

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 09, 2009

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[LB28 LB32 LB48 LB53 LB88 LB135 LB156 LB164 LB185 LB203 LB204 LB300 LB303  
LB305 LB325 LB331 LB334 LB476 LB676 LR14 LR15 LR20 LR21]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-third day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Clint Poppe with the Good Shepherd Lutheran Church here in Lincoln, Nebraska, Senator Fulton's district. Would you all please rise. []

PASTOR POPPE: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Pastor Poppe. I call to order the twenty-third day of the One Hundred First Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Are there corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

PRESIDENT SHEEHY: Messages, reports, or announcements? []

CLERK: Mr. President, your committee on Natural Resources chaired by Senator Langemeier reports LB300 to General File. Your committee on Judiciary chaired by Senator Ashford reports LB305 to General File, and LB156, LB185, and LB203 are reported indefinitely postponed, those reports signed by the respective chairs. Hearing notices from the Agriculture Committee signed by Senator Carlson, and from Natural Resources Committee signed by Senator Langemeier. Priority bill designation: Senator Giese has selected LB334 as his priority bill for this session. New resolution, LR20 by Senator Fulton. That will be laid over. And Mr. President, a unanimous consent request, Senator Wightman as Chair of the Board would ask unanimous consent to move his hearing this afternoon scheduled at 12:00 noon from Room 2102 to Room 1524. (Legislative Journal pages 409-411.) [LR20 LB156 LB185 LB203 LB300 LB305 LB334]

PRESIDENT SHEEHY: No objections? So ordered. []

CLERK: That's all that I have, Mr. President. []

PRESIDENT SHEEHY: Before moving to General File, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign

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LR14 and LR15. Mr. Clerk, we'll move to the first item under General File. [LR14 LR15]

CLERK: Mr. President, LB53 discussed last Friday by the membership. (Read title.) The Legislature left the issue. I do have amendments pending. Mr. President, I do have a priority motion. Senator Lathrop would move to reconsider the vote taken on Senator Haar's AM222. [LB53]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on your motion to reconsider AM222. [LB53]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I have put this motion to reconsider up as none voted on the amendment. And for reasons that will be evident after I yield the balance of my time to Senator Flood, after we have some discussion, I'll withdraw the request for reconsideration. And with that, I'll yield the balance of my time to Senator Flood. [LB53]

PRESIDENT SHEEHY: Senator Flood. [LB53]

SPEAKER FLOOD: Thank you, Senator Lathrop, members. On Friday, following a long week, we had a lot of good discussion on several bills, one of which was LB53. And although at the time that the call of the house was requested by Senator Haar, I objected. The minute the vote was taken, I wasn't as supportive of my decision to vote against the call of the house. I do think that as a professional courtesy we owe it to our members when they believe it is important enough to ask for a call of the house that we extend the professional courtesy to those in this body that request a call of the house. And for that reason into the future I think it's important that we all grant members the right to have a call of the house when someone feels it's appropriate. Now, obviously the vote did not reflect that on Friday. But as we extend that professional courtesy to other members and our colleagues in this Legislature, I think it's also important that those requesting the call of the house do so carefully after considering what the benefits would be to the senator requesting the call of the house. Now, I didn't agree with the call of the house request on Friday. Impulsively, I voted no. I will vote yes, and I apologize to Senator Haar for not voting for his request for the call of the house because that is a courtesy that should be extended to members in this body as we work to get along with others. With that, I believe it's Senator Lathrop's intention to yield some time to Senator Haar. [LB53]

SENATOR LATHROP: That's true and I'd yield my time to Senator Haar. [LB53]

PRESIDENT SHEEHY: Senator Haar, 8 minutes. [LB53]

SENATOR HAAR: Mr. President and members of the body. Thank you very much, Speaker Flood and Senator Lathrop, for that. I would just like to say briefly, I talked to

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Senator Avery yesterday. He was released from the hospital. He'll be flying back to Lincoln on Tuesday, and he said he's pretty sore at this point. So I'm not sure when he's coming back. Just tell you, this past weekend my electric power went off and on. I'm not quite sure why, but, (laughter) I called Beatrice to the office of Norris Public Power and they said it was something about my house didn't have a firm power contract as my neighbors do. But anyway, we got...or a raccoon may have gotten to the cables. I'm not sure. Well, as you know, I felt this is an important policy issue for the state and I think it's been worth the time to talk about it, but I'm not going to hold it up on general reading any longer. So I would like to make the motion to consider...that the motion to reconsider be withdrawn. [LB53]

PRESIDENT SHEEHY: Senator Lathrop [LB53]

SENATOR LATHROP: I'll move to withdraw the reconsideration motion. [LB53]

PRESIDENT SHEEHY: The motion to reconsider is withdrawn. Is there objection to withdraw for unanimous...is there a unanimous consent? So ordered. [LB53]

CLERK: Mr. President, the next amendment I have to the bill, Senator Haar, FA10. [LB53]

PRESIDENT SHEEHY: Senator. [LB53]

SENATOR HAAR: Yes. Mr. President and members of the house, I'd like to withdraw two other amendments that I have pending. [LB53]

PRESIDENT SHEEHY: FA10 is withdrawn. [LB53]

CLERK: Senator Haar, the next amendment I have is AM87. [LB53]

SENATOR HAAR: Okay. Likewise. Thank you. [LB53]

PRESIDENT SHEEHY: AM87 is withdrawn. [LB53]

CLERK: I have nothing further pending to the bill at this time, Mr. President. [LB53]

PRESIDENT SHEEHY: We will now return to floor discussion on LB53. Members requesting to speak, Senator Friend. [LB53]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I don't need notes for this one. Maybe Speaker Flood was correct in his discussion of what happened last week. But there are a lot of things or a lot of moving parts going on right now, and I think it's a little bit disturbing. Okay? To me it is anyway. As far as I'm

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concerned, here's two of the moving parts: one, I used to vote against calls of the house all the time. Senator Chambers would throw up something. There's 25 people off the floor. He'd call the house, I'd vote against it. Nobody followed. The other day it just so happens that 25 or 30 people actually followed. The second thing that's a little disturbing is that he's pulling these amendments off right now. That's disturbing to me. I'm going to say this again, if you've heard it, I'm sorry, I don't really care at this point. When I first got here I stood up and started making a fool out of myself. There was one person that came to my defense. It was Senator Ernie Chambers. He said, that person can say whatever he wants out here on the floor. He can take as much time as he needs. He can do it whenever he wants. He represents 33,000 people or so. He can do it whenever he chooses to do it. And if the body doesn't like it, too bad. There's decorum out here. There's collegiality. I understand that. But you know what? I'm just a little bit disturbed by this. Why? Because we've had enough debate on LB53? I want the bill to move forward. I voted against his amendments. I don't care. Senator Haar, for whatever it's worth, do whatever you feel is appropriate. And if I stand back and don't say anything, it's because I choose to. Well, guess what? I've got about two more minutes and I'm going to say whatever I want. I challenge somebody to tell me to sit down. I feel like throwing a bracket motion on this thing right now. It's Monday morning. Yeah, I'm in a foul mood. You know what? Here's the way this breaks. If we want to start this type of stuff at this point in the session, let's start it. This is not going to be the first time this type of thing happens. Just because Senator Chambers leaves means we all have to get along. I'm not teammates with any one of you people. I represent 33,000 people in my district. We're not a team. This isn't a team effort. If I agree with Senator Fischer's bill, I will vote to move it forward. What's the point of this whole thing? I hope Senator Haar goes for another four or five hours. That's the point to this whole thing. And by the way, the other point is that if everybody chooses to be noncollegial and vote not to call the...we were all here anyway. It was an attitude vote. I had actually somebody turn to me about two years ago, three years ago, one of my colleagues, somebody who shares my ideology and questioned my vote. Questioned the way I voted on a bill. The person never questioned it again. You vote red, you vote green. [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR FRIEND: Sometimes you don't vote. Thank you, Mr. President. Sometimes you don't vote. That's in here. That's right here. Okay. You don't want to listen to Friend anymore. Tough. Well, let me tell you something, in the next 60 days it's going to happen again. And by the time we're done, you're going to go, well, you know what, Friend thinks he's Ernie Chambers. Friend can do whatever he wants. No, I can't do whatever I want. You think I'm going to complain if I call the house and you say no. As a matter of fact, go ahead next time. I really don't care. You think it's going to hurt my feelings? I don't have any feelings anymore. The only thing that I have is an attitude that says, he was wrong for doing what he was doing, extending debate. He felt it was appropriate and he has every right to do it. And the second thing is that we shouldn't

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have actually voted no on his call of the house. I'll do it again next time if I feel like it.  
[LB53]

PRESIDENT SHEEHY: Time, Senator. [LB53]

SENATOR FRIEND: Thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Campbell. [LB53]

SENATOR CAMPBELL: Thank you, Mr. President. I will be very brief. I have appreciated the colleagues who have stopped by my desk or stopped me in the hall about this bill because some of them knew that I currently serve on the Lincoln Electric Board. And because of that I have declared a conflict of interest. I want to make it very clear to the body though that when Senator Fulton indicated that the LES board and management has a neutral position, that is correct. I am also somewhat conflicted in this bill just as a personal note that my father worked for Nebraska Public Power for 35 years. And so my sense of what public power is and the policy that should go into that was framed by it. And I appreciate the opportunity to just share those comments with my colleagues. Thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Are there additional members requesting to speak on LB53? Seeing none...Senator Haar. [LB53]

SENATOR HAAR: Thank you. Mr. President and members of the group. Thank you, Senator Friend, for your comments, and I know this will be going on to Select File. And although I said I don't count how many people come to testify yes and no in committees, I can count votes. And so we're taking another look at it and I don't think we've said the last on this. But for now, for right now, yes. Thanks very much. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Haar. Seeing no additional members requesting to speak. Senator Fischer, you're recognized to close. [LB53]

SENATOR FISCHER: Thank you, Mr. President and members of the body. We've had a long discussion on LB53. At this point, I would ask that you advance it to Select File. Thank you very much. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB53. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB53]

CLERK: 36 ayes, 2 nays, Mr. President, on the advancement of the bill. [LB53]

PRESIDENT SHEEHY: LB53 advances. (Doctor of the day introduced.) We'll move to

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next item under General File. [LB53]

CLERK: LB28 by Senator Pahls. (Read title.) It was a bill introduced on January 8 of this year, Mr. President, reported to Transportation Committee. The bill was advanced to General File. At this time I have no amendments. [LB28]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB28. [LB28]

SENATOR PAHLS: Thank you, Mr. President and members of the body. This bill would allow federal law enforcement agencies to obtain undercover license plates and undercover driver's license. What I'd like to draw your attention to, the page has handed out a page, and if I could draw your attention to that, that would help with the dialogue. On side A, that lists all of the state and local law enforcement agencies that are allowed to have undercover plates and licenses under today's law passed in 2005. If you go down the list you will see state law enforcement, county, city, village, Game and Parks Commission, Brand Committee, State Fire Marshal, Department of Revenue, working with the HHS, working with the Department of Agriculture and the Department of Insurance. These agencies or law enforcement groups have this authority right now. What this bill does is, if you take a look on side B, would give this authority to some of the following: FBI--and I asked for just some of the examples that they would be dealing with, not all of them but just some of them--the FBI deals with violent crimes, bank robberies, the mob, Mafia, public corruption, etcetera; the Postal Inspection Service, any crime that uses the mail, contraband, child pornography, mail bombs, and it goes on; Homeland Security, deals with immigration, illegal immigration, and terrorism; the United States Marshals, they protect the courts and justice system; the IRS deals with tax code; the Bureau of Alcohol, Tobacco and Firearms deal with illegal firearms; Drug Enforcement Agency deals with drugs; the Secret Service, they protect the Treasury, ID theft, counterfeiting, and they protect public officials. These are just some of the activities that they are in charge of overseeing. Now the question is if we want to give the federal law enforcement the same authority that we're giving the state and local, and I'll just sort of explain how this would happen. Let's say that I am a postal inspector and in the state of Nebraska currently there are seven of them. Let's say that I would have a concern and I would need an undercover license plate or a license. I would go to the director of the Department of Motor Vehicles. I would explain to her what I need, I would describe it, and I would give the dates. She would say either yes or no. If she said no, it stops there. It stops with the permission of the director of Motor Vehicles. Again, there were some questions asked at the committee hearing: Well, how long could this be? I would state that, how long I need these either the license plates or license. It's that simple. Another thing, my agency would pay. The state of Nebraska would not lose any type of revenue on this. Again, the director, at any time she wanted to, she could call these back into her office, these plates and license. She has that power. Somebody may say, well, what are we doing currently? If I need undercover license plates or I

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need undercover license, I need to go to the state of Iowa. Now you could see in the metropolitan area that probably wouldn't be too much of an issue, but if you get a little further west, probably seeing Iowa plates or an Iowa driver's license would cause some concern if I were...had me doing something illegal. Currently, they must go to Iowa because they can't do it in the state of Nebraska. That is unique to the state of Nebraska. Any other state, what we're requesting in this Legislature is to allow them to do that. They can go to any other state and it is allowable. The state of Nebraska happens to be the only state that the...that our enforcement agencies must go to another state to receive the plates or the license. That concludes my opening on LB28. Thank you. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You've heard the opening to LB28. Members requesting to speak: Senator Rogert. [LB28]

SENATOR ROBERT: Thank you, Mr. President. Members, I want to commend Senator Pahls for bringing this bill before us today. I think he's brought it before. We didn't get to it or it was knocked down for some other reason. But I'm rising in full support of LB28 and for a couple reasons. I have a couple friends of mine, one in the ATF and one in the Secret Service, and they do investigations all the time that require them to have undercover ID, an undercover car. And they either have to drive their own vehicle or they have to go, like Senator Pahls says, over to Iowa to get their undercover plates and come over here. Not such a big deal when it comes to being in Omaha, when you're going outstate to do any type of investigation for firearms and the sale of those to gangs and people who shouldn't have them. It's a big...it's kind of a big deal. The Secret Service does a lot of casework prior to any major elected official coming to the state, such as Senator Obama came, Senator Clinton this year, President Bush came last year. They come quite often and do a lot of investigative work ahead of time and they don't want to be noticed as they're doing those things. So I ask everybody in the body to support this bill and I'll yield the rest of my time. Thank you, Mr. President. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Council. [LB28]

SENATOR COUNCIL: Thank you, Mr. President. I rise because I, quite frankly, don't see the necessity for this piece of legislation. As I read the legislation, any state law enforcement official, federal, state, county or city or village law enforcement official can go to the director of Motor Vehicles and request undercover license plates or undercover driver's licenses and the current language of the statute currently provides that he or she may issue these plates in the form and under the conditions he or she determines to be necessary. So I, quite frankly, don't understand why the FBI, if they're conducting an undercover operation in Omaha, Nebraska, for example, cannot go to the Omaha Police Department, advise them of the undercover operation and their need for undercover license plates and/or driver's license, and have the Omaha Police Department apply under the current statute, have the Omaha Police Department set

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forth what the, quote, legitimate criminal investigatory purpose is, and have those license plates issued for use by the FBI. And I'd ask if Senator Pahls would yield to a question and please advise me what prevents any of the federal agencies listed on side B of the handout, what prevents them from working in cooperation with local law enforcement or local comparable state agencies to obtain these undercover plates or licenses. [LB28]

PRESIDENT SHEEHY: Senator Pahls. [LB28]

SENATOR PAHLS: Yes. Before I give the answer to that, I do want the people to understand the FBI, the Postal Inspection Service, Homeland Security, United States Marshal, those individuals did testify at this hearing and it was explained to me that the state and local cannot do it because of liability issues. Now to what extent I do not know, but they told me it was liability, is what they...at the state and local level. [LB28]

SENATOR COUNCIL: Okay. Because the fact of the matter, Senator Pahls, is if the FBI needs to have a license plate issued to the FBI for undercover purposes, there is nothing in the current legislation that prevents the director of Motor Vehicles from issuing a license plate for use by the FBI upon application of a state or local law enforcement official. One of the problems I have with this bill is that this bill imposes the duty and obligation upon the director of Motor Vehicles to determine whether one of these federal agencies is engaged in what is, quote, a legitimate criminal investigatory purpose. I don't know what training we believe the department...the director of Motor Vehicles has to make a determination as to what a legitimate criminal investigatory purpose is, but most assuredly our local...our state and local law enforcement officials would know what a legitimate criminal investigatory purpose is. And there's nothing in the current law that prevents the Department of Motor Vehicles from issuing a plate that's for use by the FBI upon request by the Lincoln police, the Omaha police, the sheriff's department, because the current language says he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. So if the FBI is concerned about liability, certainly there's nothing in the current statute that prevents the director of Motor Vehicles from issuing a plate for use by the FBI. And it would be my preference that the federal agencies have to go through local law enforcement so that local law enforcement is aware of the types of undercover activities that are occurring in their community. [LB28]

PRESIDENT SHEEHY: One minute. [LB28]

SENATOR COUNCIL: So for those reasons, I rise in opposition to this bill. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Council. We have Senator Pahls, followed by Senator Rogert. Senator Pahls. [LB28]



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SENATOR PAHLS: Thank you, Mr. President. I understand the thinking behind Senator Council. I also see the FBI as...or the federal agencies highly trained and maybe, in some cases, even more trained than what we have given this privilege to some of our local officials. Again, as explained to me, it's a liability factor why the local agencies want the federal agencies to do this. And I would like to say, if it was such an easy manner, they would not be going to Iowa right now, nor would a number of the other states deny this privilege to the federal agencies. Thank you. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Pahls. We have Senator Rogert, followed by Senator Fulton and Senator Council. Senator Rogert. [LB28]

SENATOR ROGERT: Thank you, Mr. President. I've just listened to Senator Council and her concerns, and I would maybe give some ideas on some possible ways to address those concerns she does have. I think a lot of it does have to do with the liability that the local enforcement agencies don't want to have to deal with. That's a major thing when it comes to paying for some possibility that they crashed a vehicle with the undercover plates into another vehicle and they would have to pay for that. I think it also has to do with about the difference between local and federal law enforcement practices. It's highly possible that the reason that the undercover plates are there is that they are investigating a local law enforcement agency. The ATF and the Secret Service often will do things in lieu of our sheriffs or our local law enforcement because they're not sure if those folks are involved or they want to make sure they're not and they want to use the placebo effect as they work through things and make sure that they don't have any cross emotions there. And so they come in on their own accord. They don't even tell the local officials that they're there. And it's possible that the local officials are possibly some of those that are under investigation. So I think there's kind of a secrecy factor there. And also, if you look through the list of people here that would be able to take advantage of this, I'm not sure that you can lie responsibility of who approves or disapproves with just local law enforcement. When you're talking the Postal Inspection, Homeland Security, all the way down to the IRS and the HHS officer and the Inspector General, those are all pretty varied offices with different talents and different needs, and I think...I don't know where you lie the responsibility, and it might be somebody totally offset that wouldn't have anything to do with all these. But with that, I once again stand up with my full support of LB28. Thank you, Mr. President. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Fulton. [LB28]

SENATOR FULTON: Thank you, Mr. President and members of the body. I stand in support of LB28. I do want to delve in. There's some legitimate questions, I think, that Senator Council brings forward so I wonder if she might yield to a couple questions. [LB28]

PRESIDENT SHEEHY: Senator Council, would you yield to questions? [LB28]

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SENATOR COUNCIL: Yes. [LB28]

SENATOR FULTON: Senator, I guess what jumps out off the page to me is the fact that this bill is fairly straightforward in adding the term "federal." And so the question I'd have for you, perhaps you'll be able to shed some light on this, is why is it that federal law enforcement agencies presently are excluded from our existing statute? [LB28]

SENATOR COUNCIL: I wish I could answer that question for you, Senator Fulton. Quite frankly, I have problems with the existing statute. I don't think the director of Motor Vehicles has the skills or the training to decide what is and what is not a legitimate criminal investigatory purpose, and we vest that authority exclusively in the director of the Department of Motor Vehicles, so I have problems with the act as it currently exists. But in terms of federal investigations, I suspect they weren't included in the first instance because of the fact that most of these undercover operations, if they are not conducted in cooperation with local law enforcement, they should be so local law enforcement is aware of that. I take issue with the suggestion that the FBI, under current law, could not obtain an undercover license plate or a driver's license. It squarely says that the department of...the director of the Department of Motor Vehicles can issue that plate in any form and under any condition he or she determines to be necessary. So if an issue of concern to the FBI is liability, then the department of...the director of the Department of Motor Vehicles issues that plate under the condition that the FBI is the party actually holding the plate, and it continues its secrecy because all of this is undertaken in the Department of Motor Vehicles. So if he or she issues a plate to be used by the FBI, with the understanding that the FBI is the party ultimately responsible for that plate, I don't see the reason or the necessity for this legislation. In fact, leaving the legislation the way it is requires these federal agencies...and I appreciate Senator Rogert's comment... [LB28]

SENATOR FULTON: Senator, if I may, I'm just on my own time, that...you answered my first question... [LB28]

SENATOR COUNCIL: Okay. Okay. [LB28]

SENATOR FULTON: ...and that you're starting to seg into what my second question is, and so I'll go ahead and ask that and I'd like to hear your response also. [LB28]

SENATOR COUNCIL: Okay. [LB28]

SENATOR FULTON: Why is it that federal agencies find need to go to Iowa if, indeed, this authority presently exists in Nebraska? [LB28]

SENATOR COUNCIL: I don't understand why they can't think out of side the box and

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have allowed themselves to be caught in a paradigm that doesn't exist. If they use local law enforcement officials, they can access those plates, they can access those driver's license under the existing language in this statute because the final authority on the terms and conditions of issuance rests with the director of the Department of Motor Vehicles. If he or she determines that those plates are necessary, if he or she determines that the plates will be issued for use by the FBI and that the FBI...the vehicle upon which those plates are placed is owned and operated by the FBI, they will be responsible for any damage, I don't see why the FBI, the U.S. Marshals or any other federal agency feels compelled to go to Iowa rather than utilizing local law enforcement to assist them in... [LB28]

PRESIDENT SHEEHY: One minute. [LB28]

SENATOR COUNCIL: ...obtaining these licenses. [LB28]

SENATOR FULTON: Thank you, Senator. The...there's some question. I'd be curious as to why the present state of affairs is what it is, why federal agencies find it necessary to go to Iowa. But regardless, we as a Legislature would have the opportunity to speak succinctly and precisely with regard to federal agencies. I think this is an important tool that federal agencies ought to have. It is afforded in many other states. Nebraska, once again, seems to stick out like a sore thumb here. And you know, therefore, I will support LB28. I'll be open to some of the further debate, but thank you, Mr. President. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Council, followed by Senator Hadley. Senator Council. [LB28]

SENATOR COUNCIL: Yes. And, in fact, one of the questions asked by Senator Fischer, as I read the current state of the law, for example, Nebraska State Patrol is authorized to request undercover license plates or undercover driver's license. All the State Patrol has to do is go to the director of the Department of Motor Vehicles and state that they are involved in a legitimate criminal investigation, that they need the plates for a certain period of time, and they could also state that these plates are to be used by the FBI or the U.S. Marshal or whatever federal agency is conducting the investigation, and it is up to the director of the Department of Motor Vehicles to set the conditions upon the use of those plates or those driver's licenses. In fact, by leaving the bill the way it is currently written, it encourages these federal agencies to work with and cooperate with local law enforcement and make them knowledgeable when they're conducting criminal investigations within their respective jurisdictions. When we look at the responsibility that we're placing on the director of the Department of Motor Vehicles, we are expecting him or her to know what a legitimate criminal investigatory purpose is. I submit to you that the best source of knowledge as to what a criminal...a legitimate criminal investigatory purpose would be, would be local law enforcement and that there's nothing in the current statute that prevents local law enforcement from applying for these

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licenses on behalf of any federal agency. And the liability would rest with the federal agency requesting it if that is a condition placed upon the issuance of those license plates by the director of the Department of Motor Vehicles. Again, in response to Senator Fulton's question, I don't know why any of the federal agencies listed on this handout would not utilize their comparable state agencies to assist them in accessing whatever undercover tool they deem necessary for their investigation. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Hadley, followed by Senator Price. Senator Hadley. [LB28]

SENATOR HADLEY: Mr. President and members of the body, I won't speak long but I would like to echo what Senator Pahls says. Again, when we think of Omaha and we...thinking of it as kind of an Omaha concern with Iowa right there, but these plates are going to be used throughout the state of Nebraska. And I'll tell you what, if you're...if it's a federal agency working on something in Axtell, Nebraska, and they spend two or three days driving around Axtell, Nebraska, with Iowa plates on their car, people are going to wonder what they're doing there. So I rise in fully support of Senator Pahls's bill. These are governmental agencies that we trust to do a lot of things. If we can't trust them to have correct plates on their car that helps them do the job, I don't know what we're doing. Thank you. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Price, followed by Senator Council. Senator Price. [LB28]

SENATOR PRICE: Mr. President, thank you, members of the body. I rise in support of this bill and I would bring up a few points of interest, at least to some people. Being a person who has held a top secret security clearance and beyond, I would tell you there is an important element when you deal in those realms, which is a need to know. If you don't have a need to know, even though you hold a clearance, you don't have access to that information because you're not sharing it widely for whatever possible consequence could be had if that information were out wide. Another issue I would wonder about is the timing required to secure plates going through the current process versus what has been proposed. Sometimes you don't have time to act on actionable intelligence to wait to go through a bureaucratic stream, so I believe that this would shorten that chain of timing. And finally, I think it's important to recognize the fact of who is being investigated. At all points in time we like to have our trust in all of our officials, but it has been shown in previous times that it hasn't worked that way. And it's important to give a tool to the federal agencies, who are chartered with a responsibility of our well-being, to like offer them again this tool to conduct their investigations. As Senator Hadley spoke so well, strange license plates are picked up rather quickly. So again, just as a point of notice to those that having a need to know is incredibly important and that may very well be the reason why we should afford this tool to our federal agencies. Thank you, Mr. President. [LB28]

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PRESIDENT SHEEHY: Thank you, Senator Price. Senator Council. This is your third time. [LB28]

SENATOR COUNCIL: Thank you, Mr. President. And to Senator Hadley's point, while I used Omaha as an example, Axtell, I trust, has local law enforcement and I would think that the Axtell local law enforcement would want to be aware of an undercover criminal operation occurring within their jurisdiction. And what we're saying, Senator Price, is that we can't trust our local law enforcement officials to maintain any secrecy associated with a federal criminal investigation. Again, I think we're also ignoring one of the critical points of this. We are placing a tremendous burden on the director of the Department of Motor Vehicles to determine whether or not these federal agencies are engaged in legitimate criminal investigations. I believe that the tendency would be, since the vehicles that are covered by the statute now are vehicles that are licensed in the state of Nebraska currently and that are used in operations currently and all we're talking about is transferring undercover plates to them, I would suspect that local law enforcement would not slow down or hinder an investigation. It would take no more time than it would take for an FBI agent to go directly to the Department of Motor Vehicles to have that intervening step, and I think our local law enforcement officials need to know about criminal...legitimate criminal investigations that are occurring within their jurisdictions. Because we can talk about the possibilities that local law enforcement may not be aware and may encounter one of the undercover agents and be placed in a position where they may hinder or hamper that investigation because they don't know that it's occurring. I think the better tool for undercover investigations, and I'm acutely aware of the need for undercover investigations, is that if federal agencies are going to be conducting those investigation within the state of Nebraska that, as a check and balance, they need to associate or affiliate with a comparable local agency who can obtain these plates and driver's license on their behalf. There's nothing in this statute, as currently written, that prohibits that from happening. And the fact that the FBI representatives or whoever testified before the committee stated, we have to go to Iowa to get plates, doesn't mean that that's what they have to do. That's what they've elected to do and they've elected not to use a process that currently is available for them to use. And I would submit to you that we leave the statute as it is, advise these federal agencies of the opportunity and the availability of access to these plates through their cooperation with local officials, and see if they still encounter the problems that they related during the committee. I would submit to you that they won't encounter those problems; that they will be able to find, easily and readily, local officials who would be willing to assist them in obtaining these plates and addressing these liability issues. And for those reasons, I'm going to oppose this bill. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Council. Are there additional members requesting to speak? Seeing none, Senator Pahls, you're recognized to close. [LB28]

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SENATOR PAHLS: Thank you, Mr. President and members of the body. I have been in contact with an individual who did testify and they said they are truly concerned about the liability. Whose liability would it be? Would it be the state's or the federal? And they said sometimes certain agencies have jurisdictions that are different than who you might think they're dealing with, so there is a time thing to be considered. And I also talked to the director of the department, who would be the person who'd say yes or no, and she said she would be willing to do this. Thank you. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the closing. The question before the body is on the advancement of LB28. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB28]

CLERK: 40 ayes, 3 nays, Mr. President, on the advancement of LB28. [LB28]

PRESIDENT SHEEHY: LB28 advances. Next legislative bill under General File. [LB28]

CLERK: Mr. President, LB48 by Senator Fischer relates to motor carriers. (Read title.) Introduced on January 8 of this year, referred to Transportation Committee, advanced to General File. I have no amendments at this time, Mr. President. [LB48]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Fischer, you're recognized to open on LB48. [LB48]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB48 updates the reference dates to federal rules and regulations in the motor carrier safety regulation by adopting the parts, subparts, and sections of Title 49 of the Code of Federal Regulations in existence and effective as of January 1, 2009. The regulations are applicable to all motor carriers, drivers, and vehicles to which federal regulations apply and all motor carriers transporting persons or property in the intrastate commerce. LB48 also adopts Title 49, Part 386 of the Federal Motor Carrier Safety Regulation as prescribed by the U.S. Department of Transportation Federal Motor Carrier Safety Administration. Adoption of Part 386 will permit the Nebraska State Patrol to place a motor carrier out of service for the nonpayment of civil penalties. These penalties are discovered through the Compliance Review Program. Compliance reviews conducted by the carrier enforcement investigators are on-site examinations of a motor carrier's records and operations in order to determine whether the motor carrier is in compliance with the federal motor carrier safety and hazardous material regulations. In some instances, motor carriers that are assessed civil penalties for noncompliance do not pay in a timely fashion or not at all. With the adoption of Part 386, if a motor carrier is assessed a civil penalty and payment does not occur within 90 days after the date specified by the Patrol's final agency administrative order, the motor carrier will be prohibited from operating in intrastate commerce starting on the next day. The prohibition will continue until the civil penalty is received in full. In some cases, this

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prohibition will allow the Federal Motor Carrier Safety Administration to take reciprocal action by prohibiting the motor carrier from operating in interstate commerce. Thank you, Mr. President. [LB48]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to LB48. Are there members requesting to speak? Seeing none, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is on the advancement of LB48. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB48]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB48. [LB48]

PRESIDENT SHEEHY: LB48 advances. (Visitors introduced.) We'll proceed to next item under General File. [LB48]

CLERK: LB204 introduced by the Transportation and Telecommunications Committee and signed by its members. (Read title.) Introduced on January 12 of this year, at that time referred to Transportation. The bill was advanced to General File. [LB204]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Fischer, you're recognized to open on LB204. [LB204]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB204 is the result of a Federal Motor Carrier Safety Administration audit. Congress passed federal laws in 1986 and 1999 that occupied the field of commercial motor vehicles and commercial drivers' licenses or CDLs. The federal law requires states to sustain substantial compliance or face loss of highway funding. In Nebraska, failure to maintain substantial compliance would translate into the loss of \$9 million the first year of noncompliance and \$18 million each subsequent year. As part of the federal enforcement process, each state must submit to an audit of the CDL program every three years. The most recent audit discovered some discrepancies between Nebraska's out-of-service provisions and federal rules and regulations. This bill is an attempt to remedy those discrepancies. LB204 amends two separate and distinct provisions relating to CDL laws. The bill is introduced to amend both Nebraska's traffic violation and commercial driver's license disqualification out-of-service law to comply with federal regulations that govern CDL and commercial motor vehicles. Section 1 amends language that is used by prosecutors who are seeking criminal penalties against CDL holders from any state when that driver violates Nebraska's rules of the road. Specifically, the language of LB204 makes several changes. The existing statutes do not address all the out-of-service violations required by federal law. Our current provision only applies to drivers who have been given an out-of-service order. One of the most common reasons a driver is given such an order is being found to be under the influence of alcohol or drugs. Vehicles may be declared out-of-service for things like

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being overweight or for a safety violation. In addition, the company that owns the vehicle can be declared out-of-service for a variety of reasons such as repeated safety violations or failure to pay federal fines. The existing law does not have the correct disqualification periods. We do not have the disqualification properly separated by type of commercial motor vehicle. The disqualification periods are longer for persons operating a vehicle carrying hazardous materials or 16 passengers. Penalties in the driving under suspension statute found in Section 60-4,108 have been copied into the out-of-service provisions so that a CDL violation does not become confused with other driving under suspension violations that apply when operating vehicles other than commercial motor vehicles. It is the same penalty, but now it is clear that this section only applies if a commercial motor vehicle is being operated. The penalty for violation of this provision is a Class II misdemeanor for the first offense, including a revocation of a person's CDL for one year. Any subsequent offense is a Class II misdemeanor and a prohibition from operating any motor vehicle for two years and a revocation of the person's CDL for the same period. Section 2 amends the administrative responsibilities of the DMV when tracking the violations and convictions of Nebraska's CDL holders. Those violations and convictions could be in any state. The federal law requires every state to disqualify its own CDL holders from operating a commercial motor vehicle whenever the state receives notice that a CDL holder has been convicted of a violation of any state's out-of-service statute. For a driver convicted of violating an out-of-service order while transporting nonhazardous materials, the bill increases the disqualification period from at least 90 days to at least 180 days for the first conviction, and from at least one year to at least two years for a second conviction. Finally, LB204 modifies the definition of out-of-service order to match the federal definition. Thank you, Mr. President. [LB204]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Madam Clerk, do you have an amendment on your desk. [LB204]

ASSISTANT CLERK: Mr. President, Senator Fischer would move to amend with AM84. (Legislative Journal page 380.) [LB204]

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on AM84. [LB204]

SENATOR FISCHER: Thank you, Mr. President and members. AM84 corrects an oversight in the drafting process. The original bill modifies the definition of out-of-service order to match the required federal definition and references several federal laws as they existed on January 1, 2009. However, some of these federal rules and regulations are updated every year in April. Thus, there will be some discrepancy between the laws outlined in the Nebraska statutes and the updated federal law. The amendment corrects this discrepancy by referring the definition of out-of-service order to Section 75-362. This will ensure that the Nebraska law is up to date with federal law regarding out-of-service orders. Thank you, Mr. President. [LB204]



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PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening of AM84 to LB204. Are there members requesting to speak? Seeing none, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is on the adoption of AM84 to LB204. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB204]

ASSISTANT CLERK: 41 ayes, 0 nays, on the adoption of AM84, Mr. President. [LB204]

PRESIDENT SHEEHY: AM84 is adopted. [LB204]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill. [LB204]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll return to floor discussion on LB204. Are there members requesting to speak? Seeing none, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is on the advancement LB204. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB204]

ASSISTANT CLERK: 39 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB204]

PRESIDENT SHEEHY: LB204 advances. Next item, Mr. Clerk. [LB204]

ASSISTANT CLERK: Next bill, Mr. President, LB331 introduced by the Transportation and Telecommunications Committee. (Read title.) The bill was read for the first time on January 15 of this year, referred to the Transportation and Telecommunications Committee. That committee reports the bill to General File with no committee amendments. [LB331]

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on LB331. [LB331]

SENATOR FISCHER: Thank you, Mr. President and members of the body. This is the update, cleanup bill for the Department of Motor Vehicles. There are not any number of substantive changes in the bill. I will go through it with you, however, for the record. LB331 is a comprehensive DMV bill that accomplishes several things. One is to update the reference states found in the motor vehicle statutes so that they will be up to date with the most current applicable federal rules and regulations. The change will allow the DMV and the State Patrol to follow the federal regulations as they exist on January 1, 2009. The bill strikes references to the Single State Registration System, SSRS, an obsolete program, and updates them with the unified carrier registration plan or UCR. UCR is a base-state system administered by federal and state governments and by the motor carrier industry for the collection of fees levied on motor carriers and related

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entities. The bill repeals the SSRS statutes outright. LB331 amends the Gold Star Family license plate provisions to make them consistent with other specialty plate types. Trailers, semitrailers, or cabin trailers are authorized to obtain Gold Star license plates under the bill. This does not include commercial motor vehicles. The bill also allows any number of a person's vehicles to display Gold Star plates. The bill clarifies the process for transferring or refunding the registration fees and taxes on a commercial motor vehicle that is registered through the International Registration Plan so that they are uniform with vehicles registered at the county level. Credits and refunds are now computed from the date of the event that triggers the reason for an apportioned vehicle owner's eligibility. The bill delays the implementation date for driver's license central issuance from April 1, 2009, to August 1, 2009. Central issuance was passed by the Legislature through LB911 last session. It has taken longer than anticipated to develop the specifications, system programming, testing, and employee training for this central issuance. DMV has indicated that they will need several extra months to ensure that the process runs smoothly when central issuance is implemented. Finally, LB331 authorizes undercover drivers' licenses for the insurance fraud prevention division of the Department of Insurance for investigative purposes. These investigators have been able to obtain undercover license plates for many years. This amendment brings the undercover drivers' license section in line with the undercover license plates. Thank you, Mr. President. [LB331]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to LB331. Members requesting to speak, Senator Fulton. [LB331]

SENATOR FULTON: Thank you, Mr. President and members of the body. This bill...I've had a chance to go through the bill and I rise in support of the bill. There are some things I think that need some clarification, and eventually I will ask Senator Fischer to yield. But for now on page 8 in Section 4 of the bill, there is a reference to what's called the "International Registration Plan." And I'd like to get a little bit more information on what that is, and I'll tell you what my concern is. When we enact or invoke plans...or in my experience when we act...acts that are binding with regard to how, say, an engineer practices or what measures are going to be utilized when one licenses a home or is building a house or what have you, there are certain codes that have to be followed. And oftentimes a code that is applied at an international level isn't appropriate at a local level. I can tell you that international electrical codes cause local electricians heartache and headache. And so when I see things like International Registration Plan, it's incumbent on me to ask how that international plan is going to filter down to the local level. I think I have an idea, but I wonder if Senator Fischer would yield to a question. [LB331]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB331]

SENATOR FISCHER: Yes, I will. [LB331]

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SENATOR FULTON: Senator, it's on page 8, Section 4 of the bill, and what it is, it's the International Registration Plan. Can you explain a little bit about that plan and why is it an international plan? [LB331]

SENATOR FISCHER: Thank you for the question, Senator Fulton. This International Registration Plan, it is a federal program. And under this federal program, it involves carriers within the United States and also Canada. And the carriers register their vehicles at the state level, but it is a federal program that they are following. And it's international because it involves Canada also. [LB331]

SENATOR FULTON: Okay. That's very helpful, and that stands to reason this being, you know, a bill having to do with particularly interstate commerce and travel has to do with Canada also. I would assume, perhaps, Mexico could be incorporated within that plan. But the fact that it's Canada, United States, that explains it. It's a question that needs to be raised. There was also in testimony I noticed, or I guess in the hearing I noticed, that the trucking association came and testified neutral. And I'm curious what their testifying was, what their testimony was. Could you share a little bit of what happened in that testimony? If Senator Fischer would yield. [LB331]

PRESIDENT SHEEHY: Senator Fischer. [LB331]

SENATOR FISCHER: Yes, I will. [LB331]

SENATOR FULTON: I was curious, again, the truckers, what was their testimony? Did they have apprehension with the bill? Can you fill us in on what happened during that hearing? [LB331]

SENATOR FISCHER: I don't remember specifically what their comments were during the hearing, Senator Fulton. But my understanding is that the truckers association visited with the Department of Motor Vehicles and they were able to work out some apprehension that they had had with the bill, which is why they testified in the neutral testimony at the hearing. [LB331]

SENATOR FULTON: Okay. Well, thank you, Mr. President. Thank you also, Senator Fischer. [LB331]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Additional members requesting to speak on LB331, we have Senator Haar, followed by Senator Sullivan. Senator Haar. Senator Haar. [LB331]

SENATOR HAAR: I'm sorry. Mr. President and members of the body, I'm sorry, we were talking and I don't know where we are. [LB331]

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PRESIDENT SHEEHY: You were in the queue to speak. [LB331]

SENATOR HAAR: Oh, Ken Schilz pushed my button by accident. (Laughter) [LB331]

PRESIDENT SHEEHY: Thank you, Senator Haar. [LB331]

SENATOR HAAR: So, we both apologize. Thank you. [LB331]

PRESIDENT SHEEHY: Thank you. Senator Sullivan. [LB331]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. That's nice to know that really happens to somebody else too. (Laughter) I would like to know if Senator Fischer would yield to a couple for questions. [LB331]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB331]

SENATOR FISCHER: Yes, I will. [LB331]

SENATOR SULLIVAN: Thank you. Partly it's just for my own information. Question number one, what Gold Star license plates are. And secondly, with respect to the moving the date for central issuance of drivers' license, just wanted to know if there's any impact on the county offices, and if they're going to be ready even at that elongated date? [LB331]

PRESIDENT SHEEHY: Senator Fischer. [LB331]

SENATOR FISCHER: Thank you, Mr. President. The Gold Star license plates, Senator Sullivan, are plates that families that have lost loved ones in military combat are able to purchase and display. And the central issuance date is being pushed back, as I said, because the DMV feels that they aren't going to be ready by April 1 and it will be pushed back to August 1. And the DMV is working with the counties in order to meet that date, and hopefully they will be able to do so. [LB331]

SENATOR SULLIVAN: Thank you. [LB331]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Are there additional members requesting to speak? Seeing none, Senator Fischer, you're recognized to close. [LB331]

SENATOR FISCHER: Thank you, Mr. President, and thank you for the questions. Usually on these Transportation and Telecommunications bills, they're very technical in nature and we don't get a lot of questions. So I do appreciate having the opportunity to address some of your comments and concerns on this subject matter. With that, I would

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ask that you do vote to advance LB301. Thank you...or LB331. Thank you. [LB331]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB331. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB331]

ASSISTANT CLERK: 39 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB331]

PRESIDENT SHEEHY: LB331 advances. Next item under General File. [LB331]

ASSISTANT CLERK: Mr. President, LB135 was introduced by Senator Heidemann. (Read title.) The bill was read for the first time on January 9 of this year, referred to the Appropriations Committee. That committee reports the bill to General File with no committee amendments. [LB135]

PRESIDENT SHEEHY: Senator Heidemann, you are recognized to open on LB135. [LB135]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. LB135 amends LB606A, which was passed last year, to add a personal service limit of \$15,000 in the current fiscal year. LB135 was heard before the Appropriations Committee on Tuesday of this week...last week. It was advanced from the committee on a 7 to 0 vote with no amendments. LB606 was passed in 2008, created the Stem Cell Research Advisory Committee, and authorized stipends. An appropriation of \$15,000 was provided in fiscal year '09 for administrative costs, but the A bill included a restriction that no funds could be used for personal services. Stipends are included under the personal service limit, and therefore a personal service limit authorization should have been included in the bill. LB135 removes the restriction and authorizes a personal service limit of \$15,000 to correct the error. Inclusion of the personal service limit is needed to pay the committee members the stipends authorized by the bill. Other than myself, no one testified at the public hearing as this bill is strictly technical in nature. Dr. Joann Schaefer, the chief medical officer with the Department of Health and Human Services, did submit a letter in support. I urge you to vote favorably upon the advancement of LB135. [LB135]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You've heard the opening of LB135. Members requesting to speak are Senator Fulton, followed by Senator Pirsch and Senator Ashford. Senator Fulton. [LB135]

SENATOR FULTON: Thank you, Mr. President. LB135, I voted for this in committee. I rise in support of the bill, but there is an opportunity here to share with colleagues a little bit about what goes on with regard to our appropriations process. I wonder if Senator

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Heidemann would yield to some questions. [LB135]

PRESIDENT SHEEHY: Senator Heidemann, would you yield to questions? [LB135]

SENATOR HEIDEMANN: I will try, yes. [LB135]

SENATOR FULTON: Last session, Senator, we passed LB606. The subject matter itself was quite remarkable in that we had collaboration such that I believe all of this body supported. What followed was the appropriations bill, and that's where the money gets spent. What we didn't do last year was to include PSL. This is a great opportunity. Senator, could you explain a little about what PSL actually is and why it's important to be included in an A bill? [LB135]

SENATOR HEIDEMANN: PSL is personal service limit. You can give an agency, a group money to spend and they can do that, but they can't have...hire personnel. You have to PSL for them to hire somebody, they have to have the PSL that moves along with it. That gives them the authorization then to hire somebody. [LB135]

SENATOR FULTON: Yeah. Would it be fair to say, Senator, if we as the Legislature were to appropriate, however hundreds of millions of dollars it is to any one agency, without giving them PSL, they wouldn't have the authority to actually hire employees? Would that be a fair... [LB135]

SENATOR HEIDEMANN: That's absolutely right. The PSL has to follow. [LB135]

SENATOR FULTON: Okay. Thank you, Senator. This is something that we should start to become familiar with and accustomed to. Every one of us has bills that we would like to move forward, and for many of us those bills have accompanying with them a fiscal note which will cost money. In this economy and with the budgetary situation that we see in states all across the country, we on Appropriations and we as a Legislature are going to have to be very careful with regard to our expenditure of taxpayer dollars. That being said, we have to understand what the difference is between, say, a General Fund and a Cash Fund or what PSL actually means going forward by way of policy. I'd like to point out that when you see PSL, you should begin thinking long term because in my experience, short experience granted, government tends to grow. Very seldom will you see government become smaller. There may be a recession in the economy, but you'll note that there won't be likely a recession within the expenditures of government. That's largely due because we are comprised of personnel. And whenever you see a fiscal note that comes through that has PSL, personal service limit, I believe...I've become so accustomed to using the acronym I'm not certain what it evens stands for, when you see PSL, chances are that PSL is going to go off into the future. To appropriate money in and of itself can be sunset, but PSL it's more difficult to do. It's more difficult to sunset PSL. So as we move forward, pay close attention to your fiscal notes--if it's a Cash

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Fund versus a General Fund expenditure. If there's PSL, think long term, because we're hiring somebody when you see PSL. And typically you're not able to fire someone once they've been hired within the purview of government. So I'll stop there. Thank you, Mr. President. [LB135]

PRESIDENT SHEEHY: Thank you, Senator Fulton. (Visitors introduced.) Senator Pirsch. [LB135]

SENATOR PIRSCH: I'll waive. Thank you. [LB135]

PRESIDENT SHEEHY: Senator Pirsch waives. Senator Ashford, followed by Senator Stuthman. Senator Ashford. [LB135]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. Senator Heidemann, do you mind if I...may I ask Senator Heidemann a couple of questions? [LB135]

PRESIDENT SHEEHY: Senator Heidemann, would you yield to questions? [LB135]

SENATOR HEIDEMANN: Yes. [LB135]

SENATOR ASHFORD: Senator Heidemann, thank you for your good work on this issue, and we've spent some time during the summer and fall sorting this out to make sure that these funds go into the proper fund and then properly distributed. Just for the benefit of the body generally, can you tell me overall how much money is anticipated to go into the fund and... [LB135]

SENATOR HEIDEMANN: There's \$15,000 for this part of it and \$485,000 for the grant for a total of then a half a million dollars or \$500,000. [LB135]

SENATOR ASHFORD: And as far as I know, no portion of that money has been distributed yet. Liz is saying yes. I don't think... [LB135]

SENATOR HEIDEMANN: It hasn't been. [LB135]

SENATOR ASHFORD: Has not been yet, and I think it takes this change or the appropriate thing is for us to make this change and then the funds would be distributed by a commission. And I believe we did this year already nominate the commissioners. I believe that's correct, isn't it, Senator Heidemann? [LB135]

SENATOR HEIDEMANN: Yes, that's what I've been told. [LB135]

SENATOR ASHFORD: Thank you and, again, I appreciate, Senator Heidemann, the Appropriation Committee's work on this issue and Liz Hruska's, obviously, as she...we

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work through this very important fund. Nebraska is becoming one of the only states in the United States that is really focusing on stem cell research involving other than embryonic stem cells. The bill that was passed by the Legislature and signed by the Governor last year, thanks in great part to the work of my colleagues on the Judiciary Committee and the Health Committees and Senator Lathrop's fine work in working through the tough issues involved in stem cell research. We've been able in Nebraska to create a sustaining fund to incent our universities, both Creighton and UNMC, to engage in top of class stem cell research. This is a great example of something very, very good and positive coming out of what was eight years of conflict and controversy. And I just cannot thank again the members of the Judiciary Committee and the Health Committee of the last year in working together and the Appropriations Committee and Senator Heidemann's leadership to make this actually happen. These funds will be available every year, I believe every...is it \$500,000 a year? That's a tremendous commitment by the state of Nebraska to help cure disease in a way that all Nebraskans can be proud of. And I know in my history, this is my 11th year in this body, that it's one of my proudest moments was to be involved in coming up with a resolution of the stem cell bill. I am thoroughly convinced as we work through these tough issues...and we are going to have some tough ones. We're going to be dealing with immigration. We're going to be dealing with the death penalty in our committee, and then other committees will have also very weighty decisions for us to make in the next two to three months. And the budget, of course, as we have to deal with fewer dollars and to make sure that those dollars are appropriated into the right places. I can tell you that this, to me, is such an incredible lesson to the total state and all the people who work outside this body who come to us with ideas and who come to us quite frankly with conflicts. [LB135]

PRESIDENT SHEEHY: One minute. [LB135]

SENATOR ASHFORD: They come to us with conflicts that have arisen over the years between 2, 3, 10, 12, 20 sides to a particular issue and have come to the Legislature to solve it for them. I think this stem cell effort is an example of what we do best. And that is to bring together very, very conflicted groups on very emotive issues and to support what was I think a unanimous vote, I believe, or darn near a unanimous vote--I think it was unanimous--on this stem cell initiative. So, again, I thank you, Senator Heidemann, for clearing this matter up, the procedural part of this. Again, thank all the members who were here last year who voted for this bill and have created what I think is a state of the art effort to deal with very difficult disease and injuries that plague all of our citizens and their families. Thank you, Mr. Lieutenant Governor. [LB135]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Additional members requesting to speak: Senator Fulton, followed by Senator Nelson and Senator Pahls. Senator Fulton. [LB135]

SENATOR FULTON: Thank you, Mr. President and members of the body. I spoke a



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little bit about the fiscal notes that will be attached to bills, a little bit about the policy that you should envision when reviewing those fiscal notes. I want to touch a little bit now on what Senator Ashford has talked about, and that was the subject matter of LB606. You might recall, oh, this time last year, the word "stem cells" or the words "stem cells" were...they were buzzwords. They were rhetorical words that really opened up strong emotions on both sides of that particular issue. What Nebraska did with regard to stem cell research last year in the form of LB606 is quite innovative. And I'd like people who are listening to this maybe to ponder what's going on. In other places, embryonic stem cell research remains a very divisive topic. Some states have decided to go forward with embryonic stem cell research, some have not, some have banned the research in public institutions. But regardless, it still remains a very divisive topic. The subject matter evokes strong, emotive responses on both sides, not always devoid of reason and logic, but oftentimes that is what we find. What we've done in Nebraska is somewhat different. We've looked at the stem cell research that can be agreed upon--adult stem cell research. And Senator Ashford was right on the money. Last year this thing passed unanimously. I don't know that all 49 members voted for it, because that seldom happens actually because of our scheduling and whatnot, but it passed unanimously. Senator Lathrop, Senator Ashford, many others were involved in the collaborative agreement that allowed Nebraska to move forward. And if we take a step back and look at this universally, on a more global perspective, while other states continue to be mired in the divisive debate over embryonic stem cell research, what Nebraska has done is to go down a road of adult stem cell research, a type of research that has yielded results, that has yielded cures and treatments. While others are having the divisive debate still, Nebraska has put it behind ourselves and we are moving forward. And what I'm hopeful that we see is that the public monies that will have been expended through LB606, LB606A, what we're touching on here, the PSL of LB135 that will start to leverage private dollars because nationally that is something else that's occurring, private dollars are flowing into adult stem cell research because there are actually therapies that are being derived from that mode of research. So while Nebraska has been able to move forward, I'm hoping that we'll be able to see this as a matter of policy will attract private attention. Because in my opinion I'm a free-market person, a free-market thinker and monies from the private sector are what allow monies in the government...in the public sector to even move forward. I'm hopeful that this small step that we took with LB606 last year will allow Nebraska to set out as progressing, as leaving the divisive arguments behind and going to that ground that we share in common. It was a remarkable occurrence to have Senator Chambers step up and support this bill last year. It was ostensibly a pro-life bill. And Senator Chambers and I fought on such things in past years. This is one where there's collaboration and it was done largely due to the work of the Judiciary Committee, Senator Lathrop, Senator Ashford. And we're starting to see the fruits of this now. And in the next few years, hopefully, we'll see the fruits of this policy decision start to bear out and make Nebraska stand out as a forward-thinking state on the cusp of adult stem cell research. [LB135]

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PRESIDENT SHEEHY: One minute. [LB135]

SENATOR FULTON: Thank you, Mr. President. [LB135]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Nelson. [LB135]

SENATOR NELSON: Thank you, Mr. President, members of the body. I want to thank Senator Fulton and Senator Ashford for their comments on the history and background of this bill. And in particular want to go back to Senator Fulton's comments about what PSL is and how important that is as far as the passage of A bills. I would ask a further question to clarify, and since Senator Fulton is closest to his mike, I will ask a question of him, if he will yield, rather than Senator Heidemann. [LB135]

PRESIDENT SHEEHY: Senator Fulton, would you yield to questions? [LB135]

SENATOR FULTON: Yes. [LB135]

SENATOR NELSON: Senator Fulton, you talked about PSL and explained that. And you talked in terms of hiring people. I just think it's important to also recognize that it doesn't necessarily...it's not confined to hiring people but it also provides that stipends may be paid for certain services. And, I think, in this case the request or the money would be used to pay stipends to scientists from out of the state for their services. They aren't employees but it's just a way of compensating them. Would you agree with that? [LB135]

SENATOR FULTON: Yeah, I believe that is correct, Senator. PSL does not necessarily have to mean employees. I pointed it out because I couldn't put a percentage on it. But a large majority of the time that we utilize PSL it is indeed to hire employees. So I pointed it out to members because when we hire employees we don't typically fire employees. And thus we have a growth in government over the years, and PSL is somewhat important for that reason. But in this case, this was for stipends to be paid to individuals who aren't necessarily employees of the state of Nebraska. [LB135]

SENATOR NELSON: Thank you, Senator. It's just plain...it occurred to me that \$15,000 doesn't go very far if you're going to hire someone. So that's what this is for. [LB135]

SENATOR FULTON: Senator, you could probably hire a senator at that rate. (Laughter) [LB135]

SENATOR NELSON: All right, thank you, Senator Fulton. Thank you, Mr. President. [LB135]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Are there additional members

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requesting to speak on LB135? Seeing none, Senator Heidemann, you're recognized to close. [LB135]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members. A pretty simple bill. We had some good discussion. We learned a little bit about PSL maybe through the whole process. Pretty technical in nature, just something that we need to do to correct an error on our part. And I would appreciate your supporting the advancement of LB135. [LB135]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You have heard the closing. The question before the body is on the advancement of LB135. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB135]

ASSISTANT CLERK: 41 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB135]

PRESIDENT SHEEHY: LB135 advances. Next legislative bill, Mr. Clerk. [LB135]

ASSISTANT CLERK: LB32 is legislation introduced by Senator Pahls. (Read title.) The bill was read for the first time on January 8 of this year, referred to the Banking Committee. That committee placed the bill on General File with no committee amendments. [LB32]

PRESIDENT SHEEHY: Senator Pahls, you're recognized to open on LB32. [LB32]

SENATOR PAHLS: Thank you, Mr. President and members of the body. LB32 would expand this list of business entities which may use the word "bank" in their names or to describe their business activity. Section 8-113 of the Nebraska Banking Act currently provides that no individual, firm, company, corporation, or association other than a bank, business and loan association, saving and loan association, or savings bank shall use the word "bank" as any part of its name or as a description of its business activity. This section does contain a list of entities which are exempt from this outright prohibition. LB32 would expand this list to include businesses which sponsor incentive-based solid waste recycling programs which issue reward points or credits to persons for their participation in such a program. Such a business, even with the word "bank" in its name, is unlikely to be confusing to the minds of the public with a financial institution. Thank you. [LB32]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the opening to LB32. Are there members requesting to speak? Senator Hansen. [LB32]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I think we need a little clarification on why we want a firm that does recycling, has nothing to do

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with financial institutions, being put in the banking law. If Senator Pahls would yield, please. [LB32]

PRESIDENT SHEEHY: Senator Pahls, would you yield? [LB32]

SENATOR PAHLS: Yes. Anytime a corporation or a company uses the word "bank" they must get it checked out by the Banking Department to see whether it fits that or not and it does not fit into the statute. So the company called "Reward Recycles" has come forth and asked to have this to be allowable, not for just them but for any company that does this work. [LB32]

SENATOR HANSEN: Can you explain the dimensions of their business, what...why do they want to use the word "bank" in the first place, if you know. [LB32]

SENATOR PAHLS: Okay. Recycle Rewards is a corporation from New York. What they do is they offer points for people who will recycle their goods. And they have a program called Recycle Bank. So...and as I can recall for, let's say, for a pound of recycle materials, recyclable materials they give like 2.5 points. And these points can be traded into...I have some of the places they can turn them into is like Sears, Dick's Sportswear, Target, Foot Locker, PETCO, those are just some of the companies that they work with. [LB32]

SENATOR HANSEN: But it has nothing to do with taking recyclable to a bank, to a financial institution, is that correct? [LB32]

SENATOR PAHLS: Right. As long as it is not confused with a financial institution it would seem to be allowable. [LB32]

SENATOR HANSEN: Thank you, Senator Pahls. It seems to me like we're getting a little bit carried away with the use of the word "bank." And since I was on the Banking, Commerce and Insurance Committee for a couple years I went through this discussion and it was for another financial institution. But they proved that they can use the word "bank" in their name. But then this opens up, I mean, if we're going to call a recycling bank, we also have semen banks, we have food banks, we have water banks and for that, you know, we have Ernie Banks. So I can't see why...this is going to be a long list of exceptions in this, Senator Pahls. And I'd like to have you explain that to me, if you would. [LB32]

SENATOR PAHLS: If I could have you wait until we get to LB88, that's when it gets into the banks that you're referring to because, see, this is a new exception. What you're talking about may already fall under another category that is exempted. [LB32 LB88]

SENATOR HANSEN: But we're still using the word "banks" in all these...all of my

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examples too. [LB32]

SENATOR PAHLS: Right. [LB32]

SENATOR HANSEN: Is the Banking Department going to go out and actively look for violations in other businesses, in other firms that actually aren't financial institutions? Could they tell by looking at Recycle Bank that it actually wasn't a financial institution? [LB32]

SENATOR PAHLS: Right. This is what happened, Recycle Rewards started to use the word "Recycle Bank," even though they were told this is not appropriate. Their attorneys said it did meet the statute. The Banking Department did an investigation. They fined this company and one of the other consent agreement that they had to go after was to see if this name could be...if the statute would be changed so that they could use this name. [LB32]

SENATOR HANSEN: So if I go to First National and put money in and they recycle it to another lender or another borrower, they could be called the First National Recycler Bank. [LB32]

PRESIDENT SHEEHY: One minute. [LB32]

SENATOR HANSEN: Is that correct, Senator Pahls? [LB32]

SENATOR PAHLS: Well, I don't know. They are a financial institution. [LB32]

SENATOR HANSEN: But they're also a recycler. (Inaudible.) [LB32]

SENATOR PAHLS: I suppose we could probably recycle a lot of things. (Laugh) [LB32]

SENATOR HANSEN: (Inaudible.) [LB32]

SENATOR PAHLS: But I think, in all sincerity the department would check this out. And if you're not following procedures, they can shut you down. They can fine you and they can...and you could pay for their investigation, which does happen. [LB32]

SENATOR HANSEN: I appreciate that, Senator Pahls. But still, I think we're going to fill the law books up with exceptions on this one, so. Thank you, Mr. President. [LB32]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Louden, followed by Senator Langemeier. Senator Louden. [LB32]

SENATOR LOUDEN: Thank you, Mr. President and members. I was wondering if

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Senator Pahls would yield for questions, please. [LB32]

PRESIDENT SHEEHY: Senator Pahls, would you yield to questions? [LB32]

SENATOR PAHLS: Yes, I would. [LB32]

SENATOR LOUDEN: Well, I was thinking along some of the same lines that Senator Hansen was questioning about, you know, food banks and all kinds of banks. Now with this LB...this one is LB32, will that strike the whole language of "bank" out of statutes unless you're talking about some type of money operation, is that what this is trying to do? [LB32]

SENATOR PAHLS: No, no. Those would not be struck. In fact in LB88 coming on...up later on you will...some of this dialogue we're having now would be...would really fit into that. This is just granting them, by passing this, this would grant them the ability to utilize any recycling company that wanted to use the word "bank" they could do that. [LB32 LB88]

SENATOR LOUDEN: Okay then it's giving these recycling companies the authority to use the word "bank," is that what...is that what we're supposed to be understanding? [LB32]

SENATOR PAHLS: Yes. [LB32]

SENATOR LOUDEN: Okay, because I was wondering when I look at LB88 there's not much difference. I wondered how come they weren't all into one bill. What's the difference between them because the other one it talks about your blood banks and that sort of thing? So I guess I'm at a little bit of a loss on what we were trying to do here when you have two bills that probably address the same subject and they weren't all rolled into one or...and it's in the same section of the statute. Is there a reason for that? [LB32 LB88]

SENATOR PAHLS: That could have happened. There are two different concepts. This is expanding, LB88 would be more limiting. So those are the two major reasons. This is expanding, the other would be closing it down a little bit. [LB32 LB88]

SENATOR LOUDEN: Okay. Thank you, Senator Pahls. I guess, I'm still...have a concern over we have two bills here, LB32 and LB88, that are both in the same sections and has the wording. And I guess I question why some of this couldn't have been put together. First of all, I question really what we're trying to do, if we're trying to set aside the word "bank" or if we're trying to specify what the bank is supposed to mean. With that, I'll yield any time I have to Senator Pahls, if he so wishes. [LB32 LB88]

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PRESIDENT SHEEHY: Senator Pahls, 2:30. Senator Langemeier. [LB32]

SENATOR LANGEMEIER: Mr. President and members of the body, as you can see on LB32 I voted...was the lone dissenting vote. This is...Senator Pahls has done a great job explaining this. This is a company coming to get forgiveness, to use the name. The bankers have signed off on it. And with that, I'm going to be supporting it. I had a little problem that they knew they shouldn't use it, they used it anyway. But they have affiliated with a company called First Star Fiber, out of Omaha, which is a very, very well-respected recycling group that is doing a great job and is a little company that kind of got caught up in this kind of secondhand. And I think it's very important to support that kind of activity. And if the bankers who are typically, in my five years of being on the Banking, Commerce and Insurance, are usually the ones that come and give us an earful about anybody trying to use the word "bank" for any purpose there too. And so with that I am going to be supporting LB32 and ask the rest of the body do so as well. Thank you, Mr. President. [LB32]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Pirsch. [LB32]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. For those just tuning in, I don't think this is a controversial bill. It...essentially, the word "banking" has a certain connotation in the minds of consumers in Nebraska. And so we want to be careful about how we allow that term to be used. In this particular instance, so the law, the normal rule is that you cannot use the term "bank." There's a certain list of exceptions in areas that would not lead to confusion for the consumers in Nebraska. And this is adding this particular recycling bank to the list of acceptable uses on that exclusion list. It doesn't create any confusion in the mind of people that it's an actual bank in the traditional term, I feel clearly. So much so that the bankers, as Senator Langemeier put forward, who are very zealous in protecting the use of that term have no objection to the use by the recycling bank. And if you look at the goal, what we need to do in the area of recycling and changes that have come about in the world, I think this is a really important thing we can do in the name of helping Nebraska go green in a reasonable manner. And so to that end, I would urge you to support this measure. Thank you. [LB32]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Are there additional members requesting to speak on LB32? Seeing none, Senator Pahls, you're recognized to close. [LB32]

SENATOR PAHLS: Thank you, Mr. President and members of the body. Thank you, Senator Pirsch and Senator Langemeier. I think you can see that there should be no confusion on this. The bankers are...they came out neutral on this. So I urge you to vote for this. Thank you. [LB32]

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PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the closing. The question before the body is on the adoption or the advancement of LB32. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB32]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB32. [LB32]

PRESIDENT SHEEHY: LB32 advances. Mr. Clerk, do you have items for the record? [LB32]

CLERK: I do, Mr. President. Thank you. Your Committee on Revenue, chaired by Senator Cornett, reports LB164 to General File with committee amendments attached. I have an Attorney General's Opinion addressed to Senator Cornett to be inserted in the Legislative Journal. New resolution, Senator Flood offers LR21. That will be laid over. Mr. President, Senator Nelson would like to print amendment to LB325. An announcement, Mr. President. Judiciary Committee will meet in Exec Session following adjournment underneath the south balcony; that's Judiciary Committee, south balcony upon adjournment. Name adds: Senator Mello to LB303, LB476; Senator Janssen to LB676. (Legislative Journal pages 412-427.) [LB164 LR21 LB325 LB303 LB476 LB676]

Priority motion: Senator Pirsch would move to adjourn until Tuesday morning, February 10, at 9:00 a.m. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Tuesday, February 10, 2009, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []