool here, and this bill should not die on a bracket motion. And I know that there's charged sentiments from different people who have kind of locked horns on this, but if our job is to solve problems and we have a mechanism before us, and just 25 days in which to work the mechanism, we might be able to solve several problems with one stroke. Now, maybe that's thinking too big, but you've got big problems. They're yours more than mine now and I think they deserve discussion. And this bill, I think, is a proper vehicle for making such discussion and delivering such property tax relief. And importantly, restoring that cash reserve to a safe and sound level of about \$700 million. That's our responsibility. And if we don't do it, nature will deliver the consequences. I think it's worthy of consideration. And that's my two cents worth. Thank you. [LB158]

SPEAKER SCHEER: Thank you, Senator Schumacher, Senator Ebke, you're recognized.  
[LB158]

SENATOR EBKE: Thank you, Mr. President. Colleagues, I'm disappointed that we are putting dollar amounts on constitutional rights today. Never should constitutional rights be subsumed by money, from my standpoint. Let me clarify a couple of things in the bill. First of all, parents still have the right, in conjunction with their children, to waive the right of attorney. Okay? What this does is it provides for an attorney to be appointed proactively at the first appearance in court. Sometimes what's going to happen is the attorney comes in and he says, he or she says: These are your options, go to diversion. And that's it. Okay? There are lots of possibilities that could happen here. I know that we'd like to think that all parents know how best to deal with issues with their kids. I pulled out a...hang on, I pulled out the list from 2014, which is the most recent list of juvenile crimes available on the Nebraska Crime Commission. And these are juvenile charges. We had: 1 manslaughter; 12 assault in the first or second degree; 328 assault in the third degree; 33 sexual assault in the first degree; 8 robberies; 64 drug felony charges; 28 drug misdemeanor charges; 18 arson felony charges; 48 burglaries; 29 theft greater than \$1,500; 18 theft less than \$1,500 dollars; 85 theft of less than \$500; and 304 theft of less than \$200; we had 14 criminal mischief...that's your toilet papering the trees; we had--lost my place here--we had 151 criminal mischief misdemeanors; 46 major trespasses; 1 forgery misdemeanor; 7 weapons

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felony charges 12 weapons misdemeanors; 69 disturbing the peace; 38 other felonies; 728 other misdemeanors; we had 429 truancy; 7 curfew violations; 211 ungovernable behavior--I don't know what that is, does anybody else? Adam, every day. Okay--5 possession of alcohol; and 28 other statutes. The point here, folks, is most of us are not criminal defense attorneys, we are not juvenile attorneys. We can't give our kids good information. We can't give our kids the kind of information that they need. And so why should those children not be entitled, probably there at the courthouse with their parents, to some reasonable level of advice from an attorney who is appointed on their behalf on the first day. Maybe they'll never see that attorney again, maybe the parents will decide, no, we're going to go ahead and hire somebody else. And the kid will say, okay, whatever. But parents don't have the right, I don't believe, to take away their children's constitutional rights. And this is something that we need to think about. Now, we can argue about how we're going to pay for this. But I think that's the lesser argument here. I think that's the lesser discussion that we need to be having. What we need to be having is, do we believe in constitutional rights or not? Thank you, Mr. President. [LB158]

SPEAKER SCHEER: Thank you, Senator Ebke. Senator Bostelman, you're recognized. [LB158]

SENATOR BOSTELMAN: Thank you, Mr. Speaker. I have a couple of thoughts as we're sitting here listening today and yesterday to the discussion going on. And I have had some correspondence talking to my county officials, supervisors, attorneys as well. There's some questions they bring up just to think about as we go through this. And they're saying if a child qualifies for an attorney in the counties, do they get an attorney anyway, and that they already handle a lot of juvenile grants in their offices. And in a sense, they are concerned because they're maxed out on grant requirements and how are they going to keep up with this new requirement? I've also talked outside the glass about this thing that's not going to require a whole lot of extra burdensome administrative costs or administrative working with this program, but it seems like there's probably a disagreement with that. And how...what's going to happen in two, three, four years, six years, will this fund will it be cut? Will we be able to maintain this thing, which we don't know yet as far as all of it as to the requirements, the reporting requirements, how we do that, how much time is that going to be, and what's that going to be cost to them? Will that require them to hire additional staff and that? And I understand what Senator Ebke is just talking about and I think Senator Pansing Brooks is talking about as well as far as, you know, cost should not be an issue here with the process of the attorney and having appropriate counsel for juveniles across the state. I've also heard from Senator Wayne a little bit yesterday about a majority of the costs would come out of Lincoln and Omaha because of the court cases, I believe, there. So urban is now going to be subsidizing or paying for our rural areas, which I think is an interesting view or comment on that. Just that urban now is going to be funding something in rural, rather than rural funding something in urban, such as we do on property taxes. Diversion programs, Senator Schumacher mentioned a little bit about diversion programs. And I also heard this from others that we have a patchwork of diversion programs, and how we



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handle our youth across the state. And I would wonder if Senator Schumacher would yield to some questions. [LB158]

SPEAKER SCHEER: Senator Schumacher, would you please yield? [LB158]

SENATOR SCHUMACHER: Yes, I will. [LB158]

SENATOR BOSTELMAN: So, Senator Schumacher, as my understanding is, there's each county, if they have a diversion program, each county has a different way of handling that diversion program and that juvenile in that. Is that correct, and could you speak to that for just a little bit? [LB158]

SENATOR SCHUMACHER: I think that the diversion programs are kind of individually developed. For example, the diversion program that's contemplated I think by this bill is a diversion program where the juvenile is diverted from the program before anything is ever filed in court. Platte County, I'm told, developed their own. And they're big enough to have enough volume to have a little bit of administration set up for it. They file a case in the court, and then if the juvenile does whatever, sweeps the floors or picks up the leaves in the park, whatever they have to do in order to be made good again, then it's dismissed. And so there is no uniform thing. And also the funding levels are a lot at the discretion of the county board. So some can afford to do it with a better system and some have got to just try to make do. You have problems with a lot of county attorneys, in fact, most of the county attorneys are part time. They're doing probate work and their wills and everything else, and they aren't in a position to take on much overhead for a small volume of cases. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR SCHUMACHER: And they use the juvenile system. So you're right, it's all over the board. [LB158]

SENATOR BOSTELMAN: So would you, I guess, in that sense I guess what I am hearing from you, you would agree in some counties, not all, but some counties, the cost or the need that this would add on would be a cost to that office or that division to bring on extra funding needed on the administrative side for this. And if so, that's something that the county bears rather than the state, correct? [LB158]

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SENATOR SCHUMACHER: Right. Now this bill contemplates a little bit of a grant, and they can apply for a grant. But, basically, the defense system and diversion system is a county expense. [LB158]

SENATOR BOSTELMAN: And on the grant side, your experience, I would ask, on the grant side, requesting for juvenile programs, I don't know how much experience you have in this, are those automatic? Are those things that you always can depend upon, you always receive for different juvenile programs? [LB158]

SENATOR SCHUMACHER: I've never applied for a grant from... [LB158]

SPEAKER SCHEER: Time, Senators. [LB158]

SENATOR SCHUMACHER: Thank you. [LB158]

SPEAKER SCHEER: Thank you, Senator Bostelman and Senator Schumacher. Senator Kolowski, you're recognized. [LB158]

SENATOR KOLOWSKI: Thank you, Mr. Speaker. I stand in support of LB158 and against the bracket motion that's before us at this time. I'd like to read into the record a letter from a Lancaster County judge and the impact that we're talking about as far as financial and others that have impacted the courts that we're talking about. Dear Chairman Ebke and members of the Judiciary Committee, I'm writing this letter in regards to LB158 concerning a youth's right to counsel in juvenile court proceedings. Since 2006 I have served as judge of the Separate Juvenile Court in Lancaster County. Prior to serving as a judge, I was in private practice and a shareholder attorney at Morris Titus&Heideman. The provisions relating to early appointment of counsel and additional protections regarding waiver of counsel which are contained in this bill, became applicable in Lancaster County July 21, 2016, as a result of the passage of last year's LB894. I wanted to share with the committee how these provisions have impacted my courtroom. On a whole, I have been pleased with the changes I have seen in practice and looking at our county budget, the increase in appointment rates has not, not negatively impacted our budget. We are still early in the process and budget can be impacted by a variety of reasons, but we are currently under budget. We have not had any problems implementing the early appointment of counsel measures, and I have seen many improvements in my court room. I do not have any hard data on case processing time, but on the whole it appears as though the cases are processed quicker because defense counsel has the opportunity to talk with their client and engage with the county attorney before the first court appearance. Many times these parties come to the first court hearing with an agreement already in place, which benefits the process. The early appointment of counsel is also a big benefit to families. In the past, when appointment of counsel happened at

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the first court hearing, we would have to reschedule the first appearance requiring the families to make a second trip to the courthouse. That would involve rearranging schedules, asking for additional time off of work and taking the child out of school again. In this new arrangement, that situation is avoided. Further, in my experience under the old system, there were many times I would ask the youth if they wanted an attorney and the first thing they would do is look at their parents. If their parents shook their head no, they would say they did not want an attorney. I then had the responsibility to explain to the youth and their parents that this was a youth's right and not the decision of their parents. This could create a tense environment in the courtroom and some parents would become upset. The early appointment process has created a smoother system wherein the youth can make an informed decision about waiver of counsel. We also have created an effective system for the indigent examination, ensuring that families who can afford to pay legal fees are not taking advantage of the system. I would be happy to answer any questions that the committee has about my experience with the implementation of early appointment of counsel. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR KOLOWSKI: I appreciate the opportunity to address you in regards to this bill. Sincerely, Honorable Roger J. Heideman. Thank you, Mr. Chairman. [LB158]

SPEAKER SCHEER: Thank you, Senator Kolowski. Senator Wishart, you're recognized. [LB158]

SENATOR WISHART: Thank you, Mr. President. I rise today in support of LB158 and against the bracket motion. This is not a piece of legislation that I came to last year already determined with my stance, although it is very hard to go against anything that Patty introduces. But so I've taken some time to think about this piece of legislation. And sometimes when I'm struggling with where I stand on a policy I think, if I wake up in the morning, what kind of contemporary 2018 United States and state of Nebraska do I want to live in? And I think it's one where every kid has access and has a lawyer representing them. And for that reason alone is why I will be supporting LB158. I think it's important this morning that we do clear up the record on some issues. I have been hearing a question on why do we care so much about kids having lawyers in juvenile court? It's not criminal court, is it? Well, to clear up the record on that, juvenile court is not kiddy court. Though it may...though it's meant to be rehabilitative in nature, the possible consequences can be serious and can apply on any charge, no matter how big or small. Once a charge has been admitted or adjudicated, juvenile court judges have immense power to determine what is the best interest of the child and can order anything from probation to incarceration to placement in a boot camp out of state to commitment to a youth rehabilitation and treatment center. They can order the child to undergo treatment, including the taking of psychotropic

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medication. Cases that would be just fine at...excuse me, cases that would be just a fine or have a limited time on probation for an adult have no such limit in juvenile court. Once the court has jurisdiction the parent can weigh in and offer options, but the ultimate decisions about things like whether the youth will remain in the home or be removed, whether the youth will participate in treatment or programming on the family's dime, when court dates will be scheduled and how long the case will be continued, that falls with the court. Most youth and families coming to juvenile court for the first time would not be aware of these possible consequences. An attorney appointed before the court can ensure this family is fully aware of what can possibly happen to make an informed decision about how to proceed. Thank you. [LB158]

SPEAKER SCHEER: Thank you, Senator Wishart. Senator Groene, you're recognized. [LB158]

SENATOR GROENE: Thank you, Mr. President. The first point, I don't know where Senator Wishart was going with that, but she mentioned about being removed from the home. Where is it? Any minor...any minor where an out of home placement is sought, they must be appointed an attorney by Nebraska Statute 43-3102. A lot of those instances, I don't know what she was quoting, but since 2017 when we passed LB874 that's not the case anymore. All those instances, an attorney has to be appointed, as present statutes. Any time you're going to be moved out of your home, you have to have an attorney. So if they're going to put you in a boot camp somewhere, I think that's moving you out of your home. On my handout earlier, I got ahold of the county official, the clerk there, and why some of those numbers went up. The county has increased the public defender budget in 2014 to add a juvenile attorney for \$36,185. Two attorneys that handled juvenile for public defenders are paid about \$108,000. The county increased the budget \$21,000, emergency measure. More so that the two attorneys could devote time to juvenile and assign another attorney to do mental health hearings. Plus the county went from a budget of \$6,000 to \$50,000 this year for conflict cases on juveniles that the public defender and the contract conflict attorney cannot take. The county has the conflict attorney now also, which includes juveniles, and we pay him \$7,500 a month. This is a county with about 35,000 people in it, and shrinking. I got a kick the other day, I read in our paper, a nice person, been with our economic development and our chamber for years, is retiring and they're moving to Lincoln. We are taxing ourselves out of rural Nebraska. That's what we're doing, folks, by these dictates from senators from Omaha and Lincoln. As to Senator Kolowski's claim from his judge, Lancaster County on their own prior to our passing LB874, and so did Lancaster County, was already doing it. So when the judge says it did not affect our budget, sure, because they were already had decided to appoint attorneys. It's in the details, folks, it's in the dates. Claims can be made. Research, take a look. It is not a right, it is not an individual right, unless you can decide not to use the right. How would you...would you be proud, would you wear a sticker on yourself that said, I voted today, if they said you had to vote? Would you be proud that you have a gun collection if they said everybody, your neighbor had to have one, too? Would you be proud of your son if he went in and defended himself and came out and accepted his consequences? You

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can't do that anymore with this law. Nobody is trying to throw children under the bus. I stood up, nobody...I can't hear one individual who wants to bracket this... [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR GROENE: ...who stood up and said we want to punish these kids, they deserve punishment. They need to be "thrown" in jail, they need to be taught a lesson. I want Senator Pansing Brooks, my good friend, to show me the quote from a senator who said that on the record. Words mean something. Nobody said that. What they stood up and said, we believe in America, we believe in the process, we believe in freedom, we believe in the system as we oversee it as legislators. This is a bad law and you all know it now. Now you've got to decide who you represent, the 40,000 people back home or the person you're going to go have a drink with and hors d'oeuvres at the next lobby function. I've got a lot of friends in this body, and people are coming to understand Groene is Groene. I don't got to befriend him because he's going to vote for me and I'm going to vote for him. He is who he is. That's the way you should be, folks. [LB158]

SPEAKER SCHEER: Time, Senator. [LB158]

SENATOR GROENE: It's very wise to do that. [LB158]

SPEAKER SCHEER: Thank you, Senator Groene. And that was your third time at the mike. Senator Pansing Brooks, you're recognized. [LB158]

SENATOR PANSING BROOKS: Thank you very much. It's so good again to have the law being taught to us by people that are not lawyers. But the reason that Senator Groene's costs have increased has to do with the 3-a cases that we have, which are abuse, neglect and trafficking cases. So, yeah, his things have gone up. But this bill does not deal with child welfare, it deals with law violations: MIP, shoplifting. And it will actually save the counties money, if they would listen, because it allows them to finally have a stream to be able to apply if the costs go up in regard to this bill. Talking about which, I love explanations about what is a constitutional right and what isn't a constitutional right. Thank you, Senator Ebke, for saying basically we shouldn't be balancing our courthouse's budgets on the backs of children. And now I'd like to give my time to Senator Morfeld who had a couple of things he wanted to add. [LB158]

SPEAKER SCHEER: Senator Morfeld, 3:50. [LB158]

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SENATOR MORFELD: Thank you, Mr. President. Colleagues, I have not spoken on this issue yet, but after listening to Senator Groene and a few other people, I think that I need to say a few things. First off, these are constitutional rights that we're talking about, these aren't public napping benches, okay? I mean, this is something that is worth investing in, and particularly when we see the school-to-prison pipeline, particularly with some youth. And let's be honest, disproportionately, we have way more people of color in prison than we have people that are white like me. And so there is a racial bias to that, there is a racial issue with that, so to state that is just completely false. Not only is that my opinion, it's just the facts. Also, would Senator Groene please yield to a question? [LB158]

SPEAKER SCHEER: Senator Groene, would you please yield? [LB158]

SENATOR GROENE: Yes. [LB158]

SENATOR MORFELD: Senator Groene, I just want to ask you a few different questions. Can you tell me what a petition is and what is legally required to appear on it? [LB158]

SENATOR GROENE: No. [LB158]

SENATOR MORFELD: Okay, thank you. What is the difference between notice and service? [LB158]

SENATOR GROENE: In what context? [LB158]

SENATOR MORFELD: In the legal context. [LB158]

SENATOR GROENE: I don't know, sir. [LB158]

SENATOR MORFELD: Okay. Why am I... [LB158]

SENATOR GROENE: I do know if I'm guilty or not. [LB158]

SENATOR MORFELD: So, Senator, this is the problem. Thank you, Senator Groene. I've got a bunch of basic legal questions that not even Senator Groene would be able to answer and most people, 95 percent of people in this state, wouldn't be able to answer. Some of these legal questions, as an attorney myself, I also wouldn't be able to answer. So why would we put our youth in the position to not have qualified legal counsel to be able to answer those same

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questions that will have consequences, not only until they're 18, but much beyond their life? This isn't an urban issue. This is a Nebraska issue. And for senators to get up here and talk about how, oh, this is Lincoln and Omaha telling our kids what to do in rural Nebraska. What a joke. That is a joke. This is about constitutional rights. This is about our young people's future and we should be concerned about it, regardless of whether you're from urban Nebraska or rural Nebraska. Also, Senator Groene, these juveniles can waive the counsel, so it is a right. They have a right that they can waive. They don't have to listen to their counsel, their counsel also has to listen to them. There's been so much nonsensical crap that has come out of this issue that is completely false, that it's hard to even sit here on the floor knowing that this is a filibuster and not say anything. So factually incorrect, so misguided. Colleagues, young people should have the right to counsel when their liberties and freedom... [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR MORFELD: ...are likely going to be taken away, just like adults. And in fact, given the status of a young person and not knowing fully their rights as an adult should, but often doesn't themselves know, puts them at even a higher protected status, in my opinion, than the adults. They should have more access to legal counsel than the adults because of that. This is a good bill. Will it cost some money? Sure, it will. Protecting people's fundamental rights sometimes do. Thank you, Mr. President. [LB158]

SPEAKER SCHEER: Thank you, Senator Pansing Brooks and Senator Morfeld. Senator Albrecht, you're recognized. [LB158]

SENATOR ALBRECHT: Thank you, Speaker Scheer. I'm going to try to stick to some facts that Senator Pansing Brooks handed out to us. And, again, I'm from...I represent District 17, Dakota County, Thurston, and Wayne. On her sheets that came from Voices of the Children, I believe it's 2015-'16 numbers, Dakota County on one year had 71 cases, 36 percent were represented by counsel. Another year, 61 cases, 52 percent represented by counsel. Thurston County had 5, represented by...80 percent by counsel. And the other year was 7 at 51 percent or excuse me, 57 percent. Wayne County at 26 cases at 26 percent and 13 cases at 30 percent. But what I find interesting--and I see that Senator Schumacher has left the floor, hopefully he'll come back before I get done--but what I find interesting is Platte County is number four to the big three, with 222 cases one year, represented by 27.9 percent. And they have another year at 261 cases, only with 26 percent represented. Now, because of my previous knowledge of Sarpy County, knowing that they have a very large number, 478 in one year and 398 in another, 98 percent represented by counsel, 99.5 percent represented by counsel in the other year. But I do remember sitting on the board and how important it was for us to recognize that we couldn't staff enough public defenders to take care of the cases, so we had to go outside the scope of who was

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employed by Sarpy County and we had to put on retainer other attorneys that were available. So what would we be doing to these counties in mandating, basically, that you all have to have an attorney? So it's not just giving up that extra dollar from every case that can possibly cover all this. But more importantly, thinking where I live, and we don't have the number of attorneys that they do in the big city, nor would the other 90 counties throughout our state. And if I'm going to have to pay an attorney for his time, which I think I've heard Senator Wayne say that you get to pay them from the time they get in their car until the time they get home and everything in between. This burden, not only on the court system, but the burden on the parents, is another reason why I rise supporting the bracket and not supporting LB158. I didn't support it last year, I don't support it this year. I am a little concerned that if it is true that the Chief Justice has let other folks not talk about this, that gives me a little bit of heartburn. I hope I'm incorrect in saying that. But if I am, you know, we have a right to protect the people we came here to serve. And I don't see Senator Schumacher on the floor, so Senator Groene, if you'd like the rest of my time, you're welcome to it. [LB158]

SPEAKER SCHEER: Senator Groene, 1:20. [LB158]

SENATOR GROENE: Senator Morfeld, would you answer a couple of questions? [LB158]

SPEAKER SCHEER: Senator Morfeld, would you please yield? [LB158]

SENATOR MORFELD: Yes. [LB158]

SENATOR GROENE: I believe in law there's specialties. What is your area of specialty that you're trained for? [LB158]

SENATOR MORFELD: Constitutional law. [LB158]

SENATOR GROENE: All right. Thank you. Do you think laws are written for the average person to understand? [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR MORFELD: I think they generally should. [LB158]

SENATOR GROENE: Thank you. An attorney appointed to a juvenile court does not have to be a criminal lawyer. In a small community you might have an estate lawyer, you might have a



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constitutional lawyer. Quite frankly, a constitutional lawyer knows no more about criminal law than I do. I took a couple of criminal law courses in college. And they can be appointed as an attorney. If I was going to court as a 16-year-old, I was bright and learned how to read and went to a public school, I could look the things up. And I could represent myself. You can have an estate lawyer appointed to a criminal law case. What is law school, three years? [LB158]

SPEAKER SCHEER: Time, Senator. [LB158]

SENATOR GROENE: Thank you. [LB158]

SPEAKER SCHEER: Thank you, Senator Albrecht and Senator Groene. Senator Hilkemann. [LB158]

SENATOR HILKEMANN: Thank you, Mr. Speaker. I've appreciated listening to this debate this morning. I'm looking forward to actually getting to the amendment that Senator Pansing Brooks would like to bring. I will be voting against the bracket motion. I would surrender whatever time, yield whatever time I have to Senator Krist. [LB158]

SPEAKER SCHEER: Senator Krist, 4:40. [LB158]

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraska. I haven't had an opportunity to speak on this today and I really appreciate the courtesy from Senator Hilkemann to put a few of my own comments on the record before we take a vote. I have been in contest with Senator Groene on other issues, issues that would have required a medical degree in order for him to be an expert. And he beat me. He beat me because sometimes when you get on the mike and you present a selected group of facts that you believe are correct in whatever the venue, and I'm not saying that Senator Groene doesn't believe that everything he has said into the mike is not factual, I'm saying that it should be relevant to the conversation that you're talking about and not be emotionally insightful in terms of steering someone in an opposite direction. And I think we, not Senator Groene, but we, collectively, have gotten to that point on this issue once again. There is no question, Senator Albrecht, Senator Bostelman, and all the rest who have stood up and talked about your individual districts, that the United States Constitution and Supreme Court guarantees that that child should be represented from the beginning. There is also no question that the facts speak for themselves in terms of the big three who were forced to do this by this body, and I'm talking about the big three counties, in 2016. For Senator Wayne to stand up and say, are we going to get paid for it, those counties are realizing savings because of what they're doing. Ask Don Kleine, ask Tom Riley. Listen and absorb what Judge Heideman said in the article that Senator Kolowski read. Those are all facts. Those are facts relevant to the conversation and relevant to the decision that you'll make today.

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I'm obviously in support of LB158 and in the Judiciary Committee hearing...or amendment. I don't know how bracketing this bill until a date certain, other than killing it and not having a reasonable conversation as we have had at points during this discussion over the last four years, is relevant. Senator Bostelman also brought up the fact that he had talked to his home district, his county attorney, his judges. I'm going to tell you that I've talked to juvenile court judges for the last 10 years that I've been here, and juvenile issues have been my passion. The kind of things that we have done in this body has decreased the amount of kids in detention by 50 percent across the board. It didn't happen by accident, and it certainly didn't happen because somebody stood up and said, I don't want to pay for it. It was an investment into our kids that paid dividends. You couldn't prove that to begin with. You couldn't say, we're going to save money because we're going to reduce the number of kids in detention by 50 percent. But we had the discussion, we had the faith in what we were doing and it happened. And the realization of what we did was amazing. [LB158]

SPEAKER SCHEER: One minute. [LB158]

SENATOR KRIST: It was amazing. You're going to make the decision you're going to make. And I know you've been challenged, are you going to make this decision for the 40,000 people that you represent or are you going to make this decision because of making a promise to Senator Pansing Brooks or are you going to make this decision for whatever reason? I will make this decision to be consistent with the Constitution of the United States, with the ruling of the Supreme Court, and with the full knowledge that no child in this state, regardless if they're at a beer party or they're involved with human trafficking, is any less worthy of having some help when they're in times of trouble. And that's professional help, that's a lawyer. And just remember this, the only person that can waive that constitutional right is the juvenile. Thank you, Mr. President. [LB158]

SPEAKER SCHEER: Time, Senator. Thank you, Senator Hilkemann and Senator Krist. We have now passed the time threshold. Mr. Clerk, for items. [LB158]

CLERK: Thank you, Mr. President. Committee of Transportation reports LB1009 to General File with amendments. Government Committee reports LB1015 to General File with amendments, so signed by their respective chairs. Amendments to be printed: Senator Briese to LB1084, Senator Smith to LB389. I have a notice of hearing from the Transportation Committee. New resolution. Senator Lowe, LR330; Senator Bolz, LR331; Senator McDonnell, LR332. Those will all be laid over, Mr. President. I also have two proposed rules changes, one from Speaker Scheer and the second from Senator Watermeier as Chair of the Executive Board. Subsequent to that, I have communication from the Clerk to the Rules Committee referring those

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for their consideration. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 790-806.) [LB1009 LB1015 LB1084 LB389 LR330 LR331 LR332]

SPEAKER SCHEER: Thank you, Mr. Clerk. We'll now proceed to LB935. [LB935]

CLERK: LB935 is a bill by the Performance Audit Committee; it's signed by its membership. (Read title.) Introduced on January 9 of this year, referred to the Executive Board, advanced to General File. There are committee amendments pending, Mr. President. (AM1888, Legislative Journal page 632.) [LB935]

SPEAKER SCHEER: Thank you, Mr. Clerk. Senator Kuehn, you're welcome to open on LB935. [LB935]

SENATOR KUEHN: Thank you, Mr. President, and members of the Legislature. As you know the Legislative Audit Office has been required to conduct tax incentive performance audits since 2015. This bill, LB935 and LB936, which the body has advanced to Final Reading last week, would improve the outcomes of those audits. Specifically, LB935 implements recommendations from the three audits completed so far of Nebraska's tax incentive programs with regard to the data that we need to make the evaluations more meaningful and responsive to the needs and requests of members of the Legislature. I would like to point out that this is a Performance Audit Committee priority bill and it was advanced with the committee amendment that Senator Watermeier will be speaking about with no dissenting votes from Executive Board. I would also, before I go through the details of this bill, like to remind those who are here in the body exactly how robust of a discussion we, as a group of senators, had during our legislative council meeting last fall regarding the information contained in the performance audits, as well as a lot of really helpful discussion about what information the Legislature needed to make sure that we have the proper assessment of the performance audit. There's a couple of handouts that are coming around from the pages that I would like everyone to note. One is a synopsis of each of the sections of the committee amendments, so you can follow along with specifically what we're doing in the bill and what the objectives are and why. The second is, again, a sheet that I want everyone to take a look at and keep in mind as we have the discussion we will have today regarding LB935 and that's the summary page from the Department of Revenue's annual report on the tax incentive programs. Specifically, I want to make sure that we keep in mind the magnitude of the dollars that we are talking about as we discuss assessments and evaluation of these programs. Specifically, drawing your attention to the total tax credits earned at \$842 million, as well as current tax credits outstanding at \$473 million. Those are some rather significant figures that we need to make sure we keep in mind as we are discussing how we evaluate and demonstrate effectiveness of the tax incentive programs. As the Clerk indicated, there is a committee amendment to LB935 and it will become the bill. Broadly speaking, LB935, as amended by

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amendment AM1888, would first allow certain data sharing between the Department of Revenue and the Department of Economic Development. Second, require the Revenue Department to keep certain Advantage Act data longer than they currently do. And third, require companies participating in the Advantage Act to provide additional information in a different manner than what is currently required. The biggest change under AM1888 is the requirements for new information from tax incentive program participants that would apply only to the Nebraska Advantage Act. As introduced, all tax incentive programs were included, but we became aware that the other seven tax incentive programs covered by the original bill created a huge fiscal note for upgrading data systems for the smaller incentive programs. So in prioritizing the efforts in the bill, we removed the other seven tax incentive programs and focus on the largest of the programs and the one of greatest interest to the body, the Nebraska Advantage Act. AM1888 continues to permit limited data sharing between the Department of Economic Development and the Department of Revenue, and extends the length of time programs are required to maintain program materials. Senator Watermeier will discuss those changes in the opening to his amendment. But for the remainder of my time on my opening I want to explain the proposed requirements for additional data and reporting data in a new form from the Advantage Act companies and why we need them. Under AM1888, new and existing Advantage Act participants would be required to report more specific information on the employees that they are counting towards their Advantage Act job growth requirement. The information would be added to the reports companies are already filing quarterly with the Department of Labor for employment insurance purposes. For an Advantage Act participant, the Labor Department would create a subaccount for each location of a company's Advantage Act project within the company's existing unemployment insurance account. The subaccount would list the employees used for Advantage Act job creation goals and would indicate the employee's job title and number of hours worked. I know a number of you have been polled by members of the lobby regarding the location piece and defining the location, and I want to be clear from the get-go, we are happy to further define that location. One level, which I think is a policy discussion that grew out of LB936 and Senator Bolz's amendment that was adopted is that location makes sense at the county level for example. So going forward, knowing that we are happy to discuss and further delineate that location term. This requirement combined with the requirements that Advantage Act participants report their federal identification numbers and unemployment insurance numbers to the Nebraska business operations would resolve significant problems during the 2016 audit when we were trying to match Revenue and Labor Department data relating to job creation and wage comparisons between Advantage Act companies and industry sectors statewide. One thing to keep in mind is that the Advantage Act participants are already required to keep track of which employees count towards their job creation goal through their active participation in the program. However, they are only required to report that information once. When the Revenue Department conducts a qualification audit to determine whether the company has met program requirements and may begin to use the program's benefits. After the qualification audit, the company must continue to keep employment records indicating which employees counted

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toward their job creation goal. AM1888 requires companies to report that information, as well as the employees' job titles and hours worked to the Labor Department. The unemployment insurance system subaccount was at the suggestion of the Department of Labor to create a seamless system that the companies are already using and already reporting employment data to. LB935 would also require participating companies to report new information to the Revenue Department, including whether they offer their Nebraska employees certain types of benefits, and if so, how many of their employees actually participated in each type of benefit. Companies participating in Advantage Act tiers that require reporting on investments would also be required to group individual investments into standard categories to allow for additional information in the audit reports on the types of investments that are being made. Why do we need this additional information? Well, it's pretty straightforward. The Performance Audit Committee and others in the body have increasingly been asking more information about the jobs being created by the Advantage Act companies and how those jobs compare to jobs created by non-Advantage Act companies. However, in the 2016 Advantage Act performance audit, the audit office found that there's not enough data available in the current reporting mechanism on employees at Advantage Act projects to provide the analysis that the committee and the Legislature has requested. The additional information required under AM1888 would ultimately provide the Legislature with more comprehensive information on the number of full-time jobs created by Advantage Act companies and those wages that are paid. I want to acknowledge that several of you have had questions for me about whether requiring Advantage Act participants to report through the Labor Department would be unduly burdensome. I know that that's been a concern of the Omaha Chamber, among other companies, and I have multiple times requested feedback from the Omaha Chamber on information on reporting requirements we could reduce or how we could facilitate the information needed to resolve their concerns, but have yet to receive a response. I will be interested to hear throughout our discussion this morning and remain willing to work on how we can improve any data sharing and data reporting, and find ways to get the information the Performance Audit Committee and Legislature have requested without creating excessive burdens for participating companies. I do want to be clear the additional data requirements apply to companies currently participating in the Advantage Act, as well as future participants. The Performance Audit Committee feels that it is absolutely necessary for current participants to provide this data. Excluding current participants would mean no new data... [LB935 LB936]

SPEAKER SCHEER: One minute. [LB935]

SENATOR KUEHN: ...for the 403 active signed agreements in place at the end of 2016. Instead, we would only have additional information for the handful of new agreements that are signed each year. Some may also argue that it's unfair to add requirements to existing contracts. However, I would like to point out that LB161 from last year passed by this body with 44 votes and signed by the Governor, existing contracts by changing the carry-over programs for Tier 6

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companies. If we're willing to change existing contracts to allow existing companies more time to receive their benefits, we should not shy away from changing them to require the data that we need to accurately evaluate these programs. We have additionally received some technical suggestions from the Revenue Department after AM1888 was advanced by the Executive Board and we'll address those on Select File. I look forward to our discussion this morning and hope you will join me in improving the data that we need for conducting the quality analysis of Nebraska's Advantage Act by adopting AM1888... [LB935 LB161]

SPEAKER SCHEER: Time, Senator. [LB935]

SENATOR KUEHN: ...and advancing LB935 to Select File. Thank you. [LB935]

SPEAKER SCHEER: Thank you, Senator Kuehn. As the Clerk states, there are amendments from the Executive Committee. Senator Watermeier, as Chair of the committee, you're recognized to open on those amendments. [LB935]

SENATOR WATERMEIER: Thank you, Mr. President. Good morning, Nebraska. AM1888 is a white copy amendment that replaces all the provisions in the green copy of the bill. As Senator Kuehn stated, this bill makes several statutory changes that would improve performance audits of tax incentive programs conducted by the Legislative Audit Office. AM1888 was recommended by the Legislative Performance Audit Committee and adopted by the Executive Board on a 6-0 vote, with three members absent and not voting. The Audit Committee developed the amendment to reduce...reduce and almost eliminate the fiscal note and to make improvements based on input from the Department of Economic Development, Department of Labor, and the Department of Revenue. The first provision of the committee amendment will allow for limited data sharing between the Revenue Department and the Department of Economic Development in place of more extensive data sharing provided for in the original bill. This provision will still provide the Audit Office with needed data, but will not require changes to DED's data tracking system, thereby reducing the bill's fiscal note. This data matching is needed to resolve a problem the Audit Office encountered in its recent audit of the research and development tax incentive. In that audit, DED could not be given a list of companies that participated in the R&D program because the company names are considered confidential taxpayer information that DED is not authorized to review. That meant the Audit Office could not tell us whether the companies received R&D benefits, had received other state economic development benefits from programs administered by DED. AM1888 would allow one DED staff person to review limited data which would have to be reviewed at the Revenue Department. No credit or benefit information would be allowed to be shared, only identification information. The DED employee would be subject to strict confidential requirements, including penalties for disclosure. This provision is modeled on an existing law that allows a city impacted by the Nebraska Advantage Act's sales tax benefits to

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designate one person to review the tax credit that would impact their city. The remaining provisions of AM1888 apply only to the Nebraska Advantage Act. All of the other tax incentive programs have been removed from this bill, but I don't want to repeat everything Senator Kuehn said, but essentially, companies participating in the Advantage Act would be required to report additional information, which would both improve data matching between the Advantage Act data maintained by the Revenue Department and Labor Department's wage and unemployment data, and also provide new information on issues of interest to this Legislature. For example, participating companies would have to report how many of their Nebraska employees were offered different benefits, including health, dental, and vision insurance, as well as retirement benefits. They would also have to report the number of their employees which participated in each of these benefits. They would not have to report on individual employees, they just would report big-picture numbers that would give us an idea of whether companies participating in the Advantage Act are offering these benefits to their employees. AM1888 incorporates most of the new data requirements into the unemployment insurance system, which is already used by companies participating in the Advantage Act. As a result, the Audit Committee was able to eliminate several requirements from the green copy of the bill, including reporting to the Revenue the total number of employees per quarter, a break down of the full-time, part-time, and temporary employees, and the number of employees in four wage categories. Finally, AM1888 would require the Revenue Department to retain certain program materials for 20 years, which is longer than they are currently required to maintain those materials. Currently, there are no statutory requirements on how long administrating agencies are required to retain tax incentive information. This is to ensure that future audits have the data that is necessary to review programs in their entirety. The amendment eliminated correspondence as a category of materials that has to be retained and reduce the length of data retention for five years after the last contract ended 20 years. Members, I'm just going to remind you what I've seen in this body in the last five or six years. Every single time, and I've been involved with Performance Audit for six years, every single time we bring an amendment or a bill that looks at better reporting, better metrics, and gives us a better picture of what's going on behind the tax incentives, at 11:59 on the day that the bill is introduced, the lobby gets all fired up. This bill has been out there a long time, we've been talking about it. Clearly, the Performance Audit reports have specifically said the changes that we're talking about need to happen. And it's very, very disappointing to me to hear behind the scenes, well there's this little rumor about this might cost us a little bit. There's another rumor about this. Keep in perspective, we're trying to put metrics in place of the hundreds of millions of dollars that we are spending in this state. This is a good bill. I commend Chairman Kuehn and the Performance Audit Division has done a great job of working through these issues, and it's painstaking, it's slow, but we're getting there. There's absolutely no reason to think that we can't go forward with this amendment replacing the green bill, the green copy. Thank you, Mr. President. [LB935]

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SPEAKER SCHEER: Thank you, Senator Watermeier. (Visitors introduced.) Returning to debate, Senator Chambers, you're recognized. [LB935]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I support the amendment which will become the bill, so obviously I will support the bill. I have never liked these give-away programs, they are a drag on the economy. They are a hindrance to the revenue flow. There is nothing positive that I'm able to say about them. But this is not the bill for trying to alter any of those programs. This is the Legislature's best effort to bring sunshine into all of those corners where information can be found that will be necessary for the Legislature to make wise decisions in the best interest of the public who sent us here. I don't have questions that I will put to Senator Kuehn, but I hope that those who did the work on this bill will stick behind it and forget what Senator Watermeier had to call to our attention, unfortunately, the hubbub out there in the lobby. When I came here this morning, the lobby was virtually empty because all that was going to be discussed was something that pertained to the constitutional rights of children. None of those people had an interest. Now they might have to spend a few nickels. They might have to give a modicum of information, and you can't see from where we are to the other side of the rotunda because it's full of those leeches, those spongers, those moochers, those prevaricators, otherwise known as lobbyists. We have a job to do. How much money the state is losing cannot be determined with precision, but estimates have been made. Hundred of millions of dollars. Those people out there in the lobby are working for entities who are getting this money, these benefits. They can be called credits, they can be called incentives, but however you characterize it, it is robbing the till of the state in my opinion. When you have a bucket and every entity is supposed to put money into the bucket by way of taxes, when you allow a large entity to not contribute its amount, but that amount of revenue is needed to keep the state operating, then those who are anteing up are going to put more into the bucket. This is an unfair burden on the taxpayers. You won't see Senator Groene pop up, you won't see Senator Lowe pop up, you won't see Senator Bostelman pop up, or the rest of them who were popping up this morning so concerned about the counties. All of that was a sham. I am trying to pass time hoping that Senator Lowe and Bostelman, who had so much to say against the welfare of children would come back to this Chamber and discuss this issue because I have some questions I want to put to them to test their sincerity and their knowledge. But since they know my questions might go to the knowledge that they have or don't have, they're going to stay hiding under whatever rocks they hide under when they leave here. [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR CHAMBERS: I don't see them rising to the bait. But this is a bill that I think we ought to support; we ought to support the work that's been done on it. Let the lobbyists earn their money by trying to mislead us, divert our attention, inject false issues. Information is what we need. This bill will give us that information. So out of respect for our colleagues who have done



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all of the work that has been done to date, I think we should support it. But on its merit, we ought to support it. Thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Harr, you are recognized. [LB935]

SENATOR HARR: Thank you, Mr. President, members of the body. I have no problem with accountability. I have no problem trying to figure out how our taxpayer dollars are being spent. We have a duty and accountability to the taxpayers to say this is how the money is being spent. No problem with that. What I do have a problem with is when we do this we got to do it in a responsible manner and we got to follow the process. Process is as important as the bill itself. And this bill, which deals with the Advantage Nebraska, didn't go to Revenue. Every other...and trust me, I have sat through enough of these hearings to know a lot more about this than most committees. Senator Schumacher has sat through a lot of these hearings. And yet we have a bill, I don't know if it was intentional, it seems like that's becoming more common not to go to the committee of jurisdiction that usually deals with the Nebraska Advantage Act. I don't know why. Senator Watermeier, would you yield to a question? [LB935]

SPEAKER SCHEER: Senator Watermeier, would you please yield? [LB935]

SENATOR WATERMEIER: Yes. [LB935]

SENATOR HARR: Senator Watermeier, you're Chair of the Executive Board? [LB935]

SENATOR WATERMEIER: Correct. [LB935]

SENATOR HARR: And as part of your duties as Chair of the Executive Board and the Executive Board itself, you reference all bills, is that correct? [LB935]

SENATOR WATERMEIER: Correct. [LB935]

SENATOR HARR: Okay. What do you look for in referencing a bill to certain committees? [LB935]

SENATOR WATERMEIER: Well, part of this was it was going to the act and not specific to changing in detail like...last year we had a big conversation about if it's going to change the amount of the incentive then it's clearly... [LB935]

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SENATOR HARR: No, I'm asking broader...broader question. [LB935]

SENATOR WATERMEIER: If it goes to the act in general. [LB935]

SENATOR HARR: When looking to refer a bill, what do you look to? [LB935]

SENATOR WATERMEIER: If it goes to the act of it, like a constitutional issue, it should stay in Executive Board. On these acts of...like Performance Audit Act it ought to stay in the Exec Board. [LB935]

SENATOR HARR: Okay. So if a bill is called...or if a law is called an act, it stays with Exec Board? [LB935]

SENATOR WATERMEIER: Well, there would be some times where it could go to the jurisdictional committee. But I think in general, if it is going to change the act and it's not...burdensome is changing something in the detail, I would say it's fair in the Exec Board. [LB935]

SENATOR HARR: Okay. And where is that found...is it found in the rules or where is that found? [LB935]

SENATOR WATERMEIER: I don't know. There is a Legislative Guide that talks about referencing and where bills go. It's not mandated that we use that, but I think it's an underlying principle of mind. I mean, you could ask past members of the Exec Board how they would feel, but that would be my principle. [LB935]

SENATOR HARR: Okay. Thank you. You heard that, folks. It's...we're talking right now about Nebraska, whether they're going to make the NCAA tournament or not. Do we look to the RPI, so we look to the KO, do we look to the whatever or do we look at the "I" test. Right? How is that team doing and do I want that team in and do I think the people on that committee...will this team embarrass me? No rules, no nothing. And it sounds like that is what the Exec Board does. Exec Board said, "I" test. I want this bill. I don't want it to go to Revenue. It may die in Revenue, may not die but I want to be in control of it. And yet, when it comes to tax and tax incentives, the committee of jurisdiction, no one will deny, is the Revenue Committee. Why did we make an exception here? I don't know. I have seen a lot of tinkering going on, bills that traditionally go to certain committees are not going to those committees. [LB935]

SPEAKER SCHEER: One minute. [LB935]

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SENATOR HARR: I'll have more to talk about the bill itself and I will be asking a lot of questions, questions I would normally ask in a committee, having seen a lot of Nebraska Advantage bills and knowing where the land mines are and are not. So we're going to waste some time on the floor doing committee work because we've decided that the committee of jurisdiction shouldn't be allowed to ask questions. Well, the good news is I'm up on the floor and I'm going to be asking some questions about this bill. Thank you, Mr. Speaker. [LB935]

SPEAKER SCHEER: Thank you, Senator Harr. Senator Erdman, you are recognized. [LB935]

SENATOR ERDMAN: Thank you, Mr. Speaker. Good morning. I rise in support of this amendment. And to Senator Harr's comments about the Executive Committee, I looked at that committee. It looks to me like we have very capable senators on that committee to make a decision about the issue that was presented to them. Senator Chambers and I are in agreement on these tax giveaways. We have been doing this for a long, long time. Senator Bolz had made reference to the Nebraska Advantage Act and the amount that that giveaway...and I call it a giveaway...will be in just a short period, could be \$1.4 billion. Had comments about LB936 the other day and I have a similar concern with this one. What do we do when we get the information that the audit delivers to us and we start making decisions based on what does it cost to create a job with the Nebraska Advantage Act, what have these tax incentives done for us? Senator Chambers correctly stated we have a bunch of people that are supposed to be putting money in the pot that are not. And so the revenue begins to be deleted because of the incentives that we give away. Why do we do that? Why do we do that in Nebraska? Well, we are the second highest taxed state in the United States; we're only behind Illinois. We know that. So what do we do? We give away tax incentives. We give them TIF financing. Nine percent of all property tax in Douglas County is exempt because of TIF. Am I against TIF? No, I'm not, but TIF needs to be used as the statute was written and we've done some things to strengthen that. But the Nebraska Advantage Act and the other giveaways that we do, there would be a lot of revenue, do a lot of things that we don't do now. Senator Schumacher, we'd have revenue to take care of those things we talked about this morning. There are a lot of things that we give away, so if you really want to have income tax relief for corporations, take some of the Nebraska Advantage Act and give it to all corporations, not just those hundred, or ever how many it is that get that. Senator Wayne and I were talking last year about the Nebraska Advantage Act. He said in his community in his district he has a business that he knows of that got a \$60,000 contribution from the Nebraska Advantage Act. He said the state sent two auditors to that business that was there for eight months to determine whether they filed the paperwork correctly to see if they were actually eligible for the \$60,000. So what they've done, they spent more money auditing to see if they were eligible than the \$60,000 that they received. So where is that information at? How do we find out what it costs to implement the Nebraska Advantage Act? Is that going to be in the audit? I would assume it would be. So when you add all things in and we contributed about \$350 million, I think, to the Nebraska Advantage Act, how much does it actually cost? And once we

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get that information, Senator Chambers, once we receive that audit, then we need to do something with it. Not lay it on the shelf and not say, wow, that was a lot of money. It's time for us to step up and be counted. Senator Chambers said they sent us here to represent people. Let's do it. So when we get the audit back, Senator Kuehn--and I appreciate your efforts--we should do something with it, not just talk about it. We do a lot of that here. So I am in favor of the amendment. Please vote green. Thank you. [LB935 LB936]

SPEAKER SCHEER: Thank you, Senator Erdman. (Visitors introduced.) Senator Chambers, you are recognized. [LB935]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm glad to see that Senator Lowe is back. And I would like to ask him a question or two if he would respond. [LB935]

SPEAKER SCHEER: Senator Lowe, would you please yield? [LB935]

SENATOR LOWE: I'd be glad to. [LB935]

SENATOR CHAMBERS: Senator Lowe, when we were on the previous bill, it's not an uncommon practice, the queue as they call it, was loaded up with people who wanted to run out the clock and they did it, but I was listening to what some of the speakers were saying, and I was particularly taken by something you said along the line of parental rights and the decision-making power they should have with their children are involved. I want to see if I understood you correctly. Did you say that the parents should be able to determine whether the child would have legal representation or not, that that is a parental prerogative? [LB935]

SENATOR LOWE: I believe I said that, yes, I did. [LB935]

SENATOR CHAMBERS: Okay. I want to ask you a question. Do you hold to that opinion because you think the parents probably know what's best for the child better than, perhaps, the child even knows for himself or herself? [LB935]

SENATOR LOWE: I believe it takes time to really know what you need with your life, and, yes, as long as you are living in the house with your parents, you probably do know...or the parent do know more. [LB935]

SENATOR CHAMBERS: Well now, if these parents have a 13-year-old daughter and the parents have a friend who has designs on that daughter and would like to have sex with her, and for

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whatever reason the daughter is willing, do you think the parents should be allowed to make the decision that their 13-year-old daughter will have sex with a grown man? Should the parents be allowed to make that decision? [LB935]

SENATOR LOWE: You know, there are laws against that. [LB935]

SENATOR CHAMBERS: Well, that's what we are talking about when we talk about laws to require representation for children. Why don't you want the parents to be able to make that decision? [LB935]

SENATOR LOWE: The children are able to have representation as the law currently stands. [LB935]

SENATOR CHAMBERS: No, I mean about the sex. If the daughter wants to have sex with this grown man and the parents want her to have sex, then why can't the parent make that decision, because the choice is unanimous, the parent and the daughter? But you say that that decision should not be made. [LB935]

SENATOR LOWE: I am saying that decision should not be made. [LB935]

SENATOR CHAMBERS: Why? [LB935]

SENATOR LOWE: Because I believe our morals should stand above that. [LB935]

SENATOR CHAMBERS: Your morals or the morals of the parents? [LB935]

SENATOR LOWE: I believe the morals that God gave us. [LB935]

SENATOR CHAMBERS: Well, their God told them that it's all right. [LB935]

SENATOR LOWE: Well... [LB935]

SENATOR CHAMBERS: Let me cut to the chase on this. [LB935]

SENATOR LOWE: Yes, sir. [LB935]

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SENATOR CHAMBERS: You know, first of all, there is a legal term in loco parentis. You and others under the misguidance of Senator Groene were talking about laws and legal principles, about which you know nothing. You mix this notion of morality in when it meets your satisfaction. The state...that legal term is in loco parentis, in place of the parent. The state has set certain standards for the welfare of children, and the parents cannot, without running afoul of the law, violate those laws that the state has put in place which will prohibit certain things being done that involve children such as turning a child over to somebody for sex when that child is too young. You accept the state supplanting the will of the parent in that instance... [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR CHAMBERS: ...don't you? [LB935]

SENATOR LOWE: Yes, I do. [LB935]

SENATOR CHAMBERS: And there are probably other instances I could give where you hold to that opinion. [LB935]

SENATOR LOWE: Most likely. [LB935]

SENATOR CHAMBERS: And I would agree with you. And that's all that I am going to ask you, but I want my colleagues to see that they pick and choose. He thinks it's not important for a child to have representation. He thinks if the parent who knows no more about the law than he knows, less than Senator Groene knows, who knows nothing, the child should be victimized by a parent who knows nothing about the law and decisions will be taken not by the child, the child acquiesces to what that parent... [LB935]

SPEAKER SCHEER: Time, Senator. [LB935]

SENATOR CHAMBERS: You said time? [LB935]

SPEAKER SCHEER: Yes, Senator. [LB935]

SENATOR CHAMBERS: Okay. [LB935]

SPEAKER SCHEER: Thank you, Senator Chambers and Senator Lowe. Senator Schumacher, you are recognized. [LB935]

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SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. This is another cross that you guys are going to have to bear. And that is these various incentive programs, business credits, all this sundry legislation that has accumulated over the years and now is to the point where it's pretty clear that something--even though what the something is isn't very clear--needs to be done about it. Generally, I am supportive of the amendment. I don't think this does a whole lot other than enables a little bit more information flow. I'm not terribly critical of Senator Watermeier and the Executive Committee. Senator Watermeier headed a committee a few years ago that began these studies and started us with some serious head scratching on it. And subsequent studies by the Audit Committee and Revenue Committee and many, many bills and hearings, more now that we've got a real problem with business incentives. And the bit of advice to the extent you're going to need any advice from me is once you start a program, you have a real tough time getting rid of it. And on the Advantage Act, because they can claim these credits over a long period of time, you're like taking out a loan. They go on forever and even if you cut them off, you still got to pay the bill. So it's very important, as you reconstruct these, and I think you will be reconstructing them because more and more it is appearing that these things are malfunctioning and they are not producing with the power that they were sold to produce with, and they are far more expensive than what anyone thought. And they go to just such small groups of people with most of the jobs and most of the investment in the state not getting a smell of them. And so, Senator Erdman is right to the extent that everybody else has got to carry a little extra burden because somebody isn't doing their share. And then you hear from those somebodies, we won't expand here, we wouldn't have expanded here. We would have found someplace where there is no death and no taxes to go to, we would haven't done it here. And maybe sometimes they're telling the truth. Maybe sometimes they're not. So the mechanism that you devise has got to be able to try to be very targeted and sort out the highest probability that you are actually doing some good. Watch out in these legislations that come before you with these confidentiality things. What that really says is the Legislature has got to remain, for the most part, ignorant. You can't go in there and do research because, God forbid, you'd see a name. And unless you have that kind of basic knowledge, there's no way you can formulate policy or really make good judgment, and by putting an intervening department in between, the executive branch if they want to not...if they have a different philosophy than you have will shield you and protect you from the information. And so you can't do policy which is contradictory to, maybe, what the executive branch that might exist at that time can do. And since these are such longstanding programs, and you will hear from the various interests that, gee, this is like a train, you just can't stop it, you just can't sunset it... [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR SCHUMACHER: ...because they are three years in the making and you don't want to abort that process at all. You have got to think not only for the present administration, but two or three administrations down the road because that's how long these things last. So I'm generally

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supportive of the amendment. I don't know whether it's going to do a whole lot of good, but my guess is that over the next couple of years, you're going to have to redo the whole show. And good luck. Thank you. [LB935]

SPEAKER SCHEER: Thank you, Senator Schumacher. Mr. Clerk. [LB935]

CLERK: Mr. President, Senator Harr would move to amend the committee amendment with floor amendment, FA110. (Legislative Journal page 806.) [LB935]

SPEAKER SCHEER: Senator Harr, you are welcome to open on your amendment. [LB935]

SENATOR HARR: Thank you, Mr. President, members of the body. I am going to piggyback off of something Senator Schumacher said. And what this amendment does, it's a very simple amendment, on page 1 of the amendment, line 4, it changes it from "the Tax Commissioner may permit" to "the Tax Commissioner shall permit." And we're going to have a lot of conversation this session about "may" versus "shall" and what the difference is between "may" and "shall." "May" is discretionary. As currently drafted, the Tax Commissioner has discretion whether to give the head of Economic Development, yes or no, the information which is the information limited to the name, address, and identification number of the participating taxpayers. "Shall" means they must. Right? Why are we spending all this time and all this effort to try to amend how we do this when it's all for naught, because we can spend six, eight, whatever hours on this bill, pass the bill, and Tax Commissioner says, that's great, you guys missed the first sentence of the bill, "may." And I'm telling you, no, I'm not going to do it. Thanks for playing. I enjoyed the time. I hope you enjoyed the time talking about the bill. Maybe you learned a little something about it, but it's not going anywhere. And it's what Senator Schumacher talked about when the philosophy between the Legislature and the Governor differ, well, the Tax Commissioner is appointed by whom? The Governor. Right? So the Governor says, I don't want that information out there. What happens? Gone. So it's a simple amendment, "shall" is a requirement. I personally like the word "will" better than "shall." "Shall" to me kind of has a moral implication--thou shall not, thou shall, but I am willing to use "shall" because that is what we use in statute. If I had my way, I would probably change in the statute everywhere where we say "shall" to "will." You will do this, you will not do that. But that is a battle for another day and my days are numbered. So this is a very simple bill...amendment, excuse me, but "will," "shall" permit the Director of Economic Development or his...to inspect notification from. Right? So we're requiring. If for some reason, and I don't know how this would ever happen, your head of DED wants to find something out, again, appointed by the Governor, can go to the head of Revenue, again, appointed by the Governor. So if the Governor doesn't like this stuff, folks, guess what? No one is ever going to the Governor...or going to find this information out. We are chasing our tail with this bill or at least with this amendment. We're saying we're going to find



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something out and we're going to, gosh darn it, we're going to do it. No, we aren't. No, we aren't. Again, that is why it's so important that a bill comes to a committee of jurisdiction so that those people who have seen some of these tricks before that are played, that seem like something, sound and fury signifying nothing, know that, in fact, it does signify nothing. But with this amendment, at least we take away a little bit of the executive branch discretion by saying "shall" ... "shall." So it's a simple amendment. I hope to get everyone's support on this. And thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Harr. Senator Brasch, you are recognized. [LB935]

SENATOR BRASCH: Thank you, Mr. Speaker, and good morning, colleagues. And good morning to those who are watching. I do stand in support of LB935 and the underlying amendments, including Senator Harr's changing the word "may" to "shall." It only makes it stronger. I don't have a concern with that. And the reason I turned on my light is because time ran out on the last bill, but I think it all comes down to the same place and time even if it's only a dollar. And I keep hearing the words, have the state pay for it. No, have the county pay for it. Well, no, sales tax, have municipalities pay for it. Who are the people paying for it? It is you. It is me. It is...I think there's a nursery rhyme; it's the person behind the tree. We all pay for everything, whether it's the state, it's the county, it's the tax. We are the payees. And when we have 1.9 million people and we each pay a dollar here, a dollar there, a dollar everywhere, and then you top that with selective taxes, the three-legged stool, that is where things start to crumble and this is no different. In 1989, I believe, I was about to graduate from the university here. I took most of my classes at night while I worked full time during the day, raised a family, I earned my degree. There was a lot of sweat equity in it, but I did earn it. One of the places I studied was taking classes and I wrote a paper on tax incentives. In 1989, we were the last, if not one of the last states, and I was curious because I was at the Revenue Department and LB775 came into being then. But it was multiple that...the whole nation, we were competing for jobs. We were having out-migration of our youth then. And I believe, oh, I can't even recall all the places that were courting Kawasaki, courting the railroads, jobs were needed desperately. We were coming out of a horrific farm recession and we needed the tax advantage plan. And it's done us well to a point. And I see the people who objected to this are the people, the chambers. And we are in a new day, and I could stand and defend tax incentives and what the chamber wanted. But we are at a different place and time today. We are in a very frail, if not hemorrhaging farm economy. And over my eight years, I have introduced bill after bill to help the three-legged stool not topple. Well, it's laying on the floor, friends. And we're trying the best we can. I have reached out to the chambers multiple times to help us. We have a bill now that attempts to make an incremented, slow but sure move to financial security not for just farms but for businesses and industries in our state. [LB935]

SPEAKER SCHEER: One minute. [LB935]

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SENATOR BRASCH: Our problems didn't happen overnight and they can't happen overnight. That's why I support this audit, the underlying amendment. It will be painful. It will be painful for many. But again, changing "shall" to "may" I think is something we need to do because that dollar from businesses is from every one of us here. Thank you, Mr. Speaker. And thank you, colleagues. [LB935]

SPEAKER SCHEER: Thank you, Senator Brasch. Senator Bolz, you are recognized. [LB935]

SENATOR BOLZ: Thank you, Mr. President. First, I wanted to say that I do respect and appreciate the expertise of the Revenue Committee. It is a challenging policy area, and I know you've done hard work over this session to understand the intricacies. And so I wanted to share my perspective about why it was appropriate that this bill was referenced to the Executive Board rather than to Revenue. And then I want to make sure that we talk about the underlying policy here and not get distracted by procedure, but stay focused on policy change. So the things that we look at when we're doing referencing are our referencing guide, which is public, and I would be happy to share it with anybody who hasn't seen it before. We take into consideration the recommendation of the Revisor of Statutes, given her experience and expertise and review of all of the bills. Sometimes we take into consideration history and what we have done in the past. And so we considered all of these things when we referenced this bill to the Executive Board. And I think we did our best to try to apply the principle that we used here across bills. So the principle we used here was that this is a bill directing our employees to do something and to have guidance about something. And so that is why it was appropriate to refer it to the Executive Board. Another example of this was that Senator Crawford's bill, which is the Executive Board's priority bill, LB1078, there was discussion about whether or not that should be referred to the Health and Human Services Committee because it was about child welfare and data collection in child welfare. But because we were directing the Office of the Inspector General to handle data and information and do something, that was referred to the Executive Board. So I do think that it was an appropriate, justifiable reference. But regardless of what committee it was referenced to, the underlying issue is whether or not the programs that we are investing significant state taxpayer dollars are working. And only by understanding those metrics do we understand whether we should continue on the same path or whether we should make changes. And I would like to remind the body that the total estimated tax reductions under LB775 and Nebraska Advantage grew from \$153 million in 2015 to \$270 million in 2016. This is significant. This has a significant impact on our budget. And it is right and fair to ask for information about how it is and isn't working, because at the end of the day, what I want, what I think we all want is a strong economy, is great jobs for our folks, is opportunities in manufacturing and biosciences so that Senator Brasch's point, when the ag economy hits more difficult times, we can rely more on the finance industry or the biosciences industry, and vice versa. I think it's important to continue talking about what I believe to be the heart of the matter which is we must, as a body, push for higher standards in the resources we're using in our tax incentive programs. I'm committed to

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continuing to do that; I have multiple irons in the fire around how we can do that. And I appreciate the Performance Audit Committee's contributions to this conversation. Thank you, Mr. President. [LB935 LB1078]

SPEAKER SCHEER: Thank you, Senator Bolz. Senator McCollister, you are recognized. [LB935]

SENATOR MCCOLLISTER: Thank you, Mr. Speaker, and good morning, colleagues. My first time on the mike. When I was at the Platte Institute for four years, transparency, accountability was a big part of our mission. As a matter of fact, Platte Institute had a Web site that recorded votes from this Legislature, way before the Legislature did it themselves, so that has been part of the Platte's mission, at least when I ran the operation. I support LB935 and AM1888. And I want to salute Senators Watermeier and Kuehn for what they have done in this effort. We definitely need to do a better job with accountability with our incentive programs, absolutely no question. The cost of those programs is baffling. If I recall the number correctly, we're looking at almost three-quarters of a billion dollars in program costs that we have had or will be coming up in the future, and that is big money, big money, three-quarters of a billion dollars. And it's entirely right for this Legislature to be understanding what those costs are. And those companies have an obligation to supply that information. However, it's important for us to make those programs workable. And if we can simplify the bookkeeping in that effort, that is something we really need to do. And I fear that in this bill we are speaking of today, we haven't done that as well as we should. And if this bill advances between General and Select, I hope we can work on that effort. Senator Schumacher, Senator Erdman, and a few others have talked about the fact that these programs are critical to evaluate. Something's got to give. Revenues aren't going up nearly as fast as they used to, and costs are going up...costs are going up. And so evaluating this program is part of our main job. And in the years to come, it's going to be more critical than ever. So this is a good effort. Once again, I support the bill and the first amendment. Haven't had a chance to digest Senator Harr's amendment. But please support the bill and we will try to make it better between General and Select. Thank you very much, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator McCollister. Senator Hilkemann, you are recognized. [LB935]

SENATOR HILKEMANN: Thank you, Mr. Speaker. Is Senator Erdman here? I am wondering if he will take a question. [LB935]

SPEAKER SCHEER: Senator Erdman, will you yield? [LB935]

SENATOR HILKEMANN: Senator Erdman, is he here? [LB935]

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SPEAKER SCHEER: Yes, he is. Just one moment. [LB935]

SENATOR HILKEMANN: I'll wait for him to get to the mike. [LB935]

SENATOR ERDMAN: Yes, I would. [LB935]

SENATOR HILKEMANN: Senator Erdman, just, oh, half hour ago or so, you spoke and you made the comment that Nebraska is the highest tax state just under Illinois. Is that correct? [LB935]

SENATOR ERDMAN: I said they were second highest behind Illinois. [LB935]

SENATOR HILKEMANN: Okay. We're second highest behind Illinois. Based on what study, what evidence is that...what documents support that? [LB935]

SENATOR ERDMAN: I didn't bring that with me, Senator, but I can get you a copy of it. I have it in my office. [LB935]

SENATOR HILKEMANN: Okay. Because it is just interesting because when you made that statement, and I don't know whether it was Senator Groene made that statement yesterday when we were doing an argument, and I thought, you know, I'm not...I don't think that's exactly right, because the whole time that I have ever talked about Nebraska taxes, I always say we're sort of in the middle, we're 25th, 26th, it kind of varies depending on the poll. And so anyway, I would be really interested in seeing what poll, because I just did a real quick cursory check on "Market Watch," for example, we're not in their top 10 of the highest, USA Today doesn't, Forbes doesn't have us, we're all about...in those, we're all in about that mid range, Kiplinger, we're not in the top 10, "Wallet Hub," we're not in the top 10, so anyway, I just...what I'm really concerned about is sometimes statements are made here that we need....I guess it's because of my background, I like to have some...some...what is the data point? So if you could get that for me, I would really appreciate that. Because that is the very first time, I am certainly...I absolutely will agree with you, I wish we were not taxed nearly as high. And we are a high tax state, I know we are. And we're particularly high in the property tax range. But at either rate, I would love to see that data because everything I have ever read, and just my quick search here, we are not the highest tax state. In fact, New York, in almost every poll, is the highest taxed state in the union. It was in every one of the seven that I mentioned just here. Illinois is about fifth or sixth in those. So just a clarification. I would love to find out the facts on that. Thank you, Mr. Speaker. [LB935]

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SPEAKER SCHEER: Thank you, Senator Hilkemann and Senator Erdman. Senator Crawford, you are recognized. Not seeing Senator Crawford, Senator Chambers, you are recognized. [LB935]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I have mentioned that I stay on the floor. I stay here and I listen. I hadn't caught what Senator Harr did which led him to offer his one-word amendment by changing the word "may" to "shall." And for his comfort, when you are drafting legislation or in the law, the two words are "may" versus "shall." "May" is discretionary, "shall" is mandatory. If it's discretionary, then a person is free to do one or the other thing. If it's mandatory, it is something like that which is administrative in a sense because it is to be done without discretion. But getting to what has been talked about thus far, I want to get the information that we can get. I do not believe the Legislature ever would do anything to substantively or substantially alter these giveaway programs. These programs have become embedded into the law of Nebraska more deeply than other laws that we have dealing with any subject. There is a class and category of individuals and operations which have stakes in these giveaway programs and they're not going to allow the Legislature to do what a legislature should do. Although the constitution gives us plenary authority to legislate, the Legislature has voluntarily surrendered some of that authority to these financial interests. And they will continue to dictate to this Legislature. I am surprised that they have the nerve to come here on a bill like this, which is just designed to get information, and say that they are going to be inconvenienced. We're talking about a billion-dollar giveaway and they don't want to be inconvenienced. And the ones who run these companies don't do the work themselves. They have staffs, they have accountants, they have tricksters, they have corner cutters, they have bean counters. They're not going to pay any more tax than they have to and they don't want to pay any. But what I was touching on before, small businesses will never be allowed to participate in these giveaways. These giveaways are designed for the upper crust. So the small business people, not being granted giveaways, will pay their taxes. That tax money, in turn--be it ever such a small percentage of the total, is significant to the one who pays it--will go to underwrite and subsidize the big businesses that are going to run these small businesses out of business. You are making the small businesses pay for their own demise to the ones who are going to put them in the state of having been demised. There's no past tense like that, but here we can say anything we want to because nobody's listening. However, I don't see how anybody could find fault... [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR CHAMBERS: ...with changing the "may" in line four on page one of the committee amendment, to "shall." If the Director of Economic Development may do certain things, then it's clear that those certain things are not of such a status that they should never be done. So in this case where we're trying to tighten up accountability or improve transparency, we're simply saying that those things which intrinsically do not have to be hidden and kept secret should be

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made available. And there is an entity which is going to have this information, and the Director of Economic Development, his or her designee shall be permitted... [LB935]

SPEAKER SCHEER: Time, Senator. [LB935]

SENATOR CHAMBERS: Thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Smith, you are recognized. [LB935]

SENATOR SMITH: Thank you, Mr. President. and good morning colleagues. Looks like we're nearing the noon hour, but I did want to rise on this particular amendment and bill. I'm undecided at this point, inclined to not support the Executive Board amendment and underlying bill at this point. And I will explain to you my reasons. As Senator Bolz says, a higher standard on transparency, higher standard...who can disagree with that? I certainly agree with that. I just don't want there to be impossible standards to meet. And in talking with companies that have used the incentive programs to create jobs in our state, it's a very difficult process to manage, to maneuver. We're competitive in terms of the incentive program that we have in our state, but we're not competitive when it comes to using the process and following the process. It is extremely burdensome to these businesses to use. And what I'm hearing with this underlying amendment and bill is that it layers yet another complexity on using the process that's in place. And why do we have a Nebraska Advantage and why do we have these incentives in our state? Well, I think it's quite simple. We are a high-tax state. I think these users of this incentive program, in a heartbeat, they would be more than willing to give up this incentive program in order to get our corporate tax rates and our pass-through individual tax rates competitive in the region so that they have the necessary incentive to create jobs, expand their businesses, and for outside entities to locate in our state. So I'm more than happy to have that discussion. I think I always have, and these businesses have as well. But we have to get our tax rates competitive first. And layering complexities on top of complexities is not going to help our business climate. It is not going to help us create jobs. It is not going to provide the necessary incentives. And I just want to also comment that it's just the large companies that benefit from these incentives. My small business and many other small businesses in the state, perhaps indirectly, but we benefit from these incentives. As jobs are created, as businesses expand and locate in the state, small businesses like mine are able to create jobs themselves. So this does help the economy of the state. It helps the well being of all sizes of businesses. It is not just for the high-end businesses. So I'm going to continue to listen and I'm going to continue to participate in this. But my thought here would be transparency, yes. Work with these businesses, work with the users of these incentives to find ways in which they can more easily navigate the process that is in place and make it transparent. Engage with the businesses. Don't go out on our own and start layering on

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complexities on a process that makes it nearly impossible for businesses to manage. With that, Mr. President, thank you. [LB935]

SPEAKER SCHEER: Thank you, Senator Smith. Senator Friesen, you are recognized. [LB935]

SENATOR FRIESEN: Thank you, Mr. President. We've talked about, a lot, about the Advantage Act in the Revenue Committee and we've discussed it quite in-depth last year. Again, where I stand is I do think the Advantage Act needs to be totally dismantled and removed and we need to come up with a new way of doing things. So my question with this is whether we do it or not, if it can change things. And I agree we need to account for the dollars, we need to make sure they are doing what they say they are doing. But again, I don't want to overburden a business doing it. We have already, numerous times, heard that there's a lot of complaints with the volume of information that's required. I am trying to listen to both sides. I still...we have to account for state dollars. We have to make sure they are done appropriately. But again, the discussion is always...in the end boils down to whether or not we keep the Advantage Act or we come up with a new process. I think it has to be a whole new process. I think the Nebraska Advantage Act should be sunsetted, and that would put some pressure on us to come up with how we're going to approach this. And when we talk about economic development in the state, if we would take the savings from sunseting the program and work on buying down the corporate tax rate to make us competitive, to me, that is what needs to be done. We need to be just known as a low-tax, stable state. Businesses, when they've come to talk to me, they don't talk about the incentive program, usually. That's at the bottom of their list. They'll talk about work force, they'll talk about our education. They want an educated work force that is willing to come to work at 8:00. That is number one on their list. And then they're usually coming because they see other resources or needs that can be fulfilled by them coming here. And so when we look at this, in the end, when you talk to them about the tax policy, they, well, you know, if you want to offer tax incentives, yeah, we'll take it. That's kind of icing on the cake, but it's not why we're coming. And if you're going to attract a company here just because of your incentive program, you probably don't want them. And so again, I think we need to look at this. I'm open to discussing if everything in here is needed or if there can be some compromise moving forward. I still do think we need to monitor how we're divvying out those dollars, and they will continue for quite a few years, we're not going to change the current contracts. But in the long term, I still think we need to look more at how we do this versus if this is going to improve us and make us better for us to develop a new program, because I think from my standpoint, I'd like to see a whole new track and so that we don't even look at something like this and see whether it's been effective. I'm looking at a whole new way of looking at economic development. And so I'm not seeing the value going forward in knowing whether or not these old programs work because I think we need to just start new and I think we need to be creative and look at policy and what actually attracts companies to our state because you can see how much money that we've spent and what we have accomplished. And we keep talking about wanting to grow the state, but, obviously, the Nebraska Advantage Act has

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not done that. And you look back at the audit and there were certain components of it that didn't do a very good job at all. It shouldn't be our goal to attract minimum wage jobs... [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR ERDMAN: ...or part-time jobs. It should be to attract high-quality jobs that either add value to something that we have here in Nebraska or diversifies our economy so we're not so dependent on agriculture when it goes through its up and down cycles. And so I think we need to be smarter about how we attract companies and what we want to attract. So from that standpoint, I'll still be...I got an open mind on this bill. There are portions of it, I think, are good and I am concerned that we are asking for too much. With that, thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Friesen. Mr. Clerk. [LB935]

CLERK: Mr. President, Natural Resources Committee reports LR266 back to the Legislature for further consideration. Urban Affairs Committee, chaired by Senator Wayne, reports LB873 to General File with amendments. Amendment to be printed: Senator Hughes to LB822. Notice of hearing from Natural Resources. And I have a conflict of interest statement filed by Senator Geist, Mr. President. Mr. President, name adds: Senator Halloran to LB690 and LB931; Kolterman, LB1040; Brewer, LB1100; Murante, LR6. (Legislative Journal page 807-808.) [LB873 LB822 LB690 LB931 LB1040 LB1100 LR266 LR6]

And a priority motion to recess until 1:30 p.m.

SPEAKER SCHEER: Senators, you have heard the request or the motion to recess. All those in favor please say aye. All those opposed say nay. We are in recess.

RECESS

SPEAKER SCHEER PRESIDING

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

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



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SPEAKER SCHEER: Thank you. Do you have any items for the record?

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

SPEAKER SCHEER: Okay. Mr. Clerk, we'll return to the afternoon agenda, LB935. Senator Kuehn, would you just like a minute to refresh our memories, please? [LB935]

SENATOR KUEHN: You bet. Thank you, Mr. President, members of the body. So where we're at is LB935 is a Performance Audit Committee priority bill advanced from the Executive Board, which looks at a couple of things. One, a data sharing piece between the Department of Economic Development and the Department of Revenue, as well as includes some additional reporting to help facilitate successful completion of the legislative performance audits of the tax incentives regarding questions that have been asked by this body. The bill would be amended by AM1888, and we're also looking at a pending floor amendment from Senator Harr. [LB935]

SPEAKER SCHEER: Senator Harr, did you want to refresh us to some of your concerns or would you like to proceed with debate? [LB935]

SENATOR HARR: I'm sorry. I couldn't hear you. [LB935]

SPEAKER SCHEER: Would you like to give us a review of your concerns or do you want to just proceed with debate? [LB935]

SENATOR HARR: I'll just give a quick review. I changed a word from "may" to "shall." Thank you. [LB935]

SPEAKER SCHEER: Thank you, Senator Harr for your brevity. (Doctor of the day introduced.) Going back to the queue, Senator Kuehn, you're recognized. [LB935]

SENATOR KUEHN: Thank you, Mr. President. Thank you, colleagues. Just want to touch base on a couple of issues regarding some things that have been brought up and also give the body and the people of Nebraska who may be watching a little update on where we're at regarding LB935 and some of the discussions. So first regarding FA110 from Senator Harr that changes the data sharing requirement from a "shall" to a "may." That does not materially impact the intent or purpose of the bill and certainly supportive of that floor amendment. It actually, as he indicated, makes the requirement more stringent. Would also like to point out a couple of things regarding some of the discussion and debate. A number of you have been polled by representatives of the business community and Advantage Act recipients regarding the burden and issues regarding the

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data reporting. And I want to be clear that we are certainly happy to work with, in good faith, and address any excessive reporting regulations that do not work for companies, but also finding that balance between obtaining the information and data that this Legislature has asked for in terms of evaluating the hundreds of millions of dollars of tax revenue that is credited back and foregone regarding the tax incentive programs while still making sure that we're not creating an excessive administrative burden to the participating companies. A group of us have met over the lunch hour. We have proposed and put forward language for an amendment that addresses the unemployment insurance piece; actually removes that mechanism which has been a significant objection by a number of the participants. We put that forward in good faith and we're awaiting feedback from the groups who have been polling you as to whether or not they will see that forward and end the kind of soft filibuster that is happening here with regard to advancing forward this bill. So with that said, again, this is a bill that is about how the Legislature evaluates this program for its information. It's not material changes to eligibility of the Advantage Act. It's not material changes that impact the credits received by participating companies, both those who are currently enrolled or those in the future. This is about how we obtain the information and answer the questions that this body has been asking and that this body codified into statute in 2015 regarding our staff in the Legislative Audit Office's requirement to evaluate these tax incentives. That's really what we're trying to stay focused on and move forward. I do want to respond to one quick piece regarding the idea of requiring reporting and burden, and I want to draw a parallel here. If you receive unemployment insurance benefits in the state of Nebraska right now, if you receive that entitlement, you're required to meet weekly with a job coach. I think that's probably a good thing. There are requirements for reporting and accountability for receiving that entitlement. I do not think that we should just by virtue of the fact that it may require additional reporting or additional input from participant companies simply rule that out as a basis for obtaining important information and data regarding these programs and how we choose to evaluate them. If we're going to have programs that are accountable and if we look at developing new incentive programs going forward in the future to fulfill all of the economic development objectives that Senator Smith has spoken about, Senator Schumacher has spoken about, Senator Harr has spoken about, we need to have the basis and the foundation for what have we learned from the past and how do we have the best policy going forward. And that is at its core what is happening in and what we're trying to get at with LB935. How do we have the quality data, the quality analysis... [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR KUEHN: ...the quality assessment to demonstrate to Nebraskans, to demonstrate to companies that are coming into this state, to demonstrate to members of this body who are making policy decisions, what we've learned, how we proceed forward, in a meaningful, evidence-based manner. So while I'd like to get caught up on one side or another of the tax incentives, I want to make sure we steer any further discussion today, if possible, as to what

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information do we want to know, what is valuable and how do we use that to make the best policy decisions going forward. Thank you, Mr. President. Thank you, members, for your attention and really good, thoughtful deliberation on this very important matter today. [LB935]

SPEAKER SCHEER: Thank you, Senator Kuehn. Senator Hilgers, you're recognized. [LB935]

SENATOR HILGERS: Thank you, Mr. President. Good afternoon, colleagues. I want to thank Senator Kuehn for bringing this bill and having a conversation, which I think is an important one. And it's a conversation I think implicates a whole host of questions, some of which are before this body with this particular bill, some which aren't. I think one question that isn't in front of the body, at least directly, is whether or not these types of incentives...whether Nebraska should have these types of incentives or not. I know there's been some discussion on the floor about whether we ought to do it, what other structure might we have to encourage growth or business development in the state of Nebraska. That question is not directly on the table with LB935. There are a number of other questions that when executing the current incentives that we have that are on the table, and I think many of which Senator Kuehn has already mentioned. For instance, what kind of data do we need to ensure that these programs are executed optimally? What kind of accountability measures do we need to have and the like? What kind of recordkeeping things do we need to have and the like? I don't disagree with those questions. I think they're important questions to have answered. But I do think that they're somewhat incomplete because all of those questions really view...importantly, are viewed from the lens of the policymakers, from us, from legislators, and others. I don't think that those are unimportant, but I do think that it at least leaves out as part of the picture another important set of questions and another important viewpoint. And those questions and that viewpoint are from the perspective of those who are trying to actually develop their business, grow jobs and get incentives. I have heard anecdotally, I've not seen any studies on this, which might go to Senator Kuehn's point about data, at least anecdotally from businesses that have presence in my district and around the state of Nebraska, about the incredible difficulty they have experienced navigating our current incentive system. Part of that difficulty is recordkeeping, part of it is the audit costs and burden. Part of it is shifting expectations and demands from the Department of Revenue. Part of it is just delay so much so that many businesses find that the juice isn't worth the squeeze, or they have to go out and actually hire high-priced consultants in order to navigate Nebraska's incentive program. And so when we talk about...we try to address the questions that Senator Kuehn has raised in LB935, which I agree are important ones: transparency, data keeping, and the like, they implicate these other sets of concerns, these other questions. In other words, how do we do this in a way that takes into account the concerns that the businesses have? Because at the end of the day, the reason we're doing this is to encourage a private entity, private entities to grow, create jobs, or come to Nebraska. And so I think we would be remiss if we didn't consider their concerns both in developing policy for the Advantage Act in general or in considering LB935. So when I began reviewing LB935, before the debate today, I did have a few

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concerns. One of which is the unemployment insurance piece that Senator Kuehn has discussed and I applaud him and appreciate his collaborative approach to that over the lunch hour and throughout the day on some conversations off the mike, I think that's one. But I have heard from a number of businesses throughout the state and in my district who have concerns about piling on additional burden. So I think as we proceed through this debate, I think it's very important to take into account the goal Senator Kuehn has identified, which includes better data, better transparency so we can make good decisions about what works. I think that's a very business-like approach, a very wise approach. But I think we cannot forget and should not forget the impact some of these requirements might have on the ultimate beneficiaries of the credits, but also the ultimate...the entities that are going to be creating those jobs. So I think I rise really this afternoon to at least shine somewhat of a light on those concerns and hopefully... [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR HILGERS: ...as we proceed...thank you, Mr. President...as we proceed through the afternoon, some of those concerns can be identified and addressed. Thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Hilgers. Senator Crawford, you're recognized. [LB935]

SENATOR CRAWFORD: Thank you, Mr. President. And colleagues, I rise in support of moving forward with AM1888 and LB935 as we go through this conversation and move forward and make sure that we're still continuing to discuss how to continue to improve the bill and continue to negotiate in good faith on how we're moving forward in terms of ways to make sure that we're getting the information that we need and getting it...and also doing all we can to make that as an efficient process as possible. And when I first got in the queue, I got in the queue because I really felt like when we were moving forward, there was a way to move forward with the unemployment subaccounts in a way to try to simplify not only what this needs to come to us, but to simplify and try to reduce some of the other reporting mechanisms and to have some of those negotiations. But that's fine. I think it's moving forward in...that's something that was a concern to everyone. So we're moving forward and just trying to make sure that on the wage and those elements, that we are moving forward in a way that just requires reporting of something that the companies are already maintaining in their records and to try to reduce anything...to reduce the new requirements in that section of the bill. So I appreciate Senator Kuehn's work on that. I appreciate the Performance Audit team for being here on the floor today, so if you have questions about what data they need, you're welcome to go over and talk to them and why this matters in terms of our requirements that we've laid out. And I would say, I think all of us want to try to make this program work as well as it can or when we want to know if and how it's

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working. So I think it's important that we continue to move forward and to figure out the best ways to gather the data that we need to make those kinds of choices. As some people might say, well, why do you need to do that if the program is sunseting or might be replaced? And one of the arguments for us to continue to track is that these people...the companies that are getting incentives will continue to get those incentives even after the sunset or after...if we come back next year with something that replaces this. So I think we're also trying to build a base in terms of understanding the best ways to try to gather and collect this data if we are coming back with a new change, if we are coming back with tweaks to the program or how we move forward with our incentives that establishing the kinds of information that are critical for us to make sure we have high-wage and high-quality jobs. It's important that we are laying some of that ground work. And so I appreciate the attention. I appreciate the conversations that we're having, but it is important that we are moving forward and continuing to make sure that we are gathering information that's critical to make sure that we are creating high-quality jobs in the state. And that's what matters in terms of the impact of these programs on the day-to-day life of many of our citizens is whether or not they're creating good jobs directly, and then obviously we are also needing to understand the secondary effects of the investments in the jobs. So I would also just like to point out the importance of moving ahead in this conversation, and I would like to yield the rest of my time to Senator Kuehn. [LB935]

SPEAKER SCHEER: Senator Kuehn, 1:15. [LB935]

SENATOR KUEHN: Thank you, Mr. President. Thank you, Senator Crawford. Again with...regarding where we are at in terms of addressing a number of these issues, I do want to just say, I think everyone involved in this piece of legislation recognizes that there are a number of reporting requirements associated with the programs that companies have reported as burdensome. I want to make sure that we distinguish what is regulatory process and part of the application and qualification process that is determined by the Department of Revenue and that is eligibility requirements, that is distinct from what we're asking for in this particular piece of legislation, which is trying to make sure that the data that they report matters and is meaningful, and that that meaningful information helps us make meaningful policy decisions. Certainly we're absolutely open to the idea of streamlining and making the process for applying and qualifying as user friendly as possible, but the vast majority of those complaints, which have been brought up thus far, are outside of the purview of Legislative Performance Audit. They simply are issues associated with Department of Revenue and how they assemble the data. Also, as I mentioned in my opening, there is an amount of data that is reported... [LB935]

SPEAKER SCHEER: Time, Senator. [LB935]

SENATOR KUEHN: Thank you, Mr. President. [LB935]

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SPEAKER SCHEER: Thank you, Senator Crawford and Senator Kuehn. Senator Krist, you're recognized. [LB935]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues and again good afternoon, Nebraska. Fundamentally, what I've heard the Revenue Committee and others profess is that where we are is where we are and that making changes would be very difficult, if not impossible. Well, if that's the train that we're on, if that's the train that Nebraska continues to ride on, then we will continue to have these budget issues every time the revenue goes up or down. I've been here for ten years and I have heard the chamber and others come in here and appeal to our good senses to give away, give away, give away, and give away. And now we're at a point where we can't take back, take back, take back. And by the way, let's not make it too onerous for you to tell us why we've given you all that money. Now, if that's not a summary of what I've heard in terms of keeping or maintaining what we have in place, I want somebody to stand up and tell me I'm wrong. I've had amendments on bills the last couple of years that say that these are things that we need to look at in terms of what we have done. Some of them are my own. The historic tax credit was my own. You all heard Galen Hadley in his last attempt to appeal upon us to look at things and you saw the list. You saw the list that said when we started this venture out, we gave them an \$80 million price tag because that's what the fiscal note said it was going to cost us and that particular issue--and I'm sorry if I sound like a broken record, Senator Smith and others--but you know what, that \$80 million price tag is now up to hundreds of millions of dollars on that one issue. But we're still debating upon whether or not we can get a little tough on making sure that what we're giving away is indeed providing new jobs, higher paying jobs, and is the best move forward for Nebraska. I had a conversation with a group of people, a group of stakeholders, a round table discussion. We took a whiteboard approach and said, if we could start over, what would we do? There was a lot of discussion about what they would do, people who have been in the business for many years, people who are not here anymore, people who spent 35, 40 years in state government, people who represented this body, who represented their constituents in this body in years past. And to a person, everyone who sat here who punched a button green or red said the same thing: I wish we wouldn't have done this. I wish we would have done this differently. When are we going to stop talking about how things are and worry about how things should be? And not even worry, but take action in terms of changing the environment that we're in. I'll support LB935 no matter what amendment you put up there because I think the additional focus on making sure that we're accountable for the money that we're giving away is good. But I fundamentally am going back to the same conversation that we've had and will have again when the budget bills come out, when the revenue bill, singular or plural, comes out, when we decide to give back tax dollars, I'll have the same discussion over and over again. There is not just one way to do business, and there is not just one way to grow business. My frustration is that we continue to go down the same road and this road... [LB935]

SPEAKER SCHEER: One minute. [LB935]

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SENATOR KRIST: ...has more potholes than the city of Omaha right now, and that's saying a lot. I want you to think about every one of these bills that comes forward in the years that you are here. I want you to analyze and make sure that it's not the lobby, it's not your own district that is pressing the issue, it's what's good for the entire state of Nebraska...1.9 million people across the state: ag community, manufacturing community, whatever it might be. That's what it's going to take. It's going to take the courage to turn the thing around and that's going to be painful. Thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Krist. Senator Harr, you're recognized. [LB935]

SENATOR HARR: Thank you, Mr. Speaker, members of the body. The intent of this bill is excellent. Just like the intent of the Nebraska Advantage is excellent, good in policy, bad in practice. And we have some of the same problems here with this bill. From the very get-go, again, I have some specific word problems more than just this "may" versus "shall." I would ask for your support on it. But folks, this is a complicated issue we have. Our audit committee does a great job. Our audit staff does an amazing job. And the frustration that I can see oozing from the members of the Performance Audit Committee are the same frustrations I have felt many times, over and over and over again, and it's not limited to the Nebraska Advantage Act. Surprisingly, it's not limited to our fiscal notes. It goes further than that. And again, it's nothing with what our legislative branch does. But there are numbers that are thrown around all the time and results, but we don't know how those numbers, that analysis was done. We can never really question whether they were done properly or improperly. We are given a number and we are told this is the number, don't ask questions. When we say I'd like to see the raw data, they say, that's cute, and we appreciate that. Go on your merry way and go make policy. We'll tell you what the facts are. This happens over and over and over again. And the longer I'm here, the angrier I get about it. So I understand why we want LB935. We want to have better access to the data, and there is nothing wrong with that. But we have to do it in a smart manner and we have to do it in a legal manner. And I don't understand how DED, through this, has access to data, but heaven forbid, gosh darn it, heaven forbid the Legislature have that same information. Again, you're just the policymaker, go on your way. I have a bill with the Water Sustainability Fund, funded by the General Fund... \$11 million...board made up, appointed. This committee makes no money on their own. They take it from the taxpayers. But somehow they feel that they're the policymakers and they can come in and lobby for or against a bill that we, the policymakers, decide. I get it. I am more frustrated or as frustrated as anyone in this building for the lack of respect we part-time senators are given. And as I begin my sunset, I now better than ever understand the term "webeies." We be here before you, we be here after you, and we're just going to wait you out, and we're going to exhaust you, and we're going to make you use all your energy. Again, I understand... [LB935]

SPEAKER SCHEER: One minute. [LB935]

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SENATOR HARR: ...the frustration with the Nebraska Advantage Act. I'm going to hit my light. But that being said, doing something is not necessarily better than doing nothing because, again, Nebraska Advantage, good in policy, terrible in practice. It's very impractical for the people who receive it. It's time...it's time, folks, to redo that act. No ifs, ands, or buts about it. I can't find one person out there that defends it and thinks it's a great idea. So we got to redo it, but we got to do it in a smart way, and we got to look at what we're doing, and we got to do it in an intelligent, laser-focused way. And I'll talk more about that next time. Thank you. [LB935]

SPEAKER SCHEER: Thank you, Senator Harr. Mr. Clerk. [LB935]

CLERK: Mr. President, Senator Chambers would move to bracket the bill. [LB935]

SPEAKER SCHEER: Senator Chambers, you're welcome to open on your bracket motion. [LB935]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm not going to take all the time I could on this motion. I was here when all of this giveaway started. I listened to all of the pleas and the saltwater tears shed by my colleagues for these big companies and ConAgra was the first one. And I told them, when they get from you what you what...they want, they're out of here and they're gone. Cabela's is gone. I listened to people defending these big companies on the floor now. They have to spend a little money to get a consultant...billions before it's over. And we're worried about the little money that as a business expense they have to spend to comply with what the Legislature says before we can give you these hundreds of millions of dollars? I'm not going to take all the time I can on this motion, but I had to get this out of the way so I cannot say anything else on the bill. I'm going to support it whatever form it takes. It's a worthwhile effort to try to bring some transparency and information to the public that the public is entitled to have. So what I'm going to do, and you all can get on out of here right now if you don't want to hear it, I'm going to read just a little bit from a letter I wrote to Donald Trump when he was running for presidency. And this part is called "Trump's Three Theorems" on political expediency. People have heard of Einstein's theory of relativity, Newton's laws--gravity and motion, Occam's Razor, Machiavelli the Prince, but this is the first time "Trump's Theorems" will have seen the light of day. I doubt that you yourself have formulated them in the manner that follows. Having carefully followed and analyzed your words and actions, parenthesis, to the extent that such things are susceptible of analysis and formulation, close parenthesis, I have undertaken the task. I don't know whether you arrived at these, quote, truths, unquote, then in parentheses, theorems through study and conscious thought or if they just, quote, came to you, unquote, unbidden like photosynthesis or in the way that water flows downhill and seeks its level. In a nutshell, here is the essence of each. First theorem: fool all. Second theorem: lie, dumb down. Third theorem: promise them the world. Three playbooks: Each theorem follows



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the playbook of a well-known personage: Abraham Lincoln's playbook, Hitler's playbook--Mein Kampf, Satan's playbook. First theorem from Lincoln's play book: Honest Abe famously said it is true that: You may fool all the people some of the time; you can even fool some of the people all the time, but you can't fool all of the people all the time. The supporters comprising your base fit within the second clause. You can fool some of the people all the time. And you have done so and are doing so masterfully, regardless of what you say or do. No matter how outlandish, preposterous, untrue, or unintelligible, your base unthinkingly and uncritically remains steadfastly with you. Fool all has been achieved. And by the way, the date of this is November 3, 2016, and I have post office proof that it was delivered to him at his hotel on Fifth Avenue. Second theorem--Hitler's play book: This is what Hitler said, all propaganda has to be popular and has to adapt its spiritual level to the perception of the least intelligent of those towards whom it intends to direct itself. The great masses of the people...will more easily fall victim to a big lie than to a small one and Trump lies, lies, lies. He lies like a crosstie. In sum, tell big lies and appeal to the least intelligent. You once declared that you, quote, love uneducated people, unquote. Did you by chance have your second theorem in mind? As king of hyperbole and the superlative, you have regularly unleashed some whoppers which your base thrives on like a hungry lion devouring red meat. A subtheorem might be--if you're going to strike out, do so swinging for the fences rather than trying to bunt. For the record, this is not to assert that you are a Nazi or that your ideology is Naziism, although some have made such an allegation. My point is merely to show the similarity between your approach and Hitler's is inescapable. Examples, promise everything to everybody at a cost to nobody. Two, the U.S. can sustain itself as a self-contained economic island on this planet. Three, reopen obsolete, rust belt manufacturers to produce goods for sale only on the U.S. market and give millions of good, high-wage jobs to everybody who wants one and there is no reason to raise the minimum wage which is too high anyway. Four, never detail how anything is to be accomplished. It simply will be, period. Five, don't mention Congress because you'll do all these fantastical things yourself. I said this before he was elected. Compare what I wrote to him with what he's doing now. He ought to pay me for laying out the blueprint. This is a theme song of the second theorem. I fling untruths into the air. They fall to earth I know not where, and furthermore, I do not care. All in war and politics is fair. And finally, in the fairy tale, Rumpelstiltskin was a deformed dwarf who could spin straw into gold. Using that paradigm, you can be dubbed "Trumpelstiltskin" due to your ability to spin a glaring untruth into an authoritative sounding assertion of incontrovertible fact. Lying and dumbing down have been achieved by you, again, in a masterful manner with your base. I thought he said time. Third theorem from Satan's handbook--promise them the world. Saint Matthew 4:8: Again, the devil taketh him up into an exceeding high mountain and showeth him all the kingdoms of the world and the glory of them. And sayeth unto him, all these things will I give thee if thou wilt fall down and worship me. Then sayeth Jesus unto him, get thee hence, Satan, for it is written thou shalt worship the Lord thy God and him only shalt thou serve. The byline could be--fall down and worship me, for that is what happened here. The headline of this article that I included, "Trump Thrills Christian Audience With Promise." He promised them the

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world. I won't read all of that. I got to get through quickly. Again, you handled these, quote, holy people so called like a maestro. And it told how they gave him a standing ovation. You know they, by and large, are actors. They forgot that your entertainment activities have equipped you to spot frauds a mile away, and such they are. Check this out. Despite the fact that your conduct, open and notorious, has been everything but the conduct of a good man; you mock the disabled. You have used profanity in public. You've incited and condoned violence at your rallies. You boasted and jested about sexual assaults. You've insulted, denigrated, and debased women. You've encouraged religious bigotry against Muslims. You've insulted, stereotyped, and disparaged, quote, Mexicans, unquote, as rapists, criminals, and murderers. Yet, because you made promises to these holy people and showed them all the kingdoms of the world as part of the package they, in effect, fell down and worshiped you becoming willfully blind. Here is what they had to do in order to go along with your program and gain your favor. He walks like a duck, he quacks like a duck, he looks like a duck, therefore he must be a chicken. To top it all off, they ignore Jesus' caution. It is easier for a camel to go through the eye of a needle than for a rich man to enter into the kingdom of God. You are the master manipulator who could teach Satan himself a thing or two. Is it becoming increasingly evident why I throw praise at you? When you've been in politics as long as I have, you detect certain trends. You know what's coming next. And I cannot in silence listen to all these tears...I even listened to Senator Hilgers worried about these big companies who could buy him and sell him ten times with the money they have in their watch pocket. [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR CHAMBERS: With the money they have in their watch pocket, they could buy this whole Legislature with what they've got in their billfold, the whole Legislature, save one. So you all can have the rest of the time you're going to spend on this bill. I applaud our staff for the work they did. The bill is worthy of being supported. I'll support it with my bill and cooperate and let you all off the hook by promising not to have another word to say on it. Thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Kolterman, you're recognized. [LB935]

SENATOR KOLTERMAN: Good afternoon, colleagues. Thank you, Mr. President. Have to wonder why we're doing this. First of all, I oppose the bracket motion and I actually oppose the bill itself. It's not that I don't want the information. My question, I guess, as we've heard over and over again is--what are we going to gain by adding another layer of duties for department staff, another layer for reporting for Nebraska employers? We all want to know, everybody in here wants to know something is working well as been intended to work. There is not any argument

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there. But here we're talking about adding to the already heavy burden of Nebraska Advantage participants. What are we going to get from it? What are we going to gain? What are the effects of this going to be on the added burden to agency staff, participating employers? What are we going to get for the added cost of collecting and looking at all this data? If you ask any economic developer in any community, they will tell you that the Nebraska Advantage Act is, in fact, well-known across the country. Is it well-known for the right reasons? Probably not. It's well-known for its labor intensive application process. It's also well-known for its labor intensive and ongoing reporting and audit process. It is also well-known for the lengthy approval delays employers face. How many of you have heard from businesses that have waited for years to receive benefit from Nebraska Advantage? Even after they've made the substantial investment and created the jobs? The jobs are there and then we're still waiting. These businesses deliver on their end. They've created thousands of new jobs. And I acknowledge the fact that some of them are gone. But their businesses are still here. Cabela's is gone, but they still have a presence in this state. They've created thousands of new jobs. They've invested hundreds of millions in new facilities. And for that, people question where they really do all they are promised, whether they are providing any real value to the state and their communities. So today, the proposal is to add to the already heavy burdens that exist. What are we telling the nation and the world about doing business in Nebraska? You live up to your end of the bargain and we'll think about living up to ours. There's been an annual report published on the Nebraska Advantage since its inception. It's very interesting reading for those who like data and detailed program descriptions. It shows jobs, it shows investment dollars, and they're both impressive numbers. But it also shows names and locations. We hear that this is for a select, elite class of companies, big corporations in Omaha and Lincoln. But in reality, the report shows the names and the locations, companies large and small. So the names that I look at are Ravenna, Beatrice, Nebraska City, Adams, Blair, Crete, Hastings, Kearney, Wayne... [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR KOLTERMAN: ...Ord, Falls City, Fremont, Wausa, Alda, Plainview, and the list goes on and on and on. Look around your district. Look at the homegrown businesses this keeps, not just in Nebraska, but in your community. It's important that we continue to grow our state. Is the message you want to send home we're not so sure you're doing much for the community? Is that the message we want to send? Think about that before adding a new paperwork burden that these are providing jobs in the community. I couldn't agree more that the Nebraska Advantage Act needs to be reworked, but there has got to be ways of doing it other than adding more bureaucracy to the process. So with that, I applaud the committee for bringing the bill. I think it needs to be discussed. I can't support it. Thank you very much. [LB935]

SPEAKER SCHEER: Thank you, Senator Kolterman. (Visitors introduced.) Senator Briese, you're recognized. [LB935]

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SENATOR BRIESE: Thank you, Mr. President; and good afternoon, colleagues. I rise today in support of floor amendment, FA110, AM1888, consequently LB935, and in opposition to Senator Chambers' bracket motion. The intent of the Nebraska Advantage Act is to help grow our state. In theory it should do this by fostering investment in our state. This investment should in turn yield job creation, but ideally jobs that pay well in excess of the state average. Whether you like the Nebraska Advantage Act or not, I believe you should support this bill. Our duty in this body is to protect the interest of Nebraska taxpayers, and to fulfill that duty we have to evaluate incentive programs to determine their effectiveness. So as we evaluate the Advantage Act, we have to look at the amount of new investment, the new jobs created, the salaries and the benefits for those jobs. By helping us generate data, this bill can help us evaluate some of those metrics, in particular the number of new jobs and the rate of pay and the benefits. And when we're talking hundreds of millions of dollars here, it's our duty to make sure we're getting our money's worth. And whether you're talking tax incentive programs like Nebraska Advantage or TIF at the local level, causation is a primary consideration. Essentially the question has to be asked--does this tax break actually cause this investment to occur? That's tough to verify. But any information we can get as to the level investment, the jobs created, the salaries, the benefits, could help us make that analysis. We owe it to Nebraska taxpayers to be good stewards of their dollars and this bill will help us do so. Thank you. [LB935]

SPEAKER SCHEER: Thank you, Senator Briese. Senator Williams, you're recognized. [LB935]

SENATOR WILLIAMS: Thank you, Mr. President, and good afternoon, colleagues. I'm sorry that I was gone for a while so I missed a little bit of the debate, but trying to catch back up but certainly wanted to weigh in. I'm glad we had some young people in the balcony when Senator Chambers talked about Rumpelstiltskin. Also, I've really enjoyed the titillating debate that we've had today, this morning, and this afternoon. I think as everyone knows, I've been very involved with economic development activities across the state for nearly all of my professional life, and I firmly believe it is the responsibility of this body to create an environment for growth in our state. You know, we have budget issues that we're going to spend a lot of time talking about. We have tax reform issues that we're going to spend a lot of time talking about. We can't solve these problems if we don't continue to grow our state. Tools, like Nebraska Advantage, and before that, LB775, all the things that we have used have been part of the tool box that has helped keep our state on a growth trajectory. I think it's important that we continue that. I agree with the fact that there needs to be more transparency than we certainly have at this point, and information available so that we can weigh the productivity and the jobs and the long term of those things. But I look at my community. If we had not used the tools that were available, that were given to us partly by this Legislature, we wouldn't be where we are. A lot of people will say this stuff will happen anyway. I'll guarantee you it won't, and if it does happen, it doesn't happen in our state, and it wouldn't have happened in my community. We must be competitive. You can have all the rim shots you want across the bow and we can talk about these things till we're tired, and we

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will. But today I want you to think about where we're going as a state and how we get there. I understand why this discussion is going on. I understand from one of our senators who said this morning, legislation has consequences. It certainly does. And it's our job to weigh those consequences and make a difference. And I believe this group will do that and do it well. Thank you, Mr. President. [LB935]

SPEAKER SCHEER: Thank you, Senator Williams. Mr. Clerk. [LB935]

CLERK: Mr. President. Senator Chambers, I understand, Senator, you wish to withdraw your bracket motion. Mr. President, if I may, some items: Enrollment and Review reports LB931, LB1078, and LB439A to Select File. Enrollment and Review also reports LB17 as correctly engrossed. Judiciary Committee reports LB833, LB983, LB1051 and LR293CA to General File. And a new resolution, Senator Krist, LR333, that will be laid over. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 808-810.) [LB935 LB931 LB1078 LB439A LB17 LB833 LB983 LB1051 LR293CA LR333]

SPEAKER SCHEER: Thank you, Mr. Clerk. Senator Harr, you're recognized. [LB935]

SENATOR HARR: Thank you, Mr. Speaker. Sorry for the delay. Still out in the hallway trying to figure out if there is a way that we can work something out on this. Let me continue where I left off, which is that we need more information if we are to make good policy. No one denies that. But what we have now in the collection of the Nebraska Advantage Act is you have silos. So these companies report, some to the Department of Labor, some to the Department of Revenue, maybe some to DED, and you have different silos. And the executive branch doesn't always do the best job of communicating between the different agencies. Some of that's statutorial, some of that's territorial, and some it is just whatever. Right? So they don't always communicate that well together, that information. And then you add the additional layer of...it's our information. You're a separate branch, legislative, you're not entitled to this. So we have this wall, silos and then walls. And it is impossible to find out information. And I will tell you there is a sunset on the Nebraska Advantage and that I think the Nebraska Advantage probably should not be continued or renewed, that we need something better, because, again, do not know a practitioner in the field that thinks it's good, a company that thinks it's efficient, fair and reasonable, and a Legislature that feels like they know what the heck we're spending this money on and if it's being spent effectively and efficiently. As a result, are we throwing good money after bad? Are we giving Advantage Act dollars for natural growth, organic growth? I remember hearing the Governor make that argument when he was running for Governor. Haven't seen any changes in those four years. And he would know. He would know better than most because you know what? When we elected that Governor, we said we wanted a business executive. And he wasn't just a business executive of some company, he was a business executive of one of the largest companies in

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Nebraska, a company his family founded, who grew it from probably, one, his father, Joe, to three, to five, to thousands of employees. And they were recipients of Nebraska Advantage money. He would tell you what's wrong with it. Now, we haven't had a lot of change on it, unfortunately. And he was COO, CFO, he was a mucky-muck within that company, so he would know what's going on. We need to keep businesses here. We need to grow this state. We need to provide incentives for businesses to continue in this state, to grow in this state, and we need that information. Again, don't disagree with any of that. I don't think you'll find a person in the body that would disagree with any of that. The problem is how do we do that? What is the best way to execute that? What is reasonable to ask our companies to provide? [LB935]

SPEAKER SCHEER: One minute. [LB935]

SENATOR HARR: Thank you. And more importantly, when they sign that contract, what did they agree to give...information did they agree to give? We're at a point now where we're cutting back and saying, oh, yeah, yeah, that contract you signed, we want more information. Folks, I'm not sure legally we can even do that. Where we sign a contract, you do X, Y and Z, you will get this amount of money back. Now we're coming and saying we want more information. I'd love to see, is this even possible? It should probably be new applications going forward. But you can't retroactively say, I'm changing the terms unilaterally without any consent given. So, a lot of issues with this bill. I don't disagree with the underlying intent or the nobility of that intent. But I think we need to probably get all the parties together when we do that and to really have a conversation. How do we make it better for the business and how do we make it better for us, the Legislature? Thank you, Mr. Speaker. [LB935]

SPEAKER SCHEER: Thank you, Senator Harr. Senator Smith, you're recognized. [LB935]

SENATOR SMITH: Thank you, Mr. President. And colleagues, I absolutely agree with Senator Harr. I think his points were well made and I would agree with him, as well, that the intent of the bill is good in that it's attempting to achieve transparency...or better transparency, but that effort is being sought, I believe, in a vacuum without recognition of what the impact is on businesses in our state that participate in this program. Colleagues, this will place an additional administrative burden on taxpaying businesses. The additional reporting requirements in LB935 for many companies will mean hiring additional staff to simply comply. The provisions of LB935 would further complicate the already burdensome auditing process most companies go through to qualify for the Nebraska Advantage Act, again, making our state less competitive. We are in a regional competition for attracting businesses and for expanding the businesses that are in our state. Our tax structure is already unattractive and uncompetitive, and without an incentive program that keeps us in the run, in the hunt, then once again we will end up on the short side of it. The bill contradicts the administration's desire to run our state more like a business at a time

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when the Governor is focused on reducing regulations and cutting red tape at state agencies, LB935 adds yet another layer of reporting requirements onto taxpaying businesses. The amount of reporting already required under the Nebraska Advantage Act is voluminous. Companies are already waiting months and years in the audit process at the Department of Revenue and additional quarterly reporting will only further lengthen that process. In his reopening remarks, Senator Kuehn mentioned working with business community to find a path forward to make a better bill. I would suggest that the business community needs to be engaged up front in the process, not at this hour of bill development, not at this hour of amendment introduction. We need to have a partnership with the businesses that we're seeking to attract to our state, to keep in our state, and to get them to expand in our state. And we need to engage them up front. I believe that they, too, embrace transparency, but they want a program that's simpler to maneuver. And so I think that's the partnership that we need to work towards. The proposed changes I've heard of, thus far, I do not believe are sufficient to get me to the point of supporting this bill or the amendment from the Exec Board. I do agree with the intent for better transparency. I would just hope that we could get businesses involved in building a better approach to that, and I would hope that what we are able to achieve is a process by which we have more participating businesses that are willing to invest more into our state. Thank you, Mr. President. [LB935]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Thank you, Senator Smith. Senator Bolz. [LB935]

SENATOR BOLZ: Thank you, Mr. President. I appreciate the dialogue on the floor this afternoon about LB935 and I appreciate the stakeholders are coming together to try to find common ground and some ways that we might be able to make things work. And I look forward to hearing more suggestions about some of the changes that might be possible to achieve what I think I hear to be a common goal, which is transparency, as well as making our tax incentive programs work to the greatest extent possible. And so I think this bill gives me the opportunity to talk about my favorite subject matter, which is work force development. And it gives us an opportunity to take a step back and think about the underlying issue, the thing that underpins all of this conversation about effective evaluation and outcomes. And that is we do, as a state, believe in investing in business and job growth, and that is a part of the Nebraska way. And yet, like many other states there are challenges in achieving that, not only in achieving good jobs, but in achieving the goal of making sure that people stay here and have opportunities, as well as folks who need the skill sets to fill job needs. So I thought I'd use some of the time on the debate on the floor this afternoon to talk about the Nebraska work force landscape assessment. And I'll pass out the executive summary. I'll have the pages pass it out when I get off the mike here. But this was prepared for Accelerate Nebraska. And Accelerate Nebraska is a kind of think tank around education and training and work force development. And they identify some of the challenges that we have in Nebraska that I think need to be addressed by our next evolution of

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tax incentive programs and of work force development and other economic development strategies. So the first thing that they say is that most people are working. Economic conditions illustrate that there are work force challenges. Nebraska has approximately 1.9 million residents and a consistently low unemployment rate of 2.4 percent, coupled with a high labor participation rate currently at approximately 69 percent. Meaning that people are available to work and when they are available to work, they are working. And yet underemployment is an issue. Skilled labor shortages are a contributing factor to underemployment. As the report noted, the majority of Nebraska's jobs are low and middle skill wage jobs, and four-year degrees are not always aligned with in-state job opportunities. So we really need to think through how we build up our skill sets and how we build good jobs, high-quality jobs in our state. More than that, misalignment exists. So Nebraska is minting postsecondary graduates that can't find work "commiserate" with skill level in the state. And to quote the report again, Nebraska's producing more postsecondary graduates than can be employed at their appropriate skill level in the state. However, some community colleges are making efforts to align with middle skill jobs. So Accelerate Nebraska recognizes that we have work to do in terms of building our tax incentive programs so that we can put to work those highly skilled, well-educated folks that come out of our Nebraska colleges and universities who do want to be part of the "Good Life" here, but are looking for job opportunities. So the report further articulates that Nebraska has a skills gap. We have a shortage of IT and other STEM graduates. We have a shortage of workers in the building trades. We need to integrate non-English speaking populations. We need to retain university graduates. And there is a significant... [LB935]

PRESIDENT FOLEY: One minute. [LB935]

SENATOR BOLZ: ...skills gap between job seekers and available labor pool and high growth positions. The point I'm making by laying all of this out and spending time on the microphone talking about work force development and job opportunity is that even though I agree that we need to collect data so that we can measure our outcomes and our benchmarks, the underlying issue here is that it's time for innovation and thought about where we take our tax incentive programs and our business development programs through the next generation. What's our next new vision, so we can put all these workers to work and support businesses and growing and thriving? And so I appreciate all the stakeholders and the lobby who are having these conversations not only about the amendment and about how we make that more workable for everybody, but also about the underlying vision and policy. And I'm committed to continue to work on these issues so that we can address underemployment, we can grow our state, we can provide new job opportunities for those postsecondary graduates and we can make Nebraska the best it can be. Thank you, Mr. President. [LB935]

PRESIDENT FOLEY: Thank you, Senator Bolz. Senator Crawford. [LB935]



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SENATOR CRAWFORD: Question. [LB935]

PRESIDENT FOLEY: The question has been called. Do I see five hands? I do. The question is shall debate cease? Those in favor of ceasing debate vote aye; those opposed vote nay. Record, please. [LB935]

CLERK: 25 ayes, 5 nays to cease debate, Mr. President. [LB935]

PRESIDENT FOLEY: Debate does cease. Senator Harr, you're recognized to close on FA110. [LB935]

SENATOR HARR: Thank you, Mr. President. How long do I have to close on this? [LB935]

PRESIDENT FOLEY: Five minutes. [LB935]

SENATOR HARR: Five minutes. Better use it all. It's going to take a while to explain this. Basically, what this amendment does is it changes page 1, line 4 from "may" to "shall." Now, I know that seems simple, and by word count it is. But let's think about what it really does and why the word "may" and why the word "shall" are so important, and how, when you switch from the word "may" to the word "shall," you shift the power. Right? The Department of Revenue "may" do something. Who has the power? At that point, the department has the power. They can say, yes, and they can say, no. Or they can say, maybe, or they can say, yes if, no if. They can lay down any condition they want. And we as a body are giving that discretion to the Department of Revenue. We're giving that power to the Department of Revenue and we're saying, we don't know the facts. We trust you. We think what comes up is what you need, and you'll know what is best for the department to do or not do or do conditionally. Whereas "shall," we are saying come hell or high water, Department of Revenue, you have to do this. We are taking control. We are saying, this is what we want you to do. We are setting policy. You, we are not giving you the discretion to set that policy to decide whether you're going to do it or not do it. We are saying, this is what we should do. We think this is Department of Revenue's job, duty, and obligation, and gosh darn it, you're going to do it. If you look at the rest of this amendment, they use the word "shall" every other time. So once the department decides to do this or the conditions to do it are met, then we take away all discretion. I think we are the policymakers. I think we should decide whether the Department of Revenue shall give DED this information or whether they will not or shall not. We're going to have other legislation this year, Senator Murante brought that Senator Thibodeau prioritized of changing statutes from "shall" to "may." Folks, we're giving away our power. It's bad enough. Why do we have this bill to begin with? We have this bill to begin with because we aren't getting the information we think we need to make solid decisions. And if we really believe we need that information, why the heck are we then saying, well, yeah,

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this whole bill is out there, but if the Department of Revenue for whatever reason decides at their own discretion, arbitrary or capricious or whatever, no need, this whole bill becomes worthless. So you may require the businesses to still do all the work, all the compliance work, and then it just sits there in one of our gosh darn silos. [LB935]

PRESIDENT FOLEY: One minute. [LB935]

SENATOR HARR: And we never get to see that information because the Department of Revenue said, nah, no thanks, we don't think you deserve it. So if we believe this information is so important that we're going to make businesses lean over backwards, change contracts they already signed with the state, we better make darn sure we get that information and we don't just leave it up to the discretion of whoever at the time is the head of the Department of Revenue. With that, I would ask for your vote and your support on FA110. Thank you. [LB935]

PRESIDENT FOLEY: Thank you, Senator Harr. Members, you heard the debate on FA110. The question before the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk. [LB935]

CLERK: 36 ayes, 0 nays on the adoption of Senator Harr's amendment. [LB935]

PRESIDENT FOLEY: The FA110 is adopted. Mr. Clerk. [LB935]

CLERK: Senator Kuehn would move to amend with floor amendment, FA111. (Legislative Journal page 810.) [LB935]

PRESIDENT FOLEY: Senator Kuehn, you're recognized to open on FA111. [LB935]

SENATOR KUEHN: Thank you, Mr. President. Members of the Legislature, I would draw your attention to what is a relatively short amendment, FA111. And since we've had so much talk about regulatory burden, give you a quick run-through of what FA111 does, is it strips the bill down to the chassis, if you will, and it gets us the essential information that will facilitate and give us better quality audits. So we've heard quite clearly that the business community, the stakeholders, feel that any reporting of additional information, whether it's through the unemployment system that is contained on page 4 or the additional reporting requirements are potentially burdensome. So what we have with this amendment is we have with the bill, let's see where the body is at in terms of providing important information to facilitate much better audit of the tax incentive program. So what we have left remaining in the bill is that we will have the data sharing piece, which we just amended in the "shall" to make sure that DED has access to the

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information that they need in Revenue. We will be reporting the federal ID and unemployment numbers so we can allow the matching of information between the Department of Revenue and the Department of Labor. And we do maintain the investment categories which they are already required to track and report, as well as the data retention piece which impacts our ability to continue to audit the tax incentive programs throughout the life of the credits as they are paid out. So all of the objections you have heard regarding this is a burden, we can't report this, this is too much, is eliminated from the bill. So what we're left with then is information that will help the Legislative Performance Audit conduct its job. I want you to just be aware that it's not going to answer a number of the questions that this body has asked, but it does improve the quality of our audits, which ultimately is what we're going with. Again, I really commend and appreciate the Legislative Audit Office staff who continuously and tirelessly throughout this entire process have been looking for innovative solutions to ultimately achieve what we're trying to do with this bill, which is improve the quality of the performance audits that this Legislature has required them to conduct. And I think it's an exceptional job on their part with regard to looking for solutions, and this represents a solution to address an entirety, every concern that has been brought forward. So now we'll see. Are the chambers actually looking at technical problems? Are the business interests actually looking at structural things or are they just opposing the bill on its face? So we give you an opportunity to do so. I'd also like to reference...there has been some comments made about regulatory burden and a few comments made about we're working with the Governor who is trying to reduce regulatory burden. And so you have a handout that I passed around as I was thinking about this idea of regulatory burden. We're all aware, if you walk down the hallway on the east corridor of the Capitol Building, we have a Center for Operational Excellence. And this body, through appropriations and state government, has invested significant resources financially and in human resources to operational excellence through the Six Sigma process. And some of you have probably noticed in communication with the executive branch, there is certifications which have been done for Six Sigma. Many of you may not know what that is. But what I did is I took the Six Sigma principles, which are all about good metrics, evaluating metrics, providing analysis, and I mirrored them with what is in LB935. And everything that the Performance Audit Office has been working towards, their very function, is specifically geared toward the same principles that businesses across the nation work toward in the Six Sigma principles. So I think when we talked about what we're doing, if we're going to parallel what the Performance Audit Committee is looking for and trying to do and what our legislative office staff is, if we're going to try to draw parallels with the objectives of the executive branch, all we've heard about is Six Sigma and Operational Excellence. And when you look at those six characteristics, they align almost perfectly with what our legislative branch is attempting to do. So take a look at that. If you have any questions, I'm happy to talk about those principles with you on the mike or in question. But, again, I encourage you to take a look at FA111, the sections that it strikes. You can go to the handout I handed out this morning and see that it leaves intact Section 1, Section 2, Section 3.1, Section 4.1, and 4 and 5, and Section 5 and Section 6. So all of these allegedly burdensome new reporting requirements have been

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eliminated. So let's see if we can improve the quality of our audits and move forward with what is arguably a strip down, but still effective piece of legislation for improving our performance audits. So I encourage your support on FA111, which amends the AM1888, and then passing that forward and advancing LB935 to Select File. Thank you, Mr. President. [LB935]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Debate is now open on FA111. Senator Harr. [LB935]

SENATOR HARR: Thank you, Mr. President, members of the body. Thank you, Senator Kuehn. This is a good amendment. It's a good step forward. It addresses...it helps balance out some of the things I talked about earlier between what do we require of businesses and how do we get it, and then making sure we, the policymakers, end up with this information as well. I just want to clarify for the record a little bit. Is Senator Kuehn available for a question? [LB935]

PRESIDENT FOLEY: Senator Kuehn, would you yield, please? [LB935]

SENATOR KUEHN: Yes. [LB935]

SENATOR HARR: Thank you. Thank you, Senator Kuehn, for bringing this amendment and for being willing to work, can sometimes be difficult in three hours to get something done. My biggest concern is Social Security. Senator Morfeld had a bill earlier this year about data security, and I don't know if you're aware, the state doesn't always have the most up-to-date data. [LB935]

SENATOR KUEHN: All of that...before you go too far, all of that is removed. So your Social Security... [LB935]

SENATOR HARR: Social Security is removed. That's what I was trying to get at. [LB935]

SENATOR KUEHN: Is removed. Yes, it's removed in FA111. [LB935]

SENATOR HARR: Okay. All right. I wasn't aware of that. That's what I was trying to clarify. All right. Thank you. Folks, I think I can get on board with this. I think this is a good, solid amendment that gets at what we're trying to do and gets at what the business community concerns of overregulation, overburdensome when they get the dollars. I am most concerned about how do we get the information the most efficient way possible so that we know what we're going to do. I'm gone in a short time. But let me tell you, folks, we are going to do some exciting...you guys are going to do some exciting stuff next year. What you're looking at doing

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and updating, our incentive act. I am so jealous because I think they're going to be some great things done. And I hope...hopefully, this information may not get to you in time, but it will help inform businesses as far as what we're looking for. So thank you, Senator Kuehn, for bringing this amendment. I'm going to read it over a little bit more, but I hadn't had a chance to see it. But thank you very much. [LB935]

PRESIDENT FOLEY: Thank you, Senator Harr and Senator Kuehn. Senator Watermeier. [LB935]

SENATOR WATERMEIER: Thank you, Mr. President. Good afternoon again, Nebraskans. I do appreciate where the dialogue is going in. I am disappointed in where we ended up this morning. I thought Performance Audit had done a good enough job that it was fit the way it was and certainly fit with another amendment that we had debated and talked about shortly with the stakeholders over the lunch hour. But I will tell you that this conversation today on tax incentives should not be dismissed as the end of anything. I think it's going to carry us over in the future on what we talk about on the next tax incentive and/or adjusting the Advantage Act. What we tell the public today needs to be remembered. And they will remember it, because now we brought it to light in a lot of different ways. I've heard Senator Schumacher speak to it. Even Senator Smith in the off season has talked to us about the liability that we have with some of these incentives and the long-term effects that they have. So Senator Kuehn's floor amendment, FA111, does some things and leaves us with some positive things yet. It leaves us with a reporting mechanism that we don't have today, both on the federal tax ID numbers and the unemployment numbers that we don't have access today. We, meaning we don't have access in the Legislature, but they will get it through the Department of Labor and so we will be able to use it on our reporting mechanisms back to the Legislature. We have some classifications of assets and that's going to be of benefit to us in the long run. We are still limiting the amount of sharing of the data, but it's an improvement on where we are today. We are geared up to do these audits, and we need to be able to continue to do it, and it's very frustrating to be able to say because of a statute we can't get everything we want. We can't get what the body is demanding, we can't get what the public is demanding. So this is still an improvement. The last thing it does is it allows and requires for the data to be kept for 20 years, which is not a hindrance. And for those four reasons, I would support Senator Kuehn's floor amendment and suggest that everyone seriously consider this. Some of the comments that were made earlier from people that have never been engaged in the audits of the tax incentives were a little bit disingenuous, in my regard. We have not been excessively adding to the requirements of the incentives. The incentives from day one have been a problem. They're hard to figure out and we have tried as hard as we can to make some of those improvements. And every time we come to the table to do it, there is a reason to keep it like it is. It's been a very frustrating process. I really take my hat off to the Performance Audit Division and all those involved. It's a difficult thing to do. In some ways we have hamstrung ourselves with poorly written past legislation, and that should not happen again. So I am going to say it

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again that the way we end up on this bill today, LB935, it may not be voted on today, but if it doesn't come back up in the agenda, the public needs to be aware that we chose to keep them in the dark. We made a conscious decision to not follow through on very minor additions that can help this process. So with that, I would support the floor amendment from Senator Kuehn, the committee amendment and underlying bill, LB935. Thank you, Mr. President. [LB935]

PRESIDENT FOLEY: Thank you, Senator Watermeier. Senator Williams. [LB935]

SENATOR WILLIAMS: Thank you, Mr. President, good afternoon again. You know, whether we're here defending incentives or not supporting them, supporting them, whatever, I think all of us agree that we need to be able to have the tools to weigh the advantages or success of those programs. My concern about this legislation has been how burdensome those things become on companies that are already here doing business and how burdensome they may become on companies that are looking to locate here. I sincerely appreciate FA111 that Senator Kuehn has put forward and I will support that floor amendment, and I think that takes this legislation a long ways towards a significant amount of improvement, still giving us the tools of transparency and information and yet not being maybe so overly burdensome that we can't operate into the future. One of the things that I think we get into here is allowing our beliefs and opinions to become facts. And I would caution all of us, including myself, that we don't do that, that we independently look at the information that we're given, that we independently talk to constituents that are affected by the very things that we do daily in here and make sure that we're being true to our job as being state senators. So with that, I appreciate and will be supporting FA111. Thank you, Mr. President. [LB935]

PRESIDENT FOLEY: Thank you, Senator Williams. Senator Smith. Senator Smith waives the opportunity. Senator Kuehn, you're recognized to close on FA111. [LB935]

SENATOR KUEHN: Thank you, Mr. President, colleagues. I think this is a very important step forward. I will echo Senator Watermeier's sentiments. I'm disappointed that we have not taken a stronger stand as a body with regard to how we will provide this information to the public and to this body as a whole. But I recognize that this is advancing us forward in the best step possible. So with that, I would please encourage your vote on FA111 to support this to AM1888 and LB935. I would like to ask for a call of the house and a roll call vote in regular order. [LB935]

PRESIDENT FOLEY: Thank you, Senator Kuehn. There has been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Senator Kolterman, if you could check in. Record, please. [LB935]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB935]

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PRESIDENT FOLEY: The house is under call. Senators, please return to your desk and check in, please. Senator Bolz, Senator Kolowski, Senator Murante, Senator Wayne, Senator Albrecht, please return to the floor and check in. Senator Murante, if you could please return to the floor and check in. Senator Kuehn, we're waiting for Senator Murante. We can proceed or...proceed. There's been a request for a roll call vote on FA111. Those in favor say aye, those opposed say nay when you're called. Mr. Clerk. [LB935]

CLERK: (Roll call vote taken, Legislative Journal page 811.) 43 ayes, 0 nays on the adoption of the amendment, Mr. President. [LB935]

PRESIDENT FOLEY: FA111 is adopted. Senator Watermeier waives closing on the Executive Board amendment to AM1888. The question before the body is the adoption of that amendment. Those in favor vote aye; those opposed vote nay. Record vote has been requested. Have you all voted who care to? Record, please. [LB935]

CLERK: (Record vote read, Legislative Journal pages 811-812.) 37 ayes, 0 nays on adoption of the committee amendments. [LB935]

PRESIDENT FOLEY: Committee amendments are adopted. Senator Kuehn, you're recognized to close on LB935. He waives close. The question before the body is the advance of the bill, LB935. Those in favor vote aye; those opposed vote nay. Record vote has been requested. Have you all voted who care to? Record, please. [LB935]

CLERK: (Record vote read, Legislative Journal page 812.) 36 ayes, 0 nays, Mr. President, on the advancement of the bill. [LB935]

PRESIDENT FOLEY: LB935 advances. I raise the call. Proceeding on the agenda, General File, 2018, senator priority bills. Mr. Clerk. [LB935]

CLERK: Mr. President. LB773 by Senator Clements. (Read title.) Introduced on January 3 of this year, referred to the Judiciary Committee. The bill is advanced to General File. I do have committee amendments, Mr. President. (AM1932, Legislative Journal page 679.) [LB773]

PRESIDENT FOLEY: Senator Clements, you're recognized to open on LB773. [LB773]

SENATOR CLEMENTS: Thank you, Mr. President and colleagues. First, I want to thank the Judiciary Committee for advancing LB773 to the floor for debate without opposition. LB773 amends Nebraska Revised Statute 28-1310 which creates the offense of intimidation by

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telephone call. Currently, Nebraska law does not expressly include threatening, intimidating, or harassing messages sent directly to individuals versus e-mails, text messages. These types of intimidation have migrated from traditional telephone calls to our more modern forms of electronic communication. This bill seeks to update the language for the offense of intimidation by telephone call to include intimidation by electronic message, adding more modern forms of communication to the statute. The penalty would remain a Class III misdemeanor, which is a maximum of three months' imprisonment or a \$500 fine or both. The Plattsmouth Police Department made my office aware of issues they were having with acts of intimidation being reported in their community. Many of the incidents of intimidation were conducted using text messaging, e-mails, and instant messaging. These actions don't fit within the context of the crime intimidation by a telephone call, as described in Section 28-1310. LB773 is the third version of this bill. In addition to adding electronic messages to the law it addresses First Amendment concerns of the media coalition that were brought up in the 2016 version, LB892. Their concerns were directed at language that is currently in the law like the terms "annoy," "offend" "terrify," and "indecent," which may have constitutional problems in light of recent U.S. Supreme Court Opinions. That's one of the reasons why LB773 strikes subsection (2) to address those problematic terms. Nebraska courts also ruled that jury instruction based on the presumption in subsection (2) is constitutionally impermissible. It deprives the defendant of the due process right that the state prove each element of the crime and shifts the burden of the defendant to disprove the element of intent. And that's why that section is being removed. I believe we have addressed these First Amendment issues in the bill. The Judiciary Committee amendment, AM1932, is a friendly amendment that I support, which becomes the bill. I'll allow Senator Ebke to explain those changes in her opening on the committee amendment. In addition, I have also an amendment to the committee amendment to address a couple technical issues brought to my attention by the County Attorney's Association. I thank Senator Pansing Brooks for her work on this amendment and her efforts to move the bill forward in the committee. To conclude, LB773's main purpose is to make sure law enforcement and prosecutors have the necessary tools to address intimidation, threats, and harassment that have migrated from telephone calls to new forms of direct electronic communication, like text message, e-mail, and other forms of electronic communication. With that, I'll ask for your green vote on AM1932 and LB773 and advance it to Select File. Thank you, Mr. President. [LB773]

**PRESIDENT FOLEY:** Thank you, Senator Clements. As the Clerk indicated, there are amendments from the Judiciary Committee. Senator Ebke, you're recognized to open on the committee amendments. [LB773]

**SENATOR EBKE:** Thank you, Mr. President. The Judiciary Committee held its hearing on LB773 on February 7. Proponents of LB773 at hearing included the Nebraska County Attorneys Association and the Plattsmouth Police Department. Our committee also held a hearing that day on a very similar bill from Senator Pansing Brooks, LB782. Proponents of this concept at that



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hearing included a high school student and her mother who related their experiences with intimidating electronic messages. The Nebraska Criminal Defense Attorneys Association testified in the neutral capacity on both bills. The committee amendment represents a collaboration between Senator Clements' and Pansing Brooks's offices, the Judiciary Committee amendment, AM1932, replaces the term "electronic message" with the more inclusive term "electronic communication," which is defined so as to include any writing, sound, visual imagine, or data of any nature that is received or transmitted by an electronic communication device. The committee amendment also removes reference in statute to telephoning another anonymously. In addition to the changes described above, the committee amendment adds a requirement that the call or communication "causes significant distress to the individual." The last change, while well intentioned, has resulted in some concern from our county attorneys. There's also jurisdictional language in the amendment that could present enforceability issues. Senator Clements will offer his AM2174 to the committee amendment to address these issues. Committee legal counsel worked with both the county attorneys and defense attorneys on AM2174. I would encourage you to vote green on AM1932 to Senator Clement's LB773 and green on his AM2174 to the committee amendment and of course to LB773. Thank you, Mr. President. [LB773]

PRESIDENT FOLEY: Thank you, Senator Ebke. Mr. Clerk. [LB773]

ASSISTANT CLERK: Mr. President, Senator Clements would offer AM2174 to the committee amendments. (Legislative Journal pages 812-813.) [LB773]

SENATOR CLEMENTS: Senator Clements, you're recognized to open on your amendment to the committee amendment. [LB773]

SENATOR CLEMENTS: Thank you, Mr. President and colleagues. AM2174 amends the committee amendment AM1932 in two places. On page 1, lines 6 and 7 the amendment strikes the phrase "causes significant distress to the individual." The concern is that the terms "intimidation," "threaten," or "harass" are known terms while the phrase "causes significant distress" is not known and is subjective in nature. The second change starts on the last line, page 1 and continues on page 2, line 1. It would strike the new language "in the state" and reinstate current stricken language "at the place." This better defines which jurisdiction has authority in these cases. As Senator Ebke said, both county prosecutors and defense attorneys have indicated their approval of the amendment. I "respectively" ask for your green vote on adoption of AM2174. Thank you, Mr. President. [LB773]

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PRESIDENT FOLEY: Thank you, Senator Clements. Debate is now open on LB773, the committee amendment and the amendment to the committee amendment. Senator Pansing Brooks. [LB773]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. Colleagues, Senator Clements and I both brought similar bills, as Senator Ebke mentioned, and I feel pleased because I was able to work with Senator Clements to bring these bills together into one under LB773. I thank Senator Clements for prioritizing this bill and I would like to note that Senator Bill Kintner brought a similar bill in 2016 and again in 2017, and I signed on as a cosponsor at that time because I believe in the intent of the bill. I think most of us did sign onto that bill. When I decided to introduce the legislation myself I brought in a number of cyber law experts to help improve and clarify some of the language. Most of that is incorporated in the new bill that we have created together with Senator Clements. One of the parts that we thought was important was clarifying language where we used the phrase quote unquote electronic communications because it more broadly describes the vast array of writing, sound, visual images, or data that may be sent as a communication with intent to bully. The addition of electronic communications to these provisions recognizes that methods by which people may be threatened, intimidated, or harassed have changed since the Legislature passed this bill originally in the 1970s...these statutes. Modern technology has changed in the ways that we interact with one another, so our statutes need to be updated to reflect the new forms of communications and thus ways in which people now bully one another. Children are particularly susceptible to the harmful effects of bullying. According to the Bureau of Justice statistics, 28 percent of U.S. students grades 6 through 12 have experienced bullying, much of which is done by electronic communications. In fact, according to [stopbullying.gov](http://stopbullying.gov) their statistics show that almost 43 percent of children have been bullied online and one in four have had it happen to them more than one time. I was moved to bring this bill originally and to sign onto the original Senator Kintner bill because of the experiences of my long-time friend, Jamie Sullivan, and her daughter, Teagan Sullivan (phonetic), who now live in Superior, Nebraska. I wanted to read a little portion of Teagan's testimony. She said: Hi, my name is Teagan Sullivan and I'm a freshman at Superior High School. I moved to Superior, Nebraska, five years ago, and I support this bill because when I was in seventh grade a boy in my class sexually harassed me through text messaging. At first I was just "weirded out" and surprised and stunned that someone would do this. And we went to the police and to the school, but the police said they couldn't do anything about it and so did the school. So I still had to walk the halls and have classes with this bully which was super hard because I felt so disturbed, and I would call my mom and be crying and wanting to go home. It was just very uncomfortable and scary to have to meet this person every day. I've moved on from this, she said, but I don't want other girls, like my little sister, to have to go through this, so that's why I support and have come to testify regarding this bill. Both Senator Clements and I have received strong support from law enforcement on this. I have checked regarding the changes to the amendment... [LB773]

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PRESIDENT FOLEY: One minute. [LB773]

SENATOR PANSING BROOKS: ...and have found that criminal defense attorneys also support Senator Clements' most recent changes in AM2174 on the bill. The committee has received letters of support from Lincoln Police Chief, Jeff Bliemeister, and Superior Police Chief, Perry Freeman, on my original version of the bill and I'm pretty sure that they will continue this support because it has not changed that significantly. I'd like to thank Senator Clements again and I'm happy that we could work together. That's what we're supposed to be doing in this body to address this important issue. Thank you. [LB773]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Wayne. [LB773]

SENATOR WAYNE: Thank you, Mr. Speaker. Will Senator Clements answer a few questions? [LB773]

PRESIDENT FOLEY: Senator Clements, would you yield, please? [LB773]

SENATOR CLEMENTS: Yes, Mr. President. [LB773]

SENATOR WAYNE: Senator Clements, does this bill create a new criminal offense? [LB773]

SENATOR CLEMENTS: It does. It adds to the current statute. [LB773]

SENATOR WAYNE: Yeah, it does. So prior to this the only...by allowing for electronic intimidation you are essentially creating a new offense, because prior to this there is no electronic intimidation, correct? [LB773]

SENATOR CLEMENTS: Correct. It was just a regular telephone call and text message did not...was not covered by that. [LB773]

SENATOR WAYNE: And part of this bill deals with threatening to inflict physical and mental injury. Is that not a terroristic threat? Does that not fall underneath a terroristic threat, a current offense that's already available to law enforcement? [LB773]

SENATOR CLEMENTS: That would be up to the law enforcement. I'm not sure about that. [LB773]

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SENATOR WAYNE: Thank you. Thank you, Senator Clements. I only bring that up because this is a new criminal offense that applies to both adults and juveniles. In fact, one of the testimonies were from a juvenile. And earlier today we talked a lot about juveniles and right to counsel and I'd say it off the mike. But I think it's important that sometimes our laws have to be updated and sometimes have to be expanded and sometimes there have to be new criminal offenses to deal with our current situation. I wanted to note that it was a 7-1, and Senator Halloran being absent, in which seven committee members voted for a new criminal offense. What happens is they're first charged with a Class II. They're charged again with a Class II. By the third time they are charged with a felony. This is a new criminal offense and this is a new means by which juveniles can reach a felony. I want to state that for the record, because we will have plenty of more time to talk about felonies as it relates to juveniles and what the ramifications are. I also rise...and I am supporting this bill, because I can't sit here all day and not mention what happened Sunday in Omaha, Nebraska, which involved an Omaha public school child who was murdered at the age of 17. We heard a lot of people stand up when shooting occurred in Florida, but when it happens in our own backyard nobody stood up and said anything. And yet we have a 14- and 15-year-old who were booked for first-degree murder; 14- and 15-year-olds. What happens is...if they're not already proceeding this case in juvenile court--that's up to Don Kleine--there will be a motion to move both of those cases to juvenile court and then it's up to a judge. We had a 17-year-old who shot at a police officer case been moved to juvenile court. We had a 11-year-old convicted of murder in juvenile court. It was transferred from adult court to juvenile court. And under Nebraska law this 14- and 15-year-old will turn 19 and be able to possess an AR-15. I am going to constantly remind this body of that fact. We say we want to talk about how to reduce violence. [LB773]

PRESIDENT FOLEY: One minute. [LB773]

SENATOR WAYNE: We say we want to talk about tools to make changes, but do we really? Do we really, as a body on this floor, are we ready for that conversation? That just happened last weekend and there's going to be more and I'm going to start citing example after example where a 19-year-old is caught with a CCW violation and three weeks later commits a murder which could have been prevented. We're going to have a conversation about smart gun control and reasonable gun control one way or another in this body. Thank you, Mr. President. [LB773]

PRESIDENT FOLEY: Thank you, Senator Wayne. Senator Krist. [LB773]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues. Good afternoon, Nebraska. To be honest, this is the first time...I'm on the Judiciary Committee and this is the first time I've seen or paid attention to AM2174. And so I want to make sure that I understand, it's

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probably my fault for not doing homework knowing that this bill is going to come up, so I'd ask Senator Clements to yield to a couple questions. [LB773]

PRESIDENT FOLEY: Senator Clements, would you yield, please? [LB773]

SENATOR CLEMENTS: Yes. [LB773]

SENATOR KRIST: So when last I left this subject matter we had voted it out of committee and the committee amendment changed a few things. And your amendment now...and I'm only asking questions to clarify for myself, that's the only reason. You said these...this change or this amendment was brought to you or was this something that you wanted to change after the committee amendment was amended? [LB773]

SENATOR CLEMENTS: It was brought to me later by County Attorneys Association. [LB773]

SENATOR KRIST: Okay. So on page 1 you're striking the beginning with "causes" in line 7 through "transmitting" in this line 8 and you're inserting "telephone such as individual or transmits." What was their rationale for that change, do you know? [LB773]

SENATOR CLEMENTS: Yeah, the three words "causes significant distress" was not defined in statute. It was going to be hard for them to prosecute and to prove that. [LB773]

SENATOR KRIST: Okay. And I thought that's what you said when you introduced. I appreciate that. The second on page 2, I understand that. Thank you for your courtesy, Senator Clements. Folks, why do things go to Judiciary? Wow. Because they carry with them a new offense, one of the reasons, or the technicality of the words in terms of definable terms and prosecutable terms and defensible terms are something that, in fact, other standing committees do not deal with to the level that we do in the Judiciary. I've said for a long time that when you reference another statute--and my colleagues in Judiciary will attest to this--words mean something and when you put a word in and you reference another statute that is not encompassed in the statute that's been changed, you either have to go back and look at that previous statute and find out what that definition is or, as Senator Clements has found out, the county attorneys or defense attorneys or other attorneys will say, you can't use that term because it's not defined anywhere and it's hard to defend and it's hard to prosecute. I would have much rather, Senator Clements, and maybe between General and Select and with the help of a couple of smart lawyers because you and I may have spent the night at a Holiday Inn Express last night, but we're not lawyers. With the help of some really smart lawyers I think we probably need to define that term because I thought that that term meant something to me when I voted it out of committee. So with that...I'm not

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criticizing. I'm just saying that sometimes the terminology in state of art or in the law needs to be defined, and I'm reminded of an experience I had while I was in the Air Force. Did you know that for the most part there are no new Icelandic words. There are simply words that mean something that are connected together, so there was no word for television. So it became the box that is... [LB773]

PRESIDENT FOLEY: One minute. [LB773]

SENATOR KRIST: ...unified in a way to bring imagines together, and you can imagine how long that word would be. But I think it's important sometimes to redefine those terms, particularly when we're talking about a state of law, a state of art that has not been defined previously. And I'd only say to Senator Wayne's point, I agree. If you were listening to that, this indeed is a new offense and we have to measure the issue of whether it is appropriate for us to put a new offense in when it's appropriate for us to take a stand against gun violence, for example. Thank you for your time, thank you for your courtesy, Senator Clements. [LB773]

PRESIDENT FOLEY: Thank you, Senator Krist and Senator Clements. Senator Pansing Brooks. [LB773]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. Again, I think this is tomato, tomato. I wish that Senator Wayne had asked me about whether I think this is a new offense. I don't think it was fair that he asked Senator Clements on that because it's our opinion that it's actually just an expansion of a definition. There are no changes to the law. There are no changes to the penalty except we've included "a person commits the offense of intimidation by telephone call or electronic communication with intent to" and we took out some of the language like "terrify" and we put "intimidate, threaten, or harass," which are standards that are already set within law, an individual, and the person with an electronic communication directly to such individual, whether or not a conversation or electronic response ensues. So it goes through all this and adds the words "electronic communication" and then refers to Section 28-833. It does not change any of the penalties. So I would argue, again, tomato, tomato. It's not a new charge. It's definitional in the fact that telephone calls are one form of communication and electronic communication is becoming the primary form of communication right now, so again, not meaning to be very argumentative, this does not create a new charge. It does not create new offenses or penalties. It merely expands the definition under bullying to include electronic communications. So with that, I hope that you will support Senator Clements' amendment, the Judiciary amendment, and then the underlying bill, LB773. I think that's everything. Thank you, Mr. President. [LB773]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Schumacher. [LB773]

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PRESIDENT SCHUMACHER: Thank you, Mr. President and members of the body. Would Senator Pansing Brooks respond to a few questions? [LB773]

PRESIDENT FOLEY: Senator Pansing Brooks, will you yield, please? [LB773]

SENATOR PANSING BROOKS: I will. [LB773]

SENATOR SCHUMACHER: Thank you, Senator Pansing Brooks. I was going to ask Senator Clements, but I think I heard a hint that legal questions should be directed to you. So Senator Clements, you're spared this. Senator Pansing Brooks, when an electronic communication is transmitted to an individual in order for this crime to be complete must it be received by that individual? [LB773]

SENATOR PANSING BROOKS: It goes on to say the use of obscene or suggestive language, threaten to inflict...it doesn't necessarily have to be received if it's continually being spread to everyone out in the world. [LB773]

SENATOR SCHUMACHER: Where does it say that, that it transmitted and continually being transmitted? [LB773]

SENATOR PANSING BROOKS: I think what we have to do is look at the statutes. I'll look this up off the mike and I'll be happy to talk to you again after I look at this. Thank you. [LB773]

SENATOR SCHUMACHER: Okay, because that's one question and a legitimate question. You send one of these e-mails, whatever it is, to somebody and the Internet provider's spam screen catches it. You may send it to ten people and the spam screen catches it because it senses some bad words in the context of it and it nixes it. Is that ten crimes or no crimes? So I think that needs to be...does it need to be received by the recipient of the communication? And let's just say that you're a senator and you introduce a bill that somebody doesn't like. Okay, and they're really mad at you. It's one of these hot-button subjects, abortion, guns, irrigation, water, things like that, and one of these robocall things start up and they start calling you and they want to harass you, and harass is defined by aggressive pressure, okay, or intimidation, and so I think it probably fits the definition of harass. And they suggest that you do something weird to yourself. Okay. Are you guilty? So in order for this to be constitutional, should there be an exception for irate communications with a public official? And if there isn't, is it constitutional? Those are just some interesting questions every time we get into this kind of "mooshee" attempt to do things like this with the criminal law. So thank you, Mr. President and members of the body. [LB773]

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PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Chambers. [LB773]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this has been a very interesting discussion. Senator Schumacher raised some issues. Senator Wayne did. Mainly taking Senator Schumacher's because his was the most recent one stated, as public officials we do not have the protection that an ordinary citizen has. People can say almost anything about us and it is hard to make it slanderous if it's spoken, libel if it's written. Public people, even if not politicians, are not covered with the same kind of protection that an ordinary citizen is covered. We, as elected officials, however, are immune from any action, criminal or civil, for anything we say in debate on the floor of the Legislature or in committee hearings. So when you begin to lump public officials, public people with private citizens, then distinctions have already been made in the law. And if the only thing that people said to me was the kind of thing Senator Schumacher mentioned I'd say the level of discussion has raised immeasurably. I've been called some things that people didn't even know how to spell, but because I read better than they spell I knew what they were trying to say. They never sign these things, but if somebody takes the time to write something to me and signs it and gives an address, I respond. There was one fellow in Nebraska. He took a big cardboard and wrote the "n" word and some other obscene words on it and just put, Ernie Chambers, and it was delivered by the post office to my office. The post office coconspired to transmit, that. That was not a trap, that was not an attempt on my life, but here's the way I feel about things like that. When people are very bitter, they're very angry, it helps them to be able to vent to or upon a living sentient being. I happen to be the state villain, so I get a lot of not only anonymous mail, but I get mail that has been where somebody else's name and address has been utilized. This one fellow that I was going to mention, though, he put his return address and he had sent a card. So what I did was crossed out the profanity and wrote "return to sender" and when he got it he called me and he apologized and he thanked me. He said that what we did was wrong, but his name was not attached to a wrongful thing twice by me eliminating or obliterating the obscenities, the racial slurs. It was just something that he had mailed out that the recipient did not want and it was sent back to him because he had a return address. I don't know what could be said to me at this late stage in life that hasn't been said to me many times already. I am not a person who is easily frightened or intimidated, but when it comes to the sensibilities that people may have I cannot say that my standard should be their standard. [LB773]

PRESIDENT FOLEY: One minute. [LB773]

SENATOR CHAMBERS: Sometimes if a person is not put in fear then no crime has been committed. The same thing might be done and another person is put in fear and then a crime has been committed. People think that when they see the term, "assault and battery," that means that a blow must be struck. The battery is when the blow lands. The assault is when you take the position and attempt to strike, so there are a lot of distinctions that are made in the law. But in this particular case--and I've turned my light on--there is a reference to "telephone." When that



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word was put in place nobody envisioned these little magical gadgets that you now have, but among other things it serves the function of a telephone, I think. So in order to embrace that method of committing this offense you simply add an updated way that the same kind of thing is done. You can say... [LB773]

PRESIDENT FOLEY: Time, Senator. [LB773]

SENATOR CHAMBERS: Thank you, Mr. President. [LB773]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Pansing Brooks, your third opportunity. [LB773]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. So as with many school situations when the "Professor" starts to talk to you, you get thrown a little bit and you think, well, gosh, well, maybe he's read something and I somehow missed what it was and I'm on the mike, and fortunately I didn't try to answer without...while I was on the mike. So going back to Senator Schumacher's question, it directly says in the amendment on...in the bill that transmitting an electronic communication directly to such individual, whether or not conversation or an electric response ensues. So the person about who is being harassed doesn't have to respond, but Senator Schumacher, it does have to go directly to the individual. And if you look on the...in the end of the amendment it says that "for purposes of this section, electronic communication means any writing, sound, visual imagine, or data of any nature that is received or transmitted." What are you shaking your head at? But, yes, it does say that. You may not be looking at the correct amendment, but anyway "by an electronic communication device as defined in Section 28-833." So, number one, there's no new charge. We are broadening the definition of a "communication device" from just "telephone." Number two, the harassment, extortion, the threat, the obscene language has to go to an individual and must be received. So with that, I hope that you will vote for Senator Clements' AM2174, the Judiciary amendment, AM1932, and then Senator Clements' underlying bill, LB773. Thank you, Mr. Lieutenant Governor. [LB773]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Chambers. [LB773]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to make a deal with Senator..."Professor,"--other people refer to him as Senator, I think he occupies a higher status--"Professor" Schumacher if he would respond. [LB773]

PRESIDENT FOLEY: Senator Schumacher, would you respond to a question, please? [LB773]

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SENATOR SCHUMACHER: Certainly. [LB773]

SENATOR CHAMBERS: If I yield my time to you right now so that you can respond immediately, will you yield your time to me when you're recognized? [LB773]

SENATOR SCHUMACHER: That sounds like a fair trade. [LB773]

SENATOR CHAMBERS: Deal. Thank you, Mr. President. I yield. [LB773]

SENATOR SCHUMACHER: Just briefly, I don't read it the same as Senator Pansing Brooks does. For example, it says "the person telephones such individual or transmits a communication." That's one way. You send the signal. Doesn't say anything about it having to be received. In fact, it even goes on and says "regardless of whether or not there's a response." And the other provision that she responded to, where she says, well, you've just got to read the second page where it says "where the call or communication was initiated or where it was received." So it doesn't say initiated and received. Therefore, the question remains. Does it have to be received or is transmitting good enough to commit the crime? And if transmitted to ten people on cc of an e-mail and it never goes through because it's caught by a spam screen on the Internet, did you commit ten crimes or no crimes? And so those questions remain unanswered. And I'd yield the balance of my time back to Senator Chambers, since it was his time to begin with. [LB773]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Chambers, three minutes. [LB773]

SENATOR CHAMBERS: Thank you, Mr. President. I'm going to do like one of the presidents, I want to say this about that. Before a crime is going to be charged there must be a victim. If a message is not received by somebody who may have been threatened by it, then that person who would have been the recipient is not going to file a complaint of any kind. If the person complains he or she must have received it. Some things are inherent in the circumstances that are brought forth, but when a crime is charged every element of that offense must be proved beyond a reasonable doubt. I still am going to look at the language that Senator Schumacher said when he was speaking to Senator Pansing Brooks and I will discuss these words with "Professor" Schumacher when I get to that point. But because what I was going to say will take a little more time than what I have left of what Senator Schumacher gave back, I'll turn on my light again. Thank you, Mr. President. [LB773]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Schumacher. [LB773]

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SENATOR SCHUMACHER: Thank you, Mr. President. Even the way it is worded now, even though the message is not received, it can be prosecuted because suppose there was a prosecutor who was looking into other bad acts of the sender and looking for a list of things to put on the indictment in order to plea bargain and came across these sent messages which were never received. They would be offenses because they were transmitted, so that would be my response to that. I think this needs a little cleaning up, but a promise made must be kept, and I return the favor to Senator Chambers and yield the rest of my time to him. [LB773]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Chambers, 4:18. [LB773]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, "Professor." Understand this, brothers and sisters, to be accused is not to be guilty. An allegation is an assertion without proof, so a prosecutor could put my name in a complaint against somebody else, but I would have to verify that I had been a victim. The prosecutor can't just go out and say, this person said such and such should happen to you and I don't have a complaint. Then there is no completed act at that point, in my opinion. We'll look at the language. But there are no new penalties and when you have electronic devices you could name every one. That's what had been done when this bill first came up and Jon Bruning was a member of the Legislature, maybe he was the Attorney General, but he had something to do with it. And I said instead of itemizing all those things, then find a term that encompasses all of them; an electronic device, I believe, would. But here's what I wanted to do. When a banker has something to say, I like to kind of rib him. This is something I wrote and I don't know if I read it. But it says: "All Hail the Bankers." He wrote a poem that starred a banker not so long ago. Bankers who did read it thought that it did strike a blow, that did land below the belt and therefore deemed it to be low. Knowing well his true intent the poet said, not so. But in order to make peace he took his poetry pen and dipped it in the ink of rhyme and tried his hand again. Poetry pen in hand the poet figuratively cleared his throat, putting on his thinking cap, the fine following lines he wrote. Once a poet without malice generated rancor, using metered rhyme he wrote a tale that featured a banker. Bankers are self-conscious and a hypersensitive lot who may take offense, though justification there is not. Though intending no offense the poet who was chided, inwardly does laugh with glee but outwardly does hide it. Putting on a solemn face he solemnly pretends to be sorrowfully contrite and aims to make amends. Quote that he wrote, bankers and their banks beyond a doubt do fill a need. Therefore, it is truly said in spirit and in deed. Life would be much bleaker and much darker and despair if the bankers and their banks, dear God forbid, weren't there. Banks are institutions that will gladly lend you money if you prove you're well off and don't need it, which is funny. Freely an umbrella they will give you when skies are clear, but when rain begins to fall they cry, bring it here. There you have it. Criticize not banks nor any bankers. Though not sweet as honey, they're at least not bad as cankers. Thus that chase and poet labored over each word and letter,... [LB773]

PRESIDENT FOLEY: One minute. [LB773]

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SENATOR CHAMBERS: ...having cleared his conscience, praise the Lord, he felt much better. We have at least two bankers here and maybe more. I'm not sure. But if there are, I'm going to let sleeping bankers lie. Not meaning they don't tell the truth, although they may not, and maybe I should leave that alone. But a bill like this offers the opportunity to discuss a number of issues that implicate some serious matters. I have made my comments, and Senator Wayne had indicated that there would be the opportunity to discuss some of this further at a later date, and I will join the discussion if at that time I have anything else to offer. Thank you, and thank you, "Professor" Schumacher. [LB773]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Clements, you're asked to close on AM2174. [LB773]

SENATOR CLEMENTS: Thank you, Mr. President. Thank you, Senator Schumacher. Thank you, Senator Chambers, and thank you, Senator Pansing Brooks. There may need to be some clarification, I'm not sure about that. I'd be willing to work with you if you had suggestions on Select File. I would really appreciate a green vote now on AM2174 and AM1932 and LB773. Thank you. [LB773]

PRESIDENT FOLEY: Thank you, Senator Clements. Members, you've heard the debate on AM2174. The question before the body is adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB773]

CLERK: 34 ayes, 0 nays on adoption of Senator Clements' amendment. [LB773]

PRESIDENT FOLEY: AM2174 is adopted. Senator Ebke, you're recognized to close. She waives closing on the Judiciary Committee amendment, AM1932. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB773]

CLERK: 35 ayes, 0 nays an the adoption of committee amendments. [LB773]

PRESIDENT FOLEY: Committee amendments are adopted. Senator Clements, you're recognized to close on the advance of the bill LB773. [LB773]

SENATOR CLEMENTS: Thank you, Mr. President. I believe this is a step forward to update Nebraska's statute to current technology and I would appreciate your green vote on LB773. [LB773]

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PRESIDENT FOLEY: Thank you, Senator Clements. Members, you've heard the debate on LB773. The question before the body is the advance of the bill. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB773]

CLERK: 38 ayes, 0 nays on advancement of LB773. [LB773]

PRESIDENT FOLEY: LB773 advances. Items for the record, please. [LB773]

CLERK: Thank you, Mr. President. Before we proceed I have amendments to be printed to LB389, Senator Quick. Judiciary reports LB670, LB729, LB841 to General File with amendments. Communication from the Governor to the Clerk. (Read re LB78, LB275, LB285, LB310, LB345, LB472, LB480, LB486, LB618, LB710, LB744, LB757 and LB758.) That's all that I had, Mr. President. Thank you. (Legislative Journal pages 813-816.) [LB389 LB670 LB729 LB841 LB78 LB275 LB285 LB310 LB345 LB472 LB480 LB486 LB618 LB710 LB744 LB757 LB758]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Next bill on General File, please.

CLERK: Mr. President. LB685 by Senator Blood. (Read title.) The bill was introduced on January 3 of this year, referred to the Health and Human Services Committee, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB685]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Blood, you're recognized to open on LB685. [LB685]

SENATOR BLOOD: Thank you, Mr. President. Fellow senators, friends all, I'm happy today to be able to bring you LB685 as it can have a very positive impact on my constituents and others who transfer into our state as a result of new duty assignment for the military. As you may know, since 1992 when I moved to Bellevue...may I have the gavel, please? Thank you. As you may know, since 1992 when I moved to Bellevue, Offutt Air Force Base has literally been in my own backyard. Because of this, I've become very aware of the needs of the people who live and work in my community. These are people that have to pack up and move at a moment's notice, and they generally do so without complaint. They rarely get to choose where they will be stationed, and I always like to remind those not exposed to this community that the families also serve. Moving is one of the top stressors for families. Imagine doing that every two to three years, from enrolling your children in school, finding medical professionals, making new friends, setting up your household. It's a lot of stress that these families take on willingly to support the father or mother who is serving our country. You are all aware that I'm on a mission to make the move

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into Nebraska as easy and painless as possible for our military families through numerous bills that I brought last year and yet more this year. I will continue to do this throughout my time in the Legislature. This particular bill will help to cut down the red tape these military families run into when they first move to Nebraska. LB685 is my way of trying to make sure that dependents of active-duty military who suffer with medically-complex disabilities are getting adequate and timely care. I know some of you are aware that when a child in a military family has severe disabilities that require extra medical care, Tricare does not cover that help. So imagine if your family must move every two to three years and the state does not offer a way to help expedite services for that child. Do you pay out of pocket? Do you allow that child to suffer? Do you quit your job and try to become the caregiver? What do you do? We have a family right now stationed at Offutt Air Force Base where the father is here in Nebraska and the mother had to stay back in Texas with their severely-disabled child because Nebraska has no special designation that allows them to address the needs of their loved one. That is an unfair burden to their family. In most military-friendly states you are offered a Medicaid waiver that helps expedite the process. In Nebraska we utilize a five-tiered system as to how we prioritize those in need: The first tier being those most in need and the last tier being basically everyone else needing services. In order to do this my bill would insert "active-duty military dependents who have severe developmental disabilities into the priority listings of the Department of Health and Human Services that is already in Nebraska state statute. As mentioned currently there are five funding priorities for the department in statute. Currently, the priorities are: number one, persons with developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person. Category two, persons with developmental disabilities that have resided in an institutional setting for a period of at least 12 consecutive months and who are requesting community-based services. Category three, persons with developmental disabilities that are wards of HHS or persons placed under the supervision of Probation Administration who are transitioning upon age 19 with no alternatives as determined by HHS to support residential services necessary to pursue economic self-sufficiency. Four, persons with developmental disabilities transitioning from the education system upon attaining 15 years of age to maintain skills and receive the day services necessary to pursue economic self-sufficiency. The priority listing after that in current statute is five. All other persons by date of application. This bill makes that last priority, which was the fifth priority, the sixth. By doing that I'm being sure that we aren't jumping the line when it comes to Nebraska residents with severe developmental disabilities, but it does make sure that those military dependents who do really need the time and attention of HHS will receive it. I also want to be clear that in my bill we aren't taking services away from other people and giving it to the dependents mentioned in LB685. I want to point out two factors. The first is that not only do we want to make sure we are getting these people the services they need, but putting language like this into statute helps get Nebraska designated as military friendly. This is a real designation that could have far-reaching effects when the federal government starts looking at bases they might consider closing. By having it in statute, our intent to serve the military is clear. Nebraska simply cannot afford to see Offutt Air Force Base closed.

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It would not only kill the community surrounding the base, but would have a negative impact on the state's economy as a whole. The \$1.7 billion that is contributed to Nebraska and the surrounding communities each year, that is not chump change. I'll also point out we worked closely with the Department of Health and Human Services in order to come up with this approach and this language. At the time we crafted this legislation we were told that this language was language they felt served everyone's best interest. We have also had people reach out concerned that we will be taking money from other deserving cases. That is simply not the case, considering that we are talking about truly severe cases being pulled from a very specific population. We just recently spoke again to the Department of Health and Human Services, and they said they believe it could be as little as one case a year. I think you would be hard pressed to find more than two or three cases in any given calendar year, and I believe my fiscal note demonstrates that. It's also important to understand how this list really works. Everyone needing services starts out at number six and then moves up the list depending on what kind of needs they have. So the people added under my bill really aren't jumping the line at all. They're just getting in line. Additionally, we have worked closely with the liaison's office at the Department of Defense, as we do on all bills that affect military families through the Military for Families Initiative, where they actually poll the families and those serving the military families to highlight specific and highly important issues each year so that lawmakers know in a timely fashion what issues are important to those who serve and protect and their families who also serve. Having said all of that, I encourage you to vote green on LB685, and help me to welcome these families by bringing them into our fold with opening arms and good legislation. Thank you. [LB685]

PRESIDENT FOLEY: Thank you, Senator Blood. Debate is open on LB685. Senator Krist. [LB685]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues, and good afternoon, Nebraska. This is a good bill. This is a good piece of legislation and it is as close to a Courtney Krist story as you're going to get. When we moved here we had a diagnosis for our daughter that was not very favorable and it took several years to plot a course where she was taken care of within the state of Nebraska. There used to be a system called OCHAMPUS which was an insurance company for active duty insurance, I mean in terms of medical payments for active duty outside the normal system. So if it didn't happen at the base hospital, if it happened downtown and if the person was of any designated or defined special need most of those things went downtown. And had it not been for my parents and my wife's parents we would have probably seen bankruptcy, but those referrals and denials and the kind of things that Courtney needed were not available because of the lack of responsiveness in terms of this young military family moving into the state of Nebraska. It's still happening today. There's still a waiting list. There are still things happening that prohibit us from taking care of those folks moving in. And you say, why would the military or why would anybody be any different? My argument would

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be, they shouldn't be. They should not be. This is a kid bill. Even though we're defining right now in precedent that it might be those military families that it is we're focusing on, this is a kid bill. We have a woman who is a single parent who moved here from Florida that I've been trying to represent to the Department of Health and Human Services who was fully funded in Florida and she moved here to take care of...be here for her daughter. That young man is now on a waiting list that could take up to 18 months to get through, even though the child was certified and was receiving the services in Florida. And you'd say, well, she shouldn't have moved or there has to be a waiting list, there has to be a priority. We should not recognize someone coming in and bump them up to the top of the list. My contention is this, we need to make sure that those military families that come into Nebraska, those people who move here because of all of those build better businesses across the state of Nebraska, have an opportunity to reach a minimum service level. What do I mean by that? It doesn't have to be a fully funded Medicaid or service level when they first come into the state. There can be some reasonable accommodations made, though, to get them on the list and to get them the services that they need, to get them into a sheltered workshop environment or whatever that might be. I guess sheltered workshop is not the right word anymore, it's not politically correct, but some of the work opportunities that we have here in Nebraska. Look at this bill as a kid bill. Look at it in terms of those services that government, by itself, has an obligation to fulfill to people who cannot fulfill that obligation on their own. This isn't a give-away program. It's very complicated. Once you're qualified for SSI, if you're identified as a special needs person, it is also very tough for this to follow you from state to state or even from this country to another country. [LB685]

PRESIDENT FOLEY: One minute. [LB685]

SENATOR KRIST: I could spend the rest of today talking to you about what happened to us. Suffice to say that we have an opportunity within this bill to define a "go to the head of the class" for some of these young people who are coming into our state with the issues that they bring. I would hope that you would vote green on LB685 and remember, the military is always watching to see what states treat their DOD personnel the best and when they make decisions about keeping military installations in your state. Thank you, Mr. President. [LB685]

PRESIDENT FOLEY: Thank you, Senator Krist. Continuing discussion, Senator Riepe. [LB685]

SENATOR RIEPE: Thank you, Mr. President, colleagues, and Nebraska. I want to talk about the Medicaid home and community-based services waiver and prioritization of the waiver. I voted present and not voting and I want to share with this group why. But first, I would like to thank Director Miller of the Division of Development Disabilities for her continued passion to provide both quantitative and qualitative services for individuals with developmental disabilities. The home and community-based services waiver provides opportunities for Medicaid beneficiaries to



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receive in-home or community services rather than institutional services or services in more isolated settings. These programs serve a variety of targeted population groups, such as people with intellectual or developmental disabilities, physical disabilities, and/or other mental illnesses. In Nebraska, we have two waivers: one, the adult day services waiver; and two, the comprehensive waiver. The adult day-services waiver transitions young adults after high school from services in the Department of Education to adult habitation services, including community support for employment and community integration. The comprehensive waiver combines the departmental disabilities, adult comprehensive waiver and the children's developmental disability waiver and includes an array of residential and day services. In 2017, the Division of Developmental Disabilities issued 900 offers for the home and community-based services waiver and was able to fund the first four priorities, which I will outline, and provide many services offers on this particular variety of waitlist. Currently, there are 1,876 individuals on the waitlist. This number is a fluid number, as those who are on the waitlist are not necessarily in need of immediate waiver services. Last year, LB333 was passed to prioritize the funding under the waiver. The first priority, funding goes to the individuals with developmental disabilities in immediate crises. The second priority, funding goes to individuals with developmental disabilities residing in institutional settings for more than 12 months. The third priority, funding goes to wards of DHHS or the Office of Probation. The fourth priority, funding goes to high school graduates and the current and final priority funding is the waitlist. As stated by Senator Blood's LB685, it would allow military families to become the fifth priority and move the waitlist down to the sixth priority. This is the policy question before us. Do we prioritize military families over Nebraska residents who have been on the waitlist? Or do we allow military families to join the waitlist as they come to the state? I was present, not voting out of committee. I am interested in listening to the debate regarding this policy proposal. My own inclination, just so that you know where at least I stand, if you care, is because this is probably the one or the two, I would be supportive of this particular piece of legislation. [LB685]

PRESIDENT FOLEY: One minute. [LB685]

SENATOR RIEPE: Thank you, Mr. President. [LB685]

PRESIDENT FOLEY: Thank you, Senator Riepe. Senator Crawford. [LB685]

SENATOR CRAWFORD: Thank you, Mr. President. Good afternoon, colleagues. I rise in enthusiastic support of LB685 that was heard in our Health and Human Services Committee. And as our Chair, Senator Riepe noted, we've been having a lot of thorough discussions about our waitlist and our priorities on our waitlist and trying to do all that we can to make sure that the people who need services the most get them and, hopefully, we continue to work down that waitlist so nobody is on the waitlist who needs those services. And colleagues, I want to

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emphasize that in our priority list anybody who is in need of immediate services because of an emergency situation is top priority, no matter what else and this bill does not change that. We have priorities we have identified that are important to us as a state. And one of those conversations has been about our own high school students who graduate and we want to make sure they have a continuity of services as they graduate. And our own high school students who are graduating and we're wanting to provide that continuity, they are also still above these military families in terms of priority. So, we are maintaining our priority to our Nebraskans who are most in need of immediate help. We are retaining our priority to our Nebraskans who are institutionalized and we're wanting to provide opportunities to them instead to be in their community. We're retaining our commitment and priority to Nebraskans who are graduating from our high schools to retain that commitment of care. All of those priorities all come above this military priority that we're adding. And colleagues, as Senator Blood said and what we know from our records, it looks like it may be one or two families a year. The reason that this makes sense from a policy perspective is that these military families are not choosing to move to Nebraska. They are moving because they are serving us in their federal capacity. And so they might be sitting in Tennessee for two years and then they're on the bottom of the waitlist in Tennessee. And then they might move to Texas where unless they have a provision like this they would get shifted to the bottom of the waitlist. So as that family moves--and military families tend to move every two years--as that family moves every two years, they would just always be at the bottom of every state's waitlist, and that child would never get services. Actually, we found...or the family makes a difficult choice, like we've heard in one family's situation where the family decides to split up because they're worried if the family moves with the military member, they will be at the bottom of the waitlist and where they were in the state where they were located at that time, they were getting services. And so if they move to Nebraska, they would need to split their family because they don't need to get to the bottom of the list. So this is a family friendly bill and it's a bill that addresses a need that we have for our military families. And, colleagues, our military base, Offutt Air Force Base, provides over a billion dollars of economic benefit to this state. And so it's critical that we recognize that this is an important investment in our state and it's an important investment of ours to take care of those families who are spending two years in our state. It's an important commitment of ours to say, we want you in Nebraska. We want you to come to Nebraska and bring your family... [LB685]

PRESIDENT FOLEY: One minute. [LB685]

SENATOR CRAWFORD: ...thank you, Mr. President...and we're making this small step to provide this opening for one or two of these children who are in need of these services, to make sure that they get a toehold to get those services in our state. And so I urge your support of LB685. And if you have any other questions, I'm happy to answer questions off the mike as well. Thank you, Mr. President. [LB685]

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PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Kolterman. [LB685]

SENATOR KOLTERMAN: Thank you very much, Mr. President. Colleagues, I rise in support of LB685. I was one of the people that helped advance this out of committee. My rationale behind this, I'm very much aware of the priorities and where we put people, but I have two brothers-in-law who served full time in the military. I have a lot of respect for people who are willing to put their name on the line and go out and defend us and move their families around all over the country. When they move to Nebraska they should expect the same type of treatment here that they're getting wherever they're coming from. We shouldn't be separating families because our waiver isn't correct. I don't believe we're picking losers and winners here. I believe we're being fair to the people of this state. We have people in this state that come here and I know that they move about every two years in many cases, but a lot of them will continue to live here and many will look to retire here. So for the long term, we owe it to these people to take care of them while they're here with hopes that they will remain. So I would encourage you to support LB685. This is a good piece of legislation. Nobody is going to get hurt out of this. You've already heard the statistics that maybe one or two families a year are going to be affected by this, and I would encourage you to vote green on LB685. Thank you. [LB685]

PRESIDENT FOLEY: Thank you, Senator Kolterman. Senator Krist. [LB685]

SENATOR KRIST: I'll be very brief. Thank you, Mr. President. Thank you and hello again to my colleagues and to Nebraskans. We would be remiss though if we didn't talk about the BRAC, the base relocation (sic--realignment) and closure that happens occasionally at the federal level. And I know many of you...we have talked about this before. But when they develop a checklist--and I was part of this process while I was on active duty at Offutt--when they develop a checklist for how accommodating a particular state is in which a United States Air Force base--I can only speak for the Air Force but Army, Marines, and Navy are very similar--how accommodating is that state for its military members. I alluded to it very quickly before, but I think it's important that you understand. All of these things are graded, in terms of how we treat military personnel, how we treat the base itself, how accommodating we are. And I think Senator Crawford has been adamantly--as now Senator Blood is--defending the bases, military installations around the state. But a billion dollars is nothing to sneeze at in terms of the economy and that report card could turn sour very quickly. So everything we can do and you can do in the future to make sure that that BRAC list...BRAC report card remains the best it can be; it's important to do that. And I thank you. Thank you, Mr. President. [LB685]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Blood, you're recognized to close on LB685. [LB685]

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SENATOR BLOOD: Thank you, Mr. President, and thank you to my colleagues who spoke in favor of this bill. I am sincerely appreciative. Hearing the concerns, the concerns were addressed in the opening for those who actually listened to the opening. We are not taking priority over any Nebraskans. And I want to remind you that when people move to our state and are assigned here, they become Nebraskans. It's our hope that we treat them well enough that when they retire they stay in Nebraska, and that does happen. (Legislative) District 3 is full of people who have retired in Nebraska and yet continue to work on the base. So the question I'd have, knowing that we're not skipping a line, we're not taking anything away from any Nebraskans, is what do you have against people in the military and children that are sick? Because that's what it comes down to. There's concerns that we're skipping the line. Thank you, Senator Groene. There's concerns that we're skipping the line. We are not skipping a line. We are taking nothing away from Nebraskans. Please vote green on this bill. Show Offutt Air Force Base, the Department of Defense, that we support the military. Show these families that we're nice people in Nebraska and that we care about their children. It's a simple bill. There's no fiscal note. And it's a really good gesture for you to do before you leave today. Thank you. [LB685]

PRESIDENT FOLEY: Thank you, Senator Blood. Members, you've heard the debate on LB685. The question before the body is advance of the bill to E&R Initial. Those in favor vote aye; those opposed vote nay. Record vote has been requested. Have you all voted who care to? Record, please. [LB685]

CLERK: (Record vote read, Legislative Journal page 817.) 37 ayes, 0 nays on the advancement, Mr. President. [LB685]

PRESIDENT FOLEY: LB685 advances. Proceed to the next bill, please. [LB685]

CLERK: LB913, by Senator McDonnell. (Read title.) The bill was introduced on January 8 of this year, referred to the Judiciary Committee, advanced to General File. There are no committee amendments. I do have an amendment from Senator McDonnell, Mr. President. (AM2061, Legislative Journal pages 817-818.) [LB913]

PRESIDENT FOLEY: Senator McDonnell, you're recognized to open on LB913. [LB913]

SENATOR McDONNELL: Thank you, Mr. President. LB913 would make it a Class I misdemeanor to assault a healthcare professional with bodily fluid. A Class I misdemeanor is punishable by not more than one year imprisonment or \$1,000 fine or both. Under current Nebraska state laws it is legal to spit on a nurse or strike them with any bodily fluid. The idea for this bill came to me from my constituent, Abby (phonetic), who is a registered nurse working in Omaha. She is currently employed at the Madonna in Omaha but has experience working in

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emergency rooms and clinic settings. You know, we campaign, we go door to door, we ask our constituents for ideas. We ask them that if we come down here to the Legislature, that we will listen to them, we will take their ideas to Lincoln with us, and we will try to improve things for the people from our district and also from the state of Nebraska, east, west, north, south. That's how this started. If you think about what George Norris envisioned in 1937 and the people of Nebraska, he said we're going to do things a little differently. Every bill will get a public hearing. We'll leave the Democratic/Republican party at the door and we will work together and try to help people, east, west, north, south in the state of Nebraska. That's what we are doing. When Abby brought this to me and explained the situation to where if you look at an emergency situation and it started possibly in a home and now that's been responded to by the 911 system with a firefighter/paramedic. Now that firefighter/paramedic is now in the emergency room. And it's a team effort. If you've ever been on a call like that as a paramedic/EMT and when you hit that ER with the nurses and doctors, the firefighters and paramedics and EMTs just don't stop at the door. They continue through, they continue to try to help with that patient until the hospital staff makes sure that they have that patient stabilized. So at that point, you're working as a team. Now let's say the patient decides to assault you with bodily fluid. We have the paramedic there. We have the firefighter/EMT there. We have the nurse there. At that point, the nurse is not considered a person that is worthy of being--based on her assault with the bodily fluids--is not worthy to be looked at the same as the firefighter/paramedic, EMT. They were all doing their job. They were there because of their employment. They're all vulnerable because you are totally focused on what you're doing at that point. But because of the way the state law in Nebraska, the nurse is not considered the same as the firefighter, paramedic, police officer, and others. For some background on this issue, then Senator Mike Gloor of (Legislative) District 35 introduced LB226 in 2012 that made it a Class I misdemeanor to assault police officers, probationary officers, Department of Correctional Services employees, and others with bodily fluid. Nurses and other healthcare professionals were part of the conversation in 2012 but were not included. In 2014, then Senator Lathrop of Legislative District 12 brought LB752, which was amended into LB811, which among other things, added firefighters to the bodily fluid assault provision in Nebraska Revised Statute 28-934. Nurses and other employees employed in the healthcare industry typically work 12-hour shifts away from their families to ensure people in their communities are healthy, comfortable, and alive. I believe they deserve the same protections from bodily fluid assaults that are currently afforded to police officers, firefighter, EMTs, and others. When a nurse runs in an ER patient's room with both hands full of tools and medicine, they're not prepared or thinking about having to defend themselves. They're in close proximity to patients in the process of providing lifesaving care. Nurses and other healthcare professionals are particularly vulnerable because of their employment. It is their job to be in close proximity to the patient, unarmed, unprepared, and provide care for the patient. Currently, a healthcare professional providing care on a medic unit is protected under state law from being assaulted by a patient with body fluid. As soon as that same patient is transported to the emergency room by the medic unit and the ER nurses begin delivering care. The nurse is not afforded the same

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protection under Nebraska state law as an EMT, paramedic, or firefighter. To me, providing lifesaving care in the emergency room is just as important as providing lifesaving care inside a medic unit. Safety of nurses and other healthcare workers is a growing problem across our nation. Assault against any healthcare worker is a concern, but as is the nature of the healthcare industry, nurses and certified nursing assistants spend a considerable amount of time with patients and are more vulnerable to assault. According to the 2016 American Nurses Association survey of more than 14,000 nurses and nursing students, 25 percent of the respondents had been physically assaulted by a patient or a patient's family member while at work; 9 percent of the respondents were concerned about their physical safety while at work. We should work to protect our nurses as reported by the university of Nebraska at Lincoln, Nebraska is facing a nursing shortage that will increase in the coming years. By 2020, Nebraska will have a demand of over 20,000 nurses, but we will only have about 16,000 nurses available to work. As a state, we need to make sure we are looking at ways to make the healthcare industry and the field of nursing, in particular, a more attractive option for our students and our working adults looking for a career change. LB913 is one way we can show that Nebraska is serious about nursing. We need to be able to retain and attract these hardworking professionals to our state. In October of 2017, there was a case in Senator Baker's district in Gage County where a woman assaulted both a police officer and a nurse with a bodily fluid. The woman was charged with assaulting the officer, but charges were not able to be filed for the assault against the nurse. To me, that's a clear case of why this measure makes sense and why it is indeed needed. During the committee process I received a letter in support from Gage County Attorney Roger Harris. Throughout the process of bringing LB913 forward, my office has been working with the Nebraska Nurses Association, the Nebraska Association of Public Employees, the Nebraska State AFL-CIO, and healthcare professionals from across the state. More importantly, however, it is what I've stated previously, that I worked closely with one of my constituents to get this bill drafted. It was because of Abby's story and because of her concern with her fellow nurses that we're here today. I believe that nurses and other healthcare professionals deserve the same protection from bodily fluid assaults that are afforded to police officers, firefighters, EMTs, and others. I have an amendment addressing the signage requirement for hospitals and health clinics that amends the language on the warning sign to reflect the changes made in LB913. AM2061 changes the warning sign language. Warning--assaulting a healthcare professional who is engaged in the performance of his or her official duties, including striking a healthcare professional with any bodily fluid, is a serious crime which may be punishable as a felony. LB913 has the support of the Nebraska Nurses Association, the Nebraska Hospital Association, the Nebraska Medical Association, the Nebraska Association of Public Employees, Nebraska State AFL-CIO. I urge you to please vote green and advance of LB913 to Select File. [LB913]

PRESIDENT FOLEY: Thank you, Senator McDonnell. Senator McDonnell, did you need a separate opening on the amendment or did your speech cover both? [LB913]

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SENATOR McDONNELL: The speech covered both. [LB913]

PRESIDENT FOLEY: Thank you very much, Senator McDonnell. Pending before us is LB913 and AM2061. Debate is now open. Senator Quick. [LB913]

SENATOR QUICK: Thank you, Mr. President. I wanted to thank...I do rise in support of AM2061 and LB913. And I want to thank Senator McDonnell for bringing this bill. My wife, this year she will have been a nurse for 40 years and I appreciate everything she does and really I appreciate everything all the nurses do. They put...well, they don't really put their lives on the line and maybe they do, but they are there every day with these patients and they're showing their care for them and taking care of them. I don't know how to say this, but they really put all of their work forward to make sure those patients receive the kind of care that they need so they can be healthy and they're there every day. My wife is actually a labor and delivery nurse. But there are so many nurses that are out there that are working in the emergency rooms that maybe face some of the issues that Senator McDonnell is bringing forward. And actually, even in some of my wife's line of work with labor and delivery, they could run into those type of issues. I just want to say that I do fully support this bill and thanks, Senator McDonnell, again for bringing it. And I hope you all vote green on this. [LB913]

PRESIDENT FOLEY: Thank you, Senator Quick. Senator Baker. [LB913]

SENATOR BAKER: Thank you, Mr. President. Senator McDonnell, I like your bill. I'm going to vote for it. As you pointed out, one of the classic examples occurred in my district at Beatrice Community Hospital. If you would yield to a question, I did get a letter from Disability Rights Nebraska and were concerned LB913 would punish people with psychological disabilities for the manifestation of their disabling conditions or symptoms. Can you respond to that? [LB913]

PRESIDENT FOLEY: Senator McDonnell, will you yield to the question, please? [LB913]

SENATOR McDONNELL: I will yield to the question. [LB913]

SENATOR BAKER: All right. So if you would respond to that, that concern that LB913 could punish people with psychological disabilities for the manifestation of their disabling conditions. [LB913]

SENATOR McDONNELL: I think people that currently are protected are dealing with those patients, the patients with mental illness. Currently, the idea with firefighters, paramedics, EMTs, there's always got to be some sort of common sense when we look at this. I believe based on the

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nurses, a person, the patient that's possibly suffering from a mental illness will be treated the same as the firefighters and paramedics and EMTs have been treating them. [LB913]

SENATOR BAKER: Well, thank you for answering. Again, I'm going to vote for the amendment and the underlying bill. Thank you. [LB913]

PRESIDENT FOLEY: Thank you, Senators Baker and McDonnell. Senator Wayne. [LB913]

SENATOR WAYNE: Thank you. Just to be clear on what a new crime is, is that it's simple. If The conduct of the person is not included in the current crime and it takes for us to pass a new law to include the conduct or the person, that, by definition, is a new crime. So I will ask if Senator McDonnell would yield to a question or two. [LB913]

PRESIDENT FOLEY: Senator McDonnell, would you yield, please? [LB913]

SENATOR McDONNELL: Yes. [LB913]

SENATOR WAYNE: Senator McDonnell, you are expanding and incorporating in new personnel into what was previously listed as public safety and public safety officer, correct? [LB913]

SENATOR McDONNELL: Yes. [LB913]

SENATOR WAYNE: So by the definition that I just said, this is essentially a new crime. [LB913]

SENATOR McDONNELL: Yes. [LB913]

SENATOR WAYNE: Thank you. Ladies and gentlemen, again, this came out of committee, Judiciary Committee 6-0, but what is so interesting about this is that this is also not just creating a new misdemeanor, this creates a new felony. It was voted out, six yeas. This can happen to a juvenile. It's now a new juvenile felony and it was voted out of this committee. I'm supporting the bill. I do have some fundamental issues with carve outs, not enough to literally die on the sword for this, but I think teachers and other people might be able to get some kind of special recognition or special protections. I think if somebody spits on somebody and a third degree assault isn't enough to cover them or a second degree, I think when you look at our criminal code, but I understand the intent behind this. When you run to a scene and you're dealing with a lot of things and there are intentionally problems or somebody comes into a hospital after a shooting and kids are involved, there needs to be some heightened security and some heightened



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awareness to make sure everybody is safe. But, again, this is not just a new misdemeanor, this is a new felony that applies not only to adults but to juveniles voted out of this committee again. Every time new crimes come out, I'm going to keep reminding us of this. So when somebody tells me they're against new crimes that apply to juveniles, I'm going to check the record to see if they voted for it. Let's be consistent. This is a new felony. And if you think about what happens to the 17-year-old who just got taken to Creighton Medical Center and their family and friends go there and you have a juvenile who's upset about losing a loved one, do you think the aggravated assault that could happen here wouldn't happen to that juvenile? Do you think the assault wouldn't happen if the nurses and people are trying to tell them to back away, we have to work on our friend. You don't think a young kid would accidentally or intentionally spit on somebody? Yes. Emotions are running high. But I didn't see that debate in the transcript. I support this bill. I support the efforts behind the bill, but I said last year I am going to continue to make sure we are consistent as we view these bills, and we need to be consistent. And I'm still in favor of rewriting our entire criminal code, but let's call it what it is. It's a new crime. I think it's a crime that I'm going to live with and vote green on both the amendment and the underlying bill and I would ask for your support, too. [LB913]

PRESIDENT FOLEY: Thank you, Senator Wayne. Senator Riepe. [LB913]

SENATOR RIEPE: Mr. President, colleagues and Nebraskans, I stand in support, having been a hospital administrator for many, many years, in support of all the staff that work in a hospital and work in what is almost a war-like front, if you will, sometimes in the emergency department. These individuals do need recognition and they need some level of protection from an abusing individual that may come through the emergency department. I do think Senator Wayne's comments about taking a look at this may justify between now and Select to determine if this is, in fact, or should be a felony or whether it might rise to the level of being of some higher level, if you will and I don't know what that would be...simply a misdemeanor assault. I do appreciate it. I simply wanted to stand in support of the healthcare workers. Thank you, Mr. President. [LB913]

PRESIDENT FOLEY: Thank you, Senator Riepe. Senator Chambers. [LB913]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, sometimes Pandora's box is open. I know what Senator Wayne is smarting about and he can make the arguments that he's making. And I don't put all those bills in the same category. I told Senator McDonnell that I would not fight this bill. I fought every one of these kind of bills where they put people in special categories. He should not have handed out the article that he did, because I'm going to tell you where my mind has changed. I'm going to read it. A woman was...this was from the Beatrice Daily Sun, October 5, 2017. A woman was arrested after allegedly assaulting a

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police officer at Beatrice Community Hospital. Julie Dobesh, 30, was arrested Tuesday for third-degree assault on an officer and assault on an officer with bodily fluids. Then it tells how she was brought to the hospital. Police responded to Beatrice Community Hospital Monday night for a report of a female who had a hand injury following a dispute. Hospital staff were concerned the suspect would become violent and noted she was very agitated. Dobesh told police the injury occurred after she got mad and punched a door and allegedly made suicidal comments. She was placed in emergency protective custody and started punching the rail of her hospital bed. When an officer attempted to restrain her, Dobesh allegedly pulled the officer's hair and she was placed in handcuffs. While being restrained, she dug her nails into the officer's wrist leaving three red marks and broken skin. She then allegedly spit in the officer's face and in the face of a nurse. Then she was transported to a crisis center in Lincoln and taken into custody. See, I didn't know with these police, they were stacking up charges. They charged this woman with two offenses when she was agitated when the police came. They saw she was agitated. She was not there because she had committed a crime. The police officer put his hands on this woman who was agitated and she was apparently struggling and she put the handcuffs on her, and while he's doing all this--and I know how rough cops can be--she dug her fingernails in his skin. She spit on him. I'm going to try to amend this bill to not have any special categories and we're going to make an attack with bodily fluids an offense by whoever spits on whomever. If a cop spits on a person--and they spit on people--then they are guilty of this. If a nurse, if anybody, if a preacher spits on somebody, then that is this crime. But to have a crime of assault and then plus assault with bodily fluids because it's a cop, that is crazy, in my opinion. If I hit you with a stick, they don't charge me with assault and then assault with a stick. All of that is in the one charge. This woman has two charges against her. Now, the felony comes in if there is certain infectious substances and the person knows it and then the bodily fluids strike the face, the eyes, the mouth, or whatever. This bill...and let me tell you something else, I'm going to turn on my light. How much time do I have, Mr. President? [LB913]

PRESIDENT FOLEY: 1:20. [LB913]

SENATOR CHAMBERS: I can't say it all. I'll say what I can, but I'm going to turn on my light again. When Senator Lathrop brought his bill, I was furious. It was toward the end of the session. They amended it onto a bill over my objections. And I have an ace in the hole on that one, because it was amended into a bill that has nothing to do with that subject. It comprised more than one subject in the same bill. And it can be attacked as being unconstitutional and it may pull that whole bill down. And this might be the triggering device. And a citizen can challenge the constitutionality of a bill if he or she is a taxpayer. The way Senator McDonnell presented the bill put me in a position...because he knew I followed these things. I said I won't fight it. I didn't know that under the current law when it's a cop, they stack up charges out of one incident and the cop knew this woman was upset. She wasn't damaging property. She apparently was hitting the bed. Look, are you going to call a cop on me for that? And if I'm angry and do it and one of

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these Red Coats comes and tries to restrain me or even one of the officers, and he grabbed me and I jerk away from him and we're struggling, and spit comes out of my mouth, then I'm guilty of a... [LB913]

PRESIDENT FOLEY: Time, Senator. [LB913]

SENATOR CHAMBERS: Thank you, Mr. President. [LB913]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Scuhmacher. [LB913]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. When you walk into this building, above one of the doors it says "Equality Before the Law." And what's always made me uncomfortable when we have a bill before us that starts treating people unequally. I had heartburn when the early versions of this legislation developed--not this legislation, but the underlying bill that's being amended--and I still have, because it starts ranking our citizens unequally. We have those who are deserving of special rank and treatment who a crime against gets special punishment and then we've got the rest of the people out there. Why? Can't we make the same arguments for teachers? For a mother of six children? For anybody else? For a banker who's doing his job of foreclosing on a loan and gets spit on? A lawyer in a courtroom? To say, look it, I do something special that the public depends on, I deserve to be treated specially. I've always had a hard time dealing with. I wonder how long it's going to be before we hear something like, you know, our servicemen who are at Offutt Air Base really deserve some special honor and special privilege because otherwise they might close Offutt. Who knows? And we'd like to be higher on the scoreboard for base closings so that we won't get closed. Or we want to show our appreciation to servicemen, so let's add them to the special list. I'm inclined to agree with Senator Chambers that if this is a area which needs intervention and somehow an enhanced penalty, then let's give it to everybody. Why do only some people get the special privilege? I know it's good political fodder, I've seen it long before this bill where somebody said, ah, I can get money from this association representing this group or that association there or I can get favor in elections, so let me put them on the special people list. And it seems that every time we create special people lists with special privileges or special tax treatment or special deals, we get ourselves in a complicated, convoluted mess that there is no end to. And year by year we have to come back and consider whether we should add somebody else to the special people list or the special business list or the special exemption list. And pretty soon--in a lot of areas, not just this one--we find ourselves in a quagmire of special deals. Sometimes the simple, the uniform, and the honest is the best thing. Equality before the law is not a bad idea, but this breaches that. This whole theory breaches this. Special business perks for special people breach that. By saying, ah, this is a special business. It'll create more jobs than that business over there.

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Sometimes that theory is based upon the old idea that we are in a factory widget-making economy rather than a service economy. Whatever. The idea of making us unequal... [LB913]

PRESIDENT FOLEY: One minute. [LB913]

SENATOR SCHUMACHER: ...is a bad path to go down. Thank you, Mr. President. [LB913]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Chambers. [LB913]

SENATOR CHAMBERS: Mr. President, members of the Legislature, they had brought a bill like this earlier and they were putting employees of the the Correctional Department into it. I said, the person who cuts grass outside is a correctional employee. They didn't say a guard or people who are dealing directly with prisoners. Somebody could have walked off the street and had seen this person cutting grass and popped him. Then that person was charged with this special category of attacking a Correctional Department employee, anybody who worked for the Department of Corrections. So what I was doing when Senator Lathrop brought his bill, I began to offer the kind of amendments that I offer, that there had been a rash of robberies of pizza truckdrivers. So I said, let's put them in. There have been an unusual number of bank robberies, put the bank teller in it. Anybody who's doing anything that brings them in contact with the public and itemize every one of them. Then by the time you get about 150 and you're still going they'd say, maybe we need to find a way to pass a law that just includes everybody. And then they'll say, that's what we've got already. The only reason I said I wouldn't fight this was because they had put all these other categories. But now that I know from this case what prosecutors are doing, they stack up charges based on one event. And I'm not satisfied with the answer that Senator Baker got. This woman, they called the police because she had made statements that were of a suicidal nature. If somebody is upset enough to perhaps be prepared to commit suicide, that person has some kind of mental disturbance, even if it's not ingrained and permanent. So you're dealing with somebody who may be suicidal, somebody who injured herself not hitting somebody else, but she hit a wall. So she winds up, because she was--whatever led to it--upset enough to hit a wall, they bring her to the hospital. Then she's agitated and had made suicidal comments, so the hospital people called the police. It was not even a criminal matter then. The police come. And when she begins to hit the railing of her bed, not somebody, not threatening anybody, nothing. She's hitting the railing of a bed, so the cop jumps into it and he tries to restrain her. As I've said, I've seen them restrain black kids where they put them on their knees and slap them upside the head. Yeah. And out in front of my house one time, they were on top of a woman and I went out there and made them get off. So, anyway, this woman who is agitated anyway, is then put in handcuffs. And while they're struggling around, then she digs her nails in, she pulls his hair, and she spit on him. You could be arguing with somebody and spit on them. And they stacked up the charges. Third degree assault on an officer and assaulting the officer

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with bodily fluids. I'm not going to try to stop the bill here because you all might want to go for it, but I'm going to talk to Senator McDonnell and I'm going to offer amendments to his bill to eradicate all of those kind of special categories and just have the offense either assault with bodily fluids or assault, period. And an assault includes...then you mention the kind of things that can constitute that assault, if necessary, but not special categories of people. [LB913]

PRESIDENT FOLEY: One minute. [LB913]

SENATOR CHAMBERS: If I'm spat upon by a cop, it ought to be harsher on him because he's to uphold the law and he stepped out of line and did that to me. Cops are not even punished when they assault people. When they assault people, they are not punished. They're the last ones that I wanted to see put in a special category, but like so many things around here I couldn't stop it. And now the ball is rolling and maybe fate brought this to be. And maybe fate led Senator McDonnell to put this out on our desk so I could be shown how prosecutors are misusing these bad bills. That's all I have to say. If I try to kill the bill, it's not going to be by talking it to death or getting it taken off the agenda. I've had my second chance, which gave me a chance to say all that I wanted to say this time around and I will leave it alone, but I'm going to sit out the vote on it. Thank you, Mr. President. [LB913]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator McDonnell, you're recognized to close on AM2061. [LB913]

SENATOR McDONNELL: I will be willing to work with all the senators on any of their ideas on how to improve this bill, but it was brought up the idea that nurses, I don't believe, think they're special. Because of their employment, their job, they're vulnerable. And at that moment in time, we're not only talking about that patient that possibly with their standard operating procedure if they are assaulted with bodily fluid, it's the next patient also based on that nurse will have to go although that process and no longer be there to help the next patient. But I appreciate the input and I'm willing to work with all the senators on how to improve this before we go on to Select File. Thank you. [LB913]

PRESIDENT FOLEY: Thank you, Senator McDonnell. Members, you heard the debate on AM2061. The question before the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB913]

CLERK: 35 ayes, 0 nays, on adoption of Senator McDonnell's amendment. [LB913]

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PRESIDENT FOLEY: AM2061 is adopted. Senator McDonnell, you're recognized to close on the bill. He waives close. The question before the body is the advancement of LB913 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB913]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB913. [LB913]

PRESIDENT FOLEY: LB913 advances. Proceeding to General File, 2018 Speaker priority bills. Mr. Clerk. [LB913]

CLERK: Mr. President. LB104 by Senator Bolz. (Read title.) Introduced on January 6 of last year. At that time, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments pending. (AM1464, Legislative Journal page 470.) [LB104]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Bolz, you're recognized to open on LB104. [LB104]

SENATOR BOLZ: Thank you, Mr. President. Good evening, colleagues. Today I bring you LB104, which establishes surrogates to make healthcare decisions for those who are incapacitated and otherwise delegate someone who can help make healthcare decisions. This bill cuts red tape and expenses for individuals and families who are making healthcare decisions. The Judiciary Committee amendment does become the bill. I understand that many of you have a date on the calendar with Scott Frost, so I'll do my best to summarize the bill as quickly as I can. But I do want to share with you that we have sought considerable input to bring you a bill that is considerate of many of the circumstances under which one might find themselves in need of a medical surrogate. And I want to thank all of the stakeholders who have worked with us on the bill in its current form, including those representing healthcare, legal, and religious communities. Specifically, we have received input and worked with the following: the (Nebraska) Medical Association and hospitals, the (Nebraska) Catholic Conference, the (Nebraska) Bar Association, Legal Aid (of Nebraska), and the Autism Awareness network, as well as legal staff. And I do appreciate everyone's help on this bill. LB104 establishes healthcare surrogates in the event that an individual becomes incapacitated and does not have an existing power of attorney, guardianship, or other legal designation about their healthcare decisions. It also establishes healthcare surrogates, which can assist in the healthcare decisionmaking on a limited and temporary basis. It filled the need for both individuals who need assistance in medical decisionmaking and healthcare providers who need to take healthcare actions when other guidance is not available. LB104 does not encourage any particular healthcare decision, nor does it establish or alter any existing rights of competent adults or incapacitated minors to make such

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decisions. The bill does establish a hierarchy for decisionmaking when someone is incapacitated and they have not declared their own surrogate. The bill was brought to me by the Autism Medical Legal partnership. This initiative with Legal Aid found that surrogacy was a less expensive and less restrictive approach, especially for individuals with disabilities who want to have a surrogate to help make healthcare decisions but are capable of making other financial or life decisions on their own. I want to be clear that surrogacy does not supersede other legal designations previously put into place by the individual or others on their behalf. Guardianship, for example, is a person appointed by the court to make personal decisions for the protected person such as medical, residence, and educational decisions. Guardianship has been and will remain one option for people who are unable to make decisions for themselves as it relates to healthcare or other complex needs, but guardianship is not right for everyone. The law requires that guardianship be a last resort. If someone is otherwise capable of independence, they should not be subjected to guardianship. As a general principle, we should seek the least restrictive choice as possible. Additionally, guardianship can be expensive and one testifier on the bill, a mother of a child with developmental disabilities represented that costs were up to \$5,000 for the guardianship established for her child. A power of attorney is less restrictive than a guardianship and it does not require a court to verify it, but it is more explicit and controlling to decisionmaking than the surrogate would be. A power of attorney is usually drafted with the help of an attorney and the designation of power of attorney is binding until revoked by the principal. A surrogate, on the other hand, is temporary and is removed once a person is no longer incapacitated. It is not uncommon for a person to be involved in an acute healthcare crisis that might render them temporarily unable to communicate their wishes to a medical provider. Surrogates are able to draw upon their knowledge of the incapacitated person and their values and intentions to make decisions on their behalf in those instances. I will recognize that there are difficult ethical circumstances which sometimes arise in healthcare situations, so the bill also outlines when a surrogacy may need to be revoked. Many healthcare organizations do have thoughtful ways of handling this type of situation. The bill makes surrogacy a clear option that can be counted on regardless of the organization. I have shared with you a fact sheet that provides a couple of examples and outlines the intention of the bill. I also have a specific section-by-section analysis if anyone would like further information about how the bill works. The final point I would like to make is that the language used in the bill, such as the definitions, are in large part added from the Healthcare Power of Attorney Act, existing law. So while there is a fair amount of language in the bill, most of the new pieces added relate only to the use of surrogates. Thank you for your consideration of LB104. Again, thank you to the Catholic Conference and to Legal Aid and others who helped put the bill together, and I would appreciate your support of LB104. Thank you, Mr. President. [LB104]

**SPEAKER SCHEER PRESIDING**

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SPEAKER SCHEER: Thank you, Senator Bolz. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ebke, as Chair, you're recognized to open on the amendment. [LB104]

SENATOR EBKE: Thank you, Mr. Speaker. And AM1464 makes the following changes and you can follow along in the committee statement as well and I'll just highlight a few of them. First of all, in Section 2, it modifies legislative intent language to indicate that the purpose of surrogacy is to facilitate care for a person who is incapacitated and does not already have a guardian or other advanced directive. A number of the other provisions in the amendment were designed to harmonize provisions in already existing law and to make some clarifications with respect to definitions. Other amendment sections are substantially the same as they are in the introduced version of LB104. And I would encourage you to vote green on AM1464 and the committee amendment, LB104. There were no opponents to this bill at committee. [LB104]

SPEAKER SCHEER: Thank you, Senator Ebke. Seeing no one in the queue, you're welcome to close on the committee amendment. She waives closing. The question before us is adoption of AM1464 to LB104. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record. [LB104]

CLERK: 32 ayes, 0 nays on adoption of committee amendments. [LB104]

SPEAKER SCHEER: AM1464 is adopted. Seeing no one wishing to speak, Senator Bolz, you're welcome to close. She waives closing on LB104. To advance to E&R Initial, all those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record. [LB104]

CLERK: 32 ayes, 0 nays on the advancement of the bill. [LB104]

SPEAKER SCHEER: LB104 advances to E&R Initial. Mr. Clerk. [LB104]

CLERK: Mr. President, Judiciary Committee Reports LB869 to General File with amendments. Senator Geist offers LR334. That will be laid over. Amendments: LB295, Senator Smith; LB1089, Senator Smith; LB389, Senator Morfeld and Senator McCollister. Mr. President, General Affairs will have an Executive Session tomorrow morning at 9:15 in Room 2022. [LB869 LR334 LB295 LB1089 LB389]

Senator Erdman will move to adjourn the body until Thursday morning, March 1, at 9:00 am.



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SPEAKER SCHEER: Colleagues, you've heard the motion to adjourn. All those in favor please say aye. All those opposed say nay. The ayes have it. We are adjourned.