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Transcriber's Office

Floor Debate
February 17, 2009

[LB5 LB11 LB29 LB30 LB31 LB49A LB49 LB50 LB53 LB62 LB74 LB90 LB92 LB113
LB142 LB154 LB179 LB180 LB196 LB259 LB348 LB434 LR11 LR20 LR21]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-seventh day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Art Grimm, retired from St. John's Lutheran Church in Beatrice, Nebraska, Senator Wallman's district. Would you all please rise. []

PASTOR GRIMM: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Pastor Grimm. I call to order the twenty-seventh 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. []

PRESIDENT SHEEHY: Do you have any messages, reports, or announcements? []

CLERK: Mr. President, your Committee on Enrollment and Review reports LB142 and LB90 to Select File. Government Committee, chaired by Senator Avery, reports LB434 to General File, LB348 to General File with amendments. A communication from the Governor to the Clerk. (Read re LB11, LB29, LB30, LB31, LB49, LB49A, LB50, LB62, LB154, LB179, LB180, LB196.) Mr. President, LR11 has been reported correctly enrolled. I have hearing notices from General Affairs Committee signed by Senator Karpisek. Appointment letters from the Governor to the Educational Telecommunications Commission, the Board of Emergency Medical Services, and the Nebraska Environmental Trust Board. And finally, an amendment to be printed, Senator Howard to LB92. That's all that I have, Mr. President. (Legislative Journal pages 463-469.) [LB11 LR11 LB29 LB30 LB31 LB49 LB49A LB50 LB62 LB90 LB92 LB142 LB154 LB179 LB180 LB196 LB348 LB434]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Ashford, you're recognized for a point of personal privilege. []

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor and members. Good morning. This discussion really doesn't, I don't believe, needs a lot of floor discussion,

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but I wanted to get up and talk a little bit...and I rarely if ever has done this, and I noticed my senior colleague Senator Dierks is not here, so I'm the next senior senator. And I wanted to get up and talk just a little bit about an article that appeared in the World-Herald yesterday morning that I felt was miscast to a significant degree the efforts of this body and the work that goes on outside of this floor by members of the Nebraska Legislature. This is my eleventh year in the body and in those 11 years...I would not have come back here if I did not realize and understand the commitment of this Legislature to the constituents whom they represent and to the state of Nebraska as a whole. When I was here years ago, and Senator Harms will remember because he was...I worked with him when he was president of the community college where he lives, we often had meetings in Lincoln on difficult issues. And for the most part those meetings occurred not at a lunch or a dinner, but in an office or in the hall or somewhere else. One of the developments that has occurred, had occurred in the years that I was gone was the ever-increasing number of commitments that the...my colleagues, our colleagues have in dealing with groups of individuals who are not lobbyists, who are not paid lobbyists, but who are constituents. And people who work everyday in their businesses or teachers in their schools or doctors and nurses in their hospitals who work everyday to come to Lincoln and to spend, from Scottsbluff or Kimball or Ogallala or some of those great places in our state, who come to Lincoln to spend time with state senators do it with a mission. And they do it with commitment, and they do it with caring, and they do it with a love of their state. The fact that some of those meetings occur during lunches or during dinners does not obviate the commitment that all people who are here and who come here to talk to us have to the state of Nebraska. And I can tell you and tell the public and everyone who may or may not be listening to this but may listen later to what I'm trying to say is that I would defy anybody to come down here and spend the time that it takes to be a state senator. I would defy anybody to suggest that somehow this was a boondoggle, that this was some kind of a trip to Disneyland, that this was some kind of a way of playing up to special interests day after day to get more food, more money. That's not the case. That is not the case. I have not seen it. This body will not accept that. It is unfortunate, in my view, that many of these groups feel it necessary to commit to formal dinners or formal events. I don't think that's necessary. I don't think that...nor do I think what is most important in telling is I don't think the members of this body care. I don't think they demand or need or want to have to go to a dinner every night or go to a lunch every day. I don't believe that's true. I don't believe there's anybody in this body who feels that that's a necessary part of their job. But what they do feel is a necessary part of their job is to interrelate every single day with their constituents, their friends, their neighbors whom they represent. And I'll tell you, they take that, everyone in this body, takes that duty to be one that is quite sacred and quite important to them. So I just want to respond, if I can, in the only way I can respond and that is to stand up here as the second most senior member of this body, second to my good friend and colleague Senator Dierks, and say to the people of Nebraska don't be deceived. Don't be deceived by a miscasting of what really happens in this Legislature. And I'll tell you what, I noticed the cartoon this morning that showed a rather large state

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senator trying...or some sort of allusion to a state senator walking through the door and quite large. And I don't know. I look around here and I think most of my colleagues are in pretty darn good shape. And especially, especially thank God Senator Avery is in good shape, and welcome back to Senator Avery, who I might add had open heart surgery and is back in seven days. If that's not commitment, I don't know what is. (Applause) So I guess in summary when we think about commitment to our constituents and to our state I think of Senator Avery and I think of so many others that have sacrificed to come here. And Senator Pirsch, for example, mentioning that he gets home to his two young children, the babies and Senator McCoy and all the new young senators with young families who are struggling everyday because they're trying to do so many things. So I don't think this topic needs anymore discussion than this. But I just want to make sure that our constituents and our friends across the state understand the commitment of my colleagues to this great institution and the people of the state of Nebraska. Thank you, Mr. Lieutenant Governor. []

PRESIDENT SHEEHY: Thank you, Senator Ashford. (Visitors and doctor of the day introduced.) And also, today is Senator Harms's birthday. And cookies being passed out to your desks are for his celebration. So happy birthday, Senator Harms. (Applause) While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR11, LR20, and LR21. Mr. Clerk, we will move to first item under Select File. [LR11 LR20 LR21]

CLERK: Mr. President, LB74, no Enrollment and Review. Senator Pirsch would move to amend. (AM284, Legislative Journal page 444.) [LB74]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on AM284 to LB74. [LB74]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. LB74, to refresh your recollection, would authorize a bank to provide a federal home loan bank, FHLB, letter of credit to bank depositor for the purpose of providing additional protection for deposits that are in excess of the amounts insured by the FDIC currently in the amount of \$250,000. During General File consideration of LB74, Senator White expressed interest in having a bank that is offering letters of credit to its depositors, provide notice to its customers of the potential availability of the product. Senator White appeared to be concerned that some of the customers might be aware of the availability of the product while other customers may not and would thus not be aware that they could inquire into the possibility of providing additional protection for their deposits in excess of the FDIC insured amounts. Somebody questioned the need for such a notice since customers will...I'm sorry, since customers with deposits in excess of a quarter million dollars are generally sophisticated customers, and banks in today's environment are promoting other similar types of products in an effort to retain these large deposits and the liquidity that they represent. However, AM284 would require banks that offer FHLB

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letters of credit to provide their customers with notice of the potential availability of the product. Specifically AM284 provides that any bank that provides FHLB letters of credit to depositors in connection with deposits that are in excess of the amounts insured by the FDIC would need to post in the lobby of each office of the banks a notice indicating that this product is available. The requirement to post a notice in the lobby is similar to notice requirements associated with many other state and federal regulations, including notices regarding the basic FDIC insurance coverage. Naturally, the decision to issue a letter of credit would remain with the FHLB of Topeka based upon the application submitted and collateral provided by an individual bank and the ultimate decision to provide a letter of credit to any specific depositor would remain at the discretion of the bank. It is my understanding that the provisions of AM284 are satisfactory to Senator White, and I checked with him myself directly about that. And I would simply urge you to support the amendment and ultimately for advancement of LB74 to Final Reading. Thank you very much. [LB74]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You've heard the opening of AM284 to LB74. Are there members requesting to speak? Seeing none, Senator Pirsch, you're recognized to close. Senator Pirsch waives closing. The question before the body is on the adoption of AM284 to LB74. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB74]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the amendment. [LB74]

PRESIDENT SHEEHY: AM284 is adopted. [LB74]

CLERK: Senator Nordquist, I have nothing further on the bill. [LB74]

PRESIDENT SHEEHY: Senator Nordquist. [LB74]

SENATOR NORDQUIST: Mr. President, I move LB74 to E&R for engrossing. [LB74]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed nay. LB74 advances. Next item, Mr. Clerk. [LB74]

CLERK: Mr. President, LB259. Senator Nordquist, E&R amendments first of all. (ER8013, Legislative Journal page 375.) [LB259]

PRESIDENT SHEEHY: Senator Nordquist. [LB259]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB259. [LB259]

PRESIDENT SHEEHY: You've heard the motion on the adoption of amendments. All

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those in favor say aye. Opposed nay. Amendments are adopted. [LB259]

CLERK: Senator Utter would move to amend with AM196. (Legislative Journal page 404.) [LB259]

PRESIDENT SHEEHY: Senator Utter, you're recognized to open on AM196 to LB259. [LB259]

SENATOR UTTER: Thank you, Mr. President and members of the body. As you remember, LB259 is kind of a harmonization bill that explains that the word "insure" and the word "guarantee" as it pertains to FDIC insurance coverage actually mean the same thing. In Nebraska statutes, we refer to the word "insure." We are now adding the word "guarantee" because of the new language of the FDIC that came about in October. AM196 is simply an addition to the changes where the word "insure" also needs the word "guarantee" to go along with it. As they were researching the statutes, they noticed a couple of more places where we needed to add the word "guarantee." So it's simply an addition to the areas that are covered under LB259, and I would encourage you to support it. [LB259]

PRESIDENT SHEEHY: Thank you, Senator Utter. You have heard the opening of AM196 to LB259. Are there members requesting to speak? Seeing none, Senator Utter, you're recognized to close. Senator Utter waives closing. The question before the body is on the adoption of AM196 to LB259. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB259]

CLERK: 35 ayes, 0 nays, Mr. President, on the amendment. [LB259]

PRESIDENT SHEEHY: AM196 is adopted. [LB259]

CLERK: Senator Nordquist, I have nothing further on the bill. [LB259]

PRESIDENT SHEEHY: Senator Nordquist. [LB259]

SENATOR NORDQUIST: Mr. President, I move LB259 to E&R for engrossing. [LB259]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed nay. LB259 advances. (Visitors introduced.) Next item, Mr. Clerk. [LB259]

CLERK: Mr. President, LB5. E&R amendments first of all, Senator. (ER8014, Legislative Journal page 399.) [LB5]

PRESIDENT SHEEHY: Senator Nordquist. [LB5]

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SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB5. [LB5]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed nay. They are adopted. [LB5]

CLERK: Mr. President, I have amendments to the bill. However, I have a priority motion. Senator Haar would move to bracket LB53 (sic) until June 4, 2009. [LB5]

PRESIDENT SHEEHY: Senator Haar, you're recognized to open on your motion to bracket LB53. []

SENATOR HAAR: Mr. President, members of the body, thank you. The motion to bracket...well, I guess I would start off by saying if we just started this discussion again.... []

PRESIDENT SHEEHY: Oh, hey, Senator Haar, just one moment. []

CLERK: Senator, my fault. We're on the wrong bill. My apologies, Senator. Mr. President, the first amendment I have to LB5, Senator Stuthman, AM345. (Legislative Journal page 470.) [LB5]

PRESIDENT SHEEHY: Senator Stuthman, you're recognized to open on AM345 to LB5. [LB5]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. First of all it's a pleasure to see all of these smiling faces again back here after a wonderful four-day weekend. I just think that was really nice. It almost after four days it kind of feels like it's something that I want to kind of get back to and I get reenergized and I might need a little bit reenergizing. We've got a little work to be done on some of these bills, so. What my amendment is doing is on page 1 of the E&R amendments in line 10 reinstates the stricken matter beginning with "it" in line 10 through "that" in line 11. So what it's doing, it's striking, "It shall be unlawful to trap any wildlife in the county road right-of-way, except that the commission may allow trapping of raptors within the county road right-of-way in accordance with section," and then, "Any county may enact a resolution allowing the trapping of wildlife in the county road right-of-way or in a certain area of the right-of-way." In simple terms, is the ban on trapping is still in place in the state in my opinion. But a county may see the need where they have...there should be trapping taking place in a county. A county may pass a resolution where that county would say, you know, we have a situation where we need to trap, maybe not in the whole county, and that's why I have a certain area of the county also. And that takes care of the portion that Senator Wightman and his amendment that was adopted to the E&R amendments, a certain area of the county. The whole county may not feel the need to allow trapping in the whole county, but there is an area where they feel that

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there is a need for trapping to be taking place in that area. So what this amendment does is it keeps the ban in place, the trapping ban in place, but it gives the county the responsibility and the local control that if they feel that they need to allow trapping in their county or a certain portion of the county, then they designate that and they can pass a resolution allowing trapping in that certain area or in the entire county. So it does leave it for local control. And that was emphasized many, many times as far as local control, we need to have local control. And that was addressed in Senator Campbell's and Senator Wightman's amendment. They wanted to have the local control. What this does then, like I stated before, was the fact that there will...trapping is not allowed in road right-of-ways throughout the state. And that's what we currently have on the books right now. But what this does do is that it allows a county or a certain portion of a county to allow trapping in those areas. And all the county board has to do is to pass a resolution to allow trapping in those areas. So with that, I tried...I was thinking that this would be a very simple approach to it, and it makes it that trapping can be allowed and it gives the local county board the authority to allow trapping in a county and it could be that every county would maybe allow it, but I don't think that's going to happen. But I also think that if there's a county that only has a portion of the county that needs to have these animals for wildlife management being trapped. Also, I would like to mention I did pass out an e-mail that I did receive this morning from the deputy of Jefferson County sheriff about the fact that while he was taking his dog out to walk, that he stepped in a trap meant for bobcats. And I think that is something very serious and I want you to take a look at that e-mail. I have received a lot of e-mails stating that trapping should not be allowed in those public right-of-ways. And I'm very sympathetic to that because in my opinion, those are public right-of-ways for the public to use. The public can walk in them. The public can do almost whatever they want to in those public right-of-ways. And I think with this amendment that I have attached, it really simplifies the fact that I'm very, very much interested in the local control part of it, but it allows the county to allow trapping in the whole county or in a designated area of the county. So with that, I would ask for your support on this amendment. Thank you, Mr. Lieutenant Governor. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the opening of AM345 to LB5. Members requesting to speak, Senator Haar. [LB5]

SENATOR HAAR: Mr. President and members of the body. As you know, I testified against this bill in the past because I think it's a matter of safety. In fact, I borrowed two traps from Senator Christensen and I just chickened out, I couldn't snap them on my hand. They just looked too dangerous to me. However, I think that Senator Stuthman's amendment is a good compromise and it'll give local control, which is what's being talked about, and then each county will have to decide whether or not to do trapping in the ditches. So I rise to support Senator Stuthman's amendment. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Christensen, followed by Senator Lautenbaugh. Senator Christensen. [LB5]

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SENATOR CHRISTENSEN: Thank you, Mr. President. I come in opposition to this amendment. We have already battled this particular battle on first round and decided that we...allowing trapping and the counties being able to opt out was a direction we want to go. This is just an attempt to take it backwards, back the way it's been. And I just want everybody to know that I'm in opposition to this. I believe we've been working on language on first round to make this a better bill. You'll see an amendment coming shortly that I will support that clarifies some better language for the counties to make sure that they can enforce what we put on as an amendment for the counties. And I will support that one when we get there, but this one here just takes us in a backwards direction. It's not the direction we were headed, and I just want everyone to know I'm opposed. Thank you. [LB5]

PRESIDENT SHEEHY Thank you, Senator Christensen. Senator Lautenbaugh. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I, too, rise in opposition to this amendment and in continuing support of this bill, and I'm reminded of a story. Back when I was in college at Creighton I was asked to fill in on the radio station one night, the campus radio station. The regular host that evening couldn't make it. He was a friend of mine. I've always been told I have a face for radio, so it was good fit. So I went to the radio station and long story short, the show didn't take off. Apparently there was no demand in the mid-eighties for a Led Zeppelin, Pink Floyd, Rush oriented all evening radio show. Who knew. But in any event, I started to wonder a couple hours into it if anyone was listening, and I had a good reason for wondering because this was in a building that I never went to. I didn't have any classes in that building, wasn't familiar with the building. I'm not sure if I'd had classes I would have been more familiar with the building, but that's another matter. In any event, I just said on the air, just as a point of information would anyone please call in and tell me where the restrooms are in this building because I needed to know. And the phone didn't ring, and that told me I didn't have a huge body of listeners out there, either that or it was a bunch of people who wanted me to have something embarrassing happen in the radio booth. But in any event, I never got the call, the phone never rang. I feel the same on this bill, to be honest, because I stood here a couple of weeks ago and said: Where is the evidence? Where are the people telling us what's going on here, where are the kids who have been hurt in these traps that we've heard about that are at risk? Where is it? In November of 2007, we lost our family dog. That was very traumatic. My boys cried, my wife cried, everyone cried. It would be so easy to stand here and say won't someone protect the animals, won't someone think of the animals, please save the animals. But that's not what this is about. That would be easy to do, but that wouldn't be the right thing to do, in my opinion, on this bill. And I have heard from the public. And the astonishingly uniform e-mails from the public on this. I have heard the voice of the people, and it has said usually verbatim: LB5 would allow trapping on the county road right-of-way, a dangerous proposition that would put Nebraskans, their pets at risk,

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etcetera. And I take these letters seriously, I do, but I would suggest to people when you're writing in on a letter you've gotten from a Web site, please alter it a little to bring your personal opinions to bear so we're not reading the same letter over and over and over. A corollary to that would be please don't write in and say: Please oppose LB99. The republic will fail if you support LB99. Tell us what LB99 is. Write in and say: Please oppose LB99 that allows all-night dog racing in Cozad or something like that so we know what we're talking about. In any event, that's a digression. So who are we hearing from on this? Where are these letters coming from? Almost uniformly they're coming from the Humane Society. The Humane Society, the national organization. These letters are on their Web site. You can fill in your blank, fill in your name and it comes to us. Tell them who your state senator is and we get the letter. It's interesting we're not hearing from a lot of child advocates about this. I don't think we have a shortage of child advocates in this state. We're not hearing from Voices for Children. We're not hearing from... [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR LAUTENBAUGH: ...the Child Saving Institute. I don't think this is their bailiwick. But we're not hearing from those. It's at least possible that this risk to our children was overstated in the prior debate. It's very, very likely, I would submit, that there is no real risk to our children from these things, the traps that would be legal if we repeal this. And I would suggest that when we stood here a week ago, two weeks ago and talked about the threat to tourists, tourists roaming in our ditches from November to February, we were going off in the wrong direction. And I would submit that as an individual you have a better chance of getting struck by a meteor than you do being hurt by one of these traps, and that would include your children because the evidence just hasn't come in. And now here we are with this amendment putting the burden back on the trappers to go to the county to beg permission for something we shouldn't have outlawed in the first place. [LB5]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Lautenbaugh. Senator Pirsch, followed by Senator Carlson and Senator Lautenbaugh. Senator Pirsch. Senator Pirsch waives. Senator Carlson. [LB5]

SENATOR CARLSON: Mr. President and members of the Legislature, in considering this amendment and thinking about the bill that we're debating this morning, some thoughts come to mind and I'm going to share them. The author of government is God. He is the king of kings. He's a kind, benevolent king. And if you have a kind, benevolent king, that's probably the best form of government there is. But the next best form of government, because realistically in this world we can't have the best kind, is democracy. And I think the Unicameral is the best form of a democratic government. Now, governing in the Unicameral, governing in a democracy is a process of taking away freedoms. And I think whether it's this bill or whether it's any bill that we consider

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we need to think very seriously when we have something that immediately takes away freedom. Freedom is valuable to all of us. This amendment to me works in reverse. We take away the freedom and then we force counties to opt back in. I think the bill the way it was amended by Senator Campbell is the right approach. We pass the bill, everyone is in, the freedoms are there, and then there's the option by counties to opt out. So I am not in favor of this amendment, but in favor of the bill that advanced to Select File. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Lautenbaugh. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. To continue on as I was saying before, haven't heard the evidence, haven't heard the danger of risk. So today we're presented with an e-mail that has come in now as of last Friday regarding a deputy who knows a deputy whose dog stepped in a trap meant for bobcats. That doesn't appear to be the kind of trap we're talking about here in the county right-of-ways. This is a different deal. So it's at least responsive, but not exactly relevant to what we're talking about. And it's important to know...look at this e-mail, we all got it. It's addressed to someone named Pierre Grzybowski. Well, who's Pierre Grzybowski? He's not among us. So I looked him up on the Internet just now, and he is the head of the Fur-Free Campaign for the National Humane Society. So this deputy was so moved to tell his story that he contacted not his state senator, not you or me, but the head of the Fur-Free Campaign to air this concern, this threat to our dogs and children. Please don't be deceived and don't be distracted by irrelevancies here. We are doing the right thing in repealing a bill that came on as an amendment and probably shouldn't have back in 2007. This amendment, again, puts the burden back on the trappers to justify what they want to do, which I submit is a 180 degrees from where we should be. As Senator Carlson pointed out, the burden should be on us to show a demonstrable identifiable risk, and after pleading for some evidence this is the best we can get forwarded on to us by the head of the national anti-fur campaign. I would hope you would consider that when you give weight to this e-mail. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Are there additional members requesting to speak to AM345 to LB5? Seeing none, Senator Stuthman, you're...did you wish to close or use five minutes? Senator Stuthman, you're recognized to close. [LB5]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I know we have debated this bill for quite a lengthy time. But my intent is to hopefully make this bill very plain, straightforward, and easy to understand. And the reason for that is because I feel the E&R amendment that we have in place right now, it's a piecemeal bill. We have...we're not allowing trapping at the present time. We're going to repeal that. We're going to allow trapping. We're going to have counties decide that maybe they don't want to trap. But then there's a portion of the county that says, you

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know, by golly I think we better trap in this northwest corner here by this one creek bed. So they decide that they want to have that certain portion of the county to allow trapping. I think this is a very, very poor bill, in my opinion, because the average public will not know where trapping is allowed and where trapping isn't allowed because there's no signage, there's no notification of where trapping is going to be allowed, and where trapping is allowed. I felt that with my amendment we stayed with what we had passed a couple of years ago, not allowing trapping in public road right-of-ways, in county road right-of-ways. But if there was a county that was very strongly in support of trapping in their county they could, by resolution, allow trapping in that county. Or there may be a portion of that county where they only wanted to allow the trapping and not the whole county. I think that gives the local control of that in the fact that there's going to be some trapping allowed in a county. I think, you know, in the e-mails that we've received, I've received very...a lot of them and they have stated, you know, that this is a public right-of-way. Placing a dangerous trap in a public right-of-way is not good business, in my opinion. I think there are areas of right-of-ways that need to be trapped. I truly agree with that. That's why I had made an attempt prior to this, you know, that if there was a designated area for the need of wildlife management that it would be posted and trapping could be allowed. I felt that this amendment is an amendment that very...it simplifies the fact and it gives local control. So I think this is an issue that would be very, very workable that we leave in place the ban on trapping in road right-of-ways, but we allow counties to have the jurisdiction to allow trapping in their county or any portion of that county. So with that, I would ask for your support on this amendment. Thank you, Mr. President. I will ask for a call of the house and a roll call vote in reverse order. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. There has been a call of the house. The question before the body is shall the house be placed under call? Those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB5]

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call. [LB5]

PRESIDENT SHEEHY: The house is under call. All unexcused senators please report to the legislative Chamber, all unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Dierks, Senator Fischer, the house is under call. Senator Stuthman, all members are present and accounted for. Members, you have heard the closing of AM345 to LB5. Mr. Clerk, Senator Stuthman has requested a roll call in reverse order. Please proceed. [LB5]

CLERK: (Roll call vote taken, Legislative Journal page 470.) 15 ayes, 29 nays, Mr. President, on the amendment. [LB5]

PRESIDENT SHEEHY: AM345 is not adopted. Next amendment, Mr. Clerk. The call is raised. [LB5]

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CLERK: Mr. President, the next amendment I have is by Senator Lathrop, AM347. (Legislative Journal page 471.) [LB5]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized open on AM347 to LB5. [LB5]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'll explain AM347 in just a second. I want to first express that I'm a little puzzled by this bill, by LB5, and you've noticed probably my opposition to the bill from the time it was introduced. I want to talk about that for just a second before I introduce or before I address the particulars of AM347. The bill allows an indiscriminate device to be hidden in ditches to snare and injure, not just raccoons, not just badgers, but dogs, cats, and people. And we had a thoughtful discussion when Senator Hadley indicated that he had called his roads people and said, are there times when we need to have trapping on the roadside, and they said yes. Some of these animals, the beaver can create a dam, cause a washout, so yeah, it's probably appropriate that we be able to on occasion trap in the ditch. But the roads people and now the county people are e-mailing me, probably e-mailing you, and saying, wait a minute, we got people going into those right-of-ways. We have roads workers, we have utility workers, we have employees of the county going in those ditches, and we don't want them stepping in these traps, they're going to be hurt. So what's the social utility? I mean, after all we are here to develop policy, to consider policy, and to vote on good policy and not advance poor policy. So we are now accepting the idea that these traps can be put in ditches and hurt roads workers, hurt employees of the county, hurt people that work for the utilities, hurt people that have every right and every business in that ditch, and their animals and their horses and their domestic animals. What do we get for that? What policy is advanced, what concern, what consideration is advanced by passing LB5? I'll look for Senator Christensen to give me an answer to that next time he speaks because I don't understand it. I don't understand why we are going to allow people to put devices into the right-of-way where people have every right and business to be there, where domestic animals might be found. I don't understand it. AM347 does something that's very simple. It says you want to trap in a roadside ditch, you will be liable for the damages that follow. So if that county worker whose minding his own business and he's out checking out a bridge steps into a trap and has his heel now caught and develops an infection and has problems, or the guy whose dog or cat are caught in a trap and killed, the guy who owns the trap is going to pay. Now, you may say there's Lathrop, he's a trial lawyer, he's just trying to generate work. Believe me I'd rather see this bill dead. This isn't about trying to generate work or claims for trial lawyers, but now you've got to ask yourself this: If you follow Senator Christensen's reasoning, which was I've never heard anybody getting hurt by one of these things, then what's the harm in attaching a little bit of civil liability for somebody that gets hurt? Because what you're doing now when you have any doubt about this amendment, what you're doing now is saying, well, somebody is going to get

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hurt and then they're going to sue and take somebody's farm. Well, wait a minute. Maybe we shouldn't let these things in the ditches in the first place. This isn't just an amendment to stall Senator Christensen's bill. It's not. I mean it. I mean it because I think if we're going to have trapping in ditches where people have a right to be, then the people who are doing the trapping, an indiscriminate trap that can catch a human being by the foot or a dog or a cat or a horse ought to pay for the damages they do. It's a very simple proposition. There should be liability if you're going to engage in a dangerous activity. But it also should make us think while we consider this amendment. Did I really think no one was going get caught in these traps? Did I really think no dog and no cat would ever get caught in these traps or was I just ignoring the idea and the prospect? Because now it's time to answer the question. And if you think no one is going to get caught in these traps, voting for my amendment should be easy for you. It'll just be a bunch of language in the statute creating liability for a situation you believe will never happen. But if you think it might happen and somebody might be civilly liable, then you ought to ask yourself whether trapping in the roadside ditches is a good idea in the first place. I would ask you to support AM347 if you are determined, as it appears, to pass LB5. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the opening of AM347 to LB5. Speaker Flood, you're recognized for an announcement. [LB5]

SPEAKER FLOOD: Thank you, Mr. President and members. I thought since it is Tuesday and we're off and running on Select File I'd give you an idea of what I intend to do this week on the schedule just for your own planning purposes. It is my intent this week to work through the Select File bills that you see on your agenda today, and that will obviously, I think, take us well into tomorrow, possibly Wednesday. After that, it's my intent to start back off with some General File bills. Note that you'll see some of Senator Avery's bills reappear on the agenda. It's nice to have you back, Senator. And we'll also see some of Senator Cornett's bills reappear on the agenda due to her absence last week. But it is my intention after we finish Select File to go to General File in worksheet order, and then on Friday we'll do some Final Reading and finish up some of the General File. So that's where we're at. I thought maybe this would help you as you plan your week to better understand what we will be working on. Thank you, Mr. President. []

PRESIDENT SHEEHY: Thank you, Speaker Flood. (Visitors introduced.) We'll now return to floor discussion on AM347 to LB5. Members requesting to speak, Senator Christensen, followed by Senator Lautenbaugh. Senator Christensen. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. President. I want to remind you that trapping is done during this season. It is in the winter months of November through February. Also want to remind you that legal traps won't hurt you. I have set there...and you can ask Senator Haar, we showed him after he asked on record to have these brought in. We brought the legal traps into him, we set them off on hands, we set them

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off on feet. There was not even a comment of "ouch." You've got to realize a lot of the traps you see on the Internet are all the illegal traps. They're set there to catch your attention. They're not what you're going to run into. Anybody that says that they are a county worker are going to step in it and get hurt doesn't know the truth. There isn't a trap that's going to hurt you out there. And if you want it brought to your office and set off on your hand or my hand, we'll do that because legal traps aren't going to hurt you. If you're concerned about those that could hurt you, the illegal traps, we're not even in that discussion because we're setting policy on what people that obey laws do. You can't set forth policy for criminals. You punish criminals. You don't go after criminals by making a statute more firm or change the rules to prohibit them because it doesn't work. They're already criminals. They're outside the law. There is no way a county worker as you just heard could step in one of these legal traps and have an infection. If they're working, I assume they surely got requirements for shoes, and even on a bare foot it's not going to break the skin on these legal traps. So the idea that you're going to have a county worker get infection is wrong. He doesn't understand what traps are allowed evidently. You know, and as I said, I'm more than willing to bring them to your office and show you because it is not necessary here. If you're worried about the liability here, we've got AG's opinion, 87024, February 5, 1987: An individual who places traps on public right-of-way could place themselves liable to any person injured by a trap could be sited for criminal assault or mischief or for injury. We've already got the opinion what happens, what you're liable for. But I challenge anybody that thinks this is necessary to actually allow us to bring a legal trap in, show you what it does, stick your hand in it or stick my hand in it or someone else's, stick my foot in or your foot in and see what's going to happen. Again, if it only opens up five inches wide it's not even going to close on my foot. You know, to have these e-mails of county people saying they're going to get hurt or have a statement that they're going to have infection is just not possible on these legal traps. Illegal ones, the ones with the teeth, the oversized ones with the heavier springs, sure, but we got regulations on what is allowed. It is very important that we have them regulations, and they will be put back in place by Game and Parks before they're is any trapping allowed once this bill passes. [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR CHRISTENSEN: Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator Lautenbaugh, followed by Senator Haar, Senator Stuthman, Senator Pankonin, and Senator Lathrop. Senator Lautenbaugh. [LB5]

SENATOR LAUTENBAUGH: Thank you Mr. President and members of the body. I wonder if Senator Lathrop would yield to a question. [LB5]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB5]

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SENATOR LATHROP: Yes I will. [LB5]

SENATOR LAUTENBAUGH: Thank you, Senator. You just heard Senator Christensen reference the Attorney General's Opinion. Isn't it your understanding that hunters and trappers are already liable if they cause harm negligently doing their activities? [LB5]

SENATOR LATHROP: Well, I did read the AG's Opinion and it addresses negligence and not strict liability. So I think we're talking about two different things. And of course being a liability lawyer you recognize the difference between a negligence claim and a strict liability claim. I don't want to talk on your time, but yeah, the AG's Opinion doesn't do the same thing this amendment would do. [LB5]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop. Again, I hesitated whether or not to even stand up and speak on this amendment, but I obviously did, probably unwisely, but either way. The problem we're dealing with here was also stated by Senator Christensen, and that is that we're dealing with myth rather than reality, rather than inconvenient facts. We outlawed trapping in ditches two years ago. That would suggest to me that we've had decades of experience where these traps were in ditches, decades prior to the ban where this was going on, I would assume. And I'm waiting for someone to come in and say, and this caused me damage in a ditch with the legal traps that we're talking about now. That hasn't happened. That still hasn't happened. I continue to ask for it. It still hasn't happened. We're sort of in a realm here where facts don't matter. We were moved on emotion, I believe, to pass this ban in the first place and now we're being approached on emotion again and they're trying to sell us that there's some sort of a danger here that we must avoid despite the fact that the evidence isn't forthcoming. And what do we have today to finally supposedly illustrate that there's a danger currently? We have a deputy who heard about a friend, who hurt himself on a different kind of trap in a different place trying to free his dog, and he was so moved by this that he wrote to an anti-fur activist to express his outrage. That's where this is coming from. That's where this is coming from. Don't be deceived. And here's the problem with this amendment: Yes, it is true that there have not been damages. So this amendment really doesn't increase anyone's liability. There's been no evidence that anyone's been hurt that I've found in the area we're talking about with the traps we're talking about. However, we are faced with an opposition outside of this body that wants to ban trapping. No matter what, that's the issue here. Don't be deceived. So if this liability provision is inserted, what do you suppose is going to happen? We're going to have a miraculous increase of claims for people who are inexplicable walking in ditches between November and February, and somehow hurt themselves on these traps. The lawsuits will come and they are going to try to force these individuals out of the business. I can see that coming a million miles away. If they're negligent in placing these traps, sue them now, you can. If they place them illegally, they should be prosecuted. That's the state of the law at the time that we passed this amendment or

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passed the ban in the first place, I should say. If the trap was illegal, it's illegal. You can't make it extrasuper illegal. It's illegal. [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR LAUTENBAUGH: Now we're being asked to hold people strictly liable. I guarantee you we are going to have a lot of claims probably from unfortunate people from out of the state who happen to be members of a certain organization who miraculously found their way to get hurt on these traps. I promise you that will happen. We're not hearing it from Nebraskans. We have no claim history from Nebraskans, but mark my word, we pass this amendment, the claims will come. And even if they're not meritorious, they still have to be defended and they increase the cost of doing business and the end result will be the same. Please vote no. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Haar. [LB5]

SENATOR HAAR: Mr. President, members of the body, I want to thank Senator Christensen, did bring the traps to my office. And there was somebody from Game and Parks, just to let you know what happened, who set off one trap on his hand. He said it hurt, but it didn't break any fingers. I opened the trap and put my fingers in it and it hurt. I wasn't willing to snap it on myself. For me, my background and training was in science and for me the real crucial question here is, could it hurt a child? And I would like to see some kind of experiment. And just to let you know, we called MythBusters and said this would be kind of a fun thing to do, and they said, yeah it would be, but we don't get into politics, so. But I'm looking at UNL to see if there's someone at UNL who can conduct a biometric experiment to see if a child putting their hand into either one of these traps would be hurt. And of course what they do is they model the human skin, they model human bones and so on. So I will continue that because I think until we know really whether a child could be hurt by putting their hand in these traps, we won't know. It's just going to be a debate about whether it's myth or not myth. So with that though, I again raise in support of Senator Lathrop's amendment, and I will continue my research to find an answer to this question. Can a trap, can either one of these traps hurt a child if they put their hand into it? That's what's important for me. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Stuthman. [LB5]

SENATOR STUTHMAN: Thank Lieutenant Governor and members of the body. I would like to ask Senator Christensen a couple of questions. [LB5]

PRESIDENT SHEEHY: Senator Christensen, would you yield to questions? [LB5]

SENATOR CHRISTENSEN: Yes. [LB5]

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SENATOR STUTHMAN: Senator Christensen, is the 220 Conibear trap a legal trap? [LB5]

SENATOR CHRISTENSEN: No. Not on the road right-of-way. It's legal to trap in other areas. I believe I got that correct. [LB5]

SENATOR STUTHMAN: If a trap is legal on one side of the fence, why isn't it legal on the other side of the fence? [LB5]

SENATOR CHRISTENSEN: Because we have extra precautions on the roadside. [LB5]

SENATOR STUTHMAN: Was that stated in the bill that was passed? [LB5]

SENATOR CHRISTENSEN: That's Game and Parks rules, so yes. They will set up the rules and regs, so that does make it in the bill. [LB5]

SENATOR STUTHMAN: So then in other words...you know, and I've been getting e-mails about the 220 Conibear traps, and what type of a trap would it take to trap a badger? And the majority of the game that's in a road right-of-way is badgers and beavers. I don't know of hardly any other fur-bearing animal that you would be trapping in road right-of-way. Can you tell me what type of trap it takes to trap a badger? [LB5]

SENATOR CHRISTENSEN: I can't tell you the number or what it is that they use, but when you're after a badger, you're also placing it in the hole. [LB5]

SENATOR STUTHMAN: Yes, you're in the hole. And in some of the testimony before, you know, horses step in the hole and probably hurt their foot and they probably hurt it worse if they tripped the trap also. That is the concern of mine. Senator Christensen, what type of animals would you be trapping that you could place a hand of a child in a trap and it wouldn't hurt the child as you had just claimed? What type of animals would you be catching? Would you be catching mice, road rats, or what would you be catching in those little small traps? [LB5]

SENATOR CHRISTENSEN: In comments I made, I referred to the county workers walking out there, of that e-mail that everybody was talking about, of sticking their...yeah. Is a kid going to scream? Yeah, it's going to shock them. Is it going to break their hand? You can't say it isn't possible, but if you have...and you know the trapping season and know things as a responsible parent, are you just going to send them out there and run anyway? At least I don't my kids. I brought my three-year-old here this morning. I just didn't tell him run around the Capitol. I took care of him. You know, we can make this very emotional as it was two years ago and attempt to set policy based on emotion. Well, we can look at the history of 70 years and that the number of cases turned in of people hurting things, and it's not documented. [LB5]

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SENATOR STUTHMAN: Senator Christensen, how many traps do you feel are illegal and they're used in a road right-of-way? [LB5]

SENATOR CHRISTENSEN: I wouldn't even have any answer to that. I have no idea. [LB5]

SENATOR STUTHMAN: The issue is, is in your conversation with trappers, are they getting the majority of their rewards, their pelts, their animals that they're trapping? Are they getting them out of the road right-of-ways or are they getting them from personal property? [LB5]

SENATOR CHRISTENSEN: Nine percent decrease in the pelts that were sold after the bill come in place, so that would be 9 percent on right-of-ways. If you're just using...saying everything stayed the same, you that's pretty hard number to give you, but the number of pelts and things taken in decrease 9 percent. [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR STUTHMAN: The number of the pelts decrease 9 percent, but that to me still doesn't tell me that just because of that ban there was a decrease of pelts. It could have been because of the weather. It could have been because of the quality of the pelts. When a person checks his pelts in, do you have to state I got these on private property and I've gotten these in the road right-of-ways? [LB5]

SENATOR CHRISTENSEN: Not that I'm aware of because now you wouldn't have to, definitely, because there's no trapping there. Previously, I can't answer the question, but that's why I told you it was the decrease in the amount of pelts over what the previous averages were. [LB5]

SENATOR STUTHMAN: But I feel that you really can't contribute that to the fact that there was no trapping in the road right-of-ways. I mean, yes, we did not allow trapping in the road right-of-ways, but the decrease of 9 percent could have come from other factors also. Is that correct, Senator Christensen? [LB5]

SENATOR CHRISTENSEN: I'm sure it's possible, but we all know there's some animals caught there. It has to be some number. [LB5]

PRESIDENT SHEEHY: Time, Senator. [LB5]

SENATOR STUTHMAN: Thank you, Lieutenant Governor. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Thank you, Senator

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Christensen. Senator Pankonin. [LB5]

SENATOR PANKONIN: Thank you, Mr. President. The reason I'm speaking on the amendment is kind of more of a general comment. When we had an earlier vote on Senator Stuthman's amendment today, and he started in reverse order and there was some green lights going on, and when it got to me I voted for the amendment. And Senator Christensen said fairly loudly, that maybe people heard, do you know what you're doing? You're voting for...I said, I do know what I'm doing. I did vote for that amendment because I thought it was a fair compromise to have counties have to kind of opt into this policy if they wanted to do it or in certain areas. I'm opposed to this bill. I don't think I'm going to vote for the amendment, but I want to speak on this bill for just a couple of minutes. There's three reasons I can think of very promptly of why I'm not for LB5 as a policy for our state. First of all, we're talking about public right-of-ways--public. A space that the public can use whether for different purposes, but, you know, we have a public space around this Capitol, we have state parks. And to me it's just disconnect that we're going to have traps in a public area. We call them public right-of-ways. It just...that doesn't compute for me that in areas that are meant public right-of-way, let's have traps. I don't care about the season or whatever. That just doesn't make sense. And my district and I think many of the districts in this state have acreages, mine has a lot them, lake developments that are out in the countryside. Folks may walk a pet at any time during the year, children may be out playing. And I heard from a county commissioner in my county, home county, Cass County whose definitely opposed to this bill, who is a farmer himself, but knows that our areas has so many of these acreages and people out and about that he thinks it's a poor policy and I do too. The third thing, we've talked about legal traps, illegal traps. My question is, I don't know that much about it, but my hunch is that not all the traps get picked up. People forget about them, they lose them, and they're out there, but your grandchild might find it, your dog or pet may find it. And so I just think this is a poor policy. I thought Senator Stuthman's amendment was a fair one. That's why I voted for it. I'm not wild about increasing civil liability. I know what Senator Lathrop is trying to do by putting people on the spot to say, hey, if this is no problem then why not add this. But I think this is a poor state policy. I'm going to vote against the bill. I don't know what I'm going to do on the amendment, but I just want to weigh in because more of you have acreages in your area than you may imagine. And if this policy becomes policy and your county doesn't opt out and someone gets hurt, even though we...maybe it's been anecdotal on the evidence, but I don't want that on me. I'm not voting for LB5 and that's why. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. We have Senator Lathrop, followed by Senator Price, Senator Hadley, Senator Stuthman. Senator Lathrop. [LB5]

SENATOR LATHROP: Thank you, Mr. President. I have a number of things. I've been keeping notes here and I got a number of things that I want to talk about, but it's interesting. I was listening to Senator Christensen. I want to maybe comment on some

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of the remarks so far. I was listening to Senator Christensen say two things: one is, nobody can get hurt in the legal traps, except what he also said was what's legal is a Game and Parks regulation that, contrary to what Senator Christensen represented, is not part of this statute. That can change any day. Whatever kind of maiming trap that could be authorized by Game and Parks could be in the ditch after we pass this bill. Don't be fooled that this is just about some harmless trap that could be put in the ditches because there's a law against it. There's not, it's a regulation. That's the first thing. The second thing is we go back to the same argument, which is these things are safe, come by my office and put your hand in one, you'll see that it's safe. It can't hurt you. The problem with that argument is why would you oppose my amendment if nobody can get hurt? Think about it. If we establish strict liability for somebody who can't get hurt by one of these traps, what's the harm? Why the opposition? I think the opposition is coming because there is the possibility of injury. And what about the people in your counties that are e-mailing you and they're saying, we know what we're talking about, we don't want our people hurt, don't pass this bill? Now, Senator Lautenbaugh, my friend Senator Lautenbaugh started his remarks by suggesting that we are now dealing with, in my amendment, not dealing with facts. Now we've abandoned facts and we're talking about other things. And then he said this is going to, I guarantee you, it's going to cause lawsuits. That's silliness. That's silliness. If you can't get hurt by this, it's not going to cause lawsuits. No lawyer is going to take cases from somebody that's not hurt and create a flood of lawsuits. That is propaganda and you know where it comes from and it's nonsense to try to scare you with the idea or the prospect of a lawsuit is...it isn't fair argument. This body is no place for that kind of an argument. It's not going to generate lawsuits. The only lawsuits that will be generated would be from somebody that's hurt. No lawyer worth this salt would take a case for somebody that isn't hurt, and if you have been hurt by a trap, then the guy who thinks he needs to be doing this in the roadside ditch ought to pay. The last remark I'm going to make is this isn't just about...this amendment isn't just about people. It's about their animals. It's about their dogs and their cats. And Senator Pankonin makes a great point. There are acreages. and if I get permission to put a trap in a ditch across the street and down the road from somebody's acreage and their dog chases a car and goes back by way of the ditch and gets caught, that's a real possibility. So who should pay? Should the guy who had nothing to say and nothing to do with that trap suffer the loss of his dog? Or should the guy who wants to put traps in ditches to indiscriminately capture animals pay? It's either or. [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR LATHROP: Either there's a risk that somebody's dog is going to get caught or their cat or a person or there isn't. And if there is no risk, there's no harm in voting for my amendment. But if you've been given pause by this amendment, then perhaps LB5 is a bad idea. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Price. [LB5]

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SENATOR PRICE: Mr. President and members of the body, thank you. I just...I, too, have been taking down some notes of interest, and it gets more interesting by the moment. With regards and respect to workers in the right-of-way who are employees of the state and the county...I pulled up, I took the liberty, if you don't mind, of pulling up on the Internet--a wonderful tool--that shows a safety brochure for the Adopt-A-Highway Program, which covers the required gear you're supposed to wear when you are a nonprofessional working on the side of roads. And it talks to all the safety gear, and one of them is heavy gloves, heavy work gloves and boots. So I'm wondering, we've talked about hands reaching down into the ditch and having a trap close on them, a five-inch trap, and we talked about how that would be on bare skin. But I if your a lineman and you're ready to climb a tower or work on a sign or doing anything where we have safety standards in place, whether they be OSHA from the federal level on down, where that's going to cause the amount of damage that we are talking about to one of our workers and safety boots. I'd be more concerned if we had workers in the right-of-way of roads that aren't observing our safety standards that are already there. Because...and pardon me for my great vision here while I take a moment, things that you need to be careful for, okay. And they have a whole host of things to be concerned about outside of traps. Snakes, poisonous animals live out there. Regardless, I don't think we're trapping snakes, but they're out there. You must have a safety briefing, you must have a safety monitor before you're out there. They tell you don't wear headsets. They go through a whole litany of things. Hazardous materials. Never pick up the following: abandoned barrels, chemical containers, hypodermic needles, unidentifiable containers, broken automotive batteries, bulging or dented containers, containers leaking unknown substance, weapons, pesticide, herbicide, narcotics, paint cans, dead animals, sharp objects, gas cans, and antifreeze. Never pick them up! All right. So again, back to our workers. Are we training them properly? Are we making sure they're observing standards properly regardless of traps? That's just one point. We're talking about traps and I know that this maybe goes a little bit out aside, but are we going to ban all trapping in the right-of-way because you know they do have silt traps? A silt is a pretty furry creature, you know, and we ought to careful about them, but obviously that just bails the hay and cloth. And the other thing, we talk about public awareness, public right-of-way, and public land and public use. I don't know if anybody here has every gone fishing. I go plenty of fishing and since I don't own a pond I have to go to public access waters to fish. And I dare say on any given day, even right now if you wanted to, you could walk out to one of our public waters whether it be on the river where they might have a landing or whether it's out at Wehrspann or Walnut Creek or any lake you want to, if your children are out playing along them rocks and you're not careful you'll come back with a child who's been hurt because a fishhook has gone through their finger. That fishhook may have been there for a day, maybe a month or maybe a year with rotted guts from a fish on there. Who knows what's on that thing and it's...so that, too, is a hazard. [LB5]

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PRESIDENT SHEEHY: One minute. [LB5]

SENATOR PRICE: Yet we don't hear a great outcry. So, again, we're mixing things here. We need to keep them in perspective. And I also has you, is the public always aware of all danger? Are they all aware and do we take this level of effort to ensure that the public knows of all dangers? How many of you know of how many hazardous material response teams we have here in the state? Okay. So, again, a rhetorical question and I thank the body and thank you, Mr. President. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Hadley. [LB5]

SENATOR HADLEY: Mr. President, members of the body, Would Senator Lathrop yield for a question? [LB5]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB5]

SENATOR HADLEY: Okay. Senator Lathrop, just a hypothetical situation, if a county decided that they were having problems with either a road ditch or a bridge because of burrowing animals and they asked the Game, Fish and Parks to come out and put in traps because that was only way they could remedy the problem, does that mean that the person who puts in the traps then would be civilly liable if someone were to walk along and be caught in one of these traps? [LB5]

SENATOR LATHROP: It would as written. I wouldn't have problem with making an exception for those which are accompanied by some prominent sign or indication that the trap is in the ditch. [LB5]

SENATOR HADLEY: Okay. Thank you, Senator Lathrop. When I first looked at LB5, I was opposed to it, but then I did some calling. And right now the current law we have doesn't allow any trapping in ditches. So I think there is a problem when it is necessary for counties to do trapping in ditches for the road work and bridges and such as that. And so that was the reasoning behind my initial talking about getting exceptions so we could have legal trapping to try and solve the problems that we might have through the Game, Fish and Parks and through the county highway people. We had the amendment by Senator Campbell, and I thought that was a little broad, but I thought Senator Wightman's amendment took it down to the fact that basically we're down now where the county can decide which areas that they might want to have trappings and which areas they don't want to have trapping. And to me where we stand now allows the counties if they want to where they need trapping to take care of the road ditches, the bridges and such as that they can do that. I will end by saying if we defeat LB5, I would ask members of the body how are the counties going to take care of the problems they have with burrowing animals in the right-of-way if it is illegal to go into the right-of-way to trap animals, whether it is the Game, Fish and Parks or the county itself. Thank you.

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[LB5]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Stuthman, followed by Senator Christensen, Senator Lautenbaugh, and Senator Carlson. Senator Stuthman. [LB5]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to address a question to Senator Lathrop if he's in the body. [LB5]

PRESIDENT SHEEHY: He has stepped out for a moment. [LB5]

SENATOR STUTHMAN: Okay. I would like to speak to Senator Lautenbaugh, ask him a question. [LB5]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to questions? [LB5]

SENATOR LAUTENBAUGH: Yes I will. [LB5]

SENATOR STUTHMAN: Senator Lautenbaugh, if an individual is hurt by a trap and it's a legal trap or an illegal trap, say a kid stepped in an illegal trap that was in a road right-of-way and it broke its foot. Does that child have any recourse of trying to file a suit against the county or the individual that has these traps even if it is an illegal trap? [LB5]

SENATOR LAUTENBAUGH: Yes. [LB5]

SENATOR STUTHMAN: Can that person file a lawsuit? [LB5]

SENATOR LAUTENBAUGH: Yes. [LB5]

SENATOR STUTHMAN: But we're only dealing with legal traps that are legal in the county right-of-way and if they're...if an individual steps in one of them, they could just almost, according to Senator Christensen, you could just almost pull your foot out or your hand out, wouldn't hardly hurt, maybe scrape a little hair off your hand and you could keep going. But if there's an illegal trap in there and it's illegal to have that trap and person breaks his hand, finger or his leg, he can file suit. Is that true? [LB5]

SENATOR LAUTENBAUGH: Yes. [LB5]

SENATOR STUTHMAN: So the issue, in my opinion, is not the fact that, you know, we're only allowing the legal traps is people could get hurt by an illegal trap. And if they get hurt by an illegal trap, he's going to get hurt a lot worse than that legal trap. And yes he can probably sue, but does this individual have any right to get compensation from the owner of the trap if it's an illegal trap? Senator Lautenbaugh, could you answer that

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for me please? [LB5]

SENATOR LAUTENBAUGH: I want to make sure we're talking about the same thing because I would argue that even with a legal trap you could make the case that the trap was placed negligently, that there should have been some warning sign. You're free to make that argument if you're actually injured. The problem with this amendment is it imposes strict liability, which is always a plaintiff's lawyers dream, you don't have to prove negligence, just prove an injury which isn't difficult to do. And I won't take up your time, that will be my comments in a moment here. But yes, I would argue even with a legal trap at this point while they aren't legal at this point, if we pass this and the trap is legally placed, you could still make a negligence argument if you have a mind to. [LB5]

SENATOR STUTHMAN: Okay. Thank you, Senator Lautenbaugh. I appreciate those comments. The concern that I have is, you know, that there are illegal traps I'm sure placed in the road right-of-ways, but I think it's going to be very hard to find the individual that has that illegal trap in that right-of-way. And I think the fact is that an individual, an innocent child could...or a pet, you know, could be drastically hurt or possibly killed, especially the pet, you know if it comes in contact with one of these larger traps. I've heard that there's a lot bigger traps that are legal in Nebraska, but I was unaware of the difference in the road right-of-ways and the fact that you can only have certain traps in road right-of-ways. I was unaware of that. And there's no trapper that has ever told me different, that, you know, I can use larger traps on the other side of the fence in private property where I have permission, but I got to use my little small little weeny traps, the mousetraps in the county road right-of-way because those are the only ones that are allowed. I'm sure a small five-inch trap, a child, it would... [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR STUTHMAN: ...really bruise their hand or their arm. Okay. I think it's a real situation where we have a fact of it's a public right-of-way. It's a public right-of-way. And like Senator Pankonin was saying, you know, we have a lot of developments out in the country. We have a lot of them out in Platte County in my area where someone buys 40 acres and they develop that and there is a road right-of-way in there. And what happens in the time of the winter, especially in the winter when we have nice days, families walk around the section, they go and pick up stuff out of the road ditches, and it occurs very, very often. Because in the wintertime, they're cooped up in the house and then you get a nice day and they do go out. And the fact that, you know, it's snow covered and the trapping season is in December, January and February and no one really goes in the right-of-way except someone to scoop in to try to get their trap, I think that is... [LB5]

PRESIDENT SHEEHY: Time, Senator. [LB5]

SENATOR STUTHMAN: ...not part of the issue. Thank you, Lieutenant Governor. [LB5]

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PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Christensen. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I've called a couple of the county officials that have been opposed to my bill. I've only had two or three. Evidently, they're leaving me off their list, but I called and asked them the questions. I said, is there a trapping season? Most of them didn't know that there was. I asked them if they knew what the size of the trap was. None of them knew. I asked them about the various regulations. Very few knew any of them. And then you ask them, how many problems have you had? Well, none. So I ask again, what is the real problem here? I think it's really education. People really knowing what the bill says, what the regulations are, and understanding the risk. I ask you a question, you worry about kids getting caught in the trap, but I'm going to tell you, you're assuming risk when you take kids out there because it's more likely you're kids are going to get hurt by that car than by that trap. And...or by that glass in the road ditch. It's got a higher chance of hurting them because again, I ask, why has there been no reports to Game and Parks for incidences with real, or legal traps. I'll ask one more question, if a dog leaves the right-of-way, is he trespassing? I'd like to yield the rest of my time to Senator Nelson. [LB5]

PRESIDENT SHEEHY: Senator Nelson, 3 minutes. [LB5]

SENATOR NELSON: Thank you, Mr. President. Thank you, Senator Christensen, and members of the body. Would Senator Lathrop entertain a question or two? [LB5]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LB5]

SENATOR LATHROP: Yes, I would. [LB5]

SENATOR NELSON: Senator Lathrop, I understand, I think as a lawyer, general civil liability, strict liability, and also negligence, and I'm puzzled why we would impose civil or strict liability against someone who is doing a legal act that's authorized by the state or the particular county. Could you give me an answer to that? [LB5]

SENATOR LATHROP: I'd be happy to. There are strict liability for dangerous activities such as the use of dynamite. We have statutory strict liability for dangerous activities such as police chases, and we also have strict liability for dog bites. So the use of strict liability is simply the recognition that if somebody wants to engage in an act that is potentially hazardous to another person, that they answer in damages to that person when they hurt the individual, or in this case, the person or their animals. [LB5]

SENATOR NELSON: So we have carved out certain exceptions by statute for essentially quite dangerous activities, is that correct? [LB5]

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SENATOR LATHROP: Well, not only that, though. We do it in a couple of circumstances and as you know, Senator, by case law we have product liability and strict liability, which is not statutory and it's not for a particularly dangerous activity. But it basically says that if Ford Motor Company or if a manufacturer is going to put out a product that has a design or a manufacturer's defect, they have to answer in strict liability tort for the injuries that come as a consequence. And I think the logic follows with this amendment. [LB5]

SENATOR NELSON: So it probably boils down to the fact which, whether this is a dangerous enough activity that we would want to impose strict liability, is that correct? [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR LATHROP: I think that is perhaps true, except that I think we can look at the social utility of it and say, if the guy is going to trap in the ditch, he's gets the fur, he gets the money, he takes the pelt in and sells it, and nobody else gets anything out of it. And so if I'm in the ditch hunting, or if a utility worker crosses the ditch to go to a home or some other place, and they get hurt, they haven't gotten anything out of that trap in the ditch, and it seems to me, that if someone is going to benefit by capturing raccoons, selling their pelts and making money, they ought to answer to the people they hurt with a trap that is indiscriminate in its application. [LB5]

SENATOR NELSON: All right. In my limited time, I would just have to say, I'm still opposed to the amendment, Senator. I think it goes too far. Are we going to, if there's a badger hole and someone hurts their foot, are we going to, are we going to use strict liability, you know, pass a law against the county or the state if you're injured. So I think it's a little bit of overreaction I just have to say... [LB5]

PRESIDENT SHEEHY: Time, Senator. [LB5]

SENATOR NELSON: ...I appreciate your comments. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Lautenbaugh, followed by Senator Carlson, and Senator Haar. Senator Lautenbaugh. [LB5]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and members of the body. I, again, rise in opposition to this amendment. And what I'm going to ask of all of you is a little patience. Because I've heard some of my colleagues say, this needs to end, this is going on too long. Yes, it is, and yes, it does. But that said, that doesn't diminish the importance of why we're doing this, and that doesn't make me any less likely to stand up and talk on this. Again, we are being asked under this amendment to impose strict liability, which I will tell you plaintiff's lawyers like very much because then you only have

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to prove damages. And we've been assured that there won't be specious claims, there won't be people who are opposed to trapping that are just going to make claims of injury to try to shut down the trappers. And we've been told that no lawyer with his salt, whatever pursuit worth his salt, whatever, would pursue anything like that. I would suggest to you that I have experienced occasions where injuries weren't really real, but yet somehow an attorney was found to pursue the claim. I would also submit to you that there is a body of very committed people who will bring these claims to try to shut this activity down. Mark my words. Senator Haar's comments earlier talked about how we need more testing because we need to know if these things are dangerous. Some sort of project at the university or MythBusters or something like that. We do have something of a guide here in that we had about 70 years of experience prior to the ban. You would think that would be revealing if there was a real danger here. You would think we would know if these things are dangerous by now. And now we're being told, well, Game and Parks could change the regulations to allow those big cartoon bear traps that you see in the right-of-ways. I don't know why we think Game and Parks would do that. There's no indication that Game and Parks is out to get us. That just seems like we're looking for things to worry about. And understand what we impose strict liability for. My friend, Senator Lathrop, covered this. Often it's for inherently dangerous activities, like police chases, dynamite, factories, that kind of thing. I would submit to you, you could get on the Internet and find people who have been injured in police chases. I would submit to you, you can get on the Internet and find people who have been injured by dynamite exploding. Go on the Internet and find me the evidence that people have been hurt in these ditches with this activity prior to the ban with legal traps. I feel like a broken record and I sound like broken record, but I'm still asking for that. Curiously, I'm not hearing from the county workers who are worried about this. Maybe, I haven't been vocal enough on this bill and they don't know they should contact me. Maybe I've been too quiet every time this bill comes up. You be the judge. But curiously, I'm not hearing this. I don't know why. One of my other colleagues here, who I respect very much, talked about how he has a hunch that these traps might be left behind. We don't make policy based on hunches or at least we certainly shouldn't make policy based on our hunches. We should look for evidence. We should wait for evidence. We've waited for evidence and it's not here. This bill is a good bill. It reverses something we shouldn't have done. And trying to impose strict liability on this, which is usually reserved for inherently dangerous acts, is, in my opinion, a travesty, because again someone should point out that this is a dangerous act in some way such that we need to impose strict liability.

[LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR LAUTENBAUGH: I'm still waiting. And I'll keep talking and I'll keep fighting amendments that I think are meant to destroy this activity or bring this bill down, because I think it's the right thing to do. This is not a case where strict liability is warranted. I believe we will have very bad consequences if we attach that to this

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activity, and I would urge you again to vote against this amendment. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Carlson, followed by Senator Haar. Senator Carlson. [LB5]

SENATOR CARLSON: Mr. President, and members of the Legislature, I rise in opposition to Senator Lathrop's amendment, and go back to the principle that, and the fact that governing involves the process of either taking away freedoms or of restoring freedoms. LB5 restores some freedom with the process for taking that freedom away in each counties interest in public safety. Now I think Senator Lathrop has some good arguments, some good thoughts. But I don't agree that his amendment is the answer and I agree with Senator Lautenbaugh that this amendment will encourage activists groups to come into Nebraska and create issues that we don't need. Senator Pankonin presented some good points concerning acreages and how trapping could be a danger. I understand those reservations. But I contend if we hadn't hastily passed the bill to take roadway trapping away and make it illegal, we wouldn't have a bill or any debate on this item this session. But LB5 as amended by AM132, Senator Campbell, and AM185, Senator Wightman, gives us a bill to allow counties the freedom to enact the procedures which best address their issues. I think it's presumptuous of us as a Legislature to decide that counties aren't capable of handling the freedom to trap. We don't need to remove that freedom. LB5 as amended has the capacity to serve all 93 counties as each one determines what is best. Thank you, Mr. President. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Haar, followed by Senator Lathrop and Senator Stuthman. Senator Haar. [LB5]

SENATOR HAAR: I have a question for Senator Lathrop. [LB5]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB5]

SENATOR LATHROP: Yes. [LB5]

SENATOR HAAR: So if someone gets injured in a legal trap, if this...if the bill goes through and we have legal trapping in the ditch and somebody gets injured in a legal trap, what recourse do I have as a grandparent? [LB5]

SENATOR LATHROP: I didn't hear the last part of your question. [LB5]

SENATOR HAAR: I'm sorry. What recourse do I have as a grandparent? [LB5]

SENATOR LATHROP: If one of your grandchildren get hurt? [LB5]

SENATOR HAAR: In a legal trap, yeah. [LB5]

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SENATOR LATHROP: In a legal, a lawful trap. [LB5]

SENATOR HAAR: Right. If it's... [LB5]

SENATOR LATHROP: Well, you know, I suppose the...if a child gets hurt, the child has a cause of action. Okay. And the parents have a cause of action for two things, one is the loss of the child's services, if it were bad enough to prevent the child from performing services around the house. The parents also have a claim, their own cause of action for the medical expenses because as parents they're obligated to pay the doctor and the hospital bills. [LB5]

SENATOR HAAR: Okay. So, and who could be sued in this case? [LB5]

SENATOR LATHROP: Well, the AG's opinion that they were talking about suggests that if the trap is negligently set that you could make a claim against the trap owner. What's negligently set? How does a trap get set where people foreseeably could pass through without it being negligent, I don't know. This bill would say if it's your trap and it hurts somebody or their critters, domestic animals, you're responsible for it. [LB5]

SENATOR HAAR: Okay. So if it was...I'm sorry, I'm trying to understand. If it was legally set, then according to the AG's opinion, there's no one to sue because it was legally placed? [LB5]

SENATOR LATHROP: No, it's not, it's not whether it's legal or illegal. It's about whether it was negligently placed. [LB5]

SENATOR HAAR: So if it was...(laugh) if it was not negligently placed... [LB5]

SENATOR LATHROP: If you can imagine the trap that indiscriminately snares people and animals not being negligently set or placed in a roadside ditch, yes, there wouldn't be liability. [LB5]

SENATOR HAAR: There would still be liability. And I guess what I've heard from testimony so far that if they become legals, putting them in the ditch and covering them up and so on to hide them though, that's...is not negligent. [LB5]

SENATOR LATHROP: Whether some...whether conduct is negligent or not is ultimately a question for the trier of fact. So whether it's a judge or a jury, they ultimately have to ask themselves was this reasonable conduct under all the circumstances. [LB5]

SENATOR HAAR: Okay. [LB5]

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SENATOR LATHROP: If it's a ditch that the cross country team from Broken Bow, Nebraska, runs in and they see people running every afternoon and there's a path right through the ditch and somebody puts a trap there, very clearly it would be hard to imagine somebody wouldn't conclude that that is unreasonable conduct. [LB5]

SENATOR HAAR: But if it was just an old ditch that nobody hardly ever used, then I have nobody to sue. [LB5]

SENATOR LATHROP: Maybe, you know. It's the...I'm a lawyer. We always say it depends. And so it does, it depends on the facts whenever you're talking about reasonable conduct, it depends on the facts. So there isn't a black and white and answer. No, there's no liability, yes, there's liability. When you're talking about negligence, it's made...a determination made on a case by case basis and it has to do with the reasonableness of the conduct and that in turn has to do with the foreseeability of the harm, the extent of the injury that might result, and the utility of the action or the conduct that somebody is participating in. [LB5]

SENATOR HAAR: Okay. So I'd have to come to your office and...(laugh) [LB5]

SENATOR LATHROP: You'd have to give me certain facts and then I could tell you what I think about it. [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR HAAR: Okay. Thank you very much. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Lathrop. [LB5]

SENATOR LATHROP: Okay, I'm back. Thank you, Mr. President. (Laugh) You know what, I want to comment on some of the discussions we've heard and some of the comments about the lawsuits and the suggestion by my friend, Senator Lautenbaugh, that the PETA groups are going to come into the state of Nebraska and shut down fur trappers by making a bunch of frivolous claims. I don't know, did that happen when we could do this? I mean, I don't think so. But here's the problem with that logic, if I can point it out. Our friends from those subversive organizations would have to go into the ditch, pad around in the grass where these things are hidden to find one, in order to get caught in one, in order to then have a claim. The idea that somehow I'm participating in some conspiracy to set up a situation where PETA can come into the state and shut down trapping is absurd. I go back to...well, I can't help but comment because I don't want you to be misled by my failure to comment about a statement made by Senator Christensen and that was, that somehow parents assume the risk if their kid goes into the ditch. Assumption of risk is a doctrine recognized in law. It comes from common law. It has evolved over the years. And the irony of about Senator Christensen's statement

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is, it couldn't be more off the mark. I can't imagine a circumstance where it would be more off the mark. Assumption of risk is a legal doctrine that says, if you know of a particular hazard and you knowingly encounter that hazard, in this case if you saw a trap and went over and fooled with it and then got trapped by it, maybe that's assumption of risk. But to suggest that anytime you let your kids out on a county road you're assuming the risk that they might get caught in a trap, no. That is a misuse of the doctrine and the principle of assumption of risk unless you know specifically about the risk, not that it might happen but the specific risk. I know there's a trap there and I let my kid play next to it, then maybe. The problem is, everyone of these hazards are hidden and that's the very nature of a trap. I go back to my friend, Senator Lautenbaugh said he would sound like a broken record and I do as well. If there is no risk of injury, if there's no risk of harm, what's the problem with my amendment. Strict liability for something that's never going to happen means that there's no harm in my amendment. If you have some hesitancy, I will tell you that it may be because you recognize the risk somebody is going to get hurt. The last thing I want to do is address Senator Carlson's remarks. It sounded for a minute like my friend, Senator Erdman, when we talked about government's role, doing either taking away freedoms or restoring them. I think we have a lot more responsibility than just taking away freedoms and restoring them. We regulate things. We regulate cell phones. We regulate banks. We spend...(laugh) we spend the entire session regulating and not all of that is about whether somebody has a freedom to do something they want to do or we're taking it away from them. We regulate things because there's dangers out there and people look to us and they say, don't let this hazard in our community. Don't let this hazard in our state. Sure, every time we stop somebody from...and we make it against the law to steal or shoplift, we're taking away somebody's freedom to pull something off the shelf and leave without paying for it. The question... [LB5]

PRESIDENT SHEEHY: One minute. [LB5]

SENATOR LATHROP: ...in policy is whether it makes sense to allow somebody to put, in this case, something in the ditch that indiscriminately grabs animals and traps them. What's the social utility? What does anyone of us get out of that other than the guy who is making money off the pelts? If somebody is making money off the pelts and there's nothing in it for the rest of us, the guy who is trapping and selling the pelts and making the money ought to pay the people he hurts along the way. Very simple principle. There's nothing out there about it. There's nothing too far about it. And so I'd ask you again to adopt AM347. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Mr. Clerk, you got items for the record. [LB5]

CLERK: Mr. President, amendments to be printed, Senator Haar and Senator Langemeier. I'm sorry, Senator Haar to LB53, Senator Langemeier to LB5. Senator

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Gloor would like to add his name to LB113. (Legislative Journal pages 471-472.) [LB53 LB5 LB113]

And I have a priority motion. Senator Flood would move to adjourn until Wednesday morning, February 18, at 9:00 a.m. []

PRESIDENT SHEEHY: You've heard the motion to adjourn until Wednesday, February 18, 2009, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []