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Floor Debate
April 08, 2008

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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-fifth day of the One Hundredth Legislature, Second Session. Our chaplain today is Senator Engel. Please rise.

SENATOR ENGEL: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Engel. Members, please check in. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

SPEAKER FLOOD: Are there any messages, reports, or announcements?

CLERK: Two resolutions: LR385, introduced by the Government Committee, calling for an interim study; and LR386 by Senator Howard. That will be laid over. That's all that I had, Mr. President. (Legislative Journal pages 1355-1356.) [LR385 LR386]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to Final Reading. Members, please take your seats. Again, we now proceed to Final Reading. Members, please take your seats. Mr. Clerk, we now move to LB736 on Final Reading. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB736]

ASSISTANT CLERK: 35 ayes, 2 nays to dispense with the at-large reading, Mr. President. [LB736]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB736]

ASSISTANT CLERK: (Read title of LB736.) [LB736]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied

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with, the question is, shall LB736 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB736]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1357.) Vote is 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting. [LB736]

SPEAKER FLOOD: LB736 passes. Mr. Clerk, LB736A. [LB736 LB736A]

ASSISTANT CLERK: (Read LB736A on Final Reading.) [LB736A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB736A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB736A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1357-1358.) The vote is 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting, Mr. President. [LB736A]

SPEAKER FLOOD: LB736A passes. Mr. Clerk, LB916. [LB736A LB916]

ASSISTANT CLERK: Mr. President, motion on the desk: Senator Rogert would move to return LB916 to Select File for a specific amendment, that being to strike the enacting clause. (FA270, Legislative Journal page 1358.) [LB916]

SPEAKER FLOOD: Senator Rogert, you're recognized to open on your amendment. [LB916]

SENATOR ROBERT: Thank you, Mr. President. Good morning, members of the body. And on this gloomy day, Senator White said I needed to something to brighten up everybody's day, so I thought I'd hold up this bill. LB916 is, as you all know, a revenue bill that expands our tax base on several things. One of them happens to be sales tax on digital products, and I just wanted to visit with you all a little bit about that. Senator Janssen did a marvelous job of speaking about this bill as it went through General and Select File, and he hypnotized everybody and glazed us all over, and not a question was asked. And that's how you're supposed to get a bill through--I congratulate him to that. As you go a little further into it, I have some concerns that this will tax some things that maybe shouldn't be taxed, and it may be another tax increase upon the citizens of our state and those that are hardworking and need the money. They're not large taxes, but it adds to it. I handed out a couple of handouts to everybody this morning, and one of them mentioned that Nebraska is number one in the nation on cell phone taxes, and it's because of a few things. One of them happens to be our Universal Service Fund, which I have no problem with. That fund is used to build our infrastructure across the state of Nebraska, in terms of cell service towers and those types of things, and I think

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that's great. The other one happens to be state and local charges totaling 18.35 percent. This would have a potential of adding to that. In my opinion and in...and it's actually a court opinion, anything that you can go buy at a store, that you in turn change and buy on the Internet, such as clothes at Walmart.com, CDs or books at Amazon.com, they have the right and probably the necessity to be sales taxed...be taxed on sales tax. There are products that you buy on your cell phones and other media versions on your computers that you can't go buy at a store. This would potentially add a sales tax to those types of products. In my opinion, that is...it's not what we're looking to do here. It expands the tax base on kids, young adults, folks that maybe don't have the ability or the need to pay extra taxes when it comes down to it. Some of the language in the bill I think is a little overreaching and unnecessary. In a 2002 court case, in [ABI v. Egr](#), it's clearly said that digital items, digital equivalence to paper products are subject to a tax. So we have the ability to tax these things that we're just putting into statute with this bill. The second piece of paper I handed out was an article in the paper last summer. Google is a very large, very high-tech, very high-paying, growing company in the United States. It's the type of job that I wish to create for more people my age and younger in the state of Nebraska. It is high-tech, it's highly desirable, it's innovative, it's a new type of technology, and they went to the Iowa legislature last year, as they were considering a measure such as this, and they said, if you enact this sales tax on digital products, we will not locate in your state. They in turn left that portion of the sales tax out of their laws, and Google located in Council Bluffs. And why Council Bluffs? And I circled it on the first page. It says, a large college-educated population in nearby Omaha, and combine that with tax incentives, and Iowa makes perfect sense. If you flip it over on the back, it says they will invest at least \$200 million in the state, an estimated \$6 million in sales taxes just from the things that they purchase to build and use and sell their products. So I think as we go through and we're trying to figure out ways to lower taxes on our citizens, yet create good jobs and economic development within our state, there's a possibility that a couple of the provisions within LB916, they could be anti those types of things. And it's, you know, it's of my opinion that we need to watch out for those things, look through a little bit, a couple of these bills, a little bit deeper, maybe revisit this as we go through and come up with some ways to limit, you know, more narrowly define what our tax base includes. If Senator Janssen has anything to reply, I will give him some time. Otherwise, I'll let that go. Thanks, Mr. President. [LB916]

SPEAKER FLOOD: Thank you, Senator Rogert. There are no other lights on. You're recognized to close. [LB916]

SENATOR ROBERT: Thank you, Mr. President. I'll withdraw the amendment. [LB916]

SPEAKER FLOOD: It is withdrawn. Mr. Clerk, the first vote this morning is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB916]

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ASSISTANT CLERK: 30 ayes, 9 nays to dispense with the at-large reading, Mr. President. [LB916]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB916]

ASSISTANT CLERK: (Read title of LB916.) [LB916]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB916 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB916]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1359.) The vote is 34 ayes, 4 nays, 6 present and not voting, 5 excused and not voting, Mr. President. [LB916]

SPEAKER FLOOD: LB916 passes. Mr. Clerk, we now move to LB965E. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB916 LB965]

ASSISTANT CLERK: 33 ayes, 5 nays to dispense with the at-large reading, Mr. President. [LB965]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB965]

ASSISTANT CLERK: (Read title of LB965.) [LB965]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB965E pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB965]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1360.) The vote is 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting, Mr. President. [LB965]

SPEAKER FLOOD: LB965E passes with the emergency clause attached. (Doctor of the day introduced.) Mr. Clerk, we now move to LB1058E. [LB965 LB1058]

ASSISTANT CLERK: (Read LB1058 on Final Reading.) [LB1058]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1058E pass with the emergency clause attached? All

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those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1058]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1361.) The vote is 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President. [LB1058]

SPEAKER FLOOD: LB1058E passes with the emergency clause attached. We now proceed to LB1068. [LB1058 LB1068]

ASSISTANT CLERK: (Read LB1068 on Final Reading.) [LB1068]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1068 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1068]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1361-1362.) The vote is 46 ayes, 0 nays, 3 excused and not voting. [LB1068]

SPEAKER FLOOD: LB1068 passes. Mr. Clerk, we now move to LB1154, where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. [LB1068 LB1154]

CLERK: 33 ayes, 4 nays to dispense with the at-large reading. [LB1154]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB1154]

CLERK: (Read title of LB1154.) [LB1154]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1154 pass? All those in favor vote aye; all those opposed vote nay. Senator Friend, please return to your seat area, or I'll have the Sergeant at Arms put you there. (Laughter) Mr. Clerk, please record. [LB1154]

CLERK: (Record vote read, Legislative Journal pages 1362-1363.) 30 ayes, 15 nays, 1 present and not voting, 3 excused and not voting, Mr. President. [LB1154]

SPEAKER FLOOD: LB1154 passes. Mr. Clerk, LB1154A. [LB1154 LB1154A]

CLERK: (Read LB1154A on Final Reading.) [LB1154A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied

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with, the question is, shall LB1154A pass? All those in favor vote aye; all those opposed vote nay. Have those voted who care to? Mr. Clerk, please record. [LB1154A]

CLERK: (Record vote read, Legislative Journal pages 1363-1364.) 32 ayes, 9 nays, 5 present and not voting, 3 excused and not voting, Mr. President. [LB1154A]

SPEAKER FLOOD: LB1154A passes. Mr. Clerk. [LB1154A]

CLERK: Mr. President, with respect to LB1001, Senator White would move to return the bill for a specific amendment, AM2715. (Legislative Journal page 1364.) [LB1001]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator White, you're recognized to open on your amendment. [LB1001]

SENATOR WHITE: Thank you, Mr. Speaker. Ladies and gentlemen of the body, we are facing pressure on the green sheet. The fiscal note on this bill is not insignificant. In recognition of that, I asked the Speaker if he would accept this motion, in order to postpone the date that this bill becomes effective by one year. In addition, I propose to limit the ability of any electrical providing utility to one...the previous year's sales tax receipts--5 percent of the previous sales tax receipts. This would prevent spiking. Both of these will have a substantial impact on the fiscal note, especially in the '08-09 fiscal year...or '09-10 fiscal year. Accordingly, I would ask your support for this motion. It reduces the pressure on the green sheet. It will allow other senators' bills more room so that they can also seek funding for many of the important items that have come up. So I'd ask you to vote for this. This amendment simply does two things: First, it will postpone the effective date of this bill to July 1, 2009; and second, it will prevent spiking, which is it will limit each participating electrical services group to the previous year...5 percent of the previous year's sales tax collection. So I thank you and ask for your support for this amendment, to return it to Select File. [LB1001]

SPEAKER FLOOD: Thank you, Senator White. There are no other lights on. You're recognized to close. Senator White waives closing. The question for the body is, should we return LB1001 to Select File for a specific amendment, that being AM2715? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1001]

CLERK: 41 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB1001]

SPEAKER FLOOD: LB1001 is returned to Select File for a specific amendment. Senator White, you're recognized to open on AM2715. [LB1001]

SENATOR WHITE: Thank you, my fellow members. I'd ask you now to vote for the amendment. It, again, will take the pressure off the green sheet substantially, and allow adequate funds for other matters which are also very important. So I'd ask your support

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on this amendment. [LB1001]

SPEAKER FLOOD: Thank you, Senator White. Senator Chambers, you're recognized to discuss AM2715. [LB1001]

SENATOR CHAMBERS: Thank you. Mr. President, Senator White, members of the Legislature, I've looked over this provision and I have nothing additional to add. Thank you. [LB1001]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Fulton. [LB1001]

SENATOR FULTON: (Laugh) Thank you, Mr. President. Thank you, Senator Chambers. I just...could I ask Senator White a question? [LB1001]

SPEAKER FLOOD: Senator White, will you yield to a question from Senator Fulton? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR FULTON: Could you give an idea? I haven't been able to review the amendment. Can you give an idea what this does to the fiscal note? [LB1001]

SENATOR WHITE: Yes, it would postpone any cost for a full year. The first year...the following year the fiscal note would be approximately \$2.3 million during the ramp-up. Thereafter, depending on how aggressive we are, both in actually having utilities participate--and also, you remember this bill has an aspect where it collects monies currently not being paid by people who should be paying them, as independent contractors--depending on how those work, it could in future years out, three or four years out, be as much as \$4 million a year. What this amendment simply does is we postpone it for a full year to give us time to make accommodations in the budget in the years to follow. But also, then, it also prevents spiking. The bill had a hole in it we became of, through the good offices of the Department of Revenue, that it might have been possible for some utilities to try to go back further than the one previous year on amounts of sales tax collected, thereby having a larger lump sum and increasing the costs. This bill closes such a loophole, and it ensures there will be no spiking. Again, Senator, those fiscal notes assume what are absolutely improbable, and that is 100 percent full participation by all electrical utilities. Actual costs should be much, much, much--by many (inaudible). [LB1001]

SENATOR FULTON: Okay. Do you anticipate on the...so I think I understand what you're saying on the revenue side. Do you anticipate an increase in...by closing this loophole, will the appropriations side actually increase? I guess, is there anything that's not appearing on the fiscal note that you could explain or advocate for, just by way of

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intuition, with regard to this bill? [LB1001]

SENATOR WHITE: All this will do is reduce the amount of expenditures. It will not cost additional money to apply. It won't cost anything additional. It reduces the fiscal impact. These are all savings, Senator. [LB1001]

SENATOR FULTON: So this is all going to be on the revenue side, though? [LB1001]

SENATOR WHITE: Yes. It reduces...well, yes. [LB1001]

SENATOR FULTON: Okay. Okay, thank you, Senator White. Thank you, Mr. President. [LB1001]

SPEAKER FLOOD: Thank you, Senator Fulton. There are no other lights on. Senator White, you're recognized to close on AM2715. [LB1001]

SENATOR WHITE: I'd urge the body to please advance the motion. Again, it will allow more money for other bills, A bills as well, and allows us time for more planning. Thank you. [LB1001]

SPEAKER FLOOD: Thank you, Senator White. You've heard the closing on AM2715. The question before the body is, should AM2715 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1001]

CLERK: 43 ayes, 0 nays, Mr. President, to adopt the Select File amendment. [LB1001]

SPEAKER FLOOD: AM2715 is adopted. There are no other amendments, Mr. Clerk, just to verify? [LB1001]

CLERK: I have nothing further pending, Mr. President. [LB1001]

SPEAKER FLOOD: Senator McGill for a motion. [LB1001]

SENATOR MCGILL: Mr. President, I move LB1001 to E&R for engrossing. [LB1001]

SPEAKER FLOOD: You've heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. LB1001 is readvanced to E&R Final. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB736, LB736A, LB916, LB965E, LB1058E, LB1068, and LB1154, as well as LR351. (Also signed LB1154A.) We will stand at ease in a moment as I finish making signatures. [LB1001 LB736 LB736A LB916 LB965 LB1058 LB1068 LB1154 LB1154A LR351]

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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Continuing on with today's agenda, we go to legislative resolutions, LR283. Mr. Clerk. [LR283]

CLERK: Mr. President, LR283 was originally introduced by Senator Flood. It calls upon the Legislature to ask the Executive Board of the Legislative Council to meet and appoint a special committee of the Legislature to be known as the Developmental Disabilities Special Investigating Committee. Pursuant to the resolution's introduction, the resolution was referred for purposes of conducting a public hearing. The Executive Board conducted that public hearing, reported the resolution back to the Legislature for further consideration. There are committee amendments pending, Mr. President. (AM2582, Legislative Journal page 1146.) [LR283]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Flood, you're recognized to open on your legislative resolution, LR283. [LR283]

SPEAKER FLOOD: Thank you, Mr. President and members. As a premise to my remarks on LR283, I would hope that we could move this rather quickly today, because as Speaker it's my hope that we can do as much work as possible before 2:30, given the limited time frame we have on General File. I do think we've discussed the Beatrice situation and developmental disabilities several times, and with that, I'll be brief in my comments, hoping that we can move this quickly this morning. I introduced this resolution because the safety and quality of life of those at BSDC should be of the utmost concern to the state of Nebraska, and it is clear that the facility has reached a critical point in its ability to care for and protect its residents. It is time for the legislative branch to take ownership in this matter. LR283 calls for the Executive Board to appoint a seven-member special committee, to be known as the Developmental Disabilities Special Investigative Committee of the Legislature. The committee would be authorized to study, 1) the quality of care and related staffing issues at BSDC, 2) the placement and quality of care statewide for the developmentally disabled, and 3) the Department of Health and Human Services with respect to facilities for the developmentally disabled. Because this issue at BSDC touches on the subject matter of several different standing committees, it is appropriate that the committee be comprised of members representing a cross-section of this body. This will be a multidiscipline investigation. The resolution as introduced authorizes the Executive Board to provide the committee with a legal counsel, committee clerk, and other staff from existing legislative staff. The committee would be authorized to hold hearings and issue subpoenas. It would be expected to issue a report with its findings and recommendations to the Legislature in December of 2008. There is a committee amendment that makes some minor changes to LR283, and I support the committee's work. Thank you, Mr. President. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Flood. As the Clerk has stated, there

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are committee amendments offered by the Executive Committee. Senator Engel, as Chair of that committee, you're recognized to open on the committee amendment. [LR283]

SENATOR ENGEL: Mr. President, members of the body, the committee amendment to LR283 has been drafted as a white copy, which replaces the bill, but actually only makes the following changes to the original version: It authorizes the Executive Board to hire outside legal counsel, consultants, and investigators, as required by the Developmental Disabilities Special Investigative Committee. The amendment directs the special committee, as part of the study of the Department of Health and Human Services, to look into the question of how and why services to the developmentally disabled were permitted to decline to the current level, as documented by the United States Justice Department report. And the amendment further directs the committee to utilize existing studies, reports, and legislation developed to address these current conditions. It calls for the appointment of a Vice Chairperson from the membership of the committee, and finally, it amends the due date of the report from December 31, 2008, to December 15, 2008. And these changes clarify and strengthen LR283, and I ask for your support. Thank you. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Engel. (Visitors introduced.) You have heard the opening on LR283 and AM2582, the committee amendments offered. The floor is now open for discussion. Those wishing to speak, we have Senators Schimek, Pahls, Wallman, and Gay. Senator Schimek, you're recognized. [LR283]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I don't intend to take much time, but I do have a couple of questions, either for Senator Engel, as Chair of the committee, or Senator Flood. If I might ask Senator Engel or Senator Flood. [LR283]

SENATOR LANGEMEIER: Senator Flood, would you yield? Senator Flood, would you yield to a question? [LR283]

SPEAKER FLOOD: Yes. [LR283]

SENATOR SCHIMEK: Senator Flood, I just want to make certain, for the record, what we're doing here. On page 3, on line...it doesn't give the line, actually, but the language says that the committee shall also investigate, and then it goes down to "options for service provisions for current residents of the Beatrice State Developmental Center at other 24-hour care facilities in the state." I want to ask you a question about that particular portion. Does that mean we would be looking at veterans' homes, at regional centers,... [LR283]

SPEAKER FLOOD: No. [LR283]

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SENATOR SCHIMEK: ...or what does that mean? [LR283]

SPEAKER FLOOD: Not veterans' homes, I want to be clear. The reason that was placed in there is that currently at the Hastings Regional Center there's a 14-bed unit known as the Bridges unit, where we have some of the more physically aggressive and violent developmentally disabled residents of the state at a facility at Hastings Regional Center. And in reading the Department of Justice report, I noted with interest that a number of those residents at BSDC had mental illness challenges, and they were taking psychotropic drugs. And I guess, in the event that our investigation determines that their dually diagnosed between developmental disability and cooccurring mental illness, is there an opportunity to place a mentally ill resident that happens to also have the coconcurrent diagnosis of developmentally disabled status into one of our other 24-hour care facilities at Lincoln or Norfolk? But most likely the reason that this is in there, from my standpoint as the drafter, is the program that's currently in place for physically aggressive and violent developmentally disabled at the Hastings Regional Center. [LR283]

SENATOR SCHIMEK: Okay, thank you for that explanation. And then the next part of that paragraph says, "shall also investigate the staffing practices at 24-hour care facilities and the relationship of those practices to the quality of care provided to the developmentally disabled." So that means indeed that this is going to focus entirely on the developmentally disabled, and we won't be looking at any of these issues in any of the other 24-hour care facilities. Is that correct? [LR283]

SPEAKER FLOOD: I believe it was written intentionally broad on that point, to look at what has happened at Beatrice with regard to mandatory overtime, but find out what the Department of Health and Human Services' policy is in regard to other 24-hour care facilities and the impact it is having, for instance, at Lincoln Regional Center and other places. It's my intention that looking at Beatrice, determining what the policy is on mandatory overtime, it could also be crosschecked and referenced with the other 24-hour care facilities, and we could articulate a policy next session as to what is appropriate for mandatory overtime, if at all. [LR283]

SENATOR SCHIMEK: Good. I was hoping that that would be your answer, and I just wanted to get that into the record. So thank you very much, Speaker Flood. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Wallman, you're recognized. [LR283]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. And as you realize, BSDC is in my district. A lot of good people do work there, and the problems that have been identified at BSDC are not new problems. We did not get to this

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overnight. I believe that this Legislature now recognizes the problems that we face, and I hope the body is prepared to do what it takes to inspire culture, mutual respect, and caring for both the residents and the staff of BSDC. They do have a lot of good staff, and like I said, this is not an issue that just arrived on our doorsteps yesterday. Before us are longstanding issues that will not be resolved with the passage of this resolution alone. This is a first step. Next step: We have to have a firm commitment to better understand the entire statewide system of developmentally disability care. Through this commitment we can create a new system of care where residents and staff, they should be safe, they should be respected and, above all, encouraged. This process will be long, but it is a necessary process and it's worth it. And I want to thank the Legislature for bringing this forth, and thank you, Mr. President. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Gay, you're recognized. [LR283]

SENATOR GAY: Thank you, Mr. President. I wanted to thank Speaker Flood and the Executive Committee for bringing this to the Legislature. I think it's a good idea. Speaker Flood had talked many times about the Legislature looking at our own problems instead of outside agencies, and I think this does that. By appointing senators to look at the problem, we'll get a more comprehensive view in different areas, whether it's labor or appropriations, or whoever may be on the committee. I think we're getting a comprehensive view of how to take care of the problem. We all know the problems, and we all want to fix the problems, and this is a great way to look at it. I think it's short enough that they can get down to work, get business done, come back with some tough decisions next year that are probably going to have to be made. And that may include funding issues or changes in programs, or whatever the situation may be. But I just wanted to thank them for bringing this to the body and encourage everyone's support. Thank you, Mr. President. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Howard, you're recognized, followed by Senator Dubas. [LR283]

SENATOR HOWARD: Thank you. Thank you, Mr. President and members of the body. And I want to join in, in thanking Speaker Flood for this resolution, and I hope that this will be the first step in looking at the issues within our public care system. We have to be diligent in providing a safety net that really works, and this certainly includes looking at staffing issues, not only within our 24-hour system, but within our child protection system, within our foster care system. When we are serious about providing a system that meets the needs of the families that come to us in the most vulnerable of situations, and protecting our children in foster care, and preventing child abuse, then we will certainly be on the road to success with this in Nebraska. Thank you so much. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Dubas, you're

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recognized, followed by Senator Johnson. [LR283]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I, too, would like to echo my thanks to the Speaker for bringing this resolution forward. This is a critical issue to our state, and it's about far more than just the situation that is occurring in Beatrice. And we have community-based care in this state, but we are struggling with making sure that this community-based service is supported financially, as well as with adequate staff and adequate services. And so I am extremely hopeful that through this study of what is occurring in Beatrice, we are going to come up with some very positive solutions, some very positive changes, for not only Beatrice but community-based care in general. The developmentally disabled deserve our attention, they deserve our support, and I think this resolution is a huge step in the right direction. So thank you. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Johnson, you're recognized. [LR283]

SENATOR JOHNSON: Thank you, Mr. President. Again, I'd like to thank Senator Flood for the resolution and strongly support this. One of the things that we must remember as we go through this process is to keep an entirely open mind, not go into this with preconceived ideas that community services, for instance, are the whole answer. They are actually harder to regulate and keep track of, and make sure that they are doing the right thing and doing it in a responsible way. However, we certainly have seen the problems with an institutional-based system, as well. So with this, let's keep an open mind for the betterment of the patient, and that's what counts. Let's just remember to put the patients or clients first, as we look at this and what's best for them. Thank you. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Nelson, you're recognized, followed by Senator Nantkes. [LR283]

SENATOR NELSON: Thank you, Mr. President, members of the body. I would like to ask Senator Engel a couple of questions. [LR283]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LR283]

SENATOR ENGEL: Yes, I will. [LR283]

SENATOR NELSON: Thank you, Senator Engel. I'm looking at the resolution as it was originally drafted. The bottom of page 3, in paragraph 2 there, it kind of enumerates what the committee will...or, yes, the committee will look at, and it winds up pretty much by saying, about four lines up there--they're not numbered--the committee shall also study the Department of Health and Human Services with respect to such facilities,

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referring to what went before. Then I notice that the committee, in its amendment, on page 3, starting with line 18,...do you have that in front of you? [LR283]

SENATOR ENGEL: I have that. Yes, I do, uh-huh. [LR283]

SENATOR NELSON: Okay. It expands it to say, "the Department of Health and Human Services, with respect to such facilities, including how and why services to the developmentally disabled were permitted to decline to the current level as documented by the United States Department of Justice report." I'm wondering if you could comment on why that was added. [LR283]

SENATOR ENGEL: Well, the reason it was added, because when we got the net report...Mr. Speaker, members. In response to that, the reason that was added, and Senator Flood can elaborate on that, but the reason it was added, because the reports came back from the federal government of what was happening down there, and I think we...in order to fix something, I think you've got to find out what caused it to deteriorate as far as it went. And so I think that's why we put that in there,... [LR283]

SENATOR NELSON: Uh-huh. [LR283]

SENATOR ENGEL: ...to study that and find out why all these things happened, make sure they don't happen again. So I think in order to correct your mistakes, you have to know what the mistakes and how they came to be. [LR283]

SENATOR NELSON: Well, I can appreciate that. It just would be my hope that we look forward here in examining all the other possibilities and whether...for instance, whether Beatrice should be closed or not, and not spend a lot of time just pointing figures and blame at what might have happened before. [LR283]

SENATOR ENGEL: Well, I think with...in response to that, I think what Senator Johnson said, let's move forward, not backwards here. And as far as putting blame, we're not here to put blame on anybody. It's just a matter to find out why this happened and make sure it doesn't happen again. And forget about blame. We have something to fix, let's fix it. That's the goal of this whole thing, is to fix it. [LR283]

SENATOR NELSON: Thank you. Thank you very much. I appreciate that. I appreciate what Senator Johnson said about that, and I certainly support that. And thank you for your work here as a committee in coming up with the final resolution. Thank you, Mr. President. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Nantkes, you're recognized. [LR283]

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SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. I also rise in support of the resolution and want to thank the Speaker and the Chair of the Executive Board, Senator Engel, for their hard work on this very, very difficult issue. And as we move forward, members, of course this does pull at your heartstrings, and there's a lot of emotions involved. But I know that, again, working together we can take a very measured and thorough approach to figuring out how we got in the situation that we got in, and then finding, you know, proactive, forward-looking solutions to really help meet the needs of some of Nebraska's most vulnerable citizens. And also, beyond the seven members of this legislative body who will be chosen to lead this committee, we can't forget that we have some other strong partners out there, and those are the families who have children and family members in Beatrice and in community-based care, who can share their frontline experience with us and help us to understand the day-to-day issues involved in these complicated policy decisions. Thank you. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Senator Chambers, you're recognized. [LR283]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I feel a disturbance in the force this morning, and I would like to ask Senator Nelson a question or two. [LR283]

SENATOR LANGEMEIER: Senator Nelson, would you yield? [LR283]

SENATOR NELSON: I'll be happy to. [LR283]

SENATOR CHAMBERS: Senator Nelson, I heard you mention it this morning; during other debates I've heard others talk about it. What do you mean by "blame"? You said we don't want to...what did you say about that, so I won't misstate anything? [LR283]

SENATOR NELSON: Well, I just expressed the hope that we would not spend a lot of time going back and pointing fingers and trying to assess blame for any decline that has occurred, as outlined by the Department of Justice report. My...yes. [LR283]

SENATOR CHAMBERS: Has...excuse me. Has Beatrice always been a state institution, to your knowledge? [LR283]

SENATOR NELSON: Oh, I think it goes back to the turn of the century almost. [LR283]

SENATOR CHAMBERS: Has it operated on automatic pilot, more or less, or has somebody been responsible? [LR283]

SENATOR NELSON: Well, there's been responsibility. I'm aware of the fact that there used to be about 2,000 inmates or inhabitants there. It was...over the years it's come

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down to something in the area of maybe 283, 300, right there, and somebody, of course, has had to make the decisions on the reduction in size there, because of the expense probably, for the state budget. [LR283]

SENATOR CHAMBERS: And what about the operation? Has somebody been responsible for the operation of Beatrice? [LR283]

SENATOR NELSON: Yes. Yes, certainly there have been responsible... [LR283]

SENATOR CHAMBERS: Senator Nelson, you know that this is a tripartite government--executive, legislative, and judicial. Beatrice is not under aegis of the judicial branch nor the legislative branch, so under which branch, or with which branch does responsibility for Beatrice lie? [LR283]

SENATOR NELSON: Well, you leave me no choice but to say the executive branch. [LR283]

SENATOR CHAMBERS: Who is the head of the executive branch and charged by the constitution with the duty to see that the laws are faithfully enforced? Who is that person? [LR283]

SENATOR NELSON: The Governor of our great state of Nebraska. [LR283]

SENATOR CHAMBERS: Where does the buck stop? [LR283]

SENATOR NELSON: It stops at his desk. [LR283]

SENATOR CHAMBERS: Would his handling of funding and vetoing of funds have anything to do in a contributory way to the status or conditions that exist at Beatrice right now? [LR283]

SENATOR NELSON: I can't answer that, because I can't be specific about it. If... [LR283]

SENATOR CHAMBERS: Are you trying to cover for the Governor... [LR283]

SENATOR NELSON: No. [LR283]

SENATOR CHAMBERS: ...or make sure that his role is soft-peddled and nobody will say that the Governor had any role in this? Is that what you're trying to do? [LR283]

SENATOR NELSON: Well, I'm saying in my short term here I can't specifically recall where he vetoed or reduced the budget. I'm...that's what my answer is. [LR283]

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SENATOR CHAMBERS: Well, who did you have in mind as one who might be blamed and you would rather that a lot of time might not be spent focusing blame on that individual? Wouldn't that be the Governor? [LR283]

SENATOR NELSON: No, no. I had in mind the Department of Health and Human Services. [LR283]

SENATOR CHAMBERS: Well, the Governor is in charge of the Department of Health and Human Services, isn't he or she? Isn't that right? [LR283]

SENATOR NELSON: I...it operates...I would not say he's in charge of that. [LR283]

SENATOR CHAMBERS: Who makes appointments to the directorship and other top-level positions in that and other state agencies? [LR283]

SENATOR NELSON: I believe the Governor does, yes. [LR283]

SENATOR CHAMBERS: So if there is blame, if people want to use the word "blame," it's going to wind up at the Governor's doorstep. Isn't that true? [LR283]

SENATOR NELSON: It could if the appointments did not fulfill his expectations. [LR283]

SENATOR CHAMBERS: Do you think when a person runs for Governor that he knows what the duties of that office are, and that he's not going to be protected when he doesn't discharge those duties? Do you think that person is entitled to protection? [LR283]

SENATOR NELSON: The person that he appoints? [LR283]

SENATOR CHAMBERS: No, the Governor. [LR283]

SENATOR NELSON: The Governor himself? [LR283]

SENATOR CHAMBERS: Yes. So the Governor appoints somebody, then he washes his hands and say, I don't have anything to do with Beatrice. [LR283]

SENATOR NELSON: No. [LR283]

SENATOR CHAMBERS: We have all of these terrible things that have been ongoing that the Justice Department told us about, but the Governor has no responsibility. He did not have to monitor, he did not have know, and he can be like Pilate and wash his hands and say, don't blame me, blame that man behind the tree. [LR283]

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SENATOR NELSON: No, I'm not suggesting that, Senator. [LR283]

SENATOR CHAMBERS: So I don't want...thank you. That's all I will ask you. [LR283]

SENATOR NELSON: All right. Thank... [LR283]

SENATOR CHAMBERS: How much time do I have, Mr. President? [LR283]

SENATOR LANGEMEIER: Two seconds. [LR283]

SENATOR CHAMBERS: I will...(laugh)...thank you. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Your light is next and you are recognized. [LR283]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, here's what I'm getting at. This should not be a pussyfooting committee. This committee should not deal with Beatrice as the Governor and his minions have dealt with Beatrice, and I don't want the debate or the legislative history to suggest that we as a body are saying that this committee cannot go where the evidence leads it. There are no corners into which this committee cannot look. There are no individuals and their conduct which are off base and out of range of the committee's scrutiny. When the Legislature, to use the term that has been articulated, takes charge or ownership of this matter, it should not be for the purpose of covering up and papering over. And if there are people on that committee whose aim is to defend and protect the Governor, then the committee is a sham, and the Legislature will then have full responsibility, and I'm hoping that the media will watch what this committee does. And as those people pop up who try to shield the Governor and protect the Governor, they will be named. Nobody is going to make them do these things or say these things, and people who engage in conduct have names, and their names should be publicized. They are not too concerned about being the ones who will stand up and say, get off the Governor's back. The Governor is responsible. In the same way that the President is responsible for the war in Iraq and Afghanistan, the Governor is responsible. And if he has people under him who have not done the job, it is on him to do something about it, and if he doesn't he ratifies, he endorses, he supports everything that was done. He is not a child. He is a grown man, and he is the top official in this state, and he is not entitled to protection, and he should not get it. I don't want to be on the committee, and I'm not asking to be on it, because the committee would not be strong enough to do what I think it ought to do. I'm the one, Senator Nelson, who files complaint against judges, not lawyers, and lawyers and others tell me, lighten up on them. But the judges get disciplined. So if this is going to be a committee, Senator Carlson, that is such a tap-dancing, pussyfooting group of spineless people that they could dance across a keyboard stretching from the Atlantic

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Ocean to the Pacific Ocean without striking a note, then I'm going to do everything I can to hold them up to ridicule, to scorn, to condemnation which will be so richly deserved. On the other hand, if these individuals look at the seriousness of this situation, accept the charge that is being given to them, and will uphold the dignity and integrity of the Legislature, I will do everything and anything that I can do to facilitate their work, and even though not a member of the committee, if they need to find somebody who can say those things that need to be said which the committee cannot say. My job is to be defender of the downtrodden, even if it happens to be a special committee of the Legislature. Thank you, Mr. President. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Visitors introduced.) Returning to discussion on the committee amendments offered to LR283, Senator Howard, you are recognized. [LR283]

SENATOR HOWARD: Thank you, Mr. President, members of the body. I have to rise and say I agree with Senator Chambers. It really is high time that we operate on an honest basis here in examining the problems within the Health and Human Services System. And I will caution that this should not be used as an opportunity to shift the care and responsibility for our most vulnerable citizens to inadequate community services. Heed Senator Johnson's words. I offer the remainder of my time to Senator Chambers. [LR283]

SENATOR LANGEMEIER: Senator Chambers, 4:20. [LR283]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Howard. Members of the Legislature, I don't know that everybody read that report that the Justice Department gave us. It can be a very good, objective starting point. They did not have an axe to grind. They felt that Nebraska is so incompetent, so backward, so lacking in understanding of the issues, that they extended time to Nebraska to straighten out this mess that nobody else in the country got. What is that telling you about this state? So it can be concluded that the report of the Justice Department is not a hatchet job. It is factual, it is as objective as anything can be. Nobody has been able to turn to anything in this report and find fault with it, in terms of it being false, misleading, or disingenuous. Everything is aimed at trying to assure that these people who are the responsibility of the state and the society as it exists in Nebraska should be accorded that dignity, that respect which ought to redound to the benefit of every human being, that there are no throwaway people. These are not the ones who, as in the old days, should be put in closets, hidden from public view, tormented and used as playthings. From cases that I read of in that report, you had people who were sadistic, who were lazy, who were hateful, and who were animalistic in their mistreatment of some of these people. There is no way that this matter can be treated as though it exists in a vacuum, that it just happened. I think even my cautious friend Senator Nelson will concede that the problems outlined here have been abuilding over a period of time. There are people

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who were bringing these problems to the attention of the Governor. The Governor can say, I'm not responsible for everything. He's responsible for what is happening right now, and when he took over the state, he took responsibility for everything that is in this state that has anything to do with being governed by the laws of this state. So I would like to ask the Speaker a question or two, if I may. [LR283]

SENATOR LANGEMEIER: One minute. [LR283]

SENATOR CHAMBERS: And if my time runs out, I'll put my light on, because I have one more chance. [LR283]

SENATOR LANGEMEIER: Senator Flood, would you yield? [LR283]

SPEAKER FLOOD: Yes. [LR283]

SENATOR CHAMBERS: Senator Flood, I'm sure you would not have said the things I said in the way that I said them. So I'm going to ask these questions in the way that I'm asking them, and that's the only thing I'm presenting that I would like you to respond to, if you will. Is it your intent that this committee be shackled or impeded in any way, in terms of undertaking a full and thorough review and investigation of the situation at Beatrice? [LR283]

SPEAKER FLOOD: No. [LR283]

SENATOR CHAMBERS: And would that review include how these circumstances came into being? [LR283]

SPEAKER FLOOD: Yes. [LR283]

SENATOR CHAMBERS: Would it also look at officials or appointed individuals, no matter how high their position, who may have played a role, either... [LR283]

SENATOR LANGEMEIER: Time. Thank you, Senator Howard. [LR283]

SENATOR CHAMBERS: Thank you, Mr. President. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Pahls, you're recognized. [LR283]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator Chambers, I agree with your direction. It just makes me think about, and I don't have all the dates in mind, but in the early 1970s, education was going through this same ordeal. You and I both know this. There were children being placed in classrooms, not because

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of their intellect, but a good deal because they were poverty and also the color of their skin. We went through a cleansing process over the years, it did not happen overnight, and the public schools are still going through that. So I say find out what the issues are, bring them to light, knowing that they're not all going to be cured overnight. The last time we discussed this issue I brought up how the cost of special education has grown over the years, and a number of the people on this floor do not understand that. That is because, if you do what number four of this report says, that you must have the least restrictive environment, without even having an investigation I know that's going to cost more. So we need to be up front. There will be major changes in our health system, and I'm sure in Beatrice and throughout the state. In fact, I see this as basically the tip of the iceberg how we treat mental health in the state of Nebraska. I see this as maybe something that will start us all talking about "the normal person," which I assume most of us think we are. I see this as a cleansing process. I think there will be individuals who probably will not want to take some of the responsibility. I as an educator in the early seventies, I don't know if I was astute or understood all the issues that parents were going through, but over the process, right now for a child to become part of a special ed "label," let me use that term, there are many things that you must do. Parents are involved, specialists are involved, the administrator and the teacher are just one part of a team. So as I said, in the early seventies that wasn't always true. The federal government stepped in, said hey, we need to take a look at what is happening out there. I see this same thing here. The federal government did step in, gave us at least four points for directions that we need to move forward. We're going to have a group of senators take a look at what's happening, and I'm sure not everything is going to be at everybody's...will have a smile on everyone's face. But hopefully, after one, two or perhaps more years, that face will not necessarily have a smile on it but will have a look of satisfaction that we are doing something. So I do agree with you, Senator Chambers. We need to find out the good, the bad, and the ugly, and to move on. I'm not...right now, my intent is not to find out who actually is doing what, when, why, where, and punish them, but to make it open and very transparent. Thank you. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Chambers, you are recognized. [LR283]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm trying to compile a record, if I can, so I'd like to continue my discussion with Speaker Flood. [LR283]

SENATOR LANGEMEIER: Senator Flood, would you yield? [LR283]

SPEAKER FLOOD: Yes. [LR283]

SENATOR CHAMBERS: Senator Flood, I was about to ask a question which was based on the idea...let me ask the question. Is there an intent that this committee will go

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wherever the facts carry it and will not shield any person, regardless of how high his or her position may be, when he or she is responsible for acts of omission or commission which contributed to the circumstances that the committee is looking at? In other words, is anybody to be exempted from having his or her conduct reviewed by this committee? [LR283]

SPEAKER FLOOD: No. [LR283]

SENATOR CHAMBERS: And, Senator Flood, this committee, no matter how serious it may be and no matter how searching its activities may be, we do not envision that, in and of itself, as constituting a witch hunt; would you agree? [LR283]

SPEAKER FLOOD: No. It's not my intent to make this a witch hunt. [LR283]

SENATOR CHAMBERS: And if the committee really does its job, that will not comprise a witch hunt, as long as it goes where the facts would carry it? [LR283]

SPEAKER FLOOD: Yes, Senator Chambers. [LR283]

SENATOR CHAMBERS: Thank you, Mr. Speaker. Members of the Legislature, I'm not surprised by any of those answers. I've talked to the Speaker. His resolution speaks for itself, but the resolution itself has not been read into the record, and all that might be printed by the media are some of the comments about, we're not trying to fix blame, we're not trying to point fingers. I believe that whatever needs to be done ought to be done. And the people on this committee, whoever they turn out to be, will be individuals who have asked to be on that committee. Nobody will be drafted. They are voluntarily assuming a very serious and awesome responsibility. That will oblige them to use their intelligence, exercise patience, work cooperatively, but not be under the dominance of anybody or any group of bodies. Whereas they will comprise a cooperative team, if you will, they will not lose their individuality, and they are not obliged to blindly go along to get along. I will tell you, if I had the time it would be better to appoint me than an entire committee, but that cannot be, and we're going to have to repose trust and confidence somewhere. I am pleased that the Legislature is doing this. It begins to cause this branch to measure up to what it ought to be, as that third and independent branch of government. We don't execute the laws, but we should exercise oversight. We set policy through the budget. The failure of the Legislature to override certain vetoes was a flaw on the part of the Legislature, and if there are vetoes that were inappropriately laid out, the failure of the Legislature to override must be mentioned, too. We're not going to have a coin with only one side. I'm expressing what I hope will be the direction and the methodology used by this committee. Not being a part of it, I can exercise no influence whatsoever. And I saw one of my colleagues check his watch. I'm going to take that as a hint, and I have no more to say on this. But I support the amendment, I will support the resolution, and I will support the committee in its work. Thank you, Mr. President.

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[LR283]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Howard, you're recognized, followed by Senator Carlson. [LR283]

SENATOR HOWARD: Thank you, Mr. President and members of the body. And, Senator Chambers, you're not going to stop now. (Laugh) Yesterday we heard the impassioned pleas on behalf of our neglected and abused roads. They are so needy that we have no choice but to put additional tax on gas to care for these roads. My very capable colleague and friend, Senator Fischer, has an additional bill that will provide for the care of roads. When will we reach the time in this state when we care as much about the health and the welfare of the disabled, the dependent and, yes, the foster child as we do about roads? And I was recently given a report, it's actually an RFP, page upon page upon page that has to be submitted to receive funding for early invention to keep babies from being abused. I've never seen a report where the Roads Department has to request funding or RFP to maintain our highways. I think that's certainly something that we should look at, and I offer the remainder of my time to Senator Chambers. [LR283]

SENATOR LANGEMEIER: Senator Chambers, 3:40. [LR283]

SENATOR CHAMBERS: I appreciate it, but I'm waiving off. Thank you, Mr. President. Thank you, Senator Howard. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Howard. Senator Carlson, you're recognized. [LR283]

SENATOR CARLSON: Mr. President and members of the Legislature, I'm going to refer to something that Senator Chambers mentioned, but I'd like to address Senator Flood. [LR283]

SENATOR LANGEMEIER: Senator Flood, would you yield? [LR283]

SPEAKER FLOOD: Yes. [LR283]

SENATOR CARLSON: Senator Flood, I think that something Senator Chambers inferred might be inaccurate here. I hope it is. This committee is going to be selected by the Executive Board; that's correct? That's what the resolution says. [LR283]

SPEAKER FLOOD: Yes. [LR283]

SENATOR CARLSON: And he indicated that nobody would be on this committee that didn't ask to be on it. I hope that's not the case, and that all 49 senators are prospective

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members of this committee, and any one of them could be selected. Would that be true? [LR283]

SPEAKER FLOOD: Senators that wish to participate on this committee need to notify the Executive Board Chairperson, Senator Engel, as soon as possible, if you want to be selected to be placed on the committee. [LR283]

SENATOR CARLSON: So in other words, if a senator doesn't indicate an interest but may be a good member, they will not be selected. [LR283]

SPEAKER FLOOD: Unless a member of the Executive Board goes out and talks them into doing it, that is a true and accurate statement. [LR283]

SENATOR CARLSON: Okay, so in that regard, then, all 49 are prospective members of this committee, because an Executive Committee member could go out and talk to someone who they think would serve well, and interest them in being willing to serve? [LR283]

SPEAKER FLOOD: Yes. [LR283]

SENATOR CARLSON: Okay, thank you. That's my concern. [LR283]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Seeing no other lights on, Senator Engel, you're recognized to close on the committee amendments, AM2582. Senator Flood, would you do that for us? Thank you. [LR283]

SPEAKER FLOOD: Senator Engel is not here right now. I would ask you to vote for the committee amendments. Thank you, Mr. President. [LR283]

SENATOR LANGEMEIER: You have heard the closing. Thank you, Senator Flood. You have heard the closing on AM2582 offered to LR283. The question before the body is, shall AM2582 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LR283]

CLERK: 42 ayes, 0 nays, Mr. President, on adoption of the committee amendments. [LR283]

SENATOR LANGEMEIER: AM2582 is adopted. We return now to LR283, the bill itself. The floor is now open for discussion. Seeing no lights on, Senator Flood, you're recognized to close. Senator Flood waives closing. The question before the body is, shall LR283 be advanced? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LR283]

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CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of LR283. [LR283]

SENATOR LANGEMEIER: LR283 is adopted. Mr. Clerk, continuing on the agenda to General File, LR229CA. [LR283 LR229CA]

CLERK: Mr. President, Senator McDonald offers LR229CA. It proposes an amendment to the Nebraska Constitution, specifically Article XIII, Section 2. The resolution was introduced on January 18 of this year, at that time referred to the Urban Affairs Committee. The resolution was advanced to General File. At this time I have no amendments pending, Mr. President. [LR229CA]

SENATOR LANGEMEIER: Senator McDonald, you're recognized to open on LR229CA. [LR229CA]

SENATOR McDONALD: Thank you, Mr. President, members of the body. LR229CA, if enacted, would allow the Legislature to give cities and villages more flexibility to fund municipal economic development programs. The Nebraska Constitution, Article XIII, Section 2, gives the Legislature authority to allow cities and villages to use local sources of revenue to fund economic or industrial development projects or programs which are subject to local voter approval. Local sources of revenue means funds raised from general taxes levied by the city or village and excludes funds from state or federal sources. The Local Option Municipal Economic Development Act, as LB840, was adopted under this section. LR229CA removes the limitation on the source of revenue. If voters approve the constitutional amendment, the Legislature must pass legislation in 2009 to implement the change. The Legislature would determine which funds could be used for municipal economic development. LR229CA expands the options available for funding municipal economic development. The Legislature will make the final decision about which funding sources will be allowed. I ask for your support on this measure. Thank you. [LR229CA]

SENATOR LANGEMEIER: Thank you, Senator McDonald. You have heard the opening on LR229CA. The floor is now open for discussion. Senator Friend, you're recognized. [LR229CA]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I talked to Senator McDonald earlier and I said I wouldn't talk too much, because that's usually a kiss of death. As you can see if you looked at the gadget, as everybody likes to lovingly call it, this bill came out pretty clean. We didn't amend it out of Urban Affairs. There was no opposition to the idea, and I think I just wanted to give you a little bit of an analogy. One of the concerns that a lot of our city, village leaders have expressed, more or less, was that the constitution and the law maybe doesn't provide them at this particular moment the type of flexibility that they think economic development should include. Now we can make our decision out here. I guess what I'm saying is, right now if you have to

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go to a vote of the people to use a certain type of tax application, it's going to be property tax or sales tax, correct? Well, there are also things that municipalities do in regard to occupational tax, utilities, that could also be applied with a vote of the people. This constitutional amendment is not asking to remove that type of safeguard. So when a municipality wants to use funding or approach funding for the use...for economic development or industrial development, which they have to go to a vote of the people for, they're just looking to ask for a little more flexibility as to what they can ask the people for. To me, it's simply that's what this is about. I'd welcome any discussion, and I'd be happy to answer any questions, as well, that anyone has. Thank you, Mr. President. [LR229CA]

SENATOR LANGEMEIER: Thank you, Senator Friend. Senator Chambers, you're recognized. [LR229CA]

SENATOR CHAMBERS: Mr. President, members of the Legislature, with trepidation I'd like to ask Senator Friend a question or two, if I may. [LR229CA]

SENATOR LANGEMEIER: Senator Friend, would you yield? [LR229CA]

SENATOR FRIEND: Yes. [LR229CA]

SENATOR CHAMBERS: Senator Friend, in the existing language of the part of the constitution that is being amended, there is textual material related to what might be called blighted property, as determined by law. Is that correct? If you look on page 2... [LR229CA]

SENATOR FRIEND: Yes, if you could tell me where... [LR229CA]

SENATOR CHAMBERS: Okay, page 2, in line 2. [LR229CA]

SENATOR FRIEND: Yes, I see it. [LR229CA]

SENATOR CHAMBERS: "If such property is located in blighted areas, as determined by law, and to issue revenue bonds for the purpose"--that's not what we're talking about here. The bonding is not going to change. [LR229CA]

SENATOR FRIEND: That's correct. [LR229CA]

SENATOR CHAMBERS: The definition of "blighted" is not going to change. [LR229CA]

SENATOR FRIEND: No. [LR229CA]

SENATOR CHAMBERS: Omaha can designate areas as being blighted which do not

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conform to what a layperson might think of as being blighted, in terms of their being deteriorated, dilapidated, rundown property. They can declare property blighted which is habitable, which is not hazardous at all. Isn't that true? [LR229CA]

SENATOR FRIEND: Well, that...you know what? I'd love to have that discussion, because I've railed on this discussion matter with a lot of people in a lot of different ways in the last six years. So without me...I don't know that I can say that what you just said is true, and I have concerns as well about the language (inaudible) blighted, and how it's being used. [LR229CA]

SENATOR CHAMBERS: Are you aware of some protests of people in Benson and maybe around the Saddle Creek area, with land being declared blighted? First of all, if it's declared blighted, then it can be taken for a public purpose, right? [LR229CA]

SENATOR FRIEND: In a sense, I think there are a lot more moving parts than your question would allude to, but, yeah, I would say that that's right, with some trepidation, as you say. [LR229CA]

SENATOR CHAMBERS: Okay. Can this language that is being taken out of the constitution broaden the money available to a city for the purpose of purchasing property they declare to be blighted? [LR229CA]

SENATOR FRIEND: I...it is my understanding, based on the reading and also the discussions I've had with my legal counsel, that that would not be the case. [LR229CA]

SENATOR CHAMBERS: Where is there anything that would prevent it from being used for that purpose? And these are not trick questions, by the way. [LR229CA]

SENATOR FRIEND: No, I understand. But why would it...I mean, I think that it is not only implied, but specific, as specific as statutory language can be, Senator Chambers, that you would have that problem if you're talking about the general application tax, I guess. We're not changing that; we're just saying that you can...you see where I'm going with this? I mean, I don't know. We're not adding anything that would increase that aspect of flexibility for a city. [LR229CA]

SENATOR CHAMBERS: But this is going for the purpose of economic or industrial development projects or programs. [LR229CA]

SENATOR ERDMAN PRESIDING [LR229CA]

SENATOR ERDMAN: One minute. [LR229CA]

SENATOR FRIEND: Yes, but right now if you go to the vote of the people, you can use

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sales tax and you can use property tax in order to do that. So... [LR229CA]

SENATOR CHAMBERS: Can this...can the striking of this language make it possible to appropriate money for these projects without a vote of the people? [LR229CA]

SENATOR FRIEND: I do not believe that that would be...no. I do not believe that that could happen. [LR229CA]

SENATOR CHAMBERS: What is there that necessitates a vote of the people in order to carry out an economic or industrial development project? [LR229CA]

SENATOR FRIEND: I've got the peanut gallery yelling at me. [LR229CA]

SENATOR CHAMBERS: That's all right. Anybody who can give assistance, I don't mind. [LR229CA]

SENATOR FRIEND: If you go to the bottom of page 2,... [LR229CA]

SENATOR CHAMBERS: Which is where I am. [LR229CA]

SENATOR FRIEND: Okay, and it says "to appropriate" and then there's some scratch language, "such funds as may be deemed necessary for an economic or industrial development project or program, subject to approval by a vote of a majority of the registered voters... [LR229CA]

SENATOR ERDMAN: Time. [LR229CA]

SENATOR FRIEND: ...of such city." [LR229CA]

SENATOR ERDMAN: Thank you, Senator Chambers, Senator Friend. Those senators wishing to speak are Senator Christensen, followed by Senator Chambers and Senator Friend. Senator Christensen. Senator Chambers, you're recognized to speak. [LR229CA]

SENATOR CHAMBERS: Thank you. I would like to continue my discussion with Senator Friend, Mr. President, if he's willing. [LR229CA]

SENATOR ERDMAN: Senator Friend, would you yield? [LR229CA]

SENATOR FRIEND: Yes, I will. [LR229CA]

SENATOR CHAMBERS: Senator Friend, as you've pointed out, at the bottom of page 2 and continuing to the top of page 3, we have this language, and I'm going to eliminate

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from my reading that which would be eliminated by this striking of language. [LR229CA]

SENATOR FRIEND: Okay. [LR229CA]

SENATOR CHAMBERS: Notwithstanding any other provision in the constitution, the Legislature may also authorize such funds as may be deemed necessary for an economic or industrial development project or program, subject to the approval by a vote of a majority of the registered voters of such city, and so forth. Does this language say that every such project is subject to a vote, or there are certain projects which are subject to a vote? For example, if there are bonds to be let, you can't let the bonds without a vote, can you? [LR229CA]

SENATOR FRIEND: No. [LR229CA]

SENATOR CHAMBERS: So if there is a project that is going to be funded through bonding, that project requires a vote of the people to let those bonds that will pay for the project. Is that correct? [LR229CA]

SENATOR FRIEND: Well, that would be correct, but aren't we... [LR229CA]

SENATOR CHAMBERS: Now, back to my question. Does this language at the top of page 3 say that every economic or industrial development project is subject to approval by a vote, or is it saying that these funds can be used in those projects which currently require a vote in order to be approved? Which is it, if I'm not being confusing? [LR229CA]

SENATOR FRIEND: Well, I don't know that you're being confusing, but it...I think that we have, and you've said this before, we have constitutional language that is open for interpretation, that you need statutory language to specifically indicate what...am I wrong about that? I mean, you can't...I can't tell. There's implied language here that we would need statutory language to wrap around it, in order for there to be appropriate usage of the constitutional language. I'm not trying to... [LR229CA]

SENATOR CHAMBERS: Let me ask you this question. Are you aware of economic development projects undertaken in the city of Omaha, which were undertaken without a vote of the people? [LR229CA]

SENATOR FRIEND: Yes. [LR229CA]

SENATOR CHAMBERS: Okay. So this language does not mean that every economic development project requires a vote. [LR229CA]

SENATOR FRIEND: Well, when framed that way, you're right, no, but... [LR229CA]

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SENATOR CHAMBERS: Well, I'm dealing with the reality,... [LR229CA]

SENATOR FRIEND: No, I know. [LR229CA]

SENATOR CHAMBERS: ...so this language has to be limited to those projects which require a vote of the people to be carried out. [LR229CA]

SENATOR FRIEND: And can I say something real quick? [LR229CA]

SENATOR CHAMBERS: Sure. [LR229CA]

SENATOR FRIEND: I appreciate that thought process, and like I said, the last four or five years I've been railing along this same thought process. But my thing is, Senator Chambers, or my issue right now is that's specifically not really what we're dealing with. All we're dealing with right now is language that would eliminate from local sources of revenue, because they're saying that is restrictive, and that really wasn't the intent of the constitutional language. I mean, occupational taxes are local sources of revenue. [LR229CA]

SENATOR CHAMBERS: But here... [LR229CA]

SENATOR FRIEND: I guess that's the point. So what you're...you're pointing out some inadequacies in the law that we weren't trying to fix with this constitutional amendment. [LR229CA]

SENATOR CHAMBERS: I just want us to get clear... [LR229CA]

SENATOR FRIEND: Right. [LR229CA]

SENATOR CHAMBERS: ...what it is we're talking about,... [LR229CA]

SENATOR FRIEND: Okay. [LR229CA]

SENATOR CHAMBERS: ...and the language being stricken is stricken from the area... [LR229CA]

SENATOR ERDMAN: One minute. [LR229CA]

SENATOR CHAMBERS: ...that I'm discussing. [LR229CA]

SENATOR FRIEND: Okay. [LR229CA]

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SENATOR CHAMBERS: Like I say, these are not trick questions. That's why I want to know if, by striking this language, you're giving the cities power to do what they currently don't have the power to do. We know that when it comes to using certain funds, it's extending their power. [LR229CA]

SENATOR FRIEND: Right. [LR229CA]

SENATOR CHAMBERS: We know that. [LR229CA]

SENATOR FRIEND: Right. [LR229CA]

SENATOR CHAMBERS: But by doing that, are you making money available for projects which would not be the case now? [LR229CA]

SENATOR FRIEND: No, what we're doing is broadening the opportunity in regard to revenue for them. [LR229CA]

SENATOR CHAMBERS: And the only two sources of revenue that would be involved are what? [LR229CA]

SENATOR FRIEND: Well, as far as general application taxation, the two sources available are sales and property tax. Now...but if you want to start talking about tax increment... [LR229CA]

SENATOR ERDMAN: Senator Friend, you may continue on your time. [LR229CA]

SENATOR FRIEND: Thank you, Mr. President. If you want to start talking about the question that you and I were discussing earlier, and that's tax increment financing, I think that broadens the scope of our discussion to the point that we may never (laugh) get done. [LR229CA]

SENATOR CHAMBERS: But what you're striking...go with me to page 3. [LR229CA]

SENATOR FRIEND: Okay. [LR229CA]

SENATOR CHAMBERS: In line 4, included in the definition of local sources of revenue, that means currently funds raised from general taxes levied by the city or the village. [LR229CA]

SENATOR FRIEND: And that means, the way I read it, that means sales and property taxes. That...I mean, in my reading, Senator, we're not talking in that specific area about tax increment financing application, even though there's language in here that indicates earlier, as you pointed out, that there are ways to approach economic development. But

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it doesn't say anything in that second...on that second page that you were talking about,... [LR229CA]

SENATOR CHAMBERS: But stay with me on page 3 first. [LR229CA]

SENATOR FRIEND: Okay. Sorry. [LR229CA]

SENATOR CHAMBERS: Not included in local sources would be money from the state and the federal government. That is not touched, and those funds are not included in the definition of local sources. Do you agree with that? [LR229CA]

SENATOR FRIEND: I would agree. [LR229CA]

SENATOR CHAMBERS: Even if we didn't strike this language, right now, and even with the stricken language, if you look in line 5 on page 3,... [LR229CA]

SENATOR FRIEND: Yes. [LR229CA]

SENATOR CHAMBERS: ...those local sources shall not include any funds received by the city or village which are derived from state or federal sources. You didn't strike "state or federal sources," because they're not a part of the local sources of revenue right now. Do you agree with that? [LR229CA]

SENATOR FRIEND: No, we did strike it. It should be stricken in the language of LR229CA, Senator. [LR229CA]

SENATOR CHAMBERS: Okay, I see where you've stricken it. Why did you strike that? [LR229CA]

SENATOR FRIEND: Well, because occupational tax and utility tax...because that language was not necessary. That's what the thought process was. [LR229CA]

SENATOR CHAMBERS: But when it was in the constitution, it was felt to be necessary by somebody, to make it clear that local sources of revenue is a term that does not include state and federal money. That's what was considered to be case, right? [LR229CA]

SENATOR FRIEND: It was. It still is. [LR229CA]

SENATOR CHAMBERS: And now you're eliminating altogether any reference to local sources of revenue, correct? [LR229CA]

SENATOR FRIEND: That's correct. [LR229CA]

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SENATOR CHAMBERS: So that means that you can use general taxes--because that was a part of that definition--and any other funds... [LR229CA]

SENATOR FRIEND: That's (inaudible). [LR229CA]

SENATOR CHAMBERS: ...for these purposes. Is that correct? You can use bonds for this purpose? [LR229CA]

SENATOR FRIEND: Well, let me go back and read real quick again. [LR229CA]

SENATOR CHAMBERS: Revenue bonds can be used but not general obligation bonds, based on what the constitution currently says. Again, these are not trick questions, but to try to get to a discussion of the issues. [LR229CA]

SENATOR FRIEND: Well, and I'm trying to read and then listen, too. But here...bonds can be used... [LR229CA]

SENATOR CHAMBERS: Let me ask it a different way. What can the city use for revenue purposes if this is adopted which it cannot use now? [LR229CA]

SENATOR ERDMAN: One minute. [LR229CA]

SENATOR FRIEND: The way this is written, they could use occupational tax revenue and utility fee revenue, if the people, as we mentioned before, voted to go ahead and... [LR229CA]

SENATOR CHAMBERS: And this will make it unnecessary for the people to vote. Is that true? [LR229CA]

SENATOR FRIEND: No. [LR229CA]

SENATOR CHAMBERS: All right. So what can they use as a revenue source if this is adopted which they cannot now use as a revenue source? That's what I want to know. [LR229CA]

SENATOR FRIEND: Occupation tax. [LR229CA]

SENATOR CHAMBERS: They can't use that now; is that true? [LR229CA]

SENATOR FRIEND: That's correct, and utility fees. They can't... [LR229CA]

SENATOR CHAMBERS: And where do those monies go now? [LR229CA]

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SENATOR FRIEND: Well, (laugh) utility fees are obviously to supplement, in a municipal utility, to supplement... [LR229CA]

SENATOR ERDMAN: Time. [LR229CA]

SENATOR FRIEND: ...the cost of... [LR229CA]

SENATOR ERDMAN: Senator Friend, you may continue. [LR229CA]

SENATOR FRIEND: Thank you, Mr. President. To supplement the cost of doing business and any other, I guess, general obligations that the utility has in their particular area, but also for utility infrastructure. Utilities work closely with cities, as you well know, and municipalities, to develop infrastructure and to expand natural gas lines and things like that. [LR229CA]

SENATOR CHAMBERS: Are you saying that with this language, the city can now appropriate that money for economic and industrial development projects, and not for the purposes you mentioned that that money goes for, that instead of doing it... [LR229CA]

SENATOR FRIEND: With legislative... [LR229CA]

SENATOR CHAMBERS: ...for (inaudible) infrastructure and so forth, now that money can be diverted to other economic and industrial development projects that have nothing to do with the utilities? [LR229CA]

SENATOR FRIEND: Well, with legislative approval, it's my understanding, yes, and a vote of the people. [LR229CA]

SENATOR CHAMBERS: Who said that that's what this does? [LR229CA]

SENATOR FRIEND: Who...well, I did. [LR229CA]

SENATOR CHAMBERS: And my time is out. [LR229CA]

SENATOR FRIEND: Well, I you can...I mean, I've also...and I've also talked to legal counsel about it and also Senator McDonald about it, and with...it's my understanding, to answer your question, with legislative approval and a vote of the people, that would be the case. [LR229CA]

SENATOR CHAMBERS: But if those projects require a vote of the people now, they continue to require a vote of the people. [LR229CA]

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SENATOR FRIEND: That's correct. [LR229CA]

SENATOR CHAMBERS: That will not be touched. What I'm asking you is, what revenue source will be available if this is adopted which currently is not available because this language is in the constitution? [LR229CA]

SENATOR FRIEND: And my understanding of your question, with my answer, is occupational taxes and utilities fees, certain types of utilities fees. [LR229CA]

SENATOR CHAMBERS: And you're saying if this is adopted, the city can then appropriate those fees for economic development projects that have nothing to do with the source of those fees? [LR229CA]

SENATOR FRIEND: Along with a vote of the people. [LR229CA]

SENATOR CHAMBERS: They cannot do that now with a vote of the people? [LR229CA]

SENATOR FRIEND: No. No, they... [LR229CA]

SENATOR CHAMBERS: Where does it say that a vote of the people is necessary to do that? [LR229CA]

SENATOR FRIEND: Yeah. On page 3, what we went over earlier, at the bottom of page 2 and the top of page 3. Am I confusing that with you? [LR229CA]

SENATOR CHAMBERS: I don't think it...well, I have a motion up there so that I'll have a chance to talk and I won't have to do it in a question-and-answer context, because it's on your time, and I really can't get at what I want to. So I appreciate you trying to make it possible for me to get my point through, but I'm going to stop at this point because I'm offering a motion that will give me a chance. Thank you, Senator Friend. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Friend. Mr. Clerk, a motion on the desk? [LR229CA]

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone. Senator McDonald, you'd have the option to lay the bill over. [LR229CA]

SENATOR ERDMAN: Senator McDonald, do you wish to take the motion up or lay the bill over? [LR229CA]

SENATOR McDONALD: I'll take it up. [LR229CA]

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SENATOR ERDMAN: We will take it up. Senator Chambers, you're recognized to open on your motion to indefinitely postpone LR229CA. [LR229CA]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Stuthman a question. [LR229CA]

SENATOR ERDMAN: Senator Stuthman, do you yield? [LR229CA]

SENATOR STUTHMAN: Yes. [LR229CA]

SENATOR CHAMBERS: Senator Stuthman, is this bill clear to you? [LR229CA]

SENATOR STUTHMAN: The majority of the bill is very clear to me. [LR229CA]

SENATOR CHAMBERS: Well, what part of it may not be clear to you? [LR229CA]

SENATOR STUTHMAN: The portion of the bill that I am not certain about is the fact of utilizing the funds that have been generated by a tax or a fee assessment. How can those funds, if there's not a need for those funds, how can they be utilized by the direction of the city council to appropriate those funds for economic development in another area? But the way I understand it, it is if there is a vote of the people, they can redirect those funds that are...to utilize in that. And it all comes down, in my opinion, to a vote of the people. If they're willing to allow those funds that were generated for another intent but not utilized, that they can allow them to be utilized for another function. [LR229CA]

SENATOR CHAMBERS: Senator Stuthman, is that language already existing in the constitution or somewhere, where a vote of the people allows that kind of diversion? [LR229CA]

SENATOR STUTHMAN: In my opinion, I'm not aware of any existing law that allows them to utilize that money by a vote of the people, but I could be corrected. I do not know on that for sure. [LR229CA]

SENATOR CHAMBERS: And, Senator Stuthman, thank you. Members of the Legislature, if you read the language of this provision--and I know I've probably talked too long to keep anybody interested--in line 21 it says, "Notwithstanding any other provision in the constitution." That would mean requiring a vote or anything else. All of that is off the table now if it, in any way, would affect what's being presented here. That language erases any other provision: "Notwithstanding any other provision in the constitution." So when we're told about a vote of the people, if it's not in this section that we're dealing with, I don't know where they come up with that. I'm going to say again the

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way I see this, then I'm just going to vote against this, because I don't think I can get anybody to pay close enough attention to see what is at stake here. And if the body, whether informed or not, thinks that these cities ought to have this authority with no conditions attached, then they'll vote for this. In saying that a vote of the people and these other things would be a sufficient safeguard for you, then you'll vote for it. And maybe it's one of those areas where you don't particularly care. But I live in a city, and that city has not always been fair in its dealing with people. When there were a group of people concerned about an NRD, I pointed out it was not my district, didn't affect the people in my district at all. But I got that bill bracketed because I paid enough attention to see that it would be hurtful, and the Legislature bracketed the bill, which in effect killed it. I don't know whether there is enough interest in what is going on here. The language being stricken is that which deals with local sources of revenue. Now we don't know what local sources of revenue are unless we go to page 3, and it tells us in line 4 that it means funds raised from general taxes levied by the city or village or whatever. It does not include state or federal funds that are received. General taxes--that's where Senator Friend and I got into the discussion, and he raised certain things like occupational taxes and utility fees, and I'd like to resume the discussion at that point with Senator Friend, if he's willing. [LR229CA]

SENATOR ERDMAN: Senator Friend, would you yield to questions from Senator Chambers? [LR229CA]

SENATOR FRIEND: Yes, I will. Yes, I will. Yes. [LR229CA]

SENATOR CHAMBERS: Senator Friend, is it your contention that the term "general taxes" applies only to sales and property taxes? [LR229CA]

SENATOR FRIEND: That would be my contention. [LR229CA]

SENATOR CHAMBERS: And if that is correct, the only funds that could be used for these economic and industrial development projects would be funds that come from sales and property taxes, correct? [LR229CA]

SENATOR FRIEND: Correct. [LR229CA]

SENATOR CHAMBERS: And if this language is adopted, those miscellaneous fees and other types of levies that you're mentioning could then be used. Is that correct? [LR229CA]

SENATOR FRIEND: Correct. You're expanding revenue capability, technically. [LR229CA]

SENATOR CHAMBERS: Do you have any idea how much money would be raised from

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those kinds of sources, which would fund an economic or industrial development project? [LR229CA]

SENATOR FRIEND: I do not, Senator. [LR229CA]

SENATOR CHAMBERS: Does that money run in the millions? [LR229CA]

SENATOR FRIEND: I...depending on the area of the state, I would say yes. [LR229CA]

SENATOR CHAMBERS: In Omaha would it run into the millions? [LR229CA]

SENATOR FRIEND: Yes, it would. I would almost guarantee that. [LR229CA]

SENATOR CHAMBERS: And right now that money would go to deal with whatever facility or instrumentality generated the fees or the taxes. Where would an occupation tax come from? [LR229CA]

SENATOR FRIEND: An occupation tax is...I can give you an example... [LR229CA]

SENATOR CHAMBERS: Yes. [LR229CA]

SENATOR FRIEND: ...of a large company coming in and receiving a, if you will, a benefit, a 10- or a 15-year benefit in relationship to their property tax. But depending on the amount of people that they hire, I mean, how many good jobs supposedly that they bring into that particular area, they're going to have to be taxed. [LR229CA]

SENATOR CHAMBERS: Well, could I bring somebody else into this discussion? Senator Friend, thank you. [LR229CA]

SENATOR FRIEND: Sure. [LR229CA]

SENATOR CHAMBERS: I'm going to ask Senator Wightman a question or two. [LR229CA]

SENATOR ERDMAN: Senator Wightman. [LR229CA]

SENATOR WIGHTMAN: Yes. [LR229CA]

SENATOR CHAMBERS: Senator Wightman, you are a holder of a law degree, correct? [LR229CA]

SENATOR WIGHTMAN: I have one, yes. [LR229CA]

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SENATOR CHAMBERS: You're a member of the bar association. [LR229CA]

SENATOR WIGHTMAN: I am a member of the bar association. [LR229CA]

SENATOR CHAMBERS: Those are evidences that you are trained and learned in the law, correct? [LR229CA]

SENATOR WIGHTMAN: Well, that might be a broad statement. [LR229CA]

SENATOR CHAMBERS: And you've practiced law for a good number of years, correct? [LR229CA]

SENATOR WIGHTMAN: That would be correct. [LR229CA]

SENATOR CHAMBERS: Do you know what an occupation tax is? [LR229CA]

SENATOR WIGHTMAN: Well, I think an occupation tax may be a number of variety of things. Some of them may be licensing fee of a particular types of business within a community. [LR229CA]

SENATOR CHAMBERS: Okay. Now when we talk about utility taxes...oh, that's all I will ask you. Thank you. [LR229CA]

SENATOR WIGHTMAN: Thank you. [LR229CA]

SENATOR CHAMBERS: I now would like to go back to Senator Friend. [LR229CA]

SENATOR ERDMAN: Senator Friend, would you yield to a question? [LR229CA]

SENATOR FRIEND: Yes, I will. [LR229CA]

SENATOR CHAMBERS: Senator Friend, you were going into something different before I ended our discussion and went to Senator Wightman, correct? You were going into something different from an occupation tax, as such, correct? [LR229CA]

SENATOR FRIEND: Yes, I was, and I think the reason why is because I remember working on a bill with Senator Adams, and I was looking at him and... [LR229CA]

SENATOR CHAMBERS: Okay. Now I'm going to ask you: What is an occupation tax? [LR229CA]

SENATOR FRIEND: It would be like a wheel tax or a tax on bars or something... [LR229CA]

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SENATOR CHAMBERS: And where does that money go now? Does it go into the city's general fund? [LR229CA]

SENATOR FRIEND: I believe so. [LR229CA]

SENATOR CHAMBERS: But it's not considered a general tax? [LR229CA]

SENATOR FRIEND: No. [LR229CA]

SENATOR CHAMBERS: So it cannot be appropriated as other money from the general fund for economic development. Is that true? [LR229CA]

SENATOR FRIEND: Not for industrial or economic development projects by a municipality, no. [LR229CA]

SENATOR CHAMBERS: And that other one you mentioned, this utility tax--is that what you called it? [LR229CA]

SENATOR FRIEND: A fee, a utility fee. [LR229CA]

SENATOR CHAMBERS: A utility fee? [LR229CA]

SENATOR FRIEND: Yeah. [LR229CA]

SENATOR CHAMBERS: Where does that money go? Does that go to the utility or does it go into the city of...let's deal with Omaha. Does it go into Omaha's general fund? [LR229CA]

SENATOR FRIEND: No, Omaha doesn't...the Metropolitan Utilities District would... [LR229CA]

SENATOR ERDMAN: One minute. [LR229CA]

SENATOR FRIEND: ...enable those fees, and the board would approve the enablement. [LR229CA]

SENATOR CHAMBERS: It doesn't go into the Omaha...into the city...so the... [LR229CA]

SENATOR FRIEND: The city's general fund? No. [LR229CA]

SENATOR CHAMBERS: ...city council of Omaha does not distribute those utility fees. Is

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that correct? [LR229CA]

SENATOR FRIEND: They do not. [LR229CA]

SENATOR CHAMBERS: But under this, they could do it, correct? [LR229CA]

SENATOR FRIEND: Well, if the people said they could, with a vote. [LR229CA]

SENATOR CHAMBERS: And do you think the people are the ones who can make that decision if a strong argument is made for a particular project, and some money could come from the utilities, which ought not go for one of these economic boondoggles; for example, maybe a baseball field, a baseball stadium? [LR229CA]

SENATOR FRIEND: Well, that's an interesting point you bring up. I mean, I think... [LR229CA]

SENATOR CHAMBERS: But if the public voted for that, that money would then go to underwrite that baseball stadium, and the utilities would not have it available for their purposes. Isn't that true? [LR229CA]

SENATOR FRIEND: Well, right now I don't think the people in Omaha would vote that way. [LR229CA]

SENATOR CHAMBERS: No, it can't...but if this were in place, the public could vote that way, couldn't they? [LR229CA]

SENATOR ERDMAN: Time. [LR229CA]

SENATOR CHAMBERS: Thank you, Mr. President. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on the motion to indefinitely postpone LR229CA. Senator McDonald, as principal introducer of that resolution, you are recognized to respond for five minutes. [LR229CA]

SENATOR McDONALD: Yes, Mr. President and members of the body. I just want to let you know this is not about tax increment financing. It's only about LB840, local option municipal economic development. And it's basically 44 cities--not Lincoln, not Omaha. It's many, many smaller communities that are able to use these funds. And what we're saying here is, and I'm going to read the part that is still left in the bill with the restriction omitted, page 2, line 21. It says: Notwithstanding any other provision in the constitution, the Legislature may also authorize any incorporated city or village, including cities operating under home rule charters, to appropriate such funds as may be deemed

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necessary for economic or industrial development projects or programs, subject to approval by vote of the majority of the registered voters of such city or village voting upon the question. And what we're saying is, the Legislature then next year gets to decide which one of those options, if it's a certain type of funding that we would allow them, we will make that decision. And then when we make that decision, then it will go to the vote of the people, if they want to use that option. If it's a new project, then they have to go to the vote of the people to be able to use that new funding. If it's in a project they already have, and in their plan it states that they have to use the particular funding they're using now, then they don't have that option. It has to go back to the vote of the people to add that additional option. This actually gives the Legislature more power to determine what funds they're able to use. That's what it's about, not about TIF, only about those cities that are using the local option municipal economic development funds. First of all, it has to go to the vote in the constitution. Once that passes, the Legislature gets to decide which funds can be used, and then the voters have to decide if they're going to use those funds. Many, many steps to the process, we are only in the beginning of the process to allow the constitutional amendment to go into...so the voters can vote on this in the next election. That's what this is all about. So who gets to decide on the surplus funds? The Legislature. Why is this amendment needed? It's amended to give the cities more leeway to fund local economic development. Right now they're only able to use their city sales tax of 1.5 percent and property tax. This gives our smaller communities the ability to have more economic development, which is what we're all about. They're up to the limit. They cannot add any more economic development funds. All local economic development plans must be approved by the affected voters. Change to those plans must be approved by those voters. I will take any questions. I'm not sure I can answer all the questions, but basically this is to help those that are involved in the municipal option plan, not TIF--basically not Lincoln and Omaha. It is our small rural communities. Thank you. [LR229CA]

SENATOR ERDMAN: Thank you, Senator McDonald. Your light is next. You may speak again. Senator McDonald waives that opportunity. Senator Friend, you're next, followed by Senator Adams, Flood, and Chambers. [LR229CA]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I'll be brief. I know there is some confusion and I've probably been adding to it. I believe that really the only thing that we're doing here, as I pointed out, on the bottom of page 2, the language that Senator Chambers was reading, and the top of page 3, I'm a little confused as to what we think we're afraid might happen. I'll admit that; I'm a little confused to that. The language that he was reading, "Notwithstanding any other provision in the constitution, the Legislature may also authorize any incorporated city or village, including cities operating under home rule charters, to appropriate such funds as may be deemed necessary for an economic or industrial development project or program, subject to approval by a vote of a majority of the registered voters of such city or village voting upon the question." Now what he's saying is, notwithstanding any other

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provision of the constitution; if there's another area of the constitution that says that you can use tax increment financing after you find something substandard and blighted, then, oh well, go ahead. That's the way I read this. But here when they're saying that you want to go out and use...when you want to go out and use for economic or industrial development projects certain types of general taxation revenue, you've got to go to the vote of the people. Well, so what we're striking now, then, is that there would be that local general tax revenue. I think what he's afraid of, and I'm not trying to put words in his mouth, is, oh, this is opening up a can of worms that are far greater than occupational tax and sales tax. I guess I don't read that in this constitutional amendment because, no matter what you do, you have to come back with enabling legislation to tell those particular communities what they can and can't do. You're giving them creative options here, but you still need enabling legislation to specify what the constitution is telling you. So I know there's discussions going around on the floor here. I'd be interested in listening to more of it, if that's what we have to do. But I guess I'm a little bit at a loss as to what we're missing in this constitutional language. If you don't feel...if you feel that striking this language would open up a can of the type of worms that you don't want to see, I guess I understand that. But I'm a little confused as to what kind of can of worms we're opening up here with that language that I just read into the record. We can continue this conversation. I'd be happy to answer any questions, (laugh) if I'm capable. But Bill is over here and I know he's very capable. With that, I would...Mr. President, with that I would close. Thanks. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Friend. Those senators wishing to speak on the motion to indefinitely postpone LR229CA are Senators Adams, Flood, and Chambers. Senator Adams. [LR229CA]

SENATOR ADAMS: Thank you, Mr. President. I'm going to yield some time to Senator Chambers to ask me some questions, if he would like. Let me try to put my interpretation on this, and if I'm incorrect, Senator McDonald, Senator Friend will correct me. Currently cities can use property tax dollars and, if they have local option sales tax, under LB840 they can also use those dollars for economic development, but only with a vote of the people that says it's okay to use our sales tax dollars in an LB840 economic development plan, it's okay to use property tax dollars for economic development. Those are the limitations. What this amendment, as I understand it, would allow is for other sources of revenues that cities have to be used for economic development purposes. Now obviously the amendment would have to pass, and there would have to be enabling legislation from us to do that. Let me give you an example. Let's say, for instance, that a community wanted to put up a rather large metal building and speculate on filling it, and I would tell you it's much easier to attract a company to town today if you have a place for them to be, rather than an empty cornfield and a promise. So the city says, we're going to build this building. Now they may, by a vote of the people, use sales tax to do that, by a vote of the people use property tax to do that. They have really no other source beyond that. But let's say, for instance, that the city has their own

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utilities. Maybe they own their own electrical system, their own natural gas system. Obviously, cities have water and sewer systems, and they have balances. Now typically those balances are going to be used within the electric system, within the natural gas system, within the sewer and the water system. But if they have balances there that they could use to help get this spec building built, right now they can't do that. They can't do it. Those monies stay within that utility, and you're going to have to have a vote of the people to be able to do that, and an allowance from us to be able to do that. Now that's my understanding of it. Senator Chambers, I'd yield to some questions to you, if you have them, and I'll try to answer them. [LR229CA]

SENATOR ERDMAN: Senator Chambers, you may use Senator Adams' time. [LR229CA]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Adams. Maybe I should not think just about Omaha. Would this language apply to the utilities in Omaha, which may have a surplus and Omaha's City Council decides that they want to get that money? Suppose the utility does not want it to go. Omaha would have to get a vote of the people to approve of this project using that money. Is that what you're telling me? [LR229CA]

SENATOR ADAMS: Yes. [LR229CA]

SENATOR CHAMBERS: And once that approval is given, the utilities are out of it. Their boards have nothing to say, and the city council can then take whatever they need of that money and spend it to erect that building. Is that what you're saying? [LR229CA]

SENATOR ADAMS: That would be my understanding. If the city council has authority and priority over those utilities and they have those balances, right now those balances are going to have to stay within that utility. If the city council takes it to a vote of the people, if all of this were enacted and the city council took it... [LR229CA]

SENATOR ERDMAN: One minute. [LR229CA]

SENATOR ADAMS: ...to a vote of the people, and the people said, yes, we'll allow you to take \$5 million out of the sewer and water fund in order to build this project or whatever it may be, then that would be the authorization for the city to do that. [LR229CA]

SENATOR CHAMBERS: And the surplus would be the amount...the money available in excess of the needs of the utility would be the amount that the city council said that amount would be when they submitted it to a vote of the people? [LR229CA]

SENATOR ADAMS: Correct. [LR229CA]

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SENATOR CHAMBERS: And it could be greater than the amount that really is available. In other words, it could bite into what that utility needs to operate and, if the public voted, that money would be taken from the utilities even if it was in excess of a surplus. Is that correct? [LR229CA]

SENATOR ADAMS: It wouldn't be very smart, but I could suspect that that could happen. [LR229CA]

SENATOR CHAMBERS: The public will do things that are not smart. Now if the Legislature gave enabling legislation, it would have to be general along the lines of what you're saying, that the surplus or whatever term they would use to designate... [LR229CA]

SENATOR ERDMAN: Time. [LR229CA]

SENATOR CHAMBERS: Thank you, Mr. President. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Adams. Senator Flood, you're next, followed by Senator Chambers. [LR229CA]

SPEAKER FLOOD: Thank you, Mr. President, members. In 2005 I introduced the little bill that could, LB217, which adopted the Public Facilities Construction and Finance Act, and I learned a pretty good lesson on that about the importance of the vote of the people regarding making changes in economic development and in issues like LB840 and bond issues. And what I like about this bill is that, if approved by the voters on the constitution, the Legislature comes back, we put forward the enabling legislation, and then it would go back to the community for a vote. For instance, Holdrege would have to vote specifically on what this money would be used for, and it would have to be explained to the voters in Holdrege that it was going to go for this, and if the voters approved it, then it would be permissible. There's no short-circuiting of our system here. This is above-board. It's by a vote of the people, not once but twice, and a vote of the Legislature before we ever get around to doing this, and I think it gives communities the flexibility to do with as they want the monies that have been raised by a utility or an occupation tax, and gives them the ability to spend it where the community thinks it needs to be spent. I appreciate Senator McDonald bringing this bill, I appreciate Senator Adams' support, and I also appreciate the fact that Senator Chambers is unwavering in his interest of not compromising the people's money derived from sources like utilities or occupation tax. And I'm comfortable that with this bill as drafted, placed in the constitution, that all of the safeguards remain in place, and for that reason, I do support it and I hope it passes. Thank you, Mr. President. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Flood. Senator Chambers, you're

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recognized, followed by Senator Friend. Senator Chambers waives. Senator Friend, you're recognized. [LR229CA]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Again, I know there are discussions going on the floor here, off the mike, so I wanted to make a couple of other points really quickly known. Some of the discussion on the record has been going in a direction of, well, we're a little worried about what MUD is going to do--the utilities fees and everything else that I was pretty general about. If a city owns a utility, they still end up having to appropriate those funds. The city doesn't own Metropolitan Utilities District, the city of Omaha. The city of Omaha cannot go in and take the Metropolitan Utilities District's money in order to do anything that this constitutional amendment allows them to do. They're talking right now about enabling legislation that's going to be specifically tailored to dealing with this subject matter, as far as the constitutional amendment goes. The portion of...if you look at the committee statement, the portion of language...the section of language that's being deleted from this amendment was what my legal counsel lovingly likes to refer to as a Hartnett amendment. The Hartnett amendment to the original proposal, which was, I guess, adopted in 1990, was a compromise proposal intended to alleviate some concerns about the possibility of abuse. So you're using too much revenue from too wide of sources, correct? That would be the situation. Well, the Hartnett amendment was...in other words--and I was talking to Senator Raikes about this--was we don't want to give the cities...and we don't even want you to go to a vote of the people. We don't want to give the cities this type of leeway. We don't want to give them...we don't want them to branch out this far. And by the way, not only do we not want them branching out this far, we don't even think that you should have a right to go to the vote of the people in order to do it. Well, the league and others are saying, no, we need a little bit more creativity in regard to industrial development and economic development. So that leaves us here, and that leaves four pockets of discussion going on, on the floor, as to whether this is decent policy. I would tell you only this: that despite the fact that we've butchered half of this discussion on the microphone--because frankly, I wasn't really ready for the in-depth...and Senator Chambers has a tendency to bring out the best and the worst in people--I wasn't ready for this in-depth discussion. But I think the in-depth discussion only goes so far as this: It goes so far as to, do we want the cities to have this type of expansive revenue authority? And the only way they're even going to get that expanded revenue authority is thus--a vote of the people and legislative enablement. So in other words, you've got the vote of the people, correct? You've got to come back to the Legislature and say, how are you going to make this work? The constitution is a document that is very vague for the most part. It doesn't tell a city how to appropriate its funds and how to do all these things, and by the way, tell a city, what you're doing is wrong. There's legislation that will tell them to do that. If we're afraid that somebody is going to use this type of language to help build a ballpark in Omaha, I'm not telling you to trust me on this, but I don't think that that's what this is for in the big picture. And by the way, I think that there are checks and balances in order to keep a city of Omaha, or

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a city of Lincoln, or anybody else from trying to do things like that. I don't know if I've helped or hurt. All I know is that there's a policy discussion here, and I think we need to try to... [LR229CA]

SENATOR ERDMAN: One minute. [LR229CA]

SENATOR FRIEND: ...figure out if it's...the Hartnett amendment was to try to narrow this thing. What we're doing is getting rid of the Hartnett amendment and trying to broaden it. Do we think that that's good policy or not? Senator Flood spoke to the policy. Others have spoke to the policy. I'd really be interested in hearing if anybody else really has any thought process in regard to this policy. Thank you, Mr. President. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Friend. We're discussing the motion to indefinitely postpone LR229CA. Those senators wishing to speak are as follows: Senators McDonald, Janssen, Wightman, and Raikes. Senator McDonald. [LR229CA]

SENATOR McDONALD: Mr. President and members of the body, we're actually dealing with LB840, the Local Option Municipal Economic Development Act, and we're broadening that so our cities can use other means of funding that has to, number one, be voted in the body and go onto the ballot, and it has to be passed by the voters on the ballot. It has to come back here, and then we allow which funds they're able to use; goes to the communities, and then they get to vote on whether they want to use those opportunities or not. I'm going to read to you the communities which have voted to create LB840, and you might recognize a lot of these: Albion, Bayard, Cambridge, Curtis, Gering, Kimball, Nebraska City, Schuyler, Superior, Alliance, Beatrice, Central City, Fairbury, Gothenburg, Lexington, North Platte, St. Paul, Tecumseh, Arapahoe, Beaver City, Chadron, Falls City, Grand Island, Louisville, Ord, Scottsbluff, Valentine, Arnold, Blair, Columbus, Fremont, Holdrege, Milford, Oshkosh, Seward, Wakefield, Atkinson, Burwell, Cozad, Geneva, Imperial, Mitchell, Plattsmouth, and Sidney. Those are the communities that have voted to create LB840 programs, and those are the cities that would be allowed to use this funding, because they have already abided by the program, the LB840 program. Those are the cities. Right now Lincoln and Omaha...in fact, Grand Island is the largest community that have voted to create this program. So we're not talking about the large cities in Nebraska. We're talking about the smaller cities. We're talking about economic development in our smaller communities. This would give them an option that they could fund economic development to a broader degree than they have now. But it takes many, many processes--positive votes along the way--before they ever get to that point. So please remember that, that it could be one of your communities that you're helping by voting positive on this constitutional amendment. Thank you. [LR229CA]

SENATOR ERDMAN: Thank you, Senator McDonald. Senator Janssen, you're recognized, followed by Senator Wightman. [LR229CA]

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SENATOR JANSSEN: Thank you, Senator and members of the Legislature. I remember this bill coming through the committee and I thought to myself, there are several cities in this state that would...could use this, and they are handcuffed in that process right now. But after...actually after its passage, the Legislature could amend the local option municipal economic development and authorize the use of any revenues from sources for a project under the act, developed and authorized by local voters, including the use of revenue and occupation taxes, which sometimes they can't use now, or revenue from utility charges. I think this is a good bill, but it does need discussion on the floor. With that, I look forward to the passage of this legislation and move it on to the next round of debate. With that, I would give the rest of my time to Senator Chambers, please. [LR229CA]

SENATOR ERDMAN: Senator Chambers, 3 minutes, 55 seconds. [LR229CA]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Janssen. It will take me only enough time to say I would like to withdraw that pending motion. Thank you. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Chambers. The motion is withdrawn. We are now back to discussion on LR229CA. Senator Wightman, you're recognized to speak. [LR229CA]

SENATOR WIGHTMAN: Thank you, Mr. President. I was really going to call the question, but that's unnecessary at this point. So I'll just go on record as saying that I do support LR229 and waive the rest of my time. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Wightman. Senator Raikes, you're recognized, followed by Senator Lautenbaugh. [LR229CA]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. If I understand this correctly, it would allow a city, for example, that had a service, maybe a water service or a sewer service, garbage service or whatever, with the vote of the people, to use extra money generated for that service, to finance an economic development project. And I do appreciate the vote of the people; however, I think if this would pass, the Legislature would feel compelled to provide this option to cities, and I think if you do that, you provide a message to cities--and maybe I'm completely wrong about this--that it's perfectly okay to charge more than it costs, say, to pick up garbage, and the extra money, then, can be used for an economic development project by that city, which again, my own view on that is not the common one, is mostly...those are mostly, in a sense, destructive, in that you're competing probably with other cities or other areas to the point where you pay more for a project than it's really worth, and that would be on the backs of people who are paying for services--garbage, water, sewer,

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whatever it might be. So it seems to me this is not a good idea. I'll be happy to...not happy, but I will be corrected if I'm wrong in that interpretation. Thank you. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Raikes. Senator Chambers, you're recognized to speak, and this will be your third time on this motion. [LR229CA]

SENATOR CHAMBERS: Right. And, Mr. President and members, I'm not going to speak on this provision while it's on General File. I don't like these types of bills. I have not been in favor of a lot of so-called economic provisions, and maybe what ought to be said, and it ought to be on the ballot, is that this is a way to get public money into private hands. This money is going to private individuals. It's going to private entities. The wheel tax in Omaha could be raised in order to make money available, to have the public vote to give this over to a private entity to be used for development. Public money will be available to be given over to private individuals, with a vote of the people. I don't think that the Legislature has shown the belly to resist these types of proposals when they're presented to the Legislature, because you can see these kinds of things passing routinely, every time the Governor or somebody brings something on behalf of the Governor. If these cities, these counties, and these others who are interest in this want to have the Legislature approve of something, the Legislature is going to approve. I do not think there is such a crying need for economic development money, or money to go into private hands--public money into private hands--that we need to change the constitution to bring it all the way down to the city and the village level. This will not just involve cities. It will involve a village. So if Wal-Mart came to a village and talked about all the great jobs that would be available, you think the village board couldn't get the people to vote for something like that, with the promise of a lot of jobs? And as Senator Raikes pointed out...my example, by the way, is not perfect, far from it. They will increase the amounts charged by the city for some of these occupation enterprises or activities, and in Omaha the wheel tax, for the purpose of giving it over to private individuals or entities. I'm not going to say any more on the bill at this stage, but I'm not going to vote for it. And I think when the Exec Board puts together language, that language should make it clear that these economic development and industrial development projects are not things that the city is going to do, and the city will own, but that this is money that will be given over to private individuals for these purposes. And anything less than that will be deceptive. Without the discussion this morning and even with it, I'm not sure that everybody who's going to vote on this is crystal-clear on all of the implications and ramifications. When Senator McDonald was reading off cities, they were smaller ones, and their circumstances are different from those of Omaha. I don't know if Omaha's are different from those of Lincoln. But this is not a one-size-fits-all, and I don't know that the Legislature ought to do this. But I'm convinced that it ought not. So I'm going to vote against it, and maybe the public can be prevailed upon to defeat it, if it winds up on the ballot. Thank you, Mr. President. [LR229CA]

SENATOR ERDMAN: Thank you, Senator Chambers. (Visitors introduced.) Senator

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McDonald, you're recognized to close on the motion to advance LR229CA to E&R Initial. [LR229CA]

SENATOR McDONALD: Mr. President and members of the body, we've had some good discussion on this bill. I think there are some questions that have been answered. I think there are some questions yet to be answered. I think that this constitutional amendment will open up opportunities for our smaller communities. I think we need to trust the Legislature next year. I know half of us will not be here, but the rest of you will be here, and I know that you will make the right decisions once this passes this year, and it also passes as a constitutional amendment to the vote of the people this election cycle, when it will come back to you. You will have the opportunity to decide if any funds would be available that you would authorize those communities to use. You have that discretion. We have had this conversation today. You know what the bill is about. You'll be able to take the lead and find out what opportunities there would be to fund those economic development projects. And even when you decide which funds are available to be used, it then goes to those communities for them to make the decision whether their project could be funded by those, if they would want to use that money to be funded. There are a lot of ifs and a lot of votes that have to be taken before those opportunities can be used in our rural communities to enhance the economic development. So I encourage you to pass this on to Select File. We will do a little more in-depth searching to make sure that we have all the unanswered questions answered, and if we have to do something to compromise at this point, we certainly will. But at this point I would hope that you would move this on to Select File, and we will answer all those unanswered questions on the next round of debate. Thank you. [LR229CA]

SENATOR ERDMAN: Members, you've heard the closing on the motion to advance LR229CA to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all members voted who choose to? Record please, Mr. Clerk. [LR229CA]

CLERK: 30 ayes, 4 nays, Mr. President, on the advancement of LR229CA. [LR229CA]

SENATOR ERDMAN: LR229CA does advance. Mr. Clerk, items for the record? [LR229CA]

CLERK: Bills read on Final Reading, Mr. President, this morning were presented to the Governor at 10:14 a.m. (Re LB736, LB736A, LB916, LB965, LB1058, LB1068, LB1154, and LB1154A.) Explanation of vote from Senator Dwite Pedersen (Re LB736, LB736A, LB1058, LB1154, LB1154A). Education Committee will meet in Room 1525 upon recess. (Legislative Journal page 1365.) [LB736 LB736A LB916 LB965 LB1058 LB1068 LB1154 LB1154A]

And I do have a priority motion, Mr. President. Senator Pirsch would move to recess until 1:30 p.m. []

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SENATOR ERDMAN: Members, the motion is, shall we recess until 1:30 p.m.? All those in favor say aye. All those opposed, nay. We're in recess. []

RECESS

SENATOR CARLSON PRESIDING []

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

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

SENATOR CARLSON: Thank you, Mr. Clerk. Any items for the record? []

ASSISTANT CLERK: One item: Your Committee on Enrollment and Review reports LR283 is correctly enrolled. (Legislative Journal pages 1366-1368.) [LR283]

SENATOR CARLSON: Thank you, Mr. Clerk. We will proceed to the first item on this afternoon's agenda. []

ASSISTANT CLERK: Mr. President, the first bill, LB1172, introduced by Senator Dierks. (Read title.) The bill was read for the first time on January 23 of this year, referred to the Committee on Agriculture. That committee reports the bill to General File with committee amendments. (AM2305, Legislative Journal page 920.) [LB1172]

SENATOR CARLSON: Senator Dierks, you are recognized to open on LB1172. [LB1172]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I'm pleased to present to you LB1172. This bill will attract veterinarians to our state to practice what we call food supply veterinary medicine in underserved areas of Nebraska. Agriculture is the primary business in the state of Nebraska. According to the 2008 Nebraska ag fact card, 93 percent of the state's total land area is composed of farms and ranches. The Nebraska livestock industry accounted for 64 percent of the state's total agricultural cash receipts in 2006. Nebraska was number one in commercial red meat production in 2007. It is imperative to have trained medical professionals readily available to assist our state farmers and ranchers. Unfortunately there is a shortage of veterinarians throughout rural Nebraska and the rest of the nation. The American Veterinary Medical Association predicts that the number of food supply veterinarians will decline by 4 to 5 percent annually, through the year 2016. In Nebraska alone there are currently 13 counties in rural Nebraska without veterinarians. These counties are: Banner, Deuel,

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Dixon, Fillmore, Greeley, Harlan, Hitchcock, Logan, Loup, McPherson, Perkins, Scott, and Wheeler...or Sioux and Wheeler. I've handed out information compiled by the American Veterinary Medical Association which details the county-by-county number of total food animals, total food animal veterinarians, animals per veterinarian, and 13 counties without veterinarians. This is alarming to anyone who cares about the state's economy and the future of production agriculture. That is why LB1172 is an important bill to pass this year. Upon completion of veterinary school, the American Veterinary Medical Association statistics show that most veterinarians have a loan debt of over \$100,000. LB1172 provides an incentive to veterinarians to practice food supply veterinary medicine in Nebraska. This program will be administered through the Department of Agriculture. Each year the department will choose four veterinarians to participate in the program. Selected veterinarians will be eligible to receive up to \$80,000 during a 4-year period if they practice in underserved areas of the state. After year 1, the payment to the veterinarian will be \$15,000; after year 2, \$15,000; after year 3 the amount goes up to \$25,000; after completing the 4th year the veterinarian will receive his or her final payment of \$25,000. The program is purposely weighted more heavily at the end to encourage the veterinarian to complete all four years. There are eligibility requirements, such as being a graduate of an approved veterinary medical school, and licensed to practice veterinary medicine in Nebraska. There are also provisions to release the veterinarian from his contract without penalty if certain conditions are met. This program will be funded through General Funds. No money will be allocated during fiscal year 2008-2009 while the Department of Agriculture develops its rules and regulations. I've also handed out information on actions taken by other states to attract food supply veterinarians to their states. If Nebraska wants to increase the number of veterinarians who practice in the rural areas of this state we must provide some kind of incentive so we can stay competitive with the other states. The incentive approach was chosen over the loan repayment approach so that veterinarians with or without loans could participate in Nebraska's program. This program may be attractive to veterinarians who want to move to Nebraska and need help starting a business. LB1172 was supported at the Ag Committee hearing by the following groups: the Nebraska Veterinary Medical Association, Nebraska Cattlemen, Nebraska Farm Bureau, and even Tyson Foods. Nebraska Farmers Union and the Nebraska Pork Producers supported the bill as well. There was no opposition and no neutral testimony. Seven of the eight Ag Committee members voted to advance the bill to General File, one member was absent during the vote. I want to thank Senator or Speaker Flood for naming LB1172 as a Speaker priority bill. This is an issue that's crucial to the future of our state's economy. I'd like to point out that one of the statistics that we have seen is that of all the veterinarians that graduate across the country in the United States for the past several years, 80 percent of them are women. And most...the larger percentage of women go into companion animal practice--dogs and cats and horses. So we limit some of the people that are available to come to the western part of the state, and this is one of the reasons for this incentive legislation. I think I'll stop now and ask for Senator Erdman to do the Ag Committee amendments. Thank you, Mr. President. [LB1172]

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SENATOR CARLSON: Thank you, Senator Dierks. As the Clerk stated, there are amendments from the Agriculture Committee. Senator Erdman, as Chair of the committee, you are recognized to open on the amendment. [LB1172]

SENATOR ERDMAN: Thank you, Mr. President. Nicely done. The Agriculture Committee heard the...had the public hearing, excuse me, on LB1172 on February 19, 2008. The committee was all in attendance. And as Senator Dierks just pointed out, there were no opponents to the bill and no neutral testimony. All that appeared in front of the committee that day were in favor of LB1172. Those individuals and entities are listed on your committee statement. The committee advanced the bill 7 to 0, 1 member was absent and therefore was not voting. The committee amendments make largely clarifying and technical changes or revisions to the bill, and here are some of the specific outlines of those issues--it revised the provisions to allow the state's obligation in providing these incentives to be commensurate with resources made available to the program, which is a really nice way of saying we prorate them. The money is available and it is based on the applicants. Those number of individuals that would be eligible otherwise, they would get the amount allowed and according to the funds that are appropriated under this program. It also revises Section 3 of the bill to direct the department to select up to 4 individuals. Instead of requiring them to select four individuals, it's up to four individuals to participate, and adds that the funding availability is a trigger for proration of the annual stipend amount made to the participants. It clarifies that subsection (4) sub (2) designating the food animal veterinary shortage areas and how those are determined. Under the bill as introduced it would have been based on the American Veterinary Medical Association's shortages, which I believe Senator Dierks has handed out. That's the basis. But then we also allow for a reevaluation of that process to be done by the Department of Agriculture in addition to that. And so it allows for the initial shortage area to be determined as what we currently know it to be, and as you go forward it allows for a review every so often to ensure that we're actually targeting those areas with this program that we believe is appropriate. It provides that flexibility and it allows, again, that department to update those designations as circumstances warrant. It also makes a clarifying change reflecting the bill's intent that contracts to provide veterinary practice eligible for the stipend incentive are made with the department, as inferred from the remainder of the bill. A further clarifying revision is made to provide that eligible practice may be through a dedicated food supply animal practice, in addition to rural mixed animal veterinary practice. And Senator Dierks can explain to you exactly what those issues are, but there are obviously individuals that practice on...that have their veterinary practice dealing with food supply animals. There are others that deal with small animals, and then there are others that do both. Another provision is that it adds a recapture provision as the new subsection (6)(2)(b). In the event that a veterinarian is unable to perform further veterinary service due to a license discipline for cause, as defined in the sections of the Veterinary Practice Act. We provide the opportunity for individuals that are practicing veterinary

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medicine in Nebraska to take a part of this program in shortage areas, but what we don't allow is that in the event that they have their license suspended for violating their act and which they are licensed under, that they don't get to continue under the program, and as a further provision that there is a recapture provision that the state can recover or attempt to recover those costs that were previously given to them as the incentive package allows. Obviously, if an individual is breaking the law, if an individual has had their license suspended, if they're no longer complying the codes and the ethics of their profession, we as a state shouldn't be providing an incentive to them, nor should we allow them to continue to maintain or to keep that incentive because of their actions. It also revises Section 7, which creates the cash fund to insert additional clarifying language that the receipt of the...receipt and expenditure of funds is from a cash fund. A companion revision is made to the new recapture provisions to provide that those recaptured funds are returned to that incentive fund. The final provisions of the committee amendment is that it would strike the previous version of the bill and that is Section 9 only. Again, the committee advanced the bill on a vote of 7 to 0, 1 member was absent, not voting. We offer this as consideration. Senator Dierks, as well as those that testified in front of the committee, made a strong and compelling case for the need not only within Nebraska, but throughout rural America for veterinary medicine, for their ability to provide their services, and the reality that there is a shortfall, and if there is an opportunity for us to facilitate or to be a partner in that solution that we could consider doing that. And out of the work product that Senator Dierks has been a part of, LB1172 has come forward. With that, Mr. President, I would yield the remainder of time on my opening to Senator Dierks, if he would care to use it. [LB1172]

SENATOR CARLSON: Senator Dierks, you're recognized. [LB1172]

SENATOR DIERKS: Thank you, Mr. President. I just...I know there are going to be some questions, and I think that Senator Erdman took care of most of those technical things as far as what qualifies a veterinarian and what reasons that he might lose his qualification. And I'm willing to visit with you about that. I think that...I think we've got a fairly tight piece of legislation here. And I should point out to you that there's a shortage of food service veterinarians across the nation, especially from Canada to Mexico, and it goes down the western side of North and South Dakota, Nebraska, Kansas, Oklahoma, and the eastern side of Wyoming and Montana, and it's just a swath down through there that we're very, very short on those veterinarians that work on food animals. So it isn't just Nebraska, but that's what that one little chart I pointed out...showed you...showed...turned out to you shows how other states are taking care of the problem. I should tell you that I have also been involved with a similar program at the federal level. So far we haven't had much results with that. But the feds, the AVMA is very aware of this problem and they're doing their best to try to take care of it. And they're encouraging us to do our share as well. Thank you, Mr. President. [LB1172]

SENATOR CARLSON: Thank you, Senator Dierks. Members, you've heard the opening

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to AM2305 on LB1172. There are members wishing to speak. Senator Langemeier, you are recognized. [LB1172]

SENATOR LANGEMEIER: Mr. President, members of the body, if you look down, a lot of you have asked, I filed an IPP motion to this bill, not necessarily to take that to a vote but to draw your attention to this. Sometimes we have legislation, if somebody doesn't do anything it just kind of slides on through. I just want to bring up a couple of comments, and I'm not sure that I'm in opposition to this bill at all. Senator Dierks and I introduced a bill earlier this year, LB1174, that went in front of the Health Committee, that would allow for chiropractors, doctors, vets to come assist vets for areas of expertise that veterinarians might not have. And during that process we had a lot of testimony from vets telling us that...don't do this, don't give any responsibilities that we have to anybody else, and don't let them in, because we're short of work the way it is. However, then we have this bill, LB1172, to incentivise bringing vets out into rural Nebraska where the vets just testified there's not enough work for them in the first place. So I question that. And I'd like to ask Senator Hansen a question. He and I had a good discussion earlier, so I'm going to pull him up on the mike here to try to bring him into this. [LB1172 LB1174]

SENATOR CARLSON: Senator Hansen, would you yield? [LB1172]

SENATOR HANSEN: Yes, I will. [LB1172]

SENATOR LANGEMEIER: Senator Hansen, you and I had a discussion earlier and we were talking about artificial insemination of livestock and mainly beef, which is where this bill would go forward. That started in a vet clinic doing...vets were doing that. And that has since expanded out into...you're doing it on your farm, or you have...on your ranch you have individuals, am I correct, you have individuals come out and do it? [LB1172]

SENATOR HANSEN: We do. We have the people that sell us the semen come out and do it, mainly because they do thousands of head per year. They do it on a daily basis starting in, I don't know, probably the end of this month, all the way through June. They do it and that's their business. They do it, that's the only thing they do. They don't do other veterinary practices. They have specialized in artificial insemination. [LB1172]

SENATOR LANGEMEIER: Yeah. Are you familiar with the training that they go through? [LB1172]

SENATOR HANSEN: Yes, I went through it myself. [LB1172]

SENATOR LANGEMEIER: And can you explain a little what that training is? [LB1172]

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SENATOR HANSEN: (Laugh) [LB1172]

SENATOR LANGEMEIER: Exactly. I think you explained enough. [LB1172]

SENATOR HANSEN: It is...it is...it is training. And it's not that many days of training, a week of training. Anyone, even you, Senator Langemeier, with your skinny arms could be a tremendous artificial technician. (Laughter) And I think... [LB1172]

SENATOR LANGEMEIER: I have been through the training. So I spent my three days at the University of Nebraska in my animal science background trying to perfect that method. We have people on our ranch that do it for my cow herd. We AI everything. I've just explained that we have parts of what I would call veterinary medicine that has slowly evolved out to people that have specialized in particular areas. And I think we'll pursue the other bill next year further, LB1174, to further demonstrate there are spin-offs of professional licensed people and other professional people that can come into the veterinary medicine world and assist without all the worlds training. We...there was a big discussion over letting a chiropractor work on an animal. And you go from a stack system to a hung system, they want to add all these training requirements, however, we have them licensed in the human anatomy. I think we could look at allowing them to go into other areas without so much further scrutiny and emphasis in training. And so I wanted to get that across. And that will end my conversation on this bill. I think this bill needs to go forward on the merits. Do we want to start to...thank you, Senator Hansen. I'm done, by the way. If...I'd like to see LB1172 and the amendment, which makes it better, go forward on its own merit. I do still have some questions. We can see testimony saying there's not enough work for vets out there in the large animal. [LB1172 LB1174]

SENATOR CARLSON: One minute. [LB1172]

SENATOR LANGEMEIER: Senator Hansen, I also made the comment earlier, as they go to school...currently, our students go to school, and they find out they can get out of school and they can go into horses, cattle, or excuse me, horses, dogs, pets. And Senator Dierks said before, they look at the dollars of return that they can get in those animals, they're high. This incentive program is not going to deter them from making triple the amount of money in a small animal practice versus a large animal practice in Scottsbluff, Nebraska. So I think it's crucial that we make sure this bill will do what we hope it will. Thank you, Mr. President. And you're doing a great job, by the way. [LB1172]

SENATOR CARLSON: Thank you, Senator Langemeier. Thank you, Senator Hansen. Members wishing to speak are: Dubas, Hansen, Wightman, Raikes, and Dierks. Senator Dubas, you are recognized. [LB1172]

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SENATOR DUBAS: Thank you, Mr. President, members of the body. I rise in support of the amendment and the underlying bill. In...many people might think that this is just an issue that impacts rural areas of the state or rural areas of the country, but it is not. If you eat, this issue impacts you. Large animal, food animal vets are a critical component to our national security and our food safety. They deal with issues that, through animal health, that could have devastating impacts on our food safety and on our national security. So having food animal vets in place is of the utmost importance for rural Nebraska, as well as across the state. It really should be a priority issue from the national level all the way down. Recruiting food animal vets, large animal vets in rural areas is just as important as recruiting medical doctors. I know not too long ago our local veterinarian was considering retiring, and everybody was pretty nervous about...if we were going to get somebody who was going to be willing to pick up the load that our local vet carried and do the job that our local vet did. And we were very relieved that we were able to recruit a young veterinarian into our community who had the passion and who wanted to be a large animal vet. And it was a very important day for our community, and our county, and our area to have a large animal vet come in and pick up the slack. Yes, there are a lot of things that other people can be trained to do as far as taking care of large animals, food animals. You know, we have veterinary technicians who are a key component to rural areas and in helping our local veterinarians. We have, I know on our own farm, a lot of things that we do just on our own. But yet we always know that we have our veterinarian to call and bail us out when we've done something we probably shouldn't have done or, you know, we are in need of that specialized care. So this is a very important bill. Yes, the money is definitely with companion animals, but there still is a segment of the population, I think, that are looking to go into veterinary medicine who still have that passion for food animals, large animals, want to be able to come into the rural areas and serve that specific population of animals and patrons. And while this doesn't look to serve a large number of people, I think it can serve a number that will make an impact in our state as well as across the nation. So I ask your support for this amendment, as well as the underlying bill. Thank you, Mr. President. [LB1172]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Hansen, you are recognized to speak. [LB1172]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Had an interesting lunch yesterday downstairs with the association of the students of the University of Nebraska. And the young gentleman I sat across the table from was telling us that the average indebtedness that a University of Nebraska student ends up with after graduation is \$17,000. Well, Senator Dierks has already told us that when a veterinary student...of course they go a few more years, but once they get out of veterinary school they owe a...they owe someone \$100,000. And that's the problem. We identify students whether they come from a farm or ranch background, or they just have a sincere interest in the food animal and food animal safety and food animal health. There are 4-H programs in the United States. Our FFA programs in the United States

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are becoming more and more urbanized. So those young folks are learning about animal science from the...probably from the consumer side of it. But they still realize that we need food safety and we need healthy animals. Dollars, of course, become the problem. The \$100,000 worth of indebtedness that these veterinary students see becomes a problem. They look back, they look and say, how am I going to pay this back? They look at the business world and they say, we need to save money, we need to save money everywhere we can. And they look at the companion animal practice, they look at smaller facilities, they look at the...they can get to work in a two-wheel drive pickup or a two-wheel drive car, they don't need the 4-wheel drive equipment that it takes to get out in the country. There is no capital investment in equipment that the large animal and the food animal veterinarians experience. They can get by with a smaller staff, and they have higher charges per pound of service. I'm not sure that's a veterinary (laugh) phrase, Senator Dierks, but they can charge a lot for a small dog. I do know that. And they can go practice at a horse racetrack. They can practice equine veterinary medicine at a racetrack where they don't have to have all their capital, equipment and the staff or the office facilities. Using state funds to repay student loans, I'm sure this has been a problem in the past with the Legislature and the finances...and the financial shape we're looking at now. Senator Dierks, the fiscal note shows that in the future when you get 16 students in the program it will cost \$330,000 a year. I'm sure that will raise the concern of some people. What can the communities do? I think that communities are also...should play a role in this. The communities, the farmers, the ranchers, the ones that are raising these food animals and want a healthy product to go out to the consumers, they need to help too. They need to help. One thing, they need to identify the shortages of the veterinarians and that one way we can tell that is by looking at the age of the veterinarians. Veterinarians are like policemen, they don't last very long. They're like firefighters, they have to retire at a younger age because it's a tough life. I think our community foundations might be able to help. They can identify and also fund a new young veterinarian coming back to the community. I think the chamber of commerce can get into the act, too. But the idea is that we need young veterinarians to come back to the state of Nebraska. How we do it is a matter of getting the money together, but we have to look at the \$100,000 worth of indebtedness that the veterinary student has at the time of graduation. Thank you, Mr. President. [LB1172]

SENATOR CARLSON: Thank you, Senator Hansen. Senator Wightman, you are recognized. [LB1172]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I have some questions I will ask of Senator Dierks at some point. I did want to discuss a little bit of the fiscal note. I also am not sure, from what Senator Hansen said, whether he's proposing raising some of the money from a local match, or whether he thinks it all should come from the state. So I guess I will start out and, if Senator Dierks would yield, have some questions for him. [LB1172]

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SENATOR CARLSON: Senator Dierks, will you yield to Senator Wightman? [LB1172]

SENATOR DIERKS: Yes, sir. [LB1172]

SENATOR WIGHTMAN: Senator Dierks, I'm not quite sure, in reading the bill, whether this is going to be...start out in the form of some sort of scholarship to students, or loans to first year...well, actually early veterinarians, early in their career. Right now you're not looking at it as a loan for veterinary students, is that correct; you're looking at it as a subsidy when they go out to practice in the small community? [LB1172]

SENATOR DIERKS: That's correct. The idea is to have an incentive to get people to come there in the first place, these underserved areas. [LB1172]

SENATOR WIGHTMAN: And I'm not quite sure that I followed what Senator Hansen was talking about, but he was talking about the possibility of maybe there being some funding from local groups, whether it be chamber of commerce, whether it be from farmers and ranchers that would be interested in having this veterinarian locate in their community. Was any thought given to that? [LB1172]

SENATOR DIERKS: Not really, though Senator Hansen and I had discussed it a little bit, I think earlier today or yesterday, that some communities do have active groups out looking for professionals to come to their community to work. I know a community in north central Nebraska that got very active in that issue and enticed a medical doctor, and a dentist, and a veterinarian to come into their town. And they helped provide funding for clinics in all three cases. But this not part of what we're talking about here. This is all strictly done based on General Fund dollars. [LB1172]

SENATOR WIGHTMAN: Now eventually you will have 16 veterinarians involved on an annual basis. Is that correct? [LB1172]

SENATOR DIERKS: Well, that would be the maximum. I think it's set up to take on four new ones every year, but that doesn't mean you have to. If there's not four that qualify, why you take whatever you think is qualified. [LB1172]

SENATOR WIGHTMAN: And when you got up to that maximum, you would have \$320,000, because you'd have four at each level, is that right, four at \$15,000? Well, you'd have actually eight at \$15,000, and eight at \$25,000? [LB1172]

SENATOR DIERKS: That's right. [LB1172]

SENATOR WIGHTMAN: Can you tell me approximately how many veterinarians there are in the state of Nebraska? [LB1172]

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SENATOR DIERKS: Tell you what again? [LB1172]

SENATOR WIGHTMAN: About how many veterinarians there are in the state of Nebraska? [LB1172]

SENATOR DIERKS: Well, there is somewhere in the neighborhood of 500. But that includes research people and people who work at the university, people that work at... [LB1172]

SENATOR WIGHTMAN: And small animals, too? [LB1172]

SENATOR DIERKS: That includes small animals, yeah. And there may be more than that, but I think...when I first started practice it was closer to 300, but I know we've gained. I think we're up around 500, maybe 600 veterinarians now. [LB1172]

SENATOR WIGHTMAN: But many of those do strictly a small practice and live in Omaha or Lincoln. Is that correct? [LB1172]

SENATOR DIERKS: Yeah, many do, that's correct. [LB1172]

SENATOR WIGHTMAN: Or a small animal practice. [LB1172]

SENATOR DIERKS: Yeah. [LB1172]

SENATOR WIGHTMAN: Hopefully, they don't do a small practice, they do a small animal practice, right? [LB1172]

SENATOR DIERKS: We call it companion animal. [LB1172]

SENATOR WIGHTMAN: (Laugh) Okay. [LB1172]

SENATOR DIERKS: And that means horses, cats, and dogs, and rattlesnakes... [LB1172]

SENATOR WIGHTMAN: And this bill, excuse me. [LB1172]

SENATOR DIERKS: ...and rattlesnakes, whatever they need to have fixed, right? [LB1172]

SENATOR WIGHTMAN: (Laugh) Okay. This bill would be aimed at food product animals. Is that correct? [LB1172]

SENATOR DIERKS: Yes. [LB1172]

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SENATOR CARLSON: One minute. [LB1172]

SENATOR DIERKS: We're talking about cattle, hogs, sheep, buffalo, I guess, whatever they work on that people eat. [LB1172]

SENATOR WIGHTMAN: And you indicated that...I think the bill indicates that some of this may be veterinarians with a mixed practice that might do some small animals and some food product animals? [LB1172]

SENATOR DIERKS: That's true. They've got to be, in order to qualify here they have to do a majority food animal practice. It's got to be a majority of food animal practice. I think that the selection committee will be pretty selective about that. It's up to them, really, to make the selection. But you can't do a veterinary practice in Harrison, Nebraska, without taking care...without vaccinating a dog or cat for rabies. It's just going to...you've got to have that available, too. [LB1172]

SENATOR WIGHTMAN: Thank you, Mr. President. And thank you, Senator Dierks. [LB1172]

SENATOR DIERKS: You bet. [LB1172]

SENATOR CARLSON: Thank you, Senators Wightman and Dierks. Those wishing to speak: Raikes, Dierks, Gay, and Hansen. Senator Raikes, you are recognized to speak. [LB1172]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I think this bill brings up an interesting issue. I will tell you I'm going to be, I think, a little bit counter to the trend here. I don't think this is a good idea and I'll tell you why. Particularly for large animal practice or for large animal, which this would aim at, current practice has changed, at least in my view, considerably. One of the changes that has been made is that veterinarians, practicing veterinarians, have made themselves much more efficient in terms of the number of animals, the number of operations they can serve. At one point I suspect it was the case that almost every operation had to have a visit from a veterinarian maybe once a week, or once a month, or something like that. Now it's not done that way. You have some very large cattle operations, for example, that I'm told of at least, that virtually never have a veterinarian on the premises. Now they use the services, but rather than using them by a veterinarian being present on the premises, they use the Internet, they use mail-in samples, they use video pictures that are transferred over the Internet and so on. Another thing is that people who care for the livestock, who are there every day, have become trained so that they do a lot of the work that was once done by a veterinarian themselves. For example, all the immunizations, the implanting, various other operations are done by the people on the

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ground. So my point, generally, is that there has been a change in the way operations are done so that we need many fewer veterinarians than we once did need. Suppose it were true that we did need veterinarians that are not there now. In my view, the best way to handle that is to make the operation work through the market. You...if...if there's not enough money there now to bring a veterinarian on board, then user fees need to be higher. And a bill like this, for example, does not guarantee that fees will be lower because the state is kicking in some money, or it really doesn't guarantee anything. In fact, as near as I can tell, it doesn't guarantee that the veterinarian that is under this program will be a full-time veterinarian. It's not clear but what they could develop a livestock operation on their own which they tend while they're doing this particular program. I think Senator Langemeier has made the point that, even though this is a considerable amount of money, given the alternatives available to a trained person, it's probably not going to be enough to make a difference to switch...to change the anticipated location for a veterinarian, whether they go to a city or to a rural area. I would remind you also that there is no vet school in Nebraska. If this applies only to trained veterinarians then it's going to have to apply to either someone who is from out of state or goes out of state to receive their education, which isn't necessarily a bad thing, but it, I think, does raise a question as to how you use money, state tax money. Finally, it's mentioned, at least in the statement of intent, about homeland security. I don't see that as being directly related to this. If there is a homeland security issue then that ought to be dealt directly with by the home security... [LB1172]

SENATOR CARLSON: One minute. [LB1172]

SENATOR RAIKES: ...officials rather than putting a program in this...like this in place whereby, as far as I know, there's no special or specific requirements of a person on this program to address homeland security needs. So even though this bill does raise an issue of an important profession in the state, that of veterinarians, it proposes a program which I don't believe is either needed or wise. Thank you. [LB1172]

SENATOR CARLSON: Thank you, Senator Raikes. Senator Dierks, you are recognized. [LB1172]

SENATOR DIERKS: Thank you, Mr. President. I just wanted to touch on a few things that have been discussed here. I think that some of the things Senator Raikes is concerned about as far as how they practice and what they do is going to be decided by the selection committee. They'll have to be satisfied that these people are going to practice full-time veterinary medicine in order to qualify for the funds. Yes, I agree that things have changed. I've been at it since 1961. Things certainly have changed in that time. I started out with a cattle chute behind my pickup and a lariat and an office on main street in Ewing, Nebraska. When I left, in '92, we had a clinic and three veterinarians working there. And we didn't...we got to the country frequently. But when I first started practice, if I did two cesareans at night on heifers, that took up the entire

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night, because I might drive 40 miles out there to get there and do the cesarean, and 40 miles back. As I left the practice, those cesareans were all done in the clinic in O'Neill. And I recall doing six of these cesareans one night between 6:00 and midnight, took time out between one of them to sew a cut up on a horse's head. That was...everything was just timed just right. They got there just when I needed them and we got it all done. But, yes, things have changed. And we have it easier because the facilities are better and the chutes are better and we have hydraulic chutes around the country. Some of those old chutes we used to use were widow-makers. They would really do a number on...some of those wild cows would do a number on a guy. So...but I have to go back to the fact that this is...this is...this program is being pursued not only at the state level but at the federal level because it is a homeland security thing. That's why the feds are getting involved with it. I should tell you some of the things that Senator Hansen talked about and some of the things that Senator Langemeier talked about. Senator Langemeier was concerned about the veterinary therapist bill. And, Senator Langemeier, you said that was LB1174, and if you want to help me with that next year, I'd be very happy to have you do that. Thank you. But it was LB1173, and we are going to look at that again for a bill for next year. But we had some difficulty satisfying all the professions, and it wasn't ready yet for us to pursue. So with the help of the Health and Human Services Committee, we were able to get around some of that and we used an amendment that Senator Langemeier brought to give some protection to the Henry Doorly Zoo, as far as them allowing surgeons and physicians from some of the colleges in Omaha to come out and do some of the work on some of the quadrupeds and...but the other thing I wanted to talk you about, there are some things that veterinarians used to do that now ranchers are doing and they are not violating a practice act. For instance, the artificial insemination that they talked about, pregnancy exams, those are things that most rancher kids can do. But it's difficult many times for them to do cesarean sections and it's difficult for them to do embryo transfer. One of the reasons that we had this veterinary therapy thing is the people from the... [LB1172 LB1174 LB1173]

SENATOR CARLSON: One minute. [LB1172]

SENATOR DIERKS: ...Nebraska Cattlemen Association have some members that wanted to do embryo transfer and they would like to be able to be one of these veterinary therapists to do that. At this point, embryo transfer is relegated to the veterinary profession. The same thing is true of spaying heifers, the same thing is true of equine dentists. About ten years ago we had a fellow from South Dakota come in here and he was spaying heifers, he was not a veterinarian, he had a good cattle dog to help round the cattle up, and his techniques were pretty bad as far as cleanliness and sterility. He had lots of death loss. It's a serious thing and it should be done by veterinarians who know what they're doing. So we stopped that. The Supreme Court got after him, the Attorney General got after him first, and he kept doing it, so we got some veterinarians out there to take him to court. Same thing happened to an equine dentist from over here at Waverly. [LB1172]

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SENATOR CARLSON: Time. [LB1172]

SENATOR DIERKS: Thank you, Mr. President. [LB1172]

SENATOR CARLSON: Thank you, Senator Dierks. (Visitors introduced.) Senator Gay, you're recognized to speak. [LB1172]

SENATOR GAY: Thank you, Mr. President. I'm listening to the debate and a few questions came into my mind. One...going back and forth, I understand that we deal with issues where in rural areas we're losing professionals and health professionals, now it's veterinarian professionals. As I look through the bill, I have more and more questions and one is, as we give an incentive to a lucrative field, I understand that and it's somewhat set up what it is and I'm trying to learn the differences between the veterinarian practices, but it looks to me like we could give up to \$80,000 to four vets. And then if they leave, we're just invested the \$80,000 and I didn't see any mechanism to pay that back. And a few other things, one is extreme hardship, how do you get out of that? But I'd feel a little more comfortable if we had a situation where it was, we had a local student or somebody in the area wanted to pursue this degree and had the ability to do that, and then we paid, knowing they were coming back or something like that. That's what we're doing on some of these other programs. Not after the fact, I think it's before the fact on most. I'm no expert, but I think that's the way that I've seen these other programs work. And so I'm a little hesitant to, once they get there, we train them then for four years, they're just coming out of veterinarian school, possibly. But...so I have some questions and I'd just ask if Senator Dierks would yield to a few questions. [LB1172]

SENATOR CARLSON: Senator Dierks, would you yield? [LB1172]

SENATOR DIERKS: Yes. [LB1172]

SENATOR GAY: Thank you, Senator Dierks. Senator Dierks, like I say, the way I understand this we identify the veterinarian to work in the area, the designated area, and then they get \$15,000 the first year and the second year, \$25,000 in the third and fourth year. What concerns me, though, is if we get these, are you looking at new veterinarians, or do you think they'd be accomplished? What I'm concerned about, we train them and then they leave and there's no provision that we'd be paid back. So we could have somebody four years and how do we reimburse? We just did all the training. Was that considered during the Ag Committee? [LB1172]

SENATOR DIERKS: Yes, that was considered when we were drafting the bill. I think that the thought was that if we could have them there for four years, they would have earned their \$80,000. If they wanted to leave they could. But the other thing is they don't

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have to be recent graduates. They can be somebody that graduated 30 years ago. I could even qualify if I wanted to go back out there in an underserved area. So it's not limited to new graduates. We're just looking for bodies at no large animal or food animal practice. [LB1172]

SENATOR GAY: Okay. And then this is just a cash, we'd give them cash? There's no tax credits or anything like that? We're just giving them the cash at the end of the year after they complete that service? [LB1172]

SENATOR DIERKS: Yep, yep. [LB1172]

SENATOR GAY: Were any other incentives considered, like a...maybe we'll give you...lots of times we're working with the tax code for incentives, that we will give you some kind of incentive or tax credits to come to the area? [LB1172]

SENATOR DIERKS: That was considered. I was on the task force that the university put together a few years ago dealing with changing the veterinary medical association...or the veterinary medical degree teaching program from Kansas State to Iowa State. And we had several discussions about that. And it turns out that legally we would have trouble trying to force someone to take money that they had to stay in Nebraska to practice even. But we try to select those students anyway on that basis. So that the selection committee looks at those people to see if they are prone to coming back to the rural part of the state. And those programs, the university...the state of Nebraska helps pay tuition costs. [LB1172]

SENATOR CARLSON: One minute. [LB1172]

SENATOR DIERKS: They substitute the difference between instate and outstate tuition for those students that go to Iowa State. They did that for the students that went to Kansas State. So that is out there. But this program we're talking about, Senator Gay, is strictly for those people who have already graduated and they already have a big debt load, and they're going to come to this rural area to practice medicine. And if they stay for four years, the thought is, and I think there's some validity to it, that they will stay there after they do that four years. They will have established roots and their family will be used to it. And then...but the other thought was that even if they don't stay there, we've gotten our use from them for those four years. [LB1172]

SENATOR GAY: And that's...so the...so we'd get our money back in that way. I understand that. We're running out of time here. I'll probably hit my light again to ask some questions. One would be, so we're placing a lot of faith in the board that's going to choose these people, because they're going to have to qualify who's available, where they're going... [LB1172]

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SENATOR CARLSON: Time. [LB1172]

SENATOR GAY: Thank you, Mr. President. [LB1172]

SENATOR CARLSON: Thank you, Senator Gay and Senator Dierks. Senator Hansen, you are recognized. [LB1172]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Is Senator Raikes around where I could ask him some questions? I don't see him. But I wanted to ask Senator Raikes some questions about something he might be very familiar with, and those would be the words "sparse" and "very sparse." We are becoming more sparse and very sparse in western Nebraska. We still have the same number of cows or maybe more. We have fewer people to work on these animals to maintain a safe food supply. And that's what it's all about. We have fewer people, and that may relate to a closer relationship with our veterinarian. I would disagree with Senator Raikes also in that the veterinarians never come out to the operations. They do, they come out very regularly and check. If we sell cattle, we sell them out of state, we need a health certificate. They come out and inspect them then. They come out during calving all together too often, Senator Dierks, (laugh) and perform procedures that we're not qualified to do for sure. As far as what Senator Raikes said about homeland security, I couldn't disagree more that this is not...that veterinary medicine is not involved with homeland security. We have foot-and-mouth disease, we have anthrax in cattle, and in hogs we have the circle virus. I went over and checked with Senator Stuthman and he gave me that virus. I'm not familiar with the hog industry. If you think of a terrorist coming over the boarder and infecting a...say a sale barn with foot and mouth, and those cattle disperse, if that...when that hits the press we're going to have more terrorism than this country has ever seen. When you cannot rely on the safety and the food safety of American products, we're in deep trouble. Senator Wightman was questioning whether...he's done the dine and dash also. No, here he comes. Senator Wightman was asking about what businesses or what the locals could do. It's just like any other business. What else do we do to get a business in a community? This is a business. Senator Erdman handed out a handout yesterday, and I'll refer to that, that if a business can last four years, and this was the beginning farmer business, if a business can last four years, and that's what Senator Dierks is proposing in this bill, that that business will continue. If it fails within the first four years, the chances of it continuing are not good. Startup costs, any business is going to have startup costs. Can the community help with that? I say, yes, they probably could. It's up to the community. It's certainly not necessary, but it would be great if you would provide that new veterinarian, that new business a building to operate out of. The community can do that. I relate back again to the beginning farmer program. The beginning veterinarians...and I would see this program more as a young veterinarian experience rather than a seasoned veterinarian. But no matter what it is, we still need veterinarians out there in the country. There are state organizations that have...that put on BQA programs, bovine

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quality assurance. This is cattle assurance programs, and it's usually done by veterinarians on how to handle the cattle. The procedures that we do do, we do them correctly, and it's all due to food safety and it relates back to food safety. I think that these beginning vets are... [LB1172]

SENATOR CARLSON: One minute. [LB1172]

SENATOR HANSEN: ...extremely important. I think we need to do something, Senator Gay, and it's not that...it may not be the veterinarians that you're used to seeing, but they are extremely important out there and our aging veterinarian population is probably the problem. We have an aging population in farming and ranching, and we also have an aging population in our veterinarians. We use them hard and they usually retire early. Thank you, Mr. President. [LB1172]

SENATOR CARLSON: Thank you, Senator Hansen. Senator Langemeier, you are recognized. [LB1172]

SENATOR LANGEMEIER: Mr. President, members of the body, I'm going to be really brief so we can get this voted on. As you see in the agenda, at 2:30 we're moving on, so I'm hoping we can get this to a vote. Senator Dierks, I am aware that I misspoke when I brought up LB1174. I did mean LB1173. And I'm happy to work with you on both of them next year. With that, thank you, Mr. President. [LB1172 LB1174 LB1173]

SENATOR CARLSON: Thank you, Senator Langemeier. There are no further lights, senators wishing to speak. Senator Erdman is not here. Senator Dierks, you're recognized to close on the committee amendment. [LB1172]

SENATOR DIERKS: Well, Mr. President, very briefly, I think that Senator Erdman did a great job of explaining them and I think we've had a good discussion about them. So I would just urge your support. Thank you very much. [LB1172]

SENATOR CARLSON: Thank you, Senator Dierks. You've heard the closing on the committee amendment. Question is, shall the committee amendment on LB1172 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to vote? Mr. Clerk, please record. [LB1172]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB1172]

SENATOR CARLSON: Thank you. AM2305 passes. Mr. Clerk. [LB1172]

ASSISTANT CLERK: Mr. President, Senator Langemeier had offered a motion to indefinitely postpone, but I understand he wishes to withdraw. In that case, Mr.

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President, I have nothing further on the bill. [LB1172]

SENATOR CARLSON: Mr. Clerk, the motion is withdrawn. Are there other senators wishing to speak on this bill? Seeing none, you've heard the closing on the advancement of LB1172 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1172]

ASSISTANT CLERK: 27 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB1172]

SENATOR CARLSON: LB1172 does advance. [LB1172]

ASSISTANT CLERK: Mr. President, LB1172A, introduced by Senator Dierks. (Read title.) [LB1172A]

SENATOR CARLSON: Mr. Clerk, we will advance to...Senator Dierks, you're recognized to open on LB1172A. [LB1172A]

SENATOR DIERKS: Thank you, Mr. President. The following funding will be necessary for LB1172A: during fiscal year 2008-2009, no money will be needed as the Department of Agriculture develops its rules and regulations. In fiscal year 2009-10, the program will cost \$60,000 from the General Funds. This money will be used to pay for the four veterinarians, \$15,000 each, after completing their first year of practice in underserved areas of Nebraska. Excuse me a minute, Mr. President. Thank you very much, Mr. President. [LB1172A]

SENATOR CARLSON: Thank you, Senator Dierks. You've heard the opening on LB1172A. Are there senators wishing to speak? Seeing none, Senator Dierks, you're recognized to close. Senator Dierks waives closing. Members, you have heard the closing on the advancement of LB1172A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1172A]

ASSISTANT CLERK: 28 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB1172A]

SENATOR LANGEMEIER PRESIDING [LB1172A]

SENATOR LANGEMEIER: LB1174A does...LB1172A does advance. Mr. Clerk, in keeping with today's agenda, it is 2:30. We will now move down to, on the agenda, to LB720. [LB1172A LB720]

ASSISTANT CLERK: Mr. President, LB720 was introduced by Senator Schimek. (Read title.) The bill was read for the first time on January 9 of this year, referred to the

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Government Affairs Committee, that committee reported the bill to General File with committee amendments. The bill was considered by the body yesterday at which time the committee amendments were adopted. The first division...the first division of the committee amendments, AM2713, was adopted. We now have pending the second division which is AM2714. (Legislative Journal page 1349.) [LB720]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Schimek, would you give us a brief reopening on LB720, the bill itself. [LB720]

SENATOR SCHIMEK: You want a brief reopening on the bill itself? [LB720]

SENATOR LANGEMEIER: Please. [LB720]

SENATOR SCHIMEK: All right, thank you, Mr. President and members. The bill, as you recall from last night's discussion, is a bill that attempts to regulate political "robocalls" by making them part of the ADAD Act, which is the act which allows the Public Service Commission to regulate all "robocalls." And it basically limits the time that they can be made between 8:00 a.m. and 9:00 p.m. Doesn't regulate the number of calls. Regulates some filing provisions, and also makes the caller, as well as the "robocall" company, liable for misuse of the ADAD Act. With that, Mr. President, that's kind of succinct, but that's my opening. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Mr. Clerk, for an announcement. [LB720]

ASSISTANT CLERK: Mr. President, the Health Committee will meet in Executive Session in Room 2022 now; that's the Health Committee in Room 2022. [LB720]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We are on the second division of the committee amendments offered to LB720. Senator Aguilar, as Chair of the Government, Military and Veterans Affairs Committee, you are recognized to open on the second component of the committee amendments. [LB720]

SENATOR AGUILAR: Thank you, Mr. President and members. Division two of the committee amendment provides that a person contracting with a third party to connect or operate an automatic dialing/announcing device for other than telephone solicitations will file the message to be used with the Public Service Commission within 24 hours after the message is transmitted. Similar language for telephone solicitation calls is included in the green copy of LB720 and is not changed by the committee amendment. In other words, division two of the committee amendment is necessary to ensure consistency between solicitation and nonsolicitation calls. If the body does not adopt division two of the amendment, persons contracting with a third party to connect or operate an automatic dialer for solicitation calls will be jointly and severally liable but

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persons operating such devices for nonsolicitation calls will not. For consistency, I urge you to support division two of the committee amendment. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on the second component of the divided committee amendment offered by Government, Military and Veterans Affairs Committee. The floor is now open for discussion. Senator Nelson, you're recognized. [LB720]

SENATOR NELSON: Thank you, Mr. President, members of the body. We divided this into two segments, two divisions yesterday. We're now talking about the second division, as Senator Aguilar stated. I really have no problem with Section 4 there with regard to the provisions there. But my concern would be with Section 5, which says, "A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitation shall file with the commission the message to be used within 24 hours after the message is transmitted." I think that Senator Schimek, as I recall, said that this was done because of the volatility having to do with political communications. But in my opinion, it's not necessary to have this section in there at all. I think it's more of an impediment than anything else. If we were going to keep it in there then I feel that perhaps it should be for a longer period of time, such as 72 hours. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Is there anyone else wishing to speak on the second component? Seeing no lights on, Senator Aguilar, you're recognized to close on the second component of the committee amendments. He waives closing. The question before the body is, shall the second component of the committee amendments be adopted to LB720? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Aguilar, for what purpose do you rise? [LB720]

SENATOR AGUILAR: I would request a call of the house and I'll take call-in votes. [LB720]

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. [LB720]

ASSISTANT CLERK: 20 ayes, 0 nays to go under call, Mr. President. [LB720]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Aguilar, for what purpose do you rise? [LB720]

SENATOR AGUILAR: I'll take call-in votes. [LB720]

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SENATOR LANGEMEIER: Senator Kruse, Senator Erdman, Senator Preister, Senator Chambers, Senator Nelson, would you please check in. The house is under call. Please return to the Chamber and record your presence. Senator Aguilar has authorized us to proceed. He has requested call-in votes. The question before the body is, shall the second component of the committee amendments be adopted to LB720? [LB720]

ASSISTANT CLERK: Senator Kruse voting yes. Senator Wightman voting yes. Senator Howard voting yes. [LB720]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB720]

ASSISTANT CLERK: 26 ayes, 1 nay on adoption of the second Government Committee amendment, Mr. President. [LB720]

SENATOR LANGEMEIER: The second component of the committee amendments is adopted. With that, I raise the call. Speaker Flood, you're recognized for an announcement. [LB720]

SPEAKER FLOOD: Thank you, Mr. President, members. It's that time of year where we're working on amendments and Bill Drafters is doing their very best to keep up with the direction of the Legislature. Given the computer outage we had last night and the changes that are being made to provide an amendment on LB1130, Senator Synowiecki's bill, we're going to move that to a position on the agenda right after LB810, simply moving it back one bill. Just want you to make that note on your agendas and let everybody know we will be taking up LB1130 after we take up LB810. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Speaker Flood. We return now to discussion on LB720. Mr. Clerk, for a motion. [LB720]

ASSISTANT CLERK: Mr. President, the next amendment I have is from Senator Nelson, AM2717. (Legislative Journal page 1368.) [LB720]

SENATOR LANGEMEIER: Senator Nelson, you are recognized to open on AM2717. [LB720]

SENATOR NELSON: Thank you, Mr. President, members of the body. This is a very short amendment. AM2717, what we're providing here is that this act will become operative on January 1, 2009. If we did not move it to that point then we would...it would become effective in July of this year. And we're talking about "robocalls" here in the sense of...or, rather, in the atmosphere of political campaigns. And I think we're aware that the campaigns for the primary are already underway. Commitments have been

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made, and probably commitments have been made for the general election, which will happen in November. And if this bill does pass and it becomes effective in July, we're right in the middle of campaigns by people running for the office. And it just seems to me that it would be less of an impediment and cause less concern with candidates, as far as their financial expenditures, their planning, the communications that they're going to make, whether by "robocalls" or by other means, if we put off the effective date of this bill until the first of January of next year. That will be a new year. There will be new campaigns at that time. All candidates will be on notice as to what the restrictions are as far as the bill is concerned, and they can plan for that. We're only asking that this be extended for a period of about six months. I think this is a good amendment. I would welcome discussion on it and I hope that the body will support this amendment to make the act operative on January 1, 2009. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Nelson. You have heard the opening on AM2717 offered to LB720. The floor is now open for discussion. Senator Schimek, you're recognized. [LB720]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members of the body. I rise in support of the Nelson amendment. In some ways I'd rather it go into effect upon passage, but it will be in the middle of an election cycle, as Senator Nelson has just mentioned. And I got to thinking during the debate last night, which you all really put me through the paces (laugh) last night, but I got to thinking it might be a good idea if the Public Service Commission would make it part of their job to notify all the candidates who are running about what the rules are for "robocalls." And I'm going to speak with them, I haven't yet, and encourage them to do that. And it might be easier for them to get their rules revised, get their forms revised, get candidates notified of what some of the rules are in the next election cycle rather than expecting them to get it done this time, whatever. I just think that it's not an unreasonable amendment that Senator Nelson is advocating, and I certainly am willing to support it. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Seeing no other lights on, Senator Nelson, you are recognized to close on AM2717. Senator Nelson waives closing. The question before the body is, shall AM2717 be adopted to LB720? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Nelson, for what purpose do you rise? Record, Mr. Clerk. [LB720]

ASSISTANT CLERK: 25 ayes, 3 nays on the adoption of Senator Nelson's amendment. [LB720]

SENATOR LANGEMEIER: AM2717 is adopted. We return now to discussion on LB720, the bill itself. Seeing no lights on, Senator Schimek, you are recognized to close. [LB720]

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SENATOR SCHIMEK: Yes, thank you, Mr. President and members. And thank you for the discussion on the bill. What I don't want you to forget is the reason that the bill was brought in the first place last year. And it was passed last year because I think we all heard from our constituents, either personally or through the media, about how aggravated they were about the use of "robocalls" but, more than that, the misuse of "robocalls," and that is what this bill would like to cure. Let me just remind you that the basic overall premise is to put all of the "robocalls" under the supervision of the Public Service Commission and to make them all as similar as possible, both solicitation "robocalls" and nonsolicitation "robocalls," which are the political "robocalls." And the reason for that is that the courts will perhaps look askance at any bill that does not treat them similarly, unless of course you can make good arguments about residential privacy. I think we could have done that last year with LB198, but I wasn't as sure maybe as I could have been. The Governor and the Attorney General both had problems with that approach. And so I think that this is a good approach. It's been worked on by many people and people who were involved in last year's bill, as well as others. So I would like to say...I would like your support to advance this to E&R Initial. With that, Mr. President, thank you very much. [LB720 LB198]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the closing on LB720. The question before the body is, shall LB720 be advanced? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Schimek, for what purpose do you rise? [LB720]

SENATOR SCHIMEK: For the purpose of asking for a call of the house, Mr. President. [LB720]

SENATOR LANGEMEIER: There has been a request to put the house under call. [LB720]

SENATOR SCHIMEK: Forget what I just said, Mr. President. Thank you. [LB720]

SENATOR LANGEMEIER: Seeing it's not needed, Mr. Clerk, please record. [LB720]

ASSISTANT CLERK: 26 ayes, 1 nay on the advancement of the bill, Mr. President. [LB720]

SENATOR LANGEMEIER: LB720 does advance. Pursuant to the Speaker's announcement, we are going to be skipping over LB1130 and LB1130A and advancing down to LB810. Mr. Clerk, LB810. [LB720 LB810]

ASSISTANT CLERK: Mr. President, LB810, introduced by Senator Kruse. (Read title.) The bill was read for the first time on January 10 of this year, referred to the Judiciary

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Committee. That committee reports the bill to General File with committee amendments. (AM2664, Legislative Journal page 1331.) [LB810]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Kruse, you are recognized to open on LB810. [LB810]

SENATOR KRUSE: Thank you, Mr. President and colleagues. This will be fairly direct and hopefully fairly easy. First, ignore the title that you have there. The bill has nothing to do with the title. The amendment will become the bill. I will speak to the white copy since that is all that is before us. Senator Ashford will have a bit more to say about it. And then I will have some amendments regarding the penalties. This is about mandatory server clerk training for the sale of beverage alcohol. Two years we directed, as the Legislature, that Liquor Control set up courses for training of those who would serve or sell beverage alcohol and be prepared to certify these in a list that would be available to courts to determine that these persons have completed the courses before them. The courses are basically on how to deal with teenagers and with persons who are intoxicated. Four courses are in place. This amendment will make them mandatory. And as I indicate, following Senator Ashford's presentation, I will have some amendments on penalties. Thank you. [LB810]

SENATOR LANGEMEIER: Thank you, Senator Kruse. As the Clerk has stated, there are committee amendments offered by the Judiciary Committee. Senator Ashford, as Chair of the Judiciary Committee, you are recognized to open on the committee amendments. [LB810]

SENATOR ASHFORD: Thank you, Mr. President. Thank you, Senator Kruse, for your willingness to work with the committee on LB810, which originally, as Senator Kruse suggested, was a traditional dram shop liability act. AM2664 amends LB810 fairly significantly by striking all of the sections and replacing them with a requirement that a retail licensee would, prior to an employee being allowed to sell or serve, must go through server training by electronic means. What that essentially means is that as an employee comes on board, that employee initially, before they take up their position, would be required to take what is, for the part, is an Internet-based course. And then within 60 days after employment the licensee must also have their servers and sellers of alcohol take and pass a state certified test as provided...and found...as provided for in Section 53-117.03. The state certified server training program administered by the Liquor Control Commission is more stringent, more thorough and comprehensive than the electronic version. Failure by a licensee to have all required personnel trained will be similar to the current penalties for selling alcohol to a minor. So that if someone, under the amendments...now I understand Senator Kruse has some amendments to the committee amendment. But as AM2664 is drafted, the penalties would be similar to or identical to the penalties for selling to a minor, which provide for a 5- to 10-day license suspension for the first offense, with the licensee able to pay \$50 a day in lieu of the

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suspension. A second offense occurring within 4 years provides that a license be suspended for between 10 and 20 days, with a mandatory 48-hour hard suspension, and the ability of the licensee to pay \$100 for each remaining day of suspension. A third offense occurring within 4 years provides for a 20- to 30-day license suspension, with a mandatory 5-day hard suspension, and the ability to pay \$100 for the remaining days of suspension. And then a fourth offense would call for the revocation of the license within the 4-year period. And the prior offenses can only be counted against a licensee, as I stated, for 4 years. LB266...or AM2664 is the result of numerous attempts to strike a balance between the responsible liquor sales and personal responsibility within our state. This bill comes on the heels of bills enacted during the previous two legislative sessions: LB845, a bill introduced by Senator Landis in 2006, requiring the Liquor Control Commission to certify a server training in management program, which they have done; and LB573, a bill introduced last year by Senator Kruse, which provides for a social host and which passed last year, and provides for a social host and third party liability of licensees for injuries suffered by an innocent third party when the licensee or social host seller...sells or provides alcohol to a minor. We believe that a properly trained server of alcohol is the best line of defense available to the public, and we believe that this requirement will not adversely impact licensees in the operation of their business. We have had conversations with the Liquor Control Commission, which Senator Kruse can talk to if he wishes, about some of the issues involved in bringing this training to all of the potential employees within the period of time prescribed in AM2664. And I believe we will have an amendment either today or on Select File that will address the concerns of the Liquor Control Commission so that this amendment, if it passes, will not front load the system to the degree that it cannot be handled by the Liquor Control Commission in any sort of efficient manner. With that, Mr. President, I would urge the adoption of AM2664. We can listen to Senator Kruse's amendments...amendment regarding, I believe, regarding penalties, and then go proceed with the bill. Thank you, Mr. President. [LB810 LB573]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on the committee amendments offered by the Judiciary Committee to LB810. The floor is now open for discussion. Mr. Clerk, for a motion. [LB810]

ASSISTANT CLERK: Mr. President, I do have an amendment to the committee amendments from Senator Kruse, AM2687. (Legislative Journal pages 1369-1370.) [LB810]

SENATOR LANGEMEIER: Senator Kruse, you're recognized to open on AM2687. [LB810]

SENATOR KRUSE: Thank you, Mr. President and colleagues. As I've indicated, this relates to the penalties. It was the feeling of the committee that the penalties for failing to train your servers should be about the same as sales to a minor. The bill was written

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up with that part of statute. It gets a little bit complicated because Liquor Control has guidelines for how that should be handled, and therefore, as we looked at it, we needed to make some adjustments to it. The penalties that we're suggesting are about same as sales to a minor, actually a little bit lighter than that. On first offense, Liquor Control recommends 10 to 20 days' suspension of the license. On page 1 of the amendments, and I'll give this since you may not have had a chance to locate it yet, on line 21 we're recommending 7 days. They're saying 10 to 20 days, we're saying up to 7 days. For second offense they recommend...they mandate, the statutes mandate 2 days' suspension, and Liquor Control goes on up to 20. On page 2, line 9 we're recommending up to 10 days. For third offense Liquor Control recommends 20 to 30 days' suspension of license, and you'll see on the original copy that, page 2, line 21, there's 15 days that are recognized in that. And we're leaving that as it is. So in summary, first offense would be up to 7 days' suspension; second offense would be up to 10 days' suspension; and third offense would be up to 15 days' suspension. Fourth offense, in all cases, is revocation of license. We are making one other change, an important change. We are removing the paying of cash in lieu of suspended days. This has been a feature that's usually not used, but it has been used some and been abused a lot. It's a very weak feature. It makes the enforcement as weak as water, and I'd remind you water doesn't sell very well in a bar. If you have a suspension, the Liquor Control Commission may allow you to buy out that day for \$50 a day. So if you're suspended for 2 days, you'd pay \$100 and then stay open. If you do this a lot and they get grumpy with you, then it's \$100 a day and you stay open. Obviously this is...would be noticed by a small bar, \$100 they would note that. But a large operation, a large grocery store with a very large liquor sales unit sells thousands of dollars of material every day, and a \$100 fine is just seen as a cost of doing business. And that, my friends, is the serious problem that we find here. You've heard about it from your communities and neighborhoods. They go to work trying to identify and try to bring in somebody for violating the liquor laws, very hard to do, very difficult to do that, but they will get it done, and then they'll wait for the business to be closed up for 5 days. Well, it never happens because the business can buy off that time if the Liquor Control Commission allows them to do it. We are taking out that option as a way of enforcing the penalties. You may have noticed in the paper about three weeks ago that some teenagers bought from three bars in Omaha. These bars sell to teenagers all day long. They make enough money off the teenagers to pay the fines. The teenager came in with their own license, there was nothing trickery here. Teenager, of course, had a police officer next in line. While the person there made no attempt to question them, in two of the cases never even checked their credentials, and one checked it and saw that they were indeed a teenager but proceeded to get ready to sell to them. This is what makes many of us grind our teeth. We've spent a lot of time talking about being tough on drunk drivers, but we have spent very little time talking about those few businesses that abuse the law. Well, why do they abuse it? Because the penalties are so extremely light and often unpredictable. I commend to you this amendment. I think it makes sense. And again, as Senator Ashford has indicated, on Select we will be answering some

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questions from Liquor Control. They want to know how to proceed, how to get ready for all the several thousand trainees that they will have to be handling come the first of the year. Thank you. [LB810]

SENATOR LANGEMEIER: Thank you, Senator Kruse. You have heard the opening on AM2687 offered to the committee amendments. The floor is now open for discussion. Those wishing to speak, we have Senator Pedersen, Ashford, and Gay. Senator Pedersen, you are recognized. [LB810]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. I have one question of Senator Kruse. [LB810]

SENATOR LANGEMEIER: Senator Kruse, will you yield? [LB810]

SENATOR KRUSE: Yes. [LB810]

SENATOR PEDERSEN: Senator Kruse, are you aware yet what the fiscal note will be on this amendment as it is amended down to what it is today? [LB810]

SENATOR KRUSE: There will be no fiscal note. But a comment on that: The instruction from the Legislature, when they set up this bill or set up this training course two years ago was that it was to be self-funding. And we allowed them to charge \$20 to certify and \$30 for a course. So far all they're doing is charging \$5 for certification. But it's to be self-funding. We see no need for any General Funds on it. However, they are going to have to increase it a little bit to take...to add some employees, probably. [LB810]

SENATOR PEDERSEN: Thank you, Senator Kruse. Colleagues, I'm the only one on the committee who voted against this bill or amendment coming out of the committee. I'm going to tell you why. Money is not the biggest reason that I voted against it. I do realize or believe that the Liquor Control Commission is going to have to hire at least three more people to get this bill to go. And to get this bill to go we're going to have to have more office space. It's like changing any our criminal laws. Every time we add another judge we have to add...remodel a courthouse. How often have we had to remodel the State Office Building to add more offices? It does add more people, self-funded or not, going to need more office space. But that isn't the big issue that I have. The reason I have voted against this bill is we allow, by law, and it has not been changed, even though I've attempted three or four times, young people under the age of 21 to sell alcohol, in a lot of cases unsupervised. Two times I entered a bill that would say...that said they could not sell alcohol unless they had an adult, 21 or older, supervision; have not got it...been able to pass it. Young people sell to young people, and I think we are naive if we don't realize that. When we were young, where did we buy it? In my case, you only had to be 18 to buy it. It's not a smart thing that we do, is to let young people sell booze. And now we're setting up something that says it's going to make it better,

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which I do not think it will make it better, and we're only identifying intoxication. And Senator Kruse listed a whole bunch of penalties that go along with it. I believe when we do this, to not just business but to the young people, that it's schizophrenic saying don't, but we know they're doing it. With that, I will not speak again on this bill and I will be voting no. Thank you. [LB810]

SENATOR CARLSON PRESIDING [LB810]

SENATOR CARLSON: Thank you, Senator Pedersen and Senator Kruse. Those wishing to speak: Senators Ashford, Gay, Erdman, Kruse, Karpisek. Senator Ashford, you are recognized to speak. [LB810]

SENATOR ASHFORD: Thank you, Mr. President. I look upon what Senator Kruse has done in the last two years with our committee is a package of initiatives dealing with the problems that we know are out there. What we've tried to do on the committee is to balance out personal responsibility versus the responsibility of others when problem drinking is the issue. Last year, when we were dealing with children and minors and their access to alcohol at a social gathering, or access to alcohol in a tavern or at a retail or retail licensee, I think we handled it appropriately. And in that case, personal responsibility of the minor certainly is balanced against responsibility of elders. And I think we passed legislation that gave responsibility to the elders, to the licensees, to social hosts in an appropriate manner. And what Senator Kruse is proposing here I think is really the third leg of the stool...and...in providing for mandatory training. Now quite frankly I think the issue of this amendment is really something that each of us will just have to decide which way to go. Senator Kruse is proposing a tougher penalty than what is in the committee amendments. And either way, whether the tougher penalty is passed by this body or accepted by this body, or whether AM2664 is the appropriate penalty, I think we're getting at the same issue, and that is making certain that licensees, whether they be retail...retail licensees are trained. And I've had comments made to me here in the last few minutes about the cost of getting the training started--clearly an issue. I've had conversations with the Liquor Control Commission. And on Select File we will have an amendment that I believe will address the issue adequately so that there will not be a front-loading of these tests, or not these tests, with the tests and the courses with the Liquor Control Commission that will make it fiscally very difficult to comply. So I think we can handle that on Select File. I think right now we're at the stage of deciding, is it good policy in this state to require mandatory training? I think it is. I think Senator Kruse has met his burden on that issue. And...but the issue of what the penalty should be, I don't think,...it's either what Senator Kruse proposes, or what we propose in the committee amendments, which is...which would be a penalty that would be more consistent with existing penalties for selling to a minor. And I don't know, we can talk about that all night or just vote it up or down. I think we all know, generally, what the difference in penalties would be. So with that, either way I think that Senator Kruse has met his burden, certainly he did with the committee, on the issue of mandatory training. And as long as

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on Select File we can adequately explain to you how this is going to be implemented in a prudent manner, and I think we can, that we should try to advance the bill with the committee amendments and move it forward so we can get the bill to Select File, get the data from the Liquor Control Commission on cost and on implementation and move forward with that. Thank you, Mr. President. [LB810]

SENATOR CARLSON: Thank you, Senator Ashford. Senator Gay, you are recognized. [LB810]

SENATOR GAY: Thank you, Mr. President. The Health Committee was having an Executive Session when we started this bill. So I apologize in advance if I become repetitive or if somebody has discussed this issue. But as I'm listening, I'm trying to quickly read some of the amendments here. And I had some questions about the training and the servers. Senator Ashford mentioned that he will be coming back on Select File with, not so much the fiscal note, but I'm just trying to understand where we're even at, being a new member, where we're even at in some of this training. So I would ask...I'm going to speak on the amendment. Would Senator Ashford yield to a few questions? [LB810]

SENATOR ASHFORD: Yes, sir. [LB810]

SENATOR CARLSON: Senator Ashford. [LB810]

SENATOR ASHFORD: Yes, sir. [LB810]

SENATOR GAY: Thank you, Senator Ashford. When we're talking about...I assume this server training...can you just give me a thumbnail of where we're at right now on this date, so where we are today and where we want to go--and I heard you in the end, like I say, I apologize for that--where we are now, where we're going to go? We're late in the session. I'm worried about on Select File, because I can only imagine there's an awful lot of people we're talking about here. [LB810]

SENATOR ASHFORD: Right. [LB810]

SENATOR GAY: I'll let you go. Where are we at? [LB810]

SENATOR ASHFORD: There are. There are a number of people that we are talking about, Senator Gay, that's absolutely correct. And we're going to need...we will have to have adequate information for you on Select File for you to support advancing this bill further. So I...but I don't have that answer for you today, but I will have on Select File. The...where we are is we have a server training program that the Liquor Control Commission has. And that program or that training was established, I believe, two years ago by a bill that...in a bill that Senator Landis introduced that provides for the training.

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What we're doing here is mandating it and we are requiring that it be given to new employees who serve alcohol...serve or sell alcoholic beverages and that they be certified within a period of time after they...after the act passes or after they start employment. So it is ratcheting it up from where it was in '06 to a requirement. [LB810]

SENATOR GAY: Okay, thank you, Senator Ashford. I guess the thing where I'm at, and I'm going to listen closely to the debate, and I think there will be debate on this, the issues that concern me on something like this is I look at this and of course no one wants to have people...I read through your statement to encourage...the active encouragement of an intoxicated person to consume substantial amounts of alcohol, excessive service, you know, to risk death from poisoning, assisting a noticeably intoxicated person to go drive, none of us here want that. What concerns me, though, is as we talk about...is the business, getting into these businesses. And I know they're regulated, but I can only imagine the amount of turnover that some of these places have with employees, the training. I think I read there is an electronic form, you can go on and get your training electronically and some other things. And now we're going to mandate that. And again, this is a difficult situation. But at what point though are we...we take steps, we have crack downs, and those are all good things. And we're trying to make sure people use a product responsibly one way or another. But here we go, at a certain point individual responsibility has to step in. You see these people driving five times, DUI five times, and you read about those. Those are the things I think we start at first. And maybe we're getting a little bit... [LB810]

SENATOR CARLSON: One minute. [LB810]

SENATOR GAY: ...ahead of where we're going. But some of these things, just looking at this portion of it, kind of I wonder. Because that's just a lot of...I know in a business you get a lot of turnover and it's constantly training. And if you miss somebody who didn't get trained or didn't get your information in on time, they get penalized, and so we look at some of those things. And I'm not out...I don't need to be defending any liquor industry or anything like that. That's not my intention here. But at a certain point there's individual responsibility of the person that gets behind a wheel or does something else. And you've put the burden on the businesses to enforce every second of somebody's life. I don't think that's right. And maybe I'm not phrasing this appropriately, but I do have concerns when we start looking into people's businesses, whether it be a bar owner, a convenience store, or whatever that case may be. The prevalence of these products is probably too much, quite honestly. [LB810]

SENATOR CARLSON: Time. [LB810]

SENATOR GAY: Thank you, Mr. President. [LB810]

SENATOR CARLSON: Thank you, Senator Gay and Senator Ashford. Senator Erdman,

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you are recognized to speak. [LB810]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I'm trying to go through a lot of the same logic and process I think a lot of you are, but it primarily starts with this: The underlying bill or the underlying prospect that we're discussing was not a Judiciary Committee bill. The trainer bill was done in the General Affairs Committee. And so, from my perspective, what I'm trying to understand is how we went from a dram shop bill to a bill that was advanced and passed by the General Affairs Committee. And then how do we rationalize the difference? Because you technically have the same people in the Legislature that advanced that bill that still sit on that same committee that are now trying to figure out what this bill does. And there was a rationale as to why we didn't do this last time. And so I'm trying to understand where we're going. Senator Kruse has made it no bones that he wanted to make this provision mandatory when it came out under his original bill that was introduced before the General Affairs Committee. He also has very adequately and forcefully presented the ideas of a dram shop bill and other ideas in the past. And likely his interests are well known. But I'm just thinking out loud about this process and what we're doing, not because I think what we're doing is wrong. I'm just pointing out an obvious observation that I have made that this appears to be the jurisdiction of the General Affairs Committee. And Senator Janssen has been the Chair of that committee for a number of years, Senator McDonald is now the Chair, and I've been a member of that committee for eight years. And so I'm just trying to make sure that I understand what it is that we're doing here, not pro, con, or otherwise. I just wanted to point out that observation that this subject matter generally goes to a different committee, at least in the form that this amendment is in. If I understand what we're doing, we're making some modifications to the penalties that an establishment can be subject to, which likely falls under the jurisdiction of the Judiciary Committee. But ultimately, if it's contingent upon some type of training requirement, I got to tell you, we've heard that a number of times. So I think there's more people interested in this conversation than maybe somebody initially thought, especially since the fact that this jurisdiction of this committee is not the one that generally handles this topic. Thank you, Mr. President. [LB810]

SENATOR CARLSON: Thank you, Senator Erdman. Senator Kruse, you are recognized. [LB810]

SENATOR KRUSE: Thank you, Mr. President and colleagues. Appreciate the comments and I'll seek to respond to them. First, Senator Pedersen was concerned about 19-year-olds selling. That's not what's before us. I agree with him, I question whether they should sell. This has nothing to do with that. And please understand, the penalties that are given out, the requirement of this bill, does not apply to the server, it is only to those with a license, and that's why it falls within this committee. That is the concern that we've working at, Senator Erdman. There...and the amount of penalty is kind of beside the point. Somebody said we made it a little tougher. Not really, we've

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made it lighter. I would not expect any of these penalties ever to be applied. There is no reason in the world (laugh) why any business would be in violation of this. For one thing, we don't have an enforcement situation. People aren't going around and checking on it. But also, this is as easy to do as can be. You have a new server, you shall train them. The question has been raised, is that a difficult process? Well, it took me 35 minutes in front of my computer. That's the training. The training is basically on how to deal with persons who are intoxicated and persons who are under age, how to check that, how to apply the laws of the statute, which enforce liquor liability and which enforce the Liquor Control Commission. We've had comments on this type of a thing at every hearing I can remember. We did have the hearing two years ago. It's been referred to that the body adopted the bill. We have referred to it several times since as to the question of how that could be made more applicable, and we've tried in various ways to make it more applicable. The businesses affected have been camped out on our doorstep asking for mandatory training. This is their request for the full two years. They said, please make it mandatory, and that of course in lieu of a dram shop. I'd remind you, we passed dram shop last spring for minors. That is done, that is not what is before us. Any responsible business wants their employees trained. We've got thousands that are trained already through this course that we've set up. If you're running a business, you better know how your people are operating. It's good for the PR; or to put it negatively, it's bad for your PR at a restaurant if somebody is going out the door intoxicated. You have your servers trained, and that's just a part of your own responsible sales. The question was raised by Senator Gay as to focusing on drivers. Well, we've been focusing on drivers for 15 years just as intensively as we can. We have redone all of the statutes in that. We have changed the penalties. We've really tightened up. We've got the interlock bill before us in this session. It's time to talk about responsible sales. And again, the businesses that I have talked with, and I have talked to dozens of them, want this to be responsible. It's just a few of the scofflaws that will sell to teenagers or to somebody else in order to collect some money. I have the reflections of a teenager, which I will refer to in closing. We simply... [LB810]

SENATOR CARLSON: One minute. [LB810]

SENATOR KRUSE: ...see the need for us to get serious about the sales because that person who is selling is the last person to see that intoxicated person before he gets into a car. The committee and I agree, if you really want to keep drunks off the street driving, it's time to talk to the persons who are the last to see them. The training again is how to deal with an intoxicated person, how to spot somebody who's trying to snooker you, and how to do this responsibly. This is right in line with what we've been talking about the whole time that I've been here. I think that it's a responsible way to go. And it does not really penalize anybody. Thank you. [LB810]

SENATOR CARLSON: Thank you, Senator Kruse. Those wishing to speak: Karpisek, Janssen, Lathrop, McDonald, and others. Senator Karpisek, you are recognized.

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[LB810]

SENATOR KARPISEK: Thank you, Mr. President, members of the Legislature. I have to bring up a few issues with this bill. LB...Senator Erdman touched on most of them, but LB810 was the dram shop bill. And in it the training was only an affirmative defense, it was not mandated. I think that if this is going to come out from the committee this way we need to have a hearing on this bill, not on the dram shop and then something else is inserted. This looks and smells like a shell bill, where it wasn't intended to be, I don't think. Would Senator Kruse answer a few questions, please? [LB810]

SENATOR CARLSON: Senator Kruse, would you yield? Senator Kruse, would you yield, please? [LB810]

SENATOR KRUSE: Yes, I will. [LB810]

SENATOR KARPISEK: Thank you, Senator Kruse. How many people do you think right now we have trained? I heard you said thousands? [LB810]

SENATOR KRUSE: Several thousand, it's a small percentage of the total number. [LB810]

SENATOR KARPISEK: So we do have a training mechanism in place? [LB810]

SENATOR KRUSE: We have a training mechanism that we ordered two years ago, and there are four courses that they have a choice of taking, all of them on a computer. [LB810]

SENATOR KARPISEK: All of them on a computer? [LB810]

SENATOR KRUSE: Yes. [LB810]

SENATOR KARPISEK: Okay, I'm not so sure about that, but we'll go from there. But there is something, you know you said that the businesses are begging for the mandatory. If there's a voluntary way, then why don't they go get trained voluntarily? [LB810]

SENATOR KRUSE: They are doing that voluntarily. They begged for the mandatory instead of the dram shop, which we passed last spring, for minors, and which was the base bill here. They said, well, let's not go with dram shop, that establishes a civil liability. In that bill we removed civil liability judgment if they took the training. I liked that method because that puts...the whole thing here is to get the business to be responsible. I don't want to police anybody. I don't want penalties and so on. So they were saying, well, make it mandatory. I'm somewhat hesitant about that because we

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have no enforcement. But that's why they asked... [LB810]

SENATOR KARPISEK: So they would just prefer that over the dram shop? [LB810]

SENATOR KRUSE: That's correct. [LB810]

SENATOR KARPISEK: Okay. Thank you, Senator Kruse. I just...I'm concerned about how many people are going to have to go through these...this training in a short amount of time. I'm...I see an estimate in front of me that would be over 50,000 people before the end of the year to get through this whole situation, which I don't know how we could do that. Another part that bothered me, I was busy on another bill, but I heard, well, let's just talk about it on Select about how the Liquor Control Commission feels. I think we should talk about it now. And I know that the liquor commissioner is worried how they're going to get all of these things implemented, how they're going to pay to get the programs done. I was told there is only one course that currently is on-line, and that is just the start. You do this on-line and then that is not all. You have to go in and actually physically go. I think that it's a fine idea and I prefer it over dram shop also. But I don't know that there's enough time to do it. I don't know...I know that it wasn't heard in committee, not this committee. [LB810]

SENATOR CARLSON: One minute. [LB810]

SENATOR KARPISEK: Thank you, Mr. President. And I worry about places that maybe someone just hops behind the bar to help out or just for two minutes during a busy time over the lunch hour, or in my area Czech Days. We have all sorts of people come down and tend bar at the hotel beer garden. We've been known to have university basketball coaches, a certain Creighton coach, a lot of these people, celebrities will come and tend bar for an hour, which is wonderful. I don't know that we're going to make them do this sort of training. The time and the money worries me. It is a good idea, I wish we had more time. Thank you, Mr. President. [LB810]

SENATOR CARLSON: Thank you, Senator Karpisek and Senator Kruse. Senator Janssen, you are recognized to speak. [LB810]

SENATOR JANSSEN: Thank you, Senator Carlson, members of the Legislature. I just have a few comments. You know the servers in this state, you know, we're estimating approximately 55,000 servers would have to...would have to take this training. And it would be an ongoing process, not that I'm saying it's a bad idea. I think, yes, everyone who handles alcoholic liquor should have some type of training. But this would not be a one-time situation. This would be ongoing. Because of the high turnover rate of employees within certain segments of the industry, it's anticipated that staffing needs would be ongoing. So I want you to remember that. And Senator Erdman was correct, this should have come through the General Affairs Committee, they handle these types

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of bills. So with that, I am not very apprehensive that this is going to...this is such a good idea. With that, I'll give the rest of my time back to the Chair. [LB810]

SENATOR CARLSON: Thank you, Senator Janssen. Senator Lathrop, you are recognized. [LB810]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I guess I want to stand up and give a little bit of a history maybe in response to the concerns about whether this bill should have gone through General Affairs. And probably if it were in its amended form originally, I could understand that criticism. But a little history might be helpful, and then I'll tell you kind of how my position has evolved on this. Senator Kruse, of course, had some success with the minor alcohol liquor liability bill last year that was put out by the Judiciary Committee, an important piece of work when it comes to cracking down on minors having alcohol and establishing liability as an incentive to persuade people to behave more responsibly when it comes to providing alcohol to minors. This year Senator Kruse put into the Judiciary Committee, in the form of LB810, another bill that is more of a pure dram shop, except that it provided for, and did last year in its original form as well, his bill provided for a defense for server training. That was, in my judgment, a creative approach to a problem that Senator Kruse was trying to address, and that is we have an awful lot of servers who are serving drinks, they may be selling to minors, they're not skilled at telling people, no, you've had enough, they're not skilled at identifying fraudulent IDs, they don't have the skills to do the things that we want those people working at the register and we want those people in the bars to have. And so his approach was to mandate server training by using the dram shop as an incentive program. Well, it had trouble getting out of Judiciary Committee for a variety of reasons. And I sat down with Senator Kruse when he wanted to make another run at the Judiciary Committee, and I suggested to him that if server training were his objective that we might be able to find a more straightforward way to get it out of the committee and to move it on the floor. And so here we are at the eleventh hour with the bill. I believe that what we have done in the Judiciary Committee with our amendment is good policy. Now Senator Karpisek brings up a good point maybe--What about a guest bartender? Maybe we need an exception and we can work on that between General and Select. But the idea of asking people who dispense alcohol, sell it in the convenience stores, sell it in the bars, for them to undergo training so that they know how and learn strategies to say no to people who have had too much, for them to learn strategies for identifying bad IDs for minors is only going to improve the alcohol industry. This is an area that is well regulated and it's well regulated for a reason. At one time, and certainly I'm not suggesting this is a good idea, but at one time you couldn't drink anywhere in the country. It was in the Constitution, right? So now we let people drink and that's fine, except that it's...there are certain dangers inherent in that, people get in cars, they do dumb things after they've had too much to drink, and so training those people that dispense this is important. My position ultimately is I think the Judiciary Committee had a good amendment. I support the Judiciary Committee's amendment

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and LB810 with that amendment. Now Senator Kruse has offered some...his own amendment to the committee amendment, and I have to tell you I'm going to oppose that. I think it's creating too much drag for the amendment, too much drag for the bill. It is increasing penalties before we know if that kind of an increase in penalties is even necessary. And so I'll have an opportunity to visit with Senator Kruse on...off the mike. But I just want... [LB810]

SENATOR CARLSON: One minute. [LB810]

SENATOR LATHROP: ...you to know that I think this is a good policy for the state. I appreciate the efforts of Senator Kruse to bring some education to the industry and certainly welcome constructive criticism that would allow us to improve his idea between General and Select File. Thank you. [LB810]

SENATOR CARLSON: Thank you, Senator Lathrop. Those wishing to speak: Senators McDonald, Ashford, Loudon, Langemeier, and others. Senator McDonald, you are recognized. [LB810]

SENATOR McDONALD: Mr. President and members of the body, as Chairman of the General Affairs Committee, certainly have concerns if the bill had come to our committee first, and I understand because I also serve on Judiciary, and have watched this bill evolve. The concerns that we would have had in General Affairs are probably a little bit different than you would have had in the Judiciary, because we would have probably looked closer at the training, the server training, and the costs of that, and implementing that. I think that's the concerns we probably would have looked at because we do work with the Liquor Control Commission probably at a little more degree than the Judiciary does. The amendment that becomes the bill is really a good policy idea, but it's the application of the amendment that will present a few problems for the Liquor Control Commission that I feel, as Chair of the General Affairs Committee, that I need to put on record. According to the commission, it will be costly for them to implement these provisions. The commission has stated that there are approximately 55,000 people employed by the retail beverage server profession. Therefore, 55,000...or, excuse me, 55,000 certificates would have to be issued by the effective date. This would require the hiring of additional staff, which the commission has not planned for in their budget. The commission is further concerned that it may be difficult for the electronic training programs that are certified by the commission to support the influx of the trainees. This is a potential problem that they believe should have been addressed at the public hearing, because we don't know if all of the 55,000 people that have to be trained in a certain period of time can even get on-line to be able to do that. So we don't know if that is going to create a problem. And the other thing that we need to address, that there are significant questions as to whom the bill applies. Does it apply to the volunteer staff at a special designated license event, such as a church fish fry, festivals, volunteer fire department fund-raisers? We have various special designation

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licenses. Are all of these people going to have to be trained before they go out? So there are some...many, many unanswered questions that I'm not sure that this bill answers at this point in time. So I would seriously ask you to consider whether we truly need to do this until we've done some more study on that. I did not support this coming out of committee. I was a no...I was not a no vote, I just didn't vote for it because I wasn't sure of the consequences that it created. And now after further more looking at it, there are consequences that were really not addressed at the public hearing or in our committee. So at this point in time, I'm not able to support this bill either, with either amendment. But it's something that, as committee Chair, I would definitely look at in the near future and come out with the right process to do the training for our servers. Thank you. [LB810]

SENATOR CARLSON: Thank you, Senator McDonald. Senator Ashford, you are recognized. [LB810]

SENATOR ASHFORD: Very briefly, thank you, Mr. President. Senator McDonald raises, as Senator Lathrop suggested, a good point. We have wrestled with the liability issues regarding serving to minors, or generally serving to intoxicated persons for the last two years, and have tried to come up with some policy that would balance out the personal responsibility of the person who isn't...who has become intoxicated versus the responsibility of retailers who have licenses. And in this case, we have in fact intruded a bit in the General Affairs' jurisdiction and in coming up with, as Senator Lathrop suggests, a compromise. I am fully aware of the fact that the Liquor Control Commission has some issues. And if we cannot iron those issues out between now and Select File this bill will not pass. I absolutely would agree with Senator McDonald that we would be bogged down and that it would not pass. What I'm asking the body to do now is to, as Senator Lathrop suggests, let's adopt the committee amendments, let's get off General File, give me an opportunity to talk to the Liquor Control Commission and Senator McDonald, because she is an expert on this issue, and to see if we can put something together for the body. What I don't want to do is...I would suggest we don't do is not advance this bill at this point. This is sort of a late in time compromise. Senator Kruse has worked long and hard on it. Again, I think it's part of a three-pronged package of reasonable and prudent measures that balance out the responsibilities and the...of all the individuals who are involved here. And I fully understand the burden on the Liquor Control Commission. And so with that, I would suggest that we adopt the committee amendments, and certainly everyone can vote up or down on Senator Kruse's amendments to the committee amendments. But I...let's see if we can move this to Select File today. And if I can't clear up the problems, I'll stand up here and tell you that I can't clear up the problems. But this gives me an opportunity to do that in the next couple of days. I will do that and hopefully...and can bring you a completed package next time. Thank you. [LB810]

SENATOR CARLSON: Thank you, Senator Ashford. Senator Loudon, you are

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recognized to speak. [LB810]

SENATOR LOUDEN: Thank you, Mr. President and members. As I look at this amendment, AM2664, which became the bill, I have a lot of questions myself--Senator McDonald, I think, outlined some of the same questions--when I read that, that within 60 days after the operative date of this act employees employed on the operative date have to have...be certified. And when you take the state over, she said 55,000 or so, whatever number you pick. But that's a lot of employees that have to be all certified within 60 days. Right there I think the logistics is shot right there. One other question I have is the part that a retail licensee shall, prior to allowing an employee to sell or serve liquor. Now are we talking about some of these people in grocery stores that are checkout counters that sell liquor in the grocery store? Do they have to be trained? My understanding is this is a licensee that's selling liquor, so are we including those people as part of the ones that have to be certified in order to sell liquor? I think there's...is there a need to certify some of these people? As Senator Karpisek talked about somebody helping out, but in some of our rural areas we have these supper clubs in different places that serve mostly in the evenings, and they have a certain amount of problems finding help to serve. So it's usually local people come in and help out from time to time. Sometimes they have somebody that's there on a regular basis, many times that they are just part-time people. So I question whether this is putting undue burden on a lot of people where it isn't necessary. I understand Senator Kruse wants the training so that people can recognize when someone is intoxicated or something. So when you're getting into that, that's more of a social issue. They need to have more psychiatric training than probably learning how to sell liquor to somebody. You're talking about two different modes of employment there. So when they say, fix it up and go to Select File, I really don't think so, because I think you have a vast plan here, but I think...or a vast idea, but I don't think the plan is completely vast, I guess. I think it needs to be taken back and probably overhauled, and for that matter either recommitted to the Judiciary Committee or to the General Affairs Committee or someplace where it needs to be scrutinized. And it probably should have had a hearing on this type of bill because it did change the bill considerably when they put in the amendment. So the way the thing is set up now I have many questions. Also when you sell, a licensee, does that...where does these off-sale liquor stores fit in? Do those people in there have to be all trained to sell off-sale liquor? So there's a lot of things that need to be outlined in the bill and I don't see that they're in there. And I think...I really don't think you can get from here to there. Thank you, Mr. President. [LB810]

SENATOR CARLSON: Thank you, Senator Louden. Those members wishing to speak: Langemeier, Kruse, Howard, Pedersen, Friend, and McDonald. Senator Langemeier, you are recognized. [LB810]

SENATOR LANGEMEIER: Mr. President, members of the body, I rise in opposition to LB810 and all the amendments to follow. I want to commend Senator Kruse for his

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years of dealing with this topic. And every year he brings something and gets a little something each year. However, reading this bill, I think it's problematic from the start. As you talk about serving, if you have...I'm going to use Schuyler as an example, Schuyler Labor Day, we have a lot of people come to town for the Labor Day parade and spend time in Schuyler. And a lot of our bars will hire some kids, big adult individuals, to stand around and kind of just kind of crowd management and stand around and just kind of just watch things, make sure everything is going right because we have hundreds of people come to town. The way this bill reads, if you serve, if a waitress goes out or a waiter goes out and takes an order and they set it up on the counter on a tray, and she says, man, I got to go fix this table, John, you're over there, you're kind of doing security, would you just take that out and go give it to that table over in the corner. Well, he just violated this, because we didn't train him because that's not what he was there to do, but he's old enough to do it. He didn't take the order, he's just going to take it out and set it on the table. I think this is problematic from the start. If you have extra help that calls in and says, oh, by the way, I can't help that Labor Day weekend, I need to do something else, then you need to get somebody to replace him, and then you got to get him trained on the Internet. I think it's problematic from the beginning. I had the opportunity a few weeks ago to go to a seminar on this with Project Extra Mile. And they were disappointed that I wasn't big in support of this. And I think we have a mind-set out there. It just so happens that one of the individuals that was there with Project Extra Mile, promoting it, got picked up by the State Patrol that next Thursday night for selling to a minor. Think this training would have helped him? Probably not. They were pretty passionate about the program. Second offense. I think that's problematic. I think we have a mind-set out there that is going to do this. We can create laws and create laws and they violate laws and violate laws. I just don't think this is going to get us to where we need to be. And with that, I don't have a comment on whether this went to the right committee or not, because I think we could scrutinize all the bills we have, and there would probably be a lot of them that didn't go to the right committee. And as we learned yesterday, in Senator Cornett's and Senator Carlson's discussion, that is up to the Referencing Committee. The Referencing Committee referenced this bill to Judiciary. The committee...the amendment, this AM2687, is also pretty dramatic. It might need to have gone to a committee and had a hearing as well. And so with that, I rise in opposition to LB810 and all the amendments thereafter. Thank you, Mr. President. [LB810]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Kruse, you're recognized. [LB810]

SENATOR KRUSE: Thank you, Mr. President and colleagues. There is fuss on my amendments and I will withdraw them at the end of my comments, because they're not really that big a deal. In fact, the whole bill is not that big a deal. It is something to forward where we're going and to make our roads safer, that's the only purpose of it. But let me speak to some of the comments that have been made. One is, who is this

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covering? This is for permanent licenses. It has nothing to do with a fish fry, or a church supper, or dinner, or any...or the firemen at some local hall or hotel. The fund-raisers are simply not counted. We're talking about permanent licenses, we're talking about those who regularly sell, and it does include grocery stores; Senator Loudon wondered if it would. Yes, it does. Grocery stores are the main violator of selling to minors, and a lot of their clerks don't understand how to do that, so we're talking about having them trained to understand who they're supposed to sell to. Also the question has been raised as to whether this was a natural part of our hearing. Folks, we talked about server training a lot in that hearing because that was a native part of the bill, that's what the bill was about, to provide server training as a voluntary type of a thing, which businesses would be motivated to do because it would excuse their civil liability. So we were pushing to get that done. There's also the question of crowding. I remind you that all that the Liquor Control has to do is receive the applications and make a list out of them. That is not a big deal. They will need to certify more courses. Some of the courses, I am reminded, are not on the Web. They are on videotape. You can check out a videotape and have it, or they're books that go with it. So there are various ways of doing it. But we're quite willing, on the things that Senator Ashford has talked about, as we get to Select File, to change the effective date, delay it for a month, six months, a year, whatever it takes. Again, we're not going to put money into this. Those who are doing this, and there's a great number of them, it won't take much of a fee to cover the whole thing. With that, Mr. President, I withdraw this amendment. [LB810]

SENATOR CARLSON: Thank you, Senator Kruse. AM2687 is withdrawn. We return discussion to AM2664. Senator Howard, you are recognized to speak. [LB810]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I've been listening to the discussion this afternoon because I always feel I can learn so much more about these issues if I remain on the floor and work diligently to hear all sides. And I've come to the conclusion that, rather than have the liquor commissioner concerned, quote, concerned about these, quote, these things, I want to know what the liquor commissioner is doing to assist with these problems. Clearly we have a problem with liquor distribution and with the training for servers. Rather than act as a rubber stamp for liquor license issuing, I believe the liquor commissioner should commit himself to working with the Legislature and citizens to address these problems. My district, which is inner city Omaha, is having a very severe problem with the density of liquor outlets. To solve a problem we need to work together rather than find reasons why things such as training cannot be done. And I'd like to offer the remainder of my time to Senator Kruse, if he would want it. [LB810]

SENATOR CARLSON: Thank you, Senator Howard. Senator Kruse, you're recognized. [LB810]

SENATOR KRUSE: Thank you, Mr. President. And thank you, Senator Howard. I would

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hope that we would look at the purpose of training. The whole question is, shall it be voluntary, as many businesses now do; shall it be incentivised, as it would with a dram shop--if you do this then you are not hurt by civil liability; or shall we do it simply to keep alcohol-impaired persons off the road? I am fully convinced that this will work, that it will save lives. The police officer is most likely going to meet that impaired driver after there's a crash. But the sensitive server, the bartender who's alert to this, and I have talked and seen many of them, is the person who can say, could I offer you a ride home? Can I find a ride for you? You're really not in a situation and condition where you ought to be driving. If they do it and know how to do that as a point of the training, they will be able to make the roads safer for all of us and help us get rid of the problem. Along with this, I would hope that all the discussion sensitizes the public, because we're still dealing with a public attitude that is the main reason for drivers who are impaired to drink...or to drive. They will do it because the public seems to assume it's some kind of a right. Well, it's time for us to say...to challenge that, to get people to think about it. And that's what we're here to do, to think. Thank you. [LB810]

SENATOR CARLSON: Thank you, Senator Kruse. Those senators still wishing to speak: Senators Pedersen, and McDonald. Senator Pedersen, you are recognized. [LB810]

SENATOR PEDERSEN: Question. [LB810]

SENATOR CARLSON: The question has been called. Do I see five hands? I do. The question is, should debate cease? All those in favor vote aye; all those opposed vote nay. Have all those who vote...wish to vote have voted? Senator Pedersen. [LB810]

SENATOR PEDERSEN: I'd have a call of the house, please, call-in votes accepted. [LB810]

SENATOR CARLSON: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. [LB810]

ASSISTANT CLERK: 25 ayes, 5 nays. [LB810]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those 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. Senators Johnson, Hudkins, and Schimek, the house is under call. Senator Pedersen. [LB810]

SENATOR PEDERSEN: Mr. President, I'm willing to go ahead without anymore...having the 25 votes, or I would accept call-in votes. [LB810]

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SENATOR CARLSON: Clerk is authorized to accept call-in votes. Record, Mr. Clerk. [LB810]

ASSISTANT CLERK: 25 ayes, 1 nay, Mr. President, to cease debate. [LB810]

SENATOR CARLSON: Senator Ashford, you are recognized to close on committee amendments. [LB810]

SENATOR ASHFORD: Yes, thank you, Mr. President. Just to refresh everyone's memory here, Senator Kruse has offered us an opportunity to require mandatory or require training for individuals who are going to be serving alcohol in our state at retail establishments. This has been something that Senator Kruse has cared deeply about and has put forward in a variety of different ways. He put it forward to us, and the reason, in deference to Senator McDonald, the reason why the Judiciary Committee has this bill...had this bill was because Senator Kruse suggested the best policy would be to pass a dram shop law, but to include training as a defense in an action brought against a retail establishment, a retailer. The committee felt that Senator Kruse had met his burden that training, if it's not mandatory or required in some way, is fairly useless, and that there is a...this is good information that is provided to new employees. It's information that could save a life. I believe that's true. The...I would suggest that there are some issues that Senator White has raised to me and others have raised to me the issue of the fish fry issue and other types of situations where liquor is sold. And we will...I believe it's addressed in the bill, but we will...the amendments, but we will address them on Select File. I think again that some sort of training, some sort of alertness to identifying intoxicated individuals and knowing how to address them and to, in effect, do the right thing to get that person either into some sort of form of transportation where they're taken home or to stop serving them is incredibly important. And I commend Senator Kruse for his efforts. I think we should pass this amendment, clearly, advance the bill to Select File, and we will work with Senator McDonald and others and Senator Kruse to address the issues that have been raised on General File. Thank you, Mr. President. [LB810]

SENATOR CARLSON: Thank you, Senator Ashford. You've heard the closing on the committee amendment. Question is, shall the committee amendment to LB810 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Senator Kruse. [LB810]

SENATOR KRUSE: Request a roll call vote. [LB810]

SENATOR CARLSON: A roll call vote has been requested in regular order. [LB810]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1371.) The vote is

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20 ayes, 21 nays, Mr. President, on the adoption of committee amendments. [LB810]

SENATOR CARLSON: The amendment fails. I raise the call. Motion now is to advance LB810. Is there further discussion? Senator McDonald, you are recognized. [LB810]

SENATOR McDONALD: Mr. President and members of the body, I know that that last amendment didn't pass. And what...if this bill does down, what I am offering to do is have an interim study with the Judiciary Committee and the General Affairs Committee to work out some sort of agreement so that we can work with the Liquor Control Commission on the training, because I think it takes all three of us to implement this in a satisfactory manner for all of those involved. And I think that's where we have to go with this, because the idea, as far as I'm concerned, is not a bad idea. It's the application and the process that we need to get to, to implement this satisfactorily. And so I just want to let you know that that is my intention of coming together, not territorially, because I don't necessarily think that we have to decide whose bill this should have been. If it's the General Affairs or if it's Judiciary, that's not important. But the important thing is to make sure that when this is implemented that it should be done with all parties. And I don't think that can be done on this floor today. I think that's something that needs to be done in an interim study hearing, and we can do that this summer. Thank you. [LB810]

SENATOR CARLSON: Thank you, Senator McDonald. There are no other senators wishing to speak. Senator Kruse, you are recognized to close on LB810. [LB810]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I promised to tell you about a teenager in closing, and then I will withdraw the bill because I think it's very important that we go forward as a body. I'm not interested in a divided vote on anything, because the problem in this state is we haven't decided yet what to do about persons who are intoxicated. I talked with a teenager who was on one of these checkouts of a sales place. It was a package store. He had a policeman behind his shoulder. He was going to see if they would sell to a teenager. He had his own license, driver's license, with him. There was no trickery involved. He...the clerk was a little bit new and confused, and the clerk made a mistake of entering his driver's license numbers and date into the cash register, which locked up the cash register, so they couldn't make the sale. The clerk was very upset about it because what he should have done, what he assumed, everybody has a fake ID and you ring that up and then you can go ahead. So he tried to override the cash register. He pushed all the buttons and couldn't get it to do. He then got his supervisor, called his supervisor over, told him the situation. And the supervisor went through the whole routine, tried to get that machine to sell to this teenager. He couldn't get it done. They went to the office, got the owner, the manager of this to come with his key, and he worked with his key on this cash register and he couldn't get it to sell. And he finally said to the young man, he said, I'm sorry, buddy, we aren't going to be able to sell you any liquor tonight. I said to the young man, what were

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you thinking? He said, I was embarrassed for those three adults who were trying to take money from a teenager in an illegal way, and I also was hoping that one of them would figure out how to get that cash register to work, because the officer was standing right by my shoulder and I thought something would happen. Now as I've already indicated to you, if they'd arrested or done something, nothing much would happen. We have very little penalty on a dealer like that. But the young man's query comes to all of us. How are we going to deal with the public perception where a bar sells to teenagers all day long, where a package shop sells to teenagers all day long? A package shop like that is what paralyzed my son. The boy was so upset about Doug being paralyzed that he told me the whole story of the year before, they went every week. He as a teenager, and some friends from this place, to buy off hours, three violations. How are we going to turn that around, unless we can turn around public opinion? We cannot do it unless we turn around our opinion. I do urge that those who continue on continue to work on that. And with that, Mr. President, I would request that we withdraw this bill. [LB810]

SENATOR LANGEMEIER PRESIDING [LB810]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Your motion with unanimous consent to pass over LB810. Are there any objections? Seeing no objections, we will pass over LB810. Mr. Clerk, items for the record? [LB810]

ASSISTANT CLERK: Thank you, Mr. President. Amendments to be printed: Senator Schimek to LB720; Senator White to LB1001A. Your Committee on Enrollment and Review reports LB1082 to Select File, LB1027, LB1027A, all to Select File. Mr. President, a motion regarding LB736 and LB736A from Senator Fulton, along with associated amendments. Your Committee on Enrollment and Review reports LB1001 as correctly reengrossed. (Legislative Journal pages 1371-1374.) [LB720 LB1001A LB1082 LB1027 LB1027A LB736 LB736A LB1001]

SENATOR LANGEMEIER: As the Speaker had announced earlier, we now are going to go back up the agenda to the bill we passed over, LB1130. Mr. Clerk. [LB1130]

ASSISTANT CLERK: Mr. President, LB1130 was introduced by Senator Synowiecki. (Read title.) The bill was read for the first time on January 23 of this year, referred to the Committee on Judiciary. That committee reports the bill to General File with committee amendments attached. (AM2330, Legislative Journal page 984.) [LB1130]

SENATOR LANGEMEIER: Thank you. Senator Synowiecki, you are recognized to open on LB1130. [LB1130]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Members, again, I do want to express my apology for we had some delays in getting an amendment drafted on the bill and wanted to express to you my apologies for having the delay. I also want to thank

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the members of the Judiciary Committee that advanced the bill to General File, and particularly I want to thank Senator Pedersen, who is a colleague of mine on the Community Corrections Council, for his support. He had a bill, actually introduced last year, that essentially sought to accomplish the same thing. Members, LB1130 is a bill that seeks to merge probation and parole services. This is a subject matter that has been brought to the Legislature many times before. Since 1957 there have been six attempts to merge Nebraska's probation department into the executive branch of government: 1971, 1977, 1995, 2000, 2004, 2005, and 2007. Actually, I think that's seven attempts, seven attempts to merge the probation department. While there exists many public policy reasons for this proposal, perhaps the most critical for a proposed merger of probation and parole supervision programs is the overcrowding crisis in Nebraska's correctional facilities. In 2003, Senator Kermit Brashear introduced LB46, the Community Corrections Act, in response to an inmate population and budget crisis. LB46 contained enhanced community corrections programs as its centerpiece, and also endeavored to limit the use of incarceration to those cases in which it is the best use of state resources. In 2003, at the time the Community Corrections Act passed the Legislature, the Department of Corrections was operating at 133 percent of its design capacity. As of March 1, 2008, the prisons of Nebraska are operating at 138 percent of capacity. When considering individual institutions, the Nebraska State Penitentiary, as of 3-10-08, was operating at 160 percent of offender capacity and the Diagnostic and Evaluation Center is operating at 186 percent of design capacity. Under Sections 83-962, which was implemented under the Community Corrections Act, when the population of the prison system cumulatively reaches 140 percent, which we're only 2 percent away as of now, the Governor must be notified by the director of the Department of Corrections and a correctional system overcrowding emergency is declared. Upon declaring the state of emergency, the Board of Parole shall immediately, under the provisions of this law, consider or reconsider committed offenders' eligibility for parole who have not yet been released. We are not alone in confronting this situation. According to an April 4, 2008, AP news story, due to budgetary and related prison population issues, at least eight states are now considering freeing inmates or sending offenders to rehabilitation programs instead of prisons. A Rhode Island proposal would allow inmates to deduct up to 12 days from their sentence for every month they follow the rules and work in prison. Even some violent offenders would be eligible for this program in Rhode Island, but it would exclude those serving life sentences. A plan in Mississippi would offer early parole for people convicted of selling marijuana or prescription drugs. New Jersey, South Carolina, and Vermont are considering funneling drug-addicted offenders into treatment, which is cheaper than prison. In Kentucky, which they are currently confronting a \$1.3 billion budget deficit, lawmakers approved legislation last Wednesday to grant early release to some prisoners. Initial estimates were that the plan could affect as many as 2,000 inmates. Members, Nebraska, however, is not strategically administratively positioned to offer expedited or accelerated parole release programs due directly to our fundamental lack of parole infrastructure. Nebraska has 18 field parole officers in the entire state. To

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substantively accelerate parole releases, which are to be supervised by those 18 parole officers who already have a full caseload of offenders, is unacceptable and poses a legitimate safety risk to the public. Unlike other states, Nebraska is currently in an unresponsive position should the need to accelerate parole release materialize, which is a viable likelihood, whether the situation is driven by prison population thresholds or budgetary reasons or both. The other option is to build our way out. When the Tecumseh Correctional facility was constructed, we were in a time of fiscal surplus. The total cost to build the Tecumseh facility was \$72.9 million. The yearly operating budget for both the Tecumseh facility and the Nebraska State Penitentiary is roughly \$45 million a year. We are obviously facing a very different fiscal climate today. The funds do not exist to build another correctional facility. It would be both fiscally and socially irresponsible to build another prison in the state of Nebraska. Today I think I am offering you, embodied within LB1130, an alternative to building our way out of this problem or creating undue burden on the parole system. It is a bill that seeks to merge probation and parole supervision resources. The bill, additionally, creates the Office of Court Services under the judicial branch. Members, this legislation is the culmination of an over decade long public dialogue on the future of Nebraska's criminal justice system. That dialogue among criminal justice experts, public policymakers and respected members of the judiciary has sought ways to achieve balance and solutions among a diverse set of long-term public policy issues. These issues include an undeniable growth in our prison system, the significant strain on our public treasury to construct and operate new prisons, the utmost concerns of public safety and, finally, mechanisms to ensure that criminal justice sanctions include a genuine opportunity for effective and long-term rehabilitation. In 1971, under LB680, the Legislature elected to house probation administration within the Supreme Court. LB680 was innovative in providing a limited form of cross-jurisdiction authority for parole officers to supervise probationers. Senator Terry Carpenter proposed cross-jurisdictional authority from his recognition that probation and parole officers have strikingly similar duties in our community. More over, in 2003, as previously mentioned, the Legislature passed LB46, which provides for the development of community-based programs and facilities for both probationers and parolees. In order to promote enhanced opportunities for successful LB46 outcomes, I believe it is necessary for us to seriously consider the concept of unifying our probation and parole resources. The citizens were asked to weigh in on these issues directly in the state of Nebraska. In November 2006, Amendment 4 was placed on the ballot by this body and provided an opportunity to remove the final hurdle to true reform within our criminal justice system. The citizens of Nebraska responded with a resounding vote for innovation, government efficiency in a combined approach to Nebraska's probation and parole functions. While the increased level of collaboration that has been occurring between probation and parole is appreciated and welcome, there unquestionably continues to exist administrative barriers that interfere with criminal justice system goals. Having probation and parole supervision under different branches of government and under two entirely different administrative frameworks certainly serves as a barrier in providing a continuum of offender services... [LB1130]

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SENATOR NELSON PRESIDING [LB1130]

SENATOR NELSON: One minute. [LB1130]

SENATOR SYNOWIECKI: ...and is not conducive to a seamless community corrections model. Additionally, as community corrections in our state continues to evolve toward criminal offender management, it increasingly moves away from the mission and scope of our Nebraska courts. LB1130 affirms that probation and parole offender based services share many similar characteristics. It affirms that state sponsored services and resources, that are useful to offenders as they navigate toward rehabilitation, are all located in the executive branch. And finally, LB1130 affirms that the presentence investigation reports serve as a critical element in the judiciary's sentencing deliberations. The presentence investigation officer's report provides comprehensive individual offender case histories and assessments that provide the judiciary useful insights in assisting with the delivery of proportioned and fair criminal offender sentencing. [LB1130]

SENATOR NELSON: Time. [LB1130]

SENATOR SYNOWIECKI: Thank you. [LB1130]

SENATOR NELSON: Thank you, Senator Synowiecki. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair of the committee, you are recognized to open on the amendments. Senator Ashford. [LB1130]

SENATOR ASHFORD: Thank you, Mr. President, and actually AM2330 are the committee amendments. There are amendments to the committee amendments, AM2721, which are really a substitute to AM2330. So I think what I will do, if it's appropriate, I believe it is, is just to talk about LB...or AM2721 at this time. [LB1130]

SENATOR NELSON: Thank you, Senator Ashford. Mr. Clerk, there's an amendment to the committee amendment. [LB1130]

ASSISTANT CLERK: Mr. President, I have two amendments to the committee amendment. The first, Senator Ashford, is AM2693, with a note you wish to withdraw this one? In that case, Senator Ashford would offer AM2721 to the committee amendments. (Legislative Journal pages 1375-1378.) [LB1130]

SENATOR NELSON: Senator Ashford, you are recognized to open on your amendment to the committee amendment. [LB1130]

SENATOR ASHFORD: Thank you, Mr. President. And Senator Synowiecki has very

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thoroughly described the reasons why we are here on this bill. And, in going back in my history, Senator McFarland and I, Jim McFarland, years ago I think introduced the first community corrections bill and I believe it was funded with \$25,000. And it's just amazing what has occurred in the past several years, thanks to the work of Senator Synowiecki, Senator Pedersen, obviously Speaker Brashear and others who have made this a reality, and it's exciting to see. Just as a little bit of background, I noticed today, reading New York Times, that President Bush plans to sign tomorrow the Second Chance Act, making rehabilitation a central goal of the federal justice system and to push for programs to encourage the bringing back into the community of federal prisoners. So this is clearly a movement and it's more than a movement. It's really business as usual, I think rightly so, in the federal court system, the state courts across our country. Let me just tell you that there are...have been a couple of amendments filed and the reason for that is that we have attempted to, Senator Synowiecki and his staff, and I thank them, and my staff, in trying to address some of the issues. Many of you may have received over the past couple of weeks e-mails primarily from, I think, I believe, from employees of the probation or parole side of the aisle questioning whether or not this is a good move, and also some of the concerns raised by the Department of Corrections, the executive branch about the cost of this merger. So AM2721 is a response to that. We had some discussions as late as this morning with the executive branch, with the Governor's Office, about how to appropriately move this concept forward in a significant way this year. So what AM2721 does, and it is the bill essentially, is that it creates the department and, in so doing, it provides that the Department of Corrections shall...and the probation administrator shall submit a merger plan to the Legislature, including recommendations, budget requirements, substantive recommendations on implementation, prior to September 15 of 2008. So essentially what we're doing is we are creating the Department of Corrections and...or Division of Community Corrections now and we are, at the same time, requiring that there be a merger plan submitted by September 15 of 2008 so that whatever budget requirements are in those recommendations can be included in the 2009 budget, and that is a significant part of the bill. The Probation and Parole Advisory Board will be established by July 1 of 2008 to assist with the merger and shall meet monthly at the call of the Chief Justice. The chief administrators of both the Division of Community Corrections and the Office of Court Services will not be hired until July 1 of 2009. The actual implementation of this bill, this act, this division, shall not occur until after the Legislature meets next year. The director of the Division of Community Corrections shall be appointed by the Governor and approved by the Legislature, so this is part of the idea that...of the original bill, which is to make certain that the...that this division retain substantial independence, and that as we bring these two, probation and parole, together that it be viewed as having a significant degree of independence from the Department of Corrections. Because obviously the classic discussion always is, is this a Corrections function or is...because we're really dealing with individuals who are not within the Corrections system, and I think it's adequately handled in the amendment, AM2721. This is obviously a complex merger, but again, we are dealing with not a huge

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number of employees, but the employees that we are dealing with have a significant function in our judicial system, in our criminal justice system. In my view, having been an early proponent of community corrections, it is essential that we achieve this goal this year and that we not have to come back and start over next year with a new bill and a new hearing in Judiciary Committee and then start over again. I think we have come a long way down the road because of the work of Senator Synowiecki and the others who have done such, and Senator Pedersen, who have done such a yeoman's job. And I believe the concerns that have been addressed to us, again by those outside the body, have been addressed and that the implementation of this Community Corrections Division will not occur until next year, and that the Supreme Court will retain jurisdiction over presentence investigations, over juvenile services. Some of the issues that again I noticed in some of the e-mails I received is that the concern that probation, presentence investigation and juvenile services would no longer be within the jurisdictions of the court, of the court. The amendment specifically provides that those functions will remain with the court. But probation and parole will come together in a new division. The director will be appointed by the Governor, approved by the Legislature. I think we can then move this process forward. And as the federal government, as we see by the legislation that was passed with the support of both parties in the Congress and to be signed by the President tomorrow, we are in a new age of dealing with the issues of incarceration and community corrections. We need to be on the forefront of it. I think this gets us there and moves us forward significantly. With that, Mr. President, I would urge the adoption of AM2721 to AM2330. Thank you. [LB1130]

SENATOR NELSON: Thank you, Senator Ashford. The floor is now open for discussion on AM2721. Senator Pedersen, you are recognized to speak. [LB1130]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. I'm going to support the amendment. I'm going to support the bill. But I want you to know this is a long shot from what we originally hoped it would be. When we first started looking at community corrections a few years ago the state we wanted to mirror the most was North Carolina. Their community corrections is separate from the courts and separate from the correctional facilities. Correctional facilities took care of corrections housing only. Their community corrections department takes care of postincarceration, preincarceration, and probation. They've come to the point where they spend millions of dollars on this department because it saves them millions, more millions, in the area of housing in corrections. As we know, we're a small state and I think it's narrowed down to this a lot because of money. A couple of years ago Senator "Brasure" was here...Brashear, I'm sorry, Senator, and took community corrections by the horn in this body and got it passed. We have a Community Corrections Council, which Mr. Senator Brashear is the Chairman of that council. In the short term...time or term of its operation, it has kept at least a straight line on our population in Department of Corrections. It has given and raised enough money through fees to do this and to help probation out. Probation has done a good job throughout the years and we need to recognize that.

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The courts have finally decided that they should not be in the area of supervision and they want to give it up, so Senator Synowiecki's original bill was to merge probation and parole under its own department and to be separate from any other department. Department of...or the Council on Community Corrections has been a part of this. What I want to say more than anything else is the probation officers that we have working in this state are a dedicated, very hardworking group of people. They're losing hope because of what they work for, for finances,... [LB1130]

SENATOR NELSON: One minute. [LB1130]

SENATOR PEDERSEN: ...which we improved last year, but now it's the workload. And it always the workload, I think, before finances. The morale is low because they have many new programs that have come down to administration that they don't seem to be able to get their hands around before they're required to do it. I'm supporting this bill because I think it will bring some hope to them and some hope to you people that are going to be here after we're gone, those of us that are leaving this year, to do something and keep it going in this arena. Probation works. Community correction is working. We need them both. [LB1130]

SENATOR NELSON: Time. [LB1130]

SENATOR PEDERSEN: Thank you. [LB1130]

SENATOR NELSON: Thank you, Senator Pedersen. Senator Chambers, you are recognized to speak. [LB1130]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I oppose the amendment, I oppose the bill, and this amendment is one that was put together hastily and we had to delay because, although I was told about this amendment yesterday or maybe earlier but at least yesterday, it was not available. This is being put together and engineered by people other than those on the floor of the Legislature. My intent in opposing this bill is not to call out those individuals unless they insist, but the two approaches, the two categories of officers here, probation on the right hand, parole on the left hand, are different. They may seem remarkably similar and even the same to some people, but to those practitioners there is a great amount of difference and the approaches are different. A person who is on parole has served a certain amount of time in the penitentiary. You're paroled from the penitentiary. You've been convicted of a felony. When you come out and you're under a parole officer, that person is similar to a quasi-police officer. On the other hand, when you're dealing with a probationer, this person may have served a small amount of time in a jail but generally there is no time served. What they have done is considered to be relatively minor. They pose no threat to anybody and the probation officer is serving a different role with that person than the parole officer would serve with the parolee. I do not think that it is wise

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for the Legislature, at this late hour, with an amendment just thrown together...and I can be corrected on that. Senator Synowiecki, if he stands up and says, Senator Chambers has that wrong and this is not what happened, I will not challenge him. I'm going by what my understanding is and I'm laying it on the record and laying myself open to being called out as having been misinformed and misinforming my colleagues. But on the other hand, when the practitioners find problems with this, both the parole officers and the probation officers, while will not their testimony be given some credence when you want to listen to what teachers say, you want to listen to what social workers say, you want to listen to what judges say when they come in for salary increases? You want to listen to what everybody says, but when we come to these two groups of individuals at a critical position and point in the criminal justice system's operation, suddenly what they say means nothing. There is a convenience to be served by bringing the two together. Are you going to be able to mix oil and water if you have an emulsifier? An emulsifier will break up the greasy substance into particles so small that they will...they'll be suspended, and that's how they mix with the water. They don't become water. They just can mix in with the water. Who, what, and where will the emulsifier be in bringing these two disparate elements together? A prison guard is not the same as a police officer. A prison guard is not a law enforcement officer. [LB1130]

SENATOR NELSON: One minute. [LB1130]

SENATOR CHAMBERS: Some people could say, well, they're so similar, I view them the same way. That's all right. That can be done. But it doesn't alter the fact that their duties are different, the responsibilities, the powers they exercise are different. I'm sure that others will have their points of view and many of them may disagree with mine, but I intend to resist this bill. Thank you, Mr. President. [LB1130]

SENATOR NELSON: Thank you, Senator Chambers. Senators waiting in queue are Avery, Burling, Synowiecki, Gay, Stuthman, and others. Senator Avery, you're recognized to speak. [LB1130]

SENATOR AVERY: Thank you, Mr. President. Why? Why do we want to do this, and is it necessary? Seems to me I remember last year that we passed LB540 which commissioned a study to review the state's current assignment of probation and parole services. And the primary purpose of that study or that law was to decide whether probation and parole services in Nebraska should be consolidated under one agency, and I got a look at that study this morning and I discovered that we spent \$50,000 to hire Vera Institute of Justice to carry out the study and their conclusion was, to answer my question why, the conclusion was essentially, no, we don't need to do this. In fact, they found that not 1 of the 31 states that have merged probation and parole services into one agency had done so under the judicial branch. I see that we're not proposing that. But more importantly, they, in their extensive survey and interviews of various people involved in both parole and probation, they found a substantial number of

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stakeholders strongly opposed to consolidation. So they concluded that consolidation of probation and parole services may be premature at this time. So I am wondering why do we need to do that at this point. Do we have substantial evidence that merging under Correctional Services will be better than the current system or, to put it another way, what is the source of confidence that we have that this proposal will work? I am told that in the probation area we have seen some important innovations over the last several years working toward evidence-based practices and that parole activities might actually be a couple of years ahead of probation. So does a merger threaten continued innovations in this area? So I am...I'm asking questions at this point. I haven't decided yet what I will do in my vote, but I think that I would like to have Senator Synowiecki or others address the issue of the study that we paid for and the conclusions that that study drew. Thank you, Mr. President. [LB1130 LB540]

SENATOR NELSON: Thank you, Senator Avery. Senator Burling, you are recognized to speak. [LB1130]

SENATOR BURLING: Thank you, Mr. President, members of the body. I'd like to ask Senator Synowiecki some questions, please. [LB1130]

SENATOR NELSON: Senator Synowiecki, will you yield? [LB1130]

SENATOR SYNOWIECKI: Yes, I will. Thank you. [LB1130]

SENATOR BURLING: Senator Synowiecki, I thank you for your work on this issue. We've been together here several years and I remember the passage of LB46. I think that was a big improvement. Would you agree that the prison population has declined a little bit in the last 12-18 months? [LB1130]

SENATOR SYNOWIECKI: Subsequent to the passage of LB46, the prison population has increased. [LB1130]

SENATOR BURLING: My... [LB1130]

SENATOR SYNOWIECKI: One hundred and thirty-three percent. It was at 133 percent of design capacity at the time LB46 passed; it's at 138 percent of design capacity now. Now the question is, would we be higher if not for some of these community corrections programs? I would probably tell you yes. [LB1130]

SENATOR BURLING: Okay. Right now probation and parole are separate. You propose to combine them. Would you help me understand? The emphasis in this bill is adult probation and parole. Help me understand the difference between that and youth or would youth remain separate or how...go ahead. [LB1130]

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SENATOR SYNOWIECKI: Well, under the amendment, that will all be studied during the interim. But for...yes. The answer is, for purposes of where the starting line is, and the enabling legislation under this amendment will come next year through the Judiciary Committee Chairperson, should the planning point in that direction. But under the underlying bill, Senator Burling, yes, the juvenile services, problem solving courts and presentence investigation, which are all, I think, recognized as distinctly judicial in nature given that juveniles is not a court that has sanctions is...would remain with the judicial branch. The supervision of adults, all the way from sentencing to release from the penitentiary, would remain...or would go to, if you will, to the department of Community Corrections...or to the Division of Community Corrections. [LB1130]

SENATOR BURLING: Okay. Thank you. If this amendment passes, how does that affect the fiscal note? Do you know that or not? [LB1130]

SENATOR SYNOWIECKI: Well, Senator Chambers kind of alluded to we were...and I'll admit we, as of this morning, we were getting this amendment together, my staffs and Senator Ashford's staffs. Senator Burling, in working with the bureaucracies, I had a fiscal note of \$4.2 million from the Department of Corrections' side, from the executive branch side. Now listen to this. From the judicial side, from their analysis, the other bureaucracy we're having to deal with, they were informing me of an additional 6.2 probation officers. So on one side I had \$4.2 million; on the other side I had an additional six officers, between the two analyses, the fiscal analysis of what we are trying to do. In good conscience, I couldn't bring that to the Legislature. I think this thing needs a little bit more planning, but I do think we need to engage the bureaucracies that this is going to happen, that we compel them to do their due diligence in planning, and that we move in this direction, particularly beginning in July of 2009. So the amendment, Senator Burling, AM2721, mitigates entirely the fiscal note and that, for the most part... [LB1130]

SENATOR NELSON: One minute. [LB1130]

SENATOR SYNOWIECKI: ...and I think, Senator--and I don't mean to take your time, I have my light on next if you have additional questions--I think that's what Senator Ashford was alluding to in his opening, that you know this is a process. It's a process, a long-term process. States have done this. Senator Pedersen mentions North Carolina. When they instituted their "LB46," if you will, their Community Corrections Act, the first thing they did was do this. The first thing they did was merge the probation and parole services in their state. So what I think this amendment does is keeps this issue alive, very much so. It actually establishes the divisions, but compels the bureaucracies to work in good faith to come to a resolution on this. [LB1130]

SENATOR BURLING: Thank you, Senator Synowiecki. My time is about out. I appreciate that information. I think LB46 is serving us well right now and maybe we

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should give it a little more chance to work, so I'm questioning also... [LB1130]

SENATOR NELSON: Time. [LB1130]

SENATOR BURLING: ...if it's necessary at this time. Thank you. [LB1130]

SENATOR NELSON: Thank you, Senator Burling. Thank you, Senator Synowiecki. Synowiecki, Senator Synowiecki, you are recognized to continue. [LB1130]

SENATOR SYNOWIECKI: (Laughter) There's a lot of Senator Synowieckis on this floor, Senator Nelson. [LB1130]

SENATOR NELSON: (Laugh) Right you are. [LB1130]

SENATOR SYNOWIECKI: First, Senator Nelson, thank you. I'd like to see if Senator Burling...Senator, do you have any additional questions? I took a lot of your time. Okay. Senator Burling indicates he does not have any additional... [LB1130]

SENATOR NELSON: Senator Burling waives. [LB1130]

SENATOR SYNOWIECKI: ...questions. Members, the study that Senator Avery was referring to, we tried to comply with some of the...number one, let me say this from the upstart on the study, and perhaps I have some amount to blame on this. Really, we proposed the study, the moved the legislation and, by the way, it was only \$25,000, not \$50,000 for the study. Vera Institute kicked in \$25,000. But they didn't have a plan to study. There was no plan. We didn't have anything drawn up. In retrospect, and of course you only get one opportunity at this, I think what we should have done was outline a plan for the consolidation of these services and then have that type of study take place relative to the merits of the plan itself. The Vera Institute did indicate that it may be, indeed, premature for some type of consolidation of these services, but at the same time this bill is not...the bill, and particularly the amendment, we're not looking at an immediate consolidation of probation and parole services. It's delayed. Another thing that the underlying bill does and the amendment seeks to do is to maintain that alliance of the presentence investigation officer with the court. There is, indeed, a distinctive relationship there between the court and between the presentence investigation officer. That was spoken to quite strongly in the report and the bill, the underlying bill and the amendment, seeks to keep that intact. We have...what I think we're ignoring here a little bit, and I appreciate the comment, what we have here is a state that has a profound lack of a parole infrastructure. We have 18 parole officers in the state. If this...and let me back up. And if you don't think that these budgetary items might drive some of the decision making in this body, you're wrong. They do. We closed a prison one night. I was in here. It was Senator Pedersen's motion and we closed a prison. But, members, we can't make the decisions that they're making in Rhode Island, in Vermont, in some of

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those other states, South Carolina. You will not have the luxury to implement expedited or accelerated parole strategies to deal with the prison overcrowding issue or to deal with a budgetary crisis. You will not have that luxury, as other states have, because of our profound inability, with only 18 parole officers. It will not be in keeping with public safety if we continue with the current system that we have right now. Now community corrections in Nebraska is evolving and I think what you have here is a Supreme Court recognizing more and more, with the establishment of day and evening reporting centers and those types of operations, that more and more probation supervision is becoming and evolving toward criminal offender management. [LB1130]

SENATOR LANGEMEIER PRESIDING [LB1130]

SENATOR LANGEMEIER: One minute. [LB1130]

SENATOR SYNOWIECKI: And it's the opinion of the court, as I understand it, in talking to members of the Supreme Court, that it's not their purview, it's not within their constitutional scope to set the public policy of this state relative to alternatives for their own branch. In other words, you have a judiciary whose primary responsibility in the criminal court arena is to adjudicate sentencings, but yet this state, by having probation under the Supreme Court, we call upon the judiciary, under the auspices of the probation office, to provide public policy direction to these alternatives. I think it's naturally, very naturally a duty and a responsibility of the executive branch to offer to the judiciary branch viable alternatives to a penitentiary sentence, to a penitentiary environment for offenders. It should not be the job... [LB1130]

SENATOR LANGEMEIER: Time. [LB1130]

SENATOR SYNOWIECKI: Thank you. [LB1130]

SENATOR LANGEMEIER: Time. Thank you, Senator Synowiecki. Senator Gay, you're recognized. [LB1130]

SENATOR GAY: Thank you, Mr. President. This is a good debate and I'm paying close attention. Senator Avery touched on the study I was going to ask on. Senator Synowiecki is doing a fine job explaining that Vera Institute study. I'm looking through the fiscal note here and you talk about...it says there's between 16,000 and 20,500 adult offenders on probation. Then we have the juvenile offenders who are on...basically, then 3,500 juveniles supervised. I'm concerned here. It sounds like we're moving in a direction of, well, let's just do this and we'll make sure it gets worked out. I'm a little bit concerned. I'm a proponent of community corrections, day reporting centers. I've had some experience with those issues and I think they're a great...they're something we are going to need to do. I don't know about great, but it's something we're going to need to do or we're going to, as Senator Synowiecki has made good points to, we're going to

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have a real problem on our hand if we don't address the situation. I would commend him and others who are working on this. I did receive an e-mail from someone I respect very much whose been in the probation...she's worked for probation a long, long time and I respect her opinions, saying to me, ask some of these questions. So the questions, I'm going to ask Senator Synowiecki, if he'd yield for questions. [LB1130]

SENATOR LANGEMEIER: Senator Synowiecki, would you yield? [LB1130]

SENATOR SYNOWIECKI: Yes. [LB1130]

SENATOR GAY: Thank you, Senator. Senator, the concern is this. We have an adult vehicle here and then you have the juveniles. And what I was told is, you know, lots of times in places in smaller...that don't have the volume, we're able to do two things. I can be an adult, on one hand, and I can deal with juveniles, because there's volume, so we're cross-trained to deal with those issues. The concern is this, if we go create this. We're working and doing good things; why screw it up at this point? I shouldn't use that term, but why change at this point because...just because it sounds like we're going to get more efficiencies? Because we're already doing a good job and we're utilizing our people in the best way. But if you want to address the efficiencies, of where we're going to get efficiencies on this. [LB1130]

SENATOR SYNOWIECKI: Sure. Yes, and thank you. And Senator Pedersen kind of spoke a little bit to some of the morale issues on the...in the probation officer level. You're probably aware of some of those problems as well. While Senator Chambers speaks to there's a lot of probation officers, perhaps parole officers that oppose this, there's also a lot that support this, and I don't know if you have any contact with those officers. Now in the...in your district, Senator Gay, in Douglas County, in Lancaster County all these duties are split up now. They're all...they have juvenile supervision, they have adult supervision, and it's all split up, if you will, by job duty and responsibility. In the rural area...and let me go a little bit further. They have specialization within that. You'll have a probation officer that all he does is supervise sex offenders, or you'll have one probation officer, all he does or she does is supervise DWI offenders. Then you have drug courts and that associated stuff going on. But, yes, and that's part of what I'm hoping to remedy with this. In the rural area you'll have an officer that does adult supervision, does juvenile supervision, does presentence investigations, and I question whether an individual officer in their case management practice, if they can develop a certain level of expertise with any one of those populations, particularly given that in the more populated areas not only is supervision and presentence investigations divided, but they have specialties within supervision and within presentence investigations. And then in our more rural areas, which I have concern about, where they're kind of like a jack-of-all-trades where they do everything, I have questions... [LB1130]

SENATOR LANGEMEIER: One minute. [LB1130]

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SENATOR SYNOWIECKI: ...on whether they can develop that level of expertise in individual populations in their case management to respond appropriately to those individual populations. [LB1130]

SENATOR GAY: Okay. Thank you. Looking again at the fiscal note, are we going off this last fiscal note at \$4.5 million? Because it says 20 to 30 new officers. That's where they're getting \$2.3 million of the \$4.6 million, is new officers we'd need. [LB1130]

SENATOR SYNOWIECKI: Yeah. I'm sorry, Senator Gay, if you didn't...when I was responding to Senator Burling, I think, that's what's driving this amendment AM2721, quite frankly. I had two different fiscal analyses of what we're doing here. So what AM2721 does it take it off the table entirely, the fiscal note. [LB1130]

SENATOR GAY: Well, yeah, but they're saying, though, with those, by the supervision, they're supervising 200 to 250 offenders per officer. They had to come up with these figures somewhere, so just to say, well, let's ignore it and we'll work this out, we don't want to do that, do we, this late in the game? And I think that's what people are concerned about. It sounds like there's...we're heading in the right direction here, but it's kind of important to... [LB1130]

SENATOR LANGEMEIER: Time. [LB1130]

SENATOR GAY: Thank you. Thank you, Mr. President. [LB1130]

SENATOR LANGEMEIER: Thank you, Senator Gay, and thank you, Senator Synowiecki. Pursuant to the agenda, it is 5:00, we will now proceed to Select File, LB844. [LB1130 LB844]

ASSISTANT CLERK: Mr. President, with respect to LB844, I do have E&R amendments. (ER8180, Legislative Journal page 850.) [LB844]

SENATOR LANGEMEIER: Senator Karpisek for a motion. [LB844]

SENATOR KARPISEK: Mr. President, I would move E&R amendment ER8180 to Enrollment and Review. [LB844]

SENATOR LANGEMEIER: You have heard the motion on the adoption of the E&R amendments. All those in favor say aye. All those opposed say nay. They are adopted. Mr. Clerk. [LB844]

ASSISTANT CLERK: Senator McDonald would offer AM2257. (Legislative Journal page 1190.) [LB844]

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SENATOR LANGEMEIER: Senator McDonald, you are recognized to open on AM2257. [LB844]

SENATOR McDONALD: Mr. President and members of the body, AM2257 contains LB840 as advanced to General File by the Judiciary Committee on March 4. This amendment adds the drug Salvia divinorum and its active ingredient, Salvinorin A., to Schedule I of controlled substances referred to in the Uniform Controlled Substance Act in state statute, Section 28-405. It puts Salvia divinorum on a par with psychedelic mushrooms, peyote, and LSD. Salvia divinorum is a perennial herb in the mint family native to certain areas of Mexico. It will grow in many other places, including Nebraska. This is not the perennial flower grown in gardens. It is an intense hallucinogen. The drug's effects can be felt within 30 seconds to 10 minutes, depending on how the drug is taken into the body. The most common ways to take the drug are smoking or chewing. The hallucinogenic effects last approximately 30 minutes. Salvia divinorum can cause a bad reaction in some users, with the potential to harm themselves and others. Salvia divinorum is not legal...is not illegal in Nebraska. It is easily available right now in Nebraska, can widely be available on the Internet. A quick Google search using the word "Salvia divinorum" brought up 789,000 results. The Web sites include more than 33,000 sites where the drug can be purchased. There are currently 2,630 videos of people getting high on Salvia divinorum on YouTube. A local television reporter was able to legally purchase a bag of Salvia divinorum here in Lincoln on January 7 for \$40. You may have also read that the Lincoln Police Department cited a Lincoln shop owner on March 10 for selling Salvia. LPD cited the shop owner under Section 28-420, which bans the sale of any substance that will induce an intoxicated condition. According to the Office of Diversion Control within the Drug Enforcement Administration, Salvia divinorum and its active ingredients, Salvia A., does not have to be...does not have an approved medical use in the United States. Under the amendment, AM2257, possessing Salvia divinorum would be considered a Class IV felony with a penalty up to five years. Trafficking the drug would fall under a Class III felony, with up to a 20-year penalty. Nine states have passed legislation making Salvia divinorum a controlled substance: Delaware, Illinois, Louisiana, Maine, Missouri, North Dakota, Oklahoma, Oregon, and Tennessee. Salvia divinorum and Salvia A. are regulated in Australia, Belgium, Denmark, Estonia, Finland, Italy, Spain, and Sweden. When reporters came to me concerning the Salvia divinorum, many newspapers ran articles on this, the substance, and in the Grand Island Independent, on March 18, they had a question of the day, which they have a question of the day every day, but this particular day it drew my attention and the question was, should the Legislature make Salvia a controlled substance? I know, you know, it's not a scientific poll. No one knows who writes in, but it was overwhelmingly...74 percent said, yes, the drug is a hallucinogen and the state has a chance to act before it's a serious problem here. It is a serious problem and I think that at some point in time, not this year because I'm going to withdraw this as soon as I have spoken, but I think it's something we need to look at. We're premature here in

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looking at this because, let's face it, probably nothing has happened where we can blame it on Salvia divinorum, but there will be in time something that has happened. Someone will jump out the window, someone will get in a car and get behind the wheel and it could be the result of this hallucinogenic drug. But because I have agreed to pull this, this year, I hope someone on the floor will take this next year and move it on and have it become law that we do regulate that in the state of Nebraska. And with that, I will pull AM2257. Thank you. [LB844 LB840]

SENATOR LANGEMEIER: AM2257 is withdrawn. Thank you, Senator McDonald. Mr. Clerk, for a motion. [LB844]

ASSISTANT CLERK: Senator Karpisek would offer FA271. (Legislative Journal page 1378.) [LB844]

SENATOR LANGEMEIER: Senator Karpisek, you are recognized to open on FA271. [LB844]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. As Senator Chambers and I worked through the bill on General File, Senator Chambers had some amendments that cleaned up some verbiage on the judge being able to send someone that was either caught with marijuana or a minor in possession to drug counseling or alcohol counseling. At the end, we ended up just about where the bill had started, except for on page 7, lines 12 and 13, it is still a little confusing on who shall go to counseling or if they will. This amendment would strike the new verbiage that would say "or convicted of a misdemeanor pursuant to sections 53-180.01 to 53-180.03." This will take it back to the way the bill...the statute was before we started on this bill. I was trying to make the marijuana and alcohol the same across the board. Since we did not do that coming out of committee and the MIP and marijuana weighing less than an ounce are not the same, if we strike this, it will get it back to the way we started, and that way it leaves it up to the discretion of the judge if they want to send a person to counseling. Thank you, Mr. President. [LB844]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. You have heard the opening on FA271 offered to LB844. The floor is now open for discussion. Those wishing to speak, we have Senator Pedersen, and Senator Pirsch. Senator Pedersen, you're recognized. We did have a number of lights on prior to switching to this amendment and bill. Senator Pedersen, do you wish to speak to FA271? Senator Pedersen waives that opportunity. Senator Pirsch, you're recognized. [LB844]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I would just like to state a few things with respect to the amendment that's before us and I think that it is a good amendment insofar as there's some things that exist in the...without this amendment that would need some further clarification as to with respect to when a

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course of instruction relating to the effects of the misuse of drugs or alcohol would be ordered. And so I think that at some point in time, in past incarnations, there was an attempt to marry the instructional course, not just to the original intent of this bill as, I think, Senator Karpisek had intended, but to bring in the minor in possession also and somehow require a course in that. And as through various types of amendments, I think that, as Senator Karpisek rightly points out, there was some, at the end of the day, some language that didn't flow properly and was vague. And so I think this amendment does help to clean and make accurate and clear the language of the bill. And so I would urge you to support that as well. What it essentially does, in effect, is it no longer attempts to marry the language into the language of the minor in possession. It doesn't reach that type of language in this bill. It pertains strictly to possession of marijuana. It deals with, just in four instances, the penalties that currently exist and affecting those, but it would not change then the already existing language that deals...in which courts can decide and determine whether to order a class, essentially. And so I would urge you to support the amendment. I think it does help to clean up the bill. Thank you. [LB844]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. There are no other lights on, people wishing to speak to FA271. Senator Chambers, you're recognized. [LB844]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I wish Senator Carlson were here because he could explain the meaning of the term "sackcloth and ashes." People put on sackcloth and ashes when they're in profound sorrow and deep mourning. The only thing that can plunge a person such as myself, with all of my pride, into deep sorry and profound mourning is to be thoroughly routed, whipped down to my shoelaces. I'm like the guy who was in a fight, and when it was over he was neither dressed nor clothed, he was neither shod nor unshod, meaning he lost half of his britches and had only one shoe. That's what the meat man did to me. He may not know the difference between sausage and a hotdog, but I just feel like I've been converted into sausage, put in a hotdog casing, grilled at the hottest temperature possible, and turned every way but loose. I have never been so thoroughly whipped in my life. I told him this, and he asked me, would I sign it? Well, anybody could write something and forge a signature, but I assure you that it is me whom you are looking at, it is I who am speaking, and every word that I say shall stand as it has been uttered. And I have nothing else to say on this bill and I think Senator Karpisek may have a head that's swelled up enough now without me adding to it. So with that, I close. Thank you, Mr. President. [LB844]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Karpisek, you are recognized to close on FA271. [LB844]

SENATOR KARPISEK: Thank you, Mr. President. Members of the Legislature, I do believe I misspoke on what sections we're pulling out. It's 53-180.01 to 53-180.03. I would like to thank Senator Pirsch for helping me try to get through this and get it to

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where we wanted it. I wouldn't have caught it without his help. And I'd like to thank Senator Chambers for agreeing that this would be the best way to go on this amendment. Thank you, Mr. President. [LB844]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. You have heard the closing to FA271 offered to LB844. The question before the body is, shall FA271 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB844]

ASSISTANT CLERK: 26 ayes, 0 nays on the adoption of Senator Karpisek's amendment. [LB844]

SENATOR LANGEMEIER: FA271 is adopted. [LB844]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill. [LB844]

SENATOR LANGEMEIER: Speaker Flood for an announcement. [LB844]

SPEAKER FLOOD: Thank you, Mr. President and members. I would like you to grab your agenda for just a second here. Given the speed at which Senator Karpisek's bill has advanced this evening and in light of some of the discussion earlier this afternoon, the agenda states that we would return to the above agenda left at location at 5:00. It is my opinion and order that we are going to move back up to Senator Karpisek's bill, LB837, after LB844 is resolved, and continue on down the agenda. I don't intend to stay in super late tonight; would like to see an adjournment prior to 7:30 this evening. But we will be going back to LB837 in the Fulton division on the agenda following the conclusion of LB844. Thank you, Mr. President. [LB844]

SENATOR LANGEMEIER: Thank you, Speaker Flood. Senator McGill for a motion. [LB844]

SENATOR MCGILL: Mr. President, I move LB844 to E&R for engrossing. [LB844]

SENATOR LANGEMEIER: You have heard the motion. All in favor say aye. All opposed say nay. LB844 does advance. Mr. Clerk, items for the record. [LB844]

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LR229CA to Select File; an amendment to be printed by Senator Raikes to LB1153; and a motion from Senator Schimek to LB838. (Legislative Journal pages 1378-1381.) [LR229CA LB1153 LB838]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. And pursuing with the Speaker's announcement, we are going to return back to General File, 2008 senator priority bills,

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Fulton division, LB837. Mr. Clerk. [LB837]

ASSISTANT CLERK: Mr. President, LB837, introduced by Senator Karpisek. (Read title.) The bill was read for the first time on January 10, referred to the Committee on Transportation and Telecommunications. That committee reports the bill to General File with committee amendments. (AM1767, Legislative Journal page 532.) [LB837]

SENATOR LANGEMEIER: Senator Karpisek, you are recognized to open on LB837. [LB837]

SENATOR KARPISEK: Thank you, Mr. President, members of the Legislature. LB837 deals with railroad crossings that are within one-quarter mile of a gated crossing. LB79, which was passed in 2006 by Senator Baker, placed in state statute the requirement that any public railroad crossing without gates or other warning devices shall be closed if located within one-quarter mile from a public railroad crossing with gates and warning devices. Exceptions are allowed if it is the only railroad crossing which provides access to property or if an engineer determines that the crossing is safe as designed and should not be closed. This is where the problem lies. The Nebraska Department of Roads has written an implementation program that I feel does not follow the intent of the legislation. In their implementation, the program procedures state...it's on page 3, sub (8) that I can hand out. I didn't have it ready because I didn't think we were coming back. It states the submittal by the engineer on behalf of a political subdivision must review traffic operations and grade crossing safety in the crossing corridor and determine that traffic operations and grade crossing safety will be safer if the crossing or crossings remain open. Adverse travel time and inconvenience will not be an acceptable point of objection. LB837 would strike most of the bill except where the Department of Roads would direct precautions to be taken, as it deems necessary for the safety of the traveling public, such as maintaining gates, crossing signs, signals, alarm bells, and warning personnel as the department directs. There is a committee amendment on the bill and I will address that after it is introduced. Thank you, Mr. President. [LB837]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. As the Clerk has stated, there is a Transportation, Telecommunications Committee amendment. Senator Fischer, as Chair of that committee, you are recognized to open on the committee amendment. [LB837]

SENATOR FISCHER: Thank you, Mr. President and members of the body. AM1767 reinstates subsections (2) and (3) in the original bill. Many of you will remember that these subsections were added to statute two years ago by Senator Tom Baker. Senator Karpisek alluded to that. The purpose was to put in place a process where redundant crossings could be closed. However, during the debate on LB79, there was an assurance for many of us with affected towns that an opt-out provision was included in

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the bill. This took the form of subsection (3) where a town could hire a professional engineer to object to a crossing being closed. Although this was the intent of the bill, it has not been the case when putting the statute into practice. A town may object to the Department of Roads through a professional engineer's written request, but the final authority on the matter has been with the director of the Department of Roads. The committee amendment puts Senator Karpisek's bill in line with what was the original intent of Senator Baker's LB79. A sentence is inserted at the end of subsection (3) to exempt a crossing from being closed if a written request from a professional engineer is received. The final authority is the professional engineer's opinion. This puts the decision back in the hands of the local people. Thank you, Mr. President. [LB837]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You have heard the opening on LB837 and the committee amendments offered to LB837. The floor is now open for discussion. Those wishing to speak, we have Senator Pedersen, Wallman, Karpisek, Stuthman, and Chambers. Senator Pedersen, you're recognized. [LB837]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. It's very short and sweet. I am very much support of the amendment and I thank my colleagues and the Transportation Committee for the work they've done on it. Without the amendment, I will not support the bill. Thank you, Senator Fischer and staff, for what they've done on this. [LB837]

SENATOR LANGEMEIER: Thank you, Senator Pedersen. Senator Wallman, you're recognized. [LB837]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I would like to speak to Senator Karpisek, please. [LB837]

SENATOR LANGEMEIER: Senator Karpisek, would you yield to a question? [LB837]

SENATOR KARPISEK: Yes, I will. [LB837]

SENATOR WALLMAN: Thank you. Are you comfortable with this amendment, Senator? [LB837]

SENATOR KARPISEK: Well, Senator Wallman, I don't like it as well as the green copy, because I wouldn't have turned it in that way, but this is what did come out of the committee and it does at least give us a chance to keep some of these crossings open with an engineer's stamp, his seal, to say that it is designed safely. And so I am in favor of the amendment, if that's what we can do. [LB837]

SENATOR WALLMAN: Okay. Thank you. I think, too, it's a good bill. As we have railroad tracks going through here and farmers with their equipment, they have to go

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way around on public highways, and they want to close some of these dirt roads off because they say it's unsafe. I've got one in my district that's going to happen to and he's a pretty upset farmer. So I thank Senator Karpisek and Senator Fischer for working on this bill and I urge support of this bill. Thank you. [LB837]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Karpisek, your light is next and you're recognized. [LB837]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Senator Wallman asked me mainly what I was going to say and, no, I did like the green copy of the bill better. It would not have come out of committee, as Senator Pedersen said. I do want to say that these are public crossings, not private, and they are (laugh)...they are not anything more than the ones that are a quarter mile away from gated crossings. My concern is...I know Senator Baker's concern was safety. My issue is also safety. If they...if the Department of Roads comes in and closes a significant number of intersections and a train would be blocking the one or two remaining intersections in a town, emergency vehicles have no way to go around. My dealing with this was when I as the mayor of Wilber they came in, wanted to close one crossing, then it got to be two crossings. By the time I got here, it was up to four out of six. If that would happen and a train would be blocking the two remaining intersections, rescue would have to go seven miles one way and five the other way to get to the other side of town. I don't think that that is what we need. The trains that do come through come through about one a day and they don't travel terribly fast. They are still dangerous. We have to be aware that they are dangerous. That's why I did agree to the committee amendment that would say that an engineer would have to look at the crossing and sign off on it, because after looking at one in Wilber, it should be closed. It is dangerous and if you don't look at it...you know, you see it every day, you don't kind of think about it. So that is why the bill came forward. I believe that the intent of Senator Baker was to be able to close these with an engineer's signing off. I know that that is not the way that this has been working and I want it to work the way that Senator Baker wanted it to. I think that we can all live with it that way. With some of these crossings not being closed, we can save some money also from the Grade Crossing Protection Fund. Thank you, Madam President. [LB837]

SENATOR SCHIMEK PRESIDING [LB837]

SENATOR SCHIMEK: Thank you, Senator Karpisek. Senator Stuthman, you are next in line to speak. [LB837]

SENATOR STUTHMAN: Thank you, Madam President, members of the body. I think I'm in support of the amendment and the bill, but I think what we have learned is that when the initial bill was passed by the Transportation Committee, by the legislative body in 2006, the real intent of Senator Baker at that time was, you know, for safety and in

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some of these smaller communities that didn't have the cross arms and the lights and stuff for these railroad...these crossings. But I think what we have developed right now is a very workable solution that it allows the communities to make the decision, and I think the communities are the ones that know how safe those crossings are. They know the crossings that are utilized the most because I think they are the ones that need to make that decision. What we have in here though that, you know, there has to be the employment of a professional engineer to draft up the letter upon the request of the communities to submit that to the Department of Roads, I think this is a workable solution. I think we can live with that, but the best part of it is, I think, is we get the communities involved and allow them to make the decision as to whether any of the crossings in that community need to be closed or which one could be closed if there was a need for that. So thank you, Madam President. [LB837]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Senator Chambers, you're recognized to speak. [LB837]

SENATOR CHAMBERS: Madam President, members of the Legislature, I'm going to have to get some clarification on the bill and the amendment. I'd like to ask Senator Karpisek a question or two. [LB837]

SENATOR SCHIMEK: Senator Karpisek, would you like to respond? [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: Senator Karpisek, when you say close a crossing, does that mean you close the road that would cross the railroad tracks? [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: And currently the Department of Roads can do that... [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: ...without this engineer's request. [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: And do the railroads have anything to do with which ones would be closed? [LB837]

SENATOR KARPISEK: They also go under the state statute, Senator Baker's bill, that they pick out any of them that are within a quarter mile of a gated intersection should...are closed. [LB837]

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SENATOR CHAMBERS: Is that why the railroads came in opposition to the bill?
[LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: And Senator Baker opposed the bill also. [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: Did the amendment take away Senator Baker's objection?
[LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: Did he say it would? [LB837]

SENATOR KARPISEK: Yes, he was in my office and said that it did take away his
objection. [LB837]

SENATOR CHAMBERS: And how is it going to be...all right, now scrap all that. [LB837]

SENATOR KARPISEK: Okay. [LB837]

SENATOR CHAMBERS: Right now there is no need to have this opinion in writing by
the engineer; with this bill, that would be done. And once that engineer makes the
decision, it binds the Department of Roads. It would trump anything the Department of
Roads would want, is that true? [LB837]

SENATOR KARPISEK: The way that the bill was written, that was the intent, but that is
not the way the Department of Roads has done that, Senator Chambers. [LB837]

SENATOR CHAMBERS: But here's what I'm getting at. With this amendment, the
engineer makes a determination, not the Department of Roads, as to whether or not a
crossing should be closed. [LB837]

SENATOR KARPISEK: The engineer would look at the crossing, determine if it is safe
or unsafe, and then turn that in to the city council or the county, and then they would
decide whether it would be...to remain open or closed. [LB837]

SENATOR CHAMBERS: Is that in the bill? All that I see, based on the amendment, in
this sentence: "Such a written request shall exempt a railroad crossing from being
closed under subsection (2) of this section." [LB837]

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SENATOR KARPISEK: That would be turned into the city council or the local body. But I guess you're probably right, Senator Chambers, because if they didn't...if the Department of Roads would come in, say this intersection needs to be closed, I guess the political subdivision would not even hire an engineer to have it looked at, if that were...if they didn't mind it being closed. [LB837]

SENATOR CHAMBERS: Here's what I'm getting to. All that has to be done is to obtain an opinion from this engineer and that crossing is exempted from closing, based on the amendment. [LB837]

SENATOR KARPISEK: In...with the amendment, yes. [LB837]

SENATOR CHAMBERS: And the city hires the engineer. [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: Couldn't somebody think that the city is going to hire some engineer who's going to say what they want said? [LB837]

SENATOR KARPISEK: That could be, Senator Chambers, but they have...the engineer needs to put their stamp on it, which makes them liable for saying if it is safe or not. [LB837]

SENATOR CHAMBERS: Well, how? They're going to be liable to whom? There's no question. There's no appeal. There's no evaluation of the validity of what this engineer's statement is. And if there are those things, I don't see it. Maybe I'm not reading well. [LB837]

SENATOR KARPISEK: No, I think you're right, Senator Chambers. That was the intent of Senator Baker, that if the engineer would sign off on it,... [LB837]

SENATOR SCHIMEK: One minute. [LB837]

SENATOR KARPISEK: ...that would be it. The Department of Roads have not done that. They have a long checklist which says when the engineer turns it in that the crossing would have to be safer open than closed, which I can't imagine there would be any one of those anywhere. [LB837]

SENATOR CHAMBERS: But the main thing I'm getting at is that the engineer is the employee or on the payroll of the city that wants to keep this crossing open, so they hire somebody to say that in the same way that people in a trial hire experts who are going to say what they want to have said to the court. So why would it be any different with

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engineers? You'd hire an...if you went to hire an engineer and the engineer kind of looked things over and said, well, if you hire me, I'm going to have to say this should be closed, is the city going to hire that engineer? [LB837]

SENATOR KARPISEK: Yes. Senator Chambers, we did... [LB837]

SENATOR SCHIMEK: Time. [LB837]

SENATOR CHAMBERS: You saved him. (Laughter) [LB837]

SENATOR SCHIMEK: Thank you, Senators Chambers and Karpisek. Senator Langemeier, you are next to speak. [LB837]

SENATOR LANGEMEIER: Madam President, thank you. I don't want to save him. I want this to continue and then I'll put my light on again. Senator Chambers, I'd yield you this time and then light my light again. [LB837]

SENATOR SCHIMEK: Senator Chambers, you have 4 minutes and 50 seconds. [LB837]

SENATOR CHAMBERS: Thank, Madam President, this is such a strange afternoon that I have a little rendering I want to give. It went: I planned a wedding celebration, I thought (singing) I'd made her mine; but I was just another station that wasn't on her line. And this is for Senator Karpisek. (Singing) She sure took me for a yokel; she had every right, I guess; I thought she was a local toot toot, but she was a fast express. Senator Karpisek, I think, is being left behind on this and I think that if what he says is true we don't even need this bill. If the interest of the city is in keeping a crossing open, why are they going to hire an engineer who says close it? Now that's the way I'm getting it. So let me ask Senator Karpisek another question or two for clarification. [LB837]

SENATOR SCHIMEK: Senator Karpisek, would you yield? [LB837]

SENATOR KARPISEK: Yes. Yes, I will. [LB837]

SENATOR CHAMBERS: Senator Karpisek, in order for any of this to come into play there must be somebody who's interested in closing the crossing. Would that be true? [LB837]

SENATOR KARPISEK: That would be true. [LB837]

SENATOR CHAMBERS: Now could that be the railroad or the Department of Roads, or only the Department of Roads? [LB837]

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SENATOR KARPISEK: What I have seen, it's the Department of Roads. [LB837]

SENATOR CHAMBERS: So the Department of Roads wants to close it and the city wants to keep it open. Can the Department of Roads hire an engineer and get into this mix, or is only the city allowed to hire an engineer who will express an opinion? [LB837]

SENATOR KARPISEK: Only the city would be allowed to. [LB837]

SENATOR CHAMBERS: And that kind of tilts the whole question toward giving the city what it wants. Isn't that true? [LB837]

SENATOR KARPISEK: I don't feel that way because the engineer has to give...put their stamp on it to say that that is their work, and I feel that that would leave them liable if they did not tell the truth. [LB837]

SENATOR CHAMBERS: Liable for what? [LB837]

SENATOR KARPISEK: If there would be an accident where they said, no, this is safe and the accident is investigated. [LB837]

SENATOR CHAMBERS: Well, is it your opinion that if an engineer gives it as his or her opinion that the crossing is safe, that's a guarantee that there won't be an accident? [LB837]

SENATOR KARPISEK: No. [LB837]

SENATOR CHAMBERS: Okay. So we won't say the mere fact of an accident proves one thing or the other, because it could be a drunk driver, it could be somebody's car that was defective and stalled on the track. So I don't want to put that on the engineer. There's nothing in here that talks about liability on the engineer. All this person has to be is somebody certified as an engineer to be whatever kind of engineer you need. Is it your opinion that every engineer who would look at this crossing would arrive at the same conclusion? [LB837]

SENATOR KARPISEK: No. [LB837]

SENATOR CHAMBERS: So if the city can take...can make a choice between an engineer who is going to give an opinion that will give the city what it wants, or an engineer that will not give the city what it wants, which one do you think the city will hire? [LB837]

SENATOR KARPISEK: Obviously, they would take the one that would give them the results they want. But, Senator Chambers, if...most cities... [LB837]

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SENATOR CHAMBERS: You answered my question. [LB837]

SENATOR SCHIMEK: One minute. [LB837]

SENATOR KARPISEK: I'm sorry? [LB837]

SENATOR CHAMBERS: You answered my question. [LB837]

SENATOR KARPISEK: Okay. [LB837]

SENATOR CHAMBERS: And now you've restored yourself to the realm of those who are very thoughtful. And since I only have a minute, I won't ask you another question, but I want to point this out. Madam President, I'm not sure that this is a good bill. I wasn't sure we'd get to it either, but from what I've read of the amendment and in the discussion, I don't know that one person should be able to declare that this crossing is safe and the Department of Roads must yield to that. No matter what kind of data the Department of Roads or anybody else would present, the engineer overrules, or trumps, all of that. And if what I'm saying is incorrect, I know that Senator Karpisek will make an attempt to correct me. Thank you, Madam President. Thank you, Senator Langemeier. [LB837]

SENATOR SCHIMEK: Thank you, Senators Langemeier and Chambers and Karpisek. Senator Chambers, your light is next, if you wish to use your time. [LB837]

SENATOR CHAMBERS: I will. I was going to cede it to Senator Langemeier, but I will continue, not by asking Senator Karpisek questions. We are establishing a policy here. Nobody from a railroad has talked to me. Nobody from the Department of Roads probably would want to talk to me after hearing my view about how they bungle when it comes to building roads. So all I'm going by is what I read in the bill, the discussion of the amendment, and the fact that there are cities which disagree with an opinion by the Department of Roads that a crossing ought to be closed. From what I think I've heard is that the Department of Roads may make that determination against the wishes of the city and there's no intervention by an engineer or, if there is, it's not the final word. Whether I've heard or misheard anything else, reading the language of the amendment tells me that if the engineer says that this crossing should remain open, it will remain open. I don't see anything that talks about data, studies, or anything that would have to be undertaken. I'd like to ask Senator Karpisek another question or two, if he's willing to answer. [LB837]

SENATOR SCHIMEK: Senator Karpisek, are you available for questions? [LB837]

SENATOR KARPISEK: (Laugh) Yes, I am. [LB837]

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SENATOR CHAMBERS: Senator Karpisek, must this engineer be a Nebraska engineer? Is that required? [LB837]

SENATOR KARPISEK: I guess I can't tell you that right off. I would assume so, but I don't know, Senator Chambers. [LB837]

SENATOR CHAMBERS: Oh, Senator Stuthman just pointed out that this person must be licensed by the state, so I'm going to ask Senator Stuthman a question or two. Thank you, Senator Karpisek. [LB837]

SENATOR KARPISEK: Thanks. [LB837]

SENATOR SCHIMEK: Senator Stuthman, would you yield? [LB837]

SENATOR STUTHMAN: Yes. [LB837]

SENATOR CHAMBERS: Senator Stuthman, may an engineer be licensed in more than one state? [LB837]

SENATOR STUTHMAN: Yes, they can. [LB837]

SENATOR CHAMBERS: So the person wouldn't necessarily have to be a resident or a citizen of Nebraska, but just hold a license in Nebraska. [LB837]

SENATOR STUTHMAN: Yes, that is true. [LB837]

SENATOR CHAMBERS: Would you agree that it makes sense for a city, which wants a certain course of action to occur, to hire somebody who will endorse what the city is seeking? [LB837]

SENATOR STUTHMAN: Yes, I think they would because this engineer is familiar with the requirements of this section. [LB837]

SENATOR CHAMBERS: Which section? [LB837]

SENATOR STUTHMAN: Of the bill, Section... [LB837]

SENATOR CHAMBERS: Oh, of the bill. [LB837]

SENATOR STUTHMAN: Section (3). [LB837]

SENATOR CHAMBERS: And that says, "An interested party may object... [LB837]

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SENATOR STUTHMAN: Yes. [LB837]

SENATOR CHAMBERS: ...to an action taken under subsection (2)." And under subsection (2), what can happen? [LB837]

SENATOR STUTHMAN: In subsection (2), the way the bill is, is that all crossings that do not have a signal or arms within a quarter mile of a crossing that has signals and arms must be closed. [LB837]

SENATOR CHAMBERS: That it must be closed. [LB837]

SENATOR STUTHMAN: Yes. [LB837]

SENATOR CHAMBERS: And the Department of Roads then is complying with the law when it closes these crossings. [LB837]

SENATOR STUTHMAN: Yes, because in the bill it says "shall be closed unless it is the only railroad crossing which provides access to property." [LB837]

SENATOR CHAMBERS: And this new amendment is designed to do away with the requirement that these crossings be closed, and what guarantees that a crossing will not be closed is a written statement by an engineer. [LB837]

SENATOR STUTHMAN: This amendment just reinstates all of the stricken language in sections (2) and (3), but also puts in, on the amendment, the fact that there has to be a written request from a professional engineer. [LB837]

SENATOR SCHIMEK: One minute. [LB837]

SENATOR CHAMBERS: And that written statement alone is enough to keep a crossing from being closed, based on this amendment, if we adopt it. [LB837]

SENATOR STUTHMAN: Yes, that is the intent of it, to keep a crossing open if a professional engineer that is familiar with the situation and the statute and with the community, that then it shall be remaining open. [LB837]

SENATOR CHAMBERS: And no matter what kind of data it may be presented, it cannot overrule what the engineer has written. [LB837]

SENATOR STUTHMAN: I... [LB837]

SENATOR CHAMBERS: The railroad crossing will stay open if the engineer says it

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should. [LB837]

SENATOR STUTHMAN: That is what the intent is. [LB837]

SENATOR CHAMBERS: And that's all I will deal with now because my time is up. Was that my third time, Madam President? [LB837]

SENATOR SCHIMEK: Second time, Senator Chambers. [LB837]

SENATOR CHAMBERS: Thank you. [LB837]

SENATOR SCHIMEK: Thank you, Senator Chambers and Senator Stuthman. Senator Langemeier, you are recognized to speak next. [LB837]

SENATOR LANGEMEIER: Madam President, members of the body, and I didn't think we'd get to this tonight either, so I apologize. I'm reading and learning as I go here. I have some concerns when it talks about any public railroad without gates, signals, alarms, bells and warnings within a quarter mile. For an example, David City, Nebraska, has got has got two railroads that crisscross through the edge of town. So you got crossings...we have multiple crossings because, number one, you got two railroads, and so you need to cross going two different directions. And if you closed them within a quarter of a mile, yeah, you wouldn't land lock anybody because you could go out on the gravel road and take the mile, go a mile west of town, and then go a mile north, and come back on the next county road, but the practicality of that...and I guess my other question is, and I'm going to ask Senator Fischer a question in a minute, but as this engineer talks about safety, I guess I'm curious what is safety? Is it safety for a car to drive over it? Is it safety for what? So anyway, with that, I would like to ask Senator Fischer a question. [LB837]

SENATOR SCHIMEK: Senator Fischer, would you yield, please? [LB837]

SENATOR FISCHER: Yes. [LB837]

SENATOR LANGEMEIER: Senator Fischer, you and I had a discussion a little earlier talking about the committee amendment and it was...and we're going to get this on the mike, but the intent of the committee amendment was to honor some of Senator Baker's bill two years ago. Would that be a fair statement? And maybe you have some items. [LB837]

SENATOR FISCHER: I guess I would say, Senator Langemeier, the intent of the committee amendment is that it gets back to the original intent of Senator Baker's bill that was LB79 that is law right now. The Department of Roads set up some rules and regulations because of LB79, which Senator Karpisek alluded to when he spoke, that

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we felt did not match the intent of that bill. I have my light on. I was going to read some transcript from the debate on LB79 which shows what that intent was. The department, through their rule-making process, we felt did not honor the intent of the Legislature when that bill was passed, so our purpose in this committee amendment is to get back to that original intent of the bill that was passed by this body that was Senator Baker's bill, LB79. [LB837]

SENATOR LANGEMEIER: And you can have the rest of my time if you wanted to proceed with some of that reading. [LB837]

SENATOR FISCHER: Okay. Thank you. As I said, the Department of Roads sets the process right now through their regulations. The Department of Roads are the ones that close railroad crossings. In Senator Baker's bill that was passed there is that quarter mile that Senator Stuthman was talking about, that if a crossing is a quarter of a mile from a crossing that has the arms that drop and the flashing lights, then that could be closed. The problem came about when the Department of Roads instituted their rules and regs on this. And if you remember, three years ago we passed a bill in here, LB373. It was introduced by Senator Bourne. That gave this body the opportunity to question if the rules and regs of an agency were following legislative intent. Instead, Senator Karpisek brought a bill and the committee then worked through this with the amendment. So we're trying to get back to the original intent of Senator Baker's bill. Senator Chambers asked who should decide if a crossing can be closed or not. Right now, the way the Department of Roads has interpreted this, it's the director of the Department of Roads who decides if a crossing is going to be closed or not. That was not the intent. [LB837]

SENATOR SCHIMEK: One minute. [LB837]

SENATOR FISCHER: Thank you. I will hit my light so we can continue this again, but I happen to be the one who questioned Senator Baker on LB79 when we had that discussion, because I was concerned about the Department of Roads, I guess what would happen to a number of these crossings in small towns like Wilber, Nebraska, and the problems that would ensue from that. So I will hit my light again and try and read some of that transcript so we can have a better understanding of where this amendment is coming from and why the committee wanted to get back to the original intent of the law. Thank you, Madam President. [LB837]

SENATOR SCHIMEK: Thank you, Senator Fischer. Senator Stuthman, you are recognized to speak. [LB837]

SENATOR STUTHMAN: Thank you, Madam President. In trying to remember when we passed the initial legislation in 2006 with Senator Baker, and the discussion that we had about closing any of the crossings that were not marked within that quarter mile, and I

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think at that time, you know, we put in there, in the bill, you know, any interested party may object to this action taken and, with a professional engineer that is familiar with it, could keep it open. But I think what we're trying to accomplish now with Senator Karpisek and with the Transportation, Telecommunications' amendment is the fact that we're adding into there that such a written request shall exempt a railroad crossing from being closed under this subsection. In the original green copy, you know, it could be closed if the Department of Roads had listened to an individual, an interested party that thought it should stay open, but they really didn't have to abide by that. You know, they could get a professional engineer to see that it is all safe and everything is in line, but they still could close it. It was really...it would be just the interested party, which could involve the city, the city council, the village council or anything like that. But then the Department of Roads would make the decision. What our attempt here is, what I understand, is the fact that if there is a professional engineer decides that in the distance, within a quarter mile of a marked crossing that has bells or arms or lights, shall stay open if that written request is given to the Department of Roads. That is the difference that I see with this amendment. We have put everything back in the green copy, but we have added that the crossing shall stay open then if the community decides that it needs to be. I think that's one of the things that I do support, mainly because the community knows which crossing is a crossing that is best utilized, it's safe, but it's within that quarter mile. There might be one that is two blocks further than the quarter mile and that one, it wouldn't make a lot of difference if that one was closed. And I think that is the reason that we're trying to get this at the...that if there is a request given and a written request, that that one shall stay open, because the community is the one that knows best as to how safe they are and which one is utilized the most. The next one might be just a crossing that is very, very small, hardly ever utilized, and it wouldn't make a nickel's worth of difference if that one was closed or not. Then that one should be closed. But according to the law that we have, it is within that quarter mile, and the one that is a little bit past the quarter mile wouldn't have to be closed but the good crossing within that quarter mile would be the one that would be closed. I think this is a good direction that we're going right now and I also think we need to allow communities, at this time, to see how this works, see whether they have an impact on the closing of the roads...of the crossings at that time. So I think we need to pass this. If it's something that is not workable, in the future I'm sure that we can tweak it a little bit. But I think this is the right direction we're going right now. We are still, you know, abiding by what Senator Baker had intended to do, would be to close more of these crossings in some of these smaller communities. [LB837]

SENATOR SCHIMEK: One minute. [LB837]

SENATOR STUTHMAN: So I think this gives the community the ability to let their expertise be shown in a written statement with a professional engineer as to which ones should be closed and which ones should be kept open. Thank you, Madam President. [LB837]

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SENATOR SCHIMEK: Thank you, Senator Stuthman. The next speaker is Senator Karpisek, followed by Senators Fischer, Lautenbaugh, and Dubas. Senator Karpisek. [LB837]

SENATOR KARPISEK: I would yield my time to Senator Fischer. [LB837]

SENATOR SCHIMEK: Senator Fischer, you've been yielded 4 minutes and 55 seconds. [LB837]

SENATOR FISCHER: Thank you, Senator Karpisek, and thank you, Madam President, members of the body. There are approximately 200 crossings in the state of Nebraska that could be affected by this bill, by the current law that we have, by the amendment we have and by Senator Karpisek's bill. There are only 200. I was going to read part of the transcript to you, so you'd have an idea on what the discussion was and why the committee came up with the amendment as we did, to get back to the original intent. I believe Senator Karpisek noted that Senator Baker was at the hearing and he agreed that this was the intent of his bill. I'm quoting Senator Baker: If you don't want this crossing closed, all you have to do is get a professional engineer to sign off on this thing; say, I'm familiar with it; take it to the city, the county, whoever has jurisdiction over the road that this crossing is on. You can waive the requirements. If...he talks about the railroads closing public crossings, I think he misspoke there, but he says: And the crossings cannot close...I'm sorry, and the railroads cannot close public crossings on their own. If they did, we would have turmoil because they'd close a lot of them. They can't do that. They have to work with the city, the village, the county to do this, and then they negotiate. As Senator Fischer said, you don't want this crossing closed under these provisions, get an engineer to sign off on it and it doesn't have to be closed. I can go on reading the transcript, but I think you understand now why the committee drafted this amendment the way it was, why we propose that this amendment helps to make Senator Karpisek's bill better, because it gets back to the original intent of the law that was passed before. If you want to disregard what was done by a previous body, that is always available to us to do. But I would strongly encourage you to support the committee amendment and the underlying bill. Thank you, Madam President. [LB837]

SENATOR SCHIMEK: Thank you, Senators Karpisek and Fischer. Senator Lautenbaugh, you're recognized to speak. [LB837]

SENATOR LAUTENBAUGH: Thank you, Madam President, members of the body. I do rise in support of this amendment as well, and I'm going to try not to echo a lot of the things that were just said but I think it's important to explain. I've heard people on the floor say, well, I don't like the quarter mile. Understand, that's in the existing bill. That's not something that Senator Karpisek's bill or the committee amendment adds. All the committee amendment does is make the law function...the existing law function like it

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was designed to do. I do have a concern here that if we don't pass this amendment and we don't do anything, and the Department of Roads is doing what it is alleged to have done, that there could be litigation to sort this out, because there is a very clear history as to how this is supposed to work. There is a statute in existence and some city could choose to litigate the issue. That would be, I think, a cost we can avoid by clarifying this. Now there may be an argument that the engineer isn't sufficiently defined, and what he will do before coming up with this study isn't sufficiently set forth. That might be a topic for another time of clarification of the existing bill or perhaps even a friendly amendment to this one. But I think it is important to keep in mind that there is an existing law here that the committee amendment merely clarifies and takes back to its original stated intent, and I would hope you would support this. [LB837]

SENATOR SCHIMEK: Thank you, Senator Lautenbaugh. Senator Dubas, you're recognized to speak. [LB837]

SENATOR DUBAS: Thank you, Madam President, members of the body. Railroad issues are something that I've been...I've spent a lot of time on since coming to the body. It's an issue that's been brought to my attention through my district, more so dealing with blocked railroad crossings rather than closing railroad crossings, but they do kind of have a common thread that runs through them. I think what Senator Karpisek is trying to do with his bill and amendment is to keep those decisions with the people who know and understand their territory better than anyone else does. We, in Nebraska, we have the most heavily traveled rail corridor in the nation and that is only going to increase. As ethanol production continues to grow, rail traffic just continues to grow. And unfortunately, because the growth is moving way faster than our ability to keep up with the infrastructure, it is creating challenges and it's creating hardships for communities, for individuals, and for the railroads too. Dealing with blocked railroad crossings, our trains are longer so it becomes harder for them to stop a train without blocking multiple crossings, which in turn creates a hardship for individuals and communities to get to where they need to go. This issue, as I said, was brought to my attention before I was even elected. Public safety concerns were huge, ambulance and fire and police personnel, especially if they had to go out into rural areas, were very concerned about not knowing if a crossing was blocked and, if it was, how far they were going to have to go. And while this bill is just dealing with crossings that are within a quarter of a mile of gated or crossings with lights, there are a lot of crossings out in rural areas that are very much needed and need to know if they're going to be open and accessible for people, and especially emergency personnel, to have access to, to get to where they need to go and do what they need to do. It is the intention of the Roads Department, as well as the railroads, even though it's not within their purview to do it, but it is their intention to close more crossings for a variety of reasons, for helping with blocking the crossings. It's an issue that causes them a lot of concern. There's a dedicated source of funding strictly available to help close railroad crossings. This does create hardships for citizens and especially emergency personnel. I think this bill and

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Senator Karpisek's amendment keeps that decision again in the hands of local people who know and understand their issues. I've been a part of some meetings with railroad personnel and emergency personnel, and especially as you go farther west into rural Nebraska where a community might only have one or two ways to get across a railroad track within their community and should that be a targeted crossing to close, it is a big deal to them and they need to have that ability to defend that crossing from being closed. So this is a much bigger issue than I had ever imagined. It wasn't anything that I had personally experienced, but since being elected to office, I learn about this daily. I've worked with the railroads. I've worked with individuals and businesses who are impacted by this issue. And while I understand the intent of the bill, the original bill, Senator Baker's bill was dealing with safety, I think that we need to make sure that communities have the ability to represent their issues and address their crossing concerns. [LB837]

SENATOR SCHIMEK: One minute. [LB837]

SENATOR DUBAS: Thank you, Madam President. [LB837]

SENATOR SCHIMEK: Thank you, Senator Dubas. Senator Chambers, you are next to speak, and this is your third time. [LB837]

SENATOR CHAMBERS: Yes. Thank you, Madam President, members of the Legislature. Senator Dubas touched on something that I was going to mention in terms of the length of trains. If I go back to Omaha out Highway 6, sometimes I count the number of cars on a train that is going by and then I just stop counting. A train can cover every crossing that might be available in a small town, so if you leave them all open you can't get across anyway if the train is coming. I'd like to ask Senator Karpisek a question. [LB837]

SENATOR SCHIMEK: Senator Karpisek, would you yield? [LB837]

SENATOR KARPISEK: Yes, I will. [LB837]

SENATOR CHAMBERS: Senator Karpisek, is it your intent that the train, instead of just tooting its horn when it comes to a crossing, stop? [LB837]

SENATOR KARPISEK: No. [LB837]

SENATOR CHAMBERS: It's going to go right through. [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: And the only time a person can cross, if he or she has sense,

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is when no train is going through or is far enough away so the person will not be smashed, because we're talking about unguarded, unmarked crossings. [LB837]

SENATOR KARPISEK: Correct. [LB837]

SENATOR CHAMBERS: A person not familiar with that area would not even necessarily know that a train is going to pass there. Isn't that true? [LB837]

SENATOR KARPISEK: Oh, I think you'd see the tracks, but I... [LB837]

SENATOR CHAMBERS: If it's dark? If it's raining and you're driving down the road, you might not know that there's a train track there until you cross it. [LB837]

SENATOR KARPISEK: Well, Senator, I think they all have the sign saying that there is tracks there. [LB837]

SENATOR CHAMBERS: And the sign is to warn the person who is approaching the track,... [LB837]

SENATOR KARPISEK: Correct. [LB837]

SENATOR CHAMBERS: ...not the train. [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: So if this bill were not in effect at all, other than the part that says if a town has only one crossing that cannot be closed, the department right now cannot close that single crossing. And it doesn't take an engineer's statement to prevent that from happening; the law prevents that. With this amendment, an engineer who meets all these requirements or says he does, all the engineer has to do is sign a statement. It doesn't say it's under oath or anything else. But at any rate, the engineer attests, not necessarily under oath, that he or she has all...done all these things, looked at it, studied it and it's safe, and writes that statement, that statement then goes to the Department of Roads, doesn't it? [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: So the political subdivision doesn't have to do anything. Once that statement is delivered to the Department of Roads by that engineer, the Department of Roads is powerless to close that crossing, no matter what. Isn't that the way it would be with this amendment if we adopt it? [LB837]

SENATOR KARPISEK: Yes. [LB837]

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SENATOR CHAMBERS: The city council could...let me ask you this, could the city council...the city council couldn't even overrule that, could it, under this? The city council could not say, we want that closed, because the engineer has already said it should stay open. And that crossing shall be exempt, and the law doesn't allow anybody to overcome that, does it? [LB837]

SENATOR KARPISEK: No, but they wouldn't hire the engineer if they wanted to close it. They'd just close it. [LB837]

SENATOR CHAMBERS: They can't. Oh, you mean the Department of Roads. [LB837]

SENATOR KARPISEK: The city. [LB837]

SENATOR CHAMBERS: No, well... [LB837]

SENATOR KARPISEK: If the Department of Roads comes and says, this one should be closed, and they say, okay, you're probably right, then they wouldn't hire an engineer in the first place. [LB837]

SENATOR CHAMBERS: Right, but if the city doesn't want it closed at the time they hire the engineer, then the engineer gives that statement to the Department of Roads, the Department of Roads... [LB837]

SENATOR SCHIMEK: One minute. [LB837]

SENATOR CHAMBERS: ...cannot close that crossing. Where is there anything in the law that says the city can close it, if they decide to? Is it your belief that the city could close it, if it chose to? [LB837]

SENATOR KARPISEK: It is my belief that the city could close any of them, if they wanted to. [LB837]

SENATOR CHAMBERS: Okay, despite what the engineer may have said. [LB837]

SENATOR KARPISEK: Yes. [LB837]

SENATOR CHAMBERS: Okay, I'll accept your opinion. Madam President, my time is probably up, isn't it? [LB837]

SENATOR SCHIMEK: Not quite, but almost. [LB837]

SENATOR CHAMBERS: You're doing a wonderful job. I will stop. Thank you. [LB837]

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SENATOR SCHIMEK: Thank you, Senator Chambers. You're doing a wonderful job, too. Senator Karpisek, you are recognized to speak next. And this is your third time. You're waiving off? Senator Stuthman. [LB837]

SENATOR STUTHMAN: Thank you, Madam President. And I'm not going to take long. But I think in listening to the debate and the discussion from Senator Chambers, a community can close a crossing, if they want to, without this enacted. It would be upon a vote of the people can request to the Department of Roads to close a crossing. That can already be in place. That is in a statute, by a vote of the people, that a crossing can be closed. But with this one, if a community decides or an interested party decides that a crossing shall not be closed within that quarter mile, then a professional engineer is hired and he is...that individual is one that makes the recommendation and sends a letter, you know, at the request of the interested party, to the Department of Roads, stating his reasons why that crossing shall not be closed. And what we're trying to do with this amendment is to make it available for a community to have the opportunity to decide amongst themselves whether that crossing that is just within the quarter mile should remain open, and maybe the one that is just a block further than the quarter mile could be closed. They could, the interested party, could make a request that that crossing would remain open and at the vote of the people they could also decide to allow the Department of Roads to close the one that is just a block further than the quarter mile, because all this bill does is it addresses the fact from a crossing that has cross-arms or lights, anyone that is within a quarter mile. That is what the bill that was adopted by Senator Baker in 2006. And those are my comments. Thank you, Madam President. [LB837]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Senator Wightman, you're recognized to speak. [LB837]

SENATOR WIGHTMAN: Thank you, Madam President, members of the body. I do have a question for Senator Stuthman, if he would yield. [LB837]

SENATOR SCHIMEK: Senator Stuthman, would you yield? [LB837]

SENATOR STUTHMAN: Yes. [LB837]

SENATOR WIGHTMAN: You talked about taking a vote of the people. But I think the city council, the county board can make those decisions without a vote of the people, can they not? They may wish they'd had a vote of the people. [LB837]

SENATOR STUTHMAN: I think, and I'm just...I'm going to speak in reference to our local community. We have...the city council has adopted the policy which is in the statute from many, many years ago that, you know, if they want to put a viaduct in or

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close some crossings, that has to be to a vote of the people. The city council has not made a decision of their own as to where they are going to put a viaduct and which crossings are going to be closed because of the fact that they are putting in a viaduct. And that comes with assistance from the railroad because they're funding a lot of it. But our community has went to the people and the people have decided, by vote, you know, whether they want a viaduct in a certain place. And then with that vote that would mean that several crossings got closed. And in that situation there were some avenues that were going to be closed. And because of that the viaduct part did not pass either because there was some crossings that the public did not want to have closed. That was by a vote of the people. [LB837]

SENATOR WIGHTMAN: Well, I was on the city council in Lexington when we did agree to close some crossings at the request of the railroad. And that was not a vote of the people, as I recall. I don't recall it was a vote of the people, but the city council took that action itself. Now I mentioned the fact that the city council might wish they'd had a vote of the people after the outcry. But I don't think that it would require, in most communities, a vote of the people, unless I'm mistaken. Do you have any... [LB837]

SENATOR STUTHMAN: Yes. I would make a comment on that. And I think that is what happened with the community of Columbus. There was some statute that they referred back to many, many years ago that said, you know, any crossing had to be...had to be at the vote of the people. And they are listening to that, they're respecting that. And I think, you know, I realize there are a lot of communities that the city council is the one that makes the decision. But since we have gone to the vote of the people, I think we are more or less obligated that that is what we are respecting. I could maybe find out sometime as to where it was in a statute, but it's been many, many years ago, where one of the city attorneys had found that it needed to go back to the people for a vote. [LB837]

SENATOR WIGHTMAN: And maybe we just didn't look that hard. Thank you, Madam President. Thank you, Senator Stuthman. [LB837]

SENATOR SCHIMEK: Thank you, Senators Wightman and Stuthman. Senator Langemeier, your light is next. [LB837]

SENATOR LANGEMEIER: Madam President, members of the body, can I ask Senator Stuthman a question? [LB837]

SENATOR SCHIMEK: Yes, Senator Stuthman, would you yield to a question? [LB837]

SENATOR STUTHMAN: Yes. [LB837]

SENATOR LANGEMEIER: Senator Stuthman, you've answered a lot of questions

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tonight on this bill. I'm going to ask one more. Is there any other...is there any consideration given to, per se, a short line railroad versus mainline as far as these crossings? Because I know in David City, for example, the short line that has the train, goes through once every 30 days versus UP goes through Schuyler, where I live, every 7 minutes. [LB837]

SENATOR STUTHMAN: I think, Senator Langemeier, and I'm glad you brought this issue up because I don't think it identifies, you know, the mainlines, you know, the UP lines or the short lines. I think the issue was that we were trying...what Senator Baker was trying or attempting to do was to close some crossings that were, you know, within a quarter mile of a guarded crossing, the ones that had bells. And that was for safety reasons because they didn't want to have a crossing, you know, there was a guarded crossing and then two blocks down there was another crossing, and three blocks more there was another crossing, and he was just trying to eliminate all of those crossings and direct the traffic mainly to the crossing that had the lights and the bells. [LB837]

SENATOR LANGEMEIER: Okay, thank you. And I'd yield the balance of my time to Senator Chambers, if he'd like it. Thank you. [LB837]

SENATOR SCHIMEK: Thank you. Senator Chambers, did you wish to use the time? [LB837]

SENATOR CHAMBERS: I don't...I appreciate the offer, but I don't know that it would serve any purpose. So I'm going to waive off. Thank you. [LB837]

SENATOR SCHIMEK: Thank you, Senator Chambers and Senator Langemeier. We are on discussion of the committee amendment, AM1767. And I do not see anymore lights. Senator Fischer, you are recognized to close on the committee amendments to LB837. [LB837]

SENATOR FISCHER: Thank you, Madam President and members of the body. I just want to clarify the last dialogue that was going on. It takes a vote of the people to close a viaduct. Thank you. It takes a vote of the people to open a viaduct, not to close the crossing. So it...when you're in a city, the city limits, the city council has authority within the city limits on how to handle their streets and railroad crossings there, unless it happens to be a state highway, of course. Once again, I just want to encourage you to vote for the Transportation Committee's amendment to Senator Karpisek's bill. This does clarify the intent of the original bill that we passed a few years ago that Senator Baker introduced. So I would urge you to vote for the committee amendment. Thank you. [LB837]

SENATOR SCHIMEK: Thank you, Senator Fischer. You've heard the closing on the committee amendments. The question is the adoption of AM1767 to LB837. All in favor

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vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB837]

ASSISTANT CLERK: 26 ayes, 0 nays on the adoption of committee amendments. [LB837]

SENATOR SCHIMEK: The amendment is adopted. We are back to discussion of the bill, LB837. Seeing no lights, Senator Karpisek, would you like to close on your bill? [LB837]

SENATOR KARPISEK: I would. Thank you, Madam President. Appreciate the votes for the committee amendment, and I'd also appreciate the votes on the bill. I think it gets us back to where the intent of the bill was by Senator Baker. I would like to point out that right now the cities have no recourse. They can hire an engineer, but it is the Department of Roads who make the decision. There is no hearing. You can turn in a...gosh, I can't get the word. You can turn in what you don't want to happen, but it's not going to happen if the Department of Roads says it will. So right now the city really has no recourse. The reason I probably can't get another word is because I just want to be a little lighter here, Senator Chambers, I hope...would Senator Chambers respond? Can he do that on a closing, Madam President? [LB837]

SENATOR SCHIMEK: Senator Chambers, would you yield to a question? [LB837]

SENATOR CHAMBERS: Yes, I will. [LB837]

SENATOR KARPISEK: Thank you. Senator Chambers, I said just on a lighter note I would like to tell you after bantering this year about hot dogs and sausages, this last weekend we had our meat processors convention out in the home of the new State Fair, Grand Island. And it was confirmed by my fellow members at convention that a hot dog is a sausage, as I thought it was all along. (Laughter) So I thought that you would appreciate that. And I was right. [LB837]

SENATOR CHAMBERS: Sausage makers of a feather stick together, but they're still wrong. (Laughter) [LB837]

SENATOR KARPISEK: Okay. Well, okay. There's more of us, maybe, I don't know. We'll have to get together and try to find out. Thank you. I would like to...please advance this bill. I think that our small towns need some sort of a say. The Department of Roads has not been doing this the way that is intended in the legislation. It seems to me the things that have been happening since this bill has even been in committee has not changed that at all. They're still coming and trying to close railroad crossings that I don't think that they can close. They've even been trying to close private ones. With that, Madam President, thank you. [LB837]

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SENATOR SCHIMEK: Thank you, Senator Karpisek. You have heard the closing on LB837. The question is the advancement to E&R Initial. All in favor vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB837]

CLERK: 32 ayes, 0 nays on the advancement of LB837. [LB837]

SENATOR SCHIMEK: The bill advances. Next item on the agenda, Mr. Clerk. Items for the record. [LB837]

CLERK: Madam President, two resolutions: LR387, Senator Howard, that will be laid over; LR388 is by the Education Committee calling for a study, that will be referred to the Exec Board. (Legislative Journal pages 1382-1383.) [LR387 LR388]

Madam President, the next bill is LB734. (Read title.) Introduced on January 9 of this year, at that time referred to the Banking, Commerce and Insurance Committee. The bill was advanced to General File. There are committee amendments. (AM1794, Legislative Journal page 711.) [LB734]

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Fulton, would you like to open on LB734? [LB734]

SENATOR FULTON: Yes, thank you, Madam President. LB734 changes the Political Subdivisions Self-Funding Benefits Act by allowing any governmental employee benefits plan sponsor to provide an employee benefit plan without requiring the purchase of excess insurance. Current statute only permits Omaha to forgo this statutorily required excess insurance while imposing an artificial cap on self-insurance for other cities and counties. I actually have a prepared opening here, but what I think I'll do is I'm just going to go ahead and go to the statute and read, because that is as revealing as anything. In the green copy of the bill, this is existing language, "The plan sponsor shall obtain excess insurance which will limit the plan sponsor's total claims liability for each plan year to not more than one hundred twenty-five percent of the expected claims liability as projected by an independent actuary or insurer." Also existing language, and this is where the city of Omaha is presently exempted in statute: A city of the metropolitan class may provide an employee benefit plan without excess insurance if the city obtains a determination from an independent actuary or insurer that excess insurance is not necessary to preserve the safety and soundness of the employee benefit plan. So LB734 is designed to allow political subdivisions, capable of self-funding, the ability to do so without excess insurance. Should a subdivision be incapable of self-funding, this bill doesn't require them to. They do not have to. They may choose to do so. They may if they choose to do so. There is a committee amendment which will follow, AM1794, which limits the universe of plan sponsors who are exempt from the excess insurance requirement to only primary class cities and

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counties with a population of at least 200,000. So this exemption which exists presently for Omaha the committee amendment would make available to the city of Lincoln, Lancaster County, and Douglas Counties. So I'll ask for your support of both the committee amendment and the underlying bill. Thank you, Mr. President. [LB734]

SENATOR ERDMAN PRESIDING [LB734]

SENATOR ERDMAN: Thank you, Senator Fulton. Members, you've heard opening on LB734. As the Clerk stated, there are committee amendments. Senator Pahls, as Chairman of the Banking, Commerce and Insurance Committee, you're recognized to open on AM1794. [LB734]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator Fulton did explain to some degree the amendments, but let me just review them briefly. The bill, that is as introduced, would expand the exception to any political subdivision. The committee amendments would expand this exception only to cities of the primary class and counties with populations of more than 200,000. Therefore, the exception that now applies only to the city of Omaha would be expanded by the committee amendments to the city of Lincoln and to Douglas and Lancaster County. Those are the amendments and I urge you to adopt the amendments and the bill. Thank you. [LB734]

SENATOR ERDMAN: Thank you, Senator Pahls. Members, you've heard the opening on the committee amendments to LB734. Senator Raikes, you're recognized to speak. [LB734]

SENATOR RAIKES: Thank you, Mr. President, members. Would Senator Pahls yield to a question, please? [LB734]

SENATOR ERDMAN: Senator Pahls, will you yield? [LB734]

SENATOR PAHLS: Yes. [LB734]

SENATOR RAIKES: What is excess insurance? [LB734]

SENATOR PAHLS: Right now, apparently, the city of Omaha which can do this because they're a metropolitan class, they need to...they do not need to have 125 percent. Any other political subdivision that wants to have a plan, they need to be able to prove that they can afford 125 percent, and the reason being a smaller subdivision or political subdivision may not be capable of financing, let's say, something that would be a catastrophe. That's... [LB734]

SENATOR RAIKES: So my next question is 125 percent of what? [LB734]

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SENATOR PAHLS: Of their liability. And for them to meet that, they would have to use their general fund. They have to prove that they have money to be able to afford to do this. [LB734]

SENATOR RAIKES: Well, you lost me there. So there is some procedure that's done to determine what the maximum claim could be against a subdivision, and then they have to carry insurance to cover 125 percent of that? Is that what you're telling me? [LB734]

SENATOR PAHLS: If they are self-insured. Right, it's 125 percent of expected claims. [LB734]

SENATOR RAIKES: Okay. And the expected claims are not necessarily a, you know, a high mark. That's the average claim? [LB734]

SENATOR PAHLS: Yes. They... [LB734]

SENATOR RAIKES: And so the 25 percent is the margin above average that's required. [LB734]

SENATOR PAHLS: Right. [LB734]

SENATOR RAIKES: Now you said something about general fund obligation. How does that fit in? [LB734]

SENATOR PAHLS: Well, let me...it needs to be done by an independent actuary. That's who would give you the help with the 125 percent. In other words, let's say that you should be capable of meeting the needs and so that you'd have to tax into your general funds or find some way to pay the needed fees or the needed claims. And that's why we are wanting to restrict it only to cities such as--it is already given to Omaha--to Lincoln and Douglas County, because of their size. [LB734]

SENATOR RAIKES: So what you're saying is, if you're going to allow the subdivision to insure only to 100 percent of the expected claim, then there has to be an assurance somehow or another that they would have general fund monies available to pay whatever excess might come in a claim that's over 100 percent of expectations. Is that right? [LB734]

SENATOR PAHLS: Yes. That is the reason why we're limiting it to...why it is limited to city of Omaha and also now, if passed, would be the city of Lincoln, and Douglas and Lancaster Counties. The bill originally would have let it wide open to everyone and that's our concern, that there may be some cities or school systems that could get themselves in trouble. [LB734]

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SENATOR RAIKES: Okay. Thank you. [LB734]

SENATOR ERDMAN: Thank you, Senator Raikes, Senator Pahls. Senator Chambers, you're recognized, followed by Senator Fulton. [LB734]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I think the questions that I had were answered in the exchange with Senator Raikes, but I want to ask one or two. Senator Pahls, under... [LB734]

SENATOR ERDMAN: Senator Pahls, will you yield? [LB734]

SENATOR PAHLS: Yes, I would. [LB734]

SENATOR CHAMBERS: ...under this Political Tort Claims Act, the maximum that a person can recover in a particular incident would be \$1 million, as the Supreme Court recently held in the case involving the child of a woman who was hit by a police cruiser and the child is in a coma, and the court judge rule that the maximum that can be recovered would be \$1 million. So Lincoln would have to be able to have, in money, enough to cover a judgment like that, is that true, if they're going to self...are we...we're talking about self-insurance right? [LB734]

SENATOR PAHLS: This is not tort insurance. This is health insurance. [LB734]

SENATOR CHAMBERS: Oh, health insurance only. [LB734]

SENATOR PAHLS: Yes. I'm sorry. Yes. [LB734]

SENATOR CHAMBERS: So then what Senator Raikes was talking about dealt only with health insurance. [LB734]

SENATOR PAHLS: That is what we are directing. [LB734]

SENATOR CHAMBERS: So these cities, if this bill is passed, are not allowed to become self-insurers, period, but only in the realm of these employee benefits. [LB734]

SENATOR PAHLS: They...this would...right now, Omaha is covered. We are trying to...this bill would allow Lincoln, and Douglas and Lancaster County to also. [LB734]

SENATOR CHAMBERS: And that's because they don't want to pay insurance premiums. They feel that they would be better off self-insuring in this area. Is that right? [LB734]

SENATOR PAHLS: Yes. Is my understanding that's the reason why a number of

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schools and cities do do that. [LB734]

SENATOR CHAMBERS: Okay. It's clear now. Thank you. [LB734]

SENATOR PAHLS: Thank you. [LB734]

SENATOR ERDMAN: Thank you, Senator Chambers, Senator Pahls. Senator Pirsch, you're recognized. [LB734]

SENATOR PIRSCH: Thank you very much, Mr. President, members of the body. I think Senator Chambers' question helped clarify the matter maybe for others that are out on the floor. Yeah, I think the issue or question that we're addressing here today is, at what point in time do you feel comfortable? Obviously, there are...there's the potential for certain savings to occur when a political subdivision self-insures. But there's also the potential for greater risks, as well, with self-insuring and so you want to make sure that you draw the line where you decide this political subdivision has the ability, the expertise and also the financial wherewithal should something turn south on them, some sort of unexpected type of tax on the system, so to speak, that they have the resources to weather that. And so I think that this amendment seeks to yield a sensible compromise here where it would allow a jurisdiction--Lancaster County and the city of Lincoln--that does have adequate reserves and expertise such that they can address these types of health insurance issues. And so I think that's the underlying rationale behind it. So I do support...this came out of my...the Banking Committee. I was one of the members who voted for this and so I do support both the amendment and, with the amendment, the underlying bill. So thank you very much. [LB734]

SENATOR ERDMAN: Thank you, Senator Pirsch. Members, we're discussing the Banking, Commerce and Insurance Committee amendments to LB734. Those senators wishing to speak are Adams, Fulton, and Kopplin. Senator Adams, you're recognized. [LB734]

SENATOR ADAMS: Thank you, Mr. President. Would Senator Pahls yield to a question, please? [LB734]

SENATOR ERDMAN: Senator Pahls, would you yield to questions from Senator Adams? [LB734]

SENATOR PAHLS: Yes. [LB734]

SENATOR ADAMS: Senator Pahls, I think I understand where you're headed with this. I guess I want to back up for a minute. So let's assume that I think the original bill prior to this amendment would have allowed other subdivisions other than those of the primary and metropolitan class. [LB734]

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SENATOR PAHLS: Yes. [LB734]

SENATOR ADAMS: Okay. My question is this. If...let's, hypothetically, let's say that we have a city of the first class that self-insures. As long as they're willing to do the actuarial and they're capable of withstanding that loss, I guess what I'm curious about is why would we, in this amendment, take other political subdivisions out of the same savings opportunity and say only Lincoln, Omaha, Douglas, and Lancaster County get to have this opportunity? I mean, we could say that Omaha has a bigger general fund to dip into, or Lincoln does. But put in relative terms, does it? [LB734]

SENATOR PAHLS: Well, what we are concerned about, if we just make this totally open-ended, that we could cause some havoc because some subdivisions may...political subdivisions may not approach this in the way it should be. If this is proven to be successful, this bill could be amended next year or the year following, if you'd come back and say cities of the first class would like to have this opportunity. [LB734]

SENATOR ADAMS: Thank you, Mr. President. Thank you, Senator Pahls. [LB734]

SENATOR PAHLS: Thank you. [LB734]

SENATOR ERDMAN: Thank you, Senator Adams, Senator Pahls. Senator Fulton, you're recognized, followed by Senator Kopplin. [LB734]

SENATOR FULTON: Thank you, Mr. President. Just a point of clarity here, these are indeed employee benefit plans so we're talking generally about health insurance. This also applies to those providers that have already chosen to self-insure. So we are not, by mandate, telling anyone to self-insure. This applies to those who self-insure. And I'll read again: The plan sponsor shall obtain excess insurance which would limit the plan sponsor's total claims liability back to 125 percent of the expected claims liability, as projected by an independent actuary or insurer. So when there's an independent actuary or insurer who deems that 125 percent of the expected claims liability is being usurped, is being passed, then they would be required, this...the political subdivision or the plan sponsor would have to get excess insurance but only if they go over 125 percent. Now in the case of Omaha, it's the same language: if the city obtains a determination from an independent actuary or insurer that excess insurance is not necessary to preserve the safety and soundness of the employee benefit plan. If that independent actuary or insurer indicates that excess insurance isn't required to maintain the plan, right now only Omaha can choose not to buy the excess insurance. So let's say in our case, in my city, in Lincoln, if the independent actuary or insurer comes in and says there's a .2 percent chance that you'll go over this 125 percent threshold, then the law requires Lincoln, in this case Lincoln, and other cities for that matter, other cities

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that aren't Omaha, to get excess insurance, even if the independent actuary says that it's not necessary to get excess insurance. So those remedies and exemptions which are afforded Omaha under my bill would have been afforded all plan sponsors, but under the committee amendment is relegated just to primary-class cities and counties over a population of 200,000. And I have agreed to the accord that was offered by the committee, AM1794. If indeed we learn that this is effective in saving money for counties and cities, then I would gladly come back and amend this statute in the way that I had planned with my bill. So again, I'll ask for your support on AM1794 and the underlying bill. Thank you, Mr. President. [LB734]

SENATOR ERDMAN: Thank you, Senator Fulton. Senator Kopplin, you're recognized. [LB734]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. May I have a little dialogue with Senator Pahls, please? [LB734]

SENATOR ERDMAN: Senator Pahls, will you have a dialogue with Senator Kopplin? [LB734]

SENATOR PAHLS: Truly would love it. Thank you. [LB734]

SENATOR KOPPLIN: I'm really just trying to understand this. Are we talking about just health insurance now or, as Senator Fulton says, this is a benefits package? What are we talking about here? [LB734]

SENATOR PAHLS: What is my understanding, we're talking about health insurance. For example, I don't know if Gretna, the public schools, do they self-insure? I don't know if they do. A number of schools, I know York Public Schools, they self-insure. Millard self-insures because it's probably a way to get a better rate. [LB734]

SENATOR KOPPLIN: Okay, but we're just talking about health insurance. [LB734]

SENATOR PAHLS: Yes. Yes. Yes. [LB734]

SENATOR KOPPLIN: Okay. How does this really work? The employees negotiate the type of package they want to begin with? [LB734]

SENATOR PAHLS: Yes. They talk to an insurance company and they negotiate right with that company, and that company provides the services. [LB734]

SENATOR KOPPLIN: Okay. So they look at a company plan and say, this is what we want, and the city agrees with them, and then the city says, well, we can save on premiums if we just put that much money aside. Is that what this is? [LB734]

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SENATOR PAHLS: Yeah, that's my understanding. I've never been in one of those negotiations, but the intent here is to save actual...for that subdivision...political subdivision to save actual dollars. [LB734]

SENATOR KOPPLIN: Okay. All right. [LB734]

SENATOR PAHLS: So they probably go there with a menu and say, this is what we want, what can you provide if we do this, this and this? [LB734]

SENATOR KOPPLIN: Okay. I understand the...what we're getting at here now. I do question a little bit, I think, I think it was Senator Adams, says, well, numbers really don't matter because Omaha has this huge number of employees, Lincoln would have less, maybe Grand Island would have less but they could still handle that package, couldn't they? [LB734]

SENATOR PAHLS: But that's where the...that actuary, that's what he or she would let you know you could or could not do this. It would not be a guessing game. They would look at all the information; says, hey, this system could handle this. If not, I'm sure the people would back off. [LB734]

SENATOR KOPPLIN: Okay. Thank you. [LB734]

SENATOR PAHLS: Thank you. [LB734]

SENATOR ERDMAN: There are no lights on. Senator Pahls, you're recognized to close on the committee amendments. Hi, Senator Pahls. (Laughter) Senator Pahls waives closing. Members, the question before the body is, shall the committee amendments be adopted? All those in favor vote aye; all those opposed vote nay. Members, we are voting on the committee amendments. Have all members voted who care to? Members, we are voting on the committee amendments. Have all members voted who care to? Senator Pahls, for what purpose do you rise? [LB734]

SENATOR PAHLS: For call of the house, please. [LB734]

SENATOR ERDMAN: Shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB734]

ASSISTANT CLERK: 24 ayes, 0 nays to go under call, Mr. President. [LB734]

SENATOR ERDMAN: The house is under call. Senator Johnson, please check in. Would all unauthorized guests please leave the floor. Unexcused senators please report to the Chamber and check in. The house is under call. Senator Engel, Senator Louden,

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Senator Karpisek, Senator Lathrop, Senator Kruse, Senator Langemeier, Senator Chambers, Senator Lautenbaugh, Senator McDonald, and Senator Stuthman, the house is under call. Please report to the Chamber and check in. Senator Stuthman, please check in. Senator Karpisek, please check in. Senator Pahls, you're recognized. [LB734]

SENATOR PAHLS: Thank you, Mr. President. I would accept call-ins. [LB734]

SENATOR ERDMAN: Not all members are present, but Senator Pahls has accepted call-in votes. Members, the question before the body is the adoption of the Banking, Commerce and Insurance Committee amendments to LB734. Mr. Clerk. [LB734]

ASSISTANT CLERK: Senator Kruse voting yes. Senator Janssen voting yes. Senator Johnson voting yes. Senator Karpisek voting yes. Senator Nelson voting yes. [LB734]

SENATOR ERDMAN: Record please, Mr. Clerk. [LB734]

ASSISTANT CLERK: 26 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB734]

SENATOR ERDMAN: The committee amendments are adopted. The call is raised. Senator Fulton, you're recognized to close on the advancement of LB734. [LB734]

SENATOR FULTON: Very briefly, I just want to thank Speaker Flood for naming this a Speaker priority. This passed committee 7 to 0, no one was voting opposed, there was no opposition. I think this is a good measure and I'll ask you to advance LB734 to E&R Initial. Thank you, Mr. President. [LB734]

SPEAKER FLOOD PRESIDING [LB734]

SPEAKER FLOOD: Members, you've heard the closing on LB734. All those in favor of advancing LB734 to E&R Initial vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB734]

ASSISTANT CLERK: 30 ayes, 0 nays on the advancement of the bill, Mr. President. [LB734]

SPEAKER FLOOD: LB734 advances to E&R Initial. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR283. Mr. Clerk, items for the record. [LB734 LR283]

ASSISTANT CLERK: Mr. President, one item: Senator Preister would print amendments to LB986. (Legislative Journal page 1384.) [LB986]

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And I do have a priority motion. Senator Erdman would move to adjourn until tomorrow at 9:00 a.m. []

SPEAKER FLOOD: Members, you've heard the motion from Senator Erdman. All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.
(Gavel) []