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Floor Debate
March 23, 2011

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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fiftieth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Reverend Michael Benischek, Prairie View United Methodist Church in Lincoln, Nebraska, Senator Ken Haar's district. Please rise.

REVEREND BENISCHEK: (Prayer offered.)

SPEAKER FLOOD: Thank you. I call to order the fiftieth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, your Committee on Agriculture, chaired by Senator Carlson, reports LB394 to General File. I have a confirmation report from the Agriculture Committee. And Enrollment and Review reports LB90 to Select File. That's all. (Legislative Journal pages 923-924.) [LB394 LB90]

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following legislative resolutions. By number they include LR117, LR118, LR119, LR120, LR122, LR124, LR125, LR126, LR127, LR128, and LR129. Mr. Clerk, we now proceed to the first item on the agenda, General File, 2011 senator priority bills in the Haar division. We begin with LB606. [LR117 LR118 LR119 LR120 LR122 LR124 LR125 LR126 LR127 LR128 LR129 LB606]

CLERK: LB606, a bill by Senator Avery. (Read title.) The bill was presented yesterday, Mr. President. Senator Avery opened on his bill. Following that action, Senator Lautenbaugh moved to amend. Senator Lautenbaugh's AM895 is now pending as an

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amendment to the bill. (Legislative Journal page 921.) [LB606]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Avery, you are recognized to give a two-minute summary of the underlying LB606 and, members, if we could keep our conversations to a minimum, it is a little loud in the Chamber this morning. Thank you. [LB606]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. LB606 is a bill designed to shed some light into the murky shadows of secrecy that has taken place in some of our campaigns today. As I said yesterday, I am proposing to add to the Accountability and Disclosure statute a category entitled electioneering communication. Electioneering communication would require groups that currently do not file with the Accountability and Disclosure Commission but only file with the Secretary of State, would require them to report their spending in campaigns and it would require them to report the sources of their money. This is in no way designed to stifle their right to speak or their right to participate in elections. It is only designed to contribute transparency in the political process. And I said yesterday, transparency is so fundamental to accountability, which is the bedrock of a democracy. And if we don't have accountability then pretty soon confidence in government has eroded and, with that, the legitimacy of our institutions and procedures is called into question. With that, I will wait to proceed with the rest of this subject and would ask for your support. Thank you. [LB606]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Lautenbaugh, Chair also extends you an opportunity for two minutes to update the body on AM895. [LB606]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. My amendment basically does one simple thing. It removes the distinction or the limit, I should say, on the amount a candidate can raise from nonindividuals. Currently under the CFLA, there's a 50 percent limit on what can be raised from nonindividuals, 50 percent of what is deemed to be the proper amount under our law to be spent on a campaign, and that's important to understand, because when I had a bill that completely repealed the CFLA and we had the hearing on it the other day there was an article in the World-Herald and it was one of those world-weary articles we get from time to time, oh, there they go again, the same characters are having the same debate on the same topic that we've discussed for two or three years, it's the same, it's the same, it's the same. You would have thought as all that weariness was seeping in year after year that the writer would have actually been able to adequately explain what the CFLA does and why there's a problem. But apparently the waves of weariness just washed over her to the point where all detail was swept away, so let me explain. Here's the problem I have. We have voluntary campaign spending limits that you can choose to abide by or not abide by. We don't have voluntary limits on the contributions you can accept from nonindividuals. What we have is 50 percent of arbitrary limits can be raised from nonindividuals. I have, as you may have gleaned by now, a very severe problem with

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that on several levels. My amendment simply moves it to 100 percent of the arbitrary campaign spending limit can be raised from nonindividuals. And what is the point of that? Simply put, the point is to hopefully undo some of the damage we've done with the CFLA, hopefully allow some of that money that we've forced underground to actually flow back through campaigns where there is accountability, there is identifiability, and there will still be disclosure. Thank you, Mr. President. [LB606]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. We now turn to discussion on AM895. Senator Lautenbaugh, you are recognized. [LB606]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I'd be remiss if I didn't respond to some things that were said yesterday. First of all, I think it's the Lautenbaugh-Avery show, not the Avery-Lautenbaugh show, but that's a minor matter. We heard a little bit of hand wringing yesterday from a couple senators of how can we explain this to our public, how can we go home and say if we vote for this amendment that we voted for this amendment. Well, here's what you do. You treat the voters like adults, you look them in the eye and you say why you did it. You say we have this monstrosity called the CFLA and you know all those negative things that show up in your mailbox that you find so repugnant every campaign season? We did that because we forced the money, the same pool of money that's always going to be there, we forced it underground in a nameless, faceless, unidentifiable until after the fact often, independent expenditure groups. You talk to the voters like adults. We heard yesterday that passing my amendment, adopting my amendment would lead to cynicism. Well, I think that foursome has already teed off, to be honest, because I don't think the CFLA accomplishes any of the lofty purposes that were set forth when we passed this. And I'll go a little farther. I don't think this body today would pass a monstrosity like the CFLA. I think the CFLA is the kind of thing that happens when we have senators who are here too long and they start to substitute their judgment for everyone else's judgment. And make no mistake, that's exactly what the CFLA does. It says you may spend X amount on campaigns or we'll give your opponent money if you choose not to abide. It says you may only raise half of that arbitrary amount from nonindividuals. As I asked yesterday, as I'll ask later again today, who do we think we are that we have the wisdom to say this is the proper amount that should be spent on a legislative campaign and 50 percent of that amount is the proper amount you should raise from nonindividuals? We have a system of disclosure. People know where our money comes from. And when you get a mailing that says, on the bottom, paid for by Lautenbaugh for Legislature, that takes a lot of the mystery out of who sent the mailing. And when you get a mailing that says paid for by the Nebraska Democratic Party or the Nebraska Republican Party, again, the puzzlement wains as to where that mailing came from and you know who to call if you're upset, you know who to respond to. But when you get a mailing from Citizens for Common Decency or some such nonsense, you have to go try to look it up on-line and see who that is, and there might be some organizer of the group identified on-line in the filings for that group and you may not know who he or she is. In my own circumstance

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this last cycle, the group that sent all the negative stuff in my race, I still have no idea who the organizer is. I finally found out who the contributors were after the fact and belatedly. And I think actually the law was violated in the way they waited to report their expenditures. And guess what, they're going to have to pay a hefty \$100 fine for that if anyone pursues it. They spent \$35,000 but they might have to pay a \$100 fine for belated reporting. We don't have a system that actually addresses the evils that the CFLA sought to address. It just doesn't work. No one argues that campaign spending has gone down in the aggregate. We hear these obfuscations from groups like Common Cause that say, well, the individual candidates might be spending less or their spending has plateaued. Well, of course, because we've put limits. All we've done is forced the money underground. And when someone says... [LB606]

SPEAKER FLOOD: One minute. [LB606]

SENATOR LAUTENBAUGH: Thank you, Mr. President. When someone says how can you look your voters in the eye, how can you look your constituents in the eye and say you voted for this, again, talk to them like adults, explain that we have this monstrosity with arbitrary limits in it, and by voting for this you struck a blow against it. And if they say they disagree, say that's your right. And if they say they agree, say good and stop talking at that point because they agree with you. It's very simple. When someone stands up here and says this amendment serves no public purpose, I disagree. Freedom is a public purpose. Freedom to support the candidate of your choosing is a public purpose. That freedom extends to individuals and nonindividuals alike. I think that's a pretty good public purpose worth supporting. Thank you, Mr. President. [LB606]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Avery, you are recognized. (Visitors introduced.) Senator Avery, you are recognized. [LB606]

SENATOR AVERY: Thank you, Mr. President. I wish to challenge the germaneness of AM895. Will I be given an opportunity explain why? [LB606]

SPEAKER FLOOD: You may proceed. [LB606]

SENATOR AVERY: If you go to the rules of this body, germaneness amendments are defined very clearly. They relate only to details of the specific subject of the bill and must be in a natural and logical sequence to the subject matter of the original proposal. A nongermane amendment includes one that relates to a substantially different subject. I contend that AM895 amends a different section of law. It amends the CFLA, which addresses a different subject than LB606, which amends only the accountability and disclosure law. Thank you. [LB606]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Lautenbaugh, Senator Avery has challenged the germaneness of your AM895. You are given the opportunity to

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explain your position. [LB606]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Obviously, I feel it is germane to the bill before us. We are dealing with campaign expenditures. This is clearly the same topic. Whether or not we're trying to regulate the reporting for groups that might not currently be covered or regulate the expenditures by campaigns and the...or nonentity, excuse me, the nonindividual entities that might contribute to them, I believe we're still firmly within the same area of law and in natural progression of debate. Thank you, Mr. President. [LB606]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. The Legislature will briefly stand at ease. Senator Avery, Senator Lautenbaugh, would you please come up to the Chair. As the body is aware, Senator Avery has challenged the germaneness, pursuant to Rule 7, Section 3(d) of our legislative rules as it concerns AM895. The rule says that no motion, proposition, or subject, different from that under consideration, shall be admitted under color of amendment. Any amendment that is not germane is out of order. Germane amendments relate only to the details of the specific subject of a bill and must be in a natural and logical sequence to the subject matter of the original proposal. A nongermane amendment includes one that relates to a substantively different subject. LB606 amends the Nebraska Accountability and Disclosure Act found in Sections 49-1401 to 49-14,141 by placing a reporting requirement on persons, corporations, labor organizations, and business associations that make an electioneering communication in excess of \$250. The bill is intended to close a loophole in the election reporting requirements for material which can be interpreted as intended to influence the results of an election but which, under current law, has been argued only presents factual information for educational purposes. Senator Lautenbaugh's amendment, AM895, amends the Campaign Finance Limitation Act found in Chapter 32. Senator Lautenbaugh's amendment increases contributions a candidate can accept from nonindividuals from 50 percent of the total aggregate amount the candidate may accept under the Campaign Finance Limitation Act spending limits for that office to 100 percent of the contributions limitation. LB606 addresses a very specific reporting requirement that will be applicable whether or not the candidate whom the electioneering communication is directed at is abiding by the CFLA or is even subject to the act, while the amendment from Senator Lautenbaugh, AM895, to LB606 addresses the specific provisions of contributions acceptable under the CFLA. For that reason, it is the Chair's ruling that AM895 does not relate to the details of LB606 and is not "a natural and logical sequence to the subject matter of" this bill to require reporting of electioneering communications under the Nebraska Political Accountability and Disclosure Act and is, therefore, not germane to LB606 under our rules. Senator Lautenbaugh, for what reason do you rise? [LB606]

SENATOR LAUTENBAUGH: I rise to challenge the ruling of the Chair. [LB606]

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SPEAKER FLOOD: Thank you, Senator Lautenbaugh. The ruling of the Chair has been challenged. Each member, as you know, members, is allowed to speak only once to the issue. You may not yield time to one another. The ruling of the Chair has been challenged pursuant to Rule...or the ruling pursuant to 7, Section 3(d) has been challenged. Senator Lautenbaugh, you are now recognized to speak on your challenge to the Chair. [LB606]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body, and I do rise in disagreement with the ruling and I think it is the greatest outrage and injustice in the current modern history of the Legislature, but we'll get by somehow. A lot of questions remain unanswered and this debate is being cut short. Yesterday Senator Harr said that he had six mailings sent out against him and five of them were false. What was in the sixth one? Don't you want to know? We could have gotten to that this morning. (Laughter) As luck would have it, for those of you who haven't had enough of the topic and I'm sure hopefully that's about 30-33 of you, I have a bill for you coming down the pike, LB142, which is my priority bill which would accomplish what I was not trying to seriously accomplish with this amendment, which was it would repeal CFLA outright as opposed to this piecemeal approach today. To be honest, it was not my intent to go to a vote on this amendment and it's also not my intent to go to the mat on this challenge of the Chair. So, Mr. President, would you consider my challenge cheerfully withdrawn? [LB606 LB142]

SPEAKER FLOOD: Senator Lautenbaugh has withdrawn his challenge to the Chair. It is so ordered. Continuing with discussion on LB606, Mr. Clerk, are there any other amendments to the bill before we proceed to additional discussion? [LB606]

CLERK: I have nothing further pending at this time, Mr. President. [LB606]

SPEAKER FLOOD: Senator Louden, you are recognized. [LB606]

SENATOR LOUDEN: Thank you, Mr. Speaker and members. I put my light on when we first got here because you've pretty well answered my question. As the amendment stated, we were in Section 32-1408 I think it is and then the bill is in Sections 49-1401, and that was the first question I had to ask is how come we were in two different books literally trying to pass legislation. The first...I was wondering if Senator Avery would yield for a question. [LB606]

SPEAKER FLOOD: Senator Avery, will you yield to a question from Senator Louden? [LB606]

SENATOR AVERY: I will. [LB606]

SENATOR LOUDEN: Senator Avery, this bill then is mostly with people putting out

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statements that are probably false and who's going to pay for them and that sort of thing, and this is what you're trying to do with this bill. Is that correct? [LB606]

SENATOR AVERY: Well, I'm not trying to determine whether the statements are false or correct. I'm just trying to shed some light on who is doing this, who is paying for it. [LB606]

SENATOR LOUDEN: Okay. Then all it is, is the statements can be any kind of statement. It's just a matter of they can only spend a certain amount of money putting these electioneering communications out. Is that what it is? [LB606]

SENATOR AVERY: No. No, it does... [LB606]

SENATOR LOUDEN: They got to spend... [LB606]

SENATOR AVERY: ...it does not limit the amount of money they can spend. It doesn't limit at all what they can put in these mailings or these communications. What it does is simply require disclosure. You have to disclose what you are doing, you have to specify where the money is coming from and how much. [LB606]

SENATOR LOUDEN: Okay. Well, as I look at the bill, it mostly describes the definitions and what electioneering communication means, and then it has this whole list of different things that...what it doesn't mean, I guess, or what isn't covered in there, for instance, communications by television stations and that sort of thing. So I'm wondering will this actually...will this solve the problem or is it mostly putting in statutes some of the things that can't be considered electioneering communications? [LB606]

SENATOR AVERY: Well, the problem, as we have discussed, is that independent committees can do just about whatever they want, as protected speech, and it doesn't have to be true. I've been a victim of untrue allegations involving e-mail communications and the Supreme Court in this state upheld that this was protected speech because it dealt with political subjects. The thing is that we cannot regulate that and I'm not trying to. I'm not trying to regulate the amount of money spent. I'm simply saying that with this particular definition of electioneering communication, which is consistent with federal law and with the laws passed by at least ten other states, that we can now require these groups that register with the Secretary of State as a corporation, we can require them to report their electioneering communication activity, how much they spend on it, and where the money comes from. It's simply a transparency issue. [LB606]

SENATOR LOUDEN: Okay. Thank you, Senator Avery. Well, as I wonder about it, because I think everyone has always had some kind of electioneering communications that's been put out in papers or on radios or something like that probably three days before the election and usually there wasn't much could be done about it. Now if you

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have a candidate that spends less than \$5,000 and they do that, they don't have to put anything out anyway because if they spend less than \$5,000 they don't even have to file with the Accountability, is my understanding. So I'm wondering if...I hope we're trying to close... [LB606]

SPEAKER FLOOD: One minute. [LB606]

SENATOR LOUDEN: ...some loopholes here but I'm wondering if we have enough...if the bill is extensive enough to do what we're...what you're asking it to do. Thank you, Mr. President. [LB606]

SPEAKER FLOOD: Thank you, Senator Louden. There are no other lights on. Senator Lautenbaugh, your light is now on. You are recognized. [LB606]

SENATOR LAUTENBAUGH: Thank you, Mr. Speaker. I believe Senator Louden touched on some valid points there and this will dovetail nicely with the debate that we stopped having a few moments ago. This bill can't accomplish what we want to accomplish, because what we want to accomplish is for campaigns to be fair and honest and aboveboard and we've lost the ability to do that apparently, and part of it deals with our existing statutory scheme and the fact that we forced the money underground through the CFLA. But I think Senator Avery conceded and Senator Louden pointed out these groups are going to go on doing what they're doing whether or not we pass this bill. If this bill becomes law, at some point, probably after the election, people would have gotten a little bit more information about Americans for Prosperity, the group that did the mailings that they said were educational and not candidate based so they didn't have to report anything. And I suppose on some level that does some good and I can't stand up here and say I'm going to vote against this bill because, you know, I think maybe these groups should have to play by the rules that other groups have to play by. The problem is the rules that all the groups have to play by are utterly meaningless and do us no good. And so without belaboring a topic that I'll belabor later in the session, I think we have to do something more than what this bill seeks to accomplish. And I'll probably vote in favor of this but I'm not sure where it gets us or what we've gained. Thank you, Mr. President. [LB606]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Janssen, you are recognized. [LB606]

SENATOR JANSSEN: Thank you, Mr. President, members. Would Senator Avery yield to a question? [LB606]

SPEAKER FLOOD: Senator Avery, will you yield to a question from Senator Janssen? [LB606]

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SENATOR AVERY: I will. [LB606]

SENATOR JANSSEN: Thank you, Senator Avery. When we talked about this in committee, I was present, not voting, and the main reason for that is I couldn't see how it really was going to affect anything or help anything. I think and agree with Senator Lautenbaugh that the entire system is fraught with problems and we're not...by closing this little loophole I think we open another one somehow. The money will keep flowing I think is what I keep hearing and I have no reason to doubt that. But specifically to your bill, it was talked about this was maybe to bring this in sync with federal standards. Is that correct? [LB606]

SENATOR AVERY: No. It's not intended to bring us in line with the federal standard. We used the federal standard to help us define what electioneering communication means. [LB606]

SENATOR JANSSEN: Okay. That helps. Does it...I did read the federal standards and it says, as I read it, it's only TV and radio that's covered on that and in your case is that all that you're covering or are you covering mailers or mailings? [LB606]

SENATOR AVERY: I'm covering print, too, but other states that have electioneering communication disclosure laws also include print and these have all been upheld by the courts. The courts did not rule on the specific kind of communication. They ruled that disclosure is constitutional and that's what we're trying to do is disclose. [LB606]

SENATOR JANSSEN: Thank you, Mr. President. I have no further questions. [LB606]

SPEAKER FLOOD: Thank you, Senator Janssen. Senator Nelson, you are recognized. [LB606]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have a question for Senator Avery if he will yield. [LB606]

SPEAKER FLOOD: Senator Avery, will you yield to a question from Senator Nelson? [LB606]

SENATOR AVERY: I will. [LB606]

SENATOR NELSON: Thank you, Senator Avery. I think in your introduction yesterday you said that we have the situation now where these groups are putting out this information but they are arguing that it's facts only, it's just factual information. And so it gets down to what is electioneering, an electioneering communication. Are we satisfactorily solving that? Is there somebody still going to have to decide whether it's electioneering or not? [LB606]

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SENATOR AVERY: No, that's where the federal law comes in. We use the standards set by the current law, Feingold and...who is it, McCain, McCain-Feingold, and they refer to electioneering communication as any communication that refers to clearly identified candidates, is publicly distributed in 30 days before the election, and is directed to the electorate of the office sought by that clearly identified candidate. And the fact that the group might say this is factual and educational and, therefore, not political is really disingenuous. [LB606]

SENATOR NELSON: All right. Thank you. The second question I have, and I think that mention was made yesterday, the fact that \$30,000 was spent, for instance, in the last two or three days of a campaign and it wasn't possible to find out who was doing that until well after the election was over. Are we solving that here in any way? [LB606]

SENATOR AVERY: Well, we never got a report from...about that spending because they weren't...they didn't file any reports. I don't know where the \$30,000 figure comes from. [LB606]

SENATOR NELSON: Well, oh, all right. But... [LB606]

SENATOR AVERY: So what I'm trying to do is deal with part of the problem that Senator Lautenbaugh talked about. He says we have forced money underground. What LB606 does is bring that money to the surface by disclosure. [LB606]

SENATOR NELSON: All right, but we still have the question, is it going to help the candidate if there's a huge expenditure and a lot of misinformation that goes out just the last two or three days? I don't know what...maybe my question should be what are the reporting requirements? How soon does that have to be in and when will the public know that these are false or who it was behind it? [LB606]

SENATOR AVERY: Well, the reporting requirements are quite similar to the reporting requirements currently in law about independent committees. Now you will know where the money is coming from, you will know who the people are behind it, and I think that current law requires the reporting to be within ten days. So you can know, yes. If the group spends more than \$250, they're required to file a report within ten days with the Accountability and Disclosure Commission. [LB606]

SENATOR NELSON: All right. Thank you. Thank you, Senator Avery. Thank you, Mr. President. [LB606]

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SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Avery, you're

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recognized. [LB606]

SENATOR AVERY: Are there any more lights on, Mr. President? [LB606]

SENATOR LANGEMEIER: Yes, there are. [LB606]

SENATOR AVERY: Then I will pass for now. [LB606]

SENATOR LANGEMEIER: Senator Schumacher, you're recognized. [LB606]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Yesterday we heard that this is really a bad system with these independent expenditures coming in from within state, these folks from Virginia or New York or wherever spending all this money out of state in sneaky maneuvers right up to the day of the election, trying to influence the makeup of this body, and golly gee whiz, there's not a darn thing we can do about it. Well, we may not be able to do something about it but even the reach of the Supreme Court does not get behind the curtain, and the people in this state zealously defend their right to representation in this body. Let them know who is trying to manipulate them and they will do something about it. In fact, they may well vote the other way just to assert their sovereignty. What this measure does in one limited part of the problem, and there are many problems that this one doesn't fix but it fixes a little part of it, is says if you try this electioneering communication stuff and you come in from the outside, and even from the inside I guess, but when you do this you tell the people who you are so they can adjust accordingly. Now the defect I think in this particular piece of legislation is that you don't have to report for ten days. Well, golly, you know, the big stuff comes in, those idiot mailings and everything else come in, in the last ten days and if you hold off and you don't report till after the election you get a \$100 fine. It's water under the bridge because the election is over and what good is it all going to do? I think the defect in the bill right now is that we do not have a 24-hour reporting requirement and an ability to index those expenditures on a candidate so somebody can easily go on-line to find out immediately who the people are that are sponsoring, where they're from, and what their axe is to grind. Now we're told we can't do that because it's going to cost 100 grand or 200 grand to make the computer work. Well, folks, we spend \$3 million here and \$8 million here and \$25 million here and a couple hundred grand, if it will take that much, to make this bill a better bill and address this problem and give the voter in the booths the power to deal with the problem is small potatoes. And so I rise in support of this bill. I think I'd like to see either in this bill or an amendment next year, if we should happen to have a couple hundred thousand dollars laying around, that takes that ten days down for not only these contributions but also for all the independent contributions to 24 hours on anything over a couple hundred bucks, and then the voter can do something about this messy situation we have with campaign finance. Thank you, Mr. Chairman. [LB606]

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SENATOR LANGEMEIER: Thank you, Senator Schumacher. Senator Price, you're recognized. [LB606]

SENATOR PRICE: Good morning, Mr. President, members of the body. I supported this bill out of committee but I had one question, and I still have the question and perhaps other members can focus in on this and help me to understand something. In Section 3 we talk about "a clearly identified candidate." We also heard that at the national level some of the problems are, where they're working around in this infamous loophole terms we're using, is they're not being a clearly identified candidate. So when we read this in Section 3 about there being "a clearly identified candidate" being one of the pillars of what you would base electioneering on, and we go further down in section (c) and it says an "office sought by the clearly identified candidate." So if we parse this out, the only person seeking or when a person seeks an office, that would be an electioneering thing in support, what happens to an adversary or a group that is against that? I'm hoping that there can be others who can speak to are we hemming ourselves in by using the word "sought." And with that, Mr. President, I would yield the balance of my time to Senator Lautenbaugh if he should like to use it. [LB606]

SENATOR LANGEMEIER: Senator Lautenbaugh, 3:20. [LB606]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Price. Just to address some of the points that were raised today, Senator Schumacher is correct. The reporting system doesn't currently exist for swifter disclosure, accountability and disclosure we're told, and I don't have any reason to doubt that. The bill that I have, LB142, while on one hand it repeals the CFLA, it also currently contains a requirement for swifter and fuller reporting by individual candidates at least, and there's no reason that couldn't be extended to these groups. But here's the kicker. That portion of my bill created a fiscal note of \$300,000 and some are saying, well, that's a lot of money. It is. But what you also have to understand is, as a result of the CFLA, the Accountability and Disclosure account for fair fight funds, if you will, contains about \$900,000 currently. And if there's no more CFLA, there's no more need for those funds, so there is a source of funding to pay for greater reporting. And if we say we're about transparency and we say we're about disclosure and we say we want the public to know who's doing what, Senator Schumacher just made an excellent point. And I think Senator Nelson was alluding to the \$30,000 that I was talking about spent in the last week of my race. That came from three contributors. There would have been no difficulty identifying those people on-line very quickly. A ten-day period probably is too long. And again, some are pointing out, well, this bill might address some problems but it doesn't address all problems. Well, no bill addresses all problems, obviously, but this bill struggles with a particular problem and that is we are again trying to intervene in an area where we aren't comfortable, and we shouldn't be comfortable because at a certain constitutional level we don't have a role and shouldn't have a role. So we're trying to wade into how to regulate in some way or control political speech and we're saying, well, we're not doing

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anything to impinge upon it, we're just saying that you can't contribute to these candidates directly; you have to contribute underground or you have to meet these reporting requirements. And we're dancing all around a problem that is probably... [LB606 LB142]

SENATOR LANGEMEIER: One minute. [LB606]

SENATOR LAUTENBAUGH: ...thank you, Mr. President, a problem that is not subject to redress by this body. I know sometimes we don't like to hear that because, by gosh, we're the Legislature, we should be able to do anything, we should be able to fix anything, surely something must be done. This may be one of those areas where there's very little we can do and the more we try the worse it gets. Thank you, Mr. President. [LB606]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Lautenbaugh, your light is on and you're next. Senator Lautenbaugh waives his time. Seeing no other lights on, Senator Avery, you are recognized to close on LB606. [LB606]

SENATOR AVERY: Thank you, Mr. President. We have discussed important topics here this morning and yesterday afternoon. Any time we are on the subject of transparency and accountability in government, that's important because, as I have said many times, it is accountability that we must protect, because if we don't do that then confidence in our behavior, confidence in what we do and how we do it in our institutions and procedures will be undermined. And when that confidence is undermined, cynicism increases and we do not want to contribute to that. Now this bill does not fix all the woes that we've identified. I know that. I knew it when I drafted the bill. It does not, for example, address Senator Schumacher's argument. That is a problem that I think we can work on, the problem of filing dates and timing of filings. And I'm certainly willing to work with Senator Schumacher and others on that. That's, though, for another time. What we're trying to do in this bill is shed some light on a set of or a category of groups that engage in political activity and claim that it's not political activity and have used a loophole in our law and other...and the laws of other states around the country to avoid filing any disclosure forms. All we're trying to do with LB606 is require them to file so that at least some light is shed on their activity. We do not try to alter or influence the content of that communication. We do not try to alter in any way the amount of money they can spend. All we're trying to do is bring the money that Senator Lautenbaugh says is being forced underground, bring it to the surface, let us see, and by doing so we do serve an important public purpose and that is transparency and accountability. This is a good bill and I hope that you will agree with me and vote green. Thank you, Mr. President. [LB606]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the closing on LB606. The question before the body is, shall LB606 advance to E&R Initial? All those

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in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB606]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB606. [LB606]

SENATOR LANGEMEIER: LB606 does advance. (Visitors introduced.) Mr. Clerk, items for the record? [LB606]

CLERK: Thank you, Mr. President. Senator Fischer would like to print amendments to LB84. A communication from the Executive Board Chair regarding the appointment of the Developmental Disabilities Special Investigative Committee. Senator Larson offers LR137; that will be laid over. Judiciary Committee will meet at 10:00 in Room 2022; Judiciary, 10:00 in 2022. That's all that I had, Mr. President. (Legislative Journal pages 925-927.) [LB84 LR137]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Continuing on today's agenda, General File, senator priority bills, Haar division, we have LB283. [LB283]

CLERK: LB283, a bill by Senator Haar. (Read title.) Introduced on January 12 of this year, at that time referred to the Education Committee, advanced to General File. I have no committee amendments. I do have an amendment to the bill by the principal introducer, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Haar, you are recognized to open on LB283. [LB283]

SENATOR HAAR: Mr. President, members of the body, I'm going to ask you to vote green on my green bill. We'll start with that. Twenty percent of Americans are in school right now. Talking, of course, about children, our children, our most valuable possession and our teachers. And I want to give you a little bit of background on this bill and then certainly hope you have a lot of questions. Green schools, or some people call them high-performance schools, are really about students because research shows that if you have good lighting and good air quality there's less absence among students and teachers, you have happier students and teachers, healthier students and teachers, and it's because they're in a better atmosphere. The other interesting point here is that high-performance or green schools create jobs because you can't outsource new construction and retrofitting. It's local jobs and it's local supplies from local suppliers. And there's a lot of evidence now that children who are in a good environment with good lighting and good air quality actually perform better on tests. So green schools save energy immediately, they save water immediately, and they save taxpayer money over time. I'd like you to...I think in picture so I've handed out some PowerPoints really. The first one I'd like you to look at is called the Green School Summit. In October of last year I worked in cooperation with the University of Nebraska at Lincoln, with Peter Kiewit

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Institute, with the U.S. Green Building Council and so on, you can see the list there, and we put on the Green School Summit. We had about 200 people attending the Green School Summit on a Friday and Saturday and, just to give you an idea of the flavor of the quality of the speakers we had, we had Representative Jules Bailey from Oregon where they're doing a lot of green schools kinds of things; Donnie Kenneth from the USGBC, the U.S. Green Building Council. Senator Heath Mello was one of our speakers. We had Senator, I'm sorry, Congressman Lee Terry; Senator Ben Nelson; and our keynote speaker was Gil Sperling, who's a program manager at the U.S. Department of Energy. One of the things we talked about at the summit was not only what are green schools and how can you improve air quality and lighting but how do you finance those kinds of things, and that's really what LB283 is about is how to finance green schools. So the second handout I gave you, the first page, again, is green schools are about better air quality, about lighting, and about saving money, and the anecdotal evidence from all over, including Nebraska, is kids are having more trouble with allergies. There's at least one school in western Nebraska that I'm aware of where there's a problem with mold and there's one fairly close to Lincoln where the CO₂, the carbon dioxide concentration, is too high. Some estimates are that 10 percent of American schools don't have air that's fit to breathe. And something else I learned through this process is children breathe more than adults. They're growing and so air quality is especially important for our children. On page 2 of the handout tells about how schools can finance energy projects and I've highlighted the one called QCPUF. QCPUF stands for Qualified Capital Purpose Undertaking Fund. And then the other is just for your information. This is a spreadsheet that was handed out at the Green School Summit by Scott Keene from Ameritas. Ameritas does much of the investment banking for government in Nebraska, schools, and counties, and cities. And as you can see, QCPUF qualified purposes, as described under 79-10,110, the maximum term for these bonds is ten years and it's 5.2 cents levy outside the \$1.05 levy. One of the really important things I want to tell you about this and I think that the title of the legislation is a little bit misleading, it says provide school bonds with tax levy and bonding authority related to energy efficiency projects. We're not adding any new bonding authority and we're not adding any new levy limits. What LB283 does add are...is one allowable expenditure for QCPUFs. Again, a summary here on page 3, QCPUF as it exists now...and by the way, QCPUF has been in existence since 1983. It was created and over the years various things have been added as allowed expenditures. A 5.2-cent levy bond payments outside the \$1.05 levy limit, no vote of the people is required, ten-year limit on the bonds and it has absolutely no effect on TEEOSA one way or the other. Now the current allowed expenditures are environmental hazards. In fact, it was first created for asbestos things when asbestos was discovered in school. This gave us, the school board, local control, the authority to deal with that immediately. Accessibility barriers, life safety codes like fire codes, indoor air quality, mold abatement, and what LB283 does is it adds energy efficiency projects as an allowed expenditure. And as you can see, we've got support from the school boards, from the school administrators, and from the teachers. I've had lots and lots of meetings to work this out and, again, I'm very

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pleased that we have the support of those groups. The picture, if it were in color, it's a delightful looking cream puff. Page 4...the reason I handed this out is that there's no fiscal note connected with this. This is absolutely a matter of local control, of local school boards making a decision. But I find at the bottom of the page very interesting, if you haven't had time to read that, consequently LB283 would permit school boards, there's no mandates here, with QCPUF levies below the 5.2 cents it would allow them to add this expenditure of energy efficiency. In the current year, there's about 4.1 cents in available QCPUF authority statewide and 163 school districts are not using currently any of that levy. Obviously, that means there are about 100 schools that are using that levy. And with that, that would be my introduction to LB283 and then I will talk some more about the amendment that I've added. Thank you. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Haar. Mr. Clerk for an amendment. [LB283]

ASSISTANT CLERK: Mr. President, Senator Haar would offer AM615. (Legislative Journal page 858.) [LB283]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Haar, you are recognized to open on AM615. [LB283]

SENATOR HAAR: Thank you, Mr. President. On page 5 of the handout is AM615. Actually, this was a separate bill and it required a mandate of all schools to do Energy Star auditing and, of course, the school boards didn't like that, the administrators, so we changed it. We added it as an amendment and it requires an energy audit only if you use QCPUF for an energy purpose. So I want to tell you a little bit about Energy Star Portfolio Manager. Of course we're all familiar with Energy Star on refrigerators and all those kinds of things. It's a program of the U.S. Department of Energy. But they also have something called Portfolio Manager which is an audit system that compares a particular type of building to all other buildings across the country, taking into account things like climate and so on. Again, it's a function of the U.S. EPA. It is free and, as I will show you in a minute, it's fairly easy to do. And what AM615, it adds a requirement for schools that use QCPUF for energy efficiency projects only and what this will do is...it doesn't require again that it shows an increase in efficiency, although it will show that school...it will give an indication of how things have gone. Just talk about benchmarking for a minute, that's what Portfolio Manager is about. It compares one school building against the national sample and the EPA would actually set apart a special section of their Web site for Nebraska school buildings, so you could see all Nebraska schools compared to all others in the nation or you could just look at Nebraska school buildings. You get a rating from 1 to 100, compares all school buildings of a similar type, and each month you add new...your energy bills in and it keeps telling you how things are going. And what it's been used for is to set priorities in terms of where you put your money in the state. In Washington, D.C., now they just

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passed a law so that every public building and every school has to do Portfolio Manager, and when you look at the graph of that you can tell immediately those schools that need energy upgrades. Again, after working out this compromise that only schools that do energy efficiency project with QCPUF would be required to do this audit, I've got again the support of the school boards, the administrators and so on. We did talk with bond counsel and it would not affect bonding at all, as you can see at the bottom of the page. And finally, on page 6, what I show there is the data requirements for K through 12 school space which is the energy audit. It's fairly easy to do. As you can see, it requires zip code, that so they can allow for climate; how much floor space you have; whether it's used on weekends; whether it's cooled and heated; the number of computers and so on and so forth; and then you have to enter your utility bills for the past 12 months if you want a benchmark, and that way you can compare it against the energy savings you're going to receive. Being passed out right now we thought there had to be some kind of visual to go with QCPUF so are some one-bite cream puffs supplied by Billy's. I want you to (laugh)...because every time we talk about QCPUF we smile and we think of cream puffs. So here it is, a small QCPUF to go with the bill. With that, I would like to tell you really quickly that this kind of energy auditing takes a little bit of time from the school but it can easily be done by students in the school. Some schools are forming what are called green teams and I'm going to pass out something on a very successful school in Colorado. Especially in high school, kids can do everything you see on page 6 and it gives them actually a stake. They become a stakeholder in energy efficient that's...the energy usage that's going on in their schools. Within Nebraska, there are energy projects going on and I got this information from Trane. Trane has done a lot of the work. There are other companies, such as JCI, Honeywell and so on, that are doing similar work. A common kind of energy efficiency thing is lighting upgrade, going from T12 to T8 fluorescent fixtures. This can reduce the energy consumption by 25 to 35 percent in a school and the payback is very short. HVAC retrofits: Schools are replacing aging boilers with new high-energy-efficiency boilers and you can...schools have been able to save 30 to 50 percent. There's a very interesting new kind of ground source heat pump that's actually being produced by Behlen in Columbus where they use just one well if you're sitting over an aquifer. It's a heat pump that draws with one well from the aquifer. Takes the heat or puts heat into that, reinjects it into the aquifer. Exterior building shells: Some schools are replacing windows, those kinds of things. And over the past a lot of this has been done. If you look back at page 2 there's something called BABs, Build America Bonds, that schools have used to make many of these energy upgrades, but these are expiring, including the QSCB, which are called "q-scabs." Those are also going away. So we feel and the school administrators and the school boards feel that this could be a tool that they could use as they do energy upgrades which improve air quality, improves lighting, and also saves money. So with that, I would like to end. Thank you very much. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Haar. You have now heard the opening on LB283 and AM615 offered by Senator Haar. The floor is now open for discussion.

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Those wishing to speak, we have Senators Campbell, Hadley, Fulton, Pahls, and others. Senator Campbell, you're recognized. [LB283]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. Several years ago I had the privilege of working on a special Lincoln Public Schools project in which we went to the voters for a \$250 million bond issue to improve the school facilities here in Lincoln, and it was in that process that I learned the term "QCPUF." And like Senator Haar, you get to the point where you just want to say the word because it does bring a smile to your face. But the importance of the QCPUF use by school districts across the state was brought home to me and the improvement in terms of what can be accomplished in lighting and air quality, and so I do rise in support of what Senator Haar is trying to accomplish here. I think we move into the next phase with QCPUF and our ability to ensure that schools are green and energy efficient because in the long run students I think learn better, have a better environment than certainly they might have now. And, hopefully, our discussion of this tool will say to school districts, please take a look at this whole field of green energy and what it can do but also the use of this component. If Senator Haar would entertain a question, I would like to ask him one question. [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR CAMPBELL: Senator Haar, could the use of these funds be used to create a district energy component of...we've used that a lot in Lincoln in terms of the fuel and energy. Could you use that to create a district energy? [LB283]

SENATOR HAAR: Now my understanding of a district energy would be where the data from all the schools is monitored and then brought to us at a point. [LB283]

SENATOR CAMPBELL: Okay. [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR CAMPBELL: So but you could use it for the ground coupling, you could use it as that, as a source to put in on a school. [LB283]

SENATOR HAAR: Well, my understanding, yes. If you look back at the definition in the bill, and I put that definition on the bottom of page 3 (sic): An energy efficiency project includes but is not limited to inspection and testing, which would be auditing, any maintenance to reduce, lessen, put an end to, diminish energy usage, or replacement of such material. So, yes, it could be used for that. [LB283]

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SENATOR CAMPBELL: And that would be an excellent use. As we replace school buildings across the state, I would hope that they would take a look at that. We have found great energy savings in the Lincoln Public Schools with that form of energy. Thank you, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Hadley, you're recognized. [LB283]

SENATOR HADLEY: Mr. President, members of the body, thank you. I appreciate the opportunity to speak on this bill and I appreciate Senator Haar bringing it. Would Senator Adams yield to a question? [LB283]

SENATOR LANGEMEIER: Senator Adams, would you yield? [LB283]

SENATOR ADAMS: Yes, I will. [LB283]

SENATOR HADLEY: Senator Adams, I noticed, my eyes always get a little bigger when I see that no vote of the people required for these bonds. Is it common to have bond issues issued by school districts that do not require a vote of the people? [LB283]

SENATOR ADAMS: If we went down through the list, I don't recollect the number, but I think out of about 251 school districts right now we have about...is it 50 that are...that are using this. Typically, when we think of school bonds, what you think of is a general obligation bond where you develop a plan, you take it to the voters, and they approve of the bond for the construction of new buildings and those types of things. This is different. This is different. We currently in statute give to school districts 5.2 cents of levy authority. [LB283]

SENATOR HADLEY: Okay. [LB283]

SENATOR ADAMS: That's aside from their \$1.05. It is aside from any other general obligation bond authority that they have administered. This is 5.2 cents that school boards have the discretion to use for these specific items that are listed on that handout that Senator Haar... [LB283]

SENATOR HADLEY: Okay. So basically, we're not breaking new ground at this point in time by allowing them to do this without going to a vote of the people. [LB283]

SENATOR ADAMS: You're absolutely right. This is not new levy authority. This is not new ground. What it is, is within the type of bonding program called QCPUF, we are...Senator Haar's bill is simply adding another tier. For instance, one tier that exists right now is mold abatement. Another tier is ADA accessibility so those...or asbestos abatement. Those things are already there. A school district can levy the 5.2 cents for

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that without going to a vote of the general public. This would simply add another tier to that list. [LB283]

SENATOR HADLEY: Okay. Then if I could ask you one more question, one of the comments that was made, no effect on TEEOSA. Basically, then this would not be included or...in the state funding formula? [LB283]

SENATOR ADAMS: No. In fact, I suppose one could really stretch it and argue that if you really did have energy efficiency and a reduction in utility costs, you might actually see a reduction in TEEOSA. [LB283]

SENATOR HADLEY: Okay. Thank you. Senator Haar, would Senator Haar yield to a question? [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Since this is a nice green bill, the only question I have for you, Senator Haar, is how many trees did we kill to put out all these pieces of paper? Thank you, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Hadley. (Laughter) Senator Fulton, you're recognized. [LB283]

SENATOR FULTON: Thank you, Mr. President. Would Senator Haar yield to a question? [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR FULTON: I just get the sense, Senator Haar, that you might have wanted to respond to that, and so if you want to take a couple seconds to respond to that while I'm collecting my thoughts, that would be just fine for me. [LB283]

SENATOR HAAR: Senator Hadley, those were trees cut down in my little woods and chopped up and made into paper, so... [LB283]

SENATOR FULTON: (Laugh) Okay. Senator, AM615, this Energy Star efficiency rating, can you explain a little bit more of your thoughts here? So basically you're saying that the efficiency rating needs to be considered by the school board before moving forward with a project under LB283, correct? [LB283]

SENATOR HAAR: Yes. Yes. [LB283]

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SENATOR FULTON: Okay. [LB283]

SENATOR HAAR: And what we're asking for here is a benchmarking. Energy Star Portfolio Manager is actually an audit light. Really what it does, it audits energy. If you get up to the 70...if a school comes at a 75 percent level, which is fairly high, and then they can get a plaque at the school, but then they have to have a qualified engineer checking out lighting and air quality. But up to that point, it's really very simple. [LB283]

SENATOR FULTON: So this...I'm not familiar with this software but I...I mean I've written similar, I assume, probably similar software. This is a matter of, you know, square footage. They'll want to get an idea of window space. They'll want to get an idea of what the energy bill, so BTUs in, BTUs out. So this gives an overall efficiency rating for the structure. It's not any more detailed than entering information and then spitting out an answer. Is that correct? [LB283]

SENATOR HAAR: That's correct, and the EPA said that they would, again, put a special place aside for Nebraska schools so you could just see those, and they would also supply some webinars to train those schools on how to do it. [LB283]

SENATOR FULTON: Okay. Okay, good enough. We are on AM615 and I think I'm all right with this. This isn't...let me explain. My concern is that we're putting forward another mandate on local school districts and it's going to end up costing money in the long run. That concern has been assuaged with our explanation here and that's hopefully reflected in the record, so I'll be okay with AM615. The bill, however, I need to get some clarity on it, so if you could, with me, go with me to the bill, green copy, page 8. And for the body, while you're getting caught up, Senator, for the body, here's where my concern is, page 8, line 8, "Energy efficiency project includes, but is not limited to, any inspection and testing regarding energy usage, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, or eliminate energy usage." So there are a few terms here where I'm a little uncomfortable because it seems pretty open-ended. So if you could, Senator, in lines 8 and 9, "Energy efficiency project includes, but is not limited to," I guess what's your intention there by not limiting this part of the statute? [LB283]

SENATOR HAAR: Okay. Well, the wording itself, as you probably suspect, comes from Bill Drafting and we were trying to say that the kinds of energy efficiency projects is very broad under this bill. It could be HVAC, it could be anything that includes air quality or lighting in the school. And I would be more than happy to work with you, if you'd feel more comfortable in the wording, between this and Select File. [LB283]

SENATOR FULTON: Okay. Yeah, I'd appreciate that. This is, you know, I read this late at night and it all made perfect sense to me, and then I look at it with a fresh set of eyes

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in the morning and I'm, whoa, wait a minute. So that...I'd like to work on that with you. And then I'm curious also to hear what your thoughts are: The energy efficiency project includes any inspection and testing regarding energy usage, to put an end to energy usage. So I guess what is that, to put an end to energy usage? [LB283]

SENATOR HAAR: Okay. Well, what we're talking about is the audit process. Energy Star Portfolio Manager is really, like I said, audit light and before any school went in and did a lot of work they would have a professional auditor come out and look at that. [LB283]

SENATOR LANGEMEIER: Time. [LB283]

SENATOR FULTON: Thank you, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Pahls, you're recognized. [LB283]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I agree with you, Senator Haar. I just have a question. I understand we do not want mandates and apparently there was some compromise going on. But when I read in the fiscal note, it says 163 schools or school districts are not currently using any of the .052 of the maximum (inaudible). That's a lot of schools who are not involved apparently in energy efficiency, and I happened to leave a school district that energy efficiency was the...I mean it was right at the forefront. In your dialogue with other...with these school districts, would you mind responding to that question, Senator? [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. My original bill around the Energy Star Portfolio Manager was to require all Nebraska schools... [LB283]

SENATOR PAHLS: Right. [LB283]

SENATOR HAAR: ...to do this, this Energy Star audit, so that everybody could start comparing against all the other schools. They thought that that mandate was inappropriate, so this is going to be a process. The people of the organizations, the school boards and so on, the administrators, have said that with this compromise in place they will encourage other schools to do that Energy Star audit as well, so we can get as many schools thinking about this as possible. [LB283]

SENATOR PAHLS: Oh, okay. And I see their point because, like I say, we don't want to mandate something. But we have around 250 schools in the state and, like I say, apparently 163 have not taken or participated in this type of endeavor. The thing that I

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was also intrigued about this Portfolio Manager, I had my staff take a look at that but they can't get into it. I guess you have to go through certain procedures to get into it. Is that something that...I like the idea when you said let's involve students into this process. Are you familiar enough with the Portfolio, dealing with K-12, could students, with the help of adults, input into that program? [LB283]

SENATOR HAAR: Yes, you bet, and the person who helped me out with this a lot was Judy Sunde at OPPD, because the Omaha Public Schools are all going to get up on Energy Star Portfolio Manager and so you have to register and there's a password and stuff. But certainly students...in fact, I would like to encourage schools to have students and perhaps a science teacher or whatever be the green team that does this monitoring. [LB283]

SENATOR PAHLS: Yeah. See, this sort of ties into earlier when I had a bill dealing with civics education. We need practical ideas, things that students can see of value, and they would be valuable for the particular students and schools. I would like to see you pursue that once this bill...because I have a feeling that you're going to get a lot of green on this, which would be appropriate. Again, I'm just saying the number of schools that are not involved, 163, that shows to me that there is a resistance, and I don't know if that is because they don't have the time or if they do not see the value of what you are proposing in the greening of the schools. [LB283]

SENATOR HAAR: Well, one of the things that I said in passing but I'll say it again is that currently there's the program called BABs, the Build America Bonds, and that's a better use...better way to do this because the government subsidizes the interest paid, but those are going away. And so you'd find some of this work being done currently with Build America Bonds, a program that will no longer be there. [LB283]

SENATOR PAHLS: Okay. But in your heart, you see that the schools are starting or will grab hold of your idea and move forth? [LB283]

SENATOR LANGEMEIER: One minute. [LB283]

SENATOR PAHLS: Is that...would...do you get that feeling from those people that you've negotiated with? [LB283]

SENATOR HAAR: Yes. And we're going to have another Green School Summit this fall. Hopefully, we can get some of these green teams going and my idea would be that at this Green School Summit in the fall some of these green teams in the schools could receive awards and so on. So, yeah, I'm very hopeful that we're going to get good cooperation from the school groups and my personal influence in making this happen. [LB283]

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SENATOR PAHLS: Okay. And I wish you luck with that because, again, I think this sort of ties in with my concept of let's...making civics come alive instead of just taking a look at a textbook, but actual hands-on approach with the young men and women involved in this. [LB283]

SENATOR HAAR: You bet. And when they do this at school, if they're involved in the process they're going to go home and look at the same kind of things going on. [LB283]

SENATOR PAHLS: Right. [LB283]

SENATOR HAAR: So I want this to be sort of a viral process. [LB283]

SENATOR LANGEMEIER: Time. [LB283]

SENATOR PAHLS: Yeah. I found out that by looking at it... [LB283]

SENATOR LANGEMEIER: Time. [LB283]

SENATOR PAHLS: Thank you. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Wallman, you're recognized. [LB283]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. And I want to thank Senator Haar for bringing this forth. And if you want to go south of Lincoln, there's an elementary school called Prairie Hill Learning Center. They have a windmill and they teach their children about energy efficiency. And the windmill doesn't supply all the energy but it has meters. And elementary kids are tied into this. It's amazing. And then my former school district where I was on, they also have a windmill. So this is good policy but I can tell you why schools are reluctant to tie in, just like the BAB funds. It's on your tax statement. They repay that back. And I have a school district in our area that did this, you know, for rebuilding things. So it's tough to get energy efficiency going. It's going to take some money. We had a water heat source, heat pumps in also, and it takes more money. But I think we're on the edge of things like Germany is going more and more solar and they had that on the Public Radio this morning, and so if we can get school districts and have roofs like Australia has, plugs into solar for hot water heating and all this things, I think we can save taxpayers money and we can convince them that this will pay for itself. So thank you, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Louden, you're recognized. [LB283]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look at

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this bill, this is something that's been a work in progress for some 30 years. I was on a school board for 30 years at Ellsworth, where I come from, and also back then we had to go through asbestos. My Lord, we fought asbestos. We had to cover the place up. We had to rebuild, had to hire people with suits and I don't know what all. And so there was...in the process there was a lot of energy efficiency went on then. And one thing that I must point out when we talk about energy efficiency that hasn't been mentioned, that some people are allergic to fluorescent lighting. So whenever lighting is changed, you have to be very careful that the fluorescent lighting that's put in is the kind that has diffusers on there so that those don't affect people. Because with a bunch of school children in there, if you have a poor grade of lighting or poor quality, they could all end up with headaches more times than not. Would Senator Haar yield for a question? [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR LOUDEN: The bill, the whole thing is energy efficiency product all through it, and then when we get to page 8, as Senator Fulton pointed out, the description is there of what an energy efficiency project includes. And the only thing I see you didn't include was cleaning out the sink and I'm wondering (laugh) if there's something that should have happened in there. I guess I'm somewhat like Senator Fulton. I'm wondering if that could be kind of narrowed down or have a better description, because when you go after that thing, there's about everything in the world there that that would cover, and I'm wondering if by doing something like that we would be allowing some of these school districts to question really what they were supposed to do. A lot of them have done that already. Do you have any...have you had any consideration on how that energy efficiency project in this statute was described? [LB283]

SENATOR HAAR: Well, my LA just told me that this is actually...changing energy efficiency, just those words, it's the same kind of description that goes with all the other things...all the other allowances that are within QCPUF. But if it is too broad or it's ambiguous, I will certainly work with Senator Fulton to narrow that down. [LB283]

SENATOR LOUDEN: And I'd appreciate it. What my concern is, is sometimes when we put some of this stuff in statute like that, then when it goes out there and a school board someplace has to decide what they're going to do, then they look this over and they're really in a preponderance on what you're trying to describe. And I think when we have something in statute, it should pretty well focus in on what we want done with the deal other than just give them a shotgun shot out there and tell them to go do something about energy efficiency. Thank you, Senator Haar. [LB283]

SENATOR HAAR: Thank you. [LB283]

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SENATOR LOUDEN: Thank you, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Mello, you're recognized. [LB283]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I rise in support of both AM615 and LB283. And to start off, I'd like to thank Senator Haar in part. I know this has been an ongoing issue that he has explored over the last two years and I was fortunate enough to participate in this past year's Green School Summit in conjunction with Senator Haar's office and the University of Nebraska-Lincoln, which I think provided a...for those of us who I think are...who look towards energy efficiency and energy conservation as well as other potential renewable energy opportunities for state policy, this summit I thought was one of the more fruitful, educational experiences I've had as a senator not just because I was able to learn more from experts who do this day in, day out for a living, whether it's design and implement energy saving systems in not just a variety of government or private buildings but school buildings. But more importantly I think it provided a unique...I'd say a unique synergy between our public power system, between our university system, between policymakers, as well as I think just generally interested citizens who want to see the initial steps that we can take as a state to promote energy efficiency and primarily focusing that energy efficiency and energy conservation in building design. And I know Senator Haar, there was a host of policy suggestions and recommendations that were brought up at this summit. Senator Haar is I think the leader of trying to tackle the school aspect of how do we build more energy efficient, more better designed, and more high-performance schools really took what I see LB283 and took it to its current form, which provides our school districts really this unique opportunity to provide existing financing that they have access to, to, as what Senator Adams said, possibly, ultimately reduce some of the school funding needs that our public schools currently utilize through our TEEOSA funding formula. So I rise as...obviously as a strong supporter of energy efficiency policies in the state, but more so as a strong supporter of what Senator Haar is trying to do, which in my view...and we discussed this last week on LB385 of ensuring that our state policy focuses on investments. And what I see LB283 and the amendment AM615 really focus on is making key, strategic investments in our public school system by ensuring that we are prioritizing energy efficiency policies in our current financing models because the more we can save in regards to our building operations and our energy costs and our utility costs only save us in the long run, not just with the cost of that public school building but also the cost that it provides all public power users, and as mentioned today on the floor, the environment in general that the public school provides our children, that a healthier, cleaner, more energy environment...energy efficient environment for our public school only provides a higher quality learning environment, as you've seen through some of the handouts that Senator Haar has provided. So I applaud Senator Haar for what I think is a very innovated approach to trying to provide our public school

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systems a better financing tool to ensure energy efficiency savings as well as saving all Nebraska taxpayers and public utility users better savings through utilizing energy efficiency. Thank you, Mr. President. [LB283 LB385]

SENATOR LANGEMEIER: Thank you, Senator Mello. Senator Smith, you're recognized. [LB283]

SENATOR SMITH: Thank you, Mr. President. Would Senator Haar yield to a question? [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR SMITH: I apologize for having my back to you, Senator Haar. I don't think I can move around the other side of the desk and have a face-to-face with you. But how do we measure...and I, too, applaud you for your efforts. I know you've been a strong advocate for energy conservation and I think you've just done a tremendous job in that effort, and I thank you so much for that. But I do have a question as to how do we measure the success of the energy efficiency against the investment in this particular one. I see that we talk about defining what energy efficiency is, but do we have any goals or parameters that are set that say you have to have a certain payback period with these investments? [LB283]

SENATOR HAAR: No. And in fact if we had that kind of requirement, then it would affect the bonding mechanism, as our bond counsel said, because then if you don't meet that kind of...if you don't meet your goal, it could affect whether the bonds are going to be repaid. The reason we put in this amendment though is if you use a portfolio manager and you track it over a period of time and you have the operation and maintenance that goes along with it that you actually use the tools that you've developed then, that you are going to see an energy savings and you'll be able to demonstrate it. I think one of the neat parts of this is we feel very confident that not only can schools make an investment then, but they can go back to their constituents and say, yes, we made that investment and here's the kind of savings we're having. But there's no requirement for a level. [LB283]

SENATOR SMITH: All right. And I'm kind of torn on this one because, you know, I, too, value energy efficiency and conservation of energy. You know, we do need to have that balance of demands on management and supply-side management to have a strong, effective energy policies. But it seems fitting to...before taxes are potentially increased on the community that some type of goal should be established saying, this is what we're seeking to achieve and this is how we're going to measure our success. And I understand your answer to that makes it very difficult. Let me ask you another question.

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[LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR SMITH: On page 8, line 14, if you read through there basically it says, eliminate...dah, dah, dah, dah, "eliminate energy usage in new or existing school buildings," and it sounds to me from that, that this could be used for brand new construction, is that correct, as opposed to upgrading existing dwellings? [LB283]

SENATOR HAAR: Yes, according to this definition, however, the level of QCPUF funding, the 5.2 cents, would really not be enough to construct a new building. We're talking mainly about things like HVAC and lighting and so on. [LB283]

SENATOR SMITH: Okay. [LB283]

SENATOR HAAR: And just let me add to that, one of the things though they're finding is that very often--the Peter Kiewit Institute has been finding this--they can go into brand new buildings and find out that they're not getting the energy efficiencies that they need. So that would also be a potential. [LB283]

SENATOR SMITH: Okay. And at this point I just...I haven't made up my mind how I'm going to go on this particular one. Again, I do value energy conservation. But with limited money out there today... [LB283]

SENATOR LANGEMEIER: One minutes. [LB283]

SENATOR SMITH: ...people already feeling as if they're taxed highly, I think we need to be very pragmatic and practical in our efforts to invest towards energy conservation. We need to make certain we understand what the payback is expected on any investment project. So, again, thank you and I applaud you for what you've done with this legislation. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Smith. Senator Carlson, you're recognized. [LB283]

SENATOR CARLSON: Mr. President, members of the Legislature, this is an interesting discussion this morning. I do have a question or two for Senator Haar if he would yield. [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

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SENATOR CARLSON: You've discussed this a little bit, but it seems to me like your AM615 is a mandate. Is it a mandate? [LB283]

SENATOR HAAR: Yes. If people choose to use QCPUF for this purpose, then it is a mandate, and that was the compromise with the four groups you see listed. They said don't say all schools have to do that, but if they're going to use this option, then it's okay to mandate it. [LB283]

SENATOR CARLSON: And there has to be a cost to that. [LB283]

SENATOR HAAR: The cost is very low, Senator Carlson, because if you look again on page 6, this is the data that's needed to do this energy star, I call it audit light actually. You know, things like zip code and what percent of the floor space and then tracking your utility bills. It will take some time but certainly the ongoing process could be managed by...hopefully will be managed by students. [LB283]

SENATOR CARLSON: All right. Now we go to the bill itself, and it puts this energy conservation into an acceptable category for QCPUF to be used because that's really the essence of your bill. It's putting this into qualified capital purpose undertaking fund to be used that way. Now to me a 5.2-cent levy is a significant amount of money. On the other hand, it looks like...and I think you believe and you may be right, that the decision to do this is almost a no-brainer. Is that fair? [LB283]

SENATOR HAAR: No. I think it depends totally on the school that you're talking about. [LB283]

SENATOR CARLSON: But we look at what some potential results are and the payoff is rather short and the savings are significant, and I think in most cases you would expect that to be the case, wouldn't you? [LB283]

SENATOR HAAR: Yes. Yeah. There's a lot of data to show that just replacing florescent fixtures can result in a 20 percent savings, that kind of thing. [LB283]

SENATOR CARLSON: All right. Now I went to the biggest district, school district in my district and asked what a 5-cent levy increase would amount to in terms of money, and it's \$300,000. Well, in that district, \$300,000 is a rather significant amount of money. And if this is a good idea, and I'm not arguing that it's not a good idea, why shouldn't the people have a say in that on something that is...I would say could be proven that taxpayers, if you approve this, here's what we're going to save, here's what it's going to amount to. On the other hand, I did hear you make a statement that sometimes these things are done and the savings aren't what was expected. Well, why shouldn't the people have a voice in determining whether to move forward on something that is good? [LB283]

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SENATOR HAAR: Well, I think in this case it's totally up to the local school board. It's the representation of the school board and in your particular community the people elect the school board and say, we want to...you know, we want to speak to everything, then that's up to the school board. So I think this gives the option to the school board closest to the people and you may disagree with me or not on that point. But I think this is appropriately... [LB283]

SENATOR LANGEMEIER: One minute. [LB283]

SENATOR HAAR: ...where it would be placed. [LB283]

SENATOR CARLSON: Okay. And I'm listening. You didn't agree with me yesterday. I'm not fully in agreement with you today. But I'm in agreement with the idea. I just think at this point that the people should determine that this is a good idea and we should move forward with it. And that's where I am but I'm continuing to listen. Thank you, Senator Haar. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Fulton, you're recognized. [LB283]

SENATOR FULTON: Thank you, Mr. President. When I was last up here on the mike, I got cut short. I want to make clear that this is...I support the concept that's being...we're trying to accomplish here. In fact, I used to do this. When I was still practicing engineering, this is the type of work...I enjoy this. This is good stuff. My concern has to do with the language. We would be broadening the statute. We would be adding to the statute to allow for energy efficiency projects to be encompassed within the existing tax authority of a school district. Would Senator Haar yield to a question? [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR FULTON: Am I correct so far? [LB283]

SENATOR HAAR: Correct so far. [LB283]

SENATOR FULTON: Okay. If indeed it's energy efficiency which we're trying to interject into our policy, because as it stands right now the statute allows for these types of projects... [LB283]

SENATOR HAAR: Um-hum. [LB283]

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SENATOR FULTON: ...if there is determined to be a potential environmental hazard. Would that be correct? [LB283]

SENATOR HAAR: That's correct, yes. [LB283]

SENATOR FULTON: So we are adding, in addition to a potential environmental hazard, we would be adding energy efficiency...the contemplation of energy efficiency into a decision with your bill. [LB283]

SENATOR HAAR: That's correct. [LB283]

SENATOR FULTON: So I guess then that the logic then leads me to this point where then we should make sure that we are limiting this bill to energy efficiency, which is why I brought forward the question of, you know, lines 8 and 9, "but is not limited to." So in effect the concern that I have here is that we're throwing the doors open wide to any number of ideas so long as there can be some connection to a person's idea that this is for energy efficiency, we would justify it after that fact by utilizing AM615, which isn't necessarily bad, but that's further than just energy efficiency. And so that's where my concern come in. And so I'm hopeful, Senator, that we can work on some way to limit the scope of this bill, and I think we could do that with the language. That's where my concern lies. And so I think I'll just...what I'll do is I'll yield you the rest of the time. If you're in agreement to working with me to that effect, great; if not, say so then. But that's where my concerns and hesitation rest. So with that, Mr. President, I'd like to yield the remainder of my time to Senator Haar. [LB283]

SENATOR LANGEMEIER: Senator Haar, 2:25. [LB283]

SENATOR HAAR: Yes, thank you. You're an engineer who used to do this and I like to do this and maybe would like to be an engineer, (laugh) so. But you're absolutely correct. I'll certainly be more than happy to work with you on the language to narrow this definition if it's too broad. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Haar and Senator Fulton. Senator Bloomfield, you're recognized. [LB283]

SENATOR BLOOMFIELD: Thank you, Mr. President. Would Senator Haar yield, please? [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR BLOOMFIELD: In the amendment AM615, states that the school shall keep

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a record if they actually win funding under this process. Who do they report that record to or who verifies that they are keeping a record? [LB283]

SENATOR HAAR: You know, we didn't write a specific mandate into that, so that's a good question, and we didn't put any penalty in it either, but we do require...and, again, the organizations you see, the Nebraska School Board, administrators, and so on, said they would work with us to make sure that school districts understood this, that they are required by this bill to maintain that data for the life of the bond, which would be a maximum of ten years. [LB283]

SENATOR BLOOMFIELD: Okay. [LB283]

SENATOR HAAR: So right now we don't have anybody policing that. Maybe it's needed. I'm not sure. [LB283]

SENATOR BLOOMFIELD: Does any of this information get reported back to EPA? There are two phrases with my background in agriculture and transportation that frighten me a little bit and one of them is EPA and the other one is, "I'm from the government and I'm here to help." [LB283]

SENATOR HAAR: Right. [LB283]

SENATOR BLOOMFIELD: And I fear this a little bit in this amendment. [LB283]

SENATOR HAAR: Okay. The reason we zeroed in on Energy Star which is a product of the EPA is we have some people who are experts in this, in this state with OPPD and so on. It's like I termed it an "audit light." It doesn't cost...you don't have to go out and pay an auditor to do this sort of thing. So what's going to be on the EPA's Web site will be this data which then generates the graphs and the charts. [LB283]

SENATOR BLOOMFIELD: Okay. But my concern is that none of these reports or information that the schools need to keep is required to be reported back to EPA, is it? [LB283]

SENATOR HAAR: No. [LB283]

SENATOR BLOOMFIELD: Okay. [LB283]

SENATOR HAAR: Except when you enter it, it's going to live in a database, an EPA database... [LB283]

SENATOR BLOOMFIELD: Okay. [LB283]

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SENATOR HAAR: ...to generate the charts. And it will change. If you keep putting your energy bills in, if you do these enhancements, hopefully you're going to see that energy usage go down. So it reacts to the new data as well. [LB283]

SENATOR BLOOMFIELD: Okay. Thank you. [LB283]

SENATOR HAAR: Yup. [LB283]

SENATOR BLOOMFIELD: Thank you, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Bloomfield. Senator Pahls, you're recognized. [LB283]

SENATOR PAHLS: Thank you, Mr. President, members of the body. This will be short. By listening to some of the comments, it appears that there's an uneasiness that schools will start going overboard on this. And out of the 251 schools right now, 163--if I'm reading the fiscal note correctly--are not involved in this process. So that tells me that school board members are very cautious of how they're going to spend money. And if I happen to be in a smaller town and I'm going to spend \$300,000, I've a feeling that the general public is going to know that. This is not going to be some hidden thing on their agenda, because of those of us who have lived in small towns you know that kind of stuff rarely is under the covers. But, again, I just want to point out if I'm reading this correctly, 163 schools, districts, I should say, have not utilized this process in the past. So apparently there's just...I don't think overnight they're just going to jump on board without being fiscally conservative as they are right now. Thank you. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Pirsch, you're recognized. [LB283]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Haar would yield to a question. [LB283]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB283]

SENATOR HAAR: Yes. [LB283]

SENATOR PIRSCH: Thank you, Senator Haar, for bringing this proposal forward. And I think that you're on the right track here in...when we look at energy efficiency, there is a lot of money literally escaping out the window both metaphorically and in reality. And so in looking at ways that we can capture some of these dollars I think this is a very interesting approach. To what Senator Fulton had mentioned, you know, the idea here is energy efficiency. The concern is, does the language adequately capture or contain things so that we can ensure that that's what's taking place here. And I don't

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have...unfortunately my gadget is taking a little break (laugh) as far as speaking. But the language as I had looked at it earlier indicated that...and I'm talking about what we're doing is adding language to an existing authorization that says...it adds energy efficiency project account. And then there's a part in your bill that is a definition of energy efficiency project. And I'm sorry I'm kind of flying by memory here, but if I recollect, it says a part, or replacing or restoring a wall or...do you have that exact language handy, Senator Haar? [LB283]

SENATOR HAAR: Yes. It's on page 3, by the way, of the handout on the bottom of the page so that you wouldn't have to look at your computer, if you'd just look at the handout. [LB283]

SENATOR PIRSCH: Thank you. Yes. Any restoration...and I'd call your attention to line 11, you're quite right, I've got it on the gadget now, "any restoration or replacement of material or related architectural and engineering services." And that's a separate, stand-alone authorized type of activity. And so I wonder how much of that particular activity, "restoration or replacement of material or related architectural and engineering services," is there a tie to that that must somehow make it require energy efficiency from the baseline of what a school has at the time or can it be use for in that sense possibly just if they have...want to renovate and don't want to put it under any other spending but want to free up those types of monies and so they put it under this. Can you comment on that? [LB283]

SENATOR HAAR: Sure. You know, I've been convinced we need to tighten up the language to make sure that whatever is spent here really relates to energy efficiency. [LB283]

SENATOR PIRSCH: Okay. Well, I appreciate your commitment and look forward to working with you as this goes forward. Thank you. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Senator Adams, you're recognized. [LB283]

SENATOR ADAMS: Thank you, Mr. President. I'll only take a moment. I've been listening to the debate and Senator Haar has done a good job of explaining it. But sometimes the old school teacher in me says, let me try to summarize for just a second all the things that I'm hearing. First of all, the bonding authority already exists--5.2. School boards are not required to go to a vote of the public. They are on general obligation bonds but not on these. It already exists. It exists for...as listed in the statute, it's there for ADA accessibility. It is there for mold abatement, asbestos abatement. That allowance for a school board to go up to that 5.2 cents is already there. We don't have that many school districts out of all that we have that use it. And part of the reason that they don't, my guess is many school districts if they see down the road that they are

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going to have ADA issues, they're build it into their special building fund so they don't need to go to this extra authority, but there are those that do and probably for a host of reasons. The other thing, we've talked about the language here. We can limit the language, however--and this is something that Senator Haar, Senator Fulton, and anyone else who's interested in limiting language is going to have to consider--if we're going to limit the language on this new tier of use, then we need to take a step back and review all of the language of the other tiers of use because this replicates that language. Whether it's for life safety code, whether it's for mold and asbestos abatement, we've replicated the language in this clause to look just like those. So we would need to take it back up, not that we can't, but I just want you to recognize that when this was drafted, it wasn't drafted to give school districts carte blanche. But instead it was to go along with and complement the other language just like this that's already in statute. Thank you, Mr. President. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Adams. Seeing no other lights on, Senator Haar, you're recognized to close on AM615. [LB283]

SENATOR HAAR: Mr. President, members of the body, I appreciate the discussion and the questions. I really feel that's what makes bills better is the discussion that goes on here. I'm going to talk simply to the amendment and close on that. It says, if a school board uses QCPUF for energy efficiency projects, then they have to use...they have to benchmark themselves with Portfolio Manager and keep putting the data in there which will show the progress that they've achieved through their energy efficiency. It does not require all schools to do this and it's that compromise of saying only the people who use it for energy efficiency would have to use Energy Star that got me the support of all the school groups. So I would ask you to vote green on AM615. Thank you. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Haar. You have now heard the closing on AM615 to LB283. The question before the body is, shall AM615 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Senator Haar, for what purpose do you rise? [LB283]

SENATOR HAAR: Mr. President, I'd like a call to the house. [LB283]

SENATOR LANGEMEIER: There's been a request to put the house under call. The motion before us, should the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB283]

CLERK: 34 ayes, 0 nays, Mr. President, to place the house under call. [LB283]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber. The house is under call. All unauthorized personnel please leave the floor. The house is under call. Senator Haar? [LB283]

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SENATOR HAAR: I would accept call-ins. [LB283]

SENATOR LANGEMEIER: Thank you. Senator Janssen, Senator Nordquist, Senator Lathrop, Senator McCoy, Senator Nelson, the house is under call, please return to the Chamber. Senator Krist, would you please return to the Chamber. The house is under call. Senator Louden, would you please check in. Senator Haar, all members are present or accounted for. You have asked for call-in votes. The question before the body was, shall AM615 be amended into LB283? Mr. Clerk. [LB283]

CLERK: Senator Ashford voting yes. Senator Nordquist voting yes. Senator Louden voting yes. [LB283]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB283]

CLERK: 26 ayes, 7 nays on adoption of the amendment, Mr. President. [LB283]

SENATOR LANGEMEIER: AM615 is adopted. I raise the call. We return now to LB283, the bill itself. Seeing no lights on, Senator Haar, you're recognized to close on LB283. [LB283]

SENATOR HAAR: Thank you, Mr. President, members of the body. The thing that gets me enthusiastic about LB283 is that by thinking green, by going to energy conservation, it's a win-win for children and the taxpayers. In terms of air quality and lighting, children perform better. They're happier, they score better on tests. There is some anecdotal evidence already from Lincoln. I talked to a teacher who taught at Southeast High School who used to use his inhaler two or three times a day and doesn't have to use it now that the air quality has been improved. So...and energy efficiency saves money. Win-win. The kids win, the teachers win, and the taxpayers save money. And with that, I would ask you to vote "yes" on LB283. [LB283]

SENATOR LANGEMEIER: Thank you, Senator Haar. You have now heard the closing on LB283. The question before the body is, shall LB283 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB283]

CLERK: 26 ayes, 9 nays, Mr. President, on the advancement of LB283. [LB283]

SENATOR LANGEMEIER: LB283 does advance. (Visitors introduced.) Continuing with today's agenda, General File, 2011 committee priority bills, LB407. [LB283 LB407]

CLERK: LB407, a bill by Senator Karpisek. (Read title.) Introduced on January 13, referred to the General Affairs Committee, advanced to General File. I do have

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committee amendments by General Affairs, Mr. President. (AM696, Legislative Journal page 806.) [LB407]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Karpisek, you are recognized to open on LB407. [LB407]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. LB407 eliminates the requirement that the Liquor Control Commission correspond with municipalities regarding liquor license applications through certified mail. The commission would be able to instead correspond through regular mail and electronic delivery. Correspondence with other entities or individuals could also be done through mail and electronic means if prior consent is given. The commission recommended this change to the Liquor Control Act in order to reduce its certified mail budget. LB407 with the committee amendment, which contains LB249 and LB336, were unanimously voted out of committee. Thank you, Mr. President. [LB407 LB249 LB336]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. As the Clerk has stated, there is a committee amendment offered by General Affairs, AM696. Senator Karpisek, you are recognized to open on the committee amendment. [LB407]

SENATOR KARPISEK: Thank you, Mr. President, members of the Legislature. The committee amendment, again, contains the provisions of LB249 and LB336. LB249 is currently on General File, but since it is not prioritized, the committee was concerned it would not advance further unless it was folded into a prioritized bill. LB249 would allow for a liquor license within 300 feet of a postsecondary campus but would not allow a license if the property is surrounded by the university unless the university provided a waiver. The University of Nebraska worked with the Liquor Control Commission during the interim to draft language that addressed the commission's concerns regarding the high number of SDLs or special...excuse me, special designated licenses that were being issued near campus. The commission wanted to increase its ability to regulate these establishments that normally apply for SDLs by requiring them to apply for a regular liquor license which allows the commission to implement progressive discipline to violators of the Liquor Control Act. Progressive discipline means being able to fine or suspend a license in order to get the offending party into compliance before having to take the more drastic approach of revoking a license. LB336 would allow certain Liquor Control Commission employees to obtain part-time work at a business that holds a liquor license unless that business receives more than 50 percent of its gross revenue from the sale or dispensing of alcohol. LB336 was also brought by the committee...to the committee by the Liquor Control Commission to address the issue of employees seeking part-time jobs but were unable to since they are prohibited from working at a business with a liquor license. Since the Liquor Control Act's adoption in 1936, the types of businesses with liquor licenses have greatly diversified. Places like Target, Walmart, and now even Walgreens have liquor licenses, greatly reducing the number of

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businesses for which a Liquor Control Commission employee could apply. I would like everyone to keep in mind that the Liquor Control Commission Executive Director would have to approve the employment to ensure that there are no conflicts and would hold the upper hand or would hold the decision in their power. I would be glad to discuss this with anyone. Thank you, Mr. President. [LB407 LB249 LB336]

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: Thank you, Senator Karpisek. The Chair recognizes Senator Avery. [LB407]

SENATOR AVERY: Thank you, Madam President. I am particularly interested in the amendment because it contains LB249. And it seems to me that this is a very sensible amendment because as the representative of the Liquor Commission said that it's a move toward a more logical licensing structure. The way the current law is written, if a group or an organization within 300 feet of a university or a school wishes to serve alcohol at a special event, and that happens frequently, they must apply for a special permit. This amendment would not eliminate the need to have a permit. It just means that they wouldn't have to continue to get a special permit every time they had an event. For example, in my district or just outside my district, across the street from it is a Hy-Vee store at 50th and O Street that sits within 300 feet of the Lincoln campus of Doane College. Every time the Hy-Vee store wishes to have a wine tasting, they need to go to the Liquor Commission for a special permit. According to the Hy-Vee managers, last year they had to return to the commission 246 times in order to keep the proper paperwork in order. That seems to me to be an unreasonable burden on that store. So I think that what is being proposed here by the General Affairs Committee is reasonable. It does have the support, and this is important, it has the support of the University of Nebraska-Lincoln. And it will certainly affect some development that's going on in the Haymarket where the university plans to build an annex to the Sheldon Art Museum. And in that building, they will from time to time want to serve wine and other spirits, perhaps at special events. I believe it was two years ago I carried a bill to define the western boundary of the university at 10th Street so that it would be possible for this new annex to serve alcohol and not run afoul of current law. But what we will see with this amendment that includes LB249 is that the Sheldon annex will no longer have to go for special permits over and over and over. As I understand it, you can get the one permit and that's good for a year, and you'd have to renew it every year but you wouldn't have to do what Hy-Vee has had to do and go back 246 times in one year. So I think this is very sensible and I intend to vote for it and hope that you will too. Thank you. [LB407 LB249]

SENATOR SULLIVAN: Thank you, Senator Avery. Seeing no others senators wishing to speak, Senator Karpisek, you're recognized to close on...and Senator Karpisek waives closing. The question is, shall the committee amendment to LB407 be adopted?

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All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB407]

CLERK: 34 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB407]

SENATOR SULLIVAN: The amendment is adopted. Discussion on the advancement of LB407 to E&R Initial continues. Seeing no senators wishing to speak, Senator Karpisek, you're recognized to close on the bill. [LB407]

SENATOR KARPISEK: Thank you, Madam President, members of the body. Thank you for the green on this and thank you, Senator Avery, for the kind words. We have worked on that amendment for a couple of years with the university and he is correct that they have...they actually drew up the language on that. We had a little issue with what "surrounded" meant. There is some land inside the university that is not owned by the university, and so the language there is trying to make sure that we don't have a bar or liquor establishment right in the middle of campus because that is in no way what our intent is. The intent, as Senator Avery said, is just to have the places like the Champions Club be able to get a one-year liquor license at a time and there can be progressive enforcement if things go afoul. This is in no way saying that there are problems there, but if there are, the Liquor Control Commission can work with them, do a little more education with any of those places within there. The other part about the employees seeking part-time employment, we all know what the budget is like and there's not a lot of raises and I feel that this is a good amendment to let about seven people be able to go get some part-time jobs if they see fit. And the bill overall just is trying to help the Liquor Control Commission to save some money on their mailing. I appreciate your support on the bill. Thank you, Madam President. [LB407]

SENATOR SULLIVAN: Thank you, Senator Karpisek. The question is the advancement of LB407 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB407]

CLERK: 38 ayes, 0 nays, Madam President, on the advancement of LB407. [LB407]

SENATOR SULLIVAN: The bill advances. Mr. Clerk, items for the record. [LB407]

CLERK: I have one, thank you, Madam President. Senator Council offers LB204A. (Read LB204A by title for the first time, Legislative Journal page 928.) That's all that I have. [LB204A]

SENATOR SULLIVAN: Thank you, Mr. Clerk. We'll now proceed to General File, LB95. [LB95]

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CLERK: LB95 is a bill offered by Senator Howard. (Read title.) The bill was introduced on January 6, referred to Health and Human Services. Advanced to General File. There are committee amendments, Madam President. (AM704, Legislative Journal page 813.) [LB95]

SENATOR SULLIVAN: Thank you. Senator Howard, you are recognized to open on LB95. [LB95]

SENATOR HOWARD: Thank you, Madam President and members of the body. LB95 would require that lead agencies contracted by the department to provide child welfare services are accredited by a national accrediting entity with respect to the services being provided by such lead agency. The benefits of accreditation are many. Accreditation is a peer review process that establishes that services provided meet standards of quality. Requiring accreditation assures the public that the agency meets rigorous standards that are not swayed by passion or politics, but by a scientific study of what works best. An accredited agency provides that they have effective management and that programs are designed to meet the needs and achieve the desired outcomes. In short, requiring that agencies be accredited is one more way of ensuring best practice and oversight. The committee amendment would allow the agencies 18 months from the effective date to become accredited, which I would tell you is an ample period of time. This should not cause any problems for the lead agencies. Todd Reckling testified at the hearing that the accreditation process takes about 12 months from the time of application and the lead agencies are already in the process of getting accredited. LB95 allows agencies to be accredited by any national accrediting body. This is intentionally broad so that the agencies can seek the best accreditation with respect to the services they provide. NFC is currently seeking accreditation with the Council on Accreditation and KVC is working to become accredited by the Joint Commission. Both are highly regarded accrediting organizations. LB95 is a way for this body to hold child welfare lead agencies accountable for the services they provide to Nebraska's most vulnerable children. Accreditation is a mechanism to ensure quality and effectiveness of services, and I ask that you advance LB95. Thank you. [LB95]

SENATOR SULLIVAN: Thank you, Senator Howard. As the Clerk stated, there is an amendment from the Health and Human Services Committee. Senator Campbell, as Chair of the committee, you're recognized to open on the amendment. [LB95]

SENATOR CAMPBELL: Thank you, Madam President, and good morning again, colleagues. The committee amendment amends the portion that Senator Howard talked about in her original bill...is retained in the amendment. But additionally, the committee amendment requires that until June 1 of 2012, the department will not contract with a private entity in the geographic areas previously served by the lead agency, Boys and Girls Home, for (1) case managers or case supervision of children nor (2) a new lead agencies in that geographic area. The intent of the Legislature through this committee

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amendment is to attain a stable system of care for children and families involved in the child welfare system; secondly, to begin to obtain this stability by enacting this moratorium on (1) contracting services with any new lead agency or adding new or additional service areas to any new lead agency in the child welfare reform initiative, known as Families Matter; the complete...the third reason and the intent of this amendment is to complete the LR37 to review the child welfare reform initiative, to develop a report, and to propose appropriate legislation to establish a stable child welfare system. Now why would we proceed with this amendment? The central, western, and northern area of the state has experienced a heightened degree of trauma and crisis in child welfare reform, that is continuing. As a lead agency, Girls and Boys Home had difficulties fulfilling their contract with the department in services, finances, and organization. These issues led to a sudden early termination of the contract. There was no 90-day time period to prepare for the orderly transition. And to the department's credit, they stepped in and they now service those three areas. The financial issues left by the contract termination are still impacting those children today. Many subcontractors of Boys and Girls Home have not been paid for services--for example, substance abuse evaluations or treatments. As a result, the reports have not been released and children's cases are frozen and not moving forward while entities contest the finances. Subcontractors have gone out of business, impacting other services in this state, and subcontractors are leery of stepping forward to provide new and additional services because of the uncertainty with a potential of whether there would be a new lead agency or not. Since the termination of the contract in October, Families Matter reform has added case management to the services provided to lead agencies. This would be an additional new service that a lead agency would have to put into place. And since the termination of this contract, additional funds have been provided to the last two lead agencies, but there is no understanding about what financial support might be there, or necessary to sustain. Colleagues, we have set into place in LR37 a mechanism to evaluate and to take a look at what's happened. Until we can clearly know that evaluation, it is certainly the intent of this amendment and the Health and Human Services Committee's commitment to ensure that these three service areas have the best possibility to find success in the child welfare system. And we feel that is putting some stability into this whole process for them by the moratorium. Thank you, Madam President. [LB95 LR37]

SENATOR SULLIVAN: Thank you, Senator Campbell. Mr. Clerk, there are amendments to the committee amendment. [LB95]

ASSISTANT CLERK: Madam President, there are. The first one is offered by Senator Janssen: AM753. (Legislative Journal page 879.) [LB95]

SENATOR SULLIVAN: Senator Janssen, you're recognized to open on your amendment to the committee amendment. [LB95]

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SENATOR JANSSEN: Thank you, Madam President, members. AM753 would amend committee amendment 704. AM753 would permit child-caring agencies to be organized as corporations or limited liability companies. Presently, child-caring agencies' only option for organization is as corporations. I've been made aware that some child-caring agencies would like the option to be organized as limited liability companies. The original statute defining child-caring agencies was established before Nebraska created and defined limited liability companies. LLCs are now a common form of organization. If a child-caring agency would like to be an LLC, I think it is appropriate to permit them to do so. I'd like to thank Senators Howard and Campbell for their help in allowing me to do this and add this amendment. Thank you. [LB95]

SENATOR SULLIVAN: Thank you, Senator Janssen. Those senators wishing to speak are Senators Coash, McGill, Dubas, Gloor, Hansen, and Howard. Senator Coash, you're recognized. [LB95]

SENATOR COASH: Thank you, Madam President. Good morning, members. I want to take a little bit of time to talk about the accreditation piece that's in the underlying bill of LB95. I appreciate the committee amendment which clarifies the time frames for that, but I want to talk a little bit about the accreditation process. I've had the opportunity to go through this process several times in my private life, and what I want the body to know is that there is a cost to agencies to be accredited. There is a...and it can be a fairly large cost. It takes extra staff. It takes extra resources in order to put together the reports that are necessary to become accredited. And there are only a few accreditation agencies, so the market is fairly small, and because the market is small, they can charge a hefty premium to become accredited. Would Senator Howard yield to some questions? [LB95]

SENATOR SULLIVAN: Senator Howard, would you yield? [LB95]

SENATOR HOWARD: Yes. [LB95]

SENATOR COASH: Thank you, Senator Howard. Senator Howard, were any of the...did you get any feedback from the providers who would be accredited as to their feelings about going through the accreditation process and the cost that might be associated with that? [LB95]

SENATOR HOWARD: Well, I would say to you in answer to that is these agencies, the two lead agencies that we have left, are already in the process of going through accreditation. So that would say to me that they are interested in doing this. They understand there's a cost to this. Todd Reckling also knows full well there's a cost to this, and came in, in support of the bill. [LB95]

SENATOR COASH: Okay. Thank you, Senator Howard. And I do appreciate the

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clarification that our two current lead agencies are going through the process. And it's not a bad thing, colleagues. I don't want to make it sound like having an accreditation attached to your agency is a bad thing--but it's not a free thing. And I want this body to be aware that when we do things here that require agencies to jump through hoops--at the same time we're asking them to do more with less money--we need to take a look at that. Many providers are going to be asked to do exactly what they're doing today for 4 percent less money in the future. They continue to ask for our help in providing the services. They ask for our...they ask the state taxpayers for the financial resources. And if you talk to providers, one of the things that they will tell is, we understand that there's a limited amount of money that we can use to provide services. So when you ask them the question, what can we do as a Legislature to help you provide more efficient services? They will come back and say, please don't put more regulations on us that take us away from our mission of providing services to vulnerable adults and to children. We continue in this body to put more constraints on the ability of agencies to provide the services; and the more that we do that, the more that we pull resources away from the actual service. This isn't about accreditation, folks. I wanted to use this opportunity to talk about the things that we do here that cost providers money. Accreditation costs money. Will we get an outcome out of that? I'm sure that we will. But don't kid yourselves... [LB95]

SENATOR SULLIVAN: One minute. [LB95]

SENATOR COASH: ...that when we ask further lead agencies to become accredited, that that won't cost them money. And that's money that won't be going to hire staff to provide services to more children. It matters what we do here. And so I just wanted to stand up and speak to that. Consider that. Thank you, Madam President. [LB95]

SENATOR SULLIVAN: Thank you, Senator Coash. The Chair recognizes Senator McGill. [LB95]

SENATOR MCGILL: Thank you, Madam President, members of the body. I'll be really brief. I'm just speaking on AM704 and how important I think it is to place that moratorium on a third CD, I guess if you will, provider. And everyone in here has heard me talk about the issues with foster care reform, again, so I'll be brief and just say that, you know, there's still problems paying people back from that time period when they did have a provider out there, as that provider had to remove themselves from their contract. We need time to be looking at what exactly went wrong. That's why we have a committee that will be soon formed to investigate the situation. We don't have a flow of money. We don't know all the decisions that were made and why some of them weren't avoided. The more I've talked to people, the more I've learned that many of the pitfalls that led to the problems we've had were identified by some individuals and some agencies. But the department didn't really follow through with those concerns or tried to prevent those concerns from happening. And so we need the time to really investigate

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and look at child welfare reform, see how we can make it go more smoothly, so that when it is time to find an organization out there to run services, that we do it right. So I urge everyone's support of AM704 and that moratorium. Thank you, Madam President. [LB95]

SENATOR SULLIVAN: Thank you, Senator McGill. Senators in the queue are Dubas, Gloor, and Hansen and others. Senator Dubas, you're recognized. [LB95]

SENATOR DUBAS: Thank you very much, Madam Chair. Good morning, colleagues. I rise in support of AM704 and the underlying bill. You know, a lot of my district is...has...was impacted by Boys and Girls. And I began, early on, when the first rumblings began about having problems with Boys and Girls, and trying to find answers and get people to communicate with each other. And there were just a vast array of problems. And I felt ultimately we were going to end up where we are at today with Boys and Girls not in the picture anymore and the department probably providing these services. And over and over and over again, as I visited with contractors and families and people who were being impacted by not receiving payment and lack of services, over and over I kept telling them, you know, we're working on it; you know, the department is working on it; you know, we're going to get this problem resolved; you know, just be patient. I just kept telling them that. And they got tired of hearing it and I got tired of telling them that, because nothing was being resolved. And ultimately we ended up with Boys and Girls out of the picture and the department taking over. And at least there's a relative amount of calmness--I don't know; that might not be the most appropriate word to use. But at least now people kind of know what to expect. They know who to go to. There's still bills that haven't been paid, and this is seriously impacting some of our smaller providers out there who are having a hard time keeping their doors open. That should be a real serious concern to all of us that we have outstanding debt with people that work for us and provide services for us. So in talking with some of the providers, I know that they're working on...working with the department, trying to figure out, as Senator McGill said, what happened, where did we fall down. Trying to find a real accounting of the money that's been spent to date. I think that's so important. We really need to have a firm understanding of the dollars that have been spent and where they're going and where they still need to go. I just think it's just critical that we kind of put the brakes on this. We step back. We look at what happened, how do we prevent that from happening in the future. I don't think there's a lot of disagreement that, you know, moving towards privatizing some of these services could be a good thing. But it has to be done in a very responsible, thought-out manner. And, you know, we just kind of jumped into the deep end of the pool on this issue. And not only are we, as a state, suffering; but children and families are suffering too, and that's what we need to keep the focus on. I've had some conversations with judges out in the more rural areas of the state. You know, they're expressing the same concerns--you know, providers that haven't been paid. It's just imperative that we get these people paid so that they can keep their doors open and continue to provide their services. You

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know, I just...again, I think it's so important that we step back and we wait until we've had the legislative resolution. We have a better understanding of what it is that we want this reform to look like before we open up the doors to bringing anyone new into the picture. It's just...it just doesn't make much sense for us to move forward with trying to bring someone into the picture when we're still trying to clean up a mess. I liken it to, you know, if you've experienced a tornado or a severe storm and you've lost your home and you have a lot of wreckage to clean up. It wouldn't make sense to come in and start building a foundation and building a home on top of that wreckage. You need to come in, clean up, assess the damage, make sure that when you're rebuilding you're not going to, you know, make any of the same mistakes you made in the past, and then start with a clean area... [LB95]

SENATOR SULLIVAN: One minute. [LB95]

SENATOR DUBAS: ...to build that foundation and move forward. And I think that's what this amendment is trying to do. It's taking that step back. It's being responsible. It's understanding what happened in the past, where did all our dollars go in the past, and ultimately, I hope that I'm going to finally be able to say to these people: We're going to get you paid. I think it's an embarrassment on the part of the state that we owe this type of money to people who are providing a very valuable service to our children and we're not being able to get that bill paid. I think this amendment is definitely a step in the right direction to making that happen. [LB95]

SENATOR SULLIVAN: Thank you, Senator Dubas. The Chair recognizes Senator Gloor. [LB95]

SENATOR GLOOR: Good morning, Madam President. Good morning, members. I'm a member of the Health and Human Services Committee and I want the body to know that I gave some very thoughtful deliberation to LB95 before I was supportive of it, as well as AM704. And Senator Coash points out some of the issues that I wrestled with to get comfortable with LB95. I also would tell the body I still carry some of the scars of dealing with accreditation reviews and issues around accreditation, because the vast, vast majority of hospitals in this state are accredited by a national organization, a national entity. It's not easy and it's not fun when you are responsible for that organization, to be held up to the degree of scrutiny that goes hand in hand with accreditation, because you're being measured against specific criteria that are intended to quantify the scope, the quality of services you provide and your performance. And you are measured against your peers, other entities that provide that service, those services across the country who are also accredited by these organizations. Not fun to go through. But it is, from a transparency standpoint, an appropriate thing, especially when you have lay boards of directors who would like to know, who deserve to know how you measure up against others. And that's what we are, to a large extent. We're a board of lay individuals who don't understand the intricacies of running health and human services

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programs. We would like some way to measure the performance of these lead agencies. Accreditation provides that opportunity for us, provides that reassurance for us, provides that accountability for us. And in the final analysis, even though there can be some additional cost which, if you're doing an appropriate job as an organization of measuring yourself, looking at your own performance, is a cost that ought to be in your organization anyway to a certain extent. It does include some additional time--and time is money. But again I think it's an appropriate use of time. I don't think this is any more burdensome on the lead agencies than it was burdensome on the organization that I ran, and probably even less so, given the type of organizations we're talking about requiring be accredited. The fact that some are already looking at this, tells you that it, from the industry standpoint, seems to be a standard that most people aspire to. Again I don't see it's burdensome. As relates to AM704, as Senator Dubas pointed out, the issue here is giving us a bit of a moratorium, buying some months for the dust to settle. Unless you exist outstate, where we've had a bit of a challenge--to be polite about it--when it comes to lead agencies, I don't think I can relay to you the degree of unsettledness that exists out there. I believe the department is trying to do the right thing. I think in all likelihood the department is not about to rush into appointing a new lead agency out there. But there is a distrust of the department, not necessarily within the committee, but certainly within the people that they would be interacting with who provide a wide scope of services out there, and foster families, and the judiciary for that matter. Making it clear that we're not going to rush into appointing a new lead agency, giving us a number of months for that to occur, I think will provide... [LB95]

SENATOR SULLIVAN: One minute. [LB95]

SENATOR GLOOR: ...I think very strongly--thank you, Madam President--I think will be important to us and important to the department having that statement come from the legislative branch of government. And therefore, I'm also in support of AM704. I think it's an important bill. I think it needs to go hand in hand with LB95 and would ask for your support of both LB95 and AM704. AM753, I'm still trying to sort through--would appear not to be one of major impact or import or one that's a concern to me but that I can't speak clearly to yet. Thank you. [LB95]

SENATOR SULLIVAN: Thank you, Senator Gloor. Senators wishing to speak are Hansen, Howard, Campbell, and Lautenbaugh. The Chair recognizes Senator Hansen. [LB95]

SENATOR HANSEN: Thank you, Madam President and members of the Legislature. I too rise for...in support of the Health and Human Services amendment especially, and Senator Janssen's amendment too, that these lead agencies or any of the agencies become businesses. They are businesses. But they need to...maybe need to be formed in that form, either an LLC or a corporation. So I just want to spend just a couple of minutes about...talking about, mainly about Boys and Girls Home. Boys and Girls

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Home, three years ago, became the default winner as the lead agency in the Western Service Area, the Northern Service Area, the Central Service Area. A big area, big part of Nebraska. I think just the physical size of the area was more than what Boys and Girls Home was ready for. Their fleet of automobiles that they had to buy, right off the bat, certainly had to hamper their cash flow situation. I don't know; I'm not that close to Boys and Girls Home, but it had to have some effect on it. Boys and Girls Home ran a home in North Platte, very successfully. Had two facilities there I think at one time. And after they became unable to continue their services as a lead agency, they pulled, as a lead agency. And they also pulled out of North Platte, and of Kearney, their juvenile services, and that really hurt. And another list...added to the list was the Wilcox House and the Fern House in North Platte that was run by the Salvation Army. They had to close as providers of the Boys Ranch in Alliance went out of business too. It's not that we have a loss of agencies or providers in the western, northern, and central area. It's that we have a lack of agencies. There is nobody to fill those spots. Once we lose a provider out there, it takes a lot of time and a lot of looking and a lot of coaxing somebody to come back in there and be that...even be a provider, let alone the lead agency. I think what we're talking about, a moratorium, we're talking about a time-out. Let's think this through. I really appreciate what Senator Gloor said about the making sure that the licensure and the credentials are there to be a lead agency. And that's going to take some time to go through that. I think that this moratorium time is just about right. I would...(laugh) I think it's going to take at least that much time to find someone that is capable with the business plan in order to do this. It's a serious situation that we're in right now. The lack of providers in the Western Service Area that Senator Harms and I are from, Senator Schilz, Senator Christensen, we deal with this weekly. We're looking for providers. We're trying to get someone interested in providing those services. It's not easy. It's not...they're not out there waiting in line for the interviews. It's a real problem. I think that the time-out, the moratorium, is a great idea. I think it's necessary and we have to do it right now. And I appreciate the Health and Human Services Committee working on this so diligently. Thank you, Madam President. [LB95]

SENATOR SULLIVAN: Thank you, Senator Hansen. The Chair recognizes Senator Howard. [LB95]

SENATOR HOWARD: Thank you, Madam President and members of the body. I'm not going to make this too long because I'd like to move this along toward a vote prior to all of us going to eat. I originally put my light on to support Senator Janssen and his amendment. I appreciate him putting that on. It adds clarity and removes some questions that some people have called in with, some of the providers that had some of the small mom-and-pops, which this does not affect at all. But in listening to the testimony, it really strikes me that this is an issue that concerns all of us across the state. It's not localized to one area. We often speak about our districts, and then we're reminded that we represent the state of Nebraska as Nebraska state senators. And this issue certainly, certainly covers the entire state. As to the issue of whether we should

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pay--there's a cost to accreditation--let me tell you, right now, we've pumped \$131 million into this. This includes when Boys and Girls was operating. That's a lot of money, and I can't tell you how strongly I feel that for that amount of money we have the right and we have the responsibility to expect the best possible standard of service that we can obtain, that can be provided for the families and the children in Nebraska--and I also say for the taxpayers whose money is being used to fund child welfare. I also want to thank Todd Reckling for supplying the information that I needed in terms of the cost for this. I don't often get the chance to say thank you for prompt service. But when my staff called to get an answer to my question of how much money have we put into this, he was at the ready with the answer, and I really appreciate that. I urge you to support this. It's very important and it certainly helps steer us in the right direction with child welfare services. Thank you. [LB95]

SENATOR SULLIVAN: Thank you, Senator Howard. (Visitors introduced.) The Chair recognizes Senator Lautenbaugh. [LB95]

SENATOR LAUTENBAUGH: Thank you, Madam President and members of the body. And I rise, of course, in support of Senator Janssen's amendment as a technical correction, but I also rise in support of Senator Coash's amendment as well. And I'm troubled by this, and this dovetails with the conversation that we had earlier in the session and the conversation that it looks like we'll have again at some level. Senator Campbell, I wonder if you would yield to a question? [LB95]

SENATOR SULLIVAN: Senator Campbell, would you yield? [LB95]

SENATOR CAMPBELL: Yes, certainly. [LB95]

SENATOR LAUTENBAUGH: Thank you, Senator Campbell. On the issue of the moratorium, was there a separate bill or a public hearing on that? [LB95]

SENATOR CAMPBELL: You know, Senator Lautenbaugh, there was not. And I've been asked this question earlier by another senator. And I have to say that was there a separate hearing? No, there was not. Did the Health and Human Services Committee spend the summer on an interim study on the child welfare system, and hear over and over and over again the problems that were existing, knowing that the department was trying very hard but hearing those problems? And then we went into the fall and held additional joint hearings between the LB603 Committee and the Health and Human Services Committee. And once again, we heard of the problems that existed, And particularly we started hearing after the departure of Boys and Girls in the Central, Northern, and Western Service Areas, and then we started receiving e-mails and phone calls from those same three service areas. Did it have a specific hearing? No. Has the issue been discussed continuously over the summer and the fall? Colleagues, yes, it has. And I think the committee felt strongly that in order to provide that stability we

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needed this amendment. [LB95]

SENATOR LAUTENBAUGH: Thank you, Senator Campbell. And I respect that opinion. I don't know if this rises to the level of a separation of powers issue or not. I don't think it does. But I'm troubled by the fact that we are stepping in there and declaring this moratorium. And this again comes up with some other themes that we have touched on--themes that we've touched on previously--which is there's a point at which we shouldn't be involved in the management of everything at a certain level. Last week I think I stood up here and talked about how we weren't going to do anything about wrestling at UNO, in my opinion. And constitutionally we could not because there's a Board of Regents that handles that. Now we are tacking onto a bill something that imposes a moratorium onto what is, demonstrably, a decision left to HHS otherwise, and the amendment reads more like a resolution, in my mind, like we are saying this is the sense of what we want you to do. And maybe a resolution is the right thing to do, which I know has no force and effect, but sometimes that's okay, because I again feel like this is something that is properly left to the director of HHS and whoever else would be involved in that decision. And the moratorium troubles me. I feel like we're insinuating ourselves into management decisions at a level that we shouldn't be. And this may come up again later this afternoon, too, on a different bill entirely. But there's a point at which they have to be free to run their department. I honestly don't believe there's any big push to enter into some new agreement in the areas that this moratorium would cover this year, would be my understanding, and probably well into next year. So I don't know... [LB95]

SENATOR SULLIVAN: One minute. [LB95]

SENATOR LAUTENBAUGH: Thank you, Madam Chair...Madam President. I don't know what effect the moratorium has for a practical matter, but as a policy matter it troubles me deeply that we are intruding on the province of the management of HHS and saying we think you must do this in this way until we have further deliberations and decide what more we think you should do. And yeah, it is the job of the committee, and the committee works hard to provide guidance in a very difficult area, and we do make policy and set laws that the HHS department functions within. But this just strikes me as an occasion where we might be trying to do too much and usurp too much of the management prerogative from the entity, and I can't support the underlying committee amendment. [LB95]

SENATOR SULLIVAN: Thank you, Senator. The Chair recognizes Senator Schumacher. [LB95]

SENATOR SCHUMACHER: Thank you, Madam President. Would Senator Janssen yield to a couple questions? [LB95]

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SENATOR SULLIVAN: Senator Janssen? [LB95]

SENATOR SCHUMACHER: And it looks like I'm out of luck on that one. I do have...and I was curious whether or not Senator Janssen knew whether or not these corporations or to-be limited liability companies were nonprofit or they are for profit, and if we're requiring them to have any minimum level of capitalization. If they're unable to fulfill their duties under a contract that they win from the state, it seems to me that one of the areas we should be looking at is whether or not the people gaining these contracts are coming in with undercapitalized companies, whether or not we should require them to maintain certain levels of capital so that we're not dealing with someone that can abscond on their obligations or otherwise pay themselves out in big salaries, and then not produce and leave us holding the bag. So that's an issue that I want to introduce into the debate if we are dealing with or whether we should be requiring a certain level of money in these companies we do business with and how exactly they're selected in this process. It shouldn't be a situation where you can walk away from the deal that easily. Thank you, Madam President. [LB95]

SENATOR SULLIVAN: Thank you, Senator Schumacher. Mr. Clerk, items for the record. [LB95]

CLERK: Madam President. Yes, thank you. A series of name adds: Senator Smith to LB152, and Senators Ashford and McGill to LB397. (Legislative Journal page 929.) [LB152 LB397]

A priority motion. Senator Flood would move to recess the body until 1:30 p.m.

SENATOR SULLIVAN: The motion before you is, shall we adjourn...recess, excuse me...until Thursday, March 24, at 9:00 a.m.? All in favor, say aye. Oh, I'm sorry. Excuse me. (Laugh) Back up. Excuse me. The motion is, shall we recess until 1:30 today? All in favor say aye. That was not nearly so enthusiastic. Opposed? We are recessed.

RECESS

SPEAKER FLOOD PRESIDING

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

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Do you have any items for the record?

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CLERK: I have no items, Mr. President.

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, we now proceed to the 1:30 p.m. item on the agenda titled Select File. As you will note, any bill with an asterisk we'll be taking up first, unless there is an amendment filed other than the E&R amendments. Records indicate that LB218 and LB543 do have amendments. Therefore, Senator Larson, Mr. Clerk, we proceed to LB34. [LB34]

CLERK: Senator Larson, I have E&R amendments to LB34. (ER41, Legislative Journal page 709.) [LB34]

SPEAKER FLOOD: Senator Larson for a motion. [LB34]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB34 be adopted. [LB34]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The amendments are adopted. [LB34]

CLERK: I have nothing further on LB34, Senator. [LB34]

SPEAKER FLOOD: Senator Larson for a motion. [LB34]

SENATOR LARSON: Mr. President, I move that LB34 be advanced to E&R for engrossing. [LB34]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB34 advances to E&R for engrossing. Records indicate that LB260 and LB105 both have amendments other than the E&R amendment. Therefore, Mr. Clerk, we proceed now to LB207. [LB34 LB207]

CLERK: LB207, Senator, I have Enrollment and Review amendments pending. (ER49, Legislative Journal page 845.) [LB207]

SPEAKER FLOOD: Senator Larson for a motion. [LB207]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB207 be adopted. [LB207]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The amendments are adopted. [LB207]

CLERK: I have nothing further to LB207, Senator. [LB207]

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SPEAKER FLOOD: Senator Larson for a motion. [LB207]

SENATOR LARSON: Mr. President, I move that LB207 be advanced to E&R for engrossing. [LB207]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB207 advances to E&R for engrossing. Mr. Clerk, LB563. [LB207 LB563]

CLERK: LB563, Senator, I do have Enrollment and Review amendments. (ER48, Legislative Journal page 845.) [LB563]

SPEAKER FLOOD: Senator Larson for a motion. [LB563]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB563 be adopted. [LB563]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB563]

CLERK: I have nothing further on LB563, Senator. [LB563]

SPEAKER FLOOD: Senator Larson for a motion. [LB563]

SENATOR LARSON: Mr. President, I move that LB563 be advanced to E&R for engrossing. [LB563]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB563 advances to E&R for engrossing. Mr. Clerk, LB621. [LB563 LB621]

CLERK: LB621, Senator, I have no amendments to the bill. [LB621]

SPEAKER FLOOD: Senator Larson for a motion. [LB621]

SENATOR LARSON: Mr. President, I move that LB621 be advanced to E&R for engrossing. [LB621]

SPEAKER FLOOD: Members, you have heard the motion. All those in favor say aye. Those opposed say nay. LB621 advances to E&R for engrossing. Records indicate that LB41 has an amendment other than an E&R amendment. Therefore, we now proceed to LB342, Mr. Clerk. [LB621 LB342]

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CLERK: LB342, Senator, I do have Enrollment and Review amendments. (ER50, Legislative Journal page 852.) [LB342]

SPEAKER FLOOD: Senator Larson for a motion. [LB342]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB342 be adopted. [LB342]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB342's E&R amendments are adopted. Mr. Clerk. [LB342]

CLERK: I have nothing further on LB342, Senator. [LB342]

SPEAKER FLOOD: Senator Larson for a motion. [LB342]

SENATOR LARSON: Mr. President, I move that LB342 be advanced to E&R for engrossing. [LB342]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The amendments to...or LB342 is advanced to E&R for engrossing. Mr. Clerk, LB366. [LB342 LB366]

CLERK: LB366, Senator, I do have Enrollment and Review amendments. (ER51, Legislative Journal page 852.) [LB366]

SPEAKER FLOOD: Senator Larson for a motion. [LB366]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB366 be adopted. [LB366]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The amendments to LB366 are adopted. Mr. Clerk. [LB366]

CLERK: I have no further amendments to LB366, Senator. [LB366]

SPEAKER FLOOD: Senator Larson for a motion. [LB366]

SENATOR LARSON: Mr. President, I move that LB366 be advanced to E&R for engrossing. [LB366]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB366 advances to E&R for engrossing. Mr. Clerk, LB255.

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[LB366 LB255]

CLERK: LB255, Senator, I have no amendments. [LB255]

SPEAKER FLOOD: Senator Larson for a motion. [LB255]

SENATOR LARSON: Mr. President, I move that LB255 be advanced to E&R for engrossing. [LB255]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB255 advances to E&R for engrossing. Mr. Clerk, LB259. [LB255 LB259]

CLERK: LB259, Senator, I have no amendments to the bill. [LB259]

SPEAKER FLOOD: Senator Larson for a motion [LB259]

SENATOR LARSON: Mr. President, I move that LB259 be advanced to E&R for engrossing. [LB259]

SPEAKER FLOOD: Members, you're heard the motion. All those in favor say aye. Those opposed say nay. LB259 advances to E&R for engrossing. Our records do indicate that LB45 does have an amendment other than an E&R amendment. For that reason, we now proceed back to the 1:30 p.m. Select File designation on the agenda for today and we begin with bills that have amendments other than E&R amendments, starting with LB218. Mr. Clerk. [LB259 LB218]

CLERK: Mr. President, LB218, no E&R. Senator Campbell would move to amend with AM758. (Legislative Journal page 915.) [LB218]

SPEAKER FLOOD: Senator Campbell, you are recognized to open on AM758. [LB218]

SENATOR CAMPBELL: Thank you, Mr. President, and good afternoon, colleagues. I want to just quickly remind you that Senator Karpisek's bill was brought forward to increase the number of positions that would be available in the Health and Human Services Department that would be at the discretion and appointment of the chief executive officer. And at that point, I certainly came forward with some concerns. And, number two, I pledged to you that we would meet in the interim and see if we could come up with a solution. AM758 is the product of a meeting between Senator Karpisek, myself and Mr. Kerry Winterer. And I want to particularly thank Senator Karpisek and Mr. Winterer for the meeting and clarifying it. What the amendment sets forth is a communication requirement and benchmark that the Department of Health and Human Services will provide a letter to the Health and Human Services Committee on the use

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of these personnel. And that's the major gist of it. Now let me explain what we discovered between General File and Select. In meeting with Mr. Winterer, it was noted that these are very specialized personnel, but not usually thought of in terms of a contract. And I think that was one of the questions that we had on the floor. I want to emphasize that this is not adding personnel. It is, however, as many members talked about, is this allowing them a management tool? And, yes, it is. Some of the positions and almost all of them are at the administrative level in terms of a management structure that you would normally think of. And coming on...looking at the list, you would see an attorney, a chief operating officer, an administrative community-based services, and a systems clinician or a systems financial analyst. Those are either high-level administrative positions or they bring specialized skill or background that helps the department. The history, when I looked at the history of this it was very interesting that when created the Health and Human Services Department had not, and I want to emphasize not consolidated into six divisions plus one operating division. Presently, HHS has over 6,000 employees in the administration and oversight of those six divisions, which is nearly three times the size of Corrections or Roads. So what was originally put into place and the figures that you saw in the bill, if you're looking at the bill, were originally put into place in 1987 when the department did not have six divisions. And even if you looked at the four that might be likely to have been in place at that time, they could have had 13 positions. So over the course of time and the growth of this department in its consolidation of bringing in six major divisions, those divisions have used up, to a great extent, the first 25 positions in administrative spots in each of the six divisions. Having taken a look at all of this, I agreed with Senator Karpisek and Mr. Winterer that perhaps it was appropriate that we add additional positions under their discretion. However, we all agreed that it would be helpful to the Health and Human Services Committee if we had a report or somewhat trigger. So after 15 additional positions, then Mr. Winterer or whoever held that position would come forward and talk to the committee and say, this is how we are using them. And I have every confidence that the department will keep in communication with Health and Human Services. So based on our examination of the history and our examination of the needs and how they're using the positions, I would urge your support of AM758. Thank you, Mr. President. [LB218]

SPEAKER FLOOD: Thank you, Senator Campbell. Before we proceed to discussion on LB218 and AM758, there are cookies being handed out at this time in celebration of the birth of Caroline Elizabeth Pirsch, born on Senator McGill's birthday, March 21, 2011. Mom and baby are doing well. Please help us congratulate the new father, Senator Pirsch. (Visitors introduced.) One scheduling note, we will adjourn today at 4:00 to give members of the Appropriations Committee an opportunity to meet. Again, we will be adjourning today at 4:00 to give members of the Appropriations Committee an opportunity to meet. Proceeding with discussion on LB218 and AM758, Senator Karpisek, you are recognized, followed by Senator Conrad and Avery. Senator Karpisek. [LB218]

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SENATOR KARPISEK: Thank you, Mr. President, members of the body. I would like to thank Mr. Winterer and Senator Campbell for getting together on this and coming up with an amendment that's agreeable to everyone, between us, I shouldn't say everyone probably. I think Senator Conrad might be up after me. It just says that right now they can have 25 people, noncovered positions. This will give them 15 more up to 40, and then they'll have to check with the HHS Committee when they want to go to the next 10. I think it is a way to check into the committee so they know what's going on, what Mr. Winterer or whoever would be in that position wants to do with those positions and where the money is going to come from, all those sort of things. Again, I know on General File there was some debate on whether this is the right thing to do or not. Again, my position is this is what Mr. Winterer would like to do. He realizes, as much as we do, that there are issues and would like to work through them. So in my opinion, if that is what he thinks he needs, let's give that to him. Let's let him try to work through some of these things. I think we have made major strides in some areas. Other areas we probably have not made major strides. I think it's hard to keep all oars in the water with that organization. But I know that they are working very hard and trying. So this is my way to help them try to do a better job, a more efficient job. And I hope that it does work. Thank you, Mr. President. [LB218]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Conrad, you are recognized. [LB218]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I would like to thank Senator Campbell and Senator Karpisek for working together from General File to Select to offer AM758 which, in my opinion, does indeed make a bad bill better. And I will be voting for the amendment. But I still absolutely cannot support the underlying legislation, which I still feel is poor public policy for the reasons I stated on General File and which I'll briefly reiterate here on Select File. The last time that these numbers were adjusted it was done so according to a comprehensive interim study that the Business and Labor Committee and others in this Chamber and outside of the body worked on together to figure out where the appropriate level and number of these unclassified employees should be. This legislation was brought forward with an arbitrary number. The amendment caps it also at an arbitrary number. We still don't have a clear understanding of why exactly those numbers have been offered up as necessary. In addition to the arguments that have been brought forward in regards to the department needing a specific person to do a short-term kind of obligation or work project, I still contend that the most appropriate way to carry out those kinds of issues is through a contract or a temporary consultant rather than allowing for an unadvertised position, a closed hiring process, no job descriptions, no clear parameters, and really no accountability, which is what LB218 would authorize. Not to mention the potential impact on the state for benefits, whether they be retirement, health or otherwise and, of course, the PSL implications and the employees' salaries as well. So I believe that it is

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inappropriate to move forward at this time. It is something that stands at odds to our history on this issue in Nebraska, and that a better way to move forward would be to have a comprehensive study on this, as was done last time, to ensure that we aren't allowing for arbitrary classification or reclassifications as we move forward, to ensure the most efficient and accountable use of taxpayer dollars and to ensure that leadership positions in our largest and one of our most important departments, at the Department of Health and Human Services, are filled with people who are the best qualified. And the only way that we can ensure that is when we have an open hiring process, when we advertise these positions, and when we set clear job descriptions, none of which is available under the amendment or the legislation. Thank you, Mr. President. [LB218]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Avery, you are recognized. [LB218]

SENATOR AVERY: Thank you, Mr. President. I think AM758 is a reasonable amendment. It reflects a meeting of minds on the underlying bill, LB218. It's reasonable because it preserves the interests of the Department of Health and Human Services, it also preserves a legislative role in this issue by allowing the Health and Human Services Committee to remain involved in the process. I had a conversation in the Rotunda with Mr. Winterer earlier this morning or yesterday, I guess it was. And he seemed to think that this was...in no way would it undermine the intent nor the substance of LB218. He recognized that this Legislature has an interest in maintaining at least a limited oversight role in matters involving Health and Human Services. He recognizes that his agency has come under some criticism over the past several months. And he believes that anything that we can do in this body to reassure ourselves that the department is doing everything it can to deal with current problems that we should do that. This amendment helps preserve that role for the Legislature and I intend to support it. I would just like to make one comment about the underlying bill. I'm not sure if I heard Senator Campbell right, but I believe she did indicate the size of the agency when it was given 25 unclassified positions. And I believe that number is quite a bit smaller than the department is now. Remember, it went through a reorganization a few years ago.. [LB218]

SPEAKER FLOOD: (Gavel) [LB218]

SENATOR AVERY: ...where we combined a lot of different departments and agencies into what is now a rather large behemoth. And with more than 5,000 employees, it doesn't seem to me that 1 percent of those employees being in the unclassified category is too much. So I think that we should amend LB218 with this amendment and then proceed to pass it onto Final Reading. Thank you, Mr. President. [LB218]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Howard, you are recognized. [LB218]

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SENATOR HOWARD: Thank you, Mr. Speaker and members of the body. I continue to question the reason why we need to grant this in the first place. We're giving more power and more leeway to the very agency that's walked us right into the problems with the child welfare privatization and have done it entirely outside of this legislative body. I wonder if Senator Karpisek would be willing to yield to a few questions? [LB218]

SPEAKER FLOOD: Senator Karpisek, will you yield to a question from Senator Howard? [LB218]

SENATOR KARPISEK: Yes, I will. [LB218]

SENATOR HOWARD: Thank you, Senator Karpisek. Can you give me kind of a picture of how this came about? Why Mr. Winterer felt the need to, I suppose he came to you or one of his representatives came to you. [LB218]

SENATOR KARPISEK: Correct. I think that his biggest thought is, sorry I'm still eating Senator Pirsch's cookie that was pretty good, thanks, Pete, came to me and the way I see it is if he would recognize a person, let's just say in Texas, who was really doing a bang-up job in one particular area that maybe all of a sudden has festered, let's just say the veterans. I hope nothing goes wrong there. But that festers up and there's a person in Texas that is very good at this and he has his eye on them. Without going through a lot of hoops, he can offer this person the job and offer the amount of pay and benefits that could get that person in to quickly work on the problem. [LB218]

SENATOR HOWARD: Well, I would respond if that person was that good he would certainly fit our qualifications. And what comes to mind is would this be...the pay amount would be what I question. When you talk about he would establish the salary, would that be outside of the parameters that are currently...the department is operating under? Would that be the main consideration here? [LB218]

SENATOR KARPISEK: I don't know that that would be the main consideration. But it sure would be one of the considerations to get the person in, to be able to negotiate with that person rather than going through all of the normal steps or the steps that are usually taken. It would still be posted. The regular way that they hire would still be gone through, but it would just move...could move a lot faster and get the exact person that Mr. Winterer feels he needs. Well, his exact words to me were that sometimes he feels he's trying to put a square peg in a round hole. And he'd like to be able to find the round peg for a certain, just a certain thing that needs to be done. [LB218]

SENATOR HOWARD: Thank you, Senator Karpisek. In the years that I worked for Health and Human Services, I can think back and the directors are certainly appointed by the Governor and the salary that they are paid is established by the Governor. But it

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makes me very uncomfortable to think that there will be, with the amendment, there will be 40 individuals that could be placed within the department and their salaries wouldn't be under any sort of a regulation or governed. Their benefits also would be sort of chosen by the director. I'm uncomfortable with this system. I think that we're giving a lot of leeway here. When the...the department should have policies and rules, like any other agency, that they have to abide by. If this body is comfortable in saying, Mr. Winterer, Director Winterer, we give you all the discretion to make the choices, I could say this would be the way to go. But I, frankly,... [LB218]

SPEAKER FLOOD: One minute. [LB218]

SENATOR HOWARD: ...am uncomfortable with that. I think we need to maintain our responsibility as a legislative body. And the more something like this takes place the more things are operating outside of what we have any jurisdiction over or any input in. Thank you, Mr. President. [LB218]

SPEAKER FLOOD: Thank you, Senator Howard. (Visitors introduced.) Continuing with discussion, Senator Krist, you are recognized, followed by Senators Lautenbaugh and Conrad. Senator Krist. [LB218]

SENATOR KRIST: Thank you, Mr. President. If Senator Campbell would yield to a question, I would appreciate it. [LB218]

SPEAKER FLOOD: Senator Campbell, will you yield to a question from Senator Krist? [LB218]

SENATOR CAMPBELL: Certainly. [LB218]

SENATOR KRIST: How many different sections, divisions of responsibility lies within HHS, Senator? [LB218]

SENATOR CAMPBELL: They have six divisions and an operating division also. [LB218]

SENATOR KRIST: Okay. Thank you very much. That authoritative answer is exactly what I was looking for because I certainly didn't want to give out any bad information. It appears to me, as much as I appreciate and normally would support Senator Howard and everything that she does, in this particular instance I have to respectfully disagree. If I had an organization where I had six different stovepipes, six different divisions, if you will, that were that diverse and handled that many health and safety programs and I were charged to come in, and I'm not saying that all of HHS is in disarray, but we know that there are issues within HHS that there appears to be some disarray, some dysfunction. If I were charged as a CEO to come in and make that right, I might want to put the appropriate proportionate number of people in the right places to make those

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differences. And I'll go back to what Senator Avery alluded to or highlighted for us and that is that that 25 positions were actually in place when HHS was much smaller. So I would say the time that's been spent by Senator Karpisek, the requests coming from HHS, the time that my respected colleague and the Chair of the HHS Committee has spent with Senator Karpisek and my own study is Mr. Winterer is the correct guy at the right time, the right time and the right guy to do something. And this is enabling for him to move forward. I would hope...I was going to wait to speak on LB218 by itself, but AM758 is really the compromise and the fix that I think we were asking for our two colleagues to come forward with today. I am wholeheartedly in support of Mr. Winterer. HHS, DHHS needs some oversight, some leadership, the right people in place. He's taking that step. I support AM758 and the underlying bill, LB218. Thank you, Mr. President. [LB218]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Senator Lautenbaugh, you're recognized. [LB218]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This does dovetail, to some extent, with the bill we left off on this morning. And I think I spoke on this bill, LB218, on General File. I do support it without the amendment. And I do support it with the amendment. I think the parties came together and worked out something that was workable and still accomplished the underlying purpose, which as I understand it, I support, is to give more flexibility to those at HHS to be creative and innovative and all the things we say we want them to do. We just need to be willing to let them go do it. So I will vote for this amendment. I thank Senator Campbell and Senator Karpisek and Mr. Winterer for working this out. And I support the underlying bill. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Conrad, you're recognized. [LB218]

SENATOR CONRAD: Thank you, Mr. President and colleagues. I rise again just to ensure that we have a clear record on this issue and also to point out that some of the additional policy reasons that have been brought forward in terms of the necessity of passing this legislation just really don't carry water, in my opinion. If you look at the fact that, yes, in fact Health and Human Services has been reorganized since this number was originally set, I believe back in 1986, but at that point in time there were roughly 5,000 employees, I understand or it would be fair to say a significant number of employees. And today, looking at the state Legislator's Guide to State Agencies, there's over...there's almost 6,000 employees there now. So in a 20-, 30-year period it's not as if there has been such a significant number of additional employees to necessitate this. And I think it's also clear to note that the 25 additional unclassified employees that are contemplated in this legislation and amended somewhat with the pending amendment is

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only the tip of the iceberg. As I read from the statute which authorizes such on General File, there are also the various leadership positions in the different divisions that are already exempted. And Health and Human Services in fact was very helpful in providing that current number, and that's 80.9 employees that are already unclassified. So 25 employees is really in fact just a very, very small piece of the puzzle in terms of what's already allowed. And there's a great deal of flexibility in the statute as it exists today. And I think the reasons brought forward for the legislation and the amendment just really don't match up to the historical facts. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Conrad. Those senators still wishing to speak include Karpisek, Council, Christensen, and Howard. Senator Karpisek, you're recognized. [LB218]

SENATOR KARPISEK: Thank you, Mr. President and members of the Legislature. Senator Howard is concerned about oversight and I am too. I want to be clear that there's still oversight by the Legislature, the Auditor, everyone that normally would be in oversight of any of the HHS positions would still be in oversight of these positions. There is still the budgetary authority. So if Mr. Winterer would go out and hire someone for \$250,000 I'm sure that everyone in the state is going to know about it and there's going to be a huge backlash on it and we'll (laugh) all be involved. So again, I think this just gives him a little bit more to work with to be able to get the person that he feels is the right fit for the right kind of job. Again, this does not add any additional positions. This just frees up some of the positions that are there to be nonclassified and gives him a way to get some people in that he thinks will help. I don't want to say that the people he has now aren't good, but there are...we've got problems, we've got issues. He knows that. This reminds me a little bit of some of the other things that I bring here, well, we're willing to help but, no, we won't...no, not that, we don't like it that way, we don't like it this way or that way, but we'd sure like to help those people. I guess, to me, this is a solution or part of the solution. Senator Conrad is right, it's 25 more people, 15 to begin with, that is a very small number. I don't feel that it is any less oversight of these people or I would not probably have brought the bill in the first place and wouldn't have brought it back on Select File if I didn't think that was the case or if I didn't think that the director was the person for the job. I think he's got his hands on the steering wheel and he's trying to take it in the right direction. He just needs a few more tools that he can work with. These are some that he thinks he needs. I will take him at his word, I see no reason not to. And I think that if this is what he thinks can help him then we can do it. It's not going to cost anymore money. If things go bad, folks, we will know it. If one of these people that he puts in isn't the right person, I'm sure that he will get rid of them right away because it will come right back on him. I hope that this is a part of the answer; I think it is, he thinks it is. Senator Campbell is okay with this amendment. I see nothing wrong with the amendment. It does give a little bit more knowledge to the HHS Committee knowing where we're at on this. I still think we can oversee them. And if not, then I would not be in favor of the bill. Thank you, Mr. President. [LB218]

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SENATOR CARLSON: Thank you, Senator Karpisek. Senator Council, you're recognized. [LB218]

SENATOR COUNCIL: Thank you, Mr. President. First, I want to thank Senator Campbell and Senator Karpisek for trying to address some of the concerns that were raised when LB218 was first presented on General File. But at this point I'm at the position where I have to agree with those who have indicated opposition to AM758 because it really doesn't do what one of the concerns that was raised, and that was for the body to have some idea of what kind of organizational direction the Department of Health and Human Services was intending to go in and which would, in my opinion, be the only basis to justify the addition of these 25 exempt positions. As I read AM758 it just says, well, when I fill 40 uncovered positions I'll let you know. Doesn't indicate that you have to provide any breakdown or explanation as to what kind of duties or what kind of reorganizations, if any, have been accomplished as result of the addition of these exempt positions. And, I guess, one of the points that I meant to make when we addressed this bill on General File which kind of sat with me and bothered me are the implications that it is impossible for the director of the Department of Health and Human Services to secure a quality executive-level employee through the State Personnel System, but that's impossible. That the only way you can find a high-quality person is to fill that position by classifying it as exempt, that there's no way that you could find the right person to provide the right skill set for some senior leadership position in the Department of Health and Human Services. Yeah, I think that's a slap in the face of any of our managerial staff who did come through that process. And I understand and appreciate flexibility, but I also respect and appreciate even more accountability. And when you look at the current statute, and I think my colleague Senator Conrad alluded to it, if you look at the current statute every one of the division heads is already exempt. And certain lower-level managerial positions are already exempt. I haven't totaled it up but I will accept my colleague's representation that 80 position in the Department of Health and Human Services are currently exempt. So how many more position are needed to carry out the work of this agency without the necessity of going through the established State Personnel System? So for those reasons I will not support AM758, would urge my colleagues not to support it and whether LB218 is amended or not, will not support it. And if I have any time remaining, I yield it to Senator Conrad. [LB218]

SENATOR CARLSON: Thank you, Senator Council. Senator Conrad, you're yielded 1 minute 15 seconds. [LB218]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Council, Senator Howard and others who have had an opportunity to add their concerns about this legislation into the record. And it definitely, I think, is intriguing to me that we've spent a great deal of time yesterday afternoon and... [LB218]

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SENATOR CARLSON: One minute. [LB218]

SENATOR CONRAD: ...again this morning talking about transparency and accountability and those values and how important they are. But apparently those don't seem to apply when it comes to ensuring the efficient and effective administration of the Department of Health and Human Services which has a very, very important role in our state in terms of navigating a plethora of programs which vulnerable Nebraskans rely upon. And the best way to ensure we have the best leadership carrying out those important functions as our partners in state government is through transparency, is through an open hiring process, is through an accountable process, is through a clear job description and clear benchmarks for success rather than additional, quote, unquote, flexibility outside of the legislative purview and... [LB218]

SENATOR CARLSON: Time. [LB218]

SENATOR CONRAD: ...outside of the state employment system. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Christensen, you're recognized. [LB218]

SENATOR CHRISTENSEN: Thank you, Mr. President. I guess, colleagues, as I sit here I'm just amazed. We're setting here with a department that has all kinds of problems. I don't know of a senator that has told me they don't get calls, complaints, it's the number one complaint I get, this department. And we sit here and we just want to give them more control, do what you want, hide it from us. Let's go forward. I don't even know what to say. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Howard, you're recognized. [LB218]

SENATOR HOWARD: Thank you, Mr. President and members of the body. That's a hard one to follow. I want to thank Senator Krist for his words of support. I made a note, Senator Krist, so that when I need you I'm going to refer back to (laugh) all the good things you said about me. I couldn't agree more with Senator Conrad when she talks about transparency and disclosure and all the things we labored about and spent so much time on last session. And we were all adamant that we wanted transparency and disclosure. We talked about how important that is to everyone. Well, here we're going to just say, let us know how many of those people you want to hire and let us know maybe how much those people are going to cost and we'll understand that you wanted to hire the best. You know, I think the two people that work for me in my office are the best. And they...I don't have discretion over what I pay them. I feel very fortunate to have both of them on my staff, but I can't do a search and say, gosh, you're worth \$100,000. They are worth that, but I certainly don't have that discretion and neither do any of the rest of

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you. I have a great deal of problems with giving more discretion and more leeway and more latitude and then coming in after the fact and saying, now we have a problem. Maybe we can form a committee at that point and maybe we can look at it and some of us will be on the committee. And then we'll come back and do a report and then we'll discuss how to get it under control. I just feel that's the wrong way to go about this. We have an opportunity here to say, the department is our partner, we'll consult with each other, we will make a plan together. This bill says you go ahead, do what you want, and hopefully you're going to let us know. I can't support that. In all the years I worked for Health and Human Services, I never saw a director that came in and asked for this kind of leeway and this kind of latitude. And this makes me very, very uncomfortable. So I urge you to look at this carefully and look at the implications of this not only in cost because, trust me, this will cost us more than what we're paying now, but also in terms of the direction that we're going to be going with this issue, child welfare and with every issue that comes up in front of us. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Howard. Those still wishing to speak include Gloor, Pahls, Brasch, and Dubas. Senator Gloor, you're recognized. [LB218]

SENATOR GLOOR: Good afternoon, Mr. President, members. I'm in support of AM758. I'm very strongly in support of AM758. Senator Christensen was very, very, very hammer on the nailhead when he said, one of the largest numbers of calls and complaints he gets relates to the division of Health and Human Services, that's because it's one of the largest corporations in the state of Nebraska, if you look at it that way. With the number of employees that it has, with the number of programs that it operates, six divisions, folks, this is one the largest organizations in the entire state of Nebraska. And it's not a surprise that the number of phone calls that we get as senators relate to the Department of Health and Human Services. Thank goodness that people feel comfortable calling their senators about this. But I would like to relate to you one of the realities of large organizations, and that is when there is a change of leadership it is not just common but expected that there is a turnover of the top management team so that the new executive officer can surround his or herself with people that they trust, who they think can get the job done. We're talking about a little over 2,000 employees here, including positions like the chief information officer. And heaven knows, information systems within the Department of Health and Human Services need a serious amount of work and perhaps even a significant amount of capital. But nonetheless, what I would tell you is the fact that the department and the director of the department, still relatively new, would like to surround themselves with people they know and trust, that can get the job done and make the changes necessary so that some of these problems and phone calls that we see get dealt with, is entirely appropriate and needs to be the way it is. We change our own staff sometimes when we come in. We recognize the fact that we want to be surrounded by people we can trust. Heads of government, government agencies change their top leadership teams. We're not talking about throwing everybody out. We're not talking about bringing everybody new in. We're talking about a

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couple of dozen people plus. And I don't think that's out of line. In fact, I think it should be an expectation and level of support that we give an individual who has an incredible amount of responsibility within state government. And what they are asking is, let me pick some people to get the job done. And I want to give them that...those resources, those individuals to get the job done. I do not think it will limit our transparency. I think we've got a safeguard in here so that it won't balloon, I even have a hard time using the term balloon, beyond control. This is the right thing to do within a large, large organization. And you don't have to look far at all within the business world and within the governmental world to see that this is also very commonplace. Please support AM758. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Pahls, you're recognized. [LB218]

SENATOR PAHLS: Good afternoon, Mr. President, members of the body. I, too, have a war story that I could say about this particular department. And I'll tell you what it is. A number of years ago, we were on the right track to help autism. For some reason, there was something happened and that has gone to the wayside. That disappointed me. And it did actually make me angry for a little bit. But every once in awhile you have to shelve some of these things because, like I say, I was miffed. But this is, in my...I'm just going to draw on some of my personal experiences. I had a reputation of being brought into buildings and turning them around. Some of the same arguments that I've heard from people who are against this particular bill is what I heard. As a leader, and I'm talking about in a building, much, much smaller than this organization, you need to have some latitude to be able to make decisions or change doesn't happen. And sometimes I really, because I was in several buildings because that was part of my reputation, and you could see those buildings that they gave me as a leader more latitude, I could make things happen with the help of everybody at a faster pace. So that's one thing we need to take a look at. And if you do, if you read literature, to turn anything around, in most cases, it takes between three to five years. So I think this is a...and I see that the leadership is trying to change this organization around. Are they going to stumble? Of course. And part of our responsibility is to help them get back up. Now if they keep stumbling, then after awhile you say, whoa, whoa, whoa, time for a change. But we have to give that leadership some tools to be able to make those changes because if you don't that person or persons are hitting their head against the wall. I know that from past experiences. When I was given more of an opportunity to make some changes with help it was much easier. So I'm willing to give this agency more time, because I think most of us can agree that we have seen some positive changes. Think about turning the ship around in the ocean, it takes a bit, you can't do it in a harbor, you have to be out. And that's why I think we need to give the leadership a little bit more flexibility. And I truly do not think that...this is a relatively small number if you look at the total population who are employed by that agency. So I think let's give them a chance. And then some of you, in a few years, if you're still getting all those calls, then you say, hey, we gave

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you a chance, you couldn't make it happen, maybe it's time for different leadership.
Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Pahls. Senator Brasch, you're recognized.
[LB218]

SENATOR BRASCH: Thank you, Mr. President. Thank you, body. The last couple speakers, well, I'm making my notes, have said pretty (laugh) much what I was going to say. But Senator Howard had asked me the same question initially. And I feel a sense of responsibility because I was on the committee at the time that they came before us. And I'm new to the Legislature here and coming just from the business world, it is very commonplace to allow your CEO, the president, the owner to have that capacity to be able to act quickly and responsively. When you use the word here transparency was brought up, I think more this is making the role more a bureaucracy, it's not transparency, it's bureaucracy. I've also worked in state government for 15 years and I know that it can move very slowly. And in private enterprise there's two kinds of businesses: ones that are publicly owned, and that's almost as slow as bureaucracy, and then there are the ones that are privately owned. And my privately owned, the companies that I worked with, they're very fast, very responsive, very competitive. I would like to see this as an opportunity for them to succeed. And making changes where, you know, we know government, you know, the financial burden is getting greater and greater, the need is getting greater. Not only are we fighting a declining economy, it's also how...it's hurting us. We're fighting a war on poverty. And we have many in need. So what I'm hoping, and I believe out of 6,000 employees the 40 positions is .006667-something, that this small opportunity will give them a chance to succeed. And it was mentioned that if it doesn't work every one will know. And hopefully if it does work every one will know. So very respectfully I would like to see them have an opportunity to reorganize, to become more competitive and more responsive should this be the path. Thank you. Thank you, President. [LB218]

SENATOR CARLSON: Thank you, Senator Brasch. Senator Dubas, you're recognized.
[LB218]

SENATOR DUBAS: Thank you very much, President, colleagues. I've been sitting, listening very carefully to the debate because I do understand that this is an important issue. But yet I still struggle. You know, since coming into the Legislature we have been talking about Health and Human Services, we have reorganized Health and Human Services more times than probably any of us can count. You know, every time a new administration or a new group of senators come in, and this isn't an indictment on anybody, I think this is just the way our system works, we want to reinvent government, we want to reinvent Health and Human Services, we want to make it more friendly, more accessible. But yet it's been one of the issues that I, as an individual senator, and I think as I've listened to some of my colleagues talk, feel the same way, just can't wrap

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our hands around how this particular division works and in part because it is such a large division in our government. And for us to really get into the department and fully understand how it operates and what they need is virtually next to impossible. You know, we set the budget for these agencies, but yet it is so difficult for us to really get in there and see how they work and what is working and what isn't working and do you really need the ability to hire these or to have these extra personnel in exempt status? And will it work, and do you need more time? And I think we've been trying to turn this ship of HHS around for a long, long, long time. And at this point in time, I feel like we're just going in a circle. And I don't know if we'll ever get out of that circle. I want to give the department the tools they need to help them be successful. But at this point in time I just don't have a lot of confidence in if it will happen. So as I said, I struggle. I'm listening carefully. I'm leaning towards not supporting this amendment. I would have a question for Senator Karpisek, if he would yield, please. [LB218]

SENATOR CARLSON: Senator Karpisek, would you yield? [LB218]

SENATOR KARPISEK: Yes, I will. [LB218]

SENATOR DUBAS: Senator Karpisek, out of the current 25 exempt positions, have they used those 25 exemptions to date? [LB218]

SENATOR KARPISEK: There are two that are open, Senator. [LB218]

SENATOR DUBAS: Okay. And when they...if they would fill those two, do they get another 25? How does that number change and fluctuate? [LB218]

SENATOR KARPISEK: Without this bill it does not. [LB218]

SENATOR DUBAS: Okay. So once they...if they would hire two more then they would have no more exempted positions? [LB218]

SENATOR KARPISEK: Correct, no more under the classification that they have now, this classification. [LB218]

SENATOR DUBAS: Okay. All right, thank you. That does clarify things for me. You know, another concern I have is as we look at eliminating positions at the lower level, those frontline workers, those...you know, I've been talking to some people about the ACCESSNebraska program. And our seniors are really struggling with that. And we've eliminated a lot of those people that our seniors have that direct contact with. And now we're going to the phones and asking them to use computers and it's becoming...it's very frightening and an intimidating situation for them. And as I've said, we've eliminated a lot of those frontline workers, those people who had that direct contact with our citizens. And so here we're seeking to give the department additional exempted

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employees, paying probably substantial dollars to be competitive, but yet we're eliminating positions with those frontline workers. So I'm having a hard time making that connection. And would we...maybe some of our calls would be alleviated if we put more money into those frontline workers rather than at the top... [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR DUBAS: ...with, thank you, Mr. President. You know, with every answer that I get...question that I get an answer to I seem to come up with several more. So as I said, at this point in time I'm still a little bit torn but am leaning towards not supporting this. I think there are far more questions as to how the department will really use these positions than answers. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Dubas and Senator Karpisek. Senator Christensen, you're recognized. [LB218]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, Senator Conrad, I went over and visited with her about the number, you heard 80. Where does that come from when statutes says 25? And you know, we went to the statutes and grabbed it. This come from the department, 80.9 people right now they can do, and you're going to add 25 more to that. What does this include? Well, the director of Behavioral Health of the Division of Behavioral Health; the director of Children and Family Services, Division of Children and Family Services; director of Developmental Disabilities, Division of Developmental Disabilities; the director of Medicaid, Long-Term Care Division of Medicaid in Long-Term Care; the director of Public Health, Division of Public Health; director of Veterans Affairs; the Chief Medical Officer, established under Section 81-3115; administration of the Office of Juvenile Services, the regional centers, Beatrice, Norfolk, Hastings Regional, Grand Island, all these, all the personnel employed as pharmacists, physicians, psychiatrists, I mean, the list goes on, folks. How many do you need to be able to change? You know, think about it. How many...the changes you need to be able to make are your key people under you, all these department heads he's got. And then he's got 25 more now. I got the paperwork here shows 80.9 FTEs is what he's got flexibility on now. And if you can't make a change with 80 out of 5,000 it ain't going to do any good to have 105. Think about what you're doing. Do you believe we're on the right path? I get more complaints every year I'm here. I don't think we're on the right path at all. Will Senator Campbell yield for a question, please? [LB218]

SENATOR CARLSON: I'm sorry. [LB218]

SENATOR CHRISTENSEN: Senator Campbell yield for a question? [LB218]

SENATOR CARLSON: Oh, Senator Campbell, would you yield? [LB218]

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SENATOR CAMPBELL: Yes. [LB218]

SENATOR CHRISTENSEN: Senator Campbell, how many years has Kerry Winterer been here? [LB218]

SENATOR CAMPBELL: You know, Senator Christensen, I'm not quite sure. [LB218]

SENATOR CHRISTENSEN: Okay. [LB218]

SENATOR CAMPBELL: Someone is whispering behind me a little over one year. [LB218]

SENATOR CHRISTENSEN: Year and a half. [LB218]

SENATOR CAMPBELL: Year and a half. Okay. [LB218]

SENATOR CHRISTENSEN: I just heard...thank you. You know, I'm not saying he can make all the changes in a year and a half that needs to be done, that in this size department would be asking a lot. I think you could be making some positive changes in a year and a half. I'd like to be seeing them, I'm not sure I am. At least if you go by the response of phone calls, e-mails, over the weekend we dealt with, my family and I, this is not what my staff deals with, my family and I dealt with 200 e-mails on foster care, 200 complaints. I think everybody is getting ahold of me... [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR CHRISTENSEN: ...because they know I brought a number of bills, I've been abused myself by the department and it's out of control. But 200 e-mails, folks, and I can prove it if you need it. It's on the home computer but I can get it. You know this thing is a train headed for a crash. I'm not sure we're heading in the right direction. I'm extremely disappointed and I'd be glad to forward 200 e-mails to you if they would let me. Many of them don't want to be exposed, that's the biggest problem I got. Some of them I can because of what all... [LB218]

SENATOR CARLSON: Time. [LB218]

SENATOR CHRISTENSEN: ...is occurring. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Christensen and Senator Campbell. Those still wishing to speak include Harms, Nelson, Lautenbaugh, Karpisek, and Price. Senator Harms, you're recognized. [LB218]

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SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM758, Senator Campbell's amendment and Senator Karpisek's bill, LB218. You know, I've been very openly critical of Health and Human Services over the years. I think Mr. Winterer is the first leader that I've seen that has the opportunity to correct this. And I learned a long time ago, you're going to be only as good as the people you surround yourself with and that is what this gentleman is trying to do. He's trying to get people that have the right skills that can go in and penetrate the issues that he has. This is the only way he's going to be able to fix this. I've had the opportunity to visit with him on a couple of occasions. And I've suggested that, you know, in order to straighten this around you have to change the culture of the organization. And the only way you're going to change the culture of the organization is you're going to have to replace some people internally. And I think you're going to find the same thing that we found when we went into Beatrice, that they just don't have the midmanagement. I think Mr. Winterer has the skills and the expertise, but I don't think it goes beyond that very far down. And I think when you find the cultural changes that have to occur in a corporation or organization it will be that midmanagement group and they don't seem to be carrying out the responsibilities appropriately. But in order to change it in a massive organization like you have here with Health and Human Services, you got to have some special people with some special talent that can go in and deal with those issues and people that you can trust, people that you know are going to give you the right information and the right ideas. What I found many times in my previous world, when I had vice presidents, a lot of time the information was filtered by the time it got to me. And I don't think that's what he needs. He doesn't need filtered information. He needs straight information so he can make the right decisions here. And so I think, you know, when he came aboard Health and Human Services already had gone astray when we entered into changing our behavioral health and we contracted out with people. It was so far down the line when he got here, it was hard for him to regroup and to change it. So what I'm saying to you, colleagues, this is unfair criticism. And I have to tell you, as I said before, I've been critical of it. But I realize that Mr. Winterer needs the chance and the opportunity to correct it. And if he feels this is the way he needs to do it, as any CEO, give him the authority, give him the power to do it because when we get to the end he then has to answer for this. He then has to face us two years or three years from now and say, you know what, it failed. But I don't think he's going to say that because I think we can get a handle on this. It's not easy but I'm telling you he's willing to change the culture, which I think he is. He needs the right people to do this. Give him the tools and the opportunity to do it. Thank you, Mr. President, colleagues. [LB218]

SENATOR CARLSON: Thank you, Senator Harms. Senator Nelson, you're recognized. [LB218]

SENATOR NELSON: Thank you, Mr. President, members of the body. Senator Harms has said probably better than I could a lot of what I was going to say right here. But I will just add to that just a little bit about the fact that in large corporations sometimes it's

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essential that you go to the outside to bring in someone with a fresh approach and someone with special talents and someone who will recognize where changes need to be made. I think with an organization this large, over 5,000, six divisions, that yes, you have a lot of talent within. But sometimes the persons that have been there for a long time aren't able to see beyond what's been happening for the past six, seven or eight years, they're reluctant to change and reduce personnel or reluctant to perhaps make some changes that are going to result in some people having to go. So I think we might even point to SBDC in Beatrice, just as Senator Harms did, that there, I think, we saw where a new CEO was appointed, someone from the outside, someone with a fresh approach. Look at what happened in Beatrice now with the one division being certified and it looks like we're back on the road to full certification, Jodi Fenner who supervises came from within and so that's fine. But again, we get to the need for flexibility and the right to choose people that you think will do the best job and go out and find those people and encourage them to come in and work with you. I think that Director Winterer is the right person for the right time. I would like to echo what Senator Karpisek said. We held hearings in Appropriations and I was impressed with the things that he had to say, the answers that he provided along with the division heads. So I rise to...I stand in support of AM758 and also LB218. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Nelson. Senator Lautenbaugh, you're recognized. [LB218]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This is the last time I'll rise on this bill, I can assure you of that. I do appreciate the comments of Senator Nelson and Senator Harms. And again, harkening back to some discussion we had this morning, we have to realize our limits as a body. A few minutes ago we just said, well, if he has flexibility for 100 employees give or take and he can't make major changes in this entity of 5,000 employees, it just isn't working. Well, we don't know that and we aren't qualified to say that. That is frankly an absurdity. And the absurdities are starting to mount up a little bit here. It's my sincere hope that nobody at HHS again watches the Legislature during their workday because morale, which probably isn't stellar, is always going to be worse because we're constantly telling them they're failing, they're doomed. You have flexibility regarding 80 positions and you can't make everything perfect. And you know, yeah, we do get a lot of complaints about HHS and we get very few regarding the Civil Aeronautics Patrol. I wonder why that could be? Could it be because this is one of the largest entities in the state and it's people who are in crisis and it's never going to work out right for many of them, it just isn't, that's just the reality. And so, yeah, we get a lot of complaints about HHS and they're not perfect and they're never going to be. But here we are again trying to do something to give this agency some flexibility to supposedly make changes that we say we want or at least address concerns that we say we have and we're sitting here quibbling. The scandal is that we're not giving three times the flexibility that this bill gives because we just aren't willing to trust anyone. And we tie their hands and we micromanage. And then we'll

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come back a year from now and say, well, gee, you didn't do very much. Well, guess what? We need to install more mirrors in this Chamber so when a year or two down the road we're looking around to find who to blame, if there isn't progress, we'll have 49 mirrors that we can look into and find the person to blame. Please let this amendment go, please pass this bill and let them get about the business of making the changes we hope they will make. And let's not make every occasion for an HHS bill an occasion to stand up and have the traditional fest of us airing of grievances. We've all got grievances, we don't have to roll them out every time the three letters HHS come up. I guess that's two letters, careful observers will note. But still, this bill needs to move, it's the right thing to do, please support it. [LB218]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Price, you're recognized. [LB218]

SENATOR PRICE: Thank you, Mr. President, members of the body. I suppose you find it awkward that I actually agree with Senator Lautenbaugh on this, but I do. I agree with the bill. It came to our committee. Obviously, the amendment had a lot of time and effort put into it. And I'm glad that Senator Lautenbaugh got up to say what I would like to talk about here is this is getting to be like an HHS pinata. People are just taking off on this thing. And Senator Lautenbaugh was absolutely correct, HHS deals with the most painful, difficult things we have to deal with. You know, in the Veterans arena they have to deal with things there, too, they have to deal with things all the way around. And people are teeing off on them. And I, for one, have grown weary of battles that are had because we're privatizing them. We're not privatizing them. We want it back in this house, we don't want it in that house. Everybody seems to have an answer, but they don't really have an answer. What they have is a gripe. Most of the answers seem to be: give me the authority, let me have the opportunity to run this ship and I'll be the one to change this. And as many speakers before me have said, it's a very large organization, there are a lot of moving parts, and it isn't just going to be something that you get done overnight. But all that to me gets off the subject. The subject is they came to the body, they said, we'd like to have a few more positions that we could hire to do the various functions that we need to get done. And now we have this gnashing of teeth and wailing as people are teeing off on the HHS pinata. And I just, I think it's kind of a little bit, well, I'd almost say self-serving in a way, but we really can't say that because none of us work in HHS. But again, thoughtful consideration has gone into this. And as Senator Lautenbaugh has said and others, the organization is doing what it can in the most difficult arena we have in our society. And what we need to do is empower them and keep a watchful eye mind you, but we need to be empowering them. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Price. Those still wishing to speak include Senators Hadley, McGill, and Council. Senator Hadley, you're recognized. [LB218]

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SENATOR HADLEY: Mr. President, members of the body, I stand in support of the amendment and the underlying bill. I agree with Senators Price, Lautenbaugh, Harms, and Nelson. I think it's ironic that we sit and say that there isn't change in HHS, we want them to change how they're doing things. We want them to make it a better organization. So the director comes in with a plan to try and do that and we say, oh no, no, no, we can't do that, we can't do that. One of the things when I came down here I was told by a number of people that when you have term limits it makes the bureaucracy more powerful because they're the ones that have been around here for a long time. They are the ones that have been around for 20, 25, 30 years. I've heard the same thing from the federal government. When you get to be a cabinet secretary you find out you can't do much because the bureaucracy is there. Yet here we have the largest organization in state government who wants to add a few, when you figure they have over 5,000 employees, at will people who will work directly for him to try and make changes and we sit there and want to say no. I agree entirely with Senator Lautenbaugh, if a year from now, if we defeat this and a year from now there are still problems, we can look at ourselves and say we had a chance to help and we decided we didn't want to do that. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Hadley. Senator McGill, you're recognized. [LB218]

SENATOR MCGILL: Mr. President, members of the body, I wasn't actually intending to speak on this because I am content with this legislation moving forward and giving Kerry Winterer some flexibility here. But I'm getting really frustrated with people claiming that we're just using legislation like this as a pinata or going after HHS. The concerns that some senators are sharing are very legitimate. I spent all summer and fall listening to the families coming to us were a part...who were suffering from the problems of the transition. And I don't have a problem with privatization, I just think it was poorly planned and there was bad communication. And I don't think that's all Kerry Winterer's fault. He was taking over a job that was held by someone else and there was no one in that CEO position and so I'm sure that didn't help. But there are problems. I have agencies that are saying, we pointed out these problems in advance and yet nothing was done to try to stop those problems from happening. We have a duty to look back and see how, as we move forward with privatization, can we make it work better. And the only way we can do that is to go back and look at where the mistakes were made. People are suffering, agencies across the state are shutting down because there isn't money and the funding issues with this. It's no one person's fault. I support this bill to allow Kerry Winterer to bring on a few people of his choice, but this isn't just some issue that we're out here hitting a pinata at. There are serious problems. And children and families are suffering and we have a right to stand up and point that out, whether we agree or disagree on this bill. I want to see a good solution that we're all working with, with HHS. But that also means we need to be able to get good information, which we're still not getting good financial information. I've got up on the floor and talked about that before. I

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look forward to working with the special committee over the interim to look at what's happened in the past and try to move forward together. But please, just because we get up and talk about this a lot this session doesn't mean that we're just taking some cheap shots. I know the situation is complicated. But it's something that we need to be aware of and work on as a serious issue because it is a serious issue. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator McGill. Senator Council, you're recognized. [LB218]

SENATOR COUNCIL: Yes, thank you, Mr. President. I really hadn't intended to get back up on this subject. I mean, my mind is made up on how I'm going to vote on it. But I just find it curious that my colleague, Senator Lautenbaugh, would talk about morale and what must the employees at the Department of Health and Human Services be thinking if by chance they were watching today's debate. And I found that curious because if I were them my morale would be in the toilet because we've just told them, if you come through the State Personnel System we don't consider you to be the best of the best. We've just told them the only way that we can provide this executive director with a quality team is to allow him to employ his team by going outside the State Personnel System. I think if anybody has struck a blow to morale...to the morale of the Department of Health and Human Services staff it's those who believe that the only way you can get quality, high-quality, competent people is to go outside the State Personnel System. And then someone made the statement, and I think it was my colleague Senator Price who talked about we've been told what the plan is. Well, Senator Price, can you tell me what the plan is? Would you yield to a question? He's not in the Chamber? I don't know what the plan is. I mean, that was one of the concerns that was expressed that led to the negotiations to come up with some kind of compromise. You know, give us some indication of what it is you're thinking about doing to address all of these problems. Don't come back to me and just say, well, I'll tell you when I fill 40 positions. Tell me what? The way the amendment reads you're just going to tell me you filled 40 positions. There's nothing in the amendment that says, and I'm going to tell you how these 40 positions are going to aid us, this department, in addressing all the concerns that have been raised. Senator Price also talked about, yes, you know, they're addressing our concerns and questions. Are they? They may to the Committee on Health and Human Services, but as a member of the broader body I haven't received any information as to how they're addressing the myriad number of concerns and complaints I get. And if the fact that we get on the floor and make a statement of fact, and that statement of fact is the overwhelming majority of complaints that, I speak from my office, we receive are about Department of Health and Human Services, if that's beating up on the department, so be it. Those complaints are real, the concerns of the people making those complaints are real and we have an obligation and the oversight capacity to see that their concerns are addressed. And for the director in this context, when he knows the level of concern that this body has about what his plans and

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intentions are, to say that the compromise on his request for additional unfettered right to hire whomever he wants is to say, well, when I fill them I'll tell you, that doesn't give me any confidence. It may give some of you confidence, but what that tells me is when he fills 40 position he'll tell me, I've filled 40 positions. And whatever they choose to do they'll do. And in response to my friend and colleague Senator Hadley, you know, I don't see anything written in here that says the people he hires will report directly to him. In fact, I suspect that the people, these additional 25, would be reporting to the people who were already exempt by statute. Last I checked,... [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR COUNCIL: ...we weren't creating any new division heads. This is going to, I would presume, middle management positions. And like I said, if you want to slap the face of current middle managers in the Department of Health and Human Services, you talking about a pinata, you've really done a pretty good job of it by saying that if you came through the State Personnel System we don't consider you to be as valuable as someone who is employed and hired outside of that system. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Council. Senator Howard, you're recognized. [LB218]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I have to really...I have to share some information with you. Every day without fail my office gets a call from the staff of another senator with a problem regarding a family and Health and Human Services in their district. And while we've been happy to help and to share any information and make the proper referrals and try to work with the family and then get back to you and let you know how that went and to work as a team, I have to tell you that those of you that have recently spoken in support of how the department is working, I don't feel I can really provide that service if you feel that the department is doing a bang-up job. And you know how you are. So I think in the future that we will be referring those situations back to you so that you can work closely with the department to get those resolved. Now like I say, we've been more than happy to help in the past. And with my experience and working in this arena for years I like to feel that we can provide some answers, some solutions, not always but sometimes. But I think this is going to be a good opportunity for all of you that have made these referrals to be more closely involved with Health and Human Services. So we'll just be telling people that you feel that the department is doing the job they should be doing and we will be sending those back to you. So thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Howard. There are no other senators wishing to speak. Senator Campbell, you're recognized to close on your amendment. [LB218]

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SENATOR CAMPBELL: Thank you, Mr. President. And I appreciate the discussion this afternoon and I have to say that I think we all agree on certain things. I think we are sending a very clear message to the department that there are problems there in the trust, in what the culture is, what is the communication, what is the focus, what is the strategic planning. And I expect that the department, Mr. Winterer and a number of people there, will take very seriously the comments that have been made on the floor. And we all also made comments about there are tools that need to be in place. We've heard that over and over. What I see here is in the list of the 23 current positions, and over the course you have to remember these 23 positions have come over the course of time, since 1987, as the division has grown from two or three, and now to six, plus an operating unit, plus the director. And what I was struck, in reading those, is that it truly is a management question. And to some extent Senator Council is probably right: These are probably middle management to upper if you looked at it from a corporate structure. But what I was struck with is looked at developmental disabilities, an area that, boy, a year or so ago this discussion on the floor would have centered on that area. There are four of the 23 in DD: the deputy administrator for quality improvement, the administrator for community-based services, the consumer affairs advocate, the deputy CEO of indirect services who is located and works at BSDC. In addition to that, another one of the 23 is the human resources manager at BSDC. As you look down this list, it is primarily those management team positions that a corporate CEO and structure would bring into place to effectuate the programs and the quality. What we want, all of us in this room, is for HHS to hear us and to improve the quality. And to some extent, the positions that are listed here currently probably are trying to do that--and we saw that in BSDC, with a lot of help from a legislative committee I might add. I support the amendment and bring it forward because I do think that in the end we will discuss policy and maybe set forth some directions, but we have to count on the department as a partner to carry that out. And it would seem to me that if in the extra positions we could insert some expertise and the kind of punch that we needed at BSDC in the child welfare area, in the end children and families will win. But we have to recognize that this is a management team question, not necessarily a question of what the department has done wrong, and I think we have to look at this bill in that relationship. With that, Mr. President, I'll close on AM758 and ask for your yes vote. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Campbell. Members, you've heard the closing. The question is, shall AM758 be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB218]

CLERK: 34 ayes, 6 nays, Mr. President, on the adoption of the amendment. [LB218]

SENATOR CARLSON: The amendment is adopted. [LB218]

CLERK: I have nothing further, Mr. President. [LB218]

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SENATOR CARLSON: Senator Larson for a motion. [LB218]

SENATOR LARSON: Thank you, Mr. President. I move that LB218 be advanced to E&R for engrossing. [LB218]

SENATOR CARLSON: Members, you've heard the motion. All in favor say...Senator Conrad, for what purpose do you rise? [LB218]

SENATOR CONRAD: Thank you, Mr. President. I'd like a record vote, please. [LB218]

SENATOR CARLSON: A record vote has been requested. You've heard the motion. All those in favor say aye...vote aye; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB218]

CLERK: (Record vote read, Legislative Journal page 930.) 35 ayes, 7 nays, Mr. President, on the advancement of LB218. [LB218]

SENATOR CARLSON: Thank you, Mr. Clerk. The bill does advance. Next item, Mr. Clerk. [LB218]

CLERK: Mr. President. Senator Larson, I have Enrollment and Review amendments, first of all. (ER42, Legislative Journal page 709.) [LB543]

SENATOR CARLSON: Senator Larson for a motion. [LB543]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB543 be adopted. [LB543]

SENATOR CARLSON: You've heard the motion. All those in favor say aye. Opposed, nay. Motion carried. [LB543]

CLERK: Mr. President. Senator Nordquist, I have AM884 with a note you want to withdraw that particular amendment. [LB543]

SENATOR NORDQUIST: That is correct. [LB543]

CLERK: Senator Nordquist would move to amend with AM935, Mr. President. (Legislative Journal page 931.) [LB543]

SENATOR CARLSON: Senator Nordquist, you're recognized to open on your amendment. [LB543]

SENATOR NORDQUIST: Thank you, Mr. President and members. If you remember, on

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General File I pledged to work with Senator Carlson on an amendment to address his concerns. Looking at the SNAP program we were moving to eliminate all asset limits, and we worked together on an amendment which is before you, AM935, which would exclude all assets except basically liquid assets to the amount of \$25,000. That would include cash on hand, funds in checking and savings accounts, money market accounts, share accounts. The cumulative balance of that could not exceed \$25,000. So that's what the amendment does. According to the Fiscal Office it will have no fiscal impact, as the original amendment also did not have a fiscal impact. Thank you. [LB543]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Nordquist. You have heard the opening on AM935 offered to LB543. The floor is now open for discussion. Those wishing to speak, we have Senator Campbell, Carlson, and Cook. Senator Campbell, you're recognized. [LB543]

SENATOR CAMPBELL: Thank you, Mr. President. I'll be extremely short, colleagues. I just want to thank Senator Nordquist and Senator Carlson for coming forth with the amendment. Senator Carlson was good enough to come find us at the very beginning and say "what if," and a lot of people took a look at that "what if." And I appreciate the cooperation between those two senators to bring this amendment. Thank you, Mr. President. [LB543]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Carlson, you're recognized. [LB543]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I too appreciate Senator Nordquist being cooperative on this. If you recall, in Senator Cook's original bill there was a complete asset test, and Senator Nordquist's motion was to remove everything in the way of an asset test. The good part about that was it shortened the form and made it easier for people to apply. I think the negative part of that was that there was no asset test whatsoever. And so I appreciate this cooperation because now we have, I believe, moved a reasonable amount of cash in cash accounts that can be protected by people who, over a pretty good period of time, accumulate some dollars and don't put those dollars at risk. And so I do appreciate the motion brought forward. I support it and would ask for your support on AM935. Thank you, Mr. President. [LB543]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Cook, you're recognized. [LB543]

SENATOR COOK: Thank you, Mr. President. Good afternoon, colleagues. I also rise in support of AM935 to LB543. When I sponsored the bill, I imagined that it would support

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families as they seek additional help in this tough economic time. I think with the addition of Senator Nordquist's amendment and the input that we got from our fellow committee members and other members of the Chamber, it is something that gives us something that is palatable and to which we're amenable and we can move forward, and something that I really believe will help offer an opportunity for help for Nebraska families. So please vote green on AM935 and on the underlying bill LB543. Thank you, Mr. President. [LB543]

SENATOR LANGEMEIER: Thank you, Senator Cook. Seeing no other lights on, Senator Nordquist, you're recognized to close. Senator Nordquist waives closing. The question before the body is, shall AM935 be adopted to LB543? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB543]

CLERK: 36 ayes, 0 nays on the adoption of Senator Nordquist's amendment, Mr. President. [LB543]

SENATOR LANGEMEIER: AM935 is adopted. [LB543]

CLERK: I have nothing further on the bill. [LB543]

SENATOR LANGEMEIER: Senator Larson for a motion. [LB543]

SENATOR LARSON: Mr. President, I move that LB543 be advanced to E&R for engrossing. [LB543]

SENATOR LANGEMEIER: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. LB543 does advance. Mr. Clerk. [LB543]

CLERK: Mr. President, LB260. Senator Larson, I have Enrollment and Review amendments, first of all. (ER47, Legislative Journal page 845.) [LB260]

SENATOR LANGEMEIER: Senator Larson for a motion. [LB260]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB260 be adopted. [LB260]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. They are adopted. [LB260]

CLERK: Senator... [LB260]

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SENATOR LANGEMEIER: Mr. Clerk. [LB260]

CLERK: Excuse me, Mr. President. Senator Lathrop would move to amend, AM861. (Legislative Journal page 918.) [LB260]

SENATOR LANGEMEIER: Senator Lathrop, you are recognized to open on AM861. [LB260]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. During General File debate on LB260, concerns were raised by Senator Carlson and others about how the bill was structured. As a result, I promised to work with him to address those concerns. AM861 is the result of those efforts and has been reviewed by each of the parties who have expressed concern, and to my knowledge they all support the amendment. While I could go through the changes word by word, the best way to describe the amendment is that it makes a good bill even better. It clarifies the licensed healthcare professionals definition, makes the return-to-play mechanism more specific, and requires the Chief Medical Officer to approve the training curriculum instead of the Board of Medicine and Surgery. Let me suggest, I appreciated Senator Carlson's concerns early on. They were very good observations that we needed to make sure that those people who are going to okay having an athlete, a student athlete, go back into the game have some background in pediatric neurology or at least be capable of identifying whether someone is still suffering the effects of a concussion, and that's a clarification that we put in the bill. There were some concerns that were brought to us by the Catholic Conference. As those of you who have worked with Mr. Cunningham know, he's a very thoughtful guy. We've tried to accommodate those concerns as well, and that is what you will find in AM861. I would encourage your support of AM861 and, ultimately, LB260. Thank you. [LB260]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. You have heard the opening on AM861 offered to LB260. The floor is now open for discussion. Those wishing to speak, Senator Carlson, you're recognized. [LB260]

SENATOR CARLSON: Mr. President and members of the Legislature, again I appreciate the cooperation, Senator Lathrop, in bringing this amendment forth and I know that you don't particularly like to hear these things when we talk about our background, but I have a son who is a doctor in sports medicine and he was following this bill closely. And I did have ten years of coaching experience in college and I think that the bill is good. And as Senator Lathrop has said, this amendment makes a good bill even better. So I would ask for your support of AM861. Thank you. [LB260]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Seeing no other lights on, Senator Lathrop, you are recognized to close. Senator Lathrop waives closing. The question before the body is, shall AM861 be adopted to LB260? All those in favor vote

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yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB260]

CLERK: 40 ayes, 0 nays, Mr. President, to adopt Senator Lathrop's amendment. [LB260]

SENATOR LANGEMEIER: AM861 is adopted. Mr. Clerk. [LB260]

CLERK: Nothing further on the bill, Mr. President. [LB260]

SENATOR LANGEMEIER: Senator Larson for a motion. [LB260]

SENATOR LARSON: Mr. President, I move that LB260 be advanced to E&R for engrossing. [LB260]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB260 does advance. Mr. Clerk, items for the record. [LB260]

CLERK: Thank you, Mr. President. Revenue Committee reports LB252 to General File and LB426 to General File with amendments. Natural Resources provides a confirmation report. Senator Lautenbaugh, an amendment to LB112 to be printed; Senator Coash to LB95. That's all that I have, Mr. President. (Legislative Journal pages 931-932.) [LB252 LB426 LB112 LB95]

Mr. President, with respect to LB105 on Select File, I have no E&Rs. I do have other amendments however. The first amendment I have, Senator Schilz, AM763. (Legislative Journal page 932.) [LB105]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Schilz, you are recognized to open on AM763. [LB105]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. The amendment that we've got there I think it basically it's...it is basically a cleanup amendment. On page 2, it would strike...page 2, line 15, beginning with "under" through "1985" and insert in its place "yet...." Wait a minute. This is the wrong one. Excuse me; hold on one second. I'm not sure what amendment I have here, sir. I handed it in, yeah. [LB105]

SENATOR LANGEMEIER: Senator Schilz, we have currently AM763. [LB105]

CLERK: Reads on page 2, line 18, after "boating" insert "safety." [LB105]

SENATOR SCHILZ: Oh, it's the safety one. Yeah. It adds boating safety in there. Thank

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you very much. It makes it much cleaner. I appreciate all the help, guys. Thanks. That's all it does. (Laughter) [LB105]

SENATOR LANGEMEIER: Thank you, Senator Schilz. I think you've heard the opening on AM763 (laughter) offered to LB105. The floor is now open for discussion. Seeing no lights on, Senator Schilz, would you like to close? Senator Schilz waives closing. The question before the body is, shall AM763 be adopted to LB105? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB105]

CLERK: 33 ayes, 0 nays, Mr. President on the adoption of Senator Schilz's amendment. [LB105]

SENATOR LANGEMEIER: AM763 is adopted. Mr. Clerk, next... [LB105]

CLERK: Next amendment, Mr. President. Senator Larson, I have FA10. (Legislative Journal page 932.) [LB105]

SENATOR LANGEMEIER: Senator Larson, you are recognized on FA10. [LB105]

SENATOR LARSON: Thank you, Mr. President. This is FA10. And very simply, on page 2, line 15, beginning with "under," I wish to strike... [LB105]

SENATOR LANGEMEIER: (Gavel) [LB105]

SENATOR LARSON: Thank you. With "under" through "1985," and insert "yet to reach the age of majority as defined in 43-2101." You know, I understand what Senator Schilz is trying to do with LB105 and create more safety and education for boaters throughout the state of Nebraska, and I have nothing against boater education. I just have a problem with this state, how do I want to say, putting it at the age of 25. We are dealing with adults at the age of 25 and in the state of Nebraska you are an adult at the age of 19. Now we don't require 21-year-old mothers to go take an education class to be a mother. But we want to require people to take a boater education course? We as a state cannot continue to be a nanny state over and over and over again. We are adults. We should be treated as such. You know, as I said, I understand the safety issue and what Senator Schilz is trying to get at, but not only are we adults, there's levels of personal responsibility. And I think, you know, that's a core fundamental principle of mine. We have to take responsibility for our own actions. [LB105]

SENATOR LANGEMEIER: (Gavel) [LB105]

SENATOR LARSON: And I think, you know, we...LB105 just oversteps that, a certain extent. Now I'm happy to work with Senator Schilz but I really think that 25 is wrong and

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we need to put an age of majority, because at that point, which we are open to, we are adults. And I'd be happy to discuss and listen to Senator Schilz and others' ideas on this amendment. Thank you. [LB105]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Senator Larson. You've heard the opening on FA10. Senator Schilz, you're recognized. [LB105]

SENATOR SCHILZ: Thank you, Mr. President. And, first of all, I'd like to take a moment to apologize for before. I want to make sure that I have it correct this time, so I have it written down now. I just want to bring up LB105 was brought to me as an interim study. We looked at it. Currently, the law has in place that anybody under the age of 18 who wants to operate a motorized watercraft or a personal watercraft has to take the education course. As we went through the interim study and we looked to see what effects the education program has had, it was drastic and stark, the realities of the folks that have taken that class and the accidents that they've had compared to the folks who had not taken the class and the accidents that they were continuing to have. So with those statistics, I went forward, and the reason that the date is where it's at is because that coincides with when the law started to the age of the people that had taken it already. And what this would look to do, with it remaining as it is, is to encompass those folks that...just to keep continuity in that system and moving forward. If you look at it, there's a lot of different things, and I've heard some questions bandied around about maybe some constitutionality about the, quote, unquote, "born on" date. But in my studies and in my research, what I found is there are about 12-15 states that have "born on" dates or some that are thereof. Missouri has a January 1, 1984 date. Nevada has a January 1, 1983 date. Maryland has a July 1972 date. New Mexico has a January 1, 1989 date; Wisconsin, a January 1, 1989 date. And none of these or the "born on" date basically that we have in Nebraska right now have been challenged. So I think with some...you know, with some rationale as to why that is, I think that we're in good shape there. I know that Senator Larson is working for this. I understand where he's coming from. I had some of those same thoughts myself when I started this. But after I saw how effective this class was and after I saw and after hearing about the budget constraints and everything that Game and Parks has and where they have the law enforcement that's short, I think that this bill makes perfect sense. I guess I will...I guess I will say I would leave it up to everybody to decide which is the best way to go. But I would say that I like the bill the way it was, but I'm willing to look at changes if that's what the body decides. Thank you. [LB105]

SENATOR CARLSON: Thank you, Senator Schilz. Those wishing to speak include Senators Larson, Krist, and Janssen. Senator Larson, you're recognized. [LB105]

SENATOR LARSON: Would Senator Schilz yield to a question? [LB105]

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SENATOR CARLSON: Senator Schilz, would you yield? [LB105]

SENATOR SCHILZ: Yes. [LB105]

SENATOR LARSON: Thank you, Senator Schilz. You bring up the interim study that was just done and how effective this class was and, you know, the loss of accidents. So my question is, is should everybody be required to take the class then? [LB105]

SENATOR SCHILZ: Absolutely. And what we found out is, because of budget constraints and the way it is, the best way to get everybody on board, seeing that we are using all volunteers to administer the test, is through this "born on" date and moving that way. That way it makes sure that there isn't a glut of people coming in and that they have a timely way to manage it, to stay away from a fiscal note, and... [LB105]

SENATOR LARSON: That...I mean, you're still...my question was, should everybody--not just 25 and younger, but everybody--have to take the class? If we're really concerned about safety and safety of those people who are on our Nebraska lakes, shouldn't we ensure that everybody takes the class then? [LB105]

SENATOR SCHILZ: Yes. And, Senator Larson, if we move it down to the age of majority, then what happens is that everybody will not have to take that test. What we find out now is with the age where it's at, the 1985 date, what that does is over time--over time--and that's important... [LB105]

SENATOR LARSON: I mean... [LB105]

SENATOR SCHILZ: ...everybody will have to come on board with that. [LB105]

SENATOR LARSON: But I'm saying, like, shouldn't we just make it to where even you and Senator Lautenbaugh, when he goes out to McConaughy with you this summer for your golf tournament, before he drives that boat shouldn't he have to take the class, if we're really concerned about safety in Nebraska? [LB105]

SENATOR SCHILZ: Senator Larson, I would say that that is a very valid point. The problem that we run into in this day and age is the fiscal cost. And with that fiscal cost comes some things where we have to make decisions and we have to do things, and that is why we picked this part. We looked at a fast phase-in of five years. But the fiscal note in that sense was more than I thought the body could bear, so that's why we went with this phase, with this approach, the "born on" approach, and that's why Game and Parks and everybody fell behind it. So thank you. [LB105]

SENATOR LARSON: What about a boater's license? I mean now I'm really concerned

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about safety. What about...? We had to take a course and whatnot for our driver's license. [LB105]

SENATOR SCHILZ: I know. [LB105]

SENATOR LARSON: But what about a boater's license? [LB105]

SENATOR SCHILZ: Yeah, once again...once again, when you start... [LB105]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Gentlemen, I'm going to stop you for a second. The Legislature is too loud at this time. We need to quiet our conversation so that members who are trying to listen to the debate can understand what these two individual senators are saying. There have been several members that have requested it to be quieter. We will maintain order and we will continue with this discussion. Senator Schilz, Senator Tyson, you may continue. [LB105]

SENATOR SCHILZ: Thank you, Mr. Speaker. [LB105]

SENATOR LARSON: Senator Larson. [LB105]

SENATOR SCHILZ: Can you restate your question? [LB105]

SENATOR LARSON: The boater license, what about a boater's license? I mean if we're really focused on safety, I mean we require us to take a driver's test to drive a car. I know I had to go through driver's ed and...though it wasn't that long ago (laugh) and I feel like I learned a lot. But I mean maybe a boater's ed for anybody that wants to get, take a boat and get a license, so we know that they've gone through the proper safety. And I understand the fiscal note. But I mean if safety is the argument, let's make sure everybody is part of that safety. [LB105]

SENATOR SCHILZ: Well, Senator Larson, I couldn't disagree. And, right now, anyone can go take the boater education course. I wouldn't want us to get into that part where you spoke before about the nanny state. So I don't disagree with you there on this issue. And once again, as you talk about a boater license, and during the interim study we talked about that a little bit, but once again it comes down to cost and then the number of people that are actual boaters. And we decided that a boating safety certificate was the more prudent way to go. [LB105]

SENATOR LARSON: Did the interim study focus on maybe...I mean I know we focus on how young the individuals are, but was there a...the statistics on the older you got the more wrecks that you got in? Do we need to put a cap on the top end as well? [LB105]

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SPEAKER FLOOD: One minute. [LB105]

SENATOR SCHILZ: What we have shown...thank you...or that's usually...what we have shown is that those who have taken the course, on average, have reduced the numbers of accidents by 10-15 percent, and so--and it didn't matter where that age was, it reduced it by 10-15 percent. [LB105]

SENATOR LARSON: Okay. Thank you, Senator Schilz. Like I said, I understand what Senator Schilz is trying to get at in terms of wanting to bring safety onto the waters. And, you know, like I said, I have nothing against boater education. But to pick an age out of thin air and say those below this age have to take this test I think is unfair. And as I said in the beginning, we're adults. Everybody in this room is an adult and has the ability to make decisions... [LB105]

SPEAKER FLOOD: Time, Senators. [LB105]

SENATOR LARSON: ...for themselves. Thank you. [LB105]

SPEAKER FLOOD: Thank you, Senator Larson. Senator Krist, you are recognized. [LB105]

SENATOR KRIST: Senator, if...thank you, Mr. President. I guess what I'll say, I'll be very quick and very brief and that's unusual for me. But there is a point at which you have the disposable income to buy a boat if you're an adult. And I would suggest to Senator Larson that that doesn't happen at 18 or 19 or 20 or maybe 21, maybe not even 22, depending upon how fortunate you are. On a little lake that we live on, we find that our most hazardous drivers are those who have the disposable income and have become boat owners for the first time, and a big boat and a fast boat, because they can afford to buy it. I think the "born after" date allows us to catch up with boater safety, and I don't think it's drawing a line in the sand and saying anybody is less responsible than others. I think it's a matter of education, and those people who are actually driving boats again either have to demonstrate that they can purchase, which would be a disposable income level, or that their parents have and then they have grown up with the education. Two different categories I think of individuals. Thank you, Mr. President. [LB105]

SPEAKER FLOOD: Thank you, Senator Krist. Senator Janssen, you are recognized. [LB105]

SENATOR JANSSEN: Thank you, Mr. President and members. I had promised I'd get up to speak on this issue, because some of you...I guess we talk about what we did in the past. I was in the Navy, and it was ironic that I actually drove a ship, at the helm and

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everything, at age 19. I did have training but it wasn't a ship safety and how to drive the ship, and I could have done it when I was 18 in the Navy. It was a real big boat at the time and there were no safety issues. I just wanted to bring that up. I have nothing against the boater safety bill and plan to support LB105, but I did promise to bring that up. And I'd also let Senator Larson know that I do own a boat and when he's old enough I'd be happy to take him out and teach him how to drive sometime. Thank you, Mr. President. [LB105]

SPEAKER FLOOD: Thank you, Senator Janssen. Senator Schumacher, you are recognized. [LB105]

SENATOR SCHUMACHER: Thank you, Mr. Speaker. I rise in support of Senator Larson's floor amendment. I think we've heard the reason why that's a good amendment. When Senator Schilz says, no matter what age category they looked at, there was benefit to having a boater safety course. So then we arbitrarily pick out of the sky a date, and said we're going to create two classes of citizens: those born before this date, those born after this date. No rational reason for that, because everybody is equally dangerous on the water without a boater safety class. I think we protect ourselves by saying, look, the younger boater who has not attained the age, in the case of this particular proposal, of majority needs to take the class. Now maybe it should be the boater under 25 or 30, but just to pick on somebody for no rational reason, at least none that's been articulated so far, and say this group of citizens has one set of rules and this group of citizens has another set of rules I think raises some problems. Now will any kid under 18 or 19 or 21 years old bring a lawsuit and challenge this? Who knows. But I think when we look at the Capitol Building here and it says equality under the law, then we're equal under the law, unless there's some specified reason why we're--and public safety requires we be--unequal. And we've heard it said today that there is no such reason. All ages are equally dangerous without a class. So I support Senator Larson's amendment. Thank you. [LB105]

SPEAKER FLOOD: Thank you, Senator Schumacher. Senator Larson, you are recognized. [LB105]

SENATOR LARSON: Thank you, Mr. President. And I want to personally thank Senator Janssen for offering me to teach me to drive his boat. I'm sure Ellen and I could go take the class together too, so. At this point...and I'd like to thank Senator Schumacher for supporting the amendment. But after working with Senator Schilz, I have decided to withdraw FA10 and move on to my next amendment. [LB105]

SPEAKER FLOOD: FA10 is withdrawn. Mr. Clerk. [LB105]

CLERK: Mr. President, Senator Larson would move to amend with AM818. (Legislative Journal page 933.) [LB105]

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SPEAKER FLOOD: Senator Larson, you are recognized to open with AM818. [LB105]

SENATOR LARSON: Thank you again, Mr. President. AM818 just changes the actual date from 25 down to 21. I think this is a...obviously, I would much prefer age of majority because that is where I think we are all adults, we should be personally responsible once we are adults. But I understand Senator Schilz's argument in terms of safety and the Game and Parks, where they stand, so I decided to come to the middle and try to agree, be agreeable, and move it down to 21 instead of 25. And I'd appreciate everybody's support on AM818. Thank you. [LB105]

SPEAKER FLOOD: Thank you, Senator Larson. Senator Council, you are recognized. [LB105]

SENATOR COUNCIL: Thank you, Mr. President. And perhaps I'm being a little dense today because I'm trying to follow this and I'm not figuring it out. The way the bill, as originally presented, said that no person after...born after December 1985 could operate a boat without taking this course and having a certificate. So, Senator Schilz, if you'd yield to a question? [LB105]

SPEAKER FLOOD: Senator Schilz, will you yield to a question from Senator Council? [LB105]

SENATOR SCHILZ: Yes. [LB105]

SENATOR COUNCIL: And maybe I didn't hear it or I was out of the room or engaged in other conversations. So the intent of your bill is that no person under the age of 25 could operate a motor boat? [LB105]

SENATOR SCHILZ: No. That is not it. What it says is that no person born after January 1 of 1985 can operate a boat without taking the boater safety course. That's what the original bill says. And what that does...if you don't mind, what that does is that puts it in line with how the law was in place before, from 2003, when we put in there that anybody under the age of 18 needed to take that to operate a...and what we did was we said, under the age of 18 then, and so that's capturing those folks. What we're saying now is that anyone that would be born after that date, the 1985 date, in order to operate a boat would have to do that. Right now, anybody, once they're past the age of 18, they can go out without anything and operate a boat on Nebraska's waters. [LB105]

SENATOR COUNCIL: Okay. Is that in the current statute? Because I read through the current statute and it talked about 16-year-olds pulling someone in tow and it talked about 14-year-olds. But can you point me to the current statute where it makes reference to...except the section that is being... [LB105]

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SENATOR SCHILZ: And I believe that...and I don't have it sitting right here in front of me, but I believe that anyone from the age of 14 to 18 would have to take this course. [LB105]

SENATOR COUNCIL: Under the existing law. [LB105]

SENATOR SCHILZ: Yeah. On page 2 of the bill, if you look there, and it says...and this is under the stricken portion, it says, "Effective May 1, 2000, and until January 1, 2004, a person under sixteen years of age shall not operate a motorboat or personal watercraft on the waters of this state unless he or she has successfully completed a boating safety course approved by the commission and has been issued a valid boating safety certificate." And then, "Effective January 1, 2004, no person under eighteen years of age...shall not operate a motorboat or personal watercraft on the waters of this state unless he or she has successfully completed a boating safety course." [LB105]

SENATOR COUNCIL: Okay. So the original law, until 2004, if you were under 16 you could do it, and then at...beginning in 2004, if you were under 18 you can operate it if you had the training. And the original draft of LB105 says, now, if you're under the age of 25, you have to have it. [LB105]

SENATOR SCHILZ: That's correct. And if you follow the transgression of the bill and the age of the folks that are there, that falls right into line with when those folks would turn 25, so that we don't have a gap in there of folks that would not be educated. [LB105]

SENATOR COUNCIL: Oh, well, what you're saying is, is that if you were 18 in 2004, you would be 25 now. [LB105]

SENATOR SCHILZ: Correct. I think that's what I'm saying. Yes. [LB105]

SENATOR COUNCIL: Okay. [LB105]

SPEAKER FLOOD: One minute. [LB105]

SENATOR COUNCIL: And the assumption is, is that there were no other people who (laugh)...who wanted to operate a motorboat. [LB105]

SENATOR SCHILZ: Excuse me? [LB105]

SENATOR COUNCIL: No, I mean, because...I mean inherent in what you're saying is if I operated it at 16, I operated it at 18, and now you're going to put...allow me to operate now because I'm 25, and presumably I've taken these courses when I was 16 and 18 and now I'm 25 and presumably I've taken them, but there was no reason for me to take

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the course between 2004 and now. Am I reading that correct? [LB105]

SENATOR SCHILZ: I'm not really sure. But here's what it does. If you've taken the course, it doesn't matter. You're okay. If you have not taken the course and you were born after January 1 of 1985...December 31, whatever, of 1985, then to... [LB105]

SPEAKER FLOOD: Time, Senators. Thank you. [LB105]

SENATOR SCHILZ: Thank you. [LB105]

SPEAKER FLOOD: Senator Schilz, you may continue. [LB105]

SENATOR SCHILZ: Oh, thank you. Thank you, Mr. President. Then what...what would happen then is that if you've had the course, then you would never have to take it again. But if you would be born after that date and then you would want to operate a motor boat, you would then have to go take the course before you could operate a motor boat in the state of Nebraska. So that's the answer, and I hope...and Senator Council, if you've got further questions, I'd be more than happy to answer you. I may not have done it as eloquently as I should have. And I look at it this way: I think that as we sit here, I look at the amendment that Senator Larson has brought up, I'm personally okay with that date. I would say that if the Legislature has some of the concerns that Senator Schumacher has had, I would say that the original form of the bill would give you some reasons for that and some argument as to why that's in place. But myself, personally, if the body would wish, if the body so chooses, then we could...I can live with Senator Larson's amendment. [LB105]

SPEAKER FLOOD: Thank you, Senator Schilz. Senator Smith, you are recognized. [LB105]

SENATOR SMITH: Thank you, Mr. President. Senator Schilz, I have another...if you would allow a question? [LB105]

SPEAKER FLOOD: Senator Schilz, will you yield to a question from Senator Smith? [LB105]

SENATOR SCHILZ: Yes, I will. [LB105]

SENATOR SMITH: So what you're saying, just real clearly, if you're over 25 you can operate the boat without the training? [LB105]

SENATOR SCHILZ: What I'm saying is, is that in order to get us where we need to be to stay under the fiscal restraints that have been put...you know, that we're having to deal with, as in no fiscal cost and so that we don't have a glut of people and not enough

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volunteers to give the program, this "born after" date was the one that gave us the ability to do all those things at the same time without overtaxing our system. [LB105]

SENATOR SMITH: And if you're under 25, you can still operate that boat but with certain conditions. [LB105]

SENATOR SCHILZ: Absolutely. You would have to take the boater safety course. Yes. [LB105]

SENATOR SMITH: All right. You know, I'm...I guess I'm not...I'm kind of indifferent at this point, but it's not unprecedented that there is that distinction of 21, 25. I looked up rental car requirements, and I noticed that there's a distinction between 21 and 25 just interestingly on this one that I pulled up. And it states that, you know, 21-25, you can rent something that appears to be not as fast, and then over 25 you have full access to any of the cars to be rented. So I know that there seems to be some others out there that are distinguishing between some of those ages as well. I'm not certain I really care at this point, but it's not unprecedented. Thank you. [LB105]

SPEAKER FLOOD: Thank you, Senator Smith. Senator Bloomfield, you are recognized. [LB105]

SENATOR BLOOMFIELD: Thank you, Mr. President. Senator Schilz, would you yield for a question, please? [LB105]

SPEAKER FLOOD: Senator Schilz, will you yield to a question from Senator Bloomfield? [LB105]

SENATOR SCHILZ: Yes. [LB105]

SENATOR BLOOMFIELD: Maybe it's hid away in part of the law that was there before the bill or something, but I see we're tying to 1985. Does that progress, as time goes on, so that's it's always age 25? Or is anybody... [LB105]

SENATOR SCHILZ: No. [LB105]

SENATOR BLOOMFIELD: So if I'm born in 1986 and I live in Iowa until 2025, and I come into the state and want to get a license...or want to drive a boat, I've got to take this course? [LB105]

SENATOR SCHILZ: Yes. And I would tell you that the state of Iowa already has a boating safety course that their people have to take before they can operate a boat. So I would say that folks coming from Iowa probably wouldn't notice. [LB105]

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SENATOR BLOOMFIELD: I pulled Iowa out of the air just as a place. But anybody, no matter if I am 35, 15 years from now I still have to take this test if I want to drive a boat in Nebraska. [LB105]

SENATOR SCHILZ: That would be correct. Yes. [LB105]

SENATOR BLOOMFIELD: Okay. Thank you. [LB105]

SPEAKER FLOOD: Thank you, Senator Bloomfield. Senator Council, you are recognized. [LB105]

SENATOR COUNCIL: Yes, thank you, Mr. President. Would Senator Larson yield to a couple of questions, please? [LB105]

SPEAKER FLOOD: Senator Larson, would you yield to a question or two from Senator Council? [LB105]

SENATOR LARSON: Yes. [LB105]

SENATOR COUNCIL: Senator Larson, were you born before December 31, 1985? [LB105]

SENATOR LARSON: No. [LB105]

SENATOR COUNCIL: So under LB105, as currently drafted, you would always have to take the boater training course in order to operate a boat in the great waters of the state of Nebraska. [LB105]

SENATOR LARSON: Yes. [LB105]

SENATOR COUNCIL: And someone like me who was born well before December 31, 1985, who has never driven a boat in my life, would never have to take the boater safety course. [LB105]

SENATOR LARSON: Yes, that's correct. You could go out and boat without taking the course, and I would. [LB105]

SENATOR COUNCIL: So in order for you to boat, you need AM818, correct? [LB105]

SENATOR LARSON: In order for me to drive a boat without taking the course, I would have to have AM818. Yes. [LB105]

SENATOR COUNCIL: Thank you, Senator Larson. [LB105]

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SPEAKER FLOOD: Thank you, Senator Council. Senator Langemeier, you are recognized. [LB105]

SENATOR LANGEMEIER: Mr. President and members of the body, I'd like to just put this bill just in a touch of a different framework here and not focus so much on these dates. Basically what Game and Parks is doing is, is trying to make everybody that drives a boat in Nebraska have some training. And so the purpose of this bill was not to say, starting January 1, 2012, everybody that's got a boat, you got to go out and get training, because driving a boat is a little different than a car--it doesn't have brakes. So they decided that's too much work. Number one, Game and Parks can't offer a class for all the boaters in Nebraska to come in, January 1, and go take a class. So what they've done here is said if you were born after 1998--or let's reverse that--anybody except Senator Larson, all of us that were born before that date, we're exempt for life. We are not going to have to take boater safety. But anybody from here, this day forward, born after 1985, is going to have to take boater safety to drive a boat in Nebraska forever. Senator Larson will only have to take it once and I assume he'll go take it this summer so he can drive a boat. But that's all we're doing is, is we're starting a date that says anybody born after 1985, for the future. So my son who is 8 years old today and let's say he doesn't get the opportunity to drive a boat when he turns 16, he doesn't get to drive one until he's 30, doesn't get to drive one until he's 40, but his 41st year something happens great in his life and he decides to go buy a boat, he's going to have to go take boater safety before he can drive that boat on the waters of Nebraska. And so that's the purpose. And so I rise in opposition to AM818. Sorry, Senator Larson; I think you'll enjoy the class. And I would ask the body to adopt to LB105 as it is. Thank you. [LB105]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Langemeier. Senator Larson, you are next and recognized. [LB105]

SENATOR LARSON: Will Senator Schilz yield? [LB105]

SENATOR COASH: Senator Schilz, will you yield to a question from Senator Larson? [LB105]

SENATOR SCHILZ: Yes. [LB105]

SENATOR LARSON: Senator Schilz, how many out-of-state tourists does Lake McConaughy get every year? [LB105]

SENATOR SCHILZ: Well, it depends on the year, but I would say somewhere between maybe...maybe upwards of half a million people. [LB105]

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SENATOR LARSON: A half-million people. And what's the economic impact to the area, i.e., District 47, to that population coming in and using Lake McConaughy? [LB105]

SENATOR SCHILZ: Well, I can tell you this, that Keith County, where Lake McConaughy is located, tourism is 6 percent of their total revenue. So it's a big deal. [LB105]

SENATOR LARSON: Would all those people coming from out of state, would they have to take Nebraska's boater education? [LB105]

SENATOR SCHILZ: No. No. What is amazing about that is most of the visitors to Lake McConaughy, most of the visitors there come from Colorado. Colorado already has a mandatory boater education class, so anybody there would be fine. Kansas also has a boater education class, not that we get that many Kansas folks coming. But mostly they're from Colorado, so they would already have it. [LB105]

SENATOR LARSON: Well, assuming that they boat in Colorado. What if they don't boat in Colorado? [LB105]

SENATOR SCHILZ: Then...well, then the nice thing about the Nebraska boater safety education class that we have is that it's reciprocal, so you can take the one in Colorado and that one applies to Nebraska as well. [LB105]

SENATOR LARSON: What I'm asking, what if they actually don't boat in Colorado? They live right on the border and they just always drive to McConaughy. [LB105]

SENATOR SCHILZ: Sure. [LB105]

SENATOR LARSON: They don't actually boat in Colorado. [LB105]

SENATOR SCHILZ: Sure. And the nice thing about what we've done here and what's out there and available is that the state of Nebraska has a couple different Web sites where you can actually go and study the class there and then come to Nebraska and take the test. Or you can go anywhere in Colorado, go on-line and go and take the test and get your certificate there, and then it's good in Nebraska too. So there's a number of different ways to be able to do that. [LB105]

SENATOR LARSON: So how will Game and Parks know that you didn't take the test? If they stop you, do you have to carry around, like, a little driver's license or...(inaudible) the Colorado ones, let's say they stop somebody from Colorado. [LB105]

SENATOR SCHILZ: Sure. Yeah, it's a...theirs is a certificate. I know my son went

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through the course and he actually has a certificate that he is supposed to carry on him while he's boating. Yes. [LB105]

SENATOR LARSON: Okay. And what's the fine if he doesn't have the certificate? [LB105]

SENATOR SCHILZ: You know, I don't know. I can't tell you but I'll find that out for you and let you know. I'm not sure. [LB105]

SENATOR LARSON: I appreciate that. And with all due respect, I mean I guess, obviously, now everybody in the body knows how old I am and I was born after December 31, 1985. But that's regardless, and I think FA10, my first amendment, which I withdrew, showed where I really was. It has nothing to do with my age but the simple fact, and I'll reiterate it, is we are adults. There are issues of personal responsibility in which we all must abide. And I think that as adults we have the ability to make the decisions of our lives and not have the government tell us what to do. I offered AM818 as a compromise between 25 and the age of majority. At that point will I have to take the test? No, but it's not about that. If I wanted that, I would have put the date April 17, 1986, and I would have been out and I would have been fine. It had nothing to do with whether or not I would or not. It's much more about the principle of the matter and the fact that the state cannot continue to nanny us around all the time. With that, thank you. [LB105]

SENATOR COASH: Thank you, Senator Larson. Seeing no other senators wishing to speak, Senator Larson, you are recognized to close on your amendment AM818. [LB105]

SENATOR LARSON: Thank you, Mr. President. I'd ask you, when we look to vote on AM818, I understand the safety issues that Senator Schilz and this brings up. And as I've said from the beginning, I have nothing against boater education. I think it's great. I understand why if we're going to do boater education, I mean, honestly, it should be everybody; not just those underneath 25 or 21. But we have to continue to look at our core principles and what we each believe the government should and should not be doing in our lives. And I'll say it one more time: personal responsibility. Take responsibility for your own actions. We're adults and we can all make adult decisions on how to govern our lives. And with that, I'd ask for a green on AM818. Thank you. [LB105]

SENATOR COASH: Thank you, Senator Larson. The question is, shall the amendment to LB105 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Larson. There has been a request for a call of the house. All those in favor of a call of the house, vote aye; those opposed vote nay. Record, Mr. Clerk. [LB105]

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CLERK: 33 ayes, 2 nays to place the house under call. [LB105]

SENATOR COASH: The house is under call. All senators please report to your seats and record your presence. Otherwise, unauthorized staff persons please leave the floor. The house is under call. Members, please check in. Senator Janssen, Senator Krist, please report and check in. Senator Larson, how do you wish to proceed? [LB105]

SENATOR LARSON: Roll call. [LB105]

SENATOR COASH: There's been a request for a roll call vote. Mr. Clerk. [LB105]

CLERK: (Roll call vote taken, Legislative Journal page 933.) 13 ayes, 29 nays on the amendment. [LB105]

SENATOR COASH: The amendment is not adopted. Senator Larson for a motion. I raise the call. [LB105]

SENATOR LARSON: Mr. President, I move that LB105 be advanced to E&R for engrossing. [LB105]

SENATOR COASH: Senator Lathrop, you are recognized. [LB105]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I turned my light on because the comments at the very end there started...we started talking about the nanny state. And I've heard the conversation about the nanny state before when we did the helmet bill and when we've done some other things that relate to the safety of people in Nebraska on the roads, and now we're talking about it in the context of safety of people in Nebraska on the water in boats. And the...I think it's important to talk about our role as policymakers, and that's maybe different than what you do with your children and how you think your children, what your children should do, whether they wear a helmet when they ride a bicycle or whether they wear a seat belt in the backseat of an automobile or not. But when we look at or when we legislate, it is...we do have a responsibility, I believe, to implement policy that makes this state and the motorists in this state, and, for that matter, the people that ride around in boats and operate boats, a safer place. Because when you talk about your own family or the own decisions that you make as an individual, you can say I choose to do this and I choose to do that, and if that's not wear a helmet while you're riding a horse or riding a bicycle or a Jet Ski or whatever it is, that's fine. That is a personal choice. That's not our job here though. Today...and you can disagree with me philosophically, but my point is this: that when we as policymakers look at--and some of the information is still stuck in my head about the helmet bill and I'm not trying to resurrect that fight with anybody--but when I look at every year we can predict with precision that there will be 600 motorcycle accidents a year. So as policymakers, the question is: Can we save lives by implementing a policy?

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And that doesn't make us a nanny state. You can do what you want with your own life within the law and you can do what you want with your kids' lives within the law. That's all fine. But when we're here as policymakers, it's important that we appreciate that we can predict, because of the law of large numbers, we know that there are going to be accidents with motorcycles. We know there are going to be accidents with automobiles. We know there's going to be accidents with boats. And the question is: Can we make the state safer with policy and are we intruding too much on individual choice when we do that? That's a fair debate to have. But to throw nanny state around and to suggest that individual responsibility ultimately is the answer I will suggest to you misses the point of our role in this body when it comes to safety on the roads, in particular, safety on the water. And I just wanted to make that point before we move this bill. I happen to agree with what Senator Schilz is doing, and you heard me earlier this year stand up and argue in favor of motorcycle training and the supplement or the money that was spent to provide assistance to people that attended that. This is a good bill. It provides safety. It's important, and it's good policy. And that's part of what we're here to do: make the water safer and the roads safer. Thank you. [LB105]

SENATOR COACH: Thank you, Senator Lathrop. You have heard the motion to move LB105 to E&R for engrossing. All those in favor say aye. All those opposed say nay. LB105 is advanced. Mr. Clerk, items for the record. [LB105]

CLERK: I do, Mr. President. Senator Fischer prints an amendment to LB84. I have a new resolution, LR138 by Senator Nordquist. It calls for an interim study. That will...it's too late, Senator; it's too late. Senator Janssen would like to add his name to LB279 as coinroducer; Senator Carlson to LB600. [LB84 LR138 LB279 LB600]

And I have a priority motion. Senator Avery would move to adjourn the body until Thursday morning, March 25 (sic--24), at 9:00 a.m.

SENATOR COASH: You have heard the motion to adjourn until Thursday, March 24. All those in favor say aye. All those opposed say nay. We are adjourned. (Gavel)