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Floor Debate
February 19, 2009

[LB5 LB7 LB20 LB28 LB32 LB48 LB53 LB55 LB74 LB102 LB120 LB135 LB165 LB201
LB202A LB204 LB259 LB331 LB335 LB386 LB458 LB506 LB532 LB561 LB675 LR11
LR18 LR19 LR29]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-ninth day of the One Hundred First Legislature, First Session. Our chaplain for today is Reverend Barton W. Tarman, minister at large, from Presbyterian Church in Santa Barbara, California. Today he is a guest of Senator Campbell. Would you all please rise. []

PASTOR TARMAN: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Reverend Tarman. I call to order the twenty-ninth 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: Messages, reports, or announcements? []

CLERK: Your Committee on Enrollment and Review reports LB74 and LB259 as correctly engrossed. And I have a unanimous consent request to alter hearing rooms between the Agriculture Committee and the Urban Affairs Committee, and it's signed by the respective Chairpersons for Tuesday, March 3. (Legislative Journal pages 487-488.) [LB74 LB259]

PRESIDENT SHEEHY: Are there objections? So ordered. []

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

PRESIDENT SHEEHY: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR18 and LR19. Mr. Clerk, we will return to floor discussion on legislative bill. You have an amendment on your desk. [LR18 LR19]

CLERK: I do, Mr. President. LB5 has been discussed on several different occasions. Amendments have been considered, some of which have been adopted. The first

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amendment this morning, Senator Langemeier, AM383. (Legislative Journal page 488.)
[LB5]

PRESIDENT SHEEHY: Senator Langemeier, you're recognized to open on AM383 to
LB5. [LB5]

SENATOR LANGEMEIER: Mr. President, members of the body, I'd first like to start off
by thanking Senator Avery to allow me to use his legal counsel for the Government
Committee, as well as the legal counsel from my own committee. As we start reviewing
the amendments that this body has adopted onto LB5, I continued my effort to make
them right. First of all, we clarified one yesterday. It needs to be clarified a little more
about the enforcement powers of a county in a resolution, so AM383 has Section 1
which allows the enforcement by counties. It also would allow...Game and Parks came
to us and said, we're not sure our Game and Parks law enforcement...if called by
Lancaster County, for an example, there was some concern that their law enforcement
officers could come in and assist. So we're going to change that to allow Game and
Parks to be an active part with Lancaster County, if Lancaster County--and like I said,
I'm just using them for an example--if they came in and asked for the help. Part (b) is
dealing with Senator Haar's amendment yesterday. Senator Haar's amendment
adopted a classification of using the traps that are currently permitted within the county
roadway. Well, there aren't any because remember two years ago we banned them so
there are no sizes. There are no description of traps because they're currently banned.
So this would allow us to go to, as of February 1, 2009, and use the wording that they
have in their regulations that say "any land owned or controlled by the commission."
That way it gives it an actual reference to something that does exist. So with that, I
would ask that you adopt these two correcting portions of AM383, and then we'll get
back to LB5 and its future after that. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening of
AM383 to LB5. Members requesting to speak are Senator Christensen. [LB5]

SENATOR CHRISTENSEN: Thank you, Mr. President. I just want to quickly say I agree
with this amendment, with the corrections of it, then like to go forward with the bill.
Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Are there additional members
requesting to speak? Seeing none, Senator Langemeier, you're recognized to close.
[LB5]

SENATOR LANGEMEIER: Mr. President and members of the body, I want to thank
Senator Christensen and Senator Haar for their willingness. As soon as it was adopted
yesterday, we had the discussion that we may have an issue. And I want to thank them
for their cooperation to get this resolved and get it in a workable format. I'd ask that you

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adopt AM383. Thank you. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You have heard the closing. The question before the body is on the adoption of AM383 to LB5. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB5]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Langemeier's amendment. [LB5]

PRESIDENT SHEEHY: AM383 is adopted. [LB5]

CLERK: At this time, Mr. President, I have nothing further on the bill. [LB5]

PRESIDENT SHEEHY: Senator, we'll return to...Senator Nordquist. Senator Stuthman. [LB5]

SENATOR STUTHMAN: Mr. Lieutenant Governor, members of the body, will there be any time for any other debate on LB5? [LB5]

PRESIDENT SHEEHY: Following a motion from Senator Nordquist to advance. [LB5]

SENATOR STUTHMAN: Okay, thank you. [LB5]

PRESIDENT SHEEHY: Senator Nordquist. Senator Nordquist. [LB5]

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

PRESIDENT SHEEHY: The motion for advancement is debatable. Further discussion? Seeing no lights on, you have all heard the motion...Senator Stuthman. [LB5]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I'm not going to take a lot of time on this, this morning, but I'm going to be watching very closely how the vote goes. And I've been thinking about this, you know, for some time this morning. And I'm going to be watching the fact that if this bill does pass and the people that are supporting it to pass, are these individuals concerned about public safety--safety in the road right-of-ways? Which public can utilize those safety...those right-of-ways for activities, walking, county workers can clean up these right-of-ways? I'm going to be watching the vote on that. I'm also going to be watching the fact that people that support this bill and issues that were brought up...a lot of issues were brought up that their family pets were caught or killed in these right-of-ways because of traps, not just regular traps, legal traps, but by illegal traps. The fact, though, is that when we're allowing an activity in there, there's a very good possibility that there's going to be illegal traps placed in these road right-of-ways. We've got several bills just down

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the list a little bit further that also address the issue of protection of family pets, animals, dogs, cats, and we were dealing with this issue in this bill. Like I had just stated, people have lost their family dog because of an illegal trap in a road right-of-way. I don't think we should allow any traps in a road right-of-way. So I'm going to be taking this into very serious consideration, the people that support this bill. To me, that sends up a situation that maybe they're not concerned about public safety and, furthermore, they're not concerned about the safety of these family pets. Thank you, Mr. President. [LB5]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have all heard the motion on the advancement of LB5. There has been a request for a board vote. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB5]

CLERK: 30 ayes, 8 nays, Mr. President, on the advancement of LB5. [LB5]

PRESIDENT SHEEHY: LB5 does advance. Next item under Select File. Senator Heidemann, you're recognized for an announcement. [LB5]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. We've handed out a memo from the Appropriations Committee dealing with a time line of what we're working on with the federal stimulus package. We've been working on this, and certain people quite extensively over the last three to four weeks, and we wanted to let the rest of the Legislature know what we have been doing. There have been questions about the federal stimulus package. We have been working on a procedure and laid out a time line of how things are going to, what we think, unfold. It's not a finished process as you can look at it. If you have questions, we will try to answer those questions. I want to personally thank Mike Calvert from the Fiscal Office. This is what he has been spending the majority if not all of his time on. And we...it has been a lot of work but it's something that we have to deal with. It will be part of our budgeting process this year. There's no doubt about it, it's a huge chunk of money that the federal government is bringing down to the state of Nebraska and to all other states not only to stimulate but to stabilize. And as we are working on our budget this year there's a lot of unknowns. And to us, yet, the federal stimulus package is still an unknown. We have a February Forecasting Board that is coming up shortly, I think a little bit over a week away. Those are the two unknowns that we are going to have to deal with. I think, as you know, we're going through an interesting budgeting process this year. There are a lot of tough times, a lot of tough decisions to be made, and this is a huge part of it. We are trying to let the body know as much as possible what we are up to. Hopefully, this will help you understand about what we have been doing, a time line, some information and actually some questions that we still have. If you have questions about this or anything that you need to know or you think you need to know, get ahold of me, any other member of the Appropriations Committee, or the Fiscal Office is also a great, great resource. So if you have questions just let me know. Thank you. []

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PRESIDENT SHEEHY: Thank you, Senator Heidemann. (Visitors and doctor of the day introduced.) Mr. Clerk, we'll move to the next item under Select File. []

CLERK: Mr. President, LB53. I have no E&R, Senator Nordquist, but I do have other amendments. Senator Haar would move to amend with AM340. (Legislative Journal page 471.) [LB53]

PRESIDENT SHEEHY: Senator Haar, you're recognized to open on AM340 to LB53. [LB53]

SENATOR HAAR: Mr. President and members of the body, being a new senator I'm learning, I'm listening, I'm debating, and I've listened to a lot of feedback. And we've heard very loud and clear that Lincoln has disproportionate representation on the NPPD board--two now and perhaps three after the census. That's not a good policy. We know that. We've heard that. And so LB53 is the remedy. And under LB53 Lincoln goes from two votes to no votes, which is also not a good policy. So the way I look at it, LB53 is a remedy but not a good remedy. As it stands now, LB53 is a bad policy change, and more importantly to me it's a major policy change. I hope you had a chance to see Senator McGill's article in the Journal Star, and she termed it a "power grab." And I totally agree with that. It's bad policy. It seems, however, that this bill has moved so quickly through the body. So I think it's important and it looks like probably it's going to pass, so I think it's important to explore the remedy in detail. And we spent almost eight hours debating on the traps, and I think LB53 is worth similar time since it will affect not just Lincoln but a half million Nebraskans. And in retrospect, if Senator Avery's bill, LB...I'm sorry, AM38, his amendment came up today, I would not vote for it. And let me explain. AM38, his amendment, would have given Lincoln one vote on the NPPD. But as I listen and I dig deeper, this LB53 isn't just about Lincoln. I find the issue is much broader. The issue is just not about Lincoln's two representatives, Mary Harding or Dennis Rasmussen. It's much broader. In fact, LB53 affects 475,000 Nebraskans and that's what I would like to explore. The amendment itself, and then we'll come back to more discussion, the amendment itself in substance limits NPPD's power of eminent domain to those jurisdictions where people have a right to vote for the NPPD board members. According to Nebraska Revised Statute 70-670, and I'd like you to hand this out for me if you would, Revised Statute...Nebraska Revised Statute 70-670 defines the right of eminent domain for Nebraska Public Power Districts. And as best we can figure out, NPPD has the right of eminent domain anywhere in Nebraska. OPPD has the right of eminent domain anywhere in Nebraska. LES has the right of eminent domain anywhere in Nebraska. And so what my bill does...I'm sorry, what my amendment does, what AM340 does is to limit NPPD's power and any other electric utility's power to those jurisdictions where people have a right to vote. Eminent domain, the third rail of Nebraska politics, has important implications because as we'll see if people have no right to vote yet these bodies still have the right to eminent domain. So I would suggest that LB53, which I think is bad policy, needs to be discussed. And really the main

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reason is because I think it has important policy implications for a whole bunch of things. It's one of those things that we could pass LB53 now and try to figure out the consequences later or we can look at the effects of this bill and then perhaps get back to LB53 later. So what I would like to do is explore the meaning of public power. That's what's at stake here. Is it a benefit of all Nebraskans or only for the benefit of ratepayers? Is public power, public interest, or is it only about rates? Is it only about money? I would like to explore whether public power districts are owned by the citizens of Nebraska or whether public power is simply a co-op owned and run for the sole benefit of customers. I would like to revisit the study that was done in the 1990s. The study that was done, several hundred thousand dollars were spent to see whether we should sell public power or not in an attempt to answer the question, who owns public power? I would like to try to explore the consequences of policy decisions made by NPPD other than rates. And I would like to explore the effect on each senator's district if LB53 is passed. Who will be able to vote, who will be disenfranchised. What's the difference between co-ops and municipal public power and all of these in terms of who will get to vote and who won't get to vote. I would like to explore exactly how LB53 in its present form disenfranchises one-half million Nebraskans, not just Lincoln but a half million Nebraskans. I would like to explore participation contracts; firm contracts; eminent domain; "one person, one vote"; proportional voting, 50 versus 33 versus 100 percent; and I would like to try to explore some unintended consequences. The issues I've raised are significant policy issues that will affect all Nebraskans and will disenfranchise one-half million Nebraskans. As Alice in Wonderland said, I think LB53 as a remedy becomes "curiouser and curiouser." So attempting to negotiate on LB53, it's been suggested that we pass LB53, get on with business, and then study the consequences and the issues. What I propose is we need to study the issues and the consequences and then deal with LB53. So instead of passing LB53 now and fixing the consequences later, I think we ought to look at the consequences now. And at any time I'm willing to relegate this exploration of LB53 to an interim study instead of using the time of this body. But I think, as the safe haven law showed us, it's important to do things right the first time. And so I believe to go ahead and vote on LB53 now and come back to the consequences later would be irresponsible. It's been suggested that if we do this study in the Legislature now, that people are going to get tired, they're not going to pay attention. And that's perhaps the case. But I can assure you that I would not be doing this study now if I didn't feel the consequences are so important to all Nebraskans. And that's my opening. Thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Haar. You've heard the opening of AM340 to LB53. Members requesting to speak: Senator Fischer. [LB53]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Good morning. I rise in opposition to this amendment and to all other amendments and motions that have been filed thus far on the bill. As you know, LB53 will make changes to the chartered territories of public power districts in order to establish one set of rules

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for all public power districts in the state. This bill was introduced at the request of NPPD. That board formed a committee. That committee met for several months. The board also had this proposal on their agenda for a few months before they took action on it. There has been discussion. It has been open, it has been public. NPPD is a public body. Their minutes are open to all and their meetings are open to all. I would counter Senator Haar's comments saying that there needs to be more discussion by saying there has been open public discussion on this proposal. This bill was introduced in order to address the equality and the fairness for the governing of public power districts. And LB53 will establish a single set of guidelines for public power district chartered territories. In the paper, we read some articles; on the floor we've heard some comments on General File. I would like to address those. This bill was not aimed against Lincoln or the Lincoln members of the NPPD board, but it seems to be playing that way in comments on this floor and in comments in the press. As you are all aware after listening to the long discussion we have had on the bill, Lincoln Electric System has a very different relationship with NPPD than do the full requirement wholesale customers. Those customers pay for all costs associated with NPPD, providing 100 percent of their electric energy needs. This means they pay for all of NPPD's generating and transmission facilities. They also pay for associated services NPPD provides, such as energy efficiency and economic development. In contrast, LES pays for costs associated with only two NPPD power plants: Gerald Gentleman Station and Sheldon Station. That equates to 30 percent of the net power and energy that can be produced by Sheldon Station and 8 percent of the net power and energy that can be produced by Gerald Gentleman Station. The participation contracts with LES includes the establishment of a coordination committee with members from both utilities. The coordination committee meets at least annually and more often if necessary to discuss scheduling, operating procedures, standard practices with regard to the agreement, communications, and other matters. This participation agreement also provides a dispute resolution process in the event that LES might disagree with any of the charges in a billing rendered by NPPD. There are major fundamental differences between LES's relationship with NPPD and the relationship with NPPD's other wholesale and retail customers. The Lincoln Electric System is the electric utility... [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR FISCHER: ...in Lincoln. LES has the sole responsibility to plan for the power supply needs of its customers and to provide that power supply. LES also establishes its own policies and programs for energy efficiency, renewable energy, load management, as well as recommending the rates to be charged. LES exclusively owns four power plants in and around Lincoln, has an ownership interest in power plants in Iowa and Wyoming, and has contracts with NPPD and the Western Area Power Administration to purchase power. It uses power from all of these facilities to serve its customers. Lincoln and two other communities in Lancaster County are affected by this bill. The rest of the residents of Lancaster County are not. I am tired of this being

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portrayed as a move against the residents of Lincoln and Lancaster County. [LB53]

PRESIDENT SHEEHY: Time, Senator. [LB53]

SENATOR FISCHER: This bill does not do that. Thank you. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Hadley. [LB53]

SENATOR HADLEY: Mr. President, members of the body, I would rise to oppose AM340 and support LB53. The pages are handing out a map of NPPD retail customers. I would like to echo what Senator Fischer is saying and take the spotlight off of Lancaster County and Lincoln and put it on Hall County and Buffalo County. That is the District 3 for NPPD. We elect a commissioner from that area. You'll notice that in Buffalo County we have Ravenna, Shelton, Gibbon, Elm Creek, Odessa, and Kearney as all NPPD retail customers. There are none in Hall County, yet the majority of the voters are in Hall County. I would hate to set up a situation where we were looking at an economic development company coming in. And it came down to Grand Island and Kearney, and electric power becomes a big part of the decision-making, and we would have an NPPD representative from Grand Island that has a municipal electric, and having that person have to put his way through, trying to support either Kearney or Grand Island in an economic development situation, when he represents NPPD but the city he lives in is trying to get the same company to come to work for them. So I think it's not just a Lincoln County. I have a difficult time explaining to voters in Kearney...the question consistently came up, why is Grand Island being able to vote on a representative for NPPD when they do not use NPPD power and have city-owned power. So I rise again in support of LB53. I would yield the rest of my time to Senator Fischer if she wishes to have it. [LB53]

PRESIDENT SHEEHY: Senator Fischer, 3 minutes. Senator Hadley is yielding you 3 minutes. [LB53]

SENATOR FISCHER: Thank you, Senator Hadley. I don't believe I need 3 minutes. We've had a lot of discussion on the bill. I appreciate the participation by members but I happen to believe this is a question of fairness and equity. We're looking at a governing structure of a public power district. We're looking at the administrative duties and responsibilities of a public power district. Every citizen in Nebraska has representation on a public power district right now. In Lincoln it's LES. The members of that board are appointed. They're not elected, they're appointed. Voters in Lincoln right now also get to vote for membership on the NPPD board. They're getting dual representation. I think you could twist that and have an argument to the effect they have two votes for representation. The point of this is that the public served by NPPD are the people that should vote for the board. It's just like any other board that serves the citizens. Thank you. [LB53]

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PRESIDENT SHEEHY: Thank you, Senator Fischer. We have Senator Carlson, followed by Senator White, Senator Haar, and Senator Gloor. Senator Carlson. [LB53]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to address some questions to Senator Haar if he would yield. [LB53]

PRESIDENT SHEEHY: Senator Haar, would you yield to questions? [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR CARLSON: Senator Haar, I want to repeat something that I think I heard you say yesterday in the Natural Resources hearing and this was concerning development of wind energy. But one of your concerns was that part of the reason we need to do this is because you're concerned about the dollars that are leaving Nebraska and going to Wyoming for coal. Is that accurate? [LB53]

SENATOR HAAR: That's correct. [LB53]

SENATOR CARLSON: Okay. Now according to what I think is true, for every dollar that's spent by LES to buy power from NPPD, \$2 are leaving the state to buy power from Wyoming or Iowa. Would you agree with that? [LB53]

SENATOR HAAR: I'm not sure. I'm not sure exactly where LES gets all its power. But if they're getting one-third from NPPD, we'll agree with that for right now. [LB53]

SENATOR CARLSON: Okay. I think maybe that that's pretty close. So one-third of the dollars that they spent are staying in Nebraska, and it's a good chance that the other two-thirds are leaving the state. So I want to ask you this: Could LES buy more power from NPPD? [LB53]

SENATOR HAAR: As far as I know they could make...yeah, as far as I know. [LB53]

SENATOR CARLSON: I agree with you. I think that they could buy considerably more power from NPPD. In fact, they may be able to buy 100 percent from NPPD. And if they did that, that would put LES and the people in Lincoln in an entirely different situation than they're in right now. I would encourage you to encourage LES to increase the amount of power that they buy from NPPD and keep those dollars in the state that are now leaving the state. And there are so many municipalities and areas that buy 100 percent of their power from NPPD. And so...thank you, Senator Haar. I am opposed to AM340. I support LB53 and would ask the rest of the body to do likewise. Thank you. [LB53]

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SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Thank you, Senator Carlson. Those wishing to speak, we have Senator White, Haar, and Gloor. Senator White, you're recognized. [LB53]

SENATOR WHITE: Thank you, Mr. President. Members of the body, one of the great political fiascoes of the last 20 years was the Boyd County low-level nuclear waste depository. The subsequent litigation, the cost to the state caused by a failure to, first, get a political consensus on locating such a facility, has been staggering. It runs into the tens of millions of dollars. Senator Haar...would Senator Haar please yield to a question? [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR WHITE: Senator Haar, under the law as you understand it today, could, for example, Omaha Public Power District choose to locate a facility to store its spent nuclear waste in Valentine or Scottsbluff by exercising its powers of eminent domain, and would the folks affected by that, the people who live in those communities, have any right to vote or put pressure on the elected representatives of OPPD through the ballot box to stop the location of such a facility in their community? [LB53]

SENATOR HAAR: Well, Senator White, that's a good question. My reading of statute 70-670 Nebraska Revised Statute, which defines eminent domain powers, that that's absolutely possible; that any public utility has the right of eminent domain anywhere in the state. Yes. [LB53]

SENATOR WHITE: So we see a future right now where I use nuclear power because that focuses attention. But other things can be also disruptive to a community. Lincoln, for example, I understand is concerned that NPPD intends to double the capacity and the amount of coal burnt in the existing facility south of town. Now that will have a number of real impacts on the community. First of all, the instances of asthma and other problems among children will go up. Second, the amount of mercury dropped in the area lakes will increase. Third, Lincoln's ability to compete for industrial development will decline. Federal law only allows a certain amount of air pollution burden in any community. So if a decision, not on nuclear power but just on coal power, can be made to have such dramatic effects on a community, and they have no voice, rather than a public power system that builds consensus and has the support of Nebraskans across the state, we have set up a system where some Nebraskans get to dump garbage on other Nebraskans while keeping the economic benefits. I warn all of my colleagues from the rural areas who seem to want this bill, in the long run--and we must look not at today or tomorrow or the next year or two, but in the long run--the people who will lose will be the rural areas because they will be underrepresented. And they will lose in a lot of ways. They will lose on the choice of where transmission lines go. They won't have the

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political power to stop it because the money and the power will be located in the eastern edge of the state and the decisions will affect the western part of the state and they won't have a voice. I don't think that's healthy. And I represent the most heavily populated part of the state. Senator Haar, I appreciate you bringing this amendment. I ask my rural colleagues to seriously consider whether this is really what you want. [LB53]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR WHITE: The old prayer or the old admonition: Beware of what you pray for, you may just get it. You might just get it. And in the short term it may look like the rural areas win, but believe me, under laws as we are constructing them, in the long run they will lose and lose in a big way. Thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Haar. [LB53]

SENATOR HAAR: Thank you, Mr. President, members of the body. Senator Carlson, I would like to go back to your question for a minute. First of all, I don't get to vote for, in Lincoln anymore. I live in Norris Public Power District and so actually I get to dual vote. I get to vote for Norris Public Power board, I also get to vote for NPPD board. No matter what happens in this, in LB53, I still get to vote both times. I think it would be great if LES and all of Nebraska could get much more of its energy from within Nebraska, but I don't know. Do you know, if LES would all of a sudden decide to get 100 percent of its energy from NPPD, could that all come from within the state? I'd like to ask Senator Carlson a question. [LB53]

PRESIDENT SHEEHY: Senator Carlson, would you yield? [LB53]

SENATOR CARLSON: Yes, I will. [LB53]

SENATOR HAAR: Okay. Your suggestion was to try to get LES to buy all of its power from NPPD so it would be all within Nebraska. But we know that NPPD gets much of its energy from outside of Nebraska. Do you know, would NPPD have enough excess power to supply LES with all of its power needs from within Nebraska? [LB53]

SENATOR CARLSON: Senator Haar, that question I asked you was a little bit conceptual. I did talk to NPPD and asked them if they could provide more power to LES and they said yes. Whether that would be 100 percent or not, I don't know. I used 100 percent because if it were possible, and it may be, then certainly it would place Lincoln in a different position as far as voting on the board. [LB53]

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SENATOR HAAR: But do you agree that probably much of that power would come from...could still probably come from Wyoming coal at this present moment? [LB53]

SENATOR CARLSON: Yes, it would. [LB53]

SENATOR HAAR: Yeah, I think so. You know, the goal of all of us is to get more renewable energy and to get it in the state of Nebraska, so I would hope that all of us get more of our energy from Nebraska and less from Wyoming. But here's the rub, and this came up in the amendment that I carried for Senator Avery, that as LB53 is written you have to get firm power. So even if LES was getting 100 or let's say 52 percent of its energy from NPPD, if that wasn't firm power LES would still...the citizens of Lincoln would still not be able to vote for NPPD. So anyway, I would like to ask Senator Fischer some questions if I could. [LB53]

PRESIDENT SHEEHY: Senator Fischer, would you yield? [LB53]

SENATOR FISCHER: Certainly. [LB53]

SENATOR HAAR: Okay, thanks. And protocol is I have to face...I should face the front, right? (Laugh) Okay. So I'm sorry to put my back to you, Senator Fischer. I handed out two maps and these are the maps that came from NPPD. Could you tell me on this map, help me draw the lines of where...now, first of all, I understand that where the little circles are, those are NPPD retail customers, so they would get their power no matter...or they would get a vote no matter what. But where along county lines would we draw the new districts where people get to vote? Do you know what those would be? [LB53]

SENATOR FISCHER: Senator Haar, in this legislation it was proposed that it will not take effect until after the census, and there was a reason for that. That is so that the numbers can be verified by the United States census. And the NPPD board will then redraw their lines at that point with help, I assume, from the Secretary of State's Office. So I can't tell you right now where those lines would be because it would depend upon the United States census. [LB53]

SENATOR HAAR: Except that the only places that would get power according to LB53... [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR HAAR: ...were those who get firm power, and they get...so on the map we could actually identify those counties currently that get firm power because as far as I know there are no counties that get between this magic 50 percent and 100 percent. So the census really isn't going to make much difference, is it, in terms of the map? [LB53]

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SENATOR FISCHER: Are you saying with the...the way the districts are drawn? Then the census will make a difference on the map. [LB53]

SENATOR HAAR: Right, in terms of...but I'm saying where people will no longer be able to vote. That would, I believe, be the outlines of the current... [LB53]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Haar. Thank you, Senator Fischer. Senator Gloor. [LB53]

SENATOR GLOOR: Thank you, Mr. President, members of this hardworking body. I rise in opposition to AM340 and in support of LB53. Senator Hadley has, in fact, already made mention of the fact that my district in its entirety is served by a municipal power district. On the other hand, we can have and almost did have a representative who served on the NPPD board. Senator White points out and makes some very good points, I believe, looking into the future and what may happen. But in the here and now, there are some very obvious conflicts of interest when it comes to areas such as economic development that exist because of this misrepresentation. It would be very easy for me to take advantage of that, but it would also be very self-serving. We are served by a municipal area, our power. We have the ability to put somebody on the board and make decisions that affect a lot of Nebraskans, and should not; and therefore I support Senator Fischer's bill, LB53. Thank you. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Fischer. [LB53]

SENATOR FISCHER: Thank you, Mr. President and members. I had somewhat promised you that I wouldn't speak a lot, but I need to address a couple of things. Boyd County was mentioned. Boyd County, at the time of the low-level waste pact, was part of Senator Dierks's district. It is now part of my legislative district, and there are still deep, deep divisions in that county over that situation. Was there public input in that situation? Was there public input? I think a number of my constituents in Boyd County would challenge that. Who made the decision? It would be challenged, too, that it wasn't the local people who made the decision. It wasn't a board of directors of anybody who made a decision. I believe it was the Governor who made the decision on the low-level nuclear waste. That doesn't...I don't believe...that discussion shouldn't take place on this bill but we can get into that if need be. The question and comments were made about NPPD getting power outside of the state. I can tell you that NPPD, they don't own any power plants outside of Nebraska. They only go outside of the state of Nebraska if they can buy power cheaper than they can generate power. This is usually only in an outage when they need to get power. And that goes to what a firm wholesale customer is. They are guaranteed power by NPPD and NPPD is required to provide that power. This is a common practice with utilities. They go outside of Nebraska, either to Kansas or Iowa is my understanding, when the need arises or when they can see cheaper power. And

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those utilities also reciprocate, I guess, with Nebraska. It was mentioned that Lincoln should probably get a vote because of the mere presence of a power plant in southwest Lancaster County and the possible harmful consequences to the citizens of Lincoln on that. These plants and the emissions from the plants, they're regulated by the EPA. There is testing done. Yes, we all need to be aware. We all need to be concerned about anything, anything with our environment and the harmful consequences that may have. But we also need to be aware that precautions are taken. Testing does occur not only at the state level but with the federal government in regard to emissions from power plants. If we're going to look...if you happen to be in the wind drift of a plant or live close to a plant, then maybe we should look at Omaha. Maybe Omaha should get to vote for the Lincoln City Council because LES is now the partial owner of a large coal-fired power plant in Council Bluffs. That power plant is closer to Omaha than Sheldon Station is to Lincoln. That is not a discussion we need to have on this bill. But if you want to have that discussion, we can get into that discussion too. We can point out that there are power plants that LES is associated with or owns that are closer to other jurisdictions and other citizens besides the people that are represented on the LES board. That is not the purpose of this bill. Let's not go there. Let's focus on what the bill does. [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR FISCHER: The bill provides fairness. The bill provides equity to NPPD customers and their representation, just as every public power district in this state provides such fairness to the customers that they serve. Thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Additional members requesting to speak on AM340 to LB53, Senator White, followed by Senator Haar. Senator White. [LB53]

SENATOR WHITE: Thank you, Mr. President, and thank you, Senator Fischer, for your comments. Senator...will Senator Fischer yield to a few questions? [LB53]

PRESIDENT SHEEHY: Senator Fischer, will you yield to questions? [LB53]

SENATOR FISCHER: I certainly will. [LB53]

SENATOR WHITE: Thank you, Senator Fischer. Senator Fischer, the Environmental Protection Agency and the environmental standards of the United States set floors on admissions. They say this is...you must at minimum remove this amount. They don't say to anyone, you can't do a better job. Do you agree with that? [LB53]

SENATOR FISCHER: I would think you would have to define what you mean by you

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can't do a better job. [LB53]

SENATOR WHITE: Well, in other words, they set the maximum amount of pollutants you can release. They don't tell you, and by the way, it's illegal to do an even better job and reduce pollution even more. Would you agree with that? [LB53]

SENATOR FISCHER: I think, Senator White, in the case of any regulation by a federal or a state agency, when they set those regulations, they do so, I would hope and I do believe they do so, based on science and the current science available and the current data available to make sure that the citizens are protected. [LB53]

SENATOR WHITE: Well, actually, Senator, just so you know the way they do it now is they once said you must put in this type of scrubber, for example, on a coal power plant. They got away from that. Now what they say is, you must reduce the emissions to no more than this. But you are allowed to do more and it is possible to do far more, though it costs more money. So they allow the polluter to make the judgments on what they want to do above the minimum standard. The concern I have, just so we're all clear here, is that if you tie the right to representation only to those people who buy the electricity, and you divorce the...or you take away the voice of those who have to live with the consequences of how it's made, you set up a divide inside of Nebraska as bitter and as deep as the potential divide inside of Boyd County. And what that means is this: If I consume electricity, I will not want to spend one more nickel to reduce pollution in an area that does not affect me than I must. And that means the people who are buying the electricity say, do the minimum to reduce pollution and no more because we don't care, and we don't care about what the economic or the health consequences are; it's not in my neighborhood. What happened in Boyd County, as I recall, and I could be wrong on this, but as I recall was there was a commission. They entered into an interstate pact, and there were people who really believed that a low-level nuclear waste facility in Boyd County would be a great boon economically to a very depressed area. They did not, however--I think Senator Fischer is correct--talk to enough of the local community to build a consensus on what they were going to do in their backyard. And these low-level nuclear items were coming from across the Midwest, so people were dumping garbage, literally from all of the Midwest, in Boyd County. We are setting up, and I think Senator Haar has recognized, a system where we're pitting Nebraskans against Nebraskans. And I will tell you it's not only pollution, it's going to be other things. For example, is it important to the voters that they buy American? We had a scandal where a power plant being built by a public power company in this state employed, I think, it was 400... [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR WHITE: ...Filipino workers who worked on that plant illegally. Now if the only thing I care about is how cheap the electricity is, then I might be okay with that. But

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others may say, no, we're not going to bring illegal labor into this country using public power dollars to build a plant. That occurred. We divorce political responsibility, and what we have now is only one thing that matters: what's the lowest nickel I can buy electricity for, and damn the consequences for the rest of the community. Again, to my rural colleagues, today may be a victory for you, but this victory will be a defeat because the people who have the least representation and the least votes traditionally eat the most pollution. That is how it is in this state; that is how it is in this country. Beware of what you ask for. Thank you, Mr. President. Thank you, Senator Fischer. [LB53]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Haar, this is your third time. [LB53]

SENATOR HAAR: Mr. President, members of the board...members of, I'm sorry, members of the Chamber, I would like to give you a very real example of what Senator White has been talking about. The Cooper Nuclear Power Station at Brownville, I believe, is in Senator Heidemann's district, if I'm not correct. And this was the first I'd heard about it, but they're building a new high-level nuclear waste storage facility for their spent nuclear materials. Now currently, those citizens have...they actually have a dual vote. They vote for OPPD and NPPD, and I'm not sure how that works out but they get a dual vote. So those citizens that live close to Cooper Nuclear Power Station, under LB53 will have no representation on the board. Now if rates are the only thing that we're talking about, then Nebraska Public Power is nothing more than a co-op owned by the ratepayers. But that's not the way it seems to me. It seems to me that Nebraska Public Power is owned by the citizens of Nebraska. And that not only do public power boards make decisions about rates, they make decisions about policy. So Senator Fischer, I do want to go there. I think it's very important that we go there and we talk about policy, and that's why I think that we need to study LB53 and the consequences and the importance of this policy before we go ahead with the vote. Policy is so important, as Senator White pointed out. And again, if LB53 goes through, the people at Brownville will have nobody on the board representing them around Cooper Nuclear Power Station. Senator Fischer mentioned the Sheldon plant at Hallam. Well, right now there are plans to enlarge that plant at Hallam. And so there will be, you know, hopefully not, but there will be more...since there's more electricity being generated, there will undoubtedly be more pollution coming Lincoln's way. If you look at the numbers, under the current system over a million Nebraskans have a seat. I can give you a number, 1,075,567--that's probably close--currently get to vote for NPPD board. Under the proposed LB53 that amount is cut to 602,000. And again, if we're only talking about rates, if Nebraska Public Power is nothing more than a co-op, then that's okay. But if Nebraska Public Power is about policy that affects all of Nebraskans, then cutting out 44 percent of all of the people voting for NPPD board is a major policy change and I hope that people recognize that. Forty-four percent of the people now voting for NPPD board will be disenfranchised, and that includes the people living near the Cooper Nuclear Power Station, that includes the people who will be breathing the air from Hallam. So I

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want to go there. I want to talk about policy because I think that's my point, that public power boards are not just about... [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR HAAR: ...setting rates. Again, if they were, then we'd just call them co-ops and we'd deal with that appropriately. The interesting thing about it is that in a co-op the ratepayers are the owners. But you know what? In this study, this Nebraska Electric Utility Industry Final Report that was done in December 1997 to see if we should sell public power, gosh, we would have gotten \$1 billion to put in a trust fund. But guess what? This money was not to go back to the ratepayers, it was not to go back...it was to go to the state of Nebraska in a fund to be spent for education and other things. My argument is that Nebraska Public Power belongs to the citizens of this state and that, certainly, one of their functions is rates, but an equally and possibly more important function is setting policy. [LB53]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Haar. Are there additional members requesting to speak on AM340 to LB53? Seeing none, Senator Haar, you're recognized to close. [LB53]

SENATOR HAAR: Mr. President, members of the body, the amendment before you would limit Nebraska Public Power and all other public power boards the power of eminent domain to those districts where members get to vote for the board. If you believe that Nebraska Public Power is simply a co-op and it's up to the ratepayers, then I think this is a very good idea because they can go anywhere in the state...any public power board can go anywhere in the state and use the right of eminent domain. It's an important issue. Eminent domain is an important issue that affects us all. Now if, in fact, public power belongs to the citizens of Nebraska and if setting rates is one of the functions but setting policy is another one of the functions, then I think we need to study LB53. We need to go there. As Senator Fischer has said, we need to go there because it's about policy. It's about things like setting transmission lines. For example, much of western Nebraska served by MEAN, and so on, would be cut...would be disenfranchised from their vote. Yet once we get into building, really building out wind farms and that sort of thing, transmission lines are going to go through whole counties where those people no longer have a right to vote for the board. And according to the present statutes, Nebraska or NPPD, or whichever utility it is, could use the right of eminent domain anywhere in western Nebraska, basically, cities excluded that are getting their retail customers, Nebraska Public Power, any utility, could use the right of eminent domain to build transmission lines, to build wind farms and so on. So I think we need to go there. Nebraska Public Power is owned by the citizens of this state. One of their charges is low-cost electricity, which has to do with setting rates. But possibly a more important purpose of Nebraska Public Power that's owned by the citizens is to set policy. And LB53 would disenfranchise 44 percent, almost one-half million Nebraskans

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who now get to vote for public power--Nebraska Public Power board specifically--will no longer be able to vote, yet that same Nebraska Public Power will have the right of eminent domain anywhere in the state. And I would say to you it's an important policy discussion that we need to have because when things start happening around the state with transmission lines, with wind farms, I believe that people have the right to vote for the members of the boards who make those decisions. So I would encourage you to vote...if you favor LB53 in its present form, which will disenfranchise 44 percent of the current people who vote for NPPD,... [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR HAAR: ...if you favor that then I would encourage you to vote for this amendment to limit the right of eminent domain to those jurisdictions where people get to vote for the board. We're talking about policy, not just rates. Thank you very much. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Haar. You have heard the closing. The question before the body is on the adoption of AM340 to LB53. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB53]

CLERK: 4 ayes, 26 nays on the amendment, Mr. President. [LB53]

PRESIDENT SHEEHY: AM340 is not adopted. Next amendment, Mr. Clerk. [LB53]

CLERK: Mr. President, may I read some items before? [LB53]

PRESIDENT SHEEHY: Yes. [LB53]

CLERK: Senator Wightman, an amendment to LB120 to be printed. I have explanation of vote from Senator White (re LR11). Hearing notices from Judiciary and Health and Human Services Committee. (Legislative Journal pages 489-490.) [LB120 LR11]

Mr. President, the next amendment I have is by Senator...Senator, I had a motion to bracket, but I understand you want to defer taking that up and offer your amendment AM332. You had a motion to bracket which was next, but you want to take up your amendment and defer taking up... [LB53]

SENATOR HAAR: Yes. [LB53]

CLERK: That's right, right? Okay. Senator Haar would move to amend with AM332, Mr. President. (Legislative Journal page 484.) [LB53]

PRESIDENT SHEEHY: Senator Haar, you're recognized to open on AM332 to LB53.

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[LB53]

SENATOR HAAR: Thank you, Mr. President, members of the house. AM332 recognizes basically what we've been talking about. You'll get a map in a minute. But what it recognizes is that public power, the people who are affected by the decisions of public power should get to vote. And let's see, how we coming? Well, while they're passing out the handouts, I would simply say again that LB53 in its current form will disenfranchise 44 percent of the people, a half million Nebraskans who now vote for the Nebraska Public Power board. The map that's being passed out shows the various power generation facilities around Nebraska and puts a 30-mile circle around each of those power generation facilities. And AM332 would essentially give a vote to anyone living close, within a 30-mile radius of a power generation plant, would give a vote on that board. For example, the Cooper Nuclear Power Station down in southeast Nebraska. Anybody within a 30-mile radius of the Cooper Nuclear Power Station would get to vote for NPPD board because it's in their neighborhood, it affects them. Under LB53, the people now living close to Cooper Nuclear Station have no say on the NPPD board. AM332 would at least give them that representation. The other piece I passed out today shows the dramatic policy change represented by LB53. It shows that 89 municipalities would be removed. It shows that five counties would be completely removed. And you add all those numbers together, 475,000 or about a half million Nebraskans will be disenfranchised by LB53. Again, if all you look at is that Nebraska's public power districts are co-ops and that the only thing they're about is rates, then I guess you'll like LB53. If you agree that LB53...if you agree that Nebraska Public Power should include policy decisions...that people...that Nebraska Public Power, I'm talking about all the power districts, are owned by the people and therefore that policy is an important part of being represented on a board, then I would ask you to vote for AM332, which is not a perfect fix to the bill, to LB53, but it at least represents the recognition that if you're affected by a power generation facility that you ought to have a vote on the board of whatever district you live in...I'm sorry, whichever district owns that facility. Certainly people who live close to a nuclear power plant have an interest in that policy. Certainly people who live close to a coal-fired plant have some interest in that policy because they will be breathing the air. So I would suggest that you consider AM332. I would ask that you recognize that Nebraska Public Power is owned by all the citizens and that people have a right to vote, not only over rates, but that they have a right to vote over the policies that affect their neighborhood. Thank you very much. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Haar. You have heard the opening of AM332 to LB53. Members requesting to speak are Senator Fischer, followed by Senator Fulton. Senator Fischer. [LB53]

SENATOR FISCHER: Thank you, Mr. President. Would Senator Haar yield to a question for clarification, please? [LB53]

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PRESIDENT SHEEHY: Senator Haar, would you yield? [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FISCHER: Senator Haar, on the map that you handed out, you have OPPD facilities listed here, too,... [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FISCHER: ...with the radius around those. [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FISCHER: As I read your amendment and I look at this map, are you then suggesting that the people who live within that radius get to vote for OPPD's board? [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FISCHER: When you have...you have overlaps around Fort Calhoun, the Omaha area. There's...I'm sorry, I'm just trying to clarify this map. [LB53]

SENATOR HAAR: Sure. [LB53]

SENATOR FISCHER: Okay. I see it. Thank you very much. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Fischer. [LB53]

SENATOR FISCHER: Thank you, Senator Haar. Mr. President, may I continue? I rise in opposition to the amendment. I think this isn't needed and I also think it's very confusing in regards to representation, so I would urge you to vote against the amendment. Thank you. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Fulton, followed by Senator White and Senator Haar. Senator Fulton. [LB53]

SENATOR FULTON: Thank you, Mr. President. Would Senator Haar yield to a question, please? [LB53]

PRESIDENT SHEEHY: Senator Haar, would you yield? [LB53]

SENATOR HAAR: Yes. [LB53]

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SENATOR FULTON: Senator, this is...I haven't chimed in on this, recognizing full well that this affects my constituents and Lincolniters. [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FULTON: This particular amendment, Senator, if the impetus is to have those who are in geographic proximity to a power producing plant,... [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FULTON: ...what would you...I guess what would you do with LES? LES has an ownership stake in a coal power plant in Iowa, in Council Bluffs,... [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FULTON: ...which ostensibly, I don't know exactly where it is, but it would seem that a part of the population of Omaha would be affected by that coal power plant which LES has some control over. Would it then be your intention to make LES open to a vote? Because LES right now is not a public power district. It's not something...it's an appointed board. [LB53]

SENATOR HAAR: Right. [LB53]

SENATOR FULTON: So if the policy is to look at those who are affected by a public...by a power generation source, then why wouldn't people in Omaha be afforded a vote on who gets to sit on the LES board? I guess, do you follow where my confusion and where my question is? [LB53]

SENATOR HAAR: Yes, yes. Could I... [LB53]

SENATOR FULTON: Could you elaborate on that a little bit. [LB53]

SENATOR HAAR: Could I respond to that? [LB53]

SENATOR FULTON: Sure, yeah. [LB53]

SENATOR HAAR: Okay. As Alice in Wonderland said, it gets "curiouser and curiouser." What I'm trying to demonstrate here is that if we go forward with LB53, disenfranchising many people who are affected by the power plants that they live close to, then we have to look at some other solution. And I agree that the overlap creates some interesting problems; however, for example on the one map I've handed out, notice Otoe County gets to vote for both OPPD and NPPD. And so already we have cases of... [LB53]

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SENATOR FULTON: So too would my hometown. That's what drew my attention here, so... [LB53]

SENATOR HAAR: (Laugh) Okay, good. So, yes, this gets more complicated. But again at least it takes a stab at saying people who are affected by a facility should be allowed to vote for that board. [LB53]

SENATOR FULTON: Okay. [LB53]

SENATOR HAAR: I don't know the exact way this would be worked out. I think it would be confusing, yes. [LB53]

SENATOR FULTON: Senator, this...I'm interested in probing a little bit into the basis for the policy that you want to put forward. [LB53]

SENATOR HAAR: Yes, yes. [LB53]

SENATOR FULTON: Now I'm...this...insofar as I was supportive of LB53, I am doubly opposed to AM332 because of the unforeseen... [LB53]

SENATOR HAAR: Okay. [LB53]

SENATOR FULTON: ...consequences of passage of that amendment. But would you be...would you propose or do you follow a line of rationale which would justify making all public power districts open to a vote of everyone within Nebraska? [LB53]

SENATOR HAAR: I think that's a very interesting concept, because I think public power is owned by all of Nebraska. [LB53]

SENATOR FULTON: Yeah, and that's what prompts the question. If indeed public power is owned by all Nebraska... [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FULTON: ...and if we're going...recognizing that it's at the Power Review Board level... [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FULTON: ...where all Nebraska really has its say,... [LB53]

SENATOR HAAR: Yes. [LB53]

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SENATOR FULTON: And we don't elect Power Review Board members directly. The elections that occur in our political system occurs at the public power district level. [LB53]

SENATOR HAAR: Yes. [LB53]

SENATOR FULTON: If we're going to have the policy absolutely that public power is owned by all of Nebraska, then wouldn't it follow that all public power districts would be open to a vote of all of the people of Nebraska? That...I'm following the logic... [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

SENATOR FULTON: ...and asking if you could complete that. [LB53]

SENATOR HAAR: Yes, yeah. We're both trained scientists. (Laugh) I think there are other interesting possibilities of how we could make this happen. I don't think there's time right here during this session or the next few days to make those kind of determinations. And that would lead back to my argument: I think that we need to study LB53 before we pass it and then we deal with the consequences. So I would totally agree with you in that there are other possibilities to be considered. And that's again why I would urge the body to...and there's a bracket motion coming up. Yeah. [LB53]

SENATOR FULTON: Thank you, Senator. We're coming up on my time here. [LB53]

SENATOR HAAR: Okay. [LB53]

SENATOR FULTON: How much time do I have there, Mr. President? [LB53]

PRESIDENT SHEEHY: Ten seconds. [LB53]

SENATOR FULTON: Senator, I...thank you. I'll just...I'll add something that I didn't hear earlier. We in Lincoln who breathe the air that may be... [LB53]

PRESIDENT SHEEHY: Time, Senator. [LB53]

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

PRESIDENT SHEEHY: Thank you, Senator Fulton. As a courtesy to the members that are currently discussing LB53 and the amendment, I would ask members to keep their side conversations to a low volume. Senator White, followed by Senator Haar. Senator White. [LB53]

SENATOR WHITE: Thank you, Mr. President. As a representative of the Omaha Public

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Power District area, I represent a district that is entirely consumed by it, I support the concept that people who live next to nuclear facilities should have a vote on the public power district that runs them. What we need to do is avoid the Boyd County syndrome. We have to give the people, who are not just affected by the amount they pay for the electricity, but their safety--the safety of their families, the health of their situation. Senator Lautenbaugh, are you pounding the desk for a reason or... (Laugh) Okay. I didn't know if something had just really frustrated you, Senator. But we need to avoid another repeat of the Boyd County incident. And with that, if you would like it, I'd give the rest of my time to Senator Fulton. Thank you. [LB53]

PRESIDENT SHEEHY: Senator Fulton, 4 minutes. Senator White has yielded you 4 minutes. [LB53]

SENATOR FULTON: Thank you, Senator White. Thank you, Mr. President. The point I was making, the citizens in Lincoln...my district is in the south part of Lincoln, and so there is some interest, I would hope, on the part of my constituents, certainly by me, with what happens down in Hallam. Presently, as I understand it, Hallam is situated...the power plant that NPPD operates is situated within the county of Lancaster. And it's my understanding that in addition to the EPA having some authority over what goes on, with regard to emissions anyway, from that power plant, the Lancaster County Health Department I believe would also have a say. And so it isn't as if we are eliminating any purview on the part of citizens that live in the proximity of the power station of Sheldon, then that's not the case because the Lancaster County Health Department does have some purview. Further, those power plants that LES purchases power from, LES has some contractual authority over the governance and operation--well, I wouldn't say governance--over the operation, anyway, of those power plants. And so that people understand and that it's clear, we are not usurping any authority over that energy which is being generated that will eventually find its way into the homes of Lincolniters. So that should be made clear. I hope people understand that we don't completely give up any authority over the power and the emissions that may affect our lives. That's not true. So thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Haar. [LB53]

SENATOR HAAR: Mr. President, members of the body, on the map with all the pretty circles which was prepared by the research department here--they did a really fine job on this map I think--you know, it depends on how big you draw the circle. Right now the circles are a 30-mile radius and all of Lincoln is included in that. You could make the circle bigger or smaller, I guess. But I would like to ask Senator Fulton some questions if I could. [LB53]

PRESIDENT SHEEHY: Senator Fulton, would you yield to questions from Senator Haar. [LB53]

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SENATOR FULTON: Yes. [LB53]

SENATOR HAAR: Oh, thank you. So from your testimony, and I would agree because I was on the Lincoln-Lancaster County Health Board, there may be some control because of the Lincoln-Lancaster County Health Board. Do you see that as the same level of control as having a representative on the NPPD board or... [LB53]

SENATOR FULTON: I wouldn't say it's the same, but the reason that I say that is because of the political identities of the two. A board that has direct governance is different than a health department. But I would argue that the...with regard to emissions policy anyway, VOCs, UHCs, whatever emissions that we're targeting, the Health Department, in my opinion, would probably have more authority, more power than a single vote on the board. That would be my position. [LB53]

SENATOR HAAR: Yeah, I'm not sure of that. I was on the county health board, and I...that topic never came up, so I'm not sure. Well, thank you very much. AM332, the purpose of this is to focus attention. And we're going to know in a few minutes, from the votes, whether people really think that public power belongs to the public and whether simply their only purpose is to set rates, because then LB53 is the remedy for that. If indeed public power has a responsibility in terms of policy to all Nebraskans, then I think we need to see that the boards include not only those people who pay them rates but who are affected by their policy. I agree that this amendment is complicated, but I think it would be better than simply eliminating 44 percent of Nebraskans who now vote for Nebraska Public Power. Disenfranchising 44 percent, that's an enormous, enormous decision. That's an enormous policy change. And at least AM332 gives some kind of responsibility. It says that people who live within that area, within the area of a power generation plant would get to represent the board. We'd still leave out much of western Nebraska. We'd still have many places in Nebraska where any public power board could use their eminent domain for transmission lines or wind farms or whatever they wanted to do. So with that, where are we? [LB53]

PRESIDENT SHEEHY: You have about one minute left. [LB53]

SENATOR HAAR: And then which...which time... [LB53]

PRESIDENT SHEEHY: This is your second time to speak. [LB53]

SENATOR HAAR: My second time to speak. Okay, thank you. [LB53]

PRESIDENT SHEEHY: One minute. Senator, you can continue. [LB53]

SENATOR HAAR: Okay. Well, that would be this time slot for me. Thank you. [LB53]

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PRESIDENT SHEEHY: Are there additional members requesting to speak on AM332? Seeing none, Senator Haar, you're recognized to close. [LB53]

SENATOR HAAR: Okay. Mr. President, members of the body, the purpose of AM332 is to point out that the boards of the people...the boards of the public power districts that are owned by the citizens of Nebraska, not by the ratepayers but the citizens of Nebraska, have a right to have representation on the boards that affect their lives. And that's the purpose of this. And I would like to withdraw my amendment. [LB53]

PRESIDENT SHEEHY: AM332 is withdrawn. Next amendment, Mr. Clerk. [LB53]

CLERK: Mr. President, the next motion I have is Senator Haar. He would move to bracket the bill until June 4, 2009. [LB53]

PRESIDENT SHEEHY: Senator Haar, you're recognized on your motion to bracket until June 4, 2009. [LB53]

SENATOR HAAR: Mr. President, members of the house, in my mind, again, and I'm sure you're all aware of this, I would really like you to think about who owns Nebraska public power--not big NPPD but Nebraska public power. And I believe it's the citizens of the state of Nebraska. And we're not a co-op, we're not a co-op. The public power districts don't belong to the ratepayers; they belong to all the citizens of Nebraska. And so obviously one part of the purpose of the boards of these public power districts all over the state is to set rates, that's for sure, but another important part of their duty is to set policy. And again I will say that 44 percent of those people who now vote for NPPD, 475,000 Nebraskans who currently vote for NPPD board will be disenfranchised, leaving 600,000 to vote for NPPD board. And I would simply ask you to think carefully what it...my sense is that this requires more study; that we're not ready to make a huge policy change that disenfranchises a half a million Nebraskans. And I don't care if people know who their NPPD board members are or not or whatever. That's their right to vote, not necessarily against LB53 in some final form, but I'm suggesting with this bracket motion that we study it first--that we study it first. We don't rush it through. We study it first and then we come back with a solution that does not disenfranchise people who are influenced by the policy. Again, I think the safe haven bill was an example of something that finally got passed and then there were consequences that people didn't think about. I believe that LB53 has consequences that we have not all thought about because the main idea seems to be that all the boards do is set rates. And I'm proposing that the boards do much more than that, that they set policy, especially NPPD who will be the main driver in renewable energy is going to be setting policy all over the state with eminent domain, with transmission lines, with wind farms. And I think that's appropriate. But I think we have to look carefully at who gets to be on the board. And with that, that will be my opening. Thank you, Mr. President. [LB53]

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PRESIDENT SHEEHY: Thank you, Senator Haar. You have heard the opening on the motion to bracket LB53 until June 4, 2009. Members requesting to speak are Senator Fischer, followed by Senator McGill and Senator Mello. Senator Fischer. [LB53]

SENATOR FISCHER: Thank you, Mr. President and members. I rise in opposition to the bracket motion. Senator Haar mentioned that we all need to be concerned about public power. And I can assure you that I am a strong supporter of public power as are the majority of you and I'm sure all of you are within this Chamber. Public power is a foundation in the state of Nebraska. We are very fortunate that we have cheap, available electricity in this state for our citizens, for our businesses. It is definitely a plus. It is definitely something we need to continue to support. I do take issue though with Senator Haar's comment that we are disenfranchising close to a half million people in this state. As I told you on General File and as I said today, every citizen in the state of Nebraska is represented on a public power board. Some of those boards are elected. Our rural electric associations, those are elected members. OPPD's board is elected. Some of those boards are appointed, such as Lincoln Electric System. But every citizen in this state is represented on a public power board. Some of those are known as public power districts. Some of those are known as municipal districts. And yes, with public power we do have co-ops too. I wanted to clarify that. We do have co-ops in this state that are public power boards. In fact, Senator Loudon, I believe, served on one of those. So I don't believe we are disenfranchising any voter on their representation on a public power board. Public power is important. Citizens in this state should have representation. They do have representation and under LB53 they will continue to have representation. This has been studied, this has been discussed. I think we are ready to vote and we don't need the bracket motion. So I encourage you to vote against the bracket motion. Thank you. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator McGill. [LB53]

SENATOR MCGILL: Mr. President, members of the body, I rise in support of the bracket motion. I recognize this bill is not just about Lincoln. But I think it's fair for Lincoln senators who represent the people of this city to question the bill and make sure that it is appropriate because we represent the people of Lincoln, and so I am going to speak to the issues that my constituents have brought to me. But that doesn't mean that other parts of the state may or may not be concerned about this issue. I got a great deal of e-mails over the weekend from Lincolniters that are worried about this change and are wondering why we are rushing to take away their representation. The first they heard of this was when the press first started reporting about it on the first round of debate. While there may have been open processes through NPPD's process, people weren't educated about it here in Lincoln. But the more they're learning, the more they're concerned about losing representation on a governing body. Taking away representation should be a more expansive process that includes more public input and

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more analysis by us. I do understand what this bill is trying to do and I agree that Lincoln's membership on the board should not grow. That would not be fair to the rest of Nebraska. But Lincoln residents deserve to have more input and more study put into the removal of all of their representatives. Again, I understand the concern about three members. But this proposal doesn't talk about just blocking one additional member. It's talking about removing two seats that have been a part of the board for a great deal of time. If there was a problem with Lincoln having two representatives on the board, why has this not been brought to our attention before this point in time? To Omaha senators who may feel that this simply doesn't impact them, if you had two members sitting on a governing body like this and those were being taken away, you would want to put more thought and discussion into that change as well. We are talking about representation, a basic tenet of our government. What is the rush? This doesn't have to get done this year. The census is next year. We have more time that we can put into this. It does not have to be done this year. If there is any doubt in your mind about what this bill does, then you should be voting for this bracket motion so we can extend debate, put a little more study in this over the next year. Thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator McGill. We have Senator Mello, followed by Senator Lautenbaugh and Senator Haar. Senator Mello. [LB53]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I stand today and rise in support of this bracket motion after extensive conversations with Senator Fischer, NPPD, and OPPD. You know, when the bill was on General File I had those similar discussions and did not vote on the bill because I had some concerns. I didn't quite understand it well enough. I had some concerns in regards to the unintended consequences that might come from this bill. And after further conversations and further research, some of those concerns are still there. And to the new members of the Legislature, the new 16 of us, though we're in a couple months now of the legislative session, I've not...I don't know how many of us have served actually on a public power board, how many of us actually are well knowledgeable about how public power boards work, how they operate. And because of that I really wanted to make the plea, I guess, to the newer members, that part of our job and responsibility is to take a thoughtful approach to every bill that comes up. And bills that we might not be very knowledgeable about, that we seek out information, we seek out advice. We speak with some of our senior members and get their opinions and thoughts. And this issue I really encourage everyone to do so because there's no other way to look at it. This is a redistricting bill. And I've never been involved in a redistricting process and I don't know how many of the other senators have been involved in a redistricting process, but that's what this bill is. And to give credit to Senator Haar and Senator McGill and their brief remarks, there could be unintended consequences of us not looking and actually having the Legislature study this. Believe me when I say that interest groups far and wide can do reports, they can do studies, they can do task force, public hearings, whatever public meetings to come up with a report or a recommendation that they want to see get done. I'm not

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saying that NPPD did that because I think NPPD is trying to do what they think is best. But I think it's our responsibility as the Nebraska Legislature to study this issue, to spend the interim looking at this redistricting bill to see what might be the unintended consequences, not four years from now, not ten years from now. How will this impact rural Nebraska in 20 years, taking the long view, taking a long strategic view of how this bill might have that perspective and might have those outcomes. And I know that Senator Haar has been on the floor this morning and has introduced some amendments to this bill, and I know he has some concerns and I respect those concerns. I might not agree with all of them but I agree with some of them. And I think a lot of what Senator Haar and what Senator McGill has said this morning is that we simply have to review this a little bit more. This bill has come through the Legislature very quickly. The best we could do is to slow down a little bit, take a deep breath, we bracket it to the end of this year. I've told Senator Fischer I'm not...it's not that I'm opposed to the bill. I just want to see us study the issue more, to learn about the issue more and see where our public power system might be going in 20 years, and how taking the key representatives from the second largest city in the state and the second biggest customer from NPPD and seeing how that would impact public power in the future. So with that, I encourage you to support the bracket motion. [LB53]

PRESIDENT SHEEHY: One minute. [LB53]

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

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Lautenbaugh. [LB53]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do agree with Senator Mello that this is, in essence, a redistricting bill, something I have some experience with from past public service. And words mean things and we should be careful what we say. This bill does not disenfranchise voters. People still have the right to vote for public power. If you don't have a right to vote for every elected official in the state, you have not been disenfranchised. Every year...or every ten years the Legislature redistricts. No one is disenfranchised in that process. You may be put into a different district but your right to vote is not taken away. That is just like this bill. We are not disenfranchising people. We are adjusting the boundaries and that's all it is. And I want to be very clear about that because I used to struggle with that. I used to deal with the claims of disenfranchisement every time a boundary was adjusted. That's not what this is. We're not taking away people's right to vote. We are saying, you don't vote in this particular board or for this particular board, as happens all the time when you have districts and boundaries between a school district and another school district or the city and the county area or this utility board and that utility board. This is not disenfranchisement of anyone and I want to be very clear about that. And I would urge you to vote against the motion to bracket and support the underlying bill. [LB53]

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PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Haar, followed by Senator White. Senator Haar. [LB53]

SENATOR HAAR: Mr. President, members of the body, I would like to wait and...can I do that? Talk after Senator White? Yeah. [LB53]

PRESIDENT SHEEHY: Wait, yes. You can waive this time. Senator White. [LB53]

SENATOR WHITE: Thank you, Mr. President. And I hadn't intended to speak again on this but Senator Lautenbaugh's statements, I do believe, need to be at least rebutted if not outright corrected. It is one thing to say I have a right to vote. But if I have a right to vote, living in Omaha, for the policies in Scottsbluff, but I cannot vote for the policies in my neighborhood, the right to vote means nothing. You are in fact disenfranchised. The only time a vote has meaning is if you can vote on the things that directly affect you in your neighborhood. Now is the system perfect? No. Are there policies that affect me? As Senator Fischer so properly pointed out, the coal-fired plant in Council Bluffs affects the quality of the air my children breathe in Omaha. Do I have a vote there? No. Do I wish I did under those circumstances? Yes. But when we have an opportunity to make a choice between the right to vote on matters that affect me in my home or not, it seems to me that if we're truly dedicated to democracy and to the concept that votes matter then we should err on the side of giving people more votes. Senator Haar has brought forward a number of amendments that would provide a more fair and balanced representation, increase the representation of people in the western part of the state but preserve a voice for the people in Lincoln. These coal-fired plants affect Lincoln. Cooper Nuclear Power Station affects deeply the people who live near it. You know, Alan Shepard once said, it's not so great being an astronaut when you're sitting on top of a six-story rocket with 10,000 parts, each one let to the lowest bidder. Well, if you're sitting next to a nuclear power plant in a home, which is your only investment, it may not be so great if what they're doing complies with the law but doesn't comply with the highest possible reasonable engineering standards. What I would say is, taking away a person in Lincoln's right to vote on what is an appropriate method of cleaning the air out of a coal-fired plant in a city right next to it, taking away the person who lives next to the Fort Calhoun Nuclear Power Plant or not providing the right to vote for someone who lives next to the Fort Calhoun Nuclear Power Plant or the Cooper Nuclear Power Plant is contrary to the best interests and our best traditions of democracy, and that is disenfranchisement. Because what you are by, quote, just readjusting boundaries, you are taking away the right to vote from the people who bear the consequences of the decisions being made. And that is disenfranchisement. Thank you, Mr. President. [LB53]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Haar. [LB53]

SENATOR HAAR: Sorry about that static. Mr. President, members of the body, when I

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learned that Cooper Nuclear Power Plant was...and, in fact, they are building this now, a high-level nuclear waste storage site, I could call my representative on the NPPD board and ask why. I didn't agree with their reason for doing it but at least I had a representation on the board. Under LB53, as we've said, the people that live close to Cooper Nuclear Station and me--well, actually since I'm in Norris Public Power I could vote--but the people in Lincoln, for example, and the people living near Cooper Nuclear Power Plant have no representative to call. The decision was made for them. In western Nebraska, as certainly transmission lines will go in place and wind farms will be built, and that's a wonderful opportunity, but all of a sudden people in those counties are going to find that they have no representation on the board that's building these facilities. And I do call that disenfranchisement. The difference between this and redistricting, of course, is that redistricting is just moving the boundaries. This is taking 475,000 Nebraskans, a half million Nebraskans, 44 percent of those that now are able to vote for NPPD, and saying you can no longer vote for NPPD. And I guess it's all a matter of words, it's a matter of definition. I certainly call that disenfranchisement. So, you know, we've discussed this quite a bit. I would like to ask Senator Fischer a couple more questions if I could. [LB53]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB53]

SENATOR FISCHER: Yes. [LB53]

SENATOR HAAR: Okay, thank you. I guess an area that the two of us disagree on quite a bit is that--or totally--is that Senator Fischer believes it's been studied enough and I'm saying there is too many unknowns. And I would just...I'm just curious to know who studied this? Was it at the legislative level, Senator Fischer, or who studied it? [LB53]

SENATOR FISCHER: As I said earlier, Senator Haar, this bill came from NPPD, their board of directors. They had a committee that studied it, made recommendations to the board. The board, I know, had it on their agenda for discussions at least two months, possibly more, before they took the vote on it. [LB53]

SENATOR HAAR: Okay. Do you know...because my concern here is not just the issue of rates, although that's so important, but the issue of policy. Do you know if NPPD board talked about policy, and how, you know, the fact that people in western Nebraska could no longer have a member on the board yet, yet they may have transmission towers built across their property? Did they talk about those kind of policies, do you know? [LB53]

SENATOR FISCHER: I was not at their board meetings so I don't know the specifics of what they discussed, but as with any elected body and a board of directors, policy discussions are the usual. They're commonplace. We have a representative from within my legislative district. He resides in Broken Bow... [LB53]

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PRESIDENT SHEEHY: One minute. [LB53]

SENATOR FISCHER: ...and he is a member of the board of directors. And since this bill directly affects him, I'm sure he was involved in those policy discussions and he voted in favor of the proposal. [LB53]

SENATOR HAAR: Okay. So... [LB53]

SENATOR FISCHER: Which is...some people consider Broken Bow and Custer County as western Nebraska. Those of us who live in the 43rd District, we always smile and say, no, it's central Nebraska, north-central Nebraska. And you guys always forget the Panhandle. [LB53]

SENATOR HAAR: Yeah, we're guilty of that. Actually, in my thoughts I was thinking primarily about the Panhandle that when talking about western Nebraska, that those are the areas where we are going to see, as well as your area, of course, see significant wind development, significant transmission lines and those kinds of things. Thank you. [LB53]

PRESIDENT SHEEHY: Time, Senator. Are there additional members requesting to speak to the motion to bracket LB53 until June 4, 2009? Seeing none, Senator Haar, you're recognized to close. [LB53]

SENATOR HAAR: Mr. President, members of the body, thank you very much. What's my time on closing? Is it five minutes? [LB53]

PRESIDENT SHEEHY: Five minutes, Senator. [LB53]

SENATOR HAAR: Okay, thank you. We have discussed this a great deal. And I guess if you feel that by disenfranchising 450,000...I'm sorry, 475,000 Nebraskans who can currently vote for NPPD, reducing that number from over 1 million down to 600,000, if you feel that's simply redistricting and that that's fine, obviously you'll vote against bracketing. If we've raised issues, which was my point, because I feel strongly about this that this is a major public...a major change in public policy that was not done as a study by the Legislature but it was a study of the NPPD board of directors and now they're recommending how their membership should be changed, I simply don't see that as adequate. I see this being such an important issue in terms of who owns public power, how policy is made that affects those all across the state, that I feel confident, I feel certain that we should have an interim study by the Legislature. We're the super board. Senator Fulton talked earlier about, well, who gets to vote for everybody on public power, and it's the people vote for us, we're the super board. And the Legislature has not studied this issue. The Legislature has not looked at all the unintended

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consequences. We're not sure of what the NPPD board talked about, what they considered, and, you know, questions like the fact that now people that live close to Cooper Nuclear Station will no longer have representation on the board; as Senator White pointed out, that people in far western Nebraska, in the Panhandle, could have a nuclear waste site built by NPPD using eminent domain, yet they would have...they will have no representation on the board if you vote for LB53. And so I would certainly urge you to consider that this is a major policy change. I think it's a policy change that should be considered at the level...at the legislative study level. We are the super board. We should do this study and then come back and come up with recommendations of who gets to vote where and why. And with that, I appreciate your time. I've not stood up here talking because I want to hear myself talk. I've been up here talking because I consider this an important policy issue and I think there are going to be consequences down the road. I simply ask that we have time to study this as a legislative body. Thank you very much. [LB53]

PRESIDENT SHEEHY: Thank you, Senator Haar. You have heard the closing. The question before the body is on the motion to bracket LB53 until June 4, 2009. All those in favor vote yea; opposed, nay. Senator Haar. [LB53]

SENATOR HAAR: I'd like to do a call of the house, please. [LB53]

PRESIDENT SHEEHY: There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. [LB53]

SENATOR HAAR: A record vote, please. No, not to the call of the house but the final vote, please. [LB53]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB53]

CLERK: 39 ayes, 0 nays, Mr. President, to place the house under call. [LB53]

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 Heidemann, Senator Cornett, Senator Ashford, the house is under call. Senator Haar, all members are present or accounted for. There has been a request for a roll call vote. Mr. Clerk. [LB53]

CLERK: (Roll call vote taken. Legislative Journal page 490.) 6 ayes, 33 nays, Mr. President, on the motion to bracket. [LB53]

PRESIDENT SHEEHY: The motion to bracket is not adopted. The call is raised. [LB53]

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CLERK: I have nothing further on the bill, Mr. President. [LB53]

PRESIDENT SHEEHY: Senator Nordquist. [LB53]

SENATOR NORDQUIST: Mr. President, I move LB53 to E&R for engrossing. [LB53]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB53 advances. Next item under Select File, Mr. Clerk. [LB53]

CLERK: Mr. President, LB28. Senator Nordquist, I have no amendments to the bill. [LB28]

PRESIDENT SHEEHY: Senator Nordquist. [LB28]

SENATOR NORDQUIST: Mr. President, I move LB28 to E&R for engrossing. [LB28]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB28 advances. [LB28]

CLERK: Mr. President, LB48. Senator Nordquist, I have no amendments to the bill. [LB48]

PRESIDENT SHEEHY: Senator Nordquist. [LB48]

SENATOR NORDQUIST: Mr. President, I move LB48 to E&R for engrossing. [LB48]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed, nay. LB48 advances. [LB48]

CLERK: LB204. Senator, I have E&R amendments. (ER8015, Legislative Journal page 446.) [LB204]

PRESIDENT SHEEHY: Senator Nordquist. [LB204]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB204. [LB204]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB204]

CLERK: I have nothing further on the bill, Senator. [LB204]

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PRESIDENT SHEEHY: Senator Nordquist. [LB204]

SENATOR NORDQUIST: Mr. President, I move LB204 to E&R for engrossing. [LB204]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye.
Opposed, nay. LB204 advances. [LB204]

CLERK: LB331. Senator, I have no amendments to the bill. [LB331]

PRESIDENT SHEEHY: Senator Nordquist. [LB331]

SENATOR NORDQUIST: Mr. President, I move LB331 to E&R for engrossing. [LB331]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye.
Opposed, nay. LB331 advances. [LB331]

CLERK: LB135. Senator, I have no amendments to the bill. [LB135]

PRESIDENT SHEEHY: Senator Nordquist. [LB135]

SENATOR NORDQUIST: Mr. President, I move LB135 to E&R for engrossing. [LB135]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.
Opposed, nay. LB135 advances. [LB135]

CLERK: LB32. Senator, I have no amendments to the bill. [LB32]

PRESIDENT SHEEHY: Senator Nordquist. [LB32]

SENATOR NORDQUIST: Mr. President, I move LB32 to E&R for engrossing. [LB32]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye.
Opposed, nay. LB32 advances. [LB32]

CLERK: LB7. Senator, I have no amendments to the bill. [LB7]

PRESIDENT SHEEHY: Senator Nordquist. [LB7]

SENATOR NORDQUIST: Mr. President, I move LB7 to E&R for engrossing. [LB7]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.
Opposed, nay. LB7 advances. [LB7]

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CLERK: Mr. President, LB55. No Enrollment and Review. Senator Flood would move to amend. (AM325, Legislative Journal page 460.) [LB55]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on your amendment AM325 to LB55. [LB55]

SPEAKER FLOOD: Thank you, Mr. President, members. I filed this amendment because I think we have to ask ourselves a question before we go down the road that LB55 purports to send us down, and that is placing requirements on the people that can be elected to constitutional officer positions in the state of Nebraska. I think Senator Lathrop and Senator White and any other lawyers, Senator Council, in here would agree that no one is going to go in and practice law on behalf of the state of Nebraska in any court in this state unless they've been admitted to practice law in the state of Nebraska and are a member of the Nebraska State Bar Association. The question I have with regard to LB55 is, can we place requirements on a constitutional officer's position? Walk away from the Attorney General for a second. Think about the State Treasurer. Should that person be a certified financial planner or should they be a CPA? Should the State Auditor have auditing credentials? This is a separation of powers issue. And I'm not so sure that the bill is unconstitutional the way it's written, but I think we have to ask ourselves, can we regulate the requirements for another constitutional officer? I'm not married to this amendment. This amendment basically strikes the provision in the bill about any extra requirements for Attorney General's requirements. It has nothing to do with the county attorneys. I think it's well within our province to determine what a county attorney should have as a prerequisite before they can run and win office, but when it comes to a state constitutional officer I think we have to be a little bit careful. I fully agree that our Attorney General should be a practicing lawyer. I think the voters are smart enough to figure that out though. I think any campaign...you know, if somebody ran for Attorney General and they weren't an attorney, would be a pretty serious campaign issue. I just don't see how you get elected. But if you want to leave it in there, that's fine. I don't even know, you know, I'd be interested in the opinion of other lawyers on this provision. I've been told by folks outside the glass that this is fine, we can regulate what the requirements are for Attorney General. That may be the case. It just seems a little odd to me though that we're going into one constitutional office and we're prescribing what the minimum requirements are, when I think the constitution pretty much speaks on those matters. I know this came through the Government Committee, if I'm right. I don't know if members of the Judiciary Committee want to weigh in as well. It may be constitutional, but I think it's something at the very least that we need to be watching. Thank you, Mr. President. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Flood. (Visitors introduced.) You have heard the opening of AM325 to LB55. Members requesting to speak are Senator Fischer, followed by Senator Avery and Senator Price. Senator Fischer. [LB55]

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SENATOR FISCHER: Thank you, Mr. President and members. The Speaker discussed this amendment with me and I am in support of the amendment. I appreciate the concerns that he had with including the qualifications for the Attorney General in this bill. My purpose on the bill was to clarify the requirements for county attorneys in our counties that have a population of 20,000 or less. If there are questions that if the Legislature should be involved in setting the qualifications for a constitutional officer, the Attorney General, then I think that we need to pull this from the bill, as Senator Flood's amendment does, and have that discussion at another time on another measure if such a bill would come forward. So I am in support of his amendment and I think it will help outline what the purpose and true intent of the bill is. Thank you very much. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Avery. [LB55]

SENATOR AVERY: Thank you, Mr. President, colleagues. I just want to explain that the Government Committee, when we considered this bill, we did discuss the possibility that this provision may not be constitutional. And just let me explain a little bit about how we came to where we are. While we recognize that it might not be constitutional, we felt that it was not particularly in our interest to always take the view that, well, if it might be unconstitutional we shouldn't do it. My own view is that everything we do here is constitutional until the Supreme Court tells us otherwise. And so I believe that we decided to leave it in for that reason because it's not an unreasonable qualification to require the Attorney General to be a lawyer, as Speaker Flood mentioned. I'll tell you though that my conversations with the other committee members leads me to believe that we are not particularly opposed to this amendment. In fact, I personally am not, so I will be joining with Senator Fischer, the introducer of the main bill, in supporting this. Thank you. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Avery. We have Senator Price, followed by Senator Sullivan. Senator Price. [LB55]

SENATOR PRICE: Mr. Speaker, members of the house, thank you very much....Mr. President, excuse me. In committee and hearing this bill we had a lot of discussion on this. And I had asked Ms. Zulkoski, who was the representative for the state bar, to provide me information on this very subject. In her reply to me she said that the Nebraska Supreme Court ruled that, while the constitution created the office, there is no provision pertaining to eligibility, therefore a qualification set forth by the Legislature was not violative of the true expressed or implied intent and the purpose of the constitution, and further that no presumption arose from the constitution of an intent that the Legislature should be without power to require that the railway commissioners should possess reasonable qualifications as a condition of eligibility to hold office. Now, of course, this was back in 1942, but law does endure. So I just want to bring that up to assuage any possible concerns and therefore I do not believe that AM325 is necessary. Thank you, Mr. President. [LB55]

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PRESIDENT SHEEHY: Thank you, Senator Price. Senator Sullivan. [LB55]

SENATOR SULLIVAN: Thank you, Mr. President, members of the body. I, too, rise in favor of Senator Flood's amendment because, when the bill was introduced in committee and we discussed it, I was the lone person that voted against moving it out of committee just simply for the reason that the amendment addresses. From an organizational standpoint also, I just don't think that that particular feature of the bill needs to be in its present location. So I rise in favor of the amendment. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Are there additional members requesting to speak? Seeing none, Senator Flood, you're recognized to close. [LB55]

SPEAKER FLOOD: Thank you, Mr. President, members. I appreciate the discussion on this. At the end of the day I don't think we're talking...we're making mountains out of molehills because I think the voters will decide who's fit to be the Attorney General. And I think licensed to practice law and somebody that understands what they're doing would be basic questions for any voter in the state of Nebraska. I would ask that you adopt AM325. Thank you, Mr. President. [LB55]

PRESIDENT SHEEHY: Thank you, Senator Flood. You have heard the closing. The question before the body is on the adoption of AM325 to LB55. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB55]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Flood's amendment. [LB55]

PRESIDENT SHEEHY: AM325 is adopted. [LB55]

CLERK: Senator Nordquist, I have nothing further on the bill. [LB55]

PRESIDENT SHEEHY: Senator Nordquist. [LB55]

SENATOR NORDQUIST: Mr. President, I move LB55 to E&R for engrossing. [LB55]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB55 advances. [LB55]

CLERK: LB20, Mr. President. Senator Nordquist, I have no amendments to the bill. [LB20]

PRESIDENT SHEEHY: Senator Nordquist. [LB20]

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SENATOR NORDQUIST: Mr. President, I move LB20 to E&R for engrossing. [LB20]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB20 advances. [LB20]

CLERK: LB102. Senator, I have no amendments to the bill. [LB102]

PRESIDENT SHEEHY: Senator Nordquist. [LB102]

SENATOR NORDQUIST: Mr. President, I move LB102 to E&R for engrossing. [LB102]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB102 advances. [LB102]

CLERK: LB201. Senator, I do have Enrollment and Review amendments. (ER8016, Legislative Journal page 448.) [LB201]

PRESIDENT SHEEHY: Senator Nordquist. [LB201]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB201. [LB201]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB201]

CLERK: I have nothing further on the bill, Senator. [LB201]

PRESIDENT SHEEHY: Senator Nordquist. [LB201]

SENATOR NORDQUIST: Mr. President, I move LB201 to E&R for engrossing. [LB201]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB201 advances. Mr. Clerk, we'll move to the first legislative bill under General File. [LB201]

CLERK: LB165, Mr. President, introduced by Senator Cornett. (Read title.) The bill was introduced on January 12 of this year, referred to the Revenue Committee for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM121, Legislative Journal page 343.) [LB165]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB165. [LB165]

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SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. LB165 is a department bill to clarify and improve current tax law administration. I will open on the committee amendments. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Cornett. As was noted, we do have an amendment from Revenue Committee. Senator Cornett, you're recognized to open on AM121. [LB165]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Again, LB165 is a department bill to clarify and improve current tax law administration. I'm going to go through different sections of the bill. It allows the department to recover increased administrative expenses for the petroleum remediation release fund. This change is based on a study done by the State Auditor's Office of the cost to the department of performing this duty. It limits corporate officer's liability for corporate taxes, clarifies the department's ability to enforce corporate income tax liability with officers of the corporation, and limits that time period to three years. This is done to parallel federal powers, and I have further information on this if anyone in the body needs that. It mandates electronic filing in situations where...for a profit taxpayer...tax preparer is involved, relieves the seller of liability in cases where the department fails to notify the seller of sales tax rate change in a timely manner, changes telecommunications definitions to conform with national streamlined sales tax policy. And this is an important point to note that this brings us into compliance with streamlined sales tax. It regulates online auctions qualify for garage sales or occasional sales exemption conditions. Another telecommunications sales tax change to conform to streamlined. It allows sales tax exemptions for mobility enhancing equipment if a prescription is made for the equipment. Currently, the equipment will only be exempt if it is also eligible for reimbursement. The committee amendment also deletes language in regards to medical equipment. It allows for more disclosure of sales tax information to a city so the cities will be able to better plan their budgets. Relieves purchasers of penalties for noncompliance if state fails to provide timely information on a change. Reduces the time period for administrative decisions to become effective. This will now conform...will make us conform with the state Administrative Procedure Act provisions. And it brings into conformity a new farmer tax credit that we adopted last year but failed to amend that section of tax code. It does contain an emergency clause. I would urge the body to support the bill...the amendment which becomes the bill and the underlying bill. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening of AM121 from the Revenue Committee. The floor is now open for discussion. Members requesting to speak: Senator Pahls. [LB165]

SENATOR PAHLS: Thank you, Mr. President and members of the body. I would like to speak a little bit with Senator Cornett about her bill. [LB165]

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PRESIDENT SHEEHY: Senator Cornett, would you yield to questions? [LB165]

SENATOR CORNETT: Yes, I would. [LB165]

SENATOR PAHLS: Senator, this is a friendly discussion. One thing that intrigued me was your Section 9, where you were, what I'm saying, moving around with exemptions. Could you explain that a little bit to me? [LB165]

SENATOR CORNETT: Section 9 we removed. It placed a limit on the sales tax exemption that exists in current law for purchases made by the following...by nonprofit organizations. The reason that we removed that language in committee is we have two bills that had not been heard yet that will be heard today in the Revenue Committee that that section affects. After discussion, we believe we will be amending that language back onto one of the bills that we will be hearing today. [LB165]

SENATOR PAHLS: Okay. So my understanding is you're actually removing it from this...the department's bill and possibly placing it in another bill. [LB165]

SENATOR CORNETT: Yes, because we were unable, at that time, to determine what the fiscal note would be if that was included in the department bill and one of the two bills or both of the bills passed in committee that we will be hearing today. So we wished to hear them together. [LB165]

SENATOR PAHLS: Okay. Well, I thank you for that, Senator. I assume right now you also know that I have a bill, LB386, that does away with these exemptions totally. [LB165 LB386]

SENATOR CORNETT: I did know that, yes. [LB165]

SENATOR PAHLS: Okay. Well, this is just going to allow me to speak on that bill a little bit before it is heard. It is amazing to me the number of bills that have been filed this year just with more exemptions. And I see these exemptions, it's almost...it's unfathomable how much this is going to, quote, cost the General Fund. Just to give you an idea, right now we exempt \$3 billion from sales tax. We collect \$2 billion. So we exempt more than we collect. And I'm just trying to give this a little bit more foreplay for the Senator to let her know that this will make the bill that I am proposing...hopefully, it will give it a little bit more life because if we would do away with all these exemptions, for those of you who come to the floor and say our property tax is too high, if we do away with all these exemptions we would not have property tax. You would not be paying car tax. You would not be...if you're a corporate world, you would not paying corporate taxes. And for those of you who say we should do away with income tax, we could do that. Of course, you'd lose some of these other taxes that we would like to do

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away with. So we do give an awful lot of exemptions. And I'm just encouraging people when they hear, because most of these ideas are great. You can't argue with these ideas that people want to exempt. But what it does, it does play with our General Fund, our tax revenue. So if we continue to exempt, it's going to cause more problems in the long run. And I think if we could do away with, if not all the exemptions...just think about that. Three billion we do exempt right now, \$2 billion we collect on sales taxes. Think about that. Remove some of those exemptions that have been around for years and we may have lost the idea of why some of those were brought forth to this body. So when you think, how can we reduce property tax? We can. Do away with those exemptions. Property taxes... [LB165]

PRESIDENT SHEEHY: One minute. [LB165]

SENATOR PAHLS: You would see a significant drop in property taxes if that's the direction we chose. Car. You can see what that would do for the car industry. Also think about corporate taxes, because we're always talking about our corporate taxes are too high. We can eliminate those. Also if you chose, say, like income tax, we ought to take a look at that. We could have a tremendous effect on the state of Nebraska. So again, when you do see or hear of more exemptions, that could cause some problems for the future. And I want to thank the Senator for allowing me to discuss this with her. Thank you. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Pirsch. [LB165]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Cornett would yield to a few questions. [LB165]

PRESIDENT SHEEHY: Senator Cornett, would you yield to questions? [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR PIRSCH: Thank you very much. There's a number of sections, quite a bit of substance incorporated into this single bill. If I might just have greater clarification on a number of these sections. With respect to Section 1, that would purport to allow for the Nebraska Department of Revenue to reimburse...to be reimbursed at a rate of \$150,000, moving up from \$28,000. Is that correct? [LB165]

SENATOR CORNETT: Yes, it is. [LB165]

SENATOR PIRSCH: And when was the last...when was this...I take it that \$28,000 was written into statute. Is that correct, that exact amount? [LB165]

SENATOR CORNETT: The last time that it was updated, I believe, was in the eighties.

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And the change had come about because of the auditors or the State Auditor report showing that we were actually losing money on handling that fund. And the dollar amount that they came up with is the amount that it would become actuarially sound to administer that fund. [LB165]

SENATOR PIRSCH: Is that...is this \$150,000 then set at a floating rate then to match the... [LB165]

SENATOR CORNETT: No. [LB165]

SENATOR PIRSCH: ...if it's gone up over the course of the years. Has it leveled off or will we expect these administrative expenses to also go up as the years go on? [LB165]

SENATOR CORNETT: No, it is set at a fixed rate, I believe. [LB165]

SENATOR PIRSCH: Okay. Do we know if...I mean, expenses went up from when it was set in the 1980s to now. Is that trend going to continue into the future, I mean whatever these new expenses are? Should we be setting it at a set rate, \$150,000 now, or in a couple of years are we going to be behind the eightball as well? [LB165]

SENATOR CORNETT: Hold on one moment. It is not to exceed \$150,000 for each fiscal year. At the time that if we become behind the eightball on that, as you said, we could go back in and readjust that amount. [LB165]

SENATOR PIRSCH: Okay, so \$150,000 right now would be a sum that is greater than the amount which it takes to administer the program, is that right? There's leeway built into this bill? [LB165]

SENATOR CORNETT: It states the "amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee." And then it sets that it "shall not exceed \$150,000 for each fiscal year." [LB165]

SENATOR PIRSCH: What is the petroleum...I guess, the petroleum fund? I'm not familiar with that. Do you know? [LB165]

SENATOR CORNETT: The petroleum fund was set up for...basically for leaks, for underground storage. Senator Flood had a leak in his district that ran into the millions to clean up. We have the petroleum remediation fund in place, which all the petroleum dealers pay into... [LB165]

SENATOR PIRSCH: Oh, very good. [LB165]

SENATOR CORNETT: ...a percentage to clean up spills... [LB165]

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SENATOR PIRSCH: Okay, very good. [LB165]

SENATOR CORNETT: ...or contamination. [LB165]

SENATOR PIRSCH: I just wanted to get an idea of what the fund did. And so at this point in time then though the \$150,000, which is an up to amount, we're not at that point where the \$150,000 would be the actual cost to administer. We're at some lower point than that, correct? [LB165]

SENATOR CORNETT: We are at some point in between there. I believe it depends on what year it is...what it is and what is collected in regards to how much money is used to manage that fund. And then that... [LB165]

PRESIDENT SHEEHY: One minute. [LB165]

SENATOR CORNETT: ...would be determined. [LB165]

SENATOR PIRSCH: Very good. And then with respect to...so, I guess, you don't know where within that spectrum we are though. Does that give...I mean, how many years we kind of project. If it's \$150,000, which has some leeway, and \$28,000 currently, are we more along the lines of \$40,000 or \$50,000, or should we take away from... [LB165]

SENATOR CORNETT: One hundred and fifty thousand dollars was set...was the number that the State Auditor's Office gave the Department of Revenue, what they felt would be what it would cost to administer that fund. If it is less than that amount then it would not be that amount, but it would go up to \$150,000. And I don't know of the exact cost of administering that fund last year. [LB165]

SENATOR PIRSCH: Yeah. I'm just wondering if \$150,000 is the current costs, I'm wondering if we...you know, you want to build into it, you know, if we want to keep coming back to that, revisiting it year after year. [LB165]

PRESIDENT SHEEHY: Senator Pirsch, you can continue into your next time. [LB165]

SENATOR PIRSCH: Very good. I'll move on into Section 2 just with respect to limiting corporate officer's liabilities to three years. Could you just give a brief overview of...what is the number of years' liability that corporate officers have now? [LB165]

SENATOR CORNETT: What we did in this section was to bring us into more compliance with what the federal government does. Under the federal law the IRS has an additional period of time to issue assessment against corporate officers. Currently, Nebraska did not have that additional period of time to issue assessment against

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corporate officers. LB165 would provide a three-year...three years for notice of deficiency against corporate officers after that determination of liability. [LB165]

SENATOR PIRSCH: So...so this... [LB165]

SENATOR CORNETT: So it would bring us into more compliance with what the federal government does. [LB165]

SENATOR PIRSCH: So it lengthens the period of time actually. [LB165]

SENATOR CORNETT: Yes, it does. [LB165]

SENATOR PIRSCH: It's not a shortening of the period. [LB165]

SENATOR CORNETT: No. [LB165]

SENATOR PIRSCH: Okay. That's what I wanted to check. And then with respect to Section 3 mandating e-filing of tax returns by tax professionals. Is that just a way to, I mean,... [LB165]

SENATOR CORNETT: That's a way to save money. [LB165]

SENATOR PIRSCH: Okay. And these are individuals who should have the expertise, they do it as a profession (inaudible). [LB165]

SENATOR CORNETT: Yes, these are people that prepare tax returns for a living. If they file over a certain number or prepare a certain number of tax returns a year then they have to e-file those tax returns. And they would assumably have the technological capability to do such. [LB165]

SENATOR PIRSCH: Okay. Very good. Skipping ahead to Section 9, that is... [LB165]

SENATOR CORNETT: Could you give me the page number on that? [LB165]

SENATOR PIRSCH: Oh sure. And actually, I'm looking actually at...on the statement of committee, the committee statement on my monitor here. And so it gives a brief encapsulation, but I don't have the specific bill outlay in front of me. Let me... [LB165]

SENATOR CORNETT: Okay, I've got it. Thank you. [LB165]

SENATOR PIRSCH: ...give me a second. Essentially what it says is, "Section 9 amends 77-2704.12 to clarify the sales and use tax exemption for purchases made by certain nonprofits are limited to uses licensed under the Healthcare Licensure Act, or licensed

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or certified by the Department of Health and Human Services. The exemption does not qualify for uses that are not otherwise certified or licensed." Is that...there was, I guess, a party that showed up in a neutral capacity: Friends of Nebraska Nonprofit Hospitals. Is that the section upon which that they appeared and gave comment? [LB165]

SENATOR CORNETT: Yes, it is. And let me go into a little bit of depth on that. We currently have exemptions for nonprofits in law. Removing Section 9 from this bill and the amendment does not remove those exemptions. Section 9 was the clarification language in regards to nonprofit hospitals. The nonprofit hospitals that you are referring to had brought two bills to the committee with two different committee members that affect this section and what we were looking at doing. It was the committee's decision to remove this clarifying language from the bill and offer it as amendment on one of the other bills after we were better able to determine the fiscal impact of passing the clarification language and one of their bills in regards to two or more nonprofit hospitals. [LB165]

SENATOR PIRSCH: Very good. I appreciate that. And so the testimony was not opposed to that then...or what was the nature of the testimony, I guess? [LB165]

SENATOR CORNETT: The testimony was that they did not know how this section would harmonize with what their objectives were in regards to the two bills that they were introducing in the committee. The committee... [LB165]

PRESIDENT SHEEHY: One minute. [LB165]

SENATOR CORNETT: ...had discussions in Executive Session in regards to how Section 9 would affect those bills. And it was determined that we would hear those bills in accordance with Section 9 and remove that section from the bill so we could better determine how it would affect if both bills were passed. [LB165]

SENATOR PIRSCH: Okay. Very good. And Section 13, which "amends Section 77-2780 to change the period of time in which the department's administrative decision shall become final, from 60 to 30 days." Could you explain the rationale for that? [LB165]

SENATOR CORNETT: That was a section that the Department of Revenue brought to us. And could you happen to have...oh, I know. Excuse me. That section reduces the time period for administrative decisions to become effective. With this amendment it will now conform with the state's Administrative Procedures Act provision. [LB165]

PRESIDENT SHEEHY: Time, Senator. Senator Price, followed by Senator Pirsch. Senator Price. [LB165]

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SENATOR PRICE: Mr. President, members of the body, thank you. I'd like to know if Senator Cornett will yield to some questions. [LB165]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR PRICE: Thank you very much. Senator Cornett, in looking over this bill, I'm curious to get informed a little bit, if you would please. On page 17, line 21, paragraph (2), it starts to talk about the sale of personal items and services and...are you there? I'll wait until you're there. [LB165]

SENATOR CORNETT: I know which section. You said page 17? [LB165]

SENATOR PRICE: Section 6, page 17, line 21, paragraph heading or the header that is (2). [LB165]

SENATOR CORNETT: Yes, yes. [LB165]

SENATOR PRICE: We're talking about the sale of items, personal goods... [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR PRICE: ...and services. [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR PRICE: Then when we go further, down to page 18, line 5 turning into line 6. We talk about online sales. [LB165]

SENATOR CORNETT: Correct. [LB165]

SENATOR PRICE: I wonder if you could take a moment to talk about that. Are we...and online and taxing online activities? [LB165]

SENATOR CORNETT: Yes. The state of Nebraska adopted a policy that garage sales, as long as they were not held for more than three days and include personal property in its sales, would be exempt from taxation. So if you have a garage sale or neighborhood sale that that would be exempt. This paragraph deals with primarily online sales, like Craigslist or online sales. They are going to be treated similar to garage sales as long as they're not posted for more than three days and they are personal goods. [LB165]

SENATOR PRICE: So that means that if it's online for more than three days... [LB165]

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SENATOR CORNETT: Less than three days. [LB165]

SENATOR PRICE: But if they were on more than three days they would be taxed? [LB165]

SENATOR CORNETT: It depends on the online service. And I really...I do not know that we've dealt with that, Senator Price, but I can look into that for you. This would be basically addressing Craigslist. If you put your couch on Craigslist and sell it, then it would be treated like a garage sale and it would be exempt from taxation. [LB165]

SENATOR PRICE: All right. And just so I can see this, because there's a lot to this online taxing,... [LB165]

SENATOR CORNETT: Yes, there is. [LB165]

SENATOR PRICE: ...does this mean we'd be taxing somebody from out of state who had something on for more than three days, or just residents of Nebraska? [LB165]

SENATOR CORNETT: You would be dealing with streamlined sales tax there, and again it depends on which online service...if it's more than three days and it's a sale then it depends on if you're complying with streamlined or not. And I would have to check into which state you're referring to, and each state handles it differently. [LB165]

SENATOR PRICE: Okay. And finally, just again to finish going around the mulberry bush here, do we currently tax online sales from either out of state or out of country or instate? [LB165]

SENATOR CORNETT: If you purchase something online that is not taxed, you are supposed to report it to the Department of Revenue and pay the tax on that. It depends on the online service, if they comply or not. If they do, they will collect taxes. But there is, from what I understand, no requirement for them to collect taxes, depending on which state it's sold from. It depends on whether they comply or not. [LB165]

SENATOR PRICE: Okay. Again, and we talked about this being specifically Craigslist, but the Internet is ever-expanding. I've worked with a few people who may have found the end of the Internet at work (laugh), but the point being, there's a lot of Internet and there's a lot of sales, a lot of capability. And this would apply to everybody. It doesn't just call out, you know, Craigslist. [LB165]

SENATOR CORNETT: No. [LB165]

SENATOR PRICE: It actually applies to everybody. [LB165]

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SENATOR CORNETT: This was simply to clarify... [LB165]

PRESIDENT SHEEHY: One minute. [LB165]

SENATOR CORNETT: ...like short-term sales on the Internet sales that are being...you know, if you purchase something on...and Craigslist is just an example. [LB165]

SENATOR PRICE: Okay. [LB165]

SENATOR CORNETT: But if you actually go to one of...Amazon.com. Amazon.com is one of the largest online services and they do not collect sales tax, I believe. [LB165]

SENATOR PRICE: Okay. I just want the members of the body to be aware that the, you know, when we see that addition of taxing online sales, that they're aware and they're paying attention to that in Section 6. Thank you. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Pirsch, followed by Senator Howard. Senator Pirsch. [LB165]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. And I have a few questions about the line...Section 6, that Senator Price had talked about. But just as a quick question before that, Senator Cornett, if you would yield to a... [LB165]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR PIRSCH: With respect to the amendment AM121 that the Revenue Committee has made to your bill, does that deal with changing the tax credit provision of the Beginning Farmer Act? [LB165]

SENATOR CORNETT: I'm sorry, I thought you were still in Section 6. [LB165]

SENATOR PIRSCH: Oh no, I'm sorry. [LB165]

SENATOR CORNETT: My (inaudible). [LB165]

SENATOR PIRSCH: I will...I might ask a few questions about that a little later. But to start off with, with respect to the Beginning Farmer Act, I mean is that the focus of the committee amendment? [LB165]

SENATOR CORNETT: What the committee amendment does is last year the Beginning

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Farmer Tax Credit was adopted. It was referenced to Agriculture instead of Revenue. We adopted the act, but when that was done Agriculture did not harmonize the provisions with the tax code. So this is the cleanup language... [LB165]

SENATOR PIRSCH: I see. [LB165]

SENATOR CORNETT: ...that allows what we adopted last year to actually be used. [LB165]

SENATOR PIRSCH: Okay. [LB165]

SENATOR CORNETT: It brings it into conformity with what we adopted because basically we failed to amend relevant sections of the tax code last year. [LB165]

SENATOR PIRSCH: Super. I appreciate that clarification. And to get back to some of the questions, I guess, and this is in terms of background for those of us who do not serve on the Revenue Committee, but the current paradigm with respect to online taxation, there's both a possible tax that the...say, for the sake of art, for example, you have a purchaser in Nebraska and a seller in, say, Iowa utilizing the Internet. There's a possible sales tax, and a different tax, as well...a tax potential for both the seller and the buyer then, is that correct, under the way Nebraska state law currently reads? [LB165]

SENATOR CORNETT: I'm sorry, Senator Pirsch, you lost me. [LB165]

SENATOR PIRSCH: Okay. Let me rephrase it. If you are purchasing items on the Internet in Nebraska, is our structure such that you are supposed to be paying a tax on that? [LB165]

SENATOR CORNETT: It depends on what you're purchasing on the Internet. If it is something on an online auction service or...Craigslist isn't really an auction. It's...but similar. You...this amendment exempts taxation, because if you are purchasing something like that, that is a personal good or service, from another individual, they are treating it basically like a garage sale. And garage sales in this state are exempt. If you are purchasing an item off of the Internet, it depends on whether the company is complying with streamlined sales tax. [LB165]

SENATOR PIRSCH: Very good. The question, and this is just as far as background and not so much what this particular bill does, but currently right now...and you're talking about online auctions, those kind of things--Craigslist, I'd imagine eBay, those kind of things also--you would pay...you're responsible for, if you're purchasing off of eBay or Craigslist, you're responsible for paying a tax on those items, is that correct? [LB165]

SENATOR CORNETT: Right, yeah. This kind of goes back to what Senator Price asked

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earlier. If you are purchasing something on the Internet that is not taxed, you are supposed to pay a use tax. And that is what...if you purchase...like I purchased textbooks one time that were not taxed, then you are supposed to pay in a use tax to the state of Nebraska. [LB165]

PRESIDENT SHEEHY: One minute. [LB165]

SENATOR PIRSCH: That's if you're the purchaser, right? [LB165]

SENATOR CORNETT: If you're the purchaser. [LB165]

SENATOR PIRSCH: And the seller did not pay a sales tax. Is that...that's when you pay a use tax. [LB165]

SENATOR CORNETT: Well, again it depends on where the company is located, what state it's in, whether...you're getting into whether companies have, I believe, nexus. Hold on one second, let me clarify this. Basically, without getting too complicated, no, the seller does not have to pay the tax online. [LB165]

SENATOR PIRSCH: Okay. [LB165]

SENATOR CORNETT: That's just the...as broken down to the basic... [LB165]

SENATOR PIRSCH: If a...a seller doesn't have to, you're saying. [LB165]

SENATOR CORNETT: No, but the purchaser is supposed to. You see that in a number of instances. We hear it repeatedly with, like, the farm equipment repair parts. [LB165]

SENATOR PIRSCH: Um-hum. [LB165]

SENATOR CORNETT: People go to states next to us that do not have the tax, purchase the item, and they do not come back to the state of Nebraska... [LB165]

PRESIDENT SHEEHY: Time, Senator. [LB165]

SENATOR CORNETT: ...and report that item, where they are supposed to. [LB165]

SENATOR PIRSCH: Thank you. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Thank you, Senator Cornett. Senator Howard, followed by Senator Schilz. Senator Howard. [LB165]

SENATOR HOWARD: Thank you, Mr. President. I offer my time to Senator Pirsch.

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[LB165]

PRESIDENT SHEEHY: Senator Pirsch, 5 minutes. [LB165]

SENATOR PIRSCH: Well, I thank you, Senator Howard, and I'll just use that to kind of clarify. And I appreciate the background information for those of us who don't exactly know what the existing structure is and, therefore, I guess, the exclusion that's being offered here as part of this bill, the importance of that or how that fits into the structure. But carrying on with our conversation then, the...so it's the purchaser has the responsibility for either paying a use tax under...or paying tax, essentially, for what they purchase for some items, correct? [LB165]

SENATOR CORNETT: If the seller does not collect that tax and remit it,... [LB165]

SENATOR PIRSCH: I see. [LB165]

SENATOR CORNETT: ...yes, the purchaser is supposed to do that. [LB165]

SENATOR PIRSCH: Okay. [LB165]

SENATOR CORNETT: Except in this instance where we are exempting them from sales tax and treating it like a garage sale because it is personal property or services being sold. [LB165]

SENATOR PIRSCH: Okay. So it's a "dis-uniform" procedure. Transactions over the Internet don't follow a uniform standard type of process. They are differentiated. [LB165]

SENATOR CORNETT: It is no more "un-uniform" than our sales tax code in the state is. If you go into a store and purchase a new item or you go into an antique store and purchase an item, you have to pay a sales tax. If you go to someone's driveway and purchase the same item, you don't have to pay a sales tax. What we're saying here is if these are not businesses selling items on the Internet, they are selling a personal item, that that will be exempt from taxation. [LB165]

SENATOR PIRSCH: Right. And there's a trigger date, three days. [LB165]

SENATOR CORNETT: That's three days for the garage sales, yes. [LB165]

SENATOR PIRSCH: Oh, three days for the garage sales. That has nothing to do with this... [LB165]

SENATOR CORNETT: Well, no, as long as the item is not on that Web site for more than three days then it is exempt for taxation. If you were selling an item and leave it on

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the Internet or selling...and treating it like a business, then you will be taxed like a business. [LB165]

SENATOR PIRSCH: So if you were to offer something, an item, over the Internet, no matter how inexpensive, a \$5 item, and it stayed on there for four days, then it would not meet this exemption then. [LB165]

SENATOR CORNETT: Correct. [LB165]

SENATOR PIRSCH: Okay, that's what I wanted to...and currently what would be...currently, would that item be taxed then if it was four days, say you offered an inexpensive item like that? What is this...the current...this is an exemption that says under three days you wouldn't be taxed. So I assume currently you would be taxed for that item even if it was two days now, correct? [LB165]

SENATOR CORNETT: It depends on if that item...Internet sales are different. It depends on where that item is coming from. On eBay you can be purchasing an item from Hawaii. [LB165]

SENATOR PIRSCH: Um-hum. If it's the type of item that you would normally then expect to pay tax on, then... [LB165]

SENATOR CORNETT: Then you would...you should remit the use tax. [LB165]

SENATOR PIRSCH: Okay. And so you're saying under that, under this you have a three-day...this exception sets up a three-day threshold... [LB165]

SENATOR CORNETT: Correct. [LB165]

SENATOR PIRSCH: ...and says, even if you normally pay it, if it's more than three...I'm sorry, under three days then you don't have to. [LB165]

SENATOR CORNETT: Correct. [LB165]

SENATOR PIRSCH: Okay. I see how it fits in the exemption then. So there's nothing about this law that changes the main paradigm of...this is just a narrow exception then is what you're saying that helps clarify and set some parameters that are similar to garage sales then when items are offered for sale for three days or less, correct? [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR PIRSCH: And would it be three consecutive days or if I... [LB165]

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PRESIDENT SHEEHY: One minute. [LB165]

SENATOR PIRSCH: ...or if I was to offer something on the first of each month... [LB165]

SENATOR CORNETT: More than three days in a calendar year. [LB165]

SENATOR PIRSCH: Okay. So that would not be subject to...the first of January, the first of February, first of March would not, more than three days. And it would have to be the same item or similar item or... [LB165]

SENATOR CORNETT: Same item. [LB165]

SENATOR PIRSCH: Okay. So I can sell different things on every day of the year and still receive the exemption on that. [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR PIRSCH: Okay. Just wanted to clarify that then. And I do appreciate that. Thank you. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Are there additional members requesting to speak on the...Senator Nelson. [LB165]

SENATOR NELSON: Thank you, Mr. President, members of the body. May I ask Senator Cornett some questions. [LB165]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB165]

SENATOR CORNETT: Yes. [LB165]

SENATOR NELSON: I'd like to follow up a little bit on Senator Pirsch's questions here with...regarding to Internet sales, such as eBay and Craigslist. Are we able to tax any sort of sales that are made from outside the state of Nebraska on eBay and on Craigslist? [LB165]

SENATOR CORNETT: I...okay. You're talking two different things here. [LB165]

SENATOR NELSON: Okay. [LB165]

SENATOR CORNETT: If you have this...if you have an item on an Internet site for less than three days, we will treat it as a garage sale. If you are buying something on the Internet, it depends on whether the business or the state conforms with the streamlined sales tax. Amazon is one, again what I pointed out earlier, is one of the largest sellers

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on the Internet and they do not remit sales tax to the state of Nebraska. So if you purchase something from Amazon you should pay that use tax. [LB165]

SENATOR NELSON: We should. Is that being enforced? Do people really know about that, that they're liable...here in Nebraska that they're liable for the tax, a tax, a use tax then of some sort? I'm just curious. Are we getting... [LB165]

SENATOR CORNETT: I would doubt it. [LB165]

SENATOR NELSON: So we're really not getting any money. And probably...I'm just speculating. Why is it that we want to exempt people within this three-day rule that you have here? Why...I realize it's personal property, but why do we want to give people from outside the state of Nebraska...? Well, let's put it this way: Why do we want to exempt those items from tax just because they're on Craigslist and they're personal property? Why are we giving up that income, assuming we could get it from the user here or the purchaser here in Nebraska? What's the rationale? I'm curious about that. [LB165]

SENATOR CORNETT: It is basically what I explained earlier: the garage sale rationale. We do not tax certain sales of items in this state. If you have, like I said earlier, if you have a garage sale in your neighborhood, we do not try and collect tax from all those little individual sales of personal property. So we are treating items that are sold...have you ever been on Craigslist? [LB165]

SENATOR NELSON: My kids have, my wife. I don't personally. [LB165]

SENATOR CORNETT: Okay. If you go on there, it's very similar to an online garage sale. People put their personal items, like if they're moving, on there. And we are taking the policy stance that those types of sales that are just for selling your personal property, you're not setting up a business to do that, that you have the right to do that like you have with the right to set up and sell it in your driveway, no difference. [LB165]

SENATOR NELSON: All right. Thank you for that answer. I'd like to move back to page 8 here, starting in on line 9, saying that any person who does tax returns for profit and has filed more than 25 during the past year is now going to have to file them electronically. Can you give me the rationale for that requirement? [LB165]

SENATOR CORNETT: It's a cost savings. [LB165]

SENATOR NELSON: How is it a cost savings? [LB165]

SENATOR CORNETT: They file the tax return now online. It's easier for the Department of Revenue to manage. It is something that they requested as they are trying to move

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toward e-filing for pretty much all of their services. [LB165]

SENATOR NELSON: I realize that. As an individual taxpayer I get bombarded year after year asking me to file electronically. And, personally, I don't prefer to do it that way. [LB165]

PRESIDENT SHEEHY: One minute. [LB165]

SENATOR NELSON: I'm concerned about perhaps smaller law firms in the central and western part of the state and even in my area where some attorneys or maybe just some accountants, not necessarily CPAs, might do perhaps 30 to 40 to 50 tax returns, and they're not set up to do them electronically. That's going to put them to additional expense. The other requirement here is that if you're going to do it that way then you have to tell the taxpayer that you're going to file it electronically. Why is that...why do we require that? [LB165]

SENATOR CORNETT: Which part of it? The first part of the question? [LB165]

SENATOR NELSON: Well, the part that says that you've got to notify the taxpayer, your client, that you're going to file this electronically. [LB165]

SENATOR CORNETT: It is the taxpayer's tax return and it would be, I consider, only proper to let him know how you're handling that and how you're filing it. [LB165]

PRESIDENT SHEEHY: Time, Senator. [LB165]

SENATOR NELSON: And...thank you, Mr. President. Thank you, Senator Cornett. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Thank you, Senator Cornett. Mr. Clerk, do you have items for the record? []

CLERK: I do, Mr. President. Your Committee on Revenue, chaired by Senator Cornett, reports LB335 to General File. New A bill, LB202A by Senator Fischer. (Read by title for the first time.) New resolution, LR29 by Senator Pirsch, it's...that will be laid over. Confirmation hearing report from the Education Committee, signed by Senator Adams. I have a series of hearing notices from the Appropriations Committee, all signed by Senator Heidemann. Name adds: Senator Gay to LB458; Senator Howard, LB506; Senator Mello, LB532; Senator Langemeier and Fischer to LB561; Senator Schilz and Price to LB675. (Legislative Journal pages 492-497.) [LB335 LB202A LR29 LB458 LB506 LB532 LB561 LB675]

And I have a priority motion. Senator Schilz would move to adjourn until Friday morning,

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February 20, at 9:00 a.m. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Friday, February 20, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []