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Floor Debate
January 15, 2008

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PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Senator Hudkins. Would you all please rise.
[]

SENATOR HUDKINS: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Senator Hudkins. I call to order the fifth day of the One Hundredth Legislature, Second Session. Senators, please record your presence by roll call. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK: Mr. President, I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, offers notice of hearing for Tuesday, January 22. Transportation and Telecommunication Committee, chaired by Senator Fischer, notice of hearing for January 22. And that's all that I have at this time, Mr. President. (Legislative Journal pages 225-226.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Burling, you are recognized for a motion.

SENATOR BURLING: Mr. Lieutenant Governor, I move that a committee of five be appointed to escort the Governor of the state of Nebraska to the Legislative Chamber to deliver the State of the State Address.

PRESIDENT SHEEHY: Thank you, Senator Burling. You have heard the motion. All those in favor say aye. Opposed, nay. The motion is adopted. I would appoint the following committee: Senator Schimek, Senator Preister, Senator Janssen, Senator Hudkins, and Senator Dwite Pedersen. Would the Escort Committee retire to the rear of the Chamber to escort the Governor. (Doctor of the day introduced.) Senator Engel,

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would you join the Escort Committee? (Visitors introduced.) The Chair recognizes the Sergeant at Arms. (Gavel)

SERGEANT AT ARMS: Mr. President, your committee escorting the Governor of the great state of Nebraska, Dave Heineman and first lady, Sally Ganem. (Applause.)

PRESIDENT SHEEHY: Senators, ladies and gentlemen, the Governor of the great state of Nebraska, Governor Dave Heineman.

GOVERNOR HEINEMAN: Thank you. Mr. President, Mr. Speaker, members of the Legislature, distinguished guests, friends, and fellow Nebraskans: I am pleased to be with you at the beginning of another legislative session. Working together, we have made a difference for our state. Nebraska is steadily and consistently moving forward. We are on a path that will reshape Nebraska's future. Working together, we have enhanced Nebraska's ability to compete in a free market economy. The Nebraska Advantage is working. During the past two years, 138 companies decided to expand or locate in Nebraska. These businesses will invest over \$4.6 billion in our economy, and they will create more than 12,000 new jobs in communities all across Nebraska. The ethanol industry is experiencing a strong expansion, and Nebraska is now the second largest ethanol producer in America. Capitalizing on the global demand for our high-quality products has resulted in expanded export markets in Taiwan, China, Cuba, Canada, and Mexico for our Nebraska businesses. A forward-looking insurance policy environment has significantly grown our insurance industry. I am pleased to report to you that Nebraska is making progress in creating new jobs for our young people and expanding middle-class job opportunities. But we still have more work to do. Nebraskans want higher paying jobs, better careers, financial security, and expanded opportunities for their children. Nebraskans want the ability to compete in a twenty-first century economy that leverages technology, values educational excellence, and fosters entrepreneurship. Imagine what it would be like for our children if Nebraska could create a large number of jobs that pay twice the current Nebraska county average salary. To accomplish that goal requires twenty-first century leadership that is innovative and creative. That's why I am proposing that Nebraska take a quantum leap forward with a new tier of performance-based incentives that reward the creation of higher paying jobs, and I'm asking you to make this a priority in this legislative session. This new program is called the Nebraska Super Advantage. The Nebraska Super Advantage is about the next decade and the next generation of Nebraskans. This bold, new plan is our opportunity to keep our young people right here in Nebraska. Incentives are essential, but alone they aren't enough. Taxes make a difference too. During previous legislative sessions, you have lowered taxes, including last year's tax relief package which was the largest in the history of the state. These bills provided property tax relief, repealed the death tax, eliminated the marriage penalty, expanded the Earned Income Tax Credit, and repealed the sales tax on construction labor. While we have made progress in lowering taxes, make no mistake about it--taxes are still too high. Whether you are a

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small business owner, a farmer, a rancher, an entrepreneur, a teacher, a nurse, or a retired person on a fixed income, taxes are too high. That's why I am proposing additional property tax relief in this budget. Tax relief must continue to be a priority for our state. Competing in a free market economy also requires a prekindergarten through college education system that is accountable, affordable, efficient, and student focused. Education is the great equalizer, and every Nebraska child deserves the opportunity to achieve a quality education. Accountability requires measuring school district academic success, and Nebraska needs a simplified student measurement system for comparing school district performance. The goal is better testing, not more testing. School district leaders need to focus their time and energy on closing the academic achievement gap. More parents need to be involved in their children's education. More rigorous academic standards are needed in our schools and overall academic performance must be improved. State aid to education should be predictable and sustainable. State aid is one of our most important responsibilities, and that's why I have recommended fully funding the formula every year that I have been Governor. As we look to the future, it is important that Nebraska has an understandable, stable, and affordable school funding formula. This is the long-term challenge that we must address. Nebraska has a very good K-12 education system, and we must make it even better in the future. Nebraska's higher education system should also be more accountable, more integrated, and more efficient. The University of Nebraska, our state colleges, and our community colleges can work together in a more cooperative manner. Increasing the college attendance rate is critical. Increased enrollments and revenues to our colleges through innovation like UNO's differential tuition rate to attract more students to the University of Nebraska at Omaha are important. Thank you, President Milliken and Chancellor Christensen, for your innovation. The University of Nebraska is a key component to Nebraska's future, and they must redefine their priorities to reflect the education and financial challenges of the twenty-first century. Expanded enrollment means increased tuition revenue growth which is necessary given the fiscal realities of the state budget. I believe the University of Nebraska can successfully address its future challenges because of its exceptional leadership team. Nebraska has other challenges. Imagine a new Department of Health and Human Services that accelerates the reform of the state's child welfare system, behavioral health, Medicaid, and the Beatrice State Developmental Center. Together we can make these changes. There are encouraging signs already. Adoptions are up, community-based care is increasing, and out-of-home placements are down. You and I want government to operate more efficiently and with greater accountability. Last year this body passed a comprehensive restructuring of the Department of Health and Human Services designed to make the system more effective, more efficient, and more accountable. We are in the process of implementing those changes. The challenges facing Health and Human Services have been decades in the making. Success won't happen overnight, but we are beginning to make progress. We have a new leadership team that is committed to change. We have employees who are dedicated to helping their fellow citizens. We also need changes in healthcare. This is an issue that affects every Nebraskan and every Nebraska family. Much of what should be done will require

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a federal-state partnership with the private sector. Our country needs a secure electronic healthcare system. Nebraska will be part of that effort with a pilot technology grant for Hebron and Thayer County to better coordinate patient records, to improve a patient's health, and to moderate healthcare costs. Our healthcare system should also be consumer driven and focus on prevention and wellness. Obesity is a problem that needs to be addressed in our schools, in our workplaces, in our homes, and in our communities. In Nebraska, we must reverse the trend of childhood obesity. By doing this we will reduce the risk of diabetes, high blood pressure, and heart disease for our most precious resource--our children. This issue doesn't require a new law. It's about eating properly and exercising regularly. Both children and adults need to be physically active. Creating a culture of wellness throughout Nebraska is essential, and state government should lead by example. As we reform and improve our health insurance program for state employees, I will be recommending that we focus on prevention and wellness. The long-term results will include improved employee health, increased productivity, and lower future healthcare costs. Now let's turn our attention to a very difficult and emotional issue--immigration. The fact is, the federal government is tasked with the duty to regulate immigration and the federal government has failed, creating problems for states. Their failure has resulted in an ever-increasing number of illegal immigrants in our country. States are now beginning to address their specific challenges in their own ways. I believe Nebraska should too. I want to be very clear. America is the land of opportunity and Nebraskans support legal immigration. Illegal behavior should not be rewarded. It is unfair to immigrants who have become legal American citizens to have illegal immigrants provided the same opportunities. Nebraskans are compassionate but we are also law-abiding citizens. Finally, a fiscally responsible budget requires a prudent cash reserve for when we have a downturn in the economy. Other states are beginning to experience revenue shortfalls. I hope a downturn can be avoided, but the Federal Reserve has suggested that our nation's economy may slow down in 2008. Your Tax Rate Review Committee, in its November 20, 2007, report said that, "Past history in General Fund revenue growth since 1981 demonstrates a clear pattern of growth rates, clustering of several years above average, followed by several years of below average growth, suggesting fiscal year 2008–2009 may be the onset of a below average growth period." This financial challenge presents a golden opportunity for senators departing us at the end of the year. You have the experience and the wisdom to appreciate the value of a robust cash reserve. There will be a temptation to spend it, but your leadership can preserve it. Your legacy can be a Nebraska better prepared for future progress. Our vision is about limitless dreams and endless possibilities. Nebraskans are can-do people. We want a better Nebraska. We want a strong economy that produces more high-paying jobs and financial security for our families. We want a quality education for our sons and daughters. We want to improve the health of our Nebraska families. We believe in the American dream. We are hopeful and optimistic about Nebraska's future, and I know together we can make tomorrow better than today. Together, we will continue to move Nebraska forward. Thank you. (Applause.)

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PRESIDENT SHEEHY: Thank you, Governor Heineman. Would the committee escort the Governor from the Chamber. The Legislature will stand at ease until 10:30. At 10:30 we will begin with the items on the agenda.

EASE

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: At this time the Legislature will reconvene and come to order. Mr. Clerk, items.

CLERK: Mr. President, new bills. (Read LB959-965 by title for the first time, Legislative Journal pages 230-232.) And that's all that I have at this time, Mr. President. [LB959 LB960 LB961 LB962 LB963 LB964 LB965]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Mr. Clerk, at this time we'll proceed to General File, LB253. Senator Rogert, having discussed this bill yesterday, would you give us a brief introduction on LB253. [LB253]

SENATOR ROGERT: Yes. Thank you, Mr. President. Once again, LB253 is a partial repeal of the Nebraska helmet law as it now stands. If the bill were to pass, it would require those over the age of 21 to wear eye protection and be born prior to 1988 and have...to take their helmet off. If not that old, they would have to take a certified course in order to take off their helmets. Those under the age of 21 would still be required to wear helmets and eye protection at all time. We added a couple technical amendments, and then we also added an amendment that would require all registered motorcyclists to carry \$1 million in healthcare coverage in order to register their motorcycle. At this time, we are...I guess we are ready to move forward, and I'll turn my time back to the Chair. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Mr. Clerk, for a motion. [LB253]

CLERK: Mr. President, Senator Chambers had moved to indefinitely postpone the bill. Senator Rogert, as is his option, laid the bill over pursuant to that filing. Senator Chambers' motion to indefinitely postpone is the first motion pending this morning. [LB253]

SENATOR LANGEMEIER: Pursuant to Senator Chambers' wishes to withdraw the motion to IPP, the motion is withdrawn. [LB253]

CLERK: At this time, Mr. President, I have nothing further pending to LB253. [LB253]

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SENATOR LANGEMEIER: Thank you, Mr. Clerk. We return now to discussion on LB253, and Senator Wightman, you're recognized. [LB253]

SENATOR WIGHTMAN: Okay. Thank you, Mr. President, members of the body. I left yesterday with a lot of questions with regard to the million-dollar health insurance policy that we required by an amendment passed late yesterday. If Senator Rogert would yield to several questions, I would like to have some dialogue with him. [LB253]

SENATOR LANGEMEIER: Senator Rogert, would you yield to questions? [LB253]

SENATOR ROBERT: I will. [LB253]

SENATOR WIGHTMAN: With regard to the million-dollar life insurance policy, I want to clarify...or health insurance, would one comply with that if he had a million-dollar medical pay on his vehicle insurance? [LB253]

SENATOR ROBERT: Actually, I'm not exactly for sure on that. The way it's written it would require...I believe so, because it says if they show proof of a million dollars of coverage on themselves, then they would qualify. [LB253]

SENATOR WIGHTMAN: Then I have some follow-up questions, so I guess there may well be a differentiation between a health insurance policy and the medical pay provisions of the motor vehicle, in this case, the motorcycle policy itself. I know there would be a lot of differences in the effect. Can you tell me in any way how this would protect against a passenger on that vehicle, a passenger with the operator, the registered operator being involved in an accident and maybe having a \$1 million or \$2 million claim for brain damages? [LB253]

SENATOR ROBERT: Senator Wightman, I was...being as this gets fairly legal, Senator White helped me create this amendment. Can I direct the questions to him? [LB253]

SENATOR WIGHTMAN: I'll be willing to do that. [LB253]

SENATOR LANGEMEIER: Senator White, would you yield to a question? [LB253]

SENATOR WHITE: Certainly. [LB253]

SENATOR WIGHTMAN: I would ask you the same question, if you were listening. [LB253]

SENATOR WHITE: Yes. Well, it depends on the name on the policy. A med pay provision in an auto or a motorcycle policy is generally directed to anybody in the vehicle or on the vehicle at the time of the accident, so they would be covered. The

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policies are written frequently that they might have \$1 million per person, \$2 million maximum, something like that, Senator. So they would be limited to injuries and care necessitated by the use of the vehicle, though. [LB253]

SENATOR WIGHTMAN: But, Senator White, a follow-up question. The legislation or the amendment that was passed yesterday would not require that to be tied to that particular motor vehicle but only would be a health insurance policy or medical policy for the individual in whose name it was registered; is that correct? [LB253]

SENATOR WHITE: Well, as I read the amendment, it would require a medical pay provision policy tied to the vehicle, so it would be available to anybody who was on the vehicle or injured as a result of the use of the vehicle. [LB253]

SENATOR WIGHTMAN: I guess I'll review it. I'm not sure that that's my understanding of the provisions, but I'll review it in light of what you have said. [LB253]

SENATOR WHITE: If it says medical pay provision, that's a term of art that's not a normal health insurance policy. That is a policy tied to the issuance of motor vehicle insurance. [LB253]

SENATOR WIGHTMAN: I have another question, and maybe this should go back to Senator Rogert, if he would yield again. [LB253]

SENATOR LANGEMEIER: Senator Rogert, would you yield to a question? [LB253]

SENATOR ROGERT: Yes. [LB253]

SENATOR WIGHTMAN: I know one of the arguments that were made by the ABATE group that was here yesterday was that we would have great economic development because of the fact that motorcyclists who now avoid passing through the state of Nebraska would pass through if we did not have a helmet law; is that correct? [LB253]

SENATOR ROGERT: Yes. [LB253]

SENATOR WIGHTMAN: Can you tell me how they would be affected by either the medical pay provision of a motor vehicle policy... [LB253]

SENATOR LANGEMEIER: One minute. [LB253]

SENATOR WIGHTMAN: ...or a health insurance policy? There's going to be no way of enforcement, is there, as to those people? [LB253]

SENATOR ROGERT: Well, in my understanding, anybody that rides or drives or travels

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through our state is affected by our laws. So if they do not have the proof of their insurance, then they would need to further show it, and I don't know how exactly they would enforce that on out-of-staters. But it is my opinion that everybody coming through our state will pay our fines and attend our courts and have to follow our laws and rules. [LB253]

SENATOR WIGHTMAN: But if they aren't picked up, if they aren't apprehended for some other act, the chances of that ever being enforced against an out-of-state motorcycle operator are virtually nil; would that be a fair summary? [LB253]

SENATOR ROBERT: I would agree with that, but it also goes the same way with every car that drives through our state. It's hard to see if they are insured as well, until they get in an accident or get picked up. [LB253]

SENATOR LANGEMEIER: Time. [LB253]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you, Senator Robert. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Johnson, you are recognized. [LB253]

SENATOR JOHNSON: Thank you. What I wanted to talk about here this morning is this, and actually the Governor's speech alluded to it, and it's basically what the whole premise of my discussion is about. The Governor used the term: we need to have a culture of wellness, a culture of prevention. Let me tell you what I've been doing for the last few months. I've been to some different meetings, and I think I alluded once yesterday a little bit to it, where I had been to a conference and they were basically talking about wellness, because all states and the federal government are finding the same thing as we are here in Nebraska. What we are finding here in Nebraska is that our Medicaid rate, an item that we can measure quite closely, has been going up, I believe it was at the rate of 14 percent. If you sustain this 14 percent increase indefinitely, when other costs are going up, say, at 5 percent...and what did we do for the university this last year? Was it 4 percent or some number like that? But if you have these 2 numbers going at different rates and you add 20 years to that, pretty soon you find out you don't have any money for anything else. I've been having a conversation with my friends who are on the roads committee. They are sadly disappointed with the Governor's speech, because there was no significant monies for the Road Department. Well, I can tell you, at the rate we're going, there's not going to be any monies for the university or other things, as well. We cannot sustain this 14 percent-a-year increase. A year or two ago this body put together a committee of some very good people to study this problem and come up with ideas of how we might slow down this Medicaid expense. This is the report and the numbers that we are going to do. Basically, we're going to cut down on dental services to adults. One of the things when you cut down on

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dental services to adults, you find them in the emergency room because of these kind of problems. This is a superficial savings. Eyeglasses for adults, we're going to save a whopping \$115,000 a year for the state of Nebraska. There are chiropractic services--cut down the number of visits. Hearing aids for adults--save another large amount, \$90,000, about maybe a week in the hospital for a head injury with somebody not wearing a helmet. Outpatient medical rehab for adults,... [LB253]

SENATOR LANGEMEIER: One minute. [LB253]

SENATOR JOHNSON: ...another savings of less than a million. All of these add up to \$2,544,000. That is what this committee has been working on for a year, to come up with these recommendations of how to save money. What are we talking about in this body? Who knows how much money we're talking about? This is probably the expense for just a couple of people that are in rehab-type hospitals with their head injuries. This...how in the world can we talk about being fiscal conservatives in this body and add expense, when we've had people working on this for the last two years? [LB253]

SENATOR LANGEMEIER: Time. [LB253]

SENATOR JOHNSON: Thank you, sir. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Wishing to speak we have Senators Pankonin, Howard, Chambers, Kruse, Wightman, and others. Senator Pankonin, you are recognized. [LB253]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. As I drove home last night and drove back this morning, thought about this bill, I wasn't going to speak on it yesterday. But I wanted to give my reasons of why I'm not going to vote for LB253, after listening to the good discussion yesterday. And it's interesting in this body how we come to decisions on our votes, whether it's statistics or feelings we have from our basic philosophy, and those sort of things. But as I listened to the discussion yesterday about different activities that we participate in that are dangerous, we know Senator White likes to ride a horse; my hunch is he likes to ride his horse at a very rapid speed once in a while. We know Senator Rogert likes to run a boat, and I'm sure at times that's at high speed. During the summertime there will be a half a dozen times where I ride one of those personal watercrafts or a jet ski, and I like that feeling of the wind in the air as we talked about--don't wear a helmet. At least if you do fall, it's water. It could be a dock or another boat, I guess. But as I thought about all these things, the compelling reason for me to be opposed to this bill is I've got two brothers-in-law that are doctors--both are surgeons. My brother-in-law here in Lincoln, Alan Nissen, mainly does ear surgery work, so once in a while he gets involved in a facial injury that he's called into. But probably more directly involved, my wife Lori's younger brother, Dr. John Chace in Norman, Oklahoma, the Oklahoma City area, does a lot--he's a general

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surgeon--does a lot of emergency room work. And I called him at noontime on Sunday to ask him about this bill and his experience. He was an Air Force ROTC grad and spent a lot of time in the Gulf area on assignment until the last four or five years, where he has been in private practice. But Oklahoma is one of those states that does not have a helmet law, and I knew John might have firsthand experience, and he had. He told me that those injuries...you know, in Oklahoma they have watercraft, they have horses, they have football, they have a lot of these activities that Senator Chambers has mentioned, they have children that can be hurt on playgrounds. But he talked about how horrific the motorcycle accidents can be and how devastating they can be to have these brain injuries, to not only the person involved, but to that person's family and to society as a whole, and the potential cost down the road. That was the compelling reason for me. I was leaning that way, but to talk to my brother-in-law, who I value and his judgment of why this bill is not something I can vote for, and I wanted to share those remarks with you today. Thank you. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. Senator Howard, you are recognized. [LB253]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Like my colleague and friend, Senator Pankonin, I've been thinking about this since this bill was first presented, and it's a very difficult issue. As one who recently spent five days in intensive care standing by the bed of a relative, not knowing if that individual is going to pull through, I really have feelings for the families of individuals that are injured in accidents and the repercussions that this has. It's not only the individual on the motorcycle, it's also the relatives, those that love that individual, those that care for that individual, whose lives are impacted by this act. And none of us has complete control over what happens on the highways when we're out there driving. Things that are completely unpredictable happen. This is my concern, this is why I stand in opposition to this bill. And having said that, I offer my time to Senator Johnson. [LB253]

SENATOR LANGEMEIER: Senator Johnson, four minutes. [LB253]

SENATOR JOHNSON: Thank you very much, Senator Howard. And this is one of the things. Here we talk about personal rights. There's more than personal rights involved here, and this is kind of where we left the discussion yesterday. There was some hint that we didn't care about people who ride motorcycles. Let me tell you, I have lots of friends that ride motorcycles, but even if they're not friends, when they come into the emergency room, it is not a pleasant sight. If you haven't been there when one of these people come in, I would suggest you do some volunteer work at your local hospital in the emergency room. It is absolutely horrible to go talk to these families, you know, saying that Sam would have wanted it that way, to have the hair being blown by the wind. You know, the next day after the funeral, that doesn't help very much when Dad or Mom isn't there. We get back to the situation...I went to the breakfast for the Voices of

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Children this morning, and as I was sitting there, I just said to myself, now we're going to go over to the Chamber and discuss whether we ought to create more orphans, more parents that aren't there because of severe injury and the like. How come it is that we talk about freedoms? What is the cost? I have a great appreciation for freedoms. I have been in situations where I have seen people pay a tremendous, tremendous cost to protect our freedoms. I think I probably value this as much as anybody in this Chamber. What we're talking about here is, how much freedom do we give up at the cost to society, both in these children that are orphaned or left without a functioning parent? [LB253]

SENATOR LANGEMEIER: Time. [LB253]

SENATOR JOHNSON: We have many social conservatives in this Chamber. [LB253]

SENATOR LANGEMEIER: One minute, excuse me. [LB253]

SENATOR JOHNSON: Explain that to me, how we want to create orphans, and how we want to create children without parents. Is your right that's taken away from you by wearing a helmet that important that you're willing to pay that price? We're not talking dollars and cents here; we are talking about kids being orphaned and left without a parent. It's that simple. Thank you, Mr. President. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Johnson and Senator Howard. Senator Chambers, you are recognized. [LB253]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I voted against that amendment yesterday to require that insurance policy, and I'd like to ask Senator Rogert a question or two. [LB253]

SENATOR LANGEMEIER: Senator Rogert, would you yield to a question? [LB253]

SENATOR ROGERT: I will. [LB253]

SENATOR CHAMBERS: Senator Rogert, how much would a policy such as this cost? [LB253]

SENATOR ROGERT: Well, I don't have exact numbers, but if you had...and we're trying to decide exactly right now whether it's tied to a med pay program on your registration of your motorcycle, or whether it's actually healthcare, and from my opinion, those things are usually about, if it's a healthcare policy, it's about \$40 a month at minimum. And for the motorcycle, I would assume a couple hundred dollars a year. [LB253]

SENATOR CHAMBERS: You know that there are companies that would write a policy

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such as this, with the vagaries associated with what it's supposed to accomplish?
[LB253]

SENATOR ROBERT: No, not for sure. We are actually working on the language right now, to try and clarify it a little bit. [LB253]

SENATOR CHAMBERS: If all of that language can be smoothed out and if at least one company were willing to write such a policy, if a person did not have that policy and chose not to wear a helmet, that person could not...wait a minute. If this law passes, nobody could even register a vehicle without that policy in effect; is that true? [LB253]

SENATOR ROBERT: Right. [LB253]

SENATOR CHAMBERS: So if a person could not afford that monthly additional fee, then the only alternative that person would have, if he or she chose to ride the machine, is to let the policy lapse and not have to pay that monthly premium. [LB253]

SENATOR ROBERT: Correct. [LB253]

SENATOR CHAMBERS: I heard Senator Wightman asking you how this would impact people riding through Nebraska from another state without a helmet. It could not have any impact on them at all, could it? [LB253]

SENATOR ROBERT: Well, we're unsure on...they would still be able to register that. We don't have a provision in there right now that they would have to show proof as they're riding. [LB253]

SENATOR CHAMBERS: But they would have a registration from their home state.
[LB253]

SENATOR ROBERT: Correct. [LB253]

SENATOR CHAMBERS: So if they provided a valid driver's license from their own state, that would exempt them from the application of this law with reference to the insurance policy, true or false? [LB253]

SENATOR ROBERT: It appears that way, yes. [LB253]

SENATOR CHAMBERS: That's all I will ask you. Thank you. Members of the Legislature, if I were against this bill, the inclusion of this policy can complicate it so much that I might would drop my resistance to it. I support the bill if it is going to repeal the motorcycle helmet law. What happened last time that caused me not only to withdraw support but to ridicule it was that Senator Smith...that's such a difficult name

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for me to remember. (Laughter) Senator Smith and others had offered so many amendments that to me the bill made no more sense. It was too complex to be practical. The addition of this amendment causes me concern. You are requiring these people to pay a monthly tax to ride or drive a motor vehicle, when people who drive motor vehicles that cause far more mayhem and death don't have to pay such a tax. So if on the one hand I say I'm concerned about freedom and liberty, and my concept includes making those things available to everybody on the basis of equality, I cannot support requiring somebody driving a vehicle... [LB253]

SENATOR LANGEMEIER: One minute. [LB253]

SENATOR CHAMBERS: ...to pay a monthly tax that others driving a motor vehicle will not have to pay. Senator Johnson is making a reach and a stretch when he tries to tie what we're doing here with possibly a diminution of funds for the University of Nebraska, education, and all these other things that he mentioned. Those are simply desperation arguments worthy of no great amount of consideration. They should be dismissed out of hand. He's doing what somebody without much to argue with will do, so we're accustomed to that. But I still want to focus on what we say that we're trying to do with this bill. If it's to repeal the motorcycle helmet law, I'm for it. As it becomes increasingly complex, it takes on the nature of the type of legislation that I think is not of sufficient quality to merit my support. [LB253]

SENATOR LANGEMEIER: Time. [LB253]

SENATOR CHAMBERS: But I'll keep my mind open. Thank you, Mr. President. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Kruse, you're recognized. [LB253]

SENATOR KRUSE: Thank you, Mr. President and colleagues. As the dust settles on our discussion about this important subject, I would note that we are considering personal freedom in terms of certain risks, and this has been related by some persons to all kinds of risky behavior among us. This particular one has far more direct connection. I would agree with Senator Chambers that the amount of insurance here is a remarkable contrast to our behavior in other areas. Our behavior...our requirement of motorists is \$25,000. That's a cruel joke. That doesn't cover the first night in a hospital. So we're not being consistent there at all. But I would disagree with him that this million dollars is a significant amount of money. It is not when it comes to this kind of injury. That...the death is not the critical factor, it is the long-term brain injury that requires an institution for the rest of a person's life. That's where we get up to at least a \$10 million liability for each case, and we pay it. And it does have to come out, as Senator Johnson has indicated, it has to come out of our other budget challenges. I want to make one other comment about this in the remarks, and that is, while we have our attention on this

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would be a time to remind everyone, especially bikers, that the quality of that helmet is critical. Some of these helmets are...will just shatter when they hit the ground, like a plastic salad bowl taped to the top of your head. DOT requires a helmet that for most persons costs \$100, and for the serious biker, almost \$200. That is designed to collapse in such a way on the inside that it will cradle the head and keep the brain from sloshing around, which is frankly the problem that we are challenged with, with any kind of accident that pitches a motorcyclist off there. We need to remind each other and be supportive of bikers, and especially our family members, which I have several, that the helmet has to be a quality helmet so that we can really protect ourselves and protect--in terms of this bill--protect our budget in future years. I thank you. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Mr. Clerk, for a motion. [LB253]

CLERK: Mr. President, Senator Avery would move to amend the bill with AM1566. (Legislative Journal page 232.) [LB253]

SENATOR LANGEMEIER: Senator Avery, you are recognized to open on your amendment. [LB253]

SENATOR AVERY: Thank you, Mr. President. My amendment would strike language in the bill that requires mandatory protective eyewear. Yesterday in the debate I heard frequently that this issue is about personal liberty, freedom, and personal choice. In fact, that seems to me to be the underlying argument. So I spent some time last night looking over the bill, and what did I find? Mandatory--I emphasize--mandatory wearing of protective eyewear. Is this not also a violation of personal freedom? Is this not also a violation of one's personal choice? So why is it okay to mandate the wearing of protective eyewear and not okay to require wearing protective headwear? Don't both seek to add an element of safety for the rider? Is one better than the other? So where is the consistency here? I suggest that consistency is not present in this bill. If free choice is the main object, then why require protective eyewear? I offer this amendment to strike that language with the intent to demonstrate a glaring inconsistency. More fundamentally, I suppose we could ask the question, is it more important to protect the rider's eyes than it is to protect their brains? What would be the impact on the cost in the healthcare system if you protect eyes but you don't protect brains? My inclination is to believe that it might be greater if you have traumatic head injuries, that would probably cost more than eye injuries. I simply offer this amendment to make a point, and I believe the point is made that this is not a consistent bill, that there are elements to the bill that do not conform with other elements. If freedom of choice is the main issue, then it ought to apply in all elements of the bill. With that, Mr. President, I request that this amendment be withdrawn. Thank you. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Avery. AM1566 is withdrawn. We return now to discussion on LB253. Wishing to speak are Senators Wightman, Erdman,

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Johnson, Carlson, Rogert, Howard, and others. Senator Wightman, you are recognized. [LB253]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do agree with Senator Avery that there are a lot of inconsistencies in the bill. I won't debate his proposed amendment, since it's already been withdrawn, but I do think it points out real inconsistencies in providing the freedom that the proponents of this bill are seeking to accomplish. I have a number of questions with regard yet to the million-dollar health insurance/medical pay provisions, and I guess I would like to address one of those to Senator White, if he would yield. [LB253]

SENATOR LANGEMEIER: Senator White, would you yield to a question? [LB253]

SENATOR WHITE: Certainly. [LB253]

SENATOR WIGHTMAN: Senator White, and I should have reviewed the bill but I have not, is there any provision with regard to the limit on deductibles that million-dollar medical pay provision would require? [LB253]

SENATOR WHITE: If it's a medical pay provision, it's part of the normal statutory scheme work in Nebraska. There are no deductibles. [LB253]

SENATOR WIGHTMAN: So you're saying that they couldn't take...have \$100,000 deductible under the policy to cheapen the rate of that particular coverage? [LB253]

SENATOR WHITE: Yeah, no. Deductibles don't generally apply to medical pay provisions. Matter of fact, in an accident, if you have both health insurance and auto medical pay provision, generally the medical pay provisions can be used to satisfy your health insurance deductible from the first dollar. [LB253]

SENATOR WIGHTMAN: Perhaps you could enlighten me further. With regard to the coverage under that policy, would it be required to cover every passenger that is riding with the licensed operator? [LB253]

SENATOR WHITE: Certainly in a normal case, the policies are written that the medical pay provisions do cover any occupant or person injured through the use of the vehicle. And I would say with regard to expense, because Senator Chambers had asked this, with your permission, Senator, it's much, much less expensive to get medical pay provisions tied to a vehicle than any normal health insurance, because the incidence of injury is much lower, the base of the people that pay it. So in fact, this is probably the least expensive way to make medical care available to a broad number of people, is through a medical pay provision tied to the use of the motorcycle. [LB253]

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SENATOR WIGHTMAN: Senator White, has anybody ever priced...we talked about what it would be on a normal motor vehicle. Has anybody ever priced what it would cost to obtain \$1 million coverage on a motorcycle (inaudible)? [LB253]

SENATOR WHITE: I have not, and normally they're not going to do that kind of actuarial study in advance of the bill. Obviously, if it's tied to the registration of all motor vehicles, which I understand Senator Rogert is willing to have the language do, then it would...you would have a large pool of people, and it would make it far more affordable. [LB253]

SENATOR WIGHTMAN: I suspect that if I walked into my insurance company and told them I wanted to obtain a \$1 million medical coverage or medical pay provision under that policy, and also told him I didn't intend to wear a helmet, that probably I would have someone scurrying in the main office in underwriting to determine maybe what that premium should be. [LB253]

SENATOR WHITE: Well, I'm sure they will. I mean, if this bill is passed, Senator, they will definitely do an actuarial study. They will assess the cost across the motorcycle accidents and numbers of riders, and the good part of it, which Senator Carlson raised is, then those who wish to engage in an activity which is risky--riding motorcycles is risky--are going to be in a much better position to actually bear the risk. And there is a savings here, for Senator Johnson's knowledge. Many of the very expensive injuries on motorcycles are not head injuries--they're neck injuries, they're other injuries. [LB253]

SENATOR LANGEMEIER: One minute. [LB253]

SENATOR WHITE: This provision, if passed, would cover those, as well as head injuries. We would actually move people off public care, onto a self-supporting, self-sustaining insurance policy. [LB253]

SENATOR WIGHTMAN: In closing...thank you, Senator White. In closing, I started to say this yesterday and ran out of time, but I suspect for many of the ABATE members who were here yesterday, that there would be a mother somewhere who would thank us for leaving intact the requirement that their children of all ages, whether they be 22 years of age or whether they be 65 years of age, a requirement that they wear helmets. So I think there...and I mentioned yesterday, many, many motorcyclists and probably a majority, if they were polled--and certainly that's not a scientific poll--support the requirement that motorcyclists be required to wear the helmet. Thank you. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Wishing to speak has changed some. We have Senators Erdman, Johnson, Carlson, Rogert. Senator Erdman, you are recognized. [LB253]

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SENATOR ERDMAN: Mr. President and members of the Legislature, I just wanted to inform Senator Avery that one of the auto glass stations in town is in the parking lot removing his windshield from his car. (Laughter) But since he withdrew his motion, we'll ask them to not withdraw his windshield. Senator Johnson does bring up a valid point. And I recall very vividly, as a member of the Health Committee for the past seven years, a discussion that we've had, not just in times of plenty, but when times were tight, about the funding for the Medicaid program. And I sat around and I listened to all the members of the Legislature talk about how we needed to do something, and you know what? Nobody did anything, except when we had a shortfall, and then we decided we would arbitrarily run in and just start marking things out of the Medicaid program, because that was the only option that we had. And so LB709 was introduced with the help of Senator Jensen and Senator Beutler, who were here at the time, we crafted legislation that created the Medicaid Reform Council. That was my bill. And the council is up and operating, and we've had our quarterly meetings, and we're going to continue to meet as issues arise relating to this program. But more importantly, you have to look to the future of the program. And Senator Johnson's numbers are close, but they're not actually right on. And in fact, if we do nothing in Medicaid or state aid to schools, by the year 2030 we won't do anything else. So the example that Senator Johnson gives you is somewhat slighted to the fact that it doesn't account for what the numbers tell you. Higher ed goes away, K-12 sticks around. Those are the two programs we fund, so just to be clear on how this works out. But those are based on two assumptions. They're based on the assumption that we're going to grow state aid to schools and Medicaid at the same rate over the next 20 years that we grew them last year, and that was exactly half of the historical average. So if you look down the agenda, we see we have a redistricting bill that starts in 2011. The projections show that by the year 2017 that all new revenues to the state of Nebraska will have to go to fulfill the increases in Medicaid and state aid to schools--all of it. That's based on a pretty conservative estimate, while still maintaining a pretty optimistic estimate on the revenue. It's more realistic to think that by the year 2011, 2012 you're going to start seeing those issues happen. And so it is appropriate to plan. But as I recall the discussion on this bill, we're dealing in the abstract; and, in fact, if you go back to when LB70 was debated, the numbers that were distributed to the Legislature were that the impact of repealing the helmet law is negligible or undetermined on the Medicaid program. So I'm very interested in how we can pull out \$8 million out of the air, and I hope Senator Johnson can provide that to me, because I do recall vividly the discussion on LB70, which was a previous version of this legislation, where we did not have that information. So that would be helpful to know. But to the same point, if we're sincere about solving the problems, then you're going to have to do a lot of the things that Senator Johnson would like to do anyways--take away more of your freedoms, whether it's smoking, whether it's eating hamburgers. I mean, I don't know where this ends. The fact remains, is that we aren't going to do those things. And why aren't we going to do them? Because it's not politically popular to go after those topics. But let's stand up on the floor and let's pick a fight with motorcycle riders who ironically happen to be a lot of doctors. And in fact, I

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know doctors in western Nebraska that support the repeal of the law. Or let's pick on smokers, all the time while he's going to try to take an extra 10 cents to help with mental health reform, hoping that people still smoke. [LB253]

SENATOR LANGEMEIER: One minute. [LB253]

SENATOR ERDMAN: I'm getting e-mails in my in-box saying let's be consistent--fair enough, fair enough. But let's be consistent on the breadth of the topics at hand. We're not going to vote the exact same way on every issue that's before us. It's not going to happen, because there's always going to be considerations that are different for this topic than the others, but what I'm seeing is a consistency of using public health to promote socialist ideas. That's not what public health is, and that is not, in my opinion, what public health should become. Thank you, Mr. President. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Johnson, you are recognized. [LB253]

SENATOR JOHNSON: Thank you. I was actually meaning to be complimentary to the good senator from western Nebraska, because he made a very sincere effort to do something about the high cost of Medicaid. It is a very significant problem. Senator Erdman stepped to the front and we did create this. I voted for it, supported it. We had excellent people that have worked very diligently. But when it's all said and done, the numbers that we've been able to save are miniscule. They are very, very small. Now you know, one of the things...I guess that's the first time I've been called a socialist and that sort of thing, because most doctors are usually thought of as being very self-serving, create more accidents, more operations, and more income. But you know, one of the things that we're seeing nationally, and it is coming out not just from our political sources but other ones as well, whether it is the small business association, the chamber of commerce, the AFL or whatever, they all tell us the same thing, that we cannot keep going the way we are, as far as healthcare costs are concerned. That doesn't mean that we have to have laws for all of these things, but perhaps if we raise the awareness that obesity is a problem. Diabetes, I believe, is the most expensive disease in the United States. If you have obese 12-year-olds and go 20 years, you will have mostly likely a doubling of the number of diabetics. This is doubling the most expensive disease that we have. Now, with those kind of things in mind, does it make sense that we educate people that this is a problem, and that we tell people and encourage them to have fewer games in front of their computer, and that maybe the kids should be out in the yard playing ball? It doesn't all take socialistic measures to accomplish these things, but they are very important. And let me tell you that there are many, many organizations in this state that are interested in this, and as a matter of fact, for the last three months or so we have been putting together a group of stakeholders to examine this very issue. It is a huge issue; it's not just a senator from Kearney who has all these socialistic ideas. It is a terrible problem for this country, and

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we absolutely must... [LB253]

SENATOR LANGEMEIER: One minute. [LB253]

SENATOR JOHNSON: ...solve it. I would ask one question of Senator Rogert as I wind down here. [LB253]

SENATOR LANGEMEIER: Senator Rogert, would you yield to a question? [LB253]

SENATOR ROGERT: I will. [LB253]

SENATOR JOHNSON: Do we have a law now that contains a provision that we wear protective eyewear? [LB253]

SENATOR ROGERT: On a motorcycle? [LB253]

SENATOR JOHNSON: Yes. [LB253]

SENATOR ROGERT: No. [LB253]

SENATOR JOHNSON: So what we are doing here is substituting one mandatory safety measure and taking away another. [LB253]

SENATOR ROGERT: Yes. [LB253]

SENATOR JOHNSON: Does this add a greater amount of safety to the motorcycle rider than the mandatory helmet that we're taking away? [LB253]

SENATOR ROGERT: We believe that there are valid points to that. [LB253]

SENATOR JOHNSON: I didn't ask that question. I said,... [LB253]

SENATOR LANGEMEIER: Time. [LB253]

SENATOR JOHNSON: Thank you. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Carlson, you're recognized. [LB253]

SENATOR CARLSON: Mr. President and members of the Legislature, I would believe that for many of us this is a struggle between the freedom of choice and voluntary, responsible behavior. And I had constituents talk to me on both sides of the issue, and they speak, both sides, with strong conviction. I don't like LB253, but I've said things to

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people that have talked to me about the bill and I'm going to stick to my word. I've told people that like to ride motorcycles, if you want freedom and you have an accident and you roll your head on the highway, that's your choice and I don't want to pay for it. I've said, you need to pay for it. And apparently, instead of walking away and forgetting about it, they're making an honest attempt to try and figure out a way to pay for it. I've heard some discussion this morning, Senator Chambers and others, talk about being consistent, and I guess what I'm going to say here is being rather inconsistent. Initially the amendment that was presented that included an amount for medical coverage did not fit what I said I would then approve, if it were in place. Just to require \$1 million worth of medical coverage for someone who rides a motorcycle does not get the job done. And I had told some cycle riders, if you can arrange with the insurance industry--and I've been a part of the insurance industry for 30 years--so a company will put in place in your cycle policy a million-dollar benefit that covers you and your bodily injury and your passengers while riding a motorcycle, and that is calculated and paid for by the pool of 60,000 registered cycle riders in the state of Nebraska, and it's calculated and paid for out of that pool, then I've lost part of my argument to vote against your bill. The amendment that was presented yesterday also included the mandatory long-term care coverage, and I don't argue with that. I think in listening to the people that are against repealing this bill, for the most part I agree with the points that are being made. I think that responsible, voluntary behavior would cause a person to wear a helmet. But this is America. And if I vote for LB253, I don't think it's as easy as it might sound, but by the time this bill is at Select File, the provisions for a million dollars of coverage in the policy itself, paid for by those who are licensed cycle riders, and the long-term care provision, needs to be there and needs to have proof that, in fact,... [LB253]

SENATOR LANGEMEIER: One minute. [LB253]

SENATOR CARLSON: ...the company will cover it on this basis. If that is not there, certainly I would withdraw my vote. Thank you for listening. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Rogert, you are recognized. [LB253]

SENATOR ROBERT: Question. [LB253]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease? All those in favor vote yea; all those opposed vote nay. Mr. Rogert, for what purpose do you rise? [LB253]

SENATOR ROBERT: To ask for a call of the house, please. [LB253]

SENATOR LANGEMEIER: There has been a request to put the house under call. All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB253]

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CLERK: 29 ayes, 1 nay, to place the house under call, Mr. President. [LB253]

SENATOR LANGEMEIER: The house is under call. All unauthorized personnel please leave the floor. All senators please return to the Chamber. The house is under call. The house is under call. All senators please return to the Chamber and record your presence. Senator Rogert, as we wait, how do you wish to proceed when all the members are present? You'll have call-ins or roll call? [LB253]

SENATOR ROBERT: We'll do call-ins. [LB253]

SENATOR LANGEMEIER: Thank you. Senator Chambers, would you please check in. All members are present and accounted for. The question before the body was, shall debate cease? Senator Rogert has authorized call-in votes. [LB253]

CLERK: Senator Chambers voting no; Senator Schimek voting no; Senator Hudkins voting yes; Senator Engel voting yes; Senator Lautenbaugh voting yes. [LB253]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB253]

CLERK: 26 ayes, 4 nays, to cease debate, Mr. President. [LB253]

SENATOR LANGEMEIER: Debate does cease. With that, I raise the call. Senator Rogert, you are recognized to close on LB253. [LB253]

SENATOR ROBERT: Thank you, Mr. President, and thank you, members of the body, for what we've had for several hours is some very, very good and heartfelt discussion. Senators Carlson and Wightman and others, I appreciate your position and I understand your concerns with the insurance provision that we have put in thus far. I did make a couple checks, and we got to a fellow we have here, is paying for \$1 million of med pay coverage on his motorcycle for \$9 a month. Well, I will tell you this right now, that if we move this bill to Select File, between now and then, we will get the insurance provision more precise and in the manner in which you guys would like it. And if we don't get it there, I'll respectfully ask you not to support it. But that's what we're going to do. If we move it to Select, we'll get the insurance provision figured out to the way you guys want. Let us not forget that the Legislature is about ideas and principles just as much as it is about statistics and costs. I believe we have struck a balance here between the two, with our medical reimbursement amendment, training, and the eye protection requirements. We could estimate, hypothesize, posturize, and throw statistics and numbers at each other all day, but the fact is we do not know for certain what the impact would be on Nebraska. A doctor can tell us to eat well, lower our cholesterol, take our medicine, exercise and stop smoking, but ultimately the decision is ours to make. Nebraska has not been a helmet-free state since 1989, and we can see two things from

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the statistics: one, that fatalities seem to follow registration rates; and two, that there's already been a downward trend for fatalities before the mandatory helmet bill took place. That is not a segment of information but a bigger picture perspective--as many as 100,000 riders coming through this state to Sturgis in August, thereby contributing to our tax base, including sales tax in coffee shops, gift shops, restaurants, bars, gas stations and other stores. The average biker today is around 42 years of age, is college educated, he's married, he owns a home, and he has children. They're law-abiding, responsible citizens, they have insurance, and they should be treated as such. I'd resent any implication otherwise and I ask...and that is outdated and clearly discriminatory. Our constitution grants us the flexibility and the right to change our ultimate law as circumstances or people may deem necessary. We can change the law, folks. It's okay. In fact, it is our job. I ask you to support my bill today and I promise to you that are concerned about some of the inconsistencies, as we move through it between now and Select File we'll get them changed, and if we don't, you won't have to support me on that at that time. Thank you, Mr. President. I would ask for a board vote on this, too, please. [LB253]

SENATOR LANGEMEIER: Thank you, Senator Rogert. You have heard the closing on LB253. The question before the body is, shall LB253 advance? All those in favor vote yea; all those opposed vote nay. Senator Rogert, for what purpose do you rise? [LB253]

SENATOR ROGERT: Can I get a call of the house, please? [LB253]

SENATOR LANGEMEIER: There has been a request to put the house under call. All those in favor...the question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB253]

CLERK: 47 ayes, 0 nays, Mr. President, to place the house under call. [LB253]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. Senator Rogert, how do you wish to proceed? [LB253]

SENATOR ROGERT: Let's go with call-ins for now. [LB253]

SENATOR LANGEMEIER: Senator Rogert has requested call-ins. The question is, shall LB253 advance? [LB253]

CLERK: Senator Synowiecki voting yes. Senator Rogert voting yes. [LB253]

SENATOR LANGEMEIER: Senator Rogert, for which purpose did you rise? [LB253]

SENATOR ROGERT: Can I get a roll call, please? [LB253]

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SENATOR LANGEMEIER: There has been a request for a roll call vote. Mr. Clerk, please call the roll. [LB253]

CLERK: (Roll call vote taken, Legislative Journal pages 232-233.) 23 ayes, 25 nays, Mr. President, on the motion to advance the bill. [LB253]

SENATOR LANGEMEIER: LB253 does not advance. With that, I raise the call. Mr. Clerk, LB269. [LB253 LB269]

CLERK: LB269, Mr. President. It's a bill by Senator Burling. (Read title.) The bill was introduced on January 10 of this year, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I do have committee amendments pending, Mr. President. (AM682, Legislative Journal page 858, First Session, 2007.) [LB269]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Burling, you are recognized to open on LB269. [LB269]

SENATOR BURLING: Thank you, Mr. President, members of the body. LB269 was a bill that was introduced and heard last year. There were no opponents to this bill and it came out of committee unanimously. The discussion on LB269 started several years ago with the Secretary of State in discussing some of our laws that have been on the books for a long time, and we got to looking at petitions that can be circulated in counties for various reasons, like change of county government, libraries, so on and so forth. And we found some old laws that if you want to change your form of government from a commissioner to a supervisor, you needed 250 signatures in your county; if you want to change it the other way, you needed 10 percent of the registered voters, this type of thing. Two hundred and fifty signatures in a county is 70-some percent of the registered voters of Arthur County, but in Douglas County it was .0008 percent, not very consistent across the state. That's an example of why we took a look at this. So what LB269 does was...it establishes a common percentage of 5 percent of the registered voters for petitions, for county petitions, to change the form of government, to change the number on the county board, to establish a library, so on and so forth. The only county petition that can be circulated that I didn't touch in LB269 is the recall. It takes 35 percent of the registered voters to be successful in a recall petition. I left that one alone, but this includes the rest of them. And so if you have any questions, I'll answer them later, but for now I think I'll stop with that and we'll have the committee amendment introduced and then we'll continue from there. Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Burling. As the Clerk has stated, there are amendments offered by the Government, Military and Veterans Affairs Committee. Senator Aguilar, as Chairman of that committee, you're recognized to open on the

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committee amendments. [LB269]

SENATOR AGUILAR: Thank you, Mr. President, members. The committee amendment contains the provisions of LB348, which changes the procedure for discontinuing township organizations. When a petition is filed to discontinue the township organization, the petition will specify whether the county board to be formed will have five or seven members. If the voters vote for the creation of a seven-member board, the commissioner districts will be the same districts as the supervisor districts, unless changed at a later date. The supervisors, whose terms have not expired on the effective date of the reorganization, will continue in office for the remainder of their terms. If the voters vote for the creation of a five-member board, the county clerk, county treasurer, and county attorney will meet and redistrict the county into five commissioner districts with substantially equal population. The redistricting will be completed within 30 days after the initial meeting and will specify the newly established districts which the members will serve for the balance of the unexpired terms. If three members of the board were elected for four-year terms at the election to create a five-member board, each supervisor will serve two terms as a supervisor and two years as a commissioner. Two commissioners will be elected for four-year terms from the newly established districts at the general election. If four members of the board were elected for four-year terms at the election to create a five-member board, the three receiving the most votes will serve two years as a supervisor and two years as a commissioner. The fourth supervisor will serve a two-year term. Two commissioners will be elected for four-year terms from the newly established districts at the general election. Sections regarding the discontinuance of the township supervisor system are outright repealed. The original bill contained an emergency clause, which is eliminated with the committee amendment. This bill advanced from our committee on an 8-0 vote. Also, there's no opposition to LB348, which became the committee amendment. That's what I have to offer and at this time I would like to yield the rest of my time to Senator Burling. [LB269 LB348]

SENATOR LANGEMEIER: Senator Burling, 7:40. [LB269]

SENATOR BURLING: Thank you, Mr. President. And thank you, Senator Aguilar, for that good explanation. I'll use the rest of his time, if I might, to give you some more background on why this bill was introduced and proposed as an amendment on LB269. In visiting with the Secretary of State, there wasn't a clear outline in statute on how a county could change from a supervisor form of government to a commissioner form of government, and he said he would like to have that clarified in statute. And that it appears that years ago, way back 140 years ago, all counties were commissioner counties, but we don't have records that far back to know exactly what took place. But it says in statute that if you want to go from a supervisor county to a commissioner county you simply redraw the districts as they were originally drawn when the county was organized back in the nineteenth century. Well, obviously, that won't work. I mean, there are no records in most counties to show what that was, and even if you did, it would be

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unconstitutional today. So today we come up to the point where we have 27 counties in Nebraska that are township counties, supervisor form of government. The rest of them are commissioner form of government. Statute says that Lancaster County has to have seven commissioners, which they do. The rest of the counties in the state that have a commissioner form of government can have three or five. It's up to the counties to decide that. Lancaster County, I know, has five. If there are other counties in the state that have five, I don't know about them. If you know about them, I'd be interested in knowing if there are more than just Lancaster County that has five commissioners. This bill lays out the process of how to do that. If a county wants to go from a supervisor to commissioner county, under this bill they would either circulate a petition, 5 percent of the voters sign a petition, or the county board, by resolution, would put on the ballot we want to discontinue township government and, at the same time, we want to have 5 or 7 members on the county board, so that the voters know when they go to the polls if they vote to discontinue township government they will also know, if they vote to do that, how many board members they will have after that change takes effect. So if you have seven supervisors and you want to change to five, it gets a little bit complicated on how you do that. You have to wait two years out, and it's laid out in the bill. You wait two years out so that the people that were elected to four-year term the same time that you voted to change to five members, they can serve their term out and the county attorney, the county clerk, and the county treasurer are to redistrict the county the next January after the November election and when they vote to change. And so then two years hence, when they elect county board members, the redistricting is done. Everybody knows what district they're in, and you can move on in that way. If you elected four supervisors the same time you voted to go to five, then the law lays...my bill would put in law that the...one of the four supervisors elected that got the least number of votes would serve a two-year term. That would allow the change to take place two years out. The three that got the most votes would serve two years as a supervisor. Then they would convert to two years as a commissioner. The Secretary of State believes that this would be very helpful when counties call him wanting to know how to go about doing this. There haven't been any counties change from supervisor to commissioner recently because the law is vague on how to do that. We have 27 counties, as I said, have a supervisor form of government, which means they have a township organization, but most townships in these counties do not have boards of directors so they're not really functioning. And so if there was a way laid out in statute to show people how they can do this and do it legally and do it correctly, maybe there would be more counties go this route. So I ask you for your support of the amendment, and then if there are other questions on the bill, as the amendment is put on, we'll discuss that at that time. Thank you very much. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Burling and Senator Aguilar. You have now heard the opening on LB269 and the committee amendments offered by the Government, Military and Veterans Affairs Committee. The floor is now open for discussion. Those wishing to speak, we have Senator Chambers, Stuthman, and Gay.

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Senator Chambers, you're recognized. [LB269]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature, and to my good friend Senator Burling. Senator Burling, would you answer a question or two? [LB269]

SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR CHAMBERS: Senator Burling, are you term limited out after this session in the same way that I am? [LB269]

SENATOR BURLING: Yes, sir. We go together. [LB269]

SENATOR CHAMBERS: Senator Burling, is this the last bill that you're going to present to the Legislature during your storied career here? [LB269]

SENATOR BURLING: Probably. Probably. [LB269]

SENATOR CHAMBERS: Would you consider this, if you succeed in getting it passed, to be going out in a blaze of glory? [LB269]

SENATOR BURLING: Well, I could do that I suppose, yes, considering how much work has gone into this. [LB269]

SENATOR CHAMBERS: All right. Who put work into this? [LB269]

SENATOR BURLING: The staff of mine, my staff, myself, Secretary of State staff, the staff of the Government Committee all worked together on this bill. [LB269]

SENATOR CHAMBERS: So we could say thy rod and thy staff, they comfort us. [LB269]

SENATOR BURLING: That's right. [LB269]

SENATOR CHAMBERS: Okay. Now some of the questions that I have about the bill itself, I will wait, as you've requested, until the amendment is adopted, unless Senator Stuthman and/or Senator Gay will raise an issue that I think maybe we should discuss at the moment. But what I do have some question about is why we're changing the number of people who must sign the petition. Currently, what is that number? [LB269]

SENATOR BURLING: Well, it depends on which statute you read. The statutes over the

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years have been changed and not repealed, and so currently, if you...currently, if you want to change from commissioner to supervisor, you need 250 signatures. [LB269]

SENATOR CHAMBERS: Okay. [LB269]

SENATOR BURLING: And if you want to change from supervisor to commissioner, you need 10 percent of the registered voters. [LB269]

SENATOR CHAMBERS: And you want to go with neither of these but, rather, to 5 percent. [LB269]

SENATOR BURLING: That's true. [LB269]

SENATOR CHAMBERS: Correct? [LB269]

SENATOR BURLING: That's true. [LB269]

SENATOR CHAMBERS: Why do you want to reduce the number? [LB269]

SENATOR BURLING: It was just a figure that was pulled out of the air, you might say, to be kind of a compromise. Some of the current statutes call for 10 percent, some of them call for an exact number of registered voters, and so... [LB269]

SENATOR CHAMBERS: But none calls for 5 percent. Is that correct? [LB269]

SENATOR BURLING: That's correct. [LB269]

SENATOR CHAMBERS: If this figure was pulled out of the air and we know that the air almost everywhere is polluted, then we could say this was pulled out of the polluted air. Correct? [LB269]

SENATOR BURLING: Okay. [LB269]

SENATOR CHAMBERS: And that means that it is polluted or may potentially be considered polluted. Correct? [LB269]

SENATOR BURLING: It's no...I don't have a big...I'm not married to 5 percent, if the body wants a different percent. I just think it ought to be consistent and I just picked that. [LB269]

SENATOR CHAMBERS: Well, if we could get "Chaplain" Wallman to perform the ceremony, could I persuade you to be wedded to 10 percent? [LB269]

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SENATOR BURLING: If you could get 25 votes for that, that's fine. [LB269]

SENATOR CHAMBERS: Well, I don't care about the other people. I'm talking to you because you're the one who is going to guide this particular wagon, in my opinion. [LB269]

SENATOR BURLING: I'm flexible on the percentage. I'll put it that way. [LB269]

SENATOR CHAMBERS: Do you see any reason at this moment, and I know it would be subject to change as we discuss it, to accepting 10 percent, since that is in the statute already? [LB269]

SENATOR BURLING: I don't have a problem with accepting 10 percent (inaudible). [LB269]

SENATOR CHAMBERS: And I'm not binding you to it right now; just is one of the things we'll consider because you're being flexible. [LB269]

SENATOR LANGEMEIER: One minute. [LB269]

SENATOR CHAMBERS: Would 10 percent ever equal more than 200 people in any county, 200 of those who voted or registered voters in any existing county that you're aware of? [LB269]

SENATOR BURLING: I'd have to do a little...I'd have to take a look at that. I can't answer that just right off the top of my head. [LB269]

SENATOR CHAMBERS: Are you familiar with Cedar County? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR CHAMBERS: Can you give me the name of a city in Cedar County, because I'm not really familiar with it? What is the capital of...I meant, what is the biggest city in Cedar County? Tree? [LB269]

SENATOR BURLING: Where's Hartington at? [LB269]

SENATOR CHAMBERS: Chest? [LB269]

SENATOR BURLING: Is that Cedar County? [LB269]

SENATOR CHAMBERS: Would it be cedar tree or cedar chest? Okay, Hartington. [LB269]

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SENATOR BURLING: Okay. [LB269]

SENATOR CHAMBERS: So is that way up in the northern part of the state, north central kind of, or where? [LB269]

SENATOR BURLING: Northeast, north central. [LB269]

SENATOR CHAMBERS: Northeast. How many people do you think there are in Cedar County? [LB269]

SENATOR LANGEMEIER: Time. [LB269]

SENATOR CHAMBERS: Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Stuthman, you're recognized. [LB269]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to engage in a little conversation with Senator Burling. [LB269]

SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR STUTHMAN: Senator Burling, your main subject of this bill is the changing of the names from commissioners to supervisors or vice versa. Is that part of your interest in this bill? [LB269]

SENATOR BURLING: That's the main part of the amendment that we're discussing, yes. [LB269]

SENATOR STUTHMAN: Well, thank you, Senator Burling. I, prior to coming down here in the legislative body, I did serve as a county supervisor in Platte County, of which there were seven members. And it is my understanding that a county that has a township form of government also, where you have the townships, the township has a board, generally a three-member board that is in control of the township activities, maintains some of the roads in the township and that's their main item of business. It is my understanding that as Colfax County right east of Platte County, they're commissioners. They have three county commissioners, but they do not have township forms of government in their county. They have precincts. And it is my understanding also that if a township has precincts that have no jurisdiction as a precinct body itself, then they are commissioners, three or five, I think maybe even up to seven. Butler

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County has townships. Some of their townships have boards. Some of their townships don't have boards. They've turned it over to the county. But they also have supervisors. So I think the definition, in my opinion, between the difference of supervisors and commissioners is how their county is divided, how their county is governed, and what they have as far as local governing boards, such as townships. So I don't know...I don't know if we're just trying to eliminate all of the township forms of government and when, in so doing, if a county does decide to eliminate their township forms of government, eliminate the township boards, would the commissioners then be...I mean, would the supervisors then be commissioners? Does that make any difference whether they're called supervisors or commissioners? In my opinion, it doesn't because they are elected by areas, by districts. And whether they're called supervisors or commissioners, they still have a duty to do. I just...I think what we're trying to do here is trying to eliminate the township forms of government in those counties that still have supervisors, and I think we're trying to figure out how many votes it takes to get these petitions to the voters so it gets on the ballot. And it was...in Platte County, there was a vote taken several years ago as to if they want to eliminate the township form of government. It did not pass. It failed. So we're in the same situation. So I don't know whether it makes any difference. [LB269]

SENATOR LANGEMEIER: One minute. [LB269]

SENATOR STUTHMAN: You know, if we say we're...if those elected are commissioners or supervisors, I think that's immaterial. As to the number, that's decided upon by the original governing body many, many years ago. And I think that will change in time to come because of the way the counties are increasing in population and there may be a need to increase the number on the board. But that also increases the expense to the county. So I'm going to listen to this very closely, but I do not at the present time see a lot of value in this bill. Thank you. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Mr. Clerk, for a motion. [LB269]

CLERK: Mr. President, some items, if I may. New bills. (Read LB966-978 by title for the first time.) New resolution: LR228, as offered by Senator Karpisek, congratulating Crete High School football team; that will be laid over. Two announcements: Education Committee will meet upon recess in Room 1525; Education Committee, upon recess in Room 1525; and Reference will meet upon recess in Room 2102. (Legislative Journal pages 233-236.) [LB966 LB967 LB968 LB969 LB970 LB971 LB972 LB973 LB974 LB975 LB976 LB977 LB978 LR228]

Priority motion: Senator Flood would move to recess until 1:30 p.m. []

SENATOR LANGEMEIER: You've heard the motion to recess until 1:30 this afternoon.

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All those in favor say aye. All those opposed say nay. The ayes have it. We stand at recess. []

RECESS []

SENATOR LANGEMEIER PRESIDING []

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

ASSISTANT CLERK: There's a quorum present, Mr. President. []

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

ASSISTANT CLERK: Mr. President, I do. I have a Reference report, as adopted by the Executive Board through the noonhour. New bills. (Read LB979-981 by title for the first time.) And that's all I have at this time. (Legislative Journal pages 236-238.) [LB979 LB980 LB981]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now return to this afternoon's agenda and pick up where we recessed at with LB269. We had heard the opening for LB269 and the opening for the committee amendments, and we'll return now to discussion. We had a number of lights on. Senator Gay, you are recognized to address the committee amendments. [LB269]

SENATOR GAY: Thank you, Mr. President. I'd like to ask Senator Burling if he'd yield to a few questions. [LB269]

SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR GAY: Thank you, Senator. Senator Burling, you had talked about five...a township in a county could form to go to a supervisor or commissioner form of government. When they decide to do that, you said it could be five or seven, and I guess what I'm wondering, is there any size limitation, or should there be? If a small county decided to go to seven commissioners versus five, any cost that's associated with that, should there be any restrictions on...that a small county can't go to a seven? Did you...was there any talk or discussion on that, or can they just choose? [LB269]

SENATOR BURLING: There wasn't any discussion on that. Statute says that Douglas

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County shall have...over 300,000 population shall have 7. Below 300,000 population, the citizens, the members of the county, have a choice if they want 3 or 5 commissioners. [LB269]

SENATOR GAY: Okay. So they would know then when they go to the polls they're going to obviously weigh that--do we need seven, seven commissioners versus five. So the voters get to decide that, ultimately. Correct? [LB269]

SENATOR BURLING: In the bill that we're discussing now, if the citizens circulated a petition, by petition or a resolution of the county board would state we want to discontinue township form of government and we want to go to either five or seven county board members. So when the voter votes on that, assuming it gets on the ballot, they'll know. If I vote to discontinue my seven-member supervisor board, I'll know how many commissioners we're going to have when I vote. [LB269]

SENATOR GAY: Okay. The reason I asked that, in a larger county we had five county commissioners and I thought things went fairly smooth. I know some smaller counties...Senator Stuthman said in Platte County they had seven. I just think the more you get the harder it is to...I don't think it's more efficient the more you have. You can have two different views of that, I guess, and one would be, well, we have more representation. To me, in a little bit it's probably more confusion, but in a larger county, let's say the size of Douglas, there probably...there's a reason for that because the inhabitants, there's so many. But I'm just kind of wondering if there should be some kind of limits on a smaller county to say, you know, you don't need seven commissioners for a small population, so it controls the cost a little bit because many of these areas, they're paid. So I'm just trying to get a little bit of where we're going on this. Another, when I was looking on page 9, when it comes to the districting, so this gets passed and they decide to go to a township, does the county clerk, county treasurer, and county attorney, they get together on the first Saturday after the first Tuesday of the election and redistrict? How do they...I guess on that, you have three people involved. If the county clerk is the election commissioner in a small county, I think the clerk usually is the election commissioner, why do we need the county attorney and the treasurer involved in that process? And the reason I get a little concerned on that is because now they have, well, we've got all these people in there. I could see the election commissioner talking to the county attorney, saying, well, what do you think; am I following the law here? I can see that part. But where the treasurer fits in, I don't quite get that. I know during appointments those three get together, I think the statute reads. That's who decides on appointments, which is different too. But anyway, I guess the necessity to have the treasurer involved in that,... [LB269]

SENATOR LANGEMEIER: One minute. [LB269]

SENATOR GAY: ...and the county attorney, I can see the guidance from the county

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attorney, but I don't see where the treasurer fits in on redistricting. Can you explain why that's in there? [LB269]

SENATOR BURLING: Well, that's just kind of the way it's been done, you know, even though it maybe wasn't in the law. NACO supports that. It's the idea of having a committee that makes that redistricting decision, rather than one person. You might not get as much backlash or much complaints if you know that three people were in on this redistricting plan rather than just one or two. I, you know, I wouldn't be opposed if you want to narrow that down to two people, but...I guess that's my only comment. [LB269]

SENATOR GAY: Well, I don't...yeah, and I'm just trying, as we're discussing the bill, just looking into seeing where we could go on that. And I guess on this other thing, in your mind, removing a township form of government, it is up to the constituents or to the voters to decide to do that. So they place this on themselves. [LB269]

SENATOR LANGEMEIER: Time. [LB269]

SENATOR GAY: Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Gay. There are no other lights. Oh, Senator Gay, you're recognized. [LB269]

SENATOR GAY: Thank you, Mr. President. If I could continue on with Senator Burling. Thank you. [LB269]

SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Yes. Yes. [LB269]

SENATOR GAY: Thank you. I guess, Senator Burling, what I'm looking for then, if, along this process, so if their township were removed, that form of government, they're deciding to change their form of government. Would you...is this to have a more efficient government, a smaller government? Because I could see where you could get some benefits from that. That's why I go to seven commissioners, I'm not so sure it becomes more efficient; I think at five, maybe, or three. That's why I'm kind of wondering if there should be some kind of limits of...you know. And I know counties out west are probably are a lot bigger, but I just think it might be overdone when you go to seven county commissioners. And maybe it's not for me to decide that, but in my head, I just kind of wondered if this could be more efficient, on the efficiency end, if we had fewer involved. [LB269]

SENATOR BURLING: Well, one of the reasons for introducing this proposal is that we had counties that were thinking about changing from supervisor/township form of

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government to commissioner form of government and they were contacting the Secretary of State, and the Secretary of State, well, the state law is not clear. What we find out, in most of these counties that have a township form of government now, they have the township form of government, they have townships, but they don't have people to be on those township boards. They can't get people to do that. So it would seem to me, in that situation it would be wise for a county just to say, okay, we're going to eliminate the township form of government; we can't get anybody to be on the county board like we used to. Population in rural Nebraska is decreasing. People have other things to do and they just...a township board is at the low end of the obligation of most volunteers. And so this just enables, lays out a process whereby if those people in that county want to change their form of government, this is the way you do it. Doesn't mandate anything, doesn't mandate the numbers. They can choose the numbers. That's what it does. [LB269]

SENATOR GAY: Okay. Well, and on that, and I'm kind of wondering, it's more of the duties that are involved...or they're becoming more and more. It's a more complex job every time we pass a new law or whatever, and especially I could imagine it's hard work in a county. I'm just...originally, though, when I said do you need seven, I don't know if you need seven. Maybe that would be something to control cost and, you know, just something to think about. And we're just discussing this on General File so I wanted to ask these questions but, like I say, the job is getting more complex and it would be a hard job without a good county attorney and a good clerk. They've got so many things to keep up with. So I could see both ways and I'm just trying to get in your head a little bit and kind of figure out what you're trying to get done here. I support it, so... [LB269]

SENATOR BURLING: That's a good point, Senator, but of all the counties in the state that have a commissioner form of government, none of them have seven commissioners except Douglas, which is by law--have to have. Rest of them all have three, Lancaster is five. Is your county five? [LB269]

SENATOR GAY: Yes, we're five. [LB269]

SENATOR BURLING: Okay, so there's a couple, three counties maybe in the state that have five commissioners. The rest of them all have three. Douglas County has seven. So I think they've...I don't think they need to be mandated by us to have less than seven, because they all do. [LB269]

SENATOR GAY: Is that the law? Do you have to have...do you know, is that...maybe that is the law. I don't know. Maybe we should check. Is that the law that you can only have five if you're a commissioner, except for a larger county? So Douglas County has seven but they're the largest county. Lancaster, I don't know. Do you know what they have in Lancaster? [LB269]

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SENATOR BURLING: The way I read the law, over 300,000 population,... [LB269]

SENATOR LANGEMEIER: One minute. [LB269]

SENATOR BURLING: ...which is Douglas County, has to have seven; everybody else can have three or five. It's up to the voters. [LB269]

SENATOR GAY: So can they...they can't have seven then? [LB269]

SENATOR BURLING: Yes. Yeah, excuse me, everybody else can have seven, three, or five. [LB269]

SENATOR GAY: Okay. So you could go and have seven county commissioners... [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR GAY: ...in a small county. [LB269]

SENATOR BURLING: But everybody else has either three or five. [LB269]

SENATOR GAY: Well, I'm just saying, and I don't know this, but you go out and you say, well, let's get seven, those jobs are probably pretty good jobs, quite honestly. They're...I shouldn't say that, but they're probably...those are pretty good jobs. So five would be better than seven, I would think, but I guess they're paying their own property taxes. They'd have to pay that bill, so it's none of my say. But thank you, Senator. Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Gay. Wishing to speak we have Senator Nelson, Janssen, McDonald, and Stuthman. Senator Nelson, you're recognized. [LB269]

SENATOR NELSON: Thank you, Mr. President. I would like to ask a few questions of Senator Burling. [LB269]

SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR NELSON: Senator, I'd like to kind of get back to basics here, so I'm sure where we are. I'm familiar with the township organization of counties. I think that there are 16 townships in each county, am I correct on that, ordinarily? [LB269]

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SENATOR BURLING: I'm not sure on that, how many townships every county has. [LB269]

SENATOR NELSON: Well, all right, maybe 12 to 16. But if you have a board of supervisors, that's when you have a township organization. Is that correct? [LB269]

SENATOR BURLING: That's right. [LB269]

SENATOR NELSON: And so you have these, and I agree with you, the townships, often it's very, very difficult to find people to serve on those township boards, to take care of roads and lines and things of that sort. But then, according to the number of supervisors, are they...what are the boundaries of their various districts? Are they just made up of a certain amount of townships, by township boundaries? Is that the way it's divided or they're elected, if you know? [LB269]

SENATOR BURLING: The supervisor districts follow township lines... [LB269]

SENATOR NELSON: All right. [LB269]

SENATOR BURLING: ...as much as possible, but like if you have a city, you know, where you have the population, you may have to have more than one supervisor even per township. And so in the rural parts of a county they'll try to follow township lines, but not necessarily. [LB269]

SENATOR NELSON: And so they, those supervisors, would be elected for a term by the people who reside in those particular townships. And so they could either have five or seven supervisors, as I understand it, presently. [LB269]

SENATOR BURLING: Current law allows three, five, or seven commissioners. [LB269]

SENATOR NELSON: All right. Okay. [LB269]

SENATOR BURLING: But if you have a township form of government, you have seven supervisors. [LB269]

SENATOR NELSON: You do have. That's the way it's set then. [LB269]

SENATOR BURLING: That's the way it is, yes. [LB269]

SENATOR NELSON: All right, so seven supervisors. And I think I heard you say this morning that there are about 25 counties or 24 that still have the township form of organization. [LB269]

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SENATOR BURLING: Twenty-seven. [LB269]

SENATOR NELSON: Twenty-seven, okay. Is there any requirement in this amendment or the bill itself that the counties do away with that township organization if they really don't want to? [LB269]

SENATOR BURLING: No, if this proposal passes, it's still left up to the citizens of that county whether they want to change. This just lays out the procedure. [LB269]

SENATOR NELSON: Okay. But if they do elect to go to a commissioner form of government, then they're going to have to draw new lines. Is that correct? [LB269]

SENATOR BURLING: If they change the number of board members, yes. [LB269]

SENATOR NELSON: All right, from...okay, if...all right. What would you see is the main advantage, if I may ask, of leaving the township form of organization as far as election of supervisors and going to a commissioner form of government? [LB269]

SENATOR BURLING: What is the main advantage of leaving? [LB269]

SENATOR NELSON: Yeah, of changing to that or having a commission form of government? [LB269]

SENATOR BURLING: Well, I think it makes it cleaner. Like I said, we have counties now that have a township form of government but no township boards, and so the county board is running it anyway. And it just makes it cleaner and it would allow them to have fewer board members if they want to. Right now, if you have a township form of government, you can't have fewer than seven. [LB269]

SENATOR NELSON: All right. So basically, a commissioner form of government is just going to do away with townships and township boards? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR NELSON: All right. Thank you very much, Senator, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Janssen, you're recognized. [LB269]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. This bill kind of snuck up on me and being...coming from a county that does have a township form of government, I feel as though I need to clarify a few things with Senator Burling. So if Senator Burling would respond to a few questions, please. [LB269]

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SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Okay. [LB269]

SENATOR JANSSEN: Senator Burling, the county that I represent does have a township form of government and, to my knowledge, there has never been any occasion where they were not able to fill those positions on those township boards. Now can you tell me, would this...I think I heard you say that this would not be mandatory; it only provides a vehicle for those counties to disband the township form of government? Am I correct in asking that question? [LB269]

SENATOR BURLING: That's true. [LB269]

SENATOR JANSSEN: So if, say, Colfax County does not--I don't know whether they have a commissioner type form of government or if it is township--if they wanted to do this, how would the procedure work to dissolve the township form? Would it be a vote of the people within that county, or would it be the action of the county board? [LB269]

SENATOR BURLING: The county board can pass a resolution to put on the ballot, we want to discontinue township form of government. Or the people can circulate a petition. Five percent of the people of the registered voters circulate a petition and ask to put on the ballot, we want to discontinue township form of government. The people vote and however the vote comes out, that's what happens. [LB269]

SENATOR JANSSEN: All right. If that would happen, would a lot of the polling places which now are at that township hall or meeting place, wherever they do their business, would they discontinue having a polling place there? [LB269]

SENATOR BURLING: The polling places aren't designated by townships. They're designated by precincts. [LB269]

SENATOR JANSSEN: Okay. All right. Let me ask you... [LB269]

SENATOR BURLING: So this wouldn't affect polling places. [LB269]

SENATOR JANSSEN: All right. Okay. How about road maintenance then? Right now, most all of the townships in my area have their own snow removal, road grading, so on, so forth. Would that be all under the authority of the county then? [LB269]

SENATOR BURLING: Yes, it would be. If you have a commissioner form of government and no township government, then the county takes care of all the roads. And if you live in a county that has townships and township boards and they're functioning, that's

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wonderful. This wouldn't ask them to change that. But you have counties out there that have a township form of government, no boards. They could use this process. [LB269]

SENATOR JANSSEN: Well, thank you, Senator Burling. Any time we start down this road, and I'm always just a little bit hesitant on making a change that...that it's my fault. I have not kept up on this. But I'm going to sit back and listen to the argument. Right now I don't believe that...I don't believe that I can support this unless, Senator Burling, you can convince me that this is the right way to go. Thank you. Senator Langemeier, thank you for the time. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Senator McDonald, you're recognized. [LB269]

SENATOR McDONALD: Mr. President and members of the body, this bill was a bill that I had in 2005, and the reason that it was brought to my attention was that Antelope County, one of my counties, the people in that district or that county wanted to get rid of their township government and were circulating petitions to do that. They did get enough petitions to put it on the ballot. There were some concerned citizens that came to me and wanted to know the process if this passed. We researched it. Those state statutes hadn't been changed in years and there was no process for them. Their courthouse had burned many, many, many years ago; and for them to change to a different form of government, there was no process. So we worked with NACO and the people that were concerned about this to come up with this legislation. It didn't pass in Antelope County, and I'm guessing part of the reason it didn't pass was because there was no process once the ballot passed. So Senator Burling was on that committee. He has since then taken this bill and is it your priority bill, Senator Burling? Has been working on it since that point in time, probably made it a little bit better. But I think the process still needs to be addressed because, at this point in time, what is going to happen if the voters decide to get rid of their township government in Antelope County? There is no records, but even if there is records, the population has changed that the division of those elected officials would totally be not correct in population. So I think it's something that we do need to look at. I think it's something that we didn't realize wasn't a process, and now we're putting back into state statute a process for it to happen, if it does happen. I don't think Senator Burling's bill requires it to happen, but if a county wants it to happen, there is a process to follow. Thank you. [LB269]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Senator Stuthman, you're recognized. [LB269]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I think Senator McDonald explained it very well as to what the real intent of this bill is supposed to do. It's trying to establish a policy if a county wants to go from a township form of government to a precinct form of government, eliminating the township process.

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The situation she was talking about in that one county, Antelope County, where Neligh is the county seat where all...the majority of the process...population is, that's what they're trying to figure out, how to draw the boundaries to establish a voting area for those five members or three members, as commissioners would be elected. Currently, in visiting with Larry Dix from NACO, he says what's in the statute right now is they have to go back to what it originally was. And the way I understand it, when the state was formed and the counties were formed, every county was governed by commissioners. When some of them went to the supervisor and township form of government I do not know, but I do remember township halls. I do remember townships having poor farms and things like that, that was governed by the county or the township. I think in this situation where this one county has decided to go back to the commissioner form of government, they're trying to figure out, you know, where the boundary lines were at that time and how to redraw them. The situation that was explained to me was that Neligh, with all the population there, would probably have one commissioner, and the outlying areas would maybe have four, if they went to a five-member board of commissioners. And there's very little population out there. So they're trying to come up with somehow and some method to draw the boundary lines. I also want to talk a little bit about...I think it was Senator Gay. Senator Gay talked about counties that have supervisors form of government. Those boundary lines primarily are with township lines, but they necessarily don't have to be. They are changed every ten years with the census. And some of the rural supervisors in my county, you know, gain more ground. Those in the city of Columbus, that are elected in the city of Columbus, you know, get a smaller area. I don't know the number of people that an individual represents, but I think it's maybe 5,000 people. In our county, we have five supervisors that are in the city limits of Columbus. There are areas of the rural area that can have a supervisor that lives in a housing development adjacent to the city of Columbus, and that could be two more or five...one more. In our boundaries, the way we have them set up, there's only one supervisor that totally represents just rural area. All of the other six represent portions of the area of Columbus. They're real close in. All six of them could be elected by the residents of Columbus. [LB269]

SENATOR LANGEMEIER: One minute. [LB269]

SENATOR STUTHMAN: So that's what I'm trying to explain. I'm in support of this bill. Initially, I wanted to get some things explained to me, but what we're trying to do with this bill, the way that I understand it, is trying to establish a method of how to go back to a commissioner form of government when they were supervisors at one time, and how to draw the boundary lines for those commissioners, and the voting process. I think that's what this bill is really intended to do. Thank you. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Gay, you're recognized, followed by Dubas. [LB269]

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SENATOR GAY: Thank you, Mr. President. Just a clarification: I did get an answer on the...all county commissioner forms can only go to five. You can have less, three; so you can't have seven. The reason I bring that up, Senator Stuthman is talking about Platte County. There's seven supervisors representing 29,000 people, so let's say approximately 4,000 people you'd represent, versus you look at some of the smaller counties, and I'm just going to pull one out. It's the first one on the list, Arthur County, 462 people and they're actually going to lose population or they lost population in the census, and they have 3. What I'm saying is they could go to five. I mean, I assume the voters wouldn't. So the question I had, when this goes to the ballot, I'm sure people would, if you're going to get the petition, you'd think through it and say, well, we only need three, we don't need five. But if for some reason they did go to five, then I guess they'd just be paying a little more. And I don't know what they even...what a county commissioner or supervisor would make out there. So I'm saying I can see this being...trying to...a bill that could bring a more efficient form of government, okay, in a way. You go from a township and we all, voters, decide to change their representation method. But, all I'm saying, is there some mechanism to make sure that it's done right? Maybe we don't need to but I wanted to throw it out there. I do think there's probably some opportunities there. Again, if we're looking at that, though, is there opportunities to merge some of these counties or, you know? Maybe that's a whole other deal, and I don't want to muddy that, but maybe there's opportunities they could merge together and form a form of government in this method, too, down the road, so...but anyway, I just...for clarification, it's a maximum of five if you're under the county commissioner method and Douglas County was given an exemption there because they're so large. So just wanted to get that on the record. Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Dubas, you're recognized. [LB269]

SENATOR DUBAS: Thank you very much. I guess I have...I've had some of my questions answered since I put my light on, but I am like Senator Janssen. Township form of government is a very important form of government in at least portions of my district, and so I just want to be very cautious about what I'm voting for or against. So I guess I'd like to ask Senator Burling a question, if he wouldn't mind, please. [LB269]

SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR DUBAS: Thank you, Senator Burling. Okay, so if I'm understanding this correctly, at the current time there is no mechanism or procedure in place that if a county wants to eliminate their township form of government, they don't have any real way of doing that? [LB269]

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SENATOR BURLING: It's very vague in state law what the process is, so they're just kind of out there on their own. [LB269]

SENATOR DUBAS: Okay, so this solidifies that process and then it's just determining how many commissioners you want in your government? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR DUBAS: Okay. In any...there's no way, shape or form that this bill is saying you will eliminate township government or you must or a mandate of any kind along that line. [LB269]

SENATOR BURLING: That's correct. [LB269]

SENATOR DUBAS: All right. Well, that answers my questions. I still, as Senator Janssen said, will be paying very close attention to this. I know it would be a big deal to portions of my counties. So thank you very much for your answers. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Wishing to speak we have Dierks, Erdman, Janssen, Carlson, and others. Senator Dierks, you're recognized. [LB269]

SENATOR DIERKS: Thank you, Mr. President. I wonder if I could have a little conversation with Senator McDonald, please. [LB269]

SENATOR LANGEMEIER: Senator McDonald, would you yield to a question? [LB269]

SENATOR McDONALD: Yes, I will. [LB269]

SENATOR DIERKS: You know that Antelope County was in my district for years, and I feel like it's kind...two miles outside my front door is Antelope County, but I no longer serve there. There was a problem that came up several years ago, and I wanted to clear that with you to make sure that I'm not mistaken. Maybe you know about it. The people that were voting for supervisors in Antelope County voted for supervisors that supervised a different district than they lived in. Do you recall that? [LB269]

SENATOR McDONALD: You know, I don't, but expand on that a little bit more. [LB269]

SENATOR DIERKS: Well, some of the citizens were complaining to me about not being able to vote for their own supervisor, because the supervisors they voted for lived in a different district, and this was evidently common across the county. And they said that the board had designated that procedure on their own, and I just...I didn't know they could do that and I just had kind of forgotten about it till you started talking about it

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today. [LB269]

SENATOR McDONALD: And could that be why the citizens wanted to change form of government and that's why it was brought to a vote of the people? [LB269]

SENATOR DIERKS: That could be. [LB269]

SENATOR McDONALD: You think that maybe it was? Because it was a citizen-directed petition, and so maybe that's why the process fell along those ways of getting rid of that type of government. [LB269]

SENATOR DIERKS: Uh-huh. [LB269]

SENATOR McDONALD: And then we found out that there was no process and it fell. It didn't pass but, you know, there's lots of reasons bills don't pass, and it could be because there was no process if it did pass. [LB269]

SENATOR DIERKS: Okay. Thank you. I thought...I just thought maybe you'd run into that same situation and knew more about that than I did. I just wanted to comment a little bit farther about this seven-member supervisor board, it looks to me like, is a little bit better representation of people than a three-member board. If you have a three-member board, two members could actually run that county. If you have a seven-member board, it's going to take at least four. I mean it just seems to me like it spreads out the representation a little bit better. Mostly...when I first came to the Legislature, all four of my counties were supervisor counties. I'm not even sure how they are now they have spread me off different places, but I know we still have supervisor counties in two of them. But it just...that's just a passing thought that I think that the seven-member board or maybe even a five-member board just spreads out the responsibilities a little more and may be a little bit better representation. Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Senator Erdman, you are recognized. The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB269]

CLERK: 26 ayes, 1 nay to cease debate, Mr. President. [LB269]

SENATOR LANGEMEIER: Debate does cease. Senator Aguilar, as Chairman of Government, Military and Veterans Affairs Committee, you are recognized to close on the committee amendments. [LB269]

SENATOR AGUILAR: Thank you, Mr. President, members. You know, I think we've had

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a good round of questions and I think Senator Burling answered most of them to people's satisfaction. You know, basically what this bill does is try to create a consistent mechanism to give people the opportunity to change the system if they wish to. That's really as simple as it is. And I would ask everyone to support this, and Senator Burling has indicated a, you know, more than willingness to work with anybody if they see some changes. I ask that we advance that and work on that on Select File. Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the closing on the committee amendments to LB269. The question is, shall the committee amendments be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB269]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB269]

SENATOR LANGEMEIER: The committee amendments are adopted. [LB269]

CLERK: I have nothing further on the bill, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We return now to discussion on the bill itself, LB269. There were a number of lights on. Senator Janssen, you're recognized. [LB269]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. I still have some concerns. What concerns me is the fact that if you have a large city within that county, you know, if you're going to come to a vote of the people in that county to disband the township form of government, it seems to me that a city of 25,000-30,000 people could control the outcome...the destiny of the township form of government. And I understand that they're just making some modifications; this can happen now. But making it a little easier with this bill, I'm not too sure that I am in favor of that. If I could ask Senator Burling a couple questions, please. [LB269]

SENATOR LANGEMEIER: Senator Burling, would you yield to a question? [LB269]

SENATOR BURLING: Yes. [LB269]

SENATOR JANSSEN: Senator Burling, in your county, which Hastings is the largest city, now what form of government do you have in Hastings? [LB269]

SENATOR BURLING: We have a supervisor form of government, township. [LB269]

SENATOR JANSSEN: You have a...all right. Are you having problems with your

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townships in that, in that county? [LB269]

SENATOR BURLING: The only problems we have is getting people to be on the township boards. Most of our townships don't have a board. [LB269]

SENATOR JANSSEN: Uh-huh. Well, what happens when they don't have a board? [LB269]

SENATOR BURLING: Usually, the county board just takes over the road work or whatever in that township. [LB269]

SENATOR JANSSEN: Uh-huh. To my knowledge, our counties are similar, Senator Burling, populationwise, and we don't have that problem in Dodge County, and maybe it's something that I'm not aware of. It seems to me it works fine in that county. And if it is a problem, the way the statutes read right now they could take care of that problem. Is that correct? [LB269]

SENATOR BURLING: They could vote to discontinue township government in your county. [LB269]

SENATOR JANSSEN: Um-hum. [LB269]

SENATOR BURLING: It's just that the statute is not clear on how they make that change and that's what...that's what I'm trying to do here, is clarify the statute on how your county can make the change, if they want to go to a different form of government. [LB269]

SENATOR JANSSEN: Uh-huh. Well, I've not heard from my county board of supervisors, so I'm not...I'm going to be very reluctant to vote for this legislation or to move it along to the next round of debate. I think we need more discussion and I will sit back and listen to some of the debate. Hopefully, there will be more. With that, I'll give the rest of my time back to the Chair. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Senator Carlson, you're recognized, followed by Senator Stuthman. [LB269]

SENATOR CARLSON: Mr. President and members of the Legislature, I am not thoroughly familiar with LB269, but I've had a constituent talk to me about it and I'm trying to learn today. It appears to me like we have a case here of the possibility of some voluntary change generated by citizens of a community, perhaps a move toward efficiency on a voluntary basis, perhaps maybe a move toward some consolidation on a voluntary basis, which is a whole lot better way of doing things than when we legislate something and force people to take an action they maybe don't want to take. So for that

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reason, I would be very...I'm going to be hesitant to vote against this bill. I think it leaves open the possibilities of township government remaining as it is, but it opens up an avenue of voluntary change. I think this is good. I think Senator Janssen has brought up some possibilities of unintended consequences. Are there those? What are they and what would the magnitude of those be? And we need to consider those, but I believe that this is a bill that has merit, and I'm interested in the rest of the debate. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Stuthman, you are recognized, followed by McDonald. [LB269]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. It's been very interesting listening to the debate, Senator Janssen and his concerns, and it brought up a couple issues that I wasn't aware of initially. If this bill were to pass, nothing would really change as far as eliminating township forms of government, but I think what is changing with this bill is that if a county, county board or the residents of a county decide to go with smaller government and the county has seven supervisors and they put on the ballot that we want to go to a form of government of commissioners with five commissioners, if this vote is successful, the townships are automatically eliminated because a commissioner form of government does not allow township form of jurisdiction. That is a concern that I have, that a community, as I would state Platte County, where the majority of the population is in Columbus and where the vote is, and there is a concern about spending and maybe they should only have five people as the supervisors, or they would be named commissioners then, instead of seven, and they decide to go that route, save some money, save some salary, they would automatically eliminate the township form of government. And I think the people that are out in the townships, in some of those remote areas, with a township form of government their snow removal is by far better than depending upon the county, because the majority of those townships do have motor graders and do have a part-time operator for that. So I think there's the situation that I think consequences could come with this bill, but they could happen anyway. And I'm just trying to make the people aware of what could happen if we change from supervisors to commissioners in the event that some counties feel that they are strapped with finances and want to eliminate two of those positions. So those are my comments. Thank you. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator McDonald, you're recognized. [LB269]

SENATOR McDONALD: Mr. President, members of the body, looking at this map with 27 counties with this township form of government, I have 2 counties that have...or 2 counties out of the 8 that I represent that have township form of government. There is no way that I could support a bill changing their form of government. That is their business. That is something that they can voluntarily do by petition with the votes of the people. So this bill does not mandatorily change their form of government, but what it

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does do, it gives them the ability to change. Out of the 27 counties, we don't know which of those counties, if any, or all of those counties still have the records when the township form of government was implemented in that area. We do not know if they have those records. They could be in the same position that Antelope County is. And if they do not have those form of records, they can never change their form of government because there is no process to redistrict those commissioners. So in that saying, even if they do have the records, what the problem is now, the population has shifted. So this basically gives them the way to do it if the people in that county want to do it. It's a process that can move smoothly. Without it, chances are they might not ever be able to change their form of government. So I think this is a process that we truly need to look at. I think it's a good bill. I support it wholeheartedly because the vote of the people in those counties have the ability to make that decision. We just allow them a way to, once they've made that decision, to be able to do it. Thank you. [LB269]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Seeing no other lights on, Senator Burling, you are recognized to close on LB269. [LB269]

SENATOR BURLING: Thank you, Mr. President, and thank you, folks, for the discussion. I can understand that if you haven't worked with this closely it does get confusing sometimes. I'll just say that this bill does not mandate change. It's supported by NACO. And we had some discussion about, whether it be Columbus or Hastings or Grand Island or Fremont or Beatrice or where it is, the majority rules and the cities in these counties can now discontinue township form of government in those counties if they want to. This bill wouldn't really make it any easier to discontinue township form of government. It would just lay out the process that happens after that vote is taken: the redistricting process, the delay of two years so that the supervisors that were elected for four years can fill their term, and it just lays out the process. So it doesn't make it any easier to happen. It might make it more likely to happen because there is a process in statute, but the majority still rules in this country and so the rural people know that, that they have to do a good job if they want to keep their townships. This doesn't change that, like I say, and the discussion has been good. I appreciate all the questions so that everything is clear. I hope people understand now what they're voting for, and I would ask for your affirmative vote to advance this to Select File. Thank you very much. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Burling. You have now heard the closing on LB269. The question before the body is, shall LB269 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB269]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB269. [LB269]

SENATOR LANGEMEIER: LB269 does advance. Mr. Clerk, items. [LB269]

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CLERK: Mr. President, a few new bills. (Read LB982-984 by title for the first time.) In addition, Mr. President, I have a hearing notice from the Education Committee and that's all that I have at this time, Mr. President. (Legislative Journal pages 238-239.) [LB982 LB983 LB984]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now proceed to the first item in Select File, LB39. [LB39]

CLERK: Mr. President. Excuse me, Mr. President. Select File, LB39, Senator McGill, I have Enrollment and Review amendments first of all. (ER8017, Legislative Journal page 450, First Session, 2007.) [LB39]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB39]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB39]

SENATOR LANGEMEIER: You have heard the motion. All those in favor for the adoption of the E&R amendments say aye. All those opposed say nay. They are adopted. Mr. Clerk. [LB39]

CLERK: Mr. President, Senator Schimek had AM681 and AM680. I understand, Senator, you'd like to withdraw both of those. [LB39]

SENATOR LANGEMEIER: They are withdrawn. [LB39]

CLERK: Senator Schimek would move to amend the bill, Mr. President, with AM1071. (Legislative Journal page 1494, First Session, 2007.) [LB39]

SENATOR LANGEMEIER: Senator Schimek, you are recognized to open on AM1071. [LB39]

SENATOR SCHIMEK: Thank you, Mr. President and members. This bill may have totally left your radar screen because we talked about it rather early in the session last year, and what I would like to do just very briefly is recap for you what happened on that bill on General File and even earlier. The bill came out of committee amended. The original bill suggested that we ought to have a prohibition against per-signature payments for signatures on petitions, and it also said that we should require that people who circulate petitions ought to be qualified to be electors, and the electors in this case means someone who is qualified to be a registered voter, but it does not require that person to be the registered voter. The committee deleted the electors, but added some language about campaigns which basically said that the people who were responsible for circulating petitions had to report how much money they were paying to circulators,

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but that they were not to report it by name and address and that kind of thing. And that, I think, was a good amendment to it. We had a ton of discussion on General File about this bill, and there were some other issues that were brought into it. For instance, one of the other bills that the committee didn't advance was a bill that would have required each circulator to wear an ID badge and, frankly, that discussion really got mired down. A lot of people liked the idea, but the more we talked about it the more I realized that it was just going to involve us in a lot of minutia and it might not be that enforceable in the long run. So because of some constitutional questions that were raised in the debate, I asked the Speaker, once it advanced from General File with the committee amendment, to give us a little time to look at the bill further and to talk about it. And so I got some people who seemed to be most interested in the bill, not necessarily supportive of the bill but maybe, but just interested, to sit down and discuss this. And the upshot is that we decided that what we really needed to do in any case was to be able to provide discussion on the floor that would illustrate some of the problem we did have with laws being broken in Nebraska during the petition process and with the kind of questionable, if not fraudulent, activity that also occurred during the petition drive. We also thought that maybe because of the Jaeger decision that we were on solid ground with requiring circulators to be electors. So we decided that we would try a couple of different amendments on General File. Meanwhile, this summer in Oklahoma, they had a case in the federal district court down there because Oklahoma had passed a law requiring petition circulators to be electors, and it was challenged and the court said, yes, Oklahoma, you can require circulators to be residents. Now this followed on the heels of Jaeger, which involved North Dakota, and the judges in that case said, yes, you can require residency. Now what I would like to do as we go through this discussion today is to give you a little bit of background about some of the issues that we heard in the hearing that was last summer, actually the summer of 2006--it was an interim study hearing--and tell you what the Secretary of State came in and said and tell you what some of the other people who were out in the field circulating petitions said. But that's probably enough recap. I'd be happy to answer questions, if I could. Right now what I need to do is to explain the amendment a little bit to you, and the amendment simply reinstates the language about making people...making circulators have elector status, and it actually provides language in that amendment that says a circulator will sign the affidavit saying that, yes, they are an elector. And that is the main thing that the amendment does. So if you would adopt this then we would have three provisions in the bill. One would be that you could require people to be electors; that they could...we could prohibit the per-signature payment, which is already in there; and that we would not require reporting of circulators' names to the state. They would be available, however, for law enforcement, if necessary. So that, in a nutshell, is a brief explanation. And I think, Mr. President, that I will stop there and come back and maybe explain some of the handouts. I will mention the first handout and that is the green handout, and this shows you, according to the Conference of State Legislatures, what some of the requirements are in other states, and you'll notice that there are about five...about four states that do require residency: California, Mississippi, North Dakota, and Oklahoma.

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With that, Mr. President, thank you very much. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard a brief reopening on LB39 and the amendment offered by Senator Schimek, AM1071. The floor is now open for discussion. We have Senator Erdman, followed by Senator Hansen. Senator Erdman, you're recognized. [LB39]

SENATOR ERDMAN: Mr. President, members of the Legislature, Senator Schimek, would you yield to some questions, please? [LB39]

SENATOR LANGEMEIER: Senator Schimek. [LB39]

SENATOR SCHIMEK: Yes, I would. [LB39]

SENATOR ERDMAN: Senator Schimek, in other statutes, we have provisions relating to recall petitions and who may be able to circulate a recall petition. [LB39]

SENATOR SCHIMEK: Correct. [LB39]

SENATOR ERDMAN: When you were Chair of the Government Committee, I believe I had a bill that dealt specifically with whether or not we could require the individual circulating the petition to be a registered voter or an elector. [LB39]

SENATOR SCHIMEK: Correct. [LB39]

SENATOR ERDMAN: That was based out of a situation that happened, I believe, in Ogallala where a recall attempt was put on the ballot. It was unsuccessful or there was some...some of the individuals were recalled, as I can remember. But there was a court case that was specifically on point with that that said that we could not require the individuals circulating those petitions to be registered voters or electors. You mention... [LB39]

SENATOR SCHIMEK: No. No, no. No, to be registered voters. [LB39]

SENATOR ERDMAN: Okay. You mentioned the court case recently, was it Jaeger you said? Is that the Oklahoma case? [LB39]

SENATOR SCHIMEK: No, that is not. That is a separate case that involved a case out of North Dakota,... [LB39]

SENATOR ERDMAN: Okay. [LB39]

SENATOR SCHIMEK: ...among other things, but the recent...most recent case was out

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of Oklahoma, which is in our...that same federal district. [LB39]

SENATOR ERDMAN: Eighth Circuit, correct. [LB39]

SENATOR SCHIMEK: Yes. [LB39]

SENATOR ERDMAN: So your opinion is, is that based on the new...based on the precedent set in the Oklahoma...and was it the Eighth Circuit or was it the federal district court of Oklahoma that set that ruling or that held that ruling? [LB39]

SENATOR SCHIMEK: I'll double-check it, but actually I believe it was the federal district court. [LB39]

SENATOR ERDMAN: And so the federal district court of Oklahoma would only have jurisdiction over the federal...over the state of Oklahoma and, unless it went to the Eighth Circuit, it would not be binding on the state of Nebraska under this circuit. [LB39]

SENATOR SCHIMEK: That...thank you. I believe that is correct, Senator Erdman. I should say, though, that the Jaeger, or "Yeager" or however you say that name, case did go to the circuit court. [LB39]

SENATOR ERDMAN: To the Eighth Circuit Court. [LB39]

SENATOR SCHIMEK: Yes. [LB39]

SENATOR ERDMAN: And they upheld a similar provision? [LB39]

SENATOR SCHIMEK: In North Dakota. [LB39]

SENATOR ERDMAN: Okay. I will look at that a little further. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Hansen, you're recognized. [LB39]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I would also like to ask Senator Schimek a few questions if I could, please. [LB39]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB39]

SENATOR SCHIMEK: Yes. [LB39]

SENATOR HANSEN: Thank you. In the amendment, you refer to elector. Is that to assume that...or I shouldn't say assume. Is that a registered voter? [LB39]

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SENATOR SCHIMEK: No, it is not. We cannot require a person circulating a petition to be a registered voter. The courts have already ruled on that issue. [LB39]

SENATOR HANSEN: But on the green sheet that you passed out, California, Mississippi, qualified registered to vote. [LB39]

SENATOR SCHIMEK: And that, you're qualified to register to vote. That's what an elector is. [LB39]

SENATOR HANSEN: Okay. [LB39]

SENATOR SCHIMEK: It doesn't mean that you are registered. It means you're 18 years of age, you are a citizen of the United States, blah, blah, blah. [LB39]

SENATOR HANSEN: Okay. Thank you very much. Then the next topic I'd kind of like to just discuss, and I guess it won't be any more questions, but in Lincoln County we have a...I saw the figures just this past week that we have a 2 percent unemployed rate in the county. And I assume that those qualified to vote would be in that, not in the 2 percent, but more than likely in the group that are working. So we have a 2 percent unemployment rate. I don't know what Lancaster County is in your district, Senator Schimek, but in a lot of the western counties the unemployment rate is very low. And my point is that it's hard to get someone with a full-time job to go circulate petitions, even at the rate we have now, and if we increase the rate, it's going to be harder yet. But bringing people in from a neighboring state to circulate petitions for someone that is a registered voter, or an elector, as you explained, doesn't seem that harmful to me because we're having people come in to do a job that we don't have people to do. There were some troubling incidents the last time the petitions were circulated, and I certainly agree with that and I think we ought to address that. But the fact that we can't bring people from outside the state to come in and help us collect those petitions I think is not a valid point because we have low unemployment, and that's good. I don't think we need to change that in the law either. The lack of people to circulate the petitions is the main problem. I think that the amendment that we're talking about now is not valid, and it hampers the second house of our Unicameral system, and that's the people who are out there to pass petitions and get things on the ballot that we don't do in this house. So I think that I would urge you to vote against this amendment. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Senator Adams, followed by Senator Loudon. [LB39]

SENATOR ADAMS: Thank you, Mr. President. In the last session, when this bill came forward, not only as a member of the Government Committee but as a sincere believer

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in free speech, I stood here at the microphone and said that the committee amendment which struck out this elector language was most appropriate. If somebody wanted to cross the border in Nebraska and carry a petition, it was my opinion then that it was a free speech issue, and I haven't deserted that position yet; however, I've moderated it. Since that debate occurred, I've had considerable opportunity, thanks to Senator Schimek and others, to review for myself election law, court rulings, free speech, and here's the position I've arrived at, whether you agree or not. Carrying that petition is a free speech opportunity and, above all else, we should protect that. But there are limits. There are limits to that. The question you have to ask yourself on this amendment is this: If you agree that a Nebraska elector ought to be the person carrying the petition, are you affecting what is being said? Are you affecting the speech, the word, the idea? I don't believe you are. What you are affecting is the way, the method. Now, indeed, if you affect the method, you also may have an impact on the speech. The measure is this: We have the right or the ability to limit the way something is said, not what is said but the way it is said, if, and I'm quoting here, there is a compelling state interest to do so. Admittedly, that is somewhat thin--a compelling state interest to do so. I believe that we have a compelling state interest and that state interest is to maintain the integrity of our election process. If we are going to ask that a circulator be a Nebraska elector, do we better assure ourselves that we prevent the very system that we treasure as our second house is not taken advantage of by fraud? And in doing so, at the same time have we managed to steer away from controlling what somebody is trying to say with those petitions? I think we are. It's a delicate balance. I think we can allow free speech and, at the same time, protect our voting system by saying we want the circulators to be Nebraska electors. At the risk of sounding too much like I'm preaching or too much like a school teacher here, I would tell you don't come to the microphone and say we don't want outsiders in our state because we don't like outsiders or we don't like what they say. That's the wrong reason. But to say we're trying to protect the integrity of our system,... [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR ADAMS: ...that's a valid argument to make. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Adams. Senator Louden, you are recognized, followed by Senator Schimek. [LB39]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look at the amendment, I'll probably address that part of it first, and that is whether or not the electors have to be...or they have to be electors of the state of Nebraska. And, of course, we all remember how some of these petitions were circulated here a few years back on outside people...or outside money coming in and sometimes it was outside people. So I think it's a matter of, probably on this case, whose ox is being gored,

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because it depends on which side you've been circulating petitions on whether you wanted outside help or not. In this situation, if you put in there that you have to be electors in the state of Nebraska, if outside money wants it to happen, they'll still probably come in and find people that are willing to circulate the petitions. Now, as you narrow that down, as you look at the bill you narrow it down where you...they won't pay circulators on a per-signature basis, so now you've narrowed the process down considerably more. And then, as you work on it some more, then if it's a...on a campaign statement, then you have to include the total amount paid to individual petition circulators on a campaign statement, so now you've made it a little bit tougher yet to circulate petitions. And I question whether that's what we want to do in the state of Nebraska, is make it tougher for the citizens to circulate petitions. I think probably it's worked quite well for what we had over the years. I don't know as there's been...there's been instances when everybody is...someone has cried foul, that there was a lot of outside money or something like that, but over the years the petitions get circulated and people do it, and at times I'm sure there got to be some paid circulators. So you either pay them by the hour or pay them some other way and rather than by the signature. I don't see what difference it makes. If you're going to pay a circulator, you're going to pay a circulator. So really, I haven't quite understood yet what all this bill really does to help people in Nebraska. I'll keep reading on the process and I'll also keep listening to the debate, but I have yet to have been...have anything pointed out to me that where this is going to be of a great benefit to people of Nebraska or if it's going to take care of some flagrant violation that happens in the process of circulating petitions. And after that last deal on the LB126 petition and some of that when the petitions were circulated and then the law still went into effect, so we have a lot of flaws in it, and I don't think we need to narrow down the way we circulate petitions. I think they work quite well. In fact, I think we need to decide whether or not, when petitions are circulated, whether or not they do hold up and will stop a law in process. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Louden. Wishing to speak we have Schimek, Erdman, Janssen, Chambers, Kruse, and others. Senator Schimek, you're recognized. [LB39]

SENATOR SCHIMEK: Thank you, Mr. President and members. Senator Hansen, I never did hear your question (laugh), but I would like to, in part, kind of respond to some of the things that you said. I think over the years our process has been corrupted to some degree, if you will. It was set up to be for the people of Nebraska to impact the people of Nebraska so that they could make a decision that they felt maybe frustrated about that they could not get enacted through their Legislature or whatever. What I think would happen if you require people to be electors is it would assure you that people are 18 years of age and not 15 or younger, as was the case in some instances. It would mean that the person would be a citizen. It would mean that you speak English. It would mean that you are going to live with the consequences of whatever the voters decide and you are the one that is directly impacted. One of the things that's happened over

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the years is Nebraska has become an easy target, if you will, for outside interests who have a lot of money to put together a petition drive and to come into the state and to hire people from out of state and to put things on the ballot. That is not what the process was meant to be. The process was meant to be for the citizens of Nebraska. And I fully believe that you would have plenty of people who would do circulation, maybe even volunteer, maybe even we could get to the point where we don't have such high numbers, that we can count more on the people of Nebraska and it doesn't take big money to get petitions on the ballot. That would be my hope anyway that it becomes more of a Nebraska process. But I want to tell you some of the things that were said and reported at the public hearing. And the Secretary of State I did work with on this bill to begin with, and he came in and gave excellent testimony and said that he had had that 15-year-old who had come to him and wanted him to sign a petition. He said in that hearing that the public protests that happened during that process last time, the public concern, the public dissatisfaction does require some attention and does require some potential action. That was...those were the words of our Secretary of State. He also says the constitution says you may facilitate the process, and the U.S. Supreme Court, in the case of Buckley v. American Constitutional Law Foundation in '99 said this: States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process as they have with respect to election processes generally. He also went on to say that he...there are some really basic things that he likes. He thinks that an age limitation is perfectly appropriate. He thinks that residency is a requirement that he thinks the law allows. [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR SCHIMEK: He thinks badges would be okay, and he believes that people should be U.S. citizens and need to speak the English language. And he also thinks the law allows us to require that it be payment by the hour rather than payment per signature, because one of the things that happened in the last petition drive was that people would come with three or four or five clipboards, in some cases--we heard testimony about this--and they would lead the citizen to believe that somehow they had to sign five pieces of paper, and the citizen was not told that these were all different petitions. And in fact, one of the most flagrant violations of our law is that the circulators don't tell people, don't explain what's in the petitions, and they will mislead the citizen with... [LB39]

SENATOR LANGEMEIER: Time. [LB39]

SENATOR SCHIMEK: ...things like... [LB39]

SENATOR LANGEMEIER: Time. [LB39]

SENATOR SCHIMEK: ...it's going to lower your taxes. Thank you. [LB39]

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SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Erdman, you're recognized. [LB39]

SENATOR ERDMAN: Mr. President, members of the Legislature, Senator Schimek, I have distributed, via e-mail to the Legislature, a map of the geographic boundaries of the district courts and the court of appeals, and the Oklahoma case is actually under the Tenth Circuit, and so that's...that was an e-mail attachment that went to the...went to your e-mail. It should be in your office or available on your computers. As I understand it, and so then from my perspective, I'm going to go back to the case in North Dakota, which is the Jaeger case. And if Senator Schimek would yield to a question, Mr. President. [LB39]

SENATOR LANGEMEIER: Senator Schimek, would you yield? [LB39]

SENATOR SCHIMEK: Certainly. [LB39]

SENATOR ERDMAN: The information distributed from the NCSL states that they have a requirement that they be a qualified registered voter or an elector; however, the Jaeger case doesn't say that. It says that they're a resident of the state. And so I'm trying to rationalize, because this would be binding on...or this would be a precedent that we would fall under because it was a ruling of the Eighth Circuit Court dealing with limitations on circulators for initiative and referendum processes. The NCSL states that in North Dakota they have to be 18 years of age and qualified to register to vote. In the conclusion of Jaeger it says, for the forgoing reasons, there are no constitutional infirmities with the North Dakota laws requiring petition circulators to be state residents and prohibiting payment of circulators on commission. I'm reading a distinction between being a state resident and being an elector. Is there, or can you tell me if the North Dakota law makes that distinction? [LB39]

SENATOR SCHIMEK: I think you have answered your own question, to some degree at least. The law apparently provides that you have to be 18 years of age, which I presume is the same age that their voters have to be. Resident and elector, although not interchangeable, are sometimes the same group of people. [LB39]

SENATOR ERDMAN: And that is my point to you. It's not clear from the case, and I'm looking for the date...of February 1, 2001, it's not clear whether the requirement in North Dakota was enacted at the same time or prior to this court action or if they have changed it since then. As I understand your handout, this is what's in place now. It may not have been in place under Jaeger, and I'm just making sure that there is no distinction between the two because I'm not assuming state resident means elector. I'm reading what's here and trying to make the information fit the case or understand the case. [LB39]

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SENATOR SCHIMEK: And one of our good attorney friends just came over to me and said that I should make this distinction, that you can be a resident of the state and not be a citizen of the state and, therefore, you wouldn't qualify to be an elector. So ours does say you have to qualify to be an elector. As I understand, from the Secretary of State's Office, using the word "resident" is very difficult to define, you know, what is a resident. And so most states are using the terminology may be qualified to be a registered voter. [LB39]

SENATOR ERDMAN: And I understand that distinction, Senator Schimek, between being a resident and being qualified to be an elector or being an elector. The question still comes back, can we find out if in North Dakota their provision is elector or qualified to be an elector, as the NCSL states, or was at the time that Jaeger was heard before the court that it was simply a resident of the state? [LB39]

SENATOR SCHIMEK: I will try to find that out for you, Senator Erdman. [LB39]

SENATOR ERDMAN: Okay. And that's my question. Thank you. [LB39]

SENATOR SCHIMEK: Okay. Thank you. [LB39]

SENATOR ERDMAN: Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Wishing to speak we have Janssen, Chambers, Kruse, Dierks, and others. Senator Janssen, you're recognized. Senator Janssen, you are in the queue and recognized. He waives his opportunity. Senator Chambers, you are recognized. [LB39]

SENATOR CHAMBERS: Oh, thank you. Mr. President, members of the Legislature, when Senator Hansen talked about the people being the second house of this Legislature, I want Senator Hansen to know that the Supreme Court was talking about the people of Nebraska. He didn't mean just people as a generic term applying to any Homo sapiens. Oh, with all due respect to my homophobic friends, we can't say Homo sapiens in here; we have to say "hetero sapiens." He wasn't...the court wasn't talking about "hetero sapiens." There is this looseness being articulated by people who supposedly are conservatives. There is so much in this Legislature that indicates people don't critically evaluate or analyze anything. The election process, the electoral system, is crucial to a democracy. The thrust of the legislation already on the books is to guard against fraud. You don't know if somebody comes from another state whether they're giving you the correct name or address or anything where they say they came from. If they commit 100 percent fraud, you can't get them. You cannot enforce the law against those people. If the law is to be enforced, you have to make it possible for those enforcing the law to have jurisdiction over the ones who have violated your law. An

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assertion by a Legislature is not a law, even if it's on the books, if the Legislature has no means to coerce obedience to that assertion. You cannot coerce obedience to the law on the part of somebody who doesn't live in this state. I'm surprised at the so-called conservative. They don't know what the word "conservative" means. To them, if you go for Ronald Reagan, if you go for Bush, that makes you a conservative. They don't even know what a conservative is supposed to believe in. Sometimes a conservative's job is to protect liberal principles on which a government is founded. We need more lecturing on this floor after the manner of school teachers, because people are not well educated and getting elected to the Legislature doesn't mean you know anything. You know what it means? You're old enough, you live in the right district, you're outside the penitentiary when you run. It doesn't mean you can pass an IQ test or that you understand the law or anything about voting. Don't know the difference between an elector and a registered voter. We're passing laws and we don't know what we're talking about, so what about the public? Is it any wonder that there's contempt for legislatures all over the country? They get a chance to listen to people talk about things they know nothing about. It's your system, not mine. You created it, not me. And you don't respect what you've created. You don't understand what you've created. That's why you can contaminate your constitution, you can put trash into the books because you have 25 votes, and make a mockery of it. [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR CHAMBERS: Grammar atrocious! Syntax preposterous! You don't think it's necessary to use good writing and clear language to write laws, do you? But laws impact on the lives of the people in this state, and you have no more concern for it than you show on this floor. You couldn't pass an English examination at the 10th grade level in terms of difficulty, and you're writing laws and don't know what you're talking about. (Laugh) You know, if there is a God, he, she or they had better have a sense of humor or you all would have been struck dead so long ago, but that God would know what it was he, she or they created for his, her or their amusement. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Kruse, you're recognized. [LB39]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the amendment. It seems to me that the petition process is for Nebraskans, and we need to focus our own attention on that. If we can, we should do that. And we don't have to worry about the others. And I'd make an offer. I'm sure there are counties, as Senator Hansen has indicated, that would have trouble finding someone for paid work here and I would generously offer persons from my district, and I offer even to recruit them, who would be willing to be paid to do this job in Nebraska. Thank you. [LB39]

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SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Dierks, you're recognized. [LB39]

SENATOR DIERKS: Thank you, Mister or Madam President. We have the petition process. It's part of our...it's part of our legislative system. It becomes part of our second house. We have the process; as it works, sometimes fails us. It failed us a year ago. We had citizens put on the ballot a petition, a petition drive that was voted on by our citizens, and it was passed. And yet, it couldn't take effect because there was some rule, some regulation someplace in the bureaucracy that kept that from happening. I think that our system is fouled up. It isn't working like it's supposed to, so how are we going to correct that? This particular deal we're talking about today, I just have a little problem whenever we try to make it more difficult to get petition drives done, so I'm not going to support the amendment. I think that I just think that our process was supposed to be fairly simple and we keep adding to the problem. We make it more difficult. We add or subtract the electors or voters or whatever. Let's just keep it as simple as we can and then, when we get it simplified, let's make sure that it does what our constitution says that it's supposed to do. We need to make sure that the petition drive that's done and voted on and elected by our people, that it works. And it hasn't worked. Thank you. [LB39]

SENATOR FISCHER PRESIDING [LB39]

SENATOR FISCHER: Thank you, Senator Dierks. Senator Lathrop, you're recognized. [LB39]

SENATOR LATHROP: Thank you very much, Madam President and colleagues. I would like to echo the remarks of Senator Adams, who correctly pointed out that the debate here and what we should focus on in our remarks, I think, is whether or not there is an evil that we are trying to correct. The law is very clear that we have to choose the most narrow manner for limiting the process available to us to address a compelling interest, and that narrow process, I believe the use of the term "electorate" is as narrow as we can be with the problem that we are trying to correct or the evil that we're trying to correct in the petition process. The reported cases require that we have a compelling interest, and I think that it would do us well to include in our debate the compelling interest--those things that are problematic, the fraud that we have seen, that we've heard about in these committee hearings and that accompany the introduction of this bill. I understand Senator White has worked on this and looked into and has a laundry list of some of the fraud and the abuses that we can...that we are trying to correct with this narrow amendment and, for that reason, I'd ask him if he'd yield to a question. [LB39]

SENATOR FISCHER: Senator White, would you yield? [LB39]

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SENATOR WHITE: Yes. [LB39]

SENATOR LATHROP: Senator White, you've done some investigation into, and you're familiar with, those types of frauds and concerns with the petition process that this bill is intended to address? [LB39]

SENATOR WHITE: Yes, I personally witnessed them. [LB39]

SENATOR LATHROP: And can you share some of those with us, so that our record reflects to a reviewing court what our compelling interest is in this legislation? [LB39]

SENATOR WHITE: Certainly. I live in Omaha. One of the areas I go to, I have friends that own businesses in the Old Market, heavily trafficked area, a lot of petition circulators work there. I would stop during the process and talk to them. A number of them literally move like migrant agricultural workers from petition to petition and stay with the same group or interest from state to state. When they're paid by the signature, I have seen them not only not read the provision to the voters that they are encouraging them, I've seen them flat misrepresent what it says. I've seen them when a voter wants to read it pull the petition out of their hands to go to a bigger group so that they could get more signatures. I have seen them urge people just to sign it because they want to make some money. I have seen them flat disregard requests for additional information or to look into it. I have seen petitions left unattended at the corner saying, help me make, you know, money, sign here. And they walk away. There have been documented situations where repeated signatures have been falsified by the same hand, and these people are then gone, and they're gone and we're left. I share Senator Dierks's deep concern for the process that it be accessible to our citizens, but a process that's a fraud, a process that has no integrity is not a good process. We don't let people vote without a lot more safeguards than this, and if they're really the other half of the house, we should be able to give them at least some of the same level of security that the system has integrity, and it does not have at this point in time. [LB39]

SENATOR LATHROP: What is the problem with having people engaged in this kind of activity? What's the difficulty... [LB39]

SENATOR FISCHER: One minute. [LB39]

SENATOR LATHROP: ...with having them be from out of state, in terms of reviewing the process, checking the integrity of the process? [LB39]

SENATOR WHITE: If, for example, you have a challenge to one of the people who signs on to their signatures, you can't get them back to ask them. You know, they're now in D.C. or they're in Canada or they're in Texas or they're just gone. Can you take a deposition, say, are these actual...did you actually provide these people with all the

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information? And there's no consequences. They turn them in, they get paid, and they're gone, and we're left to deal with the consequences in an election, of people who do not honor our laws. If you're at least a resident, then we know where you live. We can subpoena you. We can bring you back in. Senator Chambers made wonderful points. It's very accurate. I mean, we need to treat this as a second house, and the process has to have integrity--has to have it. We demand it when we vote; we should demand it here. [LB39]

SENATOR FISCHER: Time. [LB39]

SENATOR LATHROP: Thank you. [LB39]

SENATOR FISCHER: Thank you, Senator Lathrop and Senator White. Senator Schimek, you are recognized. [LB39]

SENATOR SCHIMEK: Thank you, Madam Chair, and thank you, Senators Lathrop and White, for the conversation that you just had. I think the pink sheet that was handed out to you is a good follow up to the discussion that was just had, because it talks about a circulator who was from out of state, who was arrested, and who was due to appear in court and he fled. And there was no way we could ever find him, or there was no way we could subpoena him. So he actually got away with actually, allegedly, punching a circulator. So I guess that is a good example. The other thing that I would like to mention and follow up with is that you also got a handout that showed pictures of people walking by the door at a--I think it's a Wal-Mart, if I remember correctly. And you know--I hope that you know--that when you circulate a petition, you are supposed to witness the signature, and you are supposed to be able to explain what's in that petition to the person that you're approaching to get a signature. Well, obviously, if you just have these petitions sitting out there for anybody to look at and sign, you don't have any idea who signed those petitions, and you are not explaining to them what the petition is all about. I can also relate several stories of being personally approached by petition circulators. In one case that circulator did a very good job of explaining what he was circulating, and I appreciated that, even though I didn't sign the petition. The other case, somebody knocked on my front door at home, and I don't know if this is common to have people come to your door, and she was circulating a petition on gambling. (Laugh) And she picked the wrong person because I asked her questions and she knew nothing. And I said to her, you know, you're supposed to be able to explain that to me, and I really do know what the answers are, but you're not doing it, and she left. People are misrepresenting the petitions that they are circulating, and they are telling people, as I started to say earlier when I ran out of time, they are telling people that this petition is going to lower your taxes. Well, sometimes it doesn't have anything to do with taxes or a particular kind of tax, like the property tax. But it's a good way to get their signature. It's a good way to fool them. The other way, as I mentioned earlier, is to have stacks of petitions, you're circulating them for four different petition drives, and you don't bother to

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tell that person that they're all different, and you don't bother again to tell that person what is on those petitions. So people are being taken in by that, and I think that it is our responsibility to make sure that the process is good. It's like this Capitol in a way. We're not going to leave it just as it was built, over time. We're going to have to make some repairs to it, we're going to have to do some things over time. We're going to have to reassign offices, we're going to have to make room so each of you can have a legislative office. I mean, we have changed... [LB39]

SENATOR FISCHER: One minute. [LB39]

SENATOR SCHIMEK: ...over time. Over time there may be things, there may be outside forces that impact our petition drive, and I would submit to you that that is what has happened. And we ought to take the reins and do something about our petition process, because otherwise, we are looked at as one of those states that is an easy mark. We have no way of controlling the fraud that happens in this state, and if you've got enough money, you can do it in Nebraska. And that is the attitude about certain states. We're one of them. [LB39]

SENATOR FISCHER: Thank you, Senator Schimek. Senator Wallman, you're recognized. [LB39]

SENATOR WALLMAN: Thank you, Madam President, members of the body. I'd like to ask Senator Chambers a question. [LB39]

SENATOR FISCHER: Senator Chambers, would you yield to a question? [LB39]

SENATOR CHAMBERS: Yes. [LB39]

SENATOR WALLMAN: Doesn't that make you wonder if the term limits petitions are all legal? [LB39]

SENATOR CHAMBERS: There were serious questions about a lot of them. [LB39]

SENATOR WALLMAN: And I looked up...that's what we're talking about here. I've carried petitions myself, not for term limits, but for various issues. And I made sure I explained. I didn't go to the Haymarket, I didn't go to the Old Market and just drop my papers off. You could go to bars, restaurants, no matter what you see, and say sign here, by pretty good-looking young women try to convince you to sign here. But I didn't do it. So if we have any way to tighten this down for Nebraskans only, if we're going to have Nebraska law, we should be Nebraska petitions. And it makes you wonder why people vote against these things on the ballot. I don't think they think maybe necessarily have any validity. So I support Senator Schimek's bill, even though I have trouble tightening things down with more regulations, more rules. But thank you, Madam

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President. [LB39]

SENATOR FISCHER: Thank you, Senator Wallman. Senator Chambers, you're recognized. [LB39]

SENATOR CHAMBERS: Madam President, members of the Legislature, when people start talking about federal court decisions and they want to say that a particular state does not fall within the circuit of a given court, it shows a lack of complete understanding of how the federal system works. Often the courts in one circuit will refer to decisions of courts in other circuits. It's done all of the time. If no court in a given circuit has dealt with a particular issue and that issue is presented, that court will gather cases and opinions from all over the country in other circuits to see what the trend has been on the part of courts having made the decision. Then they can say, as the Nebraska Supreme Court says, we will consider the way these issues have been resolved by our sister states, but it is our primary responsibility to render decisions that are in the best interests of the citizens of the state of Nebraska. So courts do look at opinions written and decisions rendered by courts in other states and at the federal level in other circuits. When people stand up here and seem to have so much to say on other occasions about how civic-minded the people in their area are, then are going to stand and tell me that there is an issue of great concern to them and they can't find people willing to circulate a petition, so they get hired guns, what you're telling me is that it's not an issue that's of great concern to the people in your area. I will hear people stand on this floor and talk about everybody's working, so you can't get anybody to circulate petitions. Then we hear those same...and from rural areas, and Senator Hansen will have them stand up and cry about the fact that they need jobs, Main Street is closing down, and I will try to get legislation that will make some of the benefits available in rural areas that are available in the big cities. So I probably have been suckered, because I believed those rural senators who talked about the depressed economy in the rural areas and how they needed jobs. But if everybody is working, so they've got to go outside of the state to get people to circulate petitions to change the law in their state, they don't realize what they're really saying. And as Senator Schimek pointed out, Nebraska is an easy state and it's acknowledged to be such in writings by people who deal with government, and these people are from all over the country. They don't have it in for Nebraska; they just know that any nutty, crack-brained notion can get on the ballot in Nebraska, because you got dumb people here. The education level is so low. And you've got people with no education formulating education policy. I have to give Senator Raikes a pat on the back. There was an editorial the other day in the Lincoln Journal-Star about the complexity of the state aid formula and how maybe it's necessary to start all over. And because my guard was down and I was tired as I was reading it, I shook my head and I said, the state aid formula is dead. It's dead. Then I read Senator Raikes's editorial reply today, and like that scientist said in one of the old Frankenstein movies, it's alive! It's alive! The state aid formula lives. Senator Raikes is a thoughtful person. Others are thoughtful. [LB39]

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SENATOR LANGEMEIER PRESIDING [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR CHAMBERS: But when you listen to the debate, if you can call it that, on this floor, you wonder where people went to school, and whether any of the schools they went to ought to be allowed to function. And the next time, which will be my last time on this particular amendment comes, I'm going to talk to Senator Dierks about what the law requires in terms of having enough signatures or votes to suspend the operation of a law. Just because you got some signatures does not nullify the existing law. You all's feelings get hurt so you say you got to change the system--it's broke. No, you don't understand the system, and I get frustrated, Mr. President. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Visitors introduced.) We return now to discussion on AM1071. Those wishing to speak, we have Nelson, Avery, Fulton, and Chambers. Senator Nelson, you are recognized. [LB39]

SENATOR NELSON: Thank you, Mr. Chairman, Mr. President. Colleagues, members of the Legislature, I rise in opposition to this amendment. I was very interested in what Senator Adams said about we have a compelling state interest here. I think we do have a compelling state interest, and I think it is in preserving the initiative process and making sure that we do not narrow it too much. I think we should point out...I remember in our last session that there was a move to increase the number of signatures that you had to have to get something on the ballot. As it stands right now, it takes 10 percent of the registered voters to get a constitutional measure on the ballot. It takes 7 percent to get a ballot issue on. We're talking about 114,000 registered voters that you have to get signatures on the petition, 70,000 on a ballot issue. It's not an easy process to get people to sign onto petitions and get things on the ballot. I don't think we should make it any more difficult. It may be that we have fraud, we have people that come in and they misrepresent, but to the best of my knowledge there has been nothing so far, and no ballot initiative or any initiative has ever failed to get on the ballot because of fraud. I think it's important that we get things on the ballot. You can talk about misrepresentation and people coming up and saying, well, this is what it says and this is...you're going to get your taxes reduced and things like that. For heaven sakes, are we denigrating the intelligence of the average voter here in the state of Nebraska? Let's ask some questions. Let's find out. Let's read what is on that petition and then decide if we want to give it a shot. At least let's not confine things to the point where we're not able to circulate petitions extensively and get the signatures that we need to get things on the ballot. I'm afraid if we're going to talk about restricting it to just electors that we are not going to have the people that will circulate these petitions. And I'd like to point out we're going to keep anyone under the age of 18 or under from circulating, and these are young people that can't vote, and they have an interest in a lot of these measures and

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these initiatives. This is an opportunity for these young people to go out and circulate, and I believe that the young people in our state of Nebraska are going to be fairer and they're going to tell what is on the petition and answer questions. And you can't bank, even if we can get people over 18 years of age that are residents of the state of Nebraska, you're not going to get a guarantee that they're not going to misrepresent what's on there if they have an interest in getting paid for what they're doing. It's already difficult, as I said, to get something on the ballot. Organizations like the Class I schools and the citizens of Elkhorn will be functionally unable, I feel, to get something on the ballot if we narrow this to the extent that the amendment requires. I think I would finally like to point out that only a small number of petitions ever become law, and that's because after they are on the ballot, then we have an opportunity to look at them, talk about them, and see if this is something that we really want to do. The important thing as far as I'm concerned, the compelling state interest here, is that we make a fair and a good effort to get things on the ballot if they deserve to be considered, whether it's constitutional or a ballot issue. And therefore, I feel that all of these things that are happening, I mean, the aspects of fraud, the fact that we can't go out and we can't prosecute people, yes, that's bad. But I think in the overall view of things,... [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR NELSON: ...that we need to be interested in getting the requisite number of signatures on a petition, if it's worthwhile, and can get on the ballot and consider it that way. That's the compelling interest as far as I'm concerned. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Avery, you're recognized. [LB39]

SENATOR AVERY: Thank you, Mr. President. You know, we do have a compelling state interest here. I've heard that mentioned now a couple of times. For me that compelling state interest is an obligation to safeguard the initiative process in our own state. I see this amendment as an acceptable means to do that. We're not making the initiative process more difficult for our citizens by passing this amendment. What we might be doing, however, is taking control of the process by putting some restrictions on the process that seems now to be used mainly by outside big-monied interests. We should protect and preserve the process for Nebraska citizens, not leave in place a process that favors those with the most money and the willingness to spend it, and which usually are outside groups. Does this debate remind you of something that happened in the last session? I remember last year I brought before this body a legislative resolution that would amend the constitution or put on the ballot a constitutional amendment, and that would have increased the number of signatures required to amend the constitution and would have decreased the number of signatures to pass a law. That did not succeed. But I remember that debate, and I remember it very

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well. I was objecting to the outside meddlers, and I thought that by raising the number of signatures required to amend the constitution would be a way to raise the bar and make it a little bit more difficult for outside interests to get things on the ballot. These outside interests, understand, they think they know better how we ought to run our state. And they think they know better than we do about what kind of laws we ought to have, and they get these things on the ballot, then they leave the state. And if it passes, we are left to live with it--they don't have to live with the consequences. So I really do think this is perhaps not a perfect way to discourage outsiders from meddling in our affairs, and I'm not xenophobic, I'm not afraid of outsiders, I'm not parochial. But I am concerned that we retain control of the petition process ourselves in our own state, for our own purposes and not for some others. And if this amendment can diminish in any way the kind of big-monied outside interests from trooping into the state of Nebraska to put items on the ballot that they think we ought to have, then I say let's do it--let's pass it. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Fulton, you are recognized. [LB39]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. I'd like to ask Senator Schimek some questions, if she'd yield. [LB39]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB39]

SENATOR SCHIMEK: Yes, I would. [LB39]

SENATOR FULTON: Senator, there have been several...I've been writing down the abuses that have been explicated here on the floor. The circulator that punched another person, the picture here of the circulator who has left his or her post--the absent circulator, I'd call that--misrepresenting petitions. So these clearly are abuses which we should remedy. I guess the question I have is, how precisely would...how would this amendment remedy those situations? So if we required these circulators to be electors of Nebraska, could we not still have someone absent from his post? [LB39]

SENATOR SCHIMEK: You could, yes, very definitely you could. But you would also have a way to prosecute the person for breaking the law. And that's the sticking point, and that's why I think this approach would be the very best that we could do. But the pink sheet was a good illustration of that, of somebody from Florida who came into the state and afterwards could not be prosecuted. I mean, the fact of the matter is, these aren't major, major crimes. It's not like somebody murdered somebody or somebody robbed a bank or, you know, it's not a federal offense. But they are major in that they do harm to our process. [LB39]

SENATOR FULTON: I guess I...thank you, Senator Schimek. [LB39]

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SENATOR SCHIMEK: Sure. [LB39]

SENATOR FULTON: That computes, I guess. That makes sense. I guess the concern that I have here, and I don't know where I am on the amendment, but it seems to me that, you know, putting this amendment forward doesn't necessarily address these abuses. These abuses, it seems to me, can still occur even if they are electors which are circulating the petitions. I do understand, though, what you're saying about prosecuting, so...I mean, is that the main...would Senator Schimek yield again, Mr. President? Is that the main concern here, prosecuting? [LB39]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB39]

SENATOR SCHIMEK: I would, Mr. President. [LB39]

SENATOR FULTON: Does this produce a mechanism by which we in Nebraska can prosecute malefactors of our petition process? [LB39]

SENATOR SCHIMEK: Yes. [LB39]

SENATOR FULTON: Is that the main reason for moving this amendment forward? [LB39]

SENATOR SCHIMEK: Yes. [LB39]

SENATOR FULTON: Okay. [LB39]

SENATOR SCHIMEK: I mean, the main thing is to prevent fraud and abuse of the system. That's the main thing, and we talked about a lot of other alternatives--being able to identify somebody with a badge, those kinds of things--but that still really doesn't get to the root of the problem. [LB39]

SENATOR FULTON: Okay. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Chambers, you're recognized. [LB39]

SENATOR CHAMBERS: Mr. President, members of the Legislature, the mere passage of a law does not prevent anything from happening. The reason you pass a law and put a sanction or punishment into it is so that when a person does commit a violation, there is a price to pay. Not only, Senator Fulton, is the purpose of a punishment to bring consequences to the one who violated the law, but to serve as a warning to others. A white judge sentenced a young black female named Marion Jones to prison for lying

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about having used performance enhancing drugs. He said he had to send a strong message to others. But to date, no white athlete has been sentenced to jail by any judge, for any purpose, when they cheated as bicycle riders or any other thing. So they pick and choose the ones they're going to use to send the message. Nevertheless, even though that activity is often corrupted by racist judges, sending a message is a legitimate purpose of punishment under the law. Again, I'm amazed that people who are supposed to have so much in their head cannot understand what is being discussed. Who on this floor has ever said passing a law will prevent something from happening? You put a punishment into it because you know it's going to happen. If the integrity of the system means nothing, then forget it. Do you know why the Legislature impeached that former regent? Because he violated the integrity of the electoral system! Do you know why the Nebraska Supreme Court convicted him, removed him from office, and he can never run for office again, Senator Nelson? Because the system was corrupted. And when people who supposedly know better will stand on this floor and say you've got to make it so easy for people to corrupt the system, it boggles my mind, and that's what we're talking about. You are not advancing the cause of democracy. You are saying that in the face of evidence of people harming the integrity of the system, you must leave that system vulnerable. And maybe there will be enough people on this floor to do so, and this is why the so-called newbies are a bunch of sheep, as I've said before. They come...they don't know anything else just because they got here. They haven't even been here long enough to appreciate the nature of the system of which they are a part. It takes awhile to begin to think institutionally, to look beyond a given issue. And my friend, the competent lawyer from Omaha--competent in his area of the law--if I had a problem that he dealt with, I wouldn't hesitate to approach him, except I probably couldn't afford his services. However, a person who is wise may not be wise in every way. And my friend that I was just discussing knows and has heard the cliché over and over, hard cases make bad law. We don't have a hard case here. We have multiples of misuse of this system. [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR CHAMBERS: The people, to use that term, do not automatically become all-knowing and knowledgeable when they're circulating petitions. If they can't read, they can't read while they're circulating petitions. There are people on this floor you could give some of these ballot questions and they could not explain the language. So you're going to give it to an ordinary citizen and say, well, because this is one of the people this person knows and you can trust them. I'm sure that Senator Nelson, as much as he trusts all these young people he's talking about, whoever they are, would not leave his billfold full of money in a room full of them and walk out of the room and expect it to be there when he came back. Those are statements that are made that are not practical, they are not pragmatic, they don't deal with reality. We have an opportunity to deal with reality, and we have to work hard, those of us who respect the system, to try to maintain its integrity. Thank you, Mr. President. [LB39]

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SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Schimek, you are recognized to close on AM1071. [LB39]

SENATOR SCHIMEK: Thank you, Mr. President and members. I think Senator Chambers has some very good and constructive lessons for us all, and I would like to thank him for making those arguments. I'd like to go back to something Senator Nelson mentioned on the floor a few minutes ago, and that was the fact that it would be fine to have high school kids circulating petitions. And I don't have anything against high school kids circulating petitions if they are of a certain age that we consider to be the age of maturity for voting. What I would not like to see happen is, I would not like to see ten-year-olds circulating petitions or eight-year-olds circulating petitions, and at some point you do or you should establish an age limit for petition circulators. And it does make sense to make it the same as the age for voting, because the presumption is that if you are old enough to be involved in the process and vote an informed vote--you must be 18--the same assumptions should be made for circulating petitions. You need an age limit, and we could probably argue that 16 would be okay, but whatever it is, it should be there. I want to just take you back to what this bill, or this amendment, actually does, and it simply amends the bill to say that a petition circulator would have to sign an affidavit and sign to the fact that he or she is an elector of the state of Nebraska. That's all this amendment does. It...I think that small change would do more than anything else we could do to help prevent some of the kinds of things that have been going on. And people, once they learn that you're not going to be able to be prosecuted for what you do in the state of Nebraska, there are going to be violations of the law, and they could get more egregious as time goes on. I think it's time to take the bull by the horns. I come to you in all sincerity with this amendment. I'm not trying to harm the process; I'm trying to help it. And if we choose not to adopt this amendment, we still have the underlying bill. It won't be as good, but it will be, perhaps, a step forward. I would sincerely hope that you would adopt this amendment, and, Mr. President, I would ask for a call of the house, please. [LB39]

SENATOR LANGEMEIER: There has been a request to put the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB39]

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call. [LB39]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. Those senators outside the Chamber, please return. All unauthorized personnel please leave the floor. The house is under call. Senators Engel and Pahls, please return to the Chamber. The house is under call. Senator Schimek, when we are all present and accounted for, how do you wish to proceed? [LB39]

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SENATOR SCHIMEK: Machine vote. [LB39]

SENATOR LANGEMEIER: Thank you. All members are present and accounted for. You have heard the closing on AM1071. The question before the body is, shall AM1071 be adopted to LB39? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB39]

CLERK: 31 ayes, 9 nays, Mr. President, on the adoption of Senator Schimek's amendment. [LB39]

SENATOR LANGEMEIER: AM1071 is adopted. With that, I raise the call. [LB39]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB39]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB39]

SENATOR MCGILL: Mr. President, I move LB39 to E&R for engrossing. [LB39]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say yea. There has been a request for a board vote. The question before the body is, shall LB39 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB39]

CLERK: 30 ayes, 11 nays on the motion to advance the bill, Mr. President. [LB39]

SENATOR LANGEMEIER: LB39 does advance. Mr. Clerk, next item. [LB39]

CLERK: Mr. President, LB402. It's a bill by Senator Schimek. (Read title.) The bill was introduced on January 16 of last year, at that time referred to the Executive Board for public hearing. The bill was advanced to General File. The issue was discussed on the floor, Mr. President. When the Legislature left it, there was pending a motion by Senator Erdman. [LB402]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Schimek, you are recognized to reopen on LB402. [LB402]

SENATOR SCHIMEK: Thank you, Mr. President. I won't try to take a reopening time, but I would just at least like the opportunity to recap where we are on this particular bill. This is a redistricting bill that has been hanging around for a number of years. The Exec Board advanced it, it would be three years ago now, and then they advanced it again last year. And Senator Erdman will tell you that he voted against that, because he thought they ought to spend more time working on the bill before they advanced it. I

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think the bill the second time around was better, organized better, but the upshot of the bill is that I was trying to put in place something that would help guide a Legislature in 2011 when the next redistricting is done, because--and I think I've already said this on the floor--because the potential for having anybody here in 2011 who has ever been through redistricting before are...the potential is, maybe I should say, is Senator Brad Ashford and Senator "Cap" Dierks. They are the only ones who might be here, and that's not even a certainty, is it, Brad? (Laugh) And so...excuse me, Senator Ashford. Did you want to say something on the mike? [LB402]

SENATOR LANGEMEIER: Senator Ashford, would you yield to a question? [LB402]

SENATOR ASHFORD: Well, it's far from a certainty, Senator Schimek,... [LB402]

SENATOR SCHIMEK: (Laugh) Okay. [LB402]

SENATOR ASHFORD: ...is what I have mentioned, but just to follow with your comments. [LB402]

SENATOR SCHIMEK: Okay, thank you, Senator Ashford. And one of the things that we who are here this year but won't be here next year have tried to do is to provide as much help and mentoring and guidance, perhaps, as you wish us to do. So what I did with this bill three years ago now, to start off, was I decided that we ought to examine the Iowa model. And the Iowa model is more of an independent commission who puts together maps for the Legislature to consider. But even more than that, I wanted to put in place what this Legislature did in 2001, which I think--and I believe most people who were here think, and I think the public feels--was a much, much, much better process than it had been in 1991, and so I tried to combine the two. Well, when this bill came up on General File last year, it was an hour before lunch, there was almost no discussion on it. Senator Erdman and I are the only ones who talked and that was pretty boring, and I began--speak for myself, right?--I began to feel that the Iowa part of the bill was probably not going anywhere, that people didn't have an interest in doing that. But they perhaps would have an interest in putting some guidelines in place for how this Legislature would deal with that redistricting. And I went to Senator Erdman, who had filed a rules change, and I said to him, I would like to work with you to see if we can come to some kind of an accord. I don't necessarily think we're 100 percent there yet, but we've done some of the work on it, and we just have a basic philosophical difference, if you will, whether this should be in the rules or whether it should be in statute or whatever. And I hope that will be part of the discussion today, so you can decide what you think it should be. But basically, what we did in 2001--Senator Coordsen was the mastermind behind this, and he decided that we ought to establish a separate Redistricting Committee, as opposed to doing it as we had done in 1991 and 1981, when we had sent it to the Government Committee, and before that, the Miscellaneous Subjects Committee. So that's what this bill attempts to do, is establish a

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Redistricting Committee composed of nine members, no more than five people of any one political party. The Exec Board appoints those people, and part of the reason the Exec Board appoints those people is because...I think what Senator Coordsen and many others felt, it was better than assigning to a regular committee, which has multiple responsibilities during a session anyway. And you can get some of the leadership of the Legislature to take part in the Redistricting Committee. So I'm not going to go into any more detail than that at this point, but I appreciate the chance to open on it and try to sort of bring you back up to snuff in the discussion. And, Senator Erdman, would you like any of my time? I think he's going to introduce his amendment in a minute. So with that, Mr. President, thank you. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Schimek. As the Clerk has stated, we have an amendment offered by Senator Erdman. Senator Erdman, it is my understanding you'd like to withdraw your amendment, and so it is withdrawn. Mr. Clerk. [LB402]

CLERK: Senator, I'm going to withdraw, I think, as per your instructions, both your motion to recommit as well as AM425. [LB402]

SENATOR ERDMAN: The motion to recommit, AM425, withdrawn, please. [LB402]

CLERK: Right. Mr. President, Senator Schimek would move to amend the bill with AM1567. (Legislative Journal pages 240-242.) [LB402]

SENATOR LANGEMEIER: Senator Schimek, you are recognized to open on your amendment, AM1567. [LB402]

SENATOR SCHIMEK: Thank you, Mr. President and members. And if the body will be a little patient, I'm going to try to walk you through this amendment, because it hasn't been on your gadgets longer than today, and I think that you need to understand the particulars of it. As I mentioned, it establishes the Redistricting Committee, and it says that the Exec Board shall appoint, and it says that the Redistricting Committee will prepare a plan, basically, for distribution to the republic. It says that it will be established as a special committee of the Legislature, and it will exist only for the time needed for the redistricting process itself, except if there's a legal challenge as there was in 1991 to the plan adopted, then the committee can be reconstituted to see the Legislature through that legal process. It also says, as I mentioned, that the committee shall be composed of nine members of the Legislature, three from each Congressional district that exists on January 1 of each year ending in zero, because at that point you won't have done the redistricting yet, so you have to use the existing Congressional districts. It also says, then, that the members of the committee would be appointed in January of 2011 or any year ending in 1. Vacancies would be filled by the Exec Board. At the first meeting of the committee, it says the members shall select the chairperson and

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vice-chair of the opposite party. The committee shall receive staff support from the Office of the Director of Research, which has generally been the entity providing that, and after reviewing redistricting guidelines that have been used by the previous Legislature, that committee then shall adopt substantive and procedural guidelines. Now this is where Senator Erdman and I tend to differ. He tends to...well, first of all, I think it would be good to put the substantive guidelines themselves into statute, but he has argued successfully to me that putting it in the rules would be better, because they can be changed more easily. And those substantive guidelines have to do with what court cases there have been over the years that determines how much variation you can have between districts, and it's different for different entities. The committee then, at the earliest feasible time, has to make available those guidelines to the public, and then it introduces bills that can either be shell bills or that can be introduced according to our own rules later in the session--that's allowed under our rules--and then the...it goes on to explain what the director...what kind of information and when the director has to receive information from the bureau, the Census Bureau. And finally, it says that the committee shall formulate those plans. Now by plans we really mean maps that are available to the public. And the redistricting plans then are taken on the road, so to speak, at three public hearings across the state, and that would be one in each Congressional district. It says that video and other methods may be used, in addition to the procedure outlined for public hearings, but not in substitution for such procedures. And we might wish to talk about that a little bit because last time, we said we'd have public hearings, and because the census figures came so late to the Legislature, we were really pushed for time, and it was decided that we'd do video conferences in some cases, instead of actual public hearings. Senator Erdman argues, and I agree with him, these should be public hearings. You could do it without making the Legislature wait very long, if you had one hearing in Lincoln in the evening, a hearing in Omaha another evening, and then one somewhere partly in the western part of the state, probably midsection somewhere--somewhere between Grand Island and North Platte, probably. But there would be a hearing in the Third Congressional District. And I see Senator Hansen. Are you smiling about my explanation about the middle of the state? (Laugh) I believe North Platte is about the middle of the state, is it not? Okay, thank you. With that, Mr. President, I think I'm going to let Senator Erdman explain to you what his thinking is on this particular amendment and see what all of you think about this. Thank you very much. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Mr. Clerk. [LB402]

CLERK: Mr. President, Senator Erdman would move to amend Senator Schimek's amendment with AM1570. (Legislative Journal page 242.) [LB402]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Erdman, you are recognized to open with AM1570. [LB402]

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SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. AM1570 is designed to be a technical amendment, based on earlier conversations that Senator Schimek and I have had today, that clarifies the provisions in Section 6 of AM1567, relating to the duties and the authorities of the Division of Research. Specifically, it would clarify that the director, and this is the director of Legislative Research, shall develop internal procedures for the Office of Legislative Audit and Research, to assist in the preparation of redistricting plans on the basis of each federal decennial census. The second part of my amendment strikes on page 4, line 4, the provision that following the public hearing, the committee shall proceed to process legislative bills introduced under Section 5 of this act. Section 5 of this act simply says that the committee shall introduce legislative bills. So it's somewhat redundant and it's unnecessary, because legislative bills already have a process outlined in our rules, as well as different statutory or constitutional provisions, and so that's what the technical amendment generally does--it clarifies that the director of Research shall begin the internal procedures of the Office of Legislative Audit and Research to assist in the preparation of the redistricting plans. And the logic behind that is, is that as Senator Schimek pointed out, in the year 2010 the Legislative Research Office will begin gathering census data, they'll begin the process of updating their computer systems and technology to be prepared for the 2011 Legislative Session in which the actual process of drawing the plans and the maps will take place. So this would clarify that the programs that they're putting in place, as is written in Senator Schimek's bill, directly refers to the internal procedures that they would operate under, and this was offered to Senator Schimek this morning. I don't know if it was an oversight in the drafting or if she has a reason why it's not included. Senator Schimek is more than capable of articulating that, but I wanted to offer it to the Legislature because it's consistent with what we had discussed this morning, and it's consistent with what I believe the parameters of Section 6 of her amendment should be. Fundamentally, here's the disagreement: Senator Schimek would like to have this process outlined in our statute. The main logical reason that generally we have come to is the fact that she would like to make it harder for this process to be changed. And the reason that I cast it in that light is the fact that if it's in statute, those of you that will be here in 2011, in order to change any of these procedures, will have to go into statute in 2010 and do that or expedite a bill early in 2011 to change these procedures. I think it goes in our rules, and the history of our process would agree. And in fact, I've got a copy of the rules from 2001, I've got a copy of the rules amendment that I will offer to the Rules Committee. Regardless of whether Senator Schimek's amendment gets adopted or not, if the idea is to create the vehicle, the mechanism, then we'll have to do that this session in the rules anyways, because simply putting it in statute doesn't necessarily recognize that committee nor their processes in our rules. And we will have to either codify as we have done earlier this session with the State Tribal Relations Committee, or as we have done in the year 2001 in creating this originally. I have a copy of all the special committees that are currently listed in statute. None of their processes are outlined. They have general authorities that are granted. Obviously, the Legislative Council has an Executive Board, of which I am a

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member. We act on behalf of the Legislature when the Legislature is not in session. There are general authorities that are granted in statute to act on behalf of the Legislature, but the process that the Executive Board uses is generally in our rules. If the Executive Board hears a legislative bill, it's heard as any other legislative bill before any other committee that has that same jurisdiction, and it is treated as any other bill would. The Retirement Systems Committee is named in statute. Their duties are generally authorized, but it is similar to what the Executive Board would have, as opposed to what we would do in another committee that hears legislation. The State Tribal Relations Committee members are outlined, and obviously the Performance Audit Committee has additional responsibilities, and those are more similar to the Executive Board, based on their responsibilities, than say, another standing committee or select or special committee. Ironically or intentionally--I'm not sure yet, Senator Schimek--her amendment that would put this in statute and my rule proposal are nearly identical. It's the same language; it's the same process. If this amendment gets adopted, it will be the exact same language as I read the rule proposal that I'll present to the committee, and her amendment. The fundamental disagreement is between whether it should be in statute or in the rules. The process for this afternoon that I hope we will go through is 1) gather your input on what you would prefer, but Senator Schimek will have an opportunity for a vote on her amendment, which I will say unequivocally is better than her underlying bill. It's not the way we should do it, but it is better than her underlying bill. I will then offer an amendment that would retain the portions of her amendment that I think should be in statute, the grant of authority to the director of Research. Should that get adopted, Senator Schimek is free to do with her bill what she will, and I will subsequently offer an amendment to the Rules Committee for their consideration of adopting the same provisions of her amendment as a rule, not as a statute. If that's not clear, feel free to ask questions, come back and visit with me or Senator Schimek. The amendment before you, however, is a technical amendment designed to bring her amendment in line with our earlier discussions this morning. Thank you, Mr. President. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have now heard the opening on AM1570 to AM1567. The floor is now open for discussion. Senator Schimek, you are recognized. [LB402]

SENATOR SCHIMEK: Thank you, Mr. President and members. Senator Erdman, I just saw this technical amendment, if you will, a few minutes ago, and I want to make sure that I'm reading it right. I think it's okay, but I just want to run it past you. As I told you this morning, I don't process things quite as fast as you do. You go fast. On the first part of that amendment, where it says you would strike beginning with "programs" in line 16 through "preparing" in line 17, that's really referring back to the director of Research, and as it would read, with your amendment, it would just say that "shall develop redistricting plans," not "shall develop programs and procedures for preparing redistricting plans," and that's primarily because we would want the committee to do

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that, correct, Senator Erdman? May I ask for a response? [LB402]

SENATOR LANGEMEIER: Senator Erdman, would you yield to a question? [LB402]

SENATOR ERDMAN: I would. And the answer, Senator Schimek, is yes. The easy way to read this technical amendment is simply if you look at the next amendment that I have filed, it is actually written the way that this would be amended. It would say, under the direction of the committee, the director shall develop internal procedures for the Office of Legislative Audit and Research to assist in the preparation of the redistricting plans, as you have just stated. So it's what we discussed this morning, it's the same language that I offered to you in my amendment this morning, as well, and I think it's just an oversight to make sure that they reflect each other and our discussion. [LB402]

SENATOR SCHIMEK: Okay, and then the second part of that, where it says insert "internal procedures for the office of Legislative Audit and Research to assist in the preparation of," that gets inserted where you took out the previous language. [LB402]

SENATOR ERDMAN: Right after the word "develop" on line 16. [LB402]

SENATOR SCHIMEK: Okay. Okay, I just want to make sure that...the amendment, I think, is fine with me. One of the things that I would argue and where we have one of our fundamental disagreements is that this is not like any other committee. It's not like a select committee; it's not like a special committee. It is a committee that exists only for a very short duration, as you and I have already talked about. I'm just expressing on the floor what some of our conversations have already been, already. And because it's of such duration and because it only happens every ten years, that's why I think it should be in statute. And I don't know what the rest of the body feels at this point, but I would hope that they would agree with me. Thank you. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Seeing no other lights on, Senator Erdman, you are recognized to close on AM1570. [LB402]

SENATOR ERDMAN: Thank you, Mr. President and members. Again, the amendment before you, as Senator Schimek and I have discussed, is a technical amendment. It will bring her amendment in line with the discussions that we have had. It is consistent, as well, with the operational provisions of my next amendment. It is also, then, consistent with our effort to find common ground here. I'm going to support AM1570, and then I'm going to support AM1567, for the time being, and the reason is, is that LB402, as I have shared with Senator Schimek, in its current form, to quote what I shared with her at the Rules Committee, is an anchor. Should the amendment get adopted, I believe LB402 is in better form. I will then make a compelling case on why my proposal under AM1568 is better, and ultimately, because the two of us could not come to an agreement, we believe that this is the simplest way to provide you an opportunity. But I will be

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supporting AM1570 as well as AM1567. Then I will offer you my amendment, and at the end of the day we should have some resolution on the process that you would like to proceed with. Thank you, Mr. President. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have now heard the closing on AM1570. The question before the body is, shall AM1570 be adopted to AM1567? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB402]

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of Senator Erdman's amendment to Senator Schimek's amendment. [LB402]

SENATOR LANGEMEIER: AM1570 is adopted. We return now to discussion on AM1567. Seeing no lights on, Senator Schimek, you are recognized to close on AM1567. [LB402]

SENATOR SCHIMEK: Thank you, Mr. President and members. I think Senator Erdman said awhile ago something to the effect that it was sort of ironic and interesting that the rules proposal that he has and the bill that I have look just the same. Well, it's not that ironic when you consider we sat down and tried to hash out some of the details together so that we could bring to you what we thought was the best possible approach to this. I truly believe, as I just said awhile ago, that this bill does belong in statute. Obviously, it would be better to have it in the rules than to not have it at all, but because this is a very special committee, I think it should be in statute. Now Senator Erdman did convince me that if you go for this amendment, that I shouldn't include in this amendment the substantive rules, that we should leave that up to the Redistricting Committee to do, and we should have something in the rules to reflect that the Redistricting Committee would put together both the structural and the procedural rules. So, Mr. President, I don't know that we've had a long enough discussion on this, but maybe it's a pretty simple choice for you. If so, good. If you want something that's going to be a good guide, I believe it should be this, and I would ask for your vote on the amendment. Thank you. And we're probably, maybe going to have to have a call of the house again, Mr. President. [LB402]

SENATOR LANGEMEIER: There has been a request to put the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB402]

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call. [LB402]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. All senators located outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Heidemann, Engel, Nantkes, Pankonin, and Chambers, the house

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is under call. Please return to the Chamber and record your presence. All members are present and accounted for. Senator Schimek, how did you wish to proceed? [LB402]

SENATOR SCHIMEK: Machine vote. [LB402]

SENATOR LANGEMEIER: There has been a request for a machine vote. The question before the body is, shall AM1567 be adopted to LB402? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB402]

CLERK: 42 ayes, 0 nays on adoption of the amendment, Mr. President. [LB402]

SENATOR LANGEMEIER: AM1567 is adopted. With that, I raise the call. Mr. Clerk. [LB402]

CLERK: Senator Erdman would move to amend with AM1568. (Legislative Journal pages 242-243.) [LB402]

SENATOR LANGEMEIER: Senator Erdman, you are recognized to open on AM1568. [LB402]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. The amendment that you adopted from Senator Schimek in AM1567 contains nearly identical language as what is in AM1568 in Section 6. So if you took the time to read Senator Schimek's amendment, you haven't lost out on the discussion, even though I told you I had a different idea. What AM1568 does is it would put in statute that one section. It would authorize the director of Research of the Legislature, or his or her designee, under the direction of the Executive Board, the same responsibilities and opportunities and obligations that we have adopted in Senator Schimek's amendment in Section 6. The only difference between my amendment and Senator Schimek's Section 6 is that I don't refer to the committee in this process, because the committee will not be in existence in the year 2010. They will only be in existence in the year 2011. And that's designed in statute, if Senator Schimek's proposal goes forward, and that's also designed in the rule proposal that I would offer to the Rules Committee, and Senator Schimek is correct--this is a special situation. Even though this would be a special committee, they would only operate in the year ending in 1, or in the successful challenge of a redistricting plan that was created in that year. And it's very narrowly drawn. This amendment would simply put into statute what is, I believe, necessary or appropriate, to allow the director of Research to prepare for the upcoming redistricting process, because candidly, I think that's all that needs to be there. The members of the Legislature set the rules for our process and for our deliberations. We follow general guidelines, whether it's statutory requirements or constitutional requirements regarding the processing of legislation, but for the most part, we determine what that looks like. Those of us that were here in the year 2001 recall that there was some uniqueness to

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the process in 2001, due to the delay of information that we received from the Bureau of Census, and that the legislation wasn't introduced until April. It required that the Redistricting Committee then meet on an expedited process to make sure that we were able to fulfill the requirements of redistricting in that time line. They utilized all of the existing rules we currently have in place, with the addition of the grant of authority or the creation of them as an entity in our rules. If you put the process that Senator Schimek has outlined in her amendment in statute, it would be an unusual precedent. It's not unusual for committees to be named in statute. We have five or possibly six that are currently there. The only standing committee that is currently in statute is the Retirement Committee, and maybe that was a good thing at the time, because since then there have been attempts to try to consolidate them with other committees or get rid of them, and the intention was made, or the deliberate attempt was made and was successful to include that they be in the statute to avoid somebody trying to get rid of them because of the responsibility that they have in oversight for the investments of our state employees. This is a special committee. It would only be convened in the years ending in 1, and again, it would only be reconvened if the plans, any of the plans, were successfully challenged. And those that live in Madison County recall--I believe it was in 1991--there was a successful challenge that required that. So that provision is in the rule proposal. To be honest, we probably wouldn't even need to put this in statute, because we did not have this grant of authority in statute in 2001 when we did redistricting. There were efforts made prior to that to prepare, but it's my understanding that they were either done under the authority of the Executive Board, which is an existing right that we have, or they were offered under the rules and pursued under the rules. I think that's where this process has to go back to. The way that the rules are written and the way that I would propose them, again, would be similar to Senator Schimek's. As far as her amendment, I just believe she's got it in the wrong place. I believe history will show you that she's got it in the wrong place, and I believe that the members of the Legislature that will be here in the year 2011, should they pursue an alternative idea that they believe is more appropriate and better to meet the needs of Nebraskans in determining the redistricting process, will know that it's in the wrong place. However, it only takes 25 votes to change a statute. Granted, you have to do it three times and get the Governor's signature. To amend the permanent rules of the Nebraska Legislature requires 30 votes. So inherently the opportunity to change the rules, while it may be a one-time opportunity, has a higher threshold that one must meet. Ultimately this discussion is not, in my opinion, for those of us that will not be here to decide. It's the discussion for those of you that will be here or potentially have the opportunity to be here with reelection. The analogy that I gave to Senator Adams is this: Under Senator Schimek's proposal you have drafted all of your final documents and you have delivered them to your lawyer, and they keep them in the safe at their law firm. Under my proposal you have done the same thing and received a copy and placed them in the safe deposit box at your bank. They're both in secure locations, they both provide direction, but you have better access to the documents that you control in your safe deposit box than by going through the process of making sure that your lawyer

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gets an extra \$100 of billing so that he can go get your document out of their vault. I firmly believe that we can provide direction to the next legislature that deals with this issue, but I am adamantly against the idea that it's in statute. All of our processes regarding the Legislature and committees, with the exception of the Executive Board and the special duties of the Legislative Audit Committee, are in our rules. That's where they belong. And if you adopt AM1568, that will put the general authorities into statute authorizing the director of Legislative Research to prepare the internal policies. And again, under Senator Schimek's prior bill, or her original bill, her bill would have had them draft the plans. This amendment would clarify that they are only to develop the internal policies and to assist. This is a decision that the Legislature makes--all of it. Once the information has been gathered, it is up to the members of the Legislature that are sworn and elected to office to determine this process, and it should follow every other process, and it should be allowed to be amended, unlike the original bill of LB402. So that's the opportunity before you. I would encourage you to vote for AM1568. Should you do that, I will pursue a rules amendment with the committee that mirrors the language of Senator Schimek's amendment, because that's where it belongs. Thank you, Mr. President. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the opening on AM1568, offered by Senator Erdman to LB402. The floor is now open for discussion. Seeing no lights on, Senator Erdman, you're recognized to close on AM1568. [LB402]

SENATOR ERDMAN: I'm glad we've had this conversation. (Laughter) Maybe as I'm told and try to practice, actions speak louder than words. Let's proceed. AM1568, I believe, is narrowly drawn and again, puts into statute what needs to be in statute. What Senator Schimek has in LB402, as amended, I believe doesn't belong in our statutes--it belongs in our rules. I would encourage your adoption of AM1568. Mr. President, I would ask for a call of the house, and we'll proceed with a machine vote when all members are present. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Erdman. There has been a request to put the house under call. All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB402]

CLERK: 29 ayes, 0 nays, Mr. President, to place the house under call. [LB402]

SENATOR LANGEMEIER: The house is under call. All senators please record your presence. All senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Preister, please return to the Chamber. The house is under call. All senators are present or accounted for. The question is, shall AM1568 be adopted to LB402? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB402]

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CLERK: 25 ayes, 7 nays, Mr. President, on the adoption of Senator Erdman's amendment. [LB402]

SENATOR LANGEMEIER: AM1568 is adopted. Mr. Clerk. With that, I raise the call. [LB402]

CLERK: Mr. President, the next motion I have with respect to the bill, Senator Erdman. Senator Erdman would move to indefinitely postpone LB402. Did you want to... [LB402]

SENATOR ERDMAN: Mr. Clerk, I'd ask that motion be withdrawn. That was from previous... [LB402]

CLERK: Right. Yes, sir. [LB402]

SENATOR LANGEMEIER: It is withdrawn. Mr. Clerk. [LB402]

CLERK: Senator Chambers, you don't need yours any longer; is that right? I have nothing further on the bill at this time, Mr. President. [LB402]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We return now to discussion on LB402. Seeing no lights on, Senator Schimek, you are recognized to close on LB402. [LB402]

SENATOR SCHIMEK: Thank you, Mr. President and members. Even though I didn't agree with that last vote, I don't feel horrible about it, because I think that this Legislature is going to end up giving some direction to that Legislature that's here in 2011, and maybe some of you newbies won't even be here then. Who knows? But I think that we've at least taken a step forward. I would ask you to go ahead and advance the bill and let's see what happens. I'm hoping that we can have that rules discussion before very many days or months go by, that we don't want until the end of the session, because depending on what happens with that rules discussion would influence how I would feel about advancement of this bill. So I would just encourage you all to advance LB402 to Select File, and we might let it sit there until we can have that rules discussion. So thank you, Mr. President. [LB402]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the closing on LB402. The question before the body is, shall LB402 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB402]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB402. [LB402]

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SENATOR LANGEMEIER: LB402 does advance. Mr. Clerk, next item, LB205. [LB402 LB205]

CLERK: LB205, Mr. President, is a bill by Senator Howard. (Read title.) The bill was introduced on January 9 of last year. At that time it was referred to the Education Committee for public hearing. The bill was advanced to General File. [LB205]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Howard, you are recognized to open on LB205. [LB205]

SENATOR HOWARD: Thank you, Mr. President and members of the body. LB205 is a simple bill that requires all school districts across the state of Nebraska to adopt a policy to address the issue of bullying in their schools. The bill language respects local control and has the support of the Nebraska Department of Education, the Nebraska Association of School Boards, and the Nebraska State Education Association. The sole purpose of this bill is to ensure Nebraska schools are safe places for our children to learn. I've introduced this bill because I believe that in order to provide the best educational environment we can for children, every school must be a place that encourages scholarship and allows students to focus on learning. LB205 offers the means of increasing academic success for students without unduly burdening our school districts. In asking for your support today, I think it's important that I clearly describe what the bill does and does not do. As I've mentioned, this bill does require that every school district develop an antibullying policy, and school districts would be required to have the policy reviewed and approved by their school boards annually. LB205 does not prescribe a specific policy to address school districts nor does it require implementation of any specific educational curriculum. While the bill does not include enumerated class language, the intent is that the protections afforded under this bill apply to all children. And let me repeat that--all children. All children includes children being subjected to bullying based on their actual or perceived membership in any demographic group, based upon race, color, religion, national origin, disability, gender, or sexual orientation. It is important that policies developed as a result of this statute consider that bullying takes many forms, from verbal threats and intimidation to physical violence and numerous forms of electronic media. Regardless of the format, the message we want to send is that bullying is not acceptable. It is also the intent of this legislation that antibullying policies take into consideration the frequency and the severity of bullying acts when determining appropriate disciplinary action for students who violate these policies. The research is clear--children who are worried about getting through the day without intimidation, harassment, and possible physical violence are not able to concentrate on learning. Students who frequently experience bullying have lower GPAs than those who do not. In fact, one study reported a 10 percent drop in grade point average for students who were constantly harassed. Students who are bullied also have more frequent absences and are less likely than other students to plan to attend college. Bullying is not a new thing, but we are starting to change the way we address it.

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I think all of us can think back to a time when we either witnessed bullying, were the target of a bully, or maybe even some folks bullied other children. Bullying is not a rite of passage, and it's not a phase that all children go through. When adults fail to respond in bullying situations or when they react with a typical "kids will be kids" sort of attitude, they "revictimize" the children who have been the target of bullying. Adults who stand by and don't take action to stop bullying enable the bully to continue. Apathy not only harms the target of bullying, it sends a message to other children that there will be no help for them, if and when they are victimized, and it reinforces the inappropriate behavior of the bully. I don't believe that teachers and administrators want to ignore bullying behaviors in their schools, but I do believe that in some school districts teachers lack the guidance and the support of effectively addressing bullying in school. By requiring school districts to develop those guidelines, we give classroom teachers the tools they need to recognize problem behavior, to appropriately respond to these behaviors, and to restore a positive learning environment to the classroom. And I'd like to draw your attention to the committee notes on this, to the hearing that we had. The individuals that testified in support of this included students, parents, State Board of Education, teachers, the Quakers, to name a few. There were 21 individuals that came in and waited patiently to address this issue. This issue passed out of my Education Committee with the support of every member. We know that bullying can have devastating effects on the student, on the student's family, and yes, tragically, on communities. I ask for your support in passing this important legislation. Thank you. [LB205]

SENATOR LANGEMEIER: Thank you, Senator Howard. Mr. Clerk. [LB205]

CLERK: Mr. President, I do have other amendments filed to the bill. Senator Howard, as the principal introducer, your amendment would come first. Senator, you would move to amend your bill with AM1563. (Legislative Journal page 222.) [LB205]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Howard, you are recognized to open on AM1563. [LB205]

SENATOR HOWARD: Again, thank you, Mr. President and members of the body. This is a simple amendment. This bill was going to be heard on the floor on March 1 of last year, and many of you may remember that that was our blizzard day and many of us were not able to be present. So it was carried over, on General File, to this year. That necessitated the change in dates from 2007 to 2009, which is a realistic time frame for school districts to develop the policies to address this. Thank you. [LB205]

SENATOR LANGEMEIER: Thank you, Senator Howard. You have heard the opening on AM1563 offered to LB205. The floor is now open for discussion. Senator Pahls, you are recognized, followed by Wallman and Kopplin. [LB205]

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SENATOR PAHLS: Mr. President, members of the body, of course, Senator, I support the concept behind your bill. I just have a couple questions. [LB205]

SENATOR LANGEMEIER: Senator Howard, would you yield to a question? [LB205]

SENATOR HOWARD: Yes, I will. [LB205]

SENATOR PAHLS: I'm looking at your definition on line 2, under Section 1, for the purpose of this section. You did not change this, did you? Bullying means any ongoing pattern of physical, verbal, or electronic abuse? [LB205]

SENATOR HOWARD: No, that hasn't been changed. [LB205]

SENATOR PAHLS: Okay. Just...to me, I understand that these are sort of wide-open phrases, and I'm just curious what members of the body, what bullying means to them, because I've been in situations where people...on both sides of this issue, and certain people have some concerns. And I'm just going to call on maybe one or two senators, just to give me their idea when they think of bullying. And I'm going to look around. Senator Kruse. [LB205]

SENATOR LANGEMEIER: Senator Kruse, would you yield to a question? [LB205]

SENATOR KRUSE: Yes, I will. [LB205]

SENATOR PAHLS: Would you give me a definition...your definition of bullying? [LB205]

SENATOR KRUSE: Yes. Bullying would be intimidation by physical means, controlling a person, or by verbal means of putting a person down, or by group means of just ostracizing and what we might sometimes call taunting in a public place. Any of those, I think, would intimidate a student. [LB205]

SENATOR PAHLS: Thank you. I'm just looking around. Is Senator McGill here, by chance? [LB205]

SENATOR LANGEMEIER: Senator McGill, would you yield to a question? [LB205]

SENATOR PAHLS: What I'm looking for is people on both ends of the spectrum. Well, maybe I could ask Senator Howard. You give me your definition. [LB205]

SENATOR LANGEMEIER: Senator Howard, would you yield? [LB205]

SENATOR HOWARD: I will, and I appreciate you asking the question. Bullying is a behavior that constitutes repeated incidents. It really becomes a pattern of behavior, a

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relentless sort of torturing, if you will, behavior. It's intended to intimidate, offend, or humiliate a person. Bullying is a form of aggression, and while actions that can be obvious or subtle, it's intended. [LB205]

SENATOR PAHLS: Okay. Thank you. I think we probably have a general feeling of what bullying is about, but it is actually a very hard thing to capture, especially when you're dealing with a number of individuals involved in that. So the concern that I have is that we really understand what this is about, because if you look at this, chances are we shouldn't be involving our...we should be involving, but probably most of bullying is learned from the adults. Children, I do not believe, are born with some of these tendencies. I think they see adults modeling that. Another question I would like to ask Senator Howard. [LB205]

SENATOR LANGEMEIER: Senator Howard, would you yield? [LB205]

SENATOR HOWARD: Yes. [LB205]

SENATOR PAHLS: Senator, I asked you earlier, how many schools right now have a policy? [LB205]

SENATOR HOWARD: You did ask me that question, and I referred to...I questioned the State Board of Education representatives, and at this time they can't really give me a definition, because there isn't any statewide policy or any way to really assess that. I will say the larger school districts, OPS, Lincoln, do have policies in place to address it. Some of the smaller school districts, it's really not known if they do. [LB205]

SENATOR PAHLS: Okay, so in other words, this legislation would probably bring all schools into...on the same sheet of music, I should say. [LB205]

SENATOR HOWARD: It would give all schools the opportunity to formulate their own policy regarding bullying. [LB205]

SENATOR PAHLS: Okay, I'm to understand that the school... [LB205]

SENATOR LANGEMEIER: One minute. [LB205]

SENATOR PAHLS: ...districts or the individual schools will be developing their own policy. It will not be a statewide mandate. [LB205]

SENATOR HOWARD: Absolutely. This gives the parents, the teachers, the school districts in their areas the opportunity to look at what their particular problems are. It retains local control. And I'd like to add, I'm so very proud of all of the individuals that have worked on this--urban individuals, rural individuals--who have come together after

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three years of work to really put in place a proposal here that addresses both local control and statewide concern. [LB205]

SENATOR PAHLS: Just one more question. What has been really the big issue with these groups, since you have been involved with a number of them? [LB205]

SENATOR LANGEMEIER: Time. Thank you, Senator Pahls. Wishing to speak we have Senators Wallman, Kopplin, Stuthman, and Wightman. Senator Wallman, you are recognized. [LB205]

SENATOR WALLMAN: Thank you, Mr. President. Would you care to finish answering that question, Senator Howard? [LB205]

SENATOR LANGEMEIER: Senator Howard, would you yield to a question? [LB205]

SENATOR HOWARD: I'm sorry. Yes, I would. [LB205]

SENATOR WALLMAN: Would you like to finish answering his question? [LB205]

SENATOR HOWARD: Yes. [LB205]

SENATOR WALLMAN: Okay, I'll yield my time till...you can finish his question, if you like. [LB205]

SENATOR HOWARD: Major issue concerning bullying would be safety. It boils down to safety in schools. I'll put it in very simple terms. When I was parenting my children when they were younger, my concerns were that my children would be safe at school. When I'd drop them off in the morning, I would know that they were in an environment that really, they had the opportunity to learn. [LB205]

SENATOR WALLMAN: Thank you. I also think safety and also fear of going to school. You know, if you take school climate surveys, some kids are actually scared to go to school. And why is that? Well, some of it is testing, but a lot of it is bullying. So I know it's hard to get a handle on this, but it's racism, it's non-English-speaking students. They're going to get bullied. I was a non-English-speaking student, and I tell you what--you're going to get picked on till you figure out a way to deal with it yourself. And so in my day, maybe parents taught their children how to deal with bullies better, but now, we have a situation where we see violence all across our state, which is probably caused sometime in the elementary or middle school or high school by bullying. And they deal with it with weapons, which we never had. So it's a safety issue and also it's an educational issue, and we have a growing number of home schools, parochial schools, and I talked to some of these people. Why is this? Safety and bullying issues. If you have a child that don't fit the norm, maybe ultra bright, maybe he doesn't look too

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good, they keep the child at home and it will be...it's probably a child we should have in public school. I'm a public school advocate, but we have to make sure that we have safety, and if we can do a little bit, and I thank Senator Howard for producing this bill. And that's all I have to say, Mr. President. [LB205]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Kopplin, you are recognized. [LB205]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. I'm very supportive of Senator Howard's efforts to tackle the problem of bullying. I have a number of observations that I'm...during this debate would like to bring out, both in support and pointing out potential problems. As parents you love, nourish, and protect that child of yours. You laugh in the good times and you cry in the bad. Then all at once it seems you're delivering him to school and leaving him with a teacher, a new person in his life, another adult who will laugh in the good times and cry in the bad. But as apprehensive as you are, you leave the child in the teacher's care, trusting the system, and you go about your business along with the parents of another 20 or so children, knowing that the teacher will become the next hero in that child's life. As an educational system, we've provided the teacher with so many tools to draw upon--curriculum planning, behavior management sessions, achievement assessments, books, supplies, top-notch facilities. And so you hope for, pray for, the teacher who can put her arms around the scruffiest, most ill-kempt child in the room and say with all sincerity, I'm glad you're here--the teacher who will make every student feel as if they are the most important person in the world, because they are. The teacher has quite a job ahead. After unbundling the children from their boots and ski masks and snowsuits, after taking lunch counts and sorting out tickets, after collecting book money and reminding children their permission slips are due, there may be actually time to teach. And then it's time to rebundle the children in their boots and ski masks and snowsuits, and after tugging and pulling boots that are too small over shoes that are too big, the child looks up at the teacher and says, these aren't my boots. So the teacher pulls and tugs to remove the too-small boots from the too-big feet and the child looks at the boots and says, they're my brother's, but Mom lets me wear them. (Laughter) But somehow, everyone makes it. The child becomes a young adult, the teacher becomes a master teacher, the parents become master parents, and wouldn't it be great if that's the way life was. It is not. Over the years in all the parent conferences I've been involved with, always prepared to talk about schoolwork and curriculum and assessments, I found that parents most wanted to know, are my children happy, are my children safe? And they are not. Schools do a good job, but violence happens, cruelty happens. It may not be easy to pass this bill, even though 32 states now have antibullying legislation. Nearly 75 percent of middle school children report being involved in bullying activities, either on the receiving end or the doling out end. Usually, victims are... [LB205]

SENATOR LANGEMEIER: One minute. [LB205]

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SENATOR KOPPLIN: ...are the children with handicaps, those who appear different, and those you can't do as well as others. Children often participate because of peer pressure to do so. It can take the form of teasing or shunning or violence. Each episode must be acted upon, taking valuable education time for all. This bill simply requires all schools to have bullying policy, but it will meet opposition because many schools already have a policy and strengthening it could invite lawsuits over policies so difficult to enforce. Thank you, Mr. President. [LB205]

SENATOR LANGEMEIER: Thank you, Senator Kopplin. Senator Stuthman, you are recognized. [LB205]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I have a very deep concern with safety of children at schools and the possibility of bullying that does take place. But I did some research today, as far as the schools in my district, as to, you know, are they in favor of this bill? Are they concerned about bullying? Yes, they are. All of the schools are concerned about bullying. But they did say that they take care of it through their harassment policy that they do have filed with their school. We have one school that called and said that they have that also covered in their handbook. And I think here we're at a situation again where, you know, we as a state, are we going to try to, you know, set up a regulation that they have to follow? I think our teachers, our administrations, and our school boards have the intelligence and the knowledge and the concern for the safety of the kids in their school that they will adopt their own type of policy. I have two teachers in my family. I have a son and a daughter that are both teachers. Things are a lot different right now in the schools. Children play on the playground. There is always a teacher or an adult supervising them at that time. It wasn't that way when I was in school. When we were out for recess, we were on our own. We did about whatever we wanted to. But I think with the fact that there has been bullying occurring, I think these things are taken care of through the school, through the administration. So I don't know whether we really need, you know, a bill like this. Yes, it's okay to discuss it, to debate it, get it out on the surface, let the people know that we are concerned about the students and the bullying. But I think if a school isn't addressing bullying, something needs to be done, and that should be done by the school board and the parents getting to the school board. That's where I think it needs to be addressed. So I think in my area, the majority of them that responded--I mean all of those that responded, except one--said they have it taken care of in their own handbook and their own harassment policy. Thank you. [LB205]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Mr. Clerk, items for the record? [LB205]

CLERK: Mr. President, new bills. (Read LB985-987 by title for the first time.) I have a hearing notice from the Agriculture Committee, signed by Senator Erdman. (Legislative

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Journal pages 243-244.) [LB985 LB986 LB987]

And I do have a priority motion, Mr. President. Senator Flood would move to adjourn until Wednesday morning, January 16, at 9 a.m.

SENATOR LANGEMEIER: You have heard the motion to adjourn until Wednesday morning, January 16, at 9 a.m. All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.