

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

Floor Debate  
February 24, 2011

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-fourth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Paul Lillenas from the Hickory Grove St. Paul Lutheran Church in Auburn, Nebraska, Senator Heidemann's district. Would you all please rise.

PASTOR LILLENAS: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Lillenas. I now call to order the thirty-fourth day of the One Hundred Second 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: (Read corrections, Legislative Journal page 635.) That's all that I had, Mr. President.

PRESIDENT SHEEHY: Are there messages, reports, or announcements?

CLERK: There are, Mr. President. Enrollment and Review reports LB383 correctly engrossed. Enrollment and Review reports LB191 to Select File with Enrollment and Review amendments. Banking Committee, chaired by Senator Pahls, reports LB22 to General File. I have notice of hearings from the Education Committee and a notice of cancellation of a hearing by the Health Committee, those signed by the respective Chairs. That's all that I have, Mr. President. (Legislative Journal pages 635-636.)  
[LB383 LB191 LB22]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now move to first item under General File, appropriations bill.

CLERK: LB181A is a bill by Senator Hansen. (Read title.) [LB181A]

PRESIDENT SHEEHY: Senator Hansen, you're recognized to open on LB181A.  
[LB181A]

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SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. LB181A is an appropriations bill that catches up with LB181 that is on...has passed Select File. It allows the Nebraska Brand Committee to charge a surcharge for fuel reimbursement and it was kind of hard to find an amount because they've not had the rules and regulations hearing yet but this is a 2012-2013 appropriation and it's a cash funded agency. No General Funds will be used. And as I say, it's a cash funded agency and the cash will be derived from the surcharge itself. Thank you, Mr. President. [LB181A LB181]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You've heard the opening to LB181A. Member requesting to speak: Senator Carlson. [LB181A]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I simply rise to support LB181A. I think the Brand Committee has done a good job. I think this approach is the right one and it's the most economical way of meeting their needs. So I would also ask for your support. Thank you. [LB181A]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Louden. [LB181A]

SENATOR LOUDEN: Thank you, Mr. President and members. I also support LB181A. This is something the Brand Committee has to have to make their operation work. They're a cash funded agency and so whatever we can do to help them along, and this has been in the works of studying this project for about two years or so. So I certainly support this and would urge it to be passed. Thank you, Mr. President. [LB181A]

PRESIDENT SHEEHY: Thank you, Senator Louden. Seeing no additional requests to speak, Senator Hansen, you're recognized to close. [LB181A]

SENATOR HANSEN: Thank you, Mr. President. I appreciate the support from the ag community on this and I would appreciate a vote to advance. Thank you. [LB181A]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You have heard the closing. The question before the body is on the advancement of LB181A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB181A]

CLERK: 34 ayes, 0 nays on the advancement of the bill, Mr. President. [LB181A]

PRESIDENT SHEEHY: LB181A advances. We will now move to items under Select File. [LB181A]

CLERK: Mr. President, LB114, Select File. Senator Larson, I have Enrollment and Review amendments first of all. (ER25, Legislative Journal page 550.) [LB114]

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PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB114]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB114 be adopted. [LB114]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. They are adopted. [LB114]

CLERK: The next amendment, Senator Dubas, AM354. I have a note, Senator, you want to withdraw AM354. [LB114]

SENATOR DUBAS: That is correct. [LB114]

PRESIDENT SHEEHY: AM354 is withdrawn. [LB114]

CLERK: Senator Dubas would move to amend with AM491, Mr. President. (Legislative Journal page 628.) [LB114]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on AM491 to LB114. [LB114]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. Good morning, colleagues. I want to thank my colleagues for their patience and their willingness to advance this bill to Select File to give me additional time to work on it. I delivered on my promise. I worked hard to take everyone's concerns into consideration as I put this amendment together. I want to be very clear, I brought this bill forward at the request of the Nebraska Beekeepers. I have a family beekeeper in my district. I've worked closely with him. The purpose of this bill is to direct the Department of Agriculture to adopt a definition for pure honey and a standard to support that, and this amendment will get us what we need. This amendment, this bill and the amendment puts no requirements on the department to do any testing, to do any labeling, to do anything of any kind. Again, there was no fiscal impact. If there was any requirement along that line, there definitely would have been a fiscal impact. So it's just as we direct many agencies to come up with definitions, this is no different than that. And it's my hope...what this ultimately will do is give anyone civil recourse. If they believe a product is being sold as pure honey and don't believe that that's the case, the burden is on them to do the testing to prove that the product is not a pure product. Again, there's no requirements from the department or anyone else. I really want to emphasize if I thought someone was selling adulterated honey, it would be on my shoulders to take that product, have the testing done, and take the civil recourse if I felt that that's what I wanted to do. So I hope through the amendment it alleviates any concerns that people may have that we'll be able to adopt this amendment, the underlying bill, and advance. Thank you again very

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much for your patience and your support. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening of AM491 to LB114. Member requesting to speak, Senator Fulton, you're recognized. [LB114]

SENATOR FULTON: Thank you, Mr. President. Good morning, members. Senator Dubas, appreciate the fact you've taken some time to...probably more time than you envisioned in putting this bill together, and I do support AM491. I would like, however, to get into the record, you know, what the concerns were and how I think we're able to go forward. So would Senator Dubas yield to a question? [LB114]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Fulton? [LB114]

SENATOR DUBAS: Yes, I will. [LB114]

SENATOR FULTON: Basically, Senator, what AM491 does is it provides authority to the Department of Agriculture to develop a standard as it regards honey, correct? [LB114]

SENATOR DUBAS: That's correct. [LB114]

SENATOR FULTON: Now there's nothing in the statute which would require...and here's where the concern came from for me. This is, you know, I didn't wake up one morning and say that I have...this is my life's goal to get involved with this bill, but we have a number of folks here in Lincoln, some of whom are constituents, who are beekeepers, raise honey, and they're able to sell at a local farmers' market, and I've actually been contacted by a number of such families, some of whom, turns out, were friends of mine. So the concern is that when we put forward this statute, we would be putting forth a requirement that these small operations would have to get their honey tested to prove, indeed, that it's 100 percent honey before being able to sell at a local farmers' market. And as I understand AM491 and LB114, that is not being required. Could you speak to that? [LB114]

SENATOR DUBAS: That is correct. There is no requirement. If these honey producers want to sell their honey at a market as pure honey, they have every right to continue to do that. As I said earlier, the burden would be on me to challenge whether their product was pure or not. The burden would be on me to do the testing. The burden would be on me to take civil recourse. This was brought to me by local family beekeepers in my district. I'm sure they're not going to ask me to put any type of onerous requirements on their backs either. So there is absolutely no requirement for these beekeepers to do any testing of any kind. [LB114]

SENATOR FULTON: Then secondly, as we will be giving authority to the Department of

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Agriculture to promulgate rules and regulations as it regards honey and putting forth a standard, is it your understanding that the Department of Agriculture has no intention to require this of a small producer, to require that the small producer prove through testing? Is it your understanding that the Department of Agriculture does not have that intention? [LB114]

SENATOR DUBAS: It is definitely my understanding. They called my office to make sure that that wasn't my intention to put that requirement on them and I was very clear that there is no requirement expected from the Department of Ag other than to create this definition of pure honey and a standard to support it. [LB114]

SENATOR FULTON: Okay. And then lastly, some who are here this morning and perhaps who would look back on this record that we're creating for this bill may wonder, well, then why are we putting this bill forward? And as I understand it, we're putting this bill forward because we have some concern that Nebraska producers who are selling pure honey to Nebraskans are in a situation where sometimes...outside of Nebraska but sometimes foreign producers are trying to sell honey, calling it pure honey when indeed it's not. And so by putting forward this statute and giving authority to the Department of Agriculture, we in Nebraska are giving the department the authority to define what pure honey is such that if an outside producer is coming en masse to try to compete inordinately against our producers who have a different product, that being 100 percent pure honey, this is the mechanism by which... [LB114]

PRESIDENT SHEEHY: One minute. [LB114]

SENATOR FULTON: ...we can disallow that practice, correct? [LB114]

SENATOR DUBAS: That would be correct. [LB114]

SENATOR FULTON: Senator Dubas, thank you very much. Thank you, Mr. President. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Members requesting to speak on AM491, we have Senator Louden, followed by Senator Carlson. Senator Louden. [LB114]

SENATOR LOUDEN: Yeah, thank you, Lieutenant Governor and members of the body. Would Senator Dubas yield for questions? [LB114]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Louden? [LB114]

SENATOR DUBAS: Yes, I will. [LB114]

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SENATOR LOUDEN: Yeah. I think Senator Fulton asked some of the question and that was my concern is that the Department of Agriculture, which is our Nebraska Department of Agriculture, would be the one that would set up the rules and regulations. Now as I understand, the amendment we put in the other day took any...this Codex or whoever they are, we took that mostly out of the bill so that they don't have any authority in that legislation whatsoever, and if someone had a problem with getting their honey registered or they would go to the Department of Agriculture and not this national or international organization? [LB114]

SENATOR DUBAS: There is absolutely no reference to the Codex whatsoever in this amendment. There's no requirement to register your honey or anything of that manner with the department. People will continue to do business as they've been doing business in the past and in the future. This just develops that definition with a standard to support that definition. [LB114]

SENATOR LOUDEN: Okay. And then at the present time then they could still go to the Nebraska Pure Food Act or something like that and get their honey, I guess, tested or whatever it is so that there weren't any other, what would you say, foreign material in there that isn't honey. That would still work for them to do that? [LB114]

SENATOR DUBAS: Yeah, the Nebraska Pure Food Act deals with contaminants in products. This bill is looking at adulterating it with other types of nontoxic products. So the Nebraska Pure Food Act could come into play with contaminants in a product, wouldn't necessarily come into play with this legislation. [LB114]

SENATOR LOUDEN: Okay. And as I say, this certainly doesn't do anything to hinder our local producers in Nebraska because that's the important people that we're dealing with here. [LB114]

SENATOR DUBAS: That's correct. And I never would bring anything forward that I thought would have that potential. And again, this was brought... [LB114]

PRESIDENT SHEEHY: (Gavel) [LB114]

SENATOR DUBAS: ...brought to me by local beekeepers, so... [LB114]

SENATOR LOUDEN: Okay. Yeah, thank you, Senator Dubas, and thank you, Lieutenant Governor. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Carlson. [LB114]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I simply want to say I appreciate the effort that Senator Dubas has put into making this a

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bill that answered the concerns that Senator Fulton and others had, and I think that as amended this will satisfy the producers in Nebraska, help them, and it's something that the department can certainly handle. So I, too, support AM491 and would ask for your support. Thank you. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Christensen. [LB114]

SENATOR CHRISTENSEN: Thank you, Mr. President. I want to thank Senator Dubas that has met all my concerns. I guess I was concerned about the United Nations language and different things in there. I appreciate that even at the last minute, when we was working on the last amendment, that she sat down with us, worked on the language and got this worked out, because I, too, am concerned to make sure that we have the United States Food and Drug finding the best method, even if it is some of the rules out of the old Codex. But I appreciate the work that's been done on this trying to work together, so we fulfilled our objectives of everybody here. I appreciate specifically that we can make sure where the Codex fell short and didn't have any rules for the blending part, that now it will be all under the same language with Food and Drug Administration making the purity of the honey complete for everyone. And I just, again, want to say thank you, appreciate the work on this, and ask for a green vote when we get to that on this amendment and bill. Thank you. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on AM491. [LB114]

SENATOR DUBAS: Appreciate the discussion this morning and would appreciate a green vote on this amendment. Thank you. [LB114]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the closing. The question before the body is on the adoption of AM491 to LB114. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB114]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption Senator Dubas' amendment. [LB114]

PRESIDENT SHEEHY: AM491 is adopted. [LB114]

CLERK: Senator Larson, I have nothing further on the bill, Senator. [LB114]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB114]

SENATOR LARSON: Mr. President, I move that LB114 be advanced to E&R for engrossing. [LB114]

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PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB114 advances. We'll now proceed to LB243. [LB114 LB243]

CLERK: LB243, Senator, I have no amendments to the bill. [LB243]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB243]

SENATOR LARSON: Mr. President, I move that LB243 be advanced to E&R for engrossing. [LB243]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB243 advances. We'll now proceed to LB62. [LB243 LB62]

CLERK: LB62, Senator, I have Enrollment and Review amendments, first of all. (ER26, Legislative Journal page 551.) [LB62]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB62]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB62 be adopted. [LB62]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB62]

CLERK: Senator Lathrop would move to amend with AM496. (Legislative Journal page 637.) [LB62]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on AM496 to LB62. [LB62]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. You will recall that on General File I had some concerns about LB62 and a little background before I tell you what my amendment does or try to explain it. In the process, and I've gotten a little bit of an education. I was never on a county board. Those of you that have served in that capacity will appreciate this. You have in the counties, those who are officers, and I'll use the assessor, the treasurer, the county attorney, public defender, those people who have a statutorily recognized responsibility, they're typically elected, a statutory responsibility to the people in their county. And then you add the county board that's responsible for the budget. Senator Heidemann's bill addresses the question of what happens when there's a power struggle, and imagine the power struggle if the county attorney doesn't get along with the county board. The county board can effectively cut the appropriation or the money to the county attorney's office and handcuff or hinder the ability of the county attorney to perform their functions. This

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problem was never more acute than in a case out of Nance County. And what the district court found itself doing, and ultimately the Supreme Court found itself reviewing, is a situation where the county attorney in Nance County said, I want to hire a full-time secretary for my office, I need it; and the board said, you know what, we don't want to pay health insurance, you should hire two part-timers, you'll get just as much work out of them, we won't have to pay benefits, that's the way it's going to be. The section that we are amending, 23-1111, provided that these officers in the various counties shall have the staff or the people necessary, I'll try to find the language here, they shall have the clerks and assistants necessary to carry out their duties. And what that brought them to then was a fight that the district court was trying to sort out over whether or not the county board was preventing the county attorney from having all the necessary clerks and assistants, and Senator Heidemann's bill is intended to clean this up. There should be a standard for sorting out the fight, the power struggle between these officers who have a statutory duty and they must have the resources to carry out that duty, and the county boards who on some occasions may have a political or a personality difference with some of these officers. My amendment basically provides for a clarification of what the standard will be and what the standard will be for the court's review should the matter land in the court. Hopefully, by this amendment, we will have fewer of these fights end up in the court, but if we do, the court will have better direction. Instead of having a standard that is...that the officers shall have the necessary clerks and assistants, we're going to change the standard to a judicially recognized standard, and I'll read it: "A county board shall not eliminate an office or unduly hinder a county officer in the conduct of his or her statutory duties." That is a very common-sense standard. It is a standard recognized by the Supreme Court already. So if there is a fight that ends up in the district court, the question for the judge is not whether the county board is interfering with an officer's ability to have necessary clerks and assistants. The question will be for the district court, is the county board effectively eliminating an office or unduly hindering the county officer in the conduct of his or her statutory duties? And if we get to a court fight, this amendment also sets the standard for the district court and it says, if a county officer challenges the board's decision, the burden on the county officer is to establish that the county board has either effectively eliminated the position or unduly hindered the officer in the conduct of his statutory duties by clear and convincing evidence. It is very straightforward. It cleans up this mess, I believe, with a clearer standard, and a clear pronouncement of the division of responsibilities between the board and the officers will lead to fewer of these fights, keep the district courts out of these messes, and provide a common-sense standard both for how these two elected officers or elected positions are to interact with one another, and when they get into a dispute, how that's to be sorted out by the court. I would appreciate your support of AM496. It has, as I understand, the support of Senator Heidemann and those county official groups that I've worked with to formulate this amendment. Thank you. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. We've heard the opening of AM496 to LB62. Members requesting to speak: Senator Heidemann, followed by

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Senator Campbell. Senator Heidemann. [LB62]

SENATOR HEIDEMANN: Thank you, Mr. Lieutenant Governor and fellow members of the body. I do stand up in support of AM496. I appreciate all the work that Senator Lathrop and his office have put into this. I actually believe that this makes the bill better, so I appreciate that work. I want to, once again, extend thanks to Senator Avery and Christy Abraham, the legal counsel, and that staff. They have put a lot of work into this bill. I appreciate the help I got from them and from NACO. And it's my understanding that they do support this and they've been in on this. So I do support AM496 to LB62. I would urge your support on both the amendment and the bill. Thank you. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Campbell. [LB62]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. Would Senator Lathrop entertain a question? [LB62]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Campbell? [LB62]

SENATOR LATHROP: Yes, I'd be happy to. [LB62]

SENATOR CAMPBELL: Senator Lathrop, I, too, support the amendment and feel that the clarity that it brings to the issue is excellent. In your research, and I noted that in your amendment you chose the words carefully, but the sheriff has some protection, do they not, in the selection of deputies that might make that situation a little different? [LB62]

SENATOR LATHROP: I would say that if they do, it's in a different section and I didn't read it or review it as I prepared this amendment. [LB62]

SENATOR CAMPBELL: And I think that's the way it should be. I think it should stay in its own separate section. But I had had an inquiry from the sheriff and my recollection is that they do have separate protection in the selection of the deputies and the number. So I appreciate that we did not go there because I think that needs to stay in place. [LB62]

SENATOR LATHROP: Okay. That's fine with me. Of course, this would be a general section. If there's a specific section dealing with sheriffs and the hiring of deputy sheriffs, certainly we're not touching that. [LB62]

SENATOR CAMPBELL: Excellent. I would like to say, colleagues, that I think this is an excellent approach. Having faced this problem several times and I know other county boards did also, this should bring clarity, as I said, to the issue and would encourage your support of both the amendment and LB62. [LB62]

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PRESIDENT SHEEHY: Thank you, Senator Campbell. Seeing no additional requests to speak, Senator Lathrop, you're recognized to close on AM496. [LB62]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, very briefly, I would appreciate your support of AM496 and I want to extend my appreciation to those from the county association, NACO, who worked with me to fashion what I think we all agree is a better approach to a dispute between the county boards and the officers who are statutorily elected, elected to the statutory positions in the various counties. Thank you. [LB62]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is on the adoption of AM496 to LB62. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB62]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of Senator Lathrop's amendment. [LB62]

PRESIDENT SHEEHY: AM496 is adopted. [LB62]

CLERK: I have nothing further on the bill, Senator Larson. [LB62]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB62]

SENATOR LARSON: Mr. President, I move that LB62 be advanced to E&R for engrossing. [LB62]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB62 advances. We'll now proceed to LB36. [LB62 LB36]

CLERK: Mr. President, before I do that I'd like to announce the Retirement Committee will meet in Exec Session, Room 2022 now; that's Retirement in Room 2022. I'm sorry, 9...now, 2022 now, Retirement. Senator Larson, LB36 I have E&R amendments, Senator. (ER29, Legislative Journal page 551.) [LB36]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB36]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB36 be adopted. [LB36]

PRESIDENT SHEEHY: You've heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB36]

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CLERK: I have nothing further on that bill, Senator. [LB36]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB36]

SENATOR LARSON: Mr. President, I move that LB36 be advanced to E&R for engrossing. [LB36]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB36 advances. We will now proceed to LB225. [LB36 LB225]

CLERK: LB225, no E&Rs. Senator Campbell would move to amend with AM495. (Legislative Journal page 629.) [LB225]

PRESIDENT SHEEHY: Senator Campbell, you're recognized to open on AM495 to LB225. [LB225]

SENATOR CAMPBELL: Thank you, Mr. President. Colleagues, in a final review of this bill, we discovered a miscommunication in drafting the bill ensued with the department. And this amendment corrects the bill and gets the language just exactly as we need it. A person lawfully admitted to the U.S. may not always be classified "for permanent residence," specifically those who are seeking asylum as refugees. So we wanted to make sure that anyone who lawfully came to the United States would be welcome to study in our nursing colleges. And with that, I would urge approval of AM495. [LB225]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening of AM495 to LB225. Seeing no requests to speak, Senator Campbell, you're recognized to close. Senator Campbell waives closing. The question before the body is on the adoption of AM495 to LB225. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB225]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Campbell's amendment. [LB225]

PRESIDENT SHEEHY: AM495 is adopted. [LB225]

CLERK: I have nothing further on the bill, Mr. President. [LB225]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB225]

SENATOR LARSON: Mr. President, I move that LB225 be advanced to E&R for engrossing. [LB225]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.

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Opposed, nay. LB225 advances. We'll now proceed to LB274. [LB225 LB274]

CLERK: LB274, Senator, I have Enrollment and Review amendments first of all. (ER30, Legislative Journal page 551.) [LB274]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB274]

SENATOR LARSON: Mr. President, I move that the E&R amendments for LB274 be adopted. [LB274]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB274]

CLERK: Senator Gloor would move to amend the bill with AM472. (Legislative Journal page 628.) [LB274]

PRESIDENT SHEEHY: Senator Gloor, you're recognized to open on AM472. [LB274]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. A brief reminder on this bill, there is an initiative underway across the country to gather up unused medications and drugs, those that would be in your cabinet, grandma's cabinet, and do something other than flush them down the toilet, which eventually finds its way into the environment. In this case, this national initiative would allow people to take them back to pharmacies where pharmacies can then dispose of them through medical incineration. Current statutes require drugs being returned to go to the dispensing pharmacy. This would allow it to go to any pharmacy. There are other components of it. And it is often the case with bills, we were working through some of those on General File. This amendment relates to a component related to long-term care facilities. Those facilities return their drugs for credit, also allows pharmacies to redispense appropriately. These are prepackaged drugs. The section...that section is specifically the subject of AM472. AM472 provides immunity to manufacturers from liability relating to relabeling and redispensing the pharmacies. It does not, and I want to point out it does not absolve them of the customary criminal or civil liability that comes from manufacturing. And it is patterned after similar language that already exists in several other statutes. I would ask the body to, in fact, advance this, please, or accept this, please. [LB274]

PRESIDENT SHEEHY: Thank you, Senator Gloor. You have heard the opening of AM472 to LB274. Members requesting to speak: Senator Lathrop, followed by Senator Ken Haar. Senator Lathrop. [LB274]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I stand in support of AM472. I have worked with Senator Gloor on this issue and on this amendment. AM472

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is a reaffirmation of common law and existing law with respect to liability for this activity and as a reaffirmation of the common law and where we are at with civil liability for this type of an activity. It is both historically...these have been found in this type of legislation, and we have these return to the pharmacy type legislation already on our books. And this is a common...reaffirmation of the common law and for that reason I support it. Thank you. [LB274]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Ken Haar. [LB274]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask a few questions of Senator Gloor if I could. [LB274]

PRESIDENT SHEEHY: Senator Gloor, would you yield to Senator Haar? [LB274]

SENATOR GLOOR: Absolutely. [LB274]

SENATOR HAAR: Thank you. With this bill, for example, I just got through with some minor surgery on my knee and had some pretty strong pain killers, went back to the pharmacy and asked them what to do and they said, grind them up and throw them in the garbage. Don't put them down the drain. So how would this bill change that recommendation? [LB274]

SENATOR GLOOR: What this bill will do is allow the pharmacy, if it chooses to, and this is totally up to the pharmacies. We're not dictating they must do it this way. But this would allow the pharmacy to, in fact, accept that medication back or any pharmacy to accept that medication back if perhaps you moved during that period of time and were miles and miles away from the dispensing pharmacy. They then would place them in a container that is shipped to a medical incinerator that falls under a whole host of EPA guidelines where it would be incinerated, which is a safer way to dispense of them. Even ground up medicines thrown into the garbage will find their way into the environment. It's just that they can't be found, dug out, and reused by somebody so that's a safety issue rather than an environmental issue. [LB274]

SENATOR HAAR: Okay. So this will just be up to the Walgreens or CVS or whatever whether they want to do this. [LB274]

SENATOR GLOOR: Correct, Senator. [LB274]

SENATOR HAAR: Okay. And in terms of this bill then, how does that help that whole process? [LB274]

SENATOR GLOOR: This part deals specifically with liability issues, hold harmless clauses--the amendment does--and brings it in line with a couple of other bills that are

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already on the books. One relates to cancer drug repository; the other to immunosuppressant drug repository programs and brings them in line with the verbiage that's also in both of those statutes. [LB274]

SENATOR HAAR: Um-hum. Just to extend again for my information and for maybe people who are watching this, my mother died in 1990 of cancer and the sheriff came out because she was doing hospice care and they came out and they took the drugs and just dumped them in the toilet. Will this affect how law enforcement handles those drugs at all? [LB274]

SENATOR GLOOR: It's still going to be an education issue. But once again, what this will do will make it easier for another option to be pursued than that. Whether law enforcement chooses to do that is an education issue, but this will give them another option rather than tossing them someplace in the environment. [LB274]

SENATOR HAAR: Okay. Well, I like this very much. I think it's great legislation. Thank you very much. [LB274]

SENATOR GLOOR: Thank you. [LB274]

PRESIDENT SHEEHY: Thank you, Senator Haar. Seeing no additional requests to speak, Senator Gloor, you're recognized to close on AM472. Senator Gloor waives closing. The question before the body is on the adoption of AM472 to LB274. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB274]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Gloor's amendment. [LB274]

PRESIDENT SHEEHY: AM472 is adopted. [LB274]

CLERK: I have nothing further on the bill, Senator Larson. [LB274]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB274]

SENATOR LARSON: Mr. President, I move that LB274 be advanced to E&R for engrossing. [LB274]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB274 advances. We will now proceed to LB401. [LB274 LB401]

CLERK: LB401, Senator, I have no amendments to the bill. [LB401]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB401]

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SENATOR LARSON: Mr. President, I move that LB401 be advanced to E&R for engrossing. [LB401]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB401 advances. We will now proceed to LB179. [LB401 LB179]

CLERK: LB179, I have no E&R. Senator Krist would move to amend with AM423. (Legislative Journal page 606.) [LB179]

PRESIDENT SHEEHY: Senator Krist, you're recognized to open on AM423. [LB179]

SENATOR KRIST: Thank you, Lieutenant Governor and colleagues. This will be very quick. AM423 is a cleanup amendment truly. The language being stricken from Section 38-2851 found on page 12, lines 2 through 10 on the LB179 and placed in Section 38-2854 is language that specifically applies to pharmacist interns but was in the pharmacist licensure section. So in fact during drafting we put them in the wrong sections. The language was incorrectly put there and when the uniform license law became the Uniform Credentialing Act, so AM423 simply corrects the incorrect placement of that reference. I ask for the adoption of AM423 and the support for the underlying LB179. Thank you. [LB179]

PRESIDENT SHEEHY: Thank you, Senator Krist. You've heard the opening of AM423 to LB179. Seeing no requests to speak, Senator Krist, you're recognized to close. Senator Krist waives closing. The question before the body is on the adoption of AM423 to LB179. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB179]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Krist's amendment. [LB179]

PRESIDENT SHEEHY: AM423 is adopted. [LB179]

CLERK: I have nothing further on the bill, Mr. President. [LB179]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB179]

SENATOR LARSON: Mr. President, I move that LB179 be advanced to E&R for engrossing. [LB179]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB179 advances. We'll now proceed to LB197. [LB179 LB197]

CLERK: LB197, Senator, I have no amendments to the bill. [LB197]

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PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB197]

SENATOR LARSON: Mr. President, I move that LB197 be advanced to E&R for engrossing. [LB197]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB197 advances. We'll now proceed to LB61. [LB197 LB61]

CLERK: Mr. President, LB61 on Select File. Senator Heidemann, I do have E&R amendments. Would you move those, please. (ER32, Legislative Journal page 553.) [LB61]

SENATOR HEIDEMANN: I move the E&R amendments...Enrollment and Review, move them on. [LB61]

PRESIDENT SHEEHY: (Laugh) You have heard the motion for the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB61]

CLERK: They have moved on, Senator. I wanted you to know that. (Laughter) Senator Heidemann would move to amend with AM482, Mr. President. (Legislative Journal page 638.) [LB61]

PRESIDENT SHEEHY: Senator Heidemann, you're recognized to open on AM482 to LB61. [LB61]

SENATOR HEIDEMANN: Thank you, Mr. Lieutenant Governor and fellow members of the body. That's exactly why I never had that job. AM482 is really simply a technical amendment. It clarifies that (2)(a)(i) refers to Peeping Toms or watching via remote camera rather than viewing pictures on a cell phone or videos on the Internet. It attempts to capture all types of means that would fit under recording. This was a concern that came up after we was on General File with Senator Schumacher. We worked with him. He worked with people in the Attorney General's Office and others to come up with this technical amendment. I hope this alleviates his concerns. And I think if he would like the rest of my time to follow up I would sure give it to him. [LB61]

PRESIDENT SHEEHY: Senator Schumacher, you're yielded 9 minutes. [LB61]

SENATOR SCHUMACHER: Thank you, Senator Heidemann. Mr. President, members of the body, this is just a technical thing to make it very clear that the viewing that we're talking about is viewing over... [LB61]

PRESIDENT SHEEHY: (Gavel) [LB61]

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SENATOR SCHUMACHER: ...a hidden camera that is transmitting or direct viewing, what we used to call Peeping Toms, not looking at a picture found on a cell phone or on the Internet or somewhere. It came to mind that in a kind of interesting way. We had discussed this bill early in the morning, I was listening to a talk show, and the talk show host apparently had found a camera with some interesting pictures on it and was discussing them. And I thought to myself, well, what if these pictures are, as suggested, a person in the state of undress, possibly in her bedroom, possibly playing with her cell phone, is this guy going to jail under our new law? So this makes it clear that it's not a picture that we're talking about viewing as being the prohibited thing, but the actual viewing as it's taking place by somebody who is intruding. And also I think it...in the intents of this legislation that the person who is viewing know that the person has an expectation of privacy and that they are in a place of solitude or seclusion. So I think this makes it easier for prosecutors and the courts to know exactly what we're talking about. Thank you. [LB61]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Thank you, Senator Heidemann. You have heard the opening of AM482 to LB61. Seeing no request to speak, Senator Heidemann, you are recognized to close. Senator Heidemann waives closing. The question before the body is on the adoption of AM482 to LB61. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB61]

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of Senator Heidemann's amendment. [LB61]

PRESIDENT SHEEHY: AM482 is adopted. [LB61]

CLERK: Senator Heidemann, would you move your bill, please. Or Senator McGill, are you...thank you. Senator McGill, I have no further amendments. [LB61]

PRESIDENT SHEEHY: Senator McGill, you're recognized for a motion. [LB61]

SENATOR MCGILL: Mr. President, I move LB61 to E&R for engrossing. [LB61]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB61 advances. We will now proceed to LB308. [LB61 LB308]

CLERK: Senator, I have no amendments to LB308. [LB308]

PRESIDENT SHEEHY: Senator McGill, you're recognized for a motion. [LB308]

SENATOR MCGILL: Mr. President, I move LB308 to E&R for engrossing. [LB308]

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PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB308 advances. We will now proceed to LB335. [LB308 LB335]

CLERK: LB335, Senator, I have no amendments to the bill. [LB335]

PRESIDENT SHEEHY: Senator McGill, you're recognized for a motion. [LB335]

SENATOR MCGILL: Mr. President, I move LB335 to E&R for engrossing. [LB335]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB335 advances. We will now proceed to LB160. [LB335 LB160]

CLERK: I have no amendments to the bill, Senator. [LB160]

PRESIDENT SHEEHY: Senator McGill, you're recognized for a motion. [LB160]

SENATOR MCGILL: Mr. President, I move the E&R amendments (sic). [LB160]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB160 advances. Mr. Clerk, you have items for the record. [LB160]

CLERK: I do, Mr. President. New resolution: Senator Harms offers LRs 81, 82 and 83. Those three will be laid over. Natural Resources Committee, chaired by Senator Langemeier, reports LB155 to General File; LB248, General File with amendments; and LB38, indefinitely postponed. Senator Schumacher has an amendment to LB159 to be printed. That's all that I had, Mr. President. (Legislative Journal pages 639-640.) [LR81 LR82 LR83 LB155 LB248 LB38 LB159]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Doctor of the day introduced.) We'll now move to the first item under General File, 2011 senator priority bills.

CLERK: Mr. President, LB284, a bill originally introduced by Senator Krist. (Read title.) Introduced on January 12 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB284]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Krist, you are recognized to open on LB284. [LB284]

SENATOR KRIST: Good morning again, Lieutenant Governor and colleagues. As indicated on the committee statement, LB284 advanced from the Judiciary Committee 7-0 with one member absent. I sincerely want to thank Senator Ashford, Chairman Ashford, and his committee members for their support. I also want to thank the Speaker

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for promptly scheduling this bill for floor debate. LB284, my priority bill for this session, is a bill I introduced on behalf of a constituent, Robert Swanson, who is a past member of the American Legion Post 1...I'm sorry...a member and a past commander of the American Legion Post 1 in Omaha. He also was a founding member of the American Legion Riders. Mr. Swanson worked with my predecessor, Senator Mike Friend, in 2006, to encourage the Legislature to enact laws to prohibit picketing within 300 feet of a funeral or memorial service. Mr. Swanson approached me this past summer and asked me to consider increasing the distance to 500 feet. This consideration I took very seriously, especially because it's based upon his own personal experience and his safety concerns during actual funeral ceremonies that he participated in as a Freedom Rider. LB284 is supported by the Nebraska Sheriffs' Association and the State Funeral Directors Association, and you all have fresh copies of that this morning; it was handed out. Specifically, LB284 amends Nebraska State Section 28-1320.02 by increasing the distance under the definition of, and I quote, picketing of a funeral, end quote, from the current distance of 300 feet, to 500 feet. Before explaining my rationale for introducing LB284, I want to draw your attention to the e-mail that I sent to all of you this morning. It contained an amicus or friend of the court brief filed to the United States Supreme Court by the state of Kansas, 47 other states, and the District of Columbia in support of the father of a fallen Marine, Mr. Albert Snyder, of York, Pennsylvania, who sued the leader of the Westboro Baptist Church of Topeka, Kansas, for protesting at his son's funeral. Mr. Snyder won an \$11 million verdict against Pastor Fred Phelps and his church for intentional infliction of emotional distress. A federal appeals court, after...overturned the verdict on the First Amendment grounds. Last fall, the United States Supreme Court heard arguments in the case. This brief I shared, cosigned...this brief I shared with you is cosigned by our Attorney General Jon Bruning, and it eloquently articulates why states have a compelling interest in protecting the sanctity and the privacy of funerals, both to honor the deceased citizens and to support and comfort grieving family. Based on research provided by our own Legislative Research Division, courtesy of the National Conference of State Legislatures, you have a handout the pages have distributed to you which shows the 20 other states that have enacted distance requirements of 500 feet or more for those who would picket at a funeral, keeping them at a safe distance. Of those 20 states, five of them--Maine, Mississippi, South Carolina, South Dakota, and Texas--have a 1,000-foot distance requirement, while Montana, "Big Sky Country," established theirs at 1,500 feet. Some of you off the record have indicated that the 500-foot setback requirement being imposed in LB284 might not go far enough for some distances based on the topography of some of our state's more rural areas. I'd like to encourage you to share those perspectives on the mike today. Striking the appropriate balance between the privacy rights of grieving family members and the freedom of speech, our own First Amendment, is a delicate undertaking indeed. My primary concern in trying to make a good law better is to have enforceable legislation which meets constitutional muster in the event of a court challenge which may or may not happen. In various First Amendment cases, the Supreme Court has ruled that--and this is very important for your consideration as you consider voting on this bill--the

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Supreme Court has ruled that time, place, and manner can be regulated. What cannot be regulated is content. LB284 meets those tests. I believe it should be noted courts have upheld distance requirements states have placed on those attempting to campaign within a certain distance of a polling site. Funerals and memorial services, much like polling places, can be viewed as having participants who are a captive audience. I believe there is a compelling state interest to protect family privacy and prevent emotional distress at funerals or memorial services. In 2004, the United States Supreme Court recognized the strong privacy interests of family members. Justice Anthony Kennedy, in the National Archives and Records Administration v. Favish , wrote, and I quote: Family rights...I sorry...family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites--and those would be ceremonial rites, spelled r-i-t-e-s--and respect they seek to accord to the deceased person who was once one of their own. End quote. In closing, I want to thank those who have contacted my office expressing their support for this legislation. The positive response I have received following the introduction of LB284 has been overwhelming, and perhaps your offices have also been contacted on this bill. I believe this feedback is indicative of the strong support, respect, and admiration our citizens have for those who have served our country and given the ultimate sacrifice, and for the ceremonial rites of their own during the burial process. They, their family members, and loved ones are the ones I have introduced and prioritized this bill for. Thank you, Mr. President. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Krist. You've heard the opening to LB284. Members requesting to speak: Senator Fulton, followed by Senator Gloor, Senator Dubas, Senator Adams, Senator Avery, and others. Senator Fulton. [LB284]

SENATOR FULTON: Thank you, Mr. President. If Senator Krist would like some time I'd be willing to yield that after I'm done here. This particular bill, I thank Senator Krist for bringing it. He's made it his priority bill. These priorities are rare in the life of a senator. We get one per year and so you don't get many chances to make something meaningful with respect to change in the law in Nebraska. This is very important. My own situation, when I was, this summer, at a football game of one of my children, this was not long after this family from Kansas had protested here in Nebraska, and that was the talk on this bleacher on which we sat during this football game. And one of the persons there knew that I was a state senator, and says: Why can't you do something about it? And so this bill that Senator Krist has introduced is actually something that my office also researched, and I can tell you that this is an issue where Republicans and Democrats and conservatives and liberals and every stripe in between can recognize because out of just a basic sense of human decency that this is an appropriate measure to put forward. The e-mail that Senator Krist has put forward explaining why the state has a compelling interest in protecting these funerals, it's important, and Senator Krist has put that into record, at least begun to, and we should continue to put that into the record. The idea that you're going to show up at a funeral of your loved one and have it become

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a public spectacle just militates against common sense. And the courts in this case have indicated as much. These are not public endeavors, and so this right to free speech is not something that occurs in the sense of a public endeavor. This is a private funeral. And so the state does have a compelling interest. We have, in our statute already, 300 feet I believe it is, and so to move it from 300 to 500 feet becomes a question of judgment, which is the purview of the Legislature...it is the purview of the Legislature to make these laws, and it becomes a question of our judgment as to whether 300 feet or 500 feet is appropriate. Five hundred feet, it seems to me, is appropriate because it further protects the safety of those engaged in a private endeavor. And when we look, indeed, what has happened in other states, we fall right in line. This is appropriate. If it should come before the judiciary, may they look upon our testimony and our floor debate and glean the intention of this Legislature, and may they recognize that we stand unanimously in asserting our legislative authority in putting forward Senator Krist's bill. I'd like to yield the remainder of my time to Senator Krist. [LB284]

PRESIDENT SHEEHY: Senator Krist, you're yielded 2 minutes. [LB284]

SENATOR KRIST: Thank you, Senator Fulton, for kindly letting me talk again. I would point out to you once again, as I did in my opening, the map that you have been handed out. These are the states that, in green, are at least 500 feet, and other states at 1,000 and 1,500. I believe that part of what I believe is a compelling reason has to do with public safety, and I think the letter from the Sheriffs' Association as well as the Funeral Directors in the state will bear that out. Sometimes a distance is not enough. It's not enough to make sure that those who want to exercise their First Amendment rights and protest and those that want to have a ceremony to honor their dead would be separated. That is public safety. That is the interest of every law enforcement officer across the state, and they're telling us... [LB284]

PRESIDENT SHEEHY: One minute. [LB284]

SENATOR KRIST: ...it is a compelling reason to keep the two groups separated. We are in no way interfering with the First Amendment rights for those who wish to protest, no matter what our feelings--and I'll say no more on that subject--but it is important for public safety that there is a safe distance. And in most cases around this state I believe, which is why I brought this forward, 500 feet is a new standard that law enforcement and those who are in the business, in the funeral direction business, would support. Thank you again, Senator Fulton, for yielding your time. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Krist. Thank you, Senator Fulton. Senator Gloor. [LB284]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I wonder if

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Senator Krist would yield for a question? [LB284]

PRESIDENT SHEEHY: Senator Krist, would you yield to Senator Gloor? [LB284]

SENATOR KRIST: Absolutely. [LB284]

SENATOR GLOOR: Senator Krist, thank you for introducing this bill. And I understand the public safety issue and the advice from law enforcement that 500 feet is an appropriate standard, yet some other states have gone to 1,000 feet and we even have a case of 1,500 feet. What is the argument in those particular states for doubling or even tripling that distance? [LB284]

SENATOR KRIST: I think if you look at the map in terms of topography and geography, you could infer that the more wide open the space, the higher the number, in some cases, and the more confined...in the case of for potentially larger cities, the more confined the area is potentially the less distance you would need. And the compelling argument that I heard from the law enforcement is it's line of sight. If I can keep the two parties' line of sight away from each other, there's a respect given for the ceremony and a respect given for a person's right to exercise the First Amendment and protest. So I can speak only to Montana because I called and talked with the folks in Montana, who were absolutely adamant that, given their topography and their arrangements, that it was almost a necessity to move them back to the 1,500-foot mark to keep the two groups separated. [LB284]

SENATOR GLOOR: Thank you, Senator Krist. What that tells me is this merits...assuming it passes, this merits paying some attention to...certainly areas of our state fit Montana's in terms of wide open spaces. And a further distance than 500 feet to me might be far more appropriate, at least when you look at the geography of this state. When I was younger I played the trumpet and was asked by the local Legion post to play taps for a lot of military funerals, a lot of military funerals. And as a young man with your mind in lots of other places other than death and dying and funerals, I can remember being struck with the poignancy of military funerals, not just the ceremony but knowing that there was sacrifice involved in this, especially since back then many of those veterans who were being buried were veterans of World War I and World War II. And the solemnity of the event and having to play taps on that event, I can't imagine...in my mind's eye I can't imagine a protest group being within visibility or even sound of that event going on. And to me, 500 feet is not far enough. One-thousand feet, 1,500 feet, 1,500 miles is a little too close. Yet, I trust the judgment on this. I understand the rights of people to freedom of speech, yet on the other hand I am uncomfortable that 500 feet is a distance far too close for an event that we all should honor and respect, for this...for a military funeral or any funeral as far as that goes. So I'll be monitoring this, asking questions, working with veterans' groups on it. I may, in fact, feel more comfortable coming back to expand on this at some future date. But I am appreciative of

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Senator Krist taking this step and will be certainly in support of LB284. Thank you.  
[LB284]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Dubas. [LB284]

SENATOR DUBAS: Thank you, Mr. President. As a mother of a former National Guard member and the daughter of a Korean War veteran and the sister of a law enforcement officer, I thank Senator Krist from the bottom of my heart for bringing this bill forward and stand in wholehearted support of it. Freedom of speech and expression is one of those freedoms that we hold most dear and that we use on a regular basis in this body. But when that right and that freedom is used in the manner such as it is with those who protest at these types of funerals, it makes it very hard to want to continue to support that particular freedom. But it is for this freedom and so many others that we take for granted on a daily basis that young men and women all across our country are willing to sacrifice their lives for, and so I think this bill is only right and good that we recognize their willingness to make that sacrifice for us. This past summer a young man from Grand Island who was serving his country was returned home to be laid to rest--First Lieutenant Mark Noziska. I attended that funeral. And the love--I attended that funeral as well as the protestors that like to follow these types of funerals around were also at this funeral--but the love and support that I saw come from the city of Grand Island and surrounding communities literally moved me to tears. I stood in the parking lot as one of the large ladder fire trucks pulled up in front of the church and hoisted one of the largest American flags I've ever seen up as high as that ladder would go and unfurled that flag for it to wave as the family pulled into the parking lot. I watched as hundreds of Freedom Riders began pulling up to the church and filing into the parking lot. I mean it literally went on for an extended amount of time as they very nobly and respectfully pulled into the parking lot and then each of them getting off of their motorcycles and going to a trailer where they pulled out large flags and lined the parking lot and the street on each side as far as they could go to, again, wrap their arms literally and figuratively around this family as they came into the church. As we left the church and processed to the cemetery--the cemetery was clear on the other side of Grand Island--and from the church all the way out to the cemetery the citizens of Grand Island lined the streets, waving their flags, holding signs. So while it is so difficult to understand why people would come forward with the type of hatred that is expressed by this small group of picketers, it is so rewarding and encouraging to see citizens practice that right of free speech and expression in such a positive manner, I can't even imagine how the Noziska family must have felt, but I hope that whatever slight bit of hatred that was brought forward on that morning was completely negated and offset by the love and the care and the compassion and respect that was expressed by the community and surrounding areas. And I would be in agreement with Senator Gloor. I don't know that 500 feet is far enough. It is a public safety issue. If the body saw fit to... [LB284]

PRESIDENT SHEEHY: One minute. [LB284]

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SENATOR DUBAS: ...to expand on that distance, I would have no problem supporting that. But again I just sincerely want to thank Senator Krist for bringing forward this legislation. Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Adams. [LB284]

SENATOR ADAMS: Thank you, Mr. President. Members, I support this bill, and I wasn't going to say anything, but as I was trying to rationalize and understand my support, I got to thinking about some things and I'd like to share them with you. And you all understand I'm no constitutional lawyer nor do I profess to be. Don't know all the case law. But here's my thought. My guess is there isn't a person in this body that, on its face, common sense as well as emotion, that wouldn't say this type of protest doesn't even belong at that funeral service. Unfortunately, we don't have the opportunity to necessarily make laws or amend free speech as a result of what our gut tells us, what our heart tells us, or what practicality and common sense might tell us. Instead, we have to look at it from a different way. And here's how I see it. We picture these protestors at a funeral. We're angry about it. Maybe the first thing we say is this isn't speech. First Amendment says speech--the spoken word maybe. That's what it's supposed to mean. We all know better. A couple of hundred years of history with the First Amendment and the changes that we've experienced in this country say that just the armband is speech, the e-mail is speech, the parade is speech, the dress is speech. The list goes on. So this protest is speech. Now we can stand up and say: but it shouldn't be protected speech; it's wrong; the First Amendment shouldn't protect speech like this. I would venture to say the First Amendment is designed to protect that speech which we most dislike, more than the speech that we most enjoy. And we dislike this kind of speech. So the First Amendment is there to protect it. The protestors are standing there at the funeral; maybe they're holding up placards. So we ask ourselves then is there a reasonable way to limit this kind of speech? Yes. If the speech is libelous and slanderous it potentially could be ended. If the speech is inciting violence and criminal action it could be prohibited. If the speech is obscene--broad definition there--but it could be limited. If the speech or the protest is an outright incite to violence and presents a clear and immediate danger to the crowd, to the community, to the funeralgoers, it could be stopped right then and there. But I'm going to suggest to you that potentially, in this case, we don't have any of those things. We don't have libel and slander; we don't have obscenity; we don't have an incite to violence. So how can we possibly, in some way, regulate this speech? So I ask you, if someone comes to town, any town, and says I want to march down main street, and I'm going march down main street and I'm not going to say a word,... [LB284]

PRESIDENT SHEEHY: One minute. [LB284]

SENATOR ADAMS: ...but the way that I dress, the placard that I carry, may be

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offensive. Do you have the right to walk down main street? Maybe. Does the city have the right to regulate the time of the march, the place of the march, and the manner of the march? Yes. Do they have a compelling interest to? Yes. Do the city authorities in that case have a compelling interest to protect not only the people on the sidewalk, but even the protestors themselves? Yes. Does the city have the right to regulate the time, place, and manner of certain kinds of adult entertainment within a community, by saying that it shouldn't be next to a church, that it shouldn't be next to day care? Is that reasonable? I think it is. A cemetery is a public place... [LB284]

PRESIDENT SHEEHY: Time, Senator. [LB284]

SENATOR ADAMS: Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Adams. (Visitors introduced.) Continuing with floor discussion on LB284, members requesting to speak: Senator Avery, followed by Senator Bloomfield, Senator Lautenbaugh, Senator Utter, and Senator Ken Haar. Senator Avery. [LB284]

SENATOR AVERY: Thank you, Mr. President. It's interesting that I follow Senator Adams, because he and I both have spent a lot of time in the classroom probably having to defend this kind of speech. I know I used to have some vigorous debates with my students, because often the kinds of speech that we must be so careful about protecting is the most obnoxious. This kind of protest, as Senator Adams said, does not belong at these funerals. All of us know that. In fact, my office looked into possibly coming forward with some legislation this session, and we were looking at possibly defining this kind of protest as obscenity, and our objective was to bar it altogether. Because what is obscenity? It's foul. It's repulsive. It's detestable. It carries a strong moral repugnance. And I don't know anyone, except perhaps some of the people at Westboro, who would disagree that this is obscene. But Senator Adams is right. The First Amendment protects the most obnoxious speech, the most despicable, the most repulsive. And why is that so? It is important that we understand that if we protect the most repulsive, if we protect the most obnoxious among us through the First Amendment, if we do that then those of us who are more ordinary, those of us who express acceptable speech, those of us who are not going to engage in obnoxious and despicable and repulsive speech can be sure that our right to free speech is protected. One of the great difficulties in a democracy is balancing the rights of the minority against the rights of the majority. I don't think there's any doubt that the majority of us in this country condemn what Westboro group does. We condemn it. We find it repulsive. But if we protect that speech, then those of us who are more mainstream, those of us who are likely to engage in speech that is not so offensive, we can be sure that our right to free speech will be protected. The First Amendment sometimes is inconvenient, but nonetheless, it's important. It's what makes this country a viable democracy that Ronald Reagan used to say: a beacon on the hill. We are an example for the rest of the world

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because of the very things that we do in this country that other democracies don't do. You know, for example, we are going to go through the business of redistricting in a few weeks, and that's going to be difficult. Other major democracies around the world don't do this. They don't protect one person, one vote, the way we do. They don't go through the painful process of protecting an important democratic principle, and we do. And other countries look at us with admiration, saying: We ought to be doing that too. The Japanese, for example, haven't reapportioned their legislature since World War II, so the rural interests are vastly overrepresented in their legislature. But they can't bring themselves to make the tough choices... [LB284]

PRESIDENT SHEEHY: One minute. [LB284]

SENATOR AVERY: ...to protect that valuable principle. This is, in my mind, a modest attempt to protect the families without injuring, seriously, the rights of the people at Westboro to exercise their First Amendment rights. It's not as far as some of us would like to go, but it's perhaps as far as we can go, and I should say also perhaps as far as we should go, as painful as it is. Thank you, Mr. President. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Bloomfield. [LB284]

SENATOR BLOOMFIELD: Thank you, Lieutenant Governor and members of the body. I rise to this with a little bit of a unique perspective. My son currently serves in Afghanistan; I am a Vietnam vet. When we came home, healthy and well, from Vietnam, we maybe weren't treated real well, but when thousands of my brothers from that battle came home, the country as a whole treated them with dignity and respect. We have lost that now. We have people going around, torturing the families of folks that have paid the ultimate price. I thank Senator Krist for bringing this bill. I wish it was five miles. If, God forbid, something should happen to my son, I certainly would not pretend to guarantee the safety of anybody protesting that funeral. I know too many of Mark's friends too well to guarantee that safety. And if Senator Krist would like any more time, he's got the rest of mine. Thank you. [LB284]

PRESIDENT SHEEHY: Senator Krist, you're yielded 3 minutes 40 seconds. [LB284]

SENATOR KRIST: Thank you, Senator Bloomfield. It is important that we remember when soldiers go to the battlefield that they believe in the axiom: Leave no man behind. That perpetuates back to the ceremony back here when they are brought back, their remains are brought back and the reverence is shown for the final time. That should extend to every citizen of the United States because they have contributed either in public service or in raising their families, even without military service. In my opening I said I bring this on their behalf and for the families. In my closing, I'll talk to it again. I think this is what we need to do. I've been asked, off the mike, at least twice, how did you pick 200? Why didn't you pick 15? Why didn't you pick five miles? Why didn't you

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pick another state? I drove around in Omaha and I looked at the cemeteries that are in my district and those close. And I saw that along the outsides of some of the cemeteries themselves another 200 feet would potentially take you to the next row over. It would allow law enforcement to stand in between. I find that compelling. I find that the distance that we keep between is in the interest of public safety, and I wanted to say that one more time. Thank you, Senator Bloomfield, for yielding your time. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Krist. Thank you, Senator Bloomfield. Senator Lautenbaugh. [LB284]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this bill as well, and I thank Senator Krist for bringing it. And we've had a good discussion in Judiciary about the bill and we've had good discussions off the mike. And I always appreciate it when Senator Adams speaks, as well, because he's always very informative and I find him to be almost always, and probably always, correct in what he says. I don't know if that makes him feel better or worse, but that's the way it is, so. This was a difficult balance to strike. Any time we're limiting free speech, we have to be able to articulate why we chose one number over another number. And I think what we're looking at here is, very simply, in too many instances 300 feet is not very far away at all. And this does deal with public safety and this does deal with the rights of those who are there to mourn their lost loved ones. And I agree with everyone else: I find it horrific that anyone would ever choose to protest anyone's funeral, ever. I just...I can't get my head around that and understand why anyone would deem that to be acceptable behavior. But unfortunately we're stuck with tolerating some things that we find repugnant, because that's maybe the ugly side of the freedoms we have. But in this case...I'm wondering if Senator Krist would yield to a question? [LB284]

PRESIDENT SHEEHY: Senator Krist, would you yield to Senator Lautenbaugh? [LB284]

SENATOR KRIST: Yes. [LB284]

SENATOR LAUTENBAUGH: Senator Krist, the 500 feet, how does that improve upon the 300 feet that we currently have? [LB284]

SENATOR KRIST: I'm told by the sheriffs, by the state association of sheriffs, the state association of funeral directors, and the Freedom Riders, that that extra 200 feet will represent a reasonable buffer. And I have to believe that those professionals that are out there every day can tell us what's appropriate. I also think that in terms of establishing a new distance--300, going up to 500--I would have not done my job as a legislator or due diligence to increase it at this point anymore, because that has been upheld. Thank you for the question. [LB284]

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SENATOR LAUTENBAUGH: Thank you, Senator Krist. And again, if the litigation and decisions under the Second Amendment have developed over the years, and we've believed consistently come down on the side of greater and greater free speech protections, with a few exceptions. There used to be an exception for fighting words that if something was likely to cause violence, it could be regulated. And that's fallen into disfavor over the last--oh, I don't know--100 years, speaking in round numbers. But that would have applied in a different time to what we're talking about here, because I can think of no legitimate person...or no legitimate reason to harass someone at a funeral. But we have to work within the confines of what the federal decisions tell us the constitution means and the Second Amendment means...or the First Amendment, excuse me. And I think this is a very reasonable, justifiable limit that's been upheld in other states. I believe Senator Krist did actually investigate this and we discussed this at length as to why 500 feet would provide more adequate protection for all involved, and I would urge you to support this bill. Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Utter. [LB284]

SENATOR UTTER: Thank you very much, Mr. President, and good morning, colleagues. First of all, I rise in support of LB284 and thank Senator Krist for bringing it. Lots of reasons, I guess, for us to do something like this, and I certainly understand the argument of moving it up to...from 300 feet to 500 feet. I would say as we move to the more rural parts of our state there should also be consideration for strong justification of moving it on up to the 1,000-foot level as they have in our neighboring state to the north. And I would...if there were a movement in this body to increase that space to 1,000 feet, I certainly would support that too. And now I have a feeling that Senator Adams wasn't finished and so I would like to yield the balance of my time to Senator Adams to finish what he was talking about. [LB284]

PRESIDENT SHEEHY: Senator Adams, you're yielded 3 minutes 45 seconds. [LB284]

SENATOR ADAMS: Well, thank you, Senator Utter. You catch me a bit off guard. I've got to remember where I left off now, and wondering if what I had yet to say was of any addition to this discussion. But again I appreciate it. The cemetery is, in effect, in my opinion, a public place. Unless the gates are closed, it is a public place. And because it is, it is a place for protest. And we may not like the protest; we may not like the means of protesting; we may not like the ideas conveyed by the protest--but it is a place. Now unless it meets the other standards that I described to you, we fall back on the time, place, and manner regulation. If we have compelling interest it would seem to me that we have the ability to regulate the time, the place, and the manner in a reasonable way. Do we say to these protestors: Okay, we'll let you protest at the cemetery, but at 3 a.m. in the morning and in the farthest corner of the cemetery. How about that? No, that's not reasonable. But is asking them to back up on this day...on the day of this funeral service, asking them to back up, have we stopped their speech? No. Have we amended

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their speech and their ideas in any way? No. Have we regulated the time--the funeral is going on; the place--in some way; we've backed them up a few hundred feet; and have we done it for the right reasons? Is there a compelling interest? I think there is. I think there is. And it can be the safety of both parties involved, not only those at the service but the protestor or protestors. But there is also the issue, I suppose, of a certain sanctity at this event that should be recognized, and can it be recognized and the speech still recognized? Yes. And I think this bill does that. Thank you, Senator Utter. Thank you, Mr. President. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Utter. Members requesting to speak on LB284: Senator Ken Haar, followed by Senator Council, Senator Pirsch, Senator Schumacher, Senator Price, and Senator Fulton. Senator Ken Haar. [LB284]

SENATOR HAAR: Thank you, Mr. President and members of the body. I want to thank Senator Krist for bringing this bill before the body. And the First Amendment is really a wonderful part of our national constitution. But I call it pesky, because it's something we will never totally resolve, what is covered and what isn't covered and how it should be covered. One of the things as Senator Adams went through his list of First Amendment, talking about it, all the various things that we consider to be speech. Money is speech, and the Supreme Court lately has done--United States Supreme Court--done what I consider some interesting rulings on money as free speech. So the First Amendment will always be pesky. But there are always two sides of it, that we should not limit free speech, but we have to look at where the appropriateness is of it and the reasonableness of it. So I think what Senator Krist has introduced here is reasonable. I think it's reasonable. I cannot, for the life of me, understand how those people, you know, come to these funerals time after time. I cannot understand what they're trying to prove or where they're coming from. But they are covered by that free speech. And so I want to thank Senator Krist for this bill. I think it is a reasonable balance. And with that, I'd like to give the rest of my time to Senator Fulton should he wish it. [LB284]

PRESIDENT SHEEHY: Senator Fulton, you're yielded 3 minutes 10 seconds. [LB284]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Haar. The...just for the record, indeed, the...a cemetery could be considered a public place, but as part of this ruling that Senator Krist had e-mailed to us earlier, I did have the opportunity to look through this. And there was a question that was asked about whether indeed the funeral could be considered a public event and whether indeed the cemetery in which a funeral is occurring would be considered a public place for purposes of the First Amendment. And so I thought I would read into the record what this ruling said. Let's see. If you want to follow along, it's on page 9 of the ruling; I think it's on page 24 of the e-mail. Funeral services are not themselves traditional public fora in which the Phelps could claim a First Amendment right to express their hateful messages. Not surprisingly, no court has ever held or suggested that a funeral service is a public forum for First Amendment

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purposes. And then it goes on to say: Instead, courts across the country have ruled uniformly that even public cemeteries are not public fora, for First Amendment purposes. And then it goes on with some more detail. But for the record, anyway, it's my understanding...and it seems to be the understanding of this court, anyway, that we're reading from, that when it comes to First Amendment purposes, the courts have not found that, indeed, the cemetery is considered a public place, at least for First Amendment purposes. And so just...you know, echoing what many here have said, and Senator Adams, and Senator Haar and...you know, we, through our legislative purview, have the authority to change this law--and we are--primarily for safety reasons, and doing in such a way as not to infringe upon one's First Amendment rights, inordinately; indeed, with respect--how shall I say it?--congruence and following what has been found in court decisions. So thank you, Mr. President. [LB284]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Fulton and Senator Haar. (Visitors introduced.) Continuing with discussion on LB284, those wishing to speak are Senator Council, Pirsch, Schumacher, and Price. Senator Council, you're recognized. [LB284]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise as a member of the Judiciary Committee that voted to advance LB284 to General File for debate. And I need the record to reflect that the vote, at least my vote, was with the caveat that there was a need to establish a record that would be able to withstand judicial scrutiny as to whether or not there is a compelling state interest to increase the distance requirement from 300 to 500, because, colleagues, that is the standard that must be met. There is no dispute that the conduct that is being engaged in by the individuals from the Westboro Baptist Church to many of us is abhorrent. But we're talking about First Amendment rights and the striking of the balance of First Amendment rights against those of the family and the attendees at a funeral. And so the issue becomes not so much whether 500 feet is far enough. The question is whether the move from 300 feet to 500 feet, that the public safety issues that have been articulately presented during this debate, will provide the evidence of compelling state interests. And so we need to appreciate and understand that. And I must...I feel compelled also to take this opportunity to correct the record in regard to my colleague Senator Fulton's last statements about the document that was circulated by Senator Krist. The document that was presented and circulated is not a court decision. Although there are references in there to court decisions, what has been circulated is a copy of an amicus brief setting forth basically the arguments that can and should be made to establish the compelling state interests to provide additional distance between such protestors and the funerals, particularly the service and the internment. So, just as we continue with this debate, just appreciate the standard that we are trying to satisfy is not really whether or not we believe that this kind of conduct is abhorrent and that there's no distance that's too great; is that we are sure that we are establishing the compelling state interests. I have

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discussed this with Senator Krist. I applaud him in his efforts. But when, you know, we're talking about constitutional rights, and we often talk about constitutional rights in this body, and when we believe it is appropriate to infringe upon them and when it's not. As badly as we consider this conduct and this behavior to be, the compelling state interests we are going to be relying on is, in this case, is the public safety interest, and just need to trust that if challenged judicially, that that will be found to be such a compelling interest that warrants the addition... [LB284]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB284]

SENATOR COUNCIL: ...of 200 feet to the current statute. Thank you very much. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Schumacher. [LB284]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. In establishing that compelling state interest, I rise as a former county attorney. County attorneys are, in Nebraska counties, the chief law enforcement officer of the county and charged with enforcing the law and keeping the peace. We have, in the situation at hand here, a conflict between rights--the rights of the family to a decent, honorable burial and the people who are in support of the family to express their sentiments, their free speech; and what the courts have told us is a constitutional right on the part of those who are there who might be protesting. The duty of the state is to referee between those two particular situations to ensure that no one gets hurt, to ensure that it is orderly. And when we have the distance of a mere city block without even enough distance to put an intersection between the groups, and when the funeral could be very large and understandably emotionally charged, putting an intersection between them, which just about happens in the case of all cases with the 500-foot standard, gives law enforcement the ability to deploy its resources, to control a situation before someone gets hurt and it gets out of hand, and is necessary in order to maintain a free and orderly society that respects all rights. I did contact the Platte County sheriff and asked for his opinion whether or not this was necessary. And he said that he felt that he could handle a situation much better and protect public safety to a far greater degree if he had the additional room. And I think that's consistent with my experience in law enforcement, and I strongly support the adoption of this bill. Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Price. [LB284]

SENATOR PRICE: Thank you, Lieutenant Governor and members of the body. I was hesitant to rise on this because I think all of you know how I feel about our members in the military and their families, so I won't hit that part because you know where I am on

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that. But I did want to hit on conceptualizing 500 feet. What is 500 feet? How do you visualize that and what do you know? So I looked up...I used a trusty computer we have here. I got Google out, and I started measuring some landmarks around that we can...help us visualize what 500 feet is and what it isn't. Five hundred feet--from one side of a football stadium to the other. If you go right over here to Lincoln High School, it's less than 500 feet to be in the bleachers on one side and holler at the other side. How many of us have been to a football game and heard hollering from the opposing fans? It's very easy for your voice to travel that distance. Five hundred feet. Memorial Stadium almost completely fits within 500 feet from the upper deck to the upper deck, going across, obviously, the narrow end--not end zone to end zone. How many of us have been to a game at Memorial Stadium and heard the people on the other side, particularly when we have a chant going on. If you want to be at home and let's say you haven't been to Memorial Stadium and you're up in Omaha, Rosenblatt fits within 500 feet; Caniglia Field is almost less than 300 feet, sideline to sideline. The Qwest parking lots where they're putting in the new ball diamond is less than 500 feet. Or as Senator Schumacher said: one city block. It's not an impairment for other opposing teams to be heard, but what it does do again, it does provide that buffer for the family. I just wanted to share that with the members so they knew what 500 feet was going to be and what it wasn't going to be. And with that, I yield back the balance of my time to the Chair. Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Price. Members wishing to speak on LB284: Senator Brasch, followed by Senator Carlson and Senator Pirsch. Senator Brasch. [LB284]

SENATOR BRASCH: Thank you, Mr. President. And I also thank Senator Krist for bringing LB284 to this body. I am in support of LB284. It's a sad day in our country that we need to legislate respect and honor in our communities. I do believe that a family who has lost someone has a right to privacy to mourning in their own way without stepping on the toes of our constitution. I believe we are recognized globally as a kind, compassionate, and caring nation who renders assistance and helps our neighbors and countries, that certainly, you know, this day, 500 feet at a minimum, more distance or just common sense to please stay away from our cemeteries. Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Brasch. Senator Carlson. [LB284]

SENATOR CARLSON: Mr. President and members of the Legislature, this has been a very, very interesting discussion this morning. And it's so easy, on a topic like this, for me to get into a frame of mind that we need to push them as far away as we can possibly push them--1,000 feet, 1,500 feet, or whatever it is--and shut them off. And then the good part of this discussion is we get balance. And I've spoken other times on this floor about the wonderful privilege that we have in freedom of speech, and we need to protect that to the very, very end. So with that in light, I think that this bill has been

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well-thought-out and it is about what it should be. I did contact law enforcement in my district and just asked them what their opinion was, and certainly they are in full support of the bill and would be in support of a distance that is even greater. So I thank Senator Krist for what he has done in bringing this forward and certainly do support the bill. Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Pirsch. [LB284]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I, of course, rise in support of Senator Krist's bill. I thank Senator Council for her aptly pointing out that, first of all, the standard that the state has to show compelling state interest in this act and that in clarifying that it was an amicus brief which was distributed, and from which I think that I'll read a few passages as we look at what a compelling state interest is. The court has weighed in on this matter, it is my understanding, and indicated that--the Supreme Court--and has said that 500 feet is kind of a safe path. That was tested, that specific distance, and found to be constitutionally sound against claims of free speech...violations of free speech. But there are other states out there that have even greater distances: 1,000 feet; 1,500 feet, I think Montana has. And as I think as we look at what the nature of the action in and weigh the compelling interests, I think those greater distances are ultimately going to be found to be constitutional. I think in the future we should consider those as well. I quote from the amicus brief to a passage I thought was very compelling and I think really kind of illustrates why those greater distances would be upheld if ever tested. In this particular case that comes, I believe, out of Kansas, the Supreme Court case, there was an amicus brief that was submitted by those urging the court to adopt...or to find that the 500-foot distance, that was the particular distance in this case--was not constitutionally unsound. The family's name, in this case the soldier's family's name was Snyder, and I won't get into the horrible type of activities that the protestors' statements that they were...very personal remarks, personal to this soldier, designed to, in my opinion, inflict intentional emotional distress to the family. But I think the brief puts it well and it says, "The Snyder family had but one opportunity to honor and mourn their fallen son, one opportunity to pay their final respects, one opportunity to bury him with solemn dignity in a time-honored tradition that far predates the founding of our country and the adoption of our Constitution. The Snyder family should have been guaranteed their time of mourning in peace, with privacy, tranquility, and dignity. Traditions as old as humanity, much older than our Constitution, demand such privacy; the First Amendment does not abrogate all history and cultural norms to protect the Phelps' unprecedented tactics." Thank you. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Wightman. [LB284]

SENATOR WIGHTMAN: I don't have a light on according to my...it's not on. [LB284]

PRESIDENT SHEEHY: Senator Smith. [LB284]

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SENATOR SMITH: Thank you, Mr. President. Would Senator Krist yield to a question? [LB284]

PRESIDENT SHEEHY: Senator Krist, would you yield to Senator Smith? [LB284]

SENATOR KRIST: Certainly. [LB284]

SENATOR SMITH: Thank you, Senator Krist. Once the group or the family members arrive at the site of the funeral, is the distance the radius from the grave site? [LB284]

SENATOR KRIST: Technically, I think the actual ceremony is the center of the distances, and the actual ceremony being the burial or internment, and then that...I forget...it's one hour prior and two hours after the event that those distances stay in place. [LB284]

SENATOR SMITH: All right. So, you know, with the size of these funerals, you know, there could definitely be, in such a relatively confined space, intermingling of the protestors with the family members and the people that are there to show their respects. And I believe my position on this, just...not only just from a human decency perspective, but there is a public safety issue here. And more than anything else I think we need to support this bill to ensure that these funerals remain safe for the families and those that are showing their respect, and there is a, certainly, a public safety issue with this. And I will provide the remainder of my time to Senator Schumacher. [LB284]

PRESIDENT SHEEHY: Senator Schumacher, you are yielded 3 minutes. [LB284]

SENATOR SCHUMACHER: Thank you, Senator Smith, Mr. President, members of the body. In looking at the language that Senator Smith raises, it says: Picketing of a funeral protest means protest activities engaged in by a person or persons located within, now to say, 500 feet of a cemetery, mortuary, church, or other place of worship. In most of all situations, the church is within a city. City blocks are generally at least 300 feet. You have parking in front of the church or the mortuary that would be located within a city situation, and you need to have some area in which the service can operate and in which the police and the sheriff or State Patrol can get engaged as a buffer. And it seems reasonable that in order to protect the public, you have to have access to that area and should at least have an intersection between them, that area of the church or the mortuary and where the protest occurs. It seems just common sense and is essential for public safety that you have that access and that buffer, particularly when these funerals get large. You have parking congestion. You have movement of vehicles, and you have all kinds of practical things that have to be dealt with in order to ensure that freedom of speech on both sides of the situation is able to happen in an orderly way so people don't get hurt. Public safety is a paramount thing here not only in the conduct

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of the funeral but also in ensuring a proper buffer and police operation zone... [LB284]

PRESIDENT SHEEHY: One minute. [LB284]

SENATOR SCHUMACHER: ...between the two conflicting rights. And the 500 feet moves us beyond the intersection into the next block and allows for maneuverability and public safety. Thank you, Mr. President. [LB284]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Thank you, Senator Smith. Seeing no additional requests to speak, Senator Krist, you're recognized to close. [LB284]

SENATOR KRIST: Thank you for your support and active discussion today. I do appreciate all the questions and our deliberate, consistent attempt to show that we are serious about public safety and about the distance increasing to facilitate that public safety. I go back to Senator Adams' comments as well as Senator Avery's, and I would say that the thing that I did in my lifetime for 21 years and that many of you have done in your service to this country is defended the right...defended this country against all enemies, foreign and domestic, and that we have defended every citizen's right of free speech. Today we're saying you have a right to protest; we have a right to honor our dead. We are saying increasing the distance will allow us both--both sides--to exercise our freedoms. I ask you for your vote on LB284. And Mr. President, I'd like a call of the house. [LB284]

PRESIDENT SHEEHY: There has been a request for the call of a house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB284]

CLERK: 33 ayes, 0 nays, to place the house under call, Mr. President. [LB284]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Please record your presence. Senator Cornett, Senator Lathrop, Senator Ashford, the house is under call. Senator Krist, all members are present or accounted for. How would you like to proceed? [LB284]

SENATOR KRIST: Machine vote. [LB284]

PRESIDENT SHEEHY: Members, the question before the body is on the advancement of LB284. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB284]

CLERK: 45 ayes, 0 nays, Mr. President, on the advancement of LB284. [LB284]

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PRESIDENT SHEEHY: LB284 advances. The call is raised. Mr. Clerk, do you have items for the record? [LB284]

CLERK: I do, Mr. President, thank you. Senator Campbell offers LR84. That will be laid over. Notice of hearing from Judiciary Committee. Retirement Systems has designated LB509 and LB382 as the committee priority bills. That's offered by Senator Nordquist as Chair. Business and Labor reports LB261 to General File; LB262 to General File with amendments; and Enrollment and Review reports LB181A to Select File. That's all that I have, Mr. President. (Legislative Journal pages 641-643.) [LR84 LB509 LB382 LB261 LB262 LB181A]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will move to the next item under General File.

CLERK: LB27, a bill by Senator Langemeier. (Read title.) Introduced on January 6, referred to the Natural Resources Committee. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB27]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Langemeier, you're recognized to open on LB27. [LB27]

SENATOR LANGEMEIER: Mr. President and members of the body, we move on from a very serious subject matter down to some technical bills here before you. LB27 was introduced on the behalf of the Department of Natural Resources, and the opening statement that the Clerk read actually is more detailed than what the bill does. What we have out there right now is NRDs consider a small capacity well to be 50 gallons or less, and the Department of Natural Resources considers a small capacity well at 49 gallons or less per minute. LB27 would take that all to 50 gallons or less so we have consistency. If you go to your NRD and you're putting in a 50-gallon well that might be for a geothermal unit on your house, you may have problems with DNR because you didn't go apply there because they require 49 or less not to need an application. So it harmonizes that to get everybody to 50 gallons or less will be a small capacity well. With that, I would ask for your adoption of LB27. [LB27]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You have heard the opening to LB27. Seeing no requests to speak, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the advancement of LB27. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB27]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB27. [LB27]

PRESIDENT SHEEHY: LB27 advances. (Visitors introduced.) Next item, Mr. Clerk.

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[LB27]

CLERK: Mr. President, LB32 is by Senator Langemeier. (Read title.) Introduced on January 6, referred to the Natural Resources Committee. At this time I have no amendments to the bill, Mr. President. [LB32]

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

SENATOR LANGEMEIER: Mr. President and members of the body, LB32 was introduced, again on behalf of the Department of Natural Resources, and it deals with applications for water appropriations in relation to storage. Currently, the system if you want to try and see if there's some unappropriated water in a river basin that you would like to build a dam to hold, you have to submit the application for the amount of water you'd like to receive from the stream as well as your full design plans for the dam itself. And once you do that, there's no set time frame to get that all approved. So you could apply for it in 2007 and dink with it until 2014 before you get everything set and move forward. LB32 changes that. LB32 allows you to apply to the Department of Natural Resources to find out if there is an instream flow available and then once they determine there is actually water that could be used or impounded, then you have six months after that date to submit your design plans for your dam. And it, number one, it puts a limit on how long you have to get this project underway, and also it allows you to see if there's any water there to actually do what you want to do before you go through all the expense and the design to get your dam built to buildable standards. So with that, we'd ask for your adoption of LB32. Thank you, Mr. President. [LB32]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening to LB32. Member requesting to speak, Senator Sullivan. [LB32]

SENATOR SULLIVAN: Thank you, Mr. President. I wonder if Senator Langemeier would yield for a question. [LB32]

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

SENATOR LANGEMEIER: Yes, I would. [LB32]

SENATOR SULLIVAN: Thank you, Senator. Just a clarification. Would this also include an existing dam that maybe is trying to change its classification and is in the process of getting the study done and submitting a different plan? [LB32]

SENATOR LANGEMEIER: No. No, because that already has an application in and there's obviously a streamflow there if they're doing the design for the dam. You're beyond where we're looking for new applications, yes. [LB32]

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SENATOR SULLIVAN: Okay. All right. Thank you for that clarification. [LB32]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Seeing no additional requests to speak, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the advancement of LB32. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB32]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB32. [LB32]

PRESIDENT SHEEHY: LB32 advances. Next item. [LB32]

CLERK: LB31 is a bill by Senator Langemeier. (Read title.) The bill was introduced on January 6, referred to Natural Resources, advanced to General File. There are Natural Resources Committee amendments pending, Mr. President. (AM206, Legislative Journal page 518.) [LB31]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Langemeier, you're recognized to open on LB31. [LB31]

SENATOR LANGEMEIER: Mr. President and members of the body, we're moving right along here. LB31, again was introduced on behalf of the Department of Natural Resources. It changes the supplemental direct flow for agricultural appropriations relating to additional flows and how the department considers these new flow permits. It's a technical change for them to allow them to...I can't say it any simpler than that so with that, I'd ask for the adoption of LB31. I was trying to give you some other...it's that simple. Thanks. (Laughter) [LB31]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening to LB31. As was stated, there is a Natural Resources Committee amendment. Senator Langemeier, you're recognized to open on AM206. [LB31]

SENATOR LANGEMEIER: It will pop up there. This amendment is a committee amendment, AM206, it strikes Section 2 and renumbers the bill. Thank you. [LB31]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening to Natural Resources Committee AM206. Seeing no requests to speak, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the adoption of AM206 to LB31. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB31]

CLERK: 32 ayes, 0 nays, on adoption of committee amendments. [LB31]

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PRESIDENT SHEEHY: AM206 is adopted. [LB31]

CLERK: I have nothing further, Mr. President. [LB31]

PRESIDENT SHEEHY: We'll return to floor discussion on LB31. Seeing no requests to speak, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the advancement of LB31. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB31]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB31. [LB31]

PRESIDENT SHEEHY: LB31 advances. Next item. [LB31]

CLERK: Mr. President, LB165, a bill by Senator Fischer. (Read title.) Introduced on January 7 and at that time referred to the Revenue Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM316, Legislative Journal page 528.) [LB165]

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

SENATOR FISCHER: Thank you, Mr. President and members. I introduced LB165 to have a broad discussion about tax policy. While the Legislature has placed limits on other taxes, there's currently no limitation in our statutes with respect to occupation tax imposed on telecommunications. I believe limitations are needed for a variety of reasons. The rate at which municipalities levy a telecommunications occupation tax varies from 1.5 percent up to 6.25 percent and currently there is no cap. Some municipalities charge the tax on both land and cell phone service while others just levy the tax on landlines. Recently, Lincoln made the decision to extend the occupation tax beyond the tax on services to also tax equipment making them the first and only municipality in the state to do so. This variance in tax policy concerns me. This current tax policy is confusing to citizens, and I worry that our municipalities might simply go too far in levying this tax. We are focused on creating job opportunities and making Nebraska more attractive to businesses. I would hope this goal applies to our telecommunication companies as well. In July of 2010, Nebraska was ranked by the committee on state taxation as having the highest state and local taxes and fees on wireless services at over 18 percent. To have the highest tax rate in the country for anything, in my opinion, is simply not where Nebraska wants to be. This occupation tax, as it is imposed now, is imposed on the service, and then the sales tax is levied on the occupation tax. I know we're dealing with this issue in other bills, but I believe this tax on a tax is contrary to our policy of being an open and a transparent government. I want to be clear that I understand the financial stress our municipalities are facing. I know that budget cuts made at the state level are going to affect local governments throughout the

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state. I understand that Omaha generates approximately \$16 million per year, and Lincoln around \$8 million from their current occupation tax on telecommunications. With the amendment from the committee, the cities with a current occupation tax on telecommunications services will not be affected with a loss of revenue. I introduced this bill because I have a serious problem with the way this tax is levied, and the broad authority municipalities have in levying the tax. In my mind, it is simply not appropriate and it needs to be analyzed. The revenue this tax generates is carried on the backs of our citizens, plain and simple. People need to be able to hold their local governments responsible for these decisions. As you will see, the Revenue Committee advanced the bill with an amendment, AM316, that I proposed to the committee, and that I believe does an excellent job of limiting the scope of the telecommunications occupation tax. I ask for your support for the amendment and for the bill. Thank you, Mr. President. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening to LB165. As was stated, there is a Revenue Committee AM316. Senator Cornett, you're recognized to open. [LB165]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. LB165 is part of an overall tax discussion that we have been having in the Revenue Committee in regards to occupation tax. Occupation tax in the state of Nebraska has no caps or upper limits on them. LB165 is a very good step towards one defining what an occupation tax is and by putting limits on them. Senator Fischer brings up a very good point. And when you look at business climate, with the occupation tax, no one has any certainty what that upper limit is. LB165...the amendment to LB165 defines what telecommunication services are, it caps the telecommunications occupation tax for services at 6.25 percent. If the municipality wants to override that cap, they can with a vote of their people. The municipality can only request to increase the vote by 25 cents for every override, so I'll give you Omaha as an example. So if Omaha is at 6.25 percent and wants to override the cap, they put the question...to the rate to 6.5 percent on the ballot. The next time they want to increase it, they can only do so again by the vote of the people. The committee adopted the amendments to this bill which used the definition...defined telecommunication...the definition of telecommunication services found in the state sales tax sourcing statutes. I have a copy of those if anyone wishes to see them. This definition reduces the tax base or activity subject to the tax and the city occupation tax may apply under the law. To be clear, this does affect some products and services that are currently being taxed in Lincoln, and that was a policy decision by the Revenue Committee in this amendment. With that, I'll be happy to answer any questions. Thank you. [LB165]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening of the Revenue Committee amendment, AM316 to LB165. Mr. Clerk, you have an amendment to committee amendment. [LB165]

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CLERK: Mr. President, Senator Avery would move to amend the committee amendments with AM485. (Legislative Journal page 632.) [LB165]

PRESIDENT SHEEHY: Senator Avery, you're recognized to open on AM485. [LB165]

SENATOR AVERY: Thank you, Mr. President. AM485 amends the committee amendment on page 2, lines 20 and 21. If you refer to the amendment, you will see that what we are proposing is to strike language in line 20 starting with the word "from" and ending with the Section 77-2703.04. And we...this amendment inserts new language that would allow the imposition of the occupation tax on telecom services and equipment that are subject to state sales tax. I believe Senator Cornett suggested that that was the intent of the committee amendment. The committee amendment looked at language or definition of telecom services that would, in effect, put it more in line with the state sales tax model. What we're doing here with the AM485 is to make it explicitly clear that the definition of services will be the same as the state definition with respect to its sales tax. Under current law, cities can collect a privilege or a license tax on an occupation or business within its boundaries. That's current law. This is commonly referred to as an occupation tax. Who pays it? Businesses pay it similar to income taxes that they pay, withholding taxes, and property taxes. Businesses may itemize the occupation tax on the customer's bill as a separate line item. In fact, most of them do. When this business chooses to show the occupation tax on the customer's bill, the tax becomes a part of the gross receipts. In this case, the occupation tax must be included in the businesses sales price before calculating the state and local sales tax that may be imposed. Now it has been said that this is a tax on a tax. I would refer you to a handout that you should have. It has...it's entitled Department of...Nebraska Department of Revenue, and it explains what an occupation tax is. If you go to the second page, it addresses explicitly and directly why an occupation tax is not a tax on a tax. This is a state document from the Department of Revenue Web site. Collecting sales tax on the occupation tax is not considered a tax on tax because the occupation tax is simply another cost of doing business. It is no different than income, withholding, property, or other business or license taxes, which are also considered cost of doing business. The simple way to see this is that the occupation tax is a part of the sale price and it is levied on the business. The sales tax is levied on the purchaser, the customer at the time they purchase the service or equipment. If you go on down to what is the difference between the sales tax and the occupation tax, it is very clear that the sales tax is directly on the customer, and the occupation tax is imposed on the occupation or the business activity. The bigger question is, why is this amendment necessary? I believe it is a fairness issue. If we're going to take away state aid to cities, and that we have done, and I suspect that we will carry through with that on to Final Reading, then we should not also tie the hands of city leaders in trying to manage their budgets. What we did with the passage of LB483 was not meant to injure cities in our state. It certainly was not meant to strap them to the point where they cannot manage their own budget problems and

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the fallout from LB383. I would remind you that I supported LB383 from start, all the way through every amendment that was put up against it, all the way through Select File, and I will continue to support it on Final Reading. But what I also want to point out is that we have an obligation to the cities. If we're going to say on the one hand, we're going to take away...in the case of Lincoln I think it's close to \$3 million, we're going to take away state aid, how can we now say to the leaders in these cities, oh, and by the way, we're also going to strip you of an important tool that you could use to cope with the consequences and the fallout of LB383. I believe this is unfair and I believe it's unjust. And I don't think it's just unjust to Lincoln but all cities in the state. And I urge you to adopt this AM485 to the committee amendment, AM316. Thank you, Mr. President. [LB165 LB383]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Avery. Members, you've heard the opening to the amendment to the committee amendment, the committee amendment, and LB165. Those Senators wishing to be heard are Wightman, Pahls, Hadley, Pirsch, Adams, Coash and McGill. Senator Wightman, you're recognized. [LB165]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. I have one question of Senator Avery, if he would yield. [LB165]

SENATOR GLOOR: Senator Avery, will you yield? [LB165]

SENATOR AVERY: I will. [LB165]

SENATOR WIGHTMAN: Senator, if AM485 were to pass, would there be any change from current law as it is right now? [LB165]

SENATOR AVERY: No, it would not. Well, it would have some...a negative consequences for the city of Lincoln. I'm not sure what it would mean for other cities, but you also have another handout that shows...it's entitled LB165 and amendments, and shows what AM485 does, what AM316 does, and what are the current occupation taxes under Lincoln ordinances. What AM485 does is, it would be much more closely aligned with what is current practice in Lincoln and what we believe was the intent of AM316, the committee amendment. [LB165]

SENATOR WIGHTMAN: Thank you, Senator Avery. I would also ask a question of Senator Fischer, if she would yield. [LB165]

SENATOR GLOOR: Senator Fischer, will you yield? [LB165]

SENATOR FISCHER: Certainly. [LB165]

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SENATOR WIGHTMAN: Senator Fischer, with AM316, would all of the services that are presently subject to an occupation tax, and I'm talking only services not equipment, would they still carry over and be taxed under LB165 as amended by AM316? [LB165]

SENATOR FISCHER: Senator Wightman, as a member of the Revenue Committee, and I see Senator Cornett is off the floor, but I can tell you what the intent of AM316 was. Senator Avery just alluded to what he felt the intent was. The intent of AM316 by the Revenue Committee was to continue to allow the occupation tax to be imposed on telecommunication services. It was to take off any tax, occupation tax that is on telecommunications equipment and prohibit that from taking place in the future. [LB165]

SENATOR WIGHTMAN: Thank you, Senator Fischer. One follow-up question if I might. Actually, LB165 over a ten-year period would have phased out the occupation tax itself, would it not? [LB165]

SENATOR FISCHER: That's the way the original bill was drafted, yes. [LB165]

SENATOR WIGHTMAN: Okay. And that part is all gone, there's no phaseout and...? [LB165]

SENATOR FISCHER: That is gone. As I said in my opening, Senator Wightman, the bill was drafted to have a broader discussion on occupation taxes. Senator Cornett also has a bill in committee dealing with occupation taxes, and we plan as a committee to continue our discussion on occupation taxes and what should be the policy on it. The amendment, AM316, narrows the focus. It narrows the focus to what the committee feels should be the policy with regards to those taxes on telecommunications equipment and on telecommunications services. [LB165]

SENATOR WIGHTMAN: Thank you, Senator Fischer. With that, if Senator Fischer desires any additional time, I would yield my remaining time to her. [LB165]

SENATOR GLOOR: One minute, 30 seconds, Senator Fischer. [LB165]

SENATOR FISCHER: Thank you, Senator Wightman, I appreciate that. I would like to respond to a couple of things that Senator Avery said when he opened on his amendment, which I am opposed to Senator Avery's amendment, AM485. I'd like to clarify. When Senator Cornett opened on the committee amendment, AM316, she did not say that this was a sales tax model. [LB165]

SENATOR GLOOR: One minute, Senator. [LB165]

SENATOR FISCHER: We did not have that discussion. We're talking about occupation

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taxes. A concern we had with the committee, when you start taxing telecommunications equipment and you're taxing the phone itself, when you're taxing the cover for your phone, is that an occupation tax? Is that appropriate? The committee felt that it was not. And so Senator Cornett, I think if she was here, she would clarify also that she did not say that this is a sales tax model because it is not. Secondly, Senator Avery said that we're taking away tools of cities. I don't see that this amendment is taking away a tool of the city. I think this amendment is being accountable to our citizens. I think this amendment is providing openness in government. We're limiting what cities can...the amount that they can tax... [LB165]

SENATOR GLOOR: Time, Senator. [LB165]

SENATOR FISCHER: ...on telecommunications services. Thank you, Mr. President. [LB165]

SENATOR GLOOR: Thank you, Senator Fischer. Senator Pahls, you are recognized. [LB165]

SENATOR PAHLS: Thank you, Mr. President and members of the body. I have a question for Senator Avery. [LB165]

SENATOR GLOOR: Senator Avery, will you yield? [LB165]

SENATOR AVERY: I will. [LB165]

SENATOR PAHLS: Thank you, Senator. My understanding, you're saying this is a cost of doing business, this is not a tax on a tax. Did I hear that correctly? [LB165]

SENATOR AVERY: That is correct and it's verified in the handout we gave you there from the Department of Revenue. [LB165]

SENATOR PAHLS: Okay, that's what...I'm just double-checking. So this is the...your foundation for your argument is from the Department of Revenue? That's one of your foundations, you may say. [LB165]

SENATOR AVERY: Well, yes, it is. And I also consulted with the legal department with the city of Lincoln. [LB165]

SENATOR PAHLS: Okay, and I thank you for that. I will have a question also for Senator Fischer in just a second but what I think is very interesting, here again the Department of Revenue, I think they're sort of going off on a sideline, because they said, this is not a tax on a tax. To me it appears that it is. I don't have all of their...the rationale that they're using for that, but it's very interesting because now I'm going to do

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a little bit of sideline here. Anytime we talk about a tax exemptions on certain items, they say, well, that would be taxing on a tax. So there again, they're making some decisions, I believe, in a bureaucracy of ideas. I don't think they're being aboveboard on all of their decision making. That is my opinion. I think they are interpreting things when they find it necessary that will fit something that they want, because I see this could be a loss of revenue. So I think sometime when we say these departments, we use them as our foundation, well, that's one foundation. It may have some cracks in that foundation, though. Because I do see that there are some similarities when some things they say are taxes on taxes, but we choose to say this is not. Thank you. Senator, may I have a question with Senator Fischer, please? [LB165]

SENATOR GLOOR: Senator Fischer, would you yield to a question from Senator Pahls? [LB165]

SENATOR FISCHER: Yes, I will. [LB165]

SENATOR PAHLS: Thank you, Senator. You know, I'm going to say, I'm a little bit disappointed. [LB165]

SENATOR FISCHER: Oh, Senator Pahls, don't start that way now. (Laughter) [LB165]

SENATOR PAHLS: Well, the reason why, your bill initially, I thought it had some oomph to it. But you may have allowed by the amendment to lose some of that oomph. To me, I think it's...you're trying to make something clear and now we dipped it into the muddy water again. Could you help me like you more again? [LB165]

SENATOR FISCHER: I'd be happy to, Senator. As I said, I introduced this bill to have a broader discussion as you usually do with regards to sales tax exemptions. I am now focusing on occupation taxes. The reason that I think we need to target it as we are with the committee amendment, targeting it on certain things, is because we have hit cities hard this year with LB383, with LB81. We don't need to do this, this year, with what the green copy of the bill is doing. I think that we can continue the discussion we're having on occupation taxes. We can look in the future as to what is appropriate with regards to those taxes, but I think this is...it is more appropriate, it is more reasonable for this body to adopt AM316 and then to pass the bill. [LB165 LB383 LB81]

SENATOR PAHLS: Okay. And I understand where you're coming from. The part that I did like what you are doing, or what you have done, is you have brought to light... [LB165]

SENATOR GLOOR: One minute. [LB165]

SENATOR PAHLS: Thank you. That there are many ways that we are taxing people

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and we call them fees. I'm amazed when I open up some of my accounts whether it be phone or whatever, I see all these fees. And what I call these little add-ons and I do think that we need to be taking a look at that. And again I also see that if we continue to take away from the cities and the counties, etcetera, it could be a major issue. [LB165]

SENATOR FISCHER: I agree with you, Senator Pahls. If you look at your phone bill, you'll see that 911 surcharge. [LB165]

SENATOR PAHLS: Yes. [LB165]

SENATOR FISCHER: It's a surcharge, which is why I think maybe the Department of Revenue says this is not a tax on a tax, because you're having a sales tax on a surcharge. I think most of our constituents would call that a tax. [LB165]

SENATOR PAHLS: Yes. [LB165]

SENATOR FISCHER: It's a fee, it's a tax, it's a user fee, it's a surcharge, you know, by any other name what would you call it. But I think we need to clarify that. I think we need to be honest with the people. [LB165]

SENATOR GLOOR: Time, Senators. [LB165]

SENATOR FISCHER: Thank you. [LB165]

SENATOR PAHLS: Yeah, thank you. [LB165]

SENATOR GLOOR: Thank you, Senator Pahls and Senator Fischer. The Chair recognizes Senator Hadley. [LB165]

SENATOR HADLEY: Mr. President and members of the body, I hope you're all well today. If you want to stay that way, don't get too close to me. I was reading the Department of Revenue handout, what is an occupation tax, and I was struck by the very first three words, to generate revenue. That's what it is, to generate revenue. This is one of those taxes that I think you could be hard-pressed from a policy issue to talk about why we have an occupation tax. I think if you go back in history, my understanding is, they did tax certain occupations, jugglers and such as that, but especially when we're dealing with telecommunications, it was because the telephone lines and such as that occupied the city right of way. And it was a tax to reimburse the city for the use of its property. But it certainly expanded a lot since then. I find it unique that we have spent a couple of days arguing about what we...the city and the fact that we took away aid to cities and counties, and the argument was, we don't want to raise taxes, we don't want to have to impose taxes on our citizens. Yet we turn right around in an occupation tax, and we are more than willing to do it. We're more than willing to raise

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the occupation tax. I think we need to take a long hard look at all occupation taxes. I know as a...I hate to use the term of former mayor, but we sat and talked about occupation taxes and we were losing money because of the fact that people going more and more to cellular communications. So we imposed a tax finally on cell phones, and the reason we did it was to make up revenue. It didn't have a lot to do with policy. It had to do with making up revenue. The second thing is, the city of Minden. A small town south of Kearney, very progressive, had their biggest fight, probably, in the last 20 years in their city council last week when they tried to implement an occupation tax on cell phones. It was defeated at the city council but it was the biggest...they had a standing room crowd because people are just so concerned about taxes. I think a lot of the occupation taxes we have now that if they were brought back to the council, I think they would have trouble getting through. With that, I am in favor of AM316 as amended to LB165 and opposed to AM485, and I would yield the rest of my time to Senator Fischer, if she likes it. [LB165]

SENATOR GLOOR: Senator Fischer, 2 minutes and 12 seconds. She waives. Senators wishing to be heard are Pirsch, Adams, Coash, McGill, Ken Haar, Avery, Schumacher, and Wallman. Senator Pirsch. [LB165]

SENATOR PIRSCH: Members of the body, I appreciate the dialogue that's occurred to this point in time. I'm a member of the Revenue Committee. I appreciate the testimony there at that level as well. The state does have a duty to responsibility in looking at the overall economic development climate of the state, and so I think it is appropriate that that bill is here, LB165. I appreciate the questions by Senator Pahls and I think his point is a duck is a duck is a duck by whatever name you give it. It's just semantics. Fee, surcharge, tax, all works the same in the eyes of the people of Nebraska. With respect to the history of the occupation tax, I appreciate Senator Hadley's input there as well. I think, if I understand, if Senator Avery would rise for a quick question just so I make sure that I do his argument justice, that I understand it. [LB165]

SENATOR GLOOR: Senator Avery, will you yield? [LB165]

SENATOR AVERY: I will. [LB165]

SENATOR PIRSCH: Is it true that the...I mean, your position is, the simple way to see this is that the occupation tax is part of the sales price? [LB165]

SENATOR AVERY: That's a good way to put it. It's imbedded in it as part of the sales price, part of the gross receipts. The Department of Revenue has been clear in their definition of that. [LB165]

SENATOR PIRSCH: Okay. Well, this is, I believe, just a philosophical type of difference then, just the way you conceptualize things. And I think you can argue them both ways.

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I would, again, argue the point that a duck is a duck is a duck and it doesn't matter in the eyes of the taxpayers, the people of Nebraska, whether you call it a surcharge, a fee, a tax, what you call it. That's the end effect, that it does, in my opinion, result in a tax on a tax. The committee amendment itself, I think, was a pretty fair accommodation and I'm talking about AM316, held most...every municipality almost harmless. When it comes to the argument that somehow as we're reducing state aid, this is the city...I'm sorry, an attempt to have alternative ways. We are just reducing, of course, state aid. That bill just went through days ago, within the last day or two, and this is a...this tax has been implemented before this year. And so I don't know that this is just a reactive measure to the state taking away...I don't think that's fair to argue the state aid cutting has resulted in this. And the idea that somehow that this has been a long...that the city has depended upon this type of revenue for a long time and so that we're effectively eliminating something that's been dependent on, this...the level at which the committee amendment would set this rate, it would...if you rewound to just a year or two ago, no city had ventured upon that limit, had gotten that high yet. And so this will not...this is just a recent development that occurred within the last year with one municipality, I believe, that has ventured to higher levels. Actually, I had put forward a similar bill a couple of years ago thinking at that time we were already the highest state in the nation in terms of this type of occupation tax. [LB165]

SENATOR GLOOR: One minute. [LB165]

SENATOR PIRSCH: I think the message that, you know, of concern was put through at that time and yet we've managed in at least in one municipality to raise over that limit since that time, so I think that this is a pretty fair reaction. I don't think it surprises anybody. And on that basis, you know, I do, you know, I think that it's a fair level with the committee amendment. I don't think it's jeopardizing or should jeopardize any municipality at that compromise level with the committee amendment. And so I'm supportive of the underlying bill, LB165. I urge you to support it as well. Thank you. [LB165]

SENATOR GLOOR: Thank you, Senator Pirsch. Senator Adams, you're recognized. [LB165]

SENATOR ADAMS: Thank you, Mr. President. As a member of the Revenue Committee I felt compelled to explain my support of the amendment. And in its original form, I was not supportive of LB165. I will tell you, though, I was concerned about the fact that a city was imposing an occupation tax on hardware and not service, and I was also concerned about the way that it was being calculated. But I didn't like the idea that we were talking about virtually taking away occupation tax from cities. The amendment, AM316, for me, strikes a good comfort point. Occupation tax. Senator Hadley referred to it. In part, I think he's correct. You're going to occupy our right of way. We also have franchise agreements that cities can enter into with cable companies and telephone

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companies for those kinds of purposes and there are franchise fees attached. Maybe in its more literal form, and I can surely stand corrected on this, but an occupation tax was just that. If you, as a business, were going to occupy our city, we are in effect going to charge you a tax for that privilege. And frequently, there was an expense incurred by the city as a result of that business. Licensing fees. If you're going to be here, we may have to follow-up with building code and other things that we have. So we're going to charge this occupation tax. You know, look at the original statute, it talks about circuses and jugglers. Well, there's other occupations. But I felt like we were stretching that occupation tax a bit too far when we were putting it on equipment. And you know what my biggest concern was? Not just from a tax policy standpoint, my biggest concern was that I want to preserve the occupation tax for cities. So let's make sure we don't stretch that thing out there so far in its use that we don't jeopardize cities ability to use occupation tax. I think what the amendment does is to bring the occupation tax a little more back into focus. And capping the amount, we looked down the chart at cities with occupation tax, the cap seemed like reasonable. I think that in effect what we have done from a policy standpoint, I think you have to separate occupation tax from sales tax. They are not the same things. Not in their original intent, they are not the same things. And LB165, with this amendment to it, preserves the occupation tax. It preserves it. And I get comfort from that for cities. But it erases some problem areas for me, like putting it on to hardware. And it brings it back more into focus what it's supposed to be. Thank you, Mr. President. [LB165]

SENATOR GLOOR: Thank you, Senator Adams. Senators wishing to speak are Coash, McGill, Ken Haar, and others. Senator Coash, you are recognized. [LB165]

SENATOR COASH: Thank you, Mr. President. Thank you, members. I see Senator Cornett is not available to answer any questions so I will ask if Senator Fischer will yield to some questions. [LB165]

SENATOR GLOOR: Senator Fischer, will you yield? [LB165]

SENATOR FISCHER: Yes, I will. [LB165]

SENATOR COASH: Thank you, Senator Fischer, and I just want to ask a few questions in general about occupation taxes. I hope you can help me answer these things. As it pertains to occupation taxes that are on telecom services and telecom equipment, are these occupation taxes required by the provider of the service or equipment to be passed on to their customers? [LB165]

SENATOR FISCHER: I think, Senator Coash, if you look at any business when a political subdivision puts a mandate on them for either dealing with regulations, dealing with fees, dealing with taxes, they are always passed on to customers, except maybe for ranchers. [LB165]

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SENATOR COASH: Okay. Earlier I think it was in your opening on your bill, you said that sometimes occupation taxes...or maybe this was Senator Avery, but sometimes occupation taxes are a line item in a bill and sometimes providers choose not to. Is that correct? [LB165]

SENATOR FISCHER: The bills that I have seen, they're line item. When you look at, as I mentioned the 911 surcharge, that's a line item in your bill you receive from the phone company or your provider. But I guess I would have to see some examples of other bills. [LB165]

SENATOR COASH: Okay. Would Senator Avery yield to a question. [LB165]

SENATOR GLOOR: Senator Avery, will you yield? [LB165]

SENATOR AVERY: I will. [LB165]

SENATOR COASH: Senator Avery, it was in your opening to your amendment you said that sometimes these are line item and sometimes, I believe, businesses choose to roll this into their bill. Can you repeat that for me? [LB165]

SENATOR AVERY: Well, actually, in the telecom business these...the occupation tax is virtually always listed as a line item on your statement. And I'm not sure why they do that except perhaps to bill opposition to the tax on the part of a customer. That could be one reason. But that makes it a part of the cost of doing business, just like the property tax, just like the sales tax, or not the sales tax, or the income taxes, withholding taxes, and that thing, those sorts of things. [LB165]

SENATOR COASH: Okay. Thank you, Senator Avery. And I ask these questions, colleagues, because I have a concern that should LB165 with AM316 go through, that customers aren't going to see any change in their phone bill. You might just see the same phone bill and more of the revenue going to the phone companies, and I understand the intent of LB165 and AM316. We want to reduce the burden on the people who are paying this. But I'm not sure we're going to see any reductions in phone bills, and I don't know if LB165 guarantees that. I do have another question for Senator Fischer if she'd come back to the mike. [LB165]

SENATOR GLOOR: Senator Fischer, would you yield? [LB165]

SENATOR FISCHER: Yes, I will. [LB165]

SENATOR COASH: Okay, thank you, Senator Fischer. Just to be clear, occupation taxes are collected first and then state sales tax or local sales tax is collected on that

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after. Is that correct? [LB165]

SENATOR FISCHER: That's my understanding, Senator Coash. But if I could comment on a comment you made previously, it's your time. [LB165]

SENATOR COASH: Sure. I'll...let me finish this and then I'll give you the rest of my time. [LB165]

SENATOR GLOOR: One minute, Senators. [LB165]

SENATOR COASH: Okay. So I want to ask you, Senator Fischer, about the fiscal note and there's a big jump between fiscal year '11-12 and '12-13. Do you think that's because of Lincoln's current imposition of their tax? Is that the reason for that big jump? [LB165]

SENATOR FISCHER: You know, Senator Coash, I'm focused on the committee amendment now which we won't see a fiscal note when the bill moves to Select File. I'd have to look at the fiscal note on the original bill in order to answer that question, but I don't believe we will be seeing any fiscal note on Select File. [LB165]

SENATOR COASH: Okay. I have some more questions about the fiscal note, but I'm going to yield you the rest of my time to answer that question. [LB165]

SENATOR GLOOR: Fifteen seconds, Senator. Never mind, Senator Fischer yields. Senator Ken Haar, you are recognized. [LB165]

SENATOR HAAR: Mr. President and members of the body, I passed out a one-page picture of my tool bucket. And I want to talk about that because I think we're talking about two issues, two important issues this year as we try to reinvent government and all those kinds of things. And as we have said to the cities and the counties with LB383, and I continue to support that, that that money is not going to be there, just that money that we've given to the cities and the counties in the past. So we have transferred the responsibility to the local government. And my picture here, and I'm going to talk about this again and again because we have to keep focusing on this, if indeed we...a part of our reinventing government is to say that local governments, counties and cities and NRDs and so on, must perform their tasks. And then part of that is because they're the part of government that is closest to the people. Senator Fischer earlier said we should hold local government accountable to the people, and yes, that's what happened. For example, with the city of Lincoln, the decisions that they made, the city council made, is about as close to the people, the government as close to the people as you can get in terms of governing the city. And so that went before the Lincoln City Council and they took a vote and they made some decisions and there's an election coming up so that if the people of the city of Lincoln don't like what's been happening, then they change the

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elected officials. Not we, we don't change the elected officials, they do. Now my tool bucket, and this sits in my workshop all the time and I use it to fix just about anything, except it come like constructing a wall or something, then I've got to get out the big power tools. I built my own house and so I love doing this kind of stuff. But my tool bucket does...I can do just about anything in terms of the little projects. It's got a hammer, it's got a large pliers, called Channellocks, shims, screwdrivers, nail sets, tape measures, chisels, saws, and so on. But if you expect me to do a project and take that hammer out of my bucket, I can't do that project. And I think it's exactly the same as we have to look at when we talk about our reinvention of government where we're switching the...we're really switching...we're saying local government, you have to take care of more of your own problems including the taxation because you are closest to the people. And so I am going to keep arguing that if we have this in mind, if this is part of the reinvention of government, then we can't take tools out of the tool bucket for local governments. And if people don't like the occupation tax as the Lincoln City Council has defined it, then they ought to unelect those officials. There were public hearings for that meeting. There were people that testified at both ways on that meeting and... [LB165 LB383]

SENATOR GLOOR: One minute, Senator. [LB165]

SENATOR HAAR: Thank you very much. And the City Council of Lincoln, the level of government that's closest to the people, it's not inferior to the Legislature, it's that part of government that more people know in Lincoln than any other, passed those changes to the occupation tax. So I'm going to talk a lot about this and I want to talk about taxes generally. There was a comment at a meeting, somebody said, this is such a rich country, we shouldn't have to pay any taxes. Okay. How do you respond to that? If we're going to provide services, we have to tax and we have to leave the taxing authority, as we're beginning to define it, close the people. Thank you, Mr. President. [LB165]

SENATOR GLOOR: Thank you, Senator Haar. Mr. Clerk, items for the record. [LB165]

CLERK: Mr. President, yes, sir, thank you. Senator Pahls offers LR85. It proposes an interim study to be conducted by the Banking, Commerce and Insurance Committee. That will be laid over at this time. Hearing notice from the Executive Board. Senator Fischer has selected LB84 as her priority bill for this session. Senator Langemeier would like to print an amendment to LB24. Some name adds, Mr. President: Senator Council to LB558 and Senator Fischer to LB284. (Legislative Journal pages 643-645.) [LR85 LB84 LB24 LB558 LB284]

And I do have a priority motion. Senator Karpisek would move to adjourn the body until Friday morning, February 25, at 9:00 a.m.

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SENATOR GLOOR: Members, you have heard the motion for adjournment until Friday morning at 9:00 a.m. All in favor say aye. All opposed say nay. We are adjourned.