

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

Floor Debate  
January 28, 2013

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[LB1 LB2 LB30 LB35 LB49 LB72 LB84 LB85 LB87 LB100 LB111 LB112 LB113 LB125  
LB146 LB204 LB613 LB654 LR44]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirteenth day of the One Hundred Third Legislature, First Session. Our chaplain for today is Senator Johnson. Would you all please rise.

SENATOR JOHNSON: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Johnson. I now call to order the thirteenth day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Your Committee on Urban Affairs, chaired by Senator McGill, reports LB87, LB111, LB112, LB113, and LB49 to General File with amendments attached, those reports signed by Senator McGill. The Government Committee, chaired by Senator Avery, reports LB125 to General File with amendments attached, that signed by Senator Avery. I have hearing notices from the Banking, Commerce and Insurance Committee, the Transportation Committee, and the Education Committee, signed by their respective Chairpersons. That's all that I have, Mr. President. (Legislative Journal pages 297-305.) [LB87 LB111 LB112 LB113 LB49 LB125]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk, we will move to agenda items under General File: Revisor Bills.

CLERK: Mr. President, on LB1, a bill by Senator Wightman as its Chairperson of the Executive Board. (Read title.) The bill was introduced on January 10 and referred directly to General File. [LB1]

PRESIDENT SHEEHY: Senator Wightman, you're recognized to open on LB1. [LB1]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. Just a

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little background. Revisor bills are technical correction bills prepared by the Revisor of Statutes. Pursuant to our rules, Rule 5, Section 3, they are introduced by the Chairperson of the Executive Board and referred directly to General File. They do not go through any committee hearings. Revisor bills includes such things as (1) the repeal of statutes or parts of statutes that have become obsolete. Section 49-771 provides that the Revisor of Statutes is to provide to the Chairperson of the Executive Board a list of statutes which the Revisor believes to be obsolete or no longer needed. Circumstances that may cause a statutory provision to be considered obsolete include (1) statutes that contain their own expiration date which is past, (2) language within a section or complete acts held unconstitutional by the United States Supreme Court...or by the Supreme Court, (3) provisions that have become inoperative because the reason for their enactment has past or their subject matter no longer exists, (4) provisions inapplicable to changed circumstances, or (5) statutes that contain effective dates of salary changes. Revisor bills also include such changes as correcting internal references and harmonizing provisions. This year we have only two Revisor bills that are included. Some years we've had substantially more--five to ten, even; but this year only two. So I'll start out with LB1. It repeals an obsolete section of law that refers to certain reports due one year after July 14, 2006. The bill also eliminates a reference to this obsolete statute found in another section of law. I would appreciate your support in moving LB1 to Select File. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You've heard the opening to LB1. Member requesting to speak: Senator Chambers. [LB1]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm back. As I was saying before I was quite rudely interrupted by term limits, there are some things that I want to say and get into the record. There are two categories of persons that I want to say something to and for this morning. First of all, the ancient of days. We know that Senator...or as I call him, "Parson," doesn't like me to say "Bibble" instead of Bible. But we worked that out when I told him, he says toe-mate-oh (phonetic), I say toe-mah-toe (phonetic). There is a verse that says the number of a man's years are three score and ten, which would be 70. Since I am 75, I'm living on borrowed time, and there are people who wish that the ticket puncher would do his or her job and punch my ticket. But while I'm still here, I want to say to those elderly ones, the fact that you reach a certain age does not mean that you have to shrivel up, dry out, vegetate, or go away or blow away. As long as you have breath in your body, your mind is clear, continue to live literally until you die. For the new people, I want to say, since I'm one of the new kids on the block, we have an obligation to participate in the activities of the Legislature. The fact that we are newly here does not mean we have less status, less right, or fewer prerogatives than those who have been here forever. When we have a thought and we think we should express it, this is the place to do it. We show our respect for the Legislature as an institution by actively participating. And to the anonymous person who wrote and sent one of my little rhymes back with the comment that when it's all over for

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him or her, he or she hopes that more was done that said: words have power. Words sometimes substitute for action. All that we deal with are words and they should be well-thought-out, well-spoken to the extent that we can do that. When that does not happen, the remainder of us have an obligation to help clarify and make definite to the public what it is we mean and what we're trying to say. If we put in a statute language that we ourselves don't understand, how could we expect the public to know? The statutes are where the public will go and are entitled to go to find out what the state has said you are allowed to do, what you are disallowed from doing. So we must know what it is we're saying, and we work together to try to clarify the statute. You must develop a thick skin. There was a commercial, Young Senator Pirsch, "Sonny," that talked about the skin you love to touch. Well, compared to my skin when it comes to the thickness, if you were to combine the hides of a Tyrannosaurus rex, a crocodile, an alligator, and a rhinoceros, that skin compared to mine would be the skin you love to touch. If you come here with your feelings on your sleeve or on your fingertips, they're going to get hurt. We are all adults. We are all politicians. [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR CHAMBERS: I'm not going to ask any quarter and I'm not going to give any. But I will treat everybody the way they want to be treated, and I'll know that by the way they treat me. Nobody can treat me better than I will treat them. I would like to commend Senator Wightman on giving such a good explanation and letting us new people know that when it comes to Revisor bills, they don't have to go through a hearing; they can be referred directly to General File. Senator Wightman, you improved my education this morning and I expect that to occur throughout the session. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Seeing no additional requests to speak, Senator Wightman, you're recognized to close. [LB1]

SENATOR WIGHTMAN: Thank you, Mr. President, I'll waive closing. [LB1]

PRESIDENT SHEEHY: Senator Wightman waives closing. The question before the body is on the advancement of LB1. All those in favor vote yea; opposed, nay. Have all voted who wish? Record, Mr. Clerk. [LB1]

CLERK: 43 ayes, 0 nays, Mr. President, on the advancement of LB1. [LB1]

PRESIDENT SHEEHY: LB1 advances. We will now proceed to LB2. [LB1 LB2]

CLERK: LB2 by Wightman, as the Chair of the Executive Board. (Read title.) [LB2]

PRESIDENT SHEEHY: Senator Wightman, you're recognized to open on LB2. [LB2]

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SENATOR WIGHTMAN: Thank you, Mr. President. LB2 repeals several sections of law that relate to appropriations that are obsolete. I would appreciate your support in moving LB2 to Select File. There are a number of sections here, all of them required action to be taken prior to this session of the Legislature. We've left out a section that did include 2012-2013 in the list of sections. So with that, I would move your approval of LB2. Thank you, Mr. President. [LB2]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You've heard the opening to LB2. Seeing no requests to speak, Senator Wightman, you're recognized to close. Senator Wightman waives closing. The question before the body is on the advancement of LB2. All those in favor vote yea; opposed, nay. Have all voted who wish? Record, Mr. Clerk. [LB2]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB2. [LB2]

PRESIDENT SHEEHY: LB2 advances. We will now move to the next item, agenda items under General File: LB30. [LB2 LB30]

CLERK: LB30, a bill originally introduced by Senator Hadley. (Read title.) The bill was introduced on January 10 of this year, referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. I have no amendments to the bill, Mr. President. [LB30]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Hadley, you're recognized to open on LB30. [LB30]

SENATOR HADLEY: Mr. President, members of the body, good morning. Welcome to the first day of hearing bills for the 2013 session. I introduced LB30 on behalf of the Department of Motor Vehicles. For the new senators, quite often we have what are called cleanup bills which the department brings us, where they find that in the past when we've worked with bills we've inadvertently not finished the job on particular bills that we've had put through. And that is exactly what this bill is. This bill corrects omissions from the 2005 recodification of the Motor Vehicle Certificate of Title Act. The department's 2011 audit uncovered that an error occurred during the 2005 recodification of the Certificate of Title Act. In 2005, two bills were introduced as part of DMV's recodification of the Motor Vehicle Certificate of Title titling act and the Motor Vehicle Registration Act. One bill, LB276, dealt specifically with nonsubstantive recodification, and the second bill dealt with the substantive changes relating to the two acts. The error that we are correcting with LB30 was contained within the nonsubstantive LB276 in 2005, and deals specifically with the statute governing title fees collected by the counties and title fees collected by the DMV Motor Carrier Services Division. In the process of combining the two sections in 2005, language was eliminated from the

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original provision that governs the distribution of the Motor Carrier Services Division titling fees. The effect of this error was that the title fees normally distributed to the Department of Motor Vehicles cash fund were mistakenly directed to the Motor Carrier Services Division cash fund. Last year, this body passed LB751, which reinstated the original distribution of the title fees. Unfortunately, the DMV missed two other sections of the law that were also affected by LB276 in the 2005 recodification error. These two sections relate to the distribution of titling lien fees and duplicate title fees. LB30 reinstates the distribution of these fees as they existed prior to the 2005 recodification error. It does contain the E clause and I would appreciate your yes vote on cleaning up this error. Thank you, Mr. President. [LB30]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You've heard the opening to LB30. Member requesting to speak: Senator Chambers. [LB30]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I shall be an example of what it is that I preach. Senator Hadley, I see a sentence in the committee statement, and it says, "A clean up bill in 2012, LB751, inadvertently omitted some sections directing the deposit of the motor vehicle title fees into various cash funds." Is that sentence correct in what it states? [LB30]

PRESIDENT SHEEHY: Senator Hadley, would you yield? [LB30]

SENATOR HADLEY: Yes. [LB30]

SENATOR CHAMBERS: Senator Hadley, were you here in 2012? [LB30]

SENATOR HADLEY: Yes, I was, sir. [LB30]

SENATOR CHAMBERS: Were you a member of the Transportation Committee? [LB30]

SENATOR HADLEY: Yes, I was. [LB30]

SENATOR CHAMBERS: Were you the Chair of that committee? [LB30]

SENATOR HADLEY: No, I was not. [LB30]

SENATOR CHAMBERS: Who was the Chair of that committee? [LB30]

SENATOR HADLEY: Senator Fischer. [LB30]

SENATOR CHAMBERS: While you were sitting on that committee, did you have a chance to hear...first of all, did this bill, LB571, called a cleanup bill, have a public hearing? [LB30]

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SENATOR HADLEY: Yes, sir. [LB30]

SENATOR CHAMBERS: Was it designated a cleanup bill at the time of the hearing? [LB30]

SENATOR HADLEY: I believe it was, sir. [LB30]

SENATOR CHAMBERS: Did the Department of Motor Vehicles have anything, to your knowledge, to do with drafting that legislation? [LB30]

SENATOR HADLEY: Yes, it did. [LB30]

SENATOR CHAMBERS: Senator Hadley, do the people who work for the Department of Motor Vehicles do so as volunteers, or are they paid? [LB30]

SENATOR HADLEY: They are paid, sir. [LB30]

SENATOR CHAMBERS: Senator Hadley, if this is a bill, if you know...let me ask it in this way. Was this cleanup bill brought to the committee by the Department of Motor Vehicles? [LB30]

SENATOR HADLEY: Yes, sir. [LB30]

SENATOR CHAMBERS: Senator Hadley, I don't want to be unreasonable. I don't like to put greater burdens on employees than they should be required to bear, but it seems to me as a new member of the Legislature that public employees should pay attention to what it is they do; and when they present something to the Legislature, they should go to great pains to make sure that what they present is what it ought to be. The committee, after it had a hearing on this bill, did it review the bill for content and accuracy, or after the hearing was it just decided that since the Department of Motor Vehicles wanted it, it would be sent to General File, if you know the answer to that? [LB30]

SENATOR HADLEY: I really don't know the answer to that, Senator Chambers. [LB30]

SENATOR CHAMBERS: Senator Hadley, since this bill deals with money that goes to the Department of Motor Vehicles, do you have any explanation--and I'm asking you to speculate--how the Motor Vehicles department brought what they called a cleanup bill which, if I understood you correctly, is to take care of errors, omissions, inadvertencies that may have crept into the statute? If they bring such a bill, how did they miss a part of it that relates to how money is to be distributed, when that money relates to the department itself? How do you think that happened? [LB30]

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SENATOR HADLEY: Senator Chambers, I can only speculate, but I'm willing to do so. This came about as a result of an audit. The actual error was not found until 2011 and the bill was 2005. And it came about as a result of an audit, and I would probably suggest that the audit did not go through and list all of the different areas that these funds were put to. So I could only speculate that in the department doing this that they did not find these two areas that needed to be corrected, sir. [LB30]

PRESIDENT SHEEHY: One minute. [LB30]

SENATOR CHAMBERS: Senator Hadley, if you will indulge me a bit more. I'm speaking for myself; I'm not a wealthy man. If you don't mind putting your business before the public, are you a wealthy man? [LB30]

SENATOR HADLEY: No, sir. I'm a retired school teacher, sir. [LB30]

SENATOR CHAMBERS: Do...oh, well...(sigh) my condolences and sympathy in terms of the money. Are you unaware of what becomes of money that is yours? If you have two accounts, one is a checking account and one is a savings account, do you pay attention when you get reports as to the amounts in those accounts, what was put in and what was taken out? [LB30]

SENATOR HADLEY: I do, sir. [LB30]

SENATOR CHAMBERS: Thank you. That's all I will ask you. And my light is on to wrap it up. I won't do it all by way of questioning. [LB30]

PRESIDENT SHEEHY: Senator Chambers, you may continue on your second time. [LB30]

SENATOR CHAMBERS: Thank you. Mr. Chairman, members of the Legislature--and in honor of a former colleague when I was here all those eons ago, Senator Preister--and friends all. We as a Legislature...let me not put any burden on anybody else. I, as a legislator, to the extent that I can, will pay attention to what's in all of the bills that come before us. And when I see flaws or think I see them, I will call attention to them. I'm not going to catch everything that is an error, but these department heads have to know that there is such a thing as delegation of authority. And I understand there's some former military people here and they know about chain of command. And a general is not going to let a private make that general catch flak from the commander in chief, because there is somebody above the general. In this state, the Legislature is the top dog. We can talk about a tripartite government, and that's true. The branches are not coequal in power. The Legislature has paramountcy. They all must come to us. They can ridicule us; they can tell us to go jump in the lake, whatever they want to; but we control the money. And

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that's when people get very serious and that's when we begin to reach the point where the rubber meets the road. And it's not for committees to do all of the work that these agencies ought to do. You ought to be able to rely on what is presented to you by these agencies; rely on what they present as being what they purport that it is. We don't conduct audits of these bills. We don't audit these departments. At this point, I have one more question I have to ask Chairman Hadley, if he will yield. [LB30]

PRESIDENT SHEEHY: Senator Hadley, would you yield? [LB30]

SENATOR HADLEY: I most certainly would. [LB30]

SENATOR CHAMBERS: Senator Hadley, who conducted the audit that discovered this problem, if you know? [LB30]

SENATOR HADLEY: I believe it was the State Auditor, sir; but I would not...I cannot answer that 100 percent. [LB30]

SENATOR CHAMBERS: Did the Auditor, if you know, indicate that this was an item that you would not expect those in the Department of Motor Vehicles to be aware of? [LB30]

SENATOR HADLEY: I do not know that, sir. [LB30]

SENATOR CHAMBERS: Thank you. Members of the Legislature, I think they should have been aware of it. Look how they treat the Legislature. We're not all-knowing individuals. We have different levels and different varieties of experience, yet we are treated as though we know everything and should know everything. And if we make a mistake, we make it in malice, because since we know everything we cannot make an error which is honest. Everything we do is deliberate and intentional; it's designed to hurt the public and rob their pocketbooks. We can't change that. But if that's the attitude toward us, placing on us responsibilities we do not have and which the constitution does not place on us, we are going to have to let these agencies know that you comb this stuff you bring before us with a fine-tooth comb, and if you find something wrong, let us know; and if we find something wrong, we're going to take you to task for it. You are paid. If the work is hard, you're paid to do the hard work. If it takes time you're paid to do whatever it takes, including giving the time. We are not dealing with volunteers... [LB30]

PRESIDENT SHEEHY: One minute. [LB30]

SENATOR CHAMBERS: ...and we don't need to apologize to these people. They are paid. They want the job. How much time did you say I have? [LB30]

PRESIDENT SHEEHY: One minute. [LB30]



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SENATOR CHAMBERS: I better put my light on again and then I'll be through on this bill. [LB30]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You may continue on your third time. [LB30]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. There was an industrialist. His name--I don't know if he's dead or not--Armand, A-r-m-a-n-d, Hammer, H-a-m-m-e-r. And some people, when they hear that name, think that the soda that says "Arm and Hammer," they show a flexed arm with a hammer in it. That was not Armand Hammer's product, and Armand Hammer is his name. He had power beyond what any private citizen ought to have. He had good relationships with the Soviets during the Cold War when Americans were looking under their bed and around corners and making people take loyalty oaths and little children participate in a civil religion by pledging allegiance to a flag that talked about God. Armand Hammer didn't go for that. And when there were some people being held in East Germany that America wanted out and couldn't work it out through their ambassadorial channels, they enlisted the help of Armand Hammer. And he, with his private plane, he got the people out and flew them back to America. Armand Hammer was a person who paid his employees very well. He said, I have two reasons for doing that: I want people to know that I appreciate what they're doing and that they'll be well paid, but because of the pay there are people who will take this job, and if you don't do it, you're out of here. That was the first reason he pays them well. The second: he said if you pay peanuts, you get monkeys. What do they pay us? What do they pay us? Then why do they look for so much out of us in a society where you reckon the value of a thing in terms of the compensation it draws? Money is the god that that slogan on that money talks about. When it says, "In God We Trust," they're not talking about some man or creature sitting up with his legs hanging over the edge of the universe with a long white beard--white like mine, but longer, probably. And definitely, he or it or she or they wouldn't have my complexion. The god they're talking about is the money on which that slogan is printed. All the people in society and agencies bow to that money. In Watergate, what was the advice to those who wanted to get to the bottom of it? Follow the money. What do the churches go for? Money. The Catholic Church, which is supposed to be the only right church; you know what the comptroller found out in Rome? That the Catholic Church was laundering money for racketeers and others. The church. What do you hear all these church people asking for when they have these television programs and so-called evangelists? Money; give me some money. Every church has a collection plate so that you put into it, but they don't have an equivalent number of plates which they load up and give to the poor or to the hungry, the ones they're to minister to. They don't care about the widows and the orphans. Well, brothers and sisters, friends, enemies, and neutrals, I care about the widows and the orphans. The only thing I find in the Bible that is persuasive to me are the comments that relate to how we ought to treat those who cannot help themselves, how the strong are to bear the infirmities of the weak, how you

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should not sell the poor for a pair of shoes. And if somebody is hungry, feed him or her. If the person is thirsty, give him or her to drink. If you have the power... [LB30]

PRESIDENT SHEEHY: One minute. [LB30]

SENATOR CHAMBERS: ...and there are 5,000 hungry people that you're dealing with, you take the bread that you have and find a way to miraculously turn it into sufficient nourishment for 5,000 people. And if you can't feed the 5,000, feed the one that you can. Now back to this. I do not have that tolerant an attitude toward these agency heads and employees who are assigned specific things. Thank you, Mr. President. [LB30]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Seeing no additional requests to speak, Senator Hadley, you're recognized to close. Senator Hadley waives closing. The question before the body is on the advancement of LB30. All those in favor vote yea; opposed, nay. Have all voted who wish? Record, Mr. Clerk. [LB30]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB30. [LB30]

PRESIDENT SHEEHY: LB30 advances. We will now proceed to LB35. [LB30 LB35]

CLERK: LB35 is a bill offered by Senator Hadley. (Read title.) The bill was introduced on January 10, referred to the Transportation Committee. The bill was advanced to General File. I have no committee amendments but I do have an amendment to the bill, Mr. President. [LB35]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Hadley, you're recognized to open on LB35. [LB35]

SENATOR HADLEY: Mr. President and members of the body, LB35 is a reference date update bill that is introduced each year to keep DMV and the State Patrol consistent with federal laws and regulations. There are certain parts of Nebraska statutes that reference federal laws, and they must be up to date in order for us to enforce them. LB35 amends the reference dates for several DMV programs that are governed by new federal laws. LB35 adopts the most recent version of the International Registration Plan, IRP. Nebraska has been in IRP member jurisdiction since 1975. Membership in an IRP allows Nebraska-based trucking companies to pay registration fees in Nebraska for all jurisdictions through which the company operates. We distribute the collected registration fees to other jurisdictions based on a pro rata share of mileage that the carrier travels in each jurisdiction. The bill will allow Nebraska to follow IRP agreement as of January 1, 2013. LB35 also updates Nebraska's statutory references to federal regulations governing commercial motor vehicles and the issuance of commercial driver's licenses. The change allows the DMV to follow the federal regulations as they exist on January 1, 2013. It is important for Nebraska to remain in compliance with

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federal laws in this area. If Nebraska fails to comply with these laws, the Federal Motor Carrier Safety Administration act, FMCSA, has the authority to withhold funding for the Nebraska Motor Carrier Safety Assistance Program and federal highway funds. LB35 updates Nebraska statutes to adopt the federal unified carrier registration plan governing interstate motor carriers and a reference to federal security standards for background checks for persons involved in driver's license issuance. Both references to federal code will be updated to January 1, 2013. When the United States Congress passed the Motor Carrier Safety Act, emphasis was placed on states adopting uniform safety measures, with the ultimate goal of a reduction in the number of commercial motor vehicle accidents. In order for the state of Nebraska to remain consistent and compliant with these federal requirements, it is necessary to update our commercial vehicle safety registration annually. This legislation will enable the Nebraska State Patrol to continue enforcing updated federal motor carrier safety regulations and the federal hazardous motor regulations. I encourage the adoption of LB35. [LB35]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You've heard the opening to LB35. As was stated, Mr. Clerk, there's an amendment on your desk. [LB35]

CLERK: There is, Mr. President. Senator Dubas would move to amend with AM46. (Legislative Journal page 305.) [LB35]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on AM46 to LB35. [LB35]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. This amendment simply adds the emergency clause to this bill since it does deal with a lot of updates, dates that are already past, in essence. We need to be able to have this bill go into effect immediately upon signage. So it's again a very simple amendment to add the emergency clause. [LB35]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening of AM46 to LB35. Member requesting to speak: Senator Chambers. [LB35]

SENATOR CHAMBERS: Thank you, Mr. Chairman and members of the Legislature and friends all. I guess you believe me when I tell you that I'm back, huh. I'd like to ask Senator Hadley a question or two. [LB35]

PRESIDENT SHEEHY: Senator Hadley, would you yield to Senator Chambers? [LB35]

SENATOR HADLEY: Most certainly. [LB35]

SENATOR CHAMBERS: Senator Hadley, you were very clear in your presentation of the bill, so I'm not challenging that, but I have a question or two. Why should Nebraska

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stay in compliance with federal law? A preliminary question: Nebraska does not have to enact this legislation, does it? [LB35]

SENATOR HADLEY: That's correct. [LB35]

SENATOR CHAMBERS: Why should Nebraska stay in compliance with federal law? And remember, if you can, the way I'm asking the question. [LB35]

SENATOR HADLEY: Senator Chambers, my understanding is the federal government, like they do in a lot of instances, holds the funding hostage to our updating of our laws to match their federal laws. And they have the ability to withhold the funding for the Motor Carrier Safety Assistance Program and some federal highway funds. [LB35]

SENATOR CHAMBERS: And if they withhold that money, how does that hurt Nebraska? How does withholding that federal money hurt the citizens of Nebraska? [LB35]

SENATOR HADLEY: We would not have the ability to do some of the highway and interstate construction projects that we now have planned and are undertaking, and also we would not have the ability for the Motor Carrier Safety Program. Part of the funding of that comes from the federal government, sir. [LB35]

SENATOR CHAMBERS: Senator Hadley, if you were to consider all the money that comes to Nebraska by way of the federal government, do you know, even if it's only anecdotally, that Nebraska receives more from the federal government than the citizens pay into the federal Treasury? Are you aware of that? [LB35]

SENATOR HADLEY: Yes, I am, sir. [LB35]

SENATOR CHAMBERS: Senator Hadley, I'm not asking you this question to pry into your affairs, but the answer that you give is one that would probably be known by everybody anyway. Do you deem yourself to be a conservative? That's a good enough answer (inaudible). [LB35]

SENATOR HADLEY: I would see myself more in the middle of the spectrum, Senator. [LB35]

SENATOR CHAMBERS: Say it again. [LB35]

SENATOR HADLEY: The middle of the spectrum between complete conservative on one side and complete liberal on the other side, I would probably be more in the moderate middle. [LB35]

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SENATOR CHAMBERS: In other words, you are a nuanced thinker... [LB35]

SENATOR HADLEY: Uh... [LB35]

SENATOR CHAMBERS: ...and you look at the issue and you gather the facts. Then an appropriate decision is taken by you. [LB35]

SENATOR HADLEY: I try real hard to do that, sir. [LB35]

SENATOR CHAMBERS: I feel a kinship to you. Here's my question now. Have you heard conservatives talk about the federal government being too big? [LB35]

SENATOR HADLEY: Yes. [LB35]

SENATOR CHAMBERS: Have you heard them talk about making the government smaller? [LB35]

SENATOR HADLEY: Yes. [LB35]

SENATOR CHAMBERS: If the government stopped giving money to states that don't give that much money to the federal government, wouldn't that lessen the size of the federal government in terms of its activities? [LB35]

SENATOR HADLEY: That would be true, sir. [LB35]

SENATOR CHAMBERS: Thank you. That's very helpful. Now here's another question. Has Nebraska, if you know, reviewed these various new federal provisions to see if they make sense and if they really accomplish the goal that the feds, as they're called, indicated they would accomplish when they enacted this legislation? In other words, did Nebraska take an independent decision and form a judgment that all of these things are worthwhile, or did they just conclude that since it's required in order to get the money, it will be done? [LB35]

SENATOR HADLEY: Senator Chambers, I really cannot answer that question because I have no basis to know the thought process by both the Department of Motor Vehicles and the State Patrol in bringing this particular bill forward. [LB35]

SENATOR CHAMBERS: Thank you, Mr. Chairman. You also are nimble of wit and quick of mind. I appreciate that also. Members of the Legislature, I'm going to raise these issues. I get sick and tired... [LB35]

PRESIDENT SHEEHY: One minute. [LB35]

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SENATOR CHAMBERS: ...of all these hypocrites running around here talking about the federal government is too big; reduce the size of the government. Then who do they go to with their hands stuck out all the time? If there's a drought in Nebraska, who are they going to go to? Not Ghostbusters. Not to the Tea Party. When you need this kind of money for road building, for education, for healthcare, for all of the panoply of interests, activities, and functions that the federal government funds in this state, why don't the conservatives--and the Governor says he's one of them--turn all of them down; not just those that hurt people, not just those that hurt the poor? Because an individual like that...I think it was Oscar Wilde who said a cynic is a person who knows the cost of everything and the value of nothing. We're going to deal with some values while I'm here, if it's only by way of the discussion. [LB35]

PRESIDENT SHEEHY: Senator Chambers, you're on your second time. [LB35]

SENATOR CHAMBERS: Thank you, Mr. President. And everything is not going to be reduced to dollars and cents. You all put me in a position to talk like I talk by saying your prayers every morning. I know something about the things you all talk about when you pray. I know a bit of theology and I'm going to see if those notions are going to be brought to bear in our conduct. A Legislature is like a debating society. But, brothers and sisters, we differ from every debating society because we have the power and means to do something about those things we debate about. We have the power to make reality of all of those things related to justice, compassion, charity, consideration for our brothers and sisters. We have the power. But do you know what you hear everything reduced to? How much does it cost. Unless you're talking about inflicting pain and suffering on people. When it comes to what I consider the most barbaric, atrocious, so-called penalty, the death penalty, the Attorney General and the people on this floor say, cost is no matter; cost is no issue; we've got to have a death penalty. Well, what about those women who are pregnant and they cannot afford the healthcare they need? And I'm talking about getting things from the government. And somebody says, well, they don't have American citizenship. What some people who don't read the constitution fail to understand is that the constitution talks about the rights of citizens and the rights of persons or human beings. And when it talks about persons, you don't have to be a citizen. If you were born of a man and a woman, you are a human being, and there's a basic dignity that you have. And when these troglodytes come forth with these horrendous bills, I'm going to be there to fight them. And why do I use terms like that? Because I'm dealing with adults, and every adult has the same access to the microphone that I have. And every adult who doesn't like what I say or thinks that I'm in error has the opportunity to stand on this floor and correct me for the record. And I accept correction when the person brings me facts. It does me no good to hold an opinion or a position that I know is fallacious. I will change if somebody shows me a reason to. I did in a committee hearing the other day. After speaking very strongly in favor of bill, new information was brought; stopped on a dime, spun around, and took an opposite position, because I had new information. I'm going to try to give that new

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information. But while we're doing these kind of bills, there's one other question that we have to consider, and that is the issue of unconstitutional delegation of legislative authority. Whenever the Legislature is going to adopt something that was done by some other agency or entity, it has to specify that, specify what it is adopting, because no entity other than the Legislature under the Nebraska Constitution has the power and authority to legislate. So if you're going to do what Senator Hadley is bringing us, there's no other way to do it than the way he's doing it. You have to name it so that it's the Legislature's action. But I would invite you to review some of these things which are being adopted in this fashion. I happen to agree with these and I probably agree with most of them. But that doesn't mean, carte blanche,... [LB35]

PRESIDENT SHEEHY: One minute. [LB35]

SENATOR CHAMBERS: ...I'm going to substitute their judgment for mine. I'm here to work. And, brothers and sisters, we're supposed to be here 90 days. We're going to be doing something 90 days, and I probably will be doing something on all of them. I don't have as many years left as some of you youngsters, so I have to run fast. I have work hard. Because, as Satchel Paige said, when you reach our advanced age, if you slow down, something is going to overtake you, and it's not something that means you good. Thank you, Mr. President. [LB35]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on AM46. Senator Dubas waives closing. The question before the body is on the adoption of AM46 to LB35. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB35]

CLERK: 39 ayes, 0 nays on adoption of Senator Dubas' amendment to LB35. [LB35]

PRESIDENT SHEEHY: AM46 is adopted. [LB35]

CLERK: I have nothing further on the bill, Mr. President. [LB35]

PRESIDENT SHEEHY: We'll now return to discussion on LB35. Seeing no requests to speak, Senator Hadley, you're recognized to close. [LB35]

SENATOR HADLEY: Mr. President and members of the body, I ask for your green vote on this. I believe it's a bill that will be of benefit to the operations of the state of Nebraska and to the citizens of the state of Nebraska. Thank you, Mr. President. [LB35]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You have heard the closing. The question before the body is on advancement of LB35. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB35]

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CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB35. [LB35]

PRESIDENT SHEEHY: LB35 advances. We will now proceed to LB72. [LB35 LB72]

CLERK: LB72 is a bill by Senator McCoy. (Read title.) The bill was introduced on January 10 of this year, referred to the Banking, Commerce and Insurance Committee, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator McCoy, you're recognized to open on LB72. [LB72]

SENATOR McCOY: Thank you, Mr. President and members. I rise this morning to introduce LB72 this morning, which changes the sunset date from July 1, 2014, that was part of LB347 in 2011, to a new sunset date of July 1, 2017, for the interest-bearing trust accounts under the Nebraska Real Estate License Act, that again were encompassed in LB347, which I introduced two years ago in 2011. LB347, as some of you may recall, gave authorized real estate brokers the option to have their accounts in an interest-bearing account so long as the interest goes to a nonprofit organization. The interest, of course, does not go to the broker. LB347 also made this voluntary for the banks and all parties involved, as well. The Nebraska Realtors Association received a \$50,000 grant from the National Realtors Association to initiate this process, and it was to aid low-income individuals in urban and rural areas of our state in homebuying. And one of the requirements of that grant is to have sustainability, and that was the genesis of why I introduced LB347 two years ago. The Nebraska Realtors Association will use this interest from LB347 two years ago, and if this LB72 enjoys favor from the Legislature, would use this interest in helping with that sustainability. The program that was chosen two years ago to receive that interest is the Readiness Education Awareness Collaborative for Homebuyers and Homeowners, or, in short, REACH. REACH was established in 1997 to remove barriers to home ownership through a quality statewide education system. The sunset date of July 1, 2014, was placed to allow the Legislature to review how the process is working. As was discussed in the Banking, Commerce and Insurance Committee last week, in the hearing, by the Nebraska Realtors Association, it's taken a little bit long to get this program set up. And my hope is that changing the sunset date will allow additional time for that evaluation of sustainability to occur. I think that it may be appropriate at this point to outline what has been accomplished so far, the work that's been done to date and the direction that we would be going with this program if we were to change this sunset date. Again, the fund started with a \$50,000 grant from the National Realtors Association; well, last year, in 2012, \$2,000--so a small amount, but a start--and interest was placed into this program. Currently, there is one realtor in the state that's active, with five banks that have been signed up, and 21 banks have expressed an interest. Again, no one is required to



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participate. It's voluntary with both the buyer and the seller. And the realtors do not decide on the charity; the foundation does. Again, my hope would be by extending this sunset date, which I don't take up lightly--we talk about sunset dates often--I think this may be particularly appropriate in order to again judge sustainability. If several years from now, when this sunset expires, if there isn't more of a proven record of sustainability, then it would go away, as it should. I think this is a worthwhile endeavor to hopefully help educate Nebraskans across the state on home ownership, and that is again the purpose of this bill. Thank you, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Senator McCoy. You've heard the opening to LB72. Member requesting to speak: Senator Chambers. [LB72]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I'd like to ask Senator McCoy a question. [LB72]

PRESIDENT SHEEHY: Senator McCoy, would you yield? [LB72]

SENATOR McCOY: Yes, I would. [LB72]

SENATOR CHAMBERS: Senator McCoy, you may have answered this. Who pays...where does the money come from on which interest will be paid? [LB72]

SENATOR McCOY: Well, Senator Chambers, the money would be the trust accounts that are set up by realtors; so earnest money deposits, those types of transactions by real estate brokers. [LB72]

SENATOR CHAMBERS: And who puts the money into those accounts? [LB72]

SENATOR McCOY: Do you mind repeating that again? I'm sorry. [LB72]

SENATOR CHAMBERS: Who puts the money into those various accounts that you mentioned? [LB72]

SENATOR McCOY: Well, again, it could be the buyer or the seller, depending on what type of a transaction, whether it be an earned...earnest money for a deposit, whatever the transaction may be. And typically, again, those have always been required to be in a noninterest-bearing trust account. Under what we did two years ago with LB347, the only way they could be allowed by law to be in an interest-bearing account is for this purpose, for a nonprofit--in this case, education purpose. [LB72]

SENATOR CHAMBERS: Now there are people who will put money into some of these accounts who are just ordinary persons wanting to buy a house or engage in a real estate transaction. It's not just brokers, isn't that true? [LB72]

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SENATOR McCOY: Yes, sir. That's correct. [LB72]

SENATOR CHAMBERS: And the money that the ordinary citizens put into this account will be allowed to bear interest under this legislation, correct? [LB72]

SENATOR McCOY: With their permission; yes, sir, that's correct. [LB72]

SENATOR CHAMBERS: So then at the time that the person puts this money in, that person is asked, are you willing to let this money bear interest which you will not receive? Is that the way the question is put to the person? [LB72]

SENATOR McCOY: Yes, sir. And I believe to my knowledge it also requires them to put...affix their signature on a form authorizing such a transaction. [LB72]

SENATOR CHAMBERS: And I have one other question for you. Are you the McCoy who drives that truck with the ladders on it and parks in the parking lot? [LB72]

SENATOR CHAMBERS: That would be one and the same, Senator Chambers. [LB72]

SENATOR CHAMBERS: I want to tell you that I'm appreciative of that, because where I park is right beside yours, so I sight in on your truck. And without even looking at the ground to see if that's slot 11, I have so much confidence in you parking where you belong, that I just follow along. So thank you very much. Members of the Legislature, as I stated, maybe Senator McCoy had answered those questions, but I wanted them specifically answered in the record. And just because it's in the record does not mean that an ordinary citizen is going to know that he or she is entitled to receive this information. If there is information that some professional is required to give you but you have no way of knowing it, then it's of no value. I'm not going to mess with Senator McCoy's bill this morning, but I would like to see them post that information somewhere, because if the money that I put up is going to make money, it should make the money for me. And...oh, I do have one more question I have to ask Senator McCoy. [LB72]

PRESIDENT SHEEHY: Senator McCoy, would you yield? [LB72]

SENATOR McCOY: Yes. [LB72]

SENATOR CHAMBERS: Senator McCoy, if a person happens to know this, does that mean that that person's money will not bear interest, but if it does it will redound to the benefit of that person? [LB72]

SENATOR McCOY: If I'm understanding your question correctly, Senator Chambers, and correct me if I'm not understanding it correctly, again this would have to be

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voluntary and would have to actually be signed off on by a buyer or a seller that would be involved in this transaction and their funds would be receiving interest. So that money could only go...ordinarily, it would go into a trust account anyway that wouldn't be receiving... [LB72]

PRESIDENT SHEEHY: One minute. [LB72]

SENATOR McCOY: ...or accruing interest. But by their authorization, it would be allowed to accrue interest only for the purposes of this particular program. So if the status quo existed, then that would be that it would go into a trust account where no such interest would be accrued. [LB72]

SENATOR CHAMBERS: Thank you. And if I have additional questions, I will ask you for them. I will conclude now in the second or two that I have. I really like that last vote that we took on the other bill, a unanimous vote for roads. I want to see if we vote unanimously for people when we're talking about assistance from the federal government. Thank you. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Additional members requesting to speak on LB72, we have Senator Nordquist, followed by Senator Carlson and Senator Schumacher. Senator Nordquist. [LB72]

SENATOR NORDQUIST: Thank you, Mr. President and members. I just want to rise and ask Senator McCoy a quick question, and maybe we can follow up more between General File and Select. But if Senator McCoy would yield? [LB72]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Nordquist? [LB72]

SENATOR McCOY: Yes, I would. [LB72]

SENATOR NORDQUIST: Senator, I understand, I think, the intent of this legislation, and my question is regarding just the openness of it being able to direct to any nonprofit as opposed to the industry itself directing it to a specific function. I know it's my understanding that the bar association, with some of their dollars on interest-bearing accounts, has to support legal services for the indigent with that interest. I was wondering if there was any discussion about limiting this for that interest to support our affordable housing work in Nebraska? We've...over the last few years we've actually taken some money out of those funds. It's very much needed. I know the realtors are very much in support of that program, and anything we can do to ensure stronger support of our affordable housing programs in the state, I think is much needed. And I was just wondering if there was any discussion about focusing these dollars on something that's very much related to the industry here and just getting more bang for our buck as opposed to those dollars being spread widely across all nonprofits? [LB72]

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SENATOR McCOY: Well, I think, Senator Nordquist, there have been discussions about how the best way to go about this so that there is as good of a quality education for home ownership as possible. Part of the rules of the road, if you will, that dictated the grant that was received, dictates in turn how you go about implementing that, from the best of my understanding. So I think that's a very worthwhile discussion and it's a discussion that we had in committee when I previously served on the Banking, Commerce and Insurance Committee, two years ago, when we first discussed this topic. But as I recall, the...and I'd be happy to do some further checking into this. But as I recall, to address the sustainability requirement from the National Realtors Association that was the initial seed money, the \$50,000, required us to look at it from an education standpoint with home ownership, which, of course, also feeds into affordable housing, of course. [LB72]

SENATOR NORDQUIST: Yeah, yeah. [LB72]

SENATOR McCOY: I would be happy to look at if there's a way to somehow address that a little bit differently. But as I recall, the best that I can in that discussion two years ago, it was determined that addressing it, worded this way and in this direction, was the best way to maintain the sustainability requirements from those that granted the original seed money of \$50,000. [LB72]

SENATOR NORDQUIST: Sure. Thank you, Senator. And I look forward to having a continued discussion. This...just reading through this, I thought it was an opportunity that we could look at to focus those dollars on a very worthwhile and very much related...very much related cause. Thank you, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Carlson. [LB72]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to direct a question or two to Senator McCoy if he would yield. [LB72]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Carlson? [LB72]

SENATOR McCOY: Yes, I would. [LB72]

SENATOR CARLSON: Senator McCoy, just to clarify, because certainly I was in on the committee hearing and believe I understand the bill. But there's a possibility into this account there could be a number of deposits from a lot of different people that do go into this account. Would that be correct? [LB72]

SENATOR McCOY: Yes, that would be correct. [LB72]

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SENATOR CARLSON: And each one that has money going into that account has to be aware that, if it is to be interest-bearing, they acknowledge that, and then they give their release for that to happen. Is that correct? [LB72]

SENATOR McCOY: That's my understanding, Senator Carlson. Yes. [LB72]

SENATOR CARLSON: Okay. And it's been brought up, well, if interest is being earned on my money, I should get the money; and I understand that. But I did some figuring, and if this is close, this is part of the reason why it doesn't work that way. If I pay down \$1,000 and, interest rates what they are today, it's probably not even 1 percent. But if it were 1 percent on \$1,000, that would be 2.7 cents a day. And money comes in and out of these accounts rather frequently, so I think that if there were an effort to pay back to the individual the amount of interest earned on these accounts, it's going to be very small amounts and cumbersome for the financial institution to handle. But if the person says, if my money is in with a whole bunch of other deposits and it goes for a cause that I agree in, and I sign to this effect, that takes care of it. Would that be true? [LB72]

SENATOR McCOY: Yes, Senator Carlson. I think that's probably a much more articulate explanation for the issue at hand. [LB72]

SENATOR CARLSON: Okay, thank you. And so if I do understand the bill and the fact that this has been in effect for a while but not long enough to have a number of different banks become involved with it and make it so that it's really usable to be put back into the industry to educate people on real estate transactions, it needs more time. And when we go through an interest period where interest is higher, then the concern about this I think will be greater. But I do support the bill the way it was presented and will support it on my vote. Thank you. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Schumacher. [LB72]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. I believe in the committee we were given to understand that this was somewhat patterned after what the bar association does. It's unethical for a single lawyer to take money from one of these escrow funds and put it in his pocket, but if the bar association does it together, it's called a program. So I think we were also told that parties could get together and agree how to divide this interest between the seller and the buyer in a real estate transaction. I don't think that there was discussion, at least in the committee, that the buyer and seller had to sign a piece of paper saying, yeah, it's okay to keep my interest, even though I think I understood that that was what Senator McCoy answered Senator Chambers' question at. So to clarify for the record: Senator McCoy, is this a default situation that the money goes into the broker's account and it's divvied up into this pot, or is this something that requires express consent on the part of the buyer and the seller for this to become operant? [LB72]

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PRESIDENT SHEEHY: Senator McCoy. [LB72]

SENATOR McCOY: Well, Senator Schumacher, if I'm articulating this correctly, and I believe that I am, but these funds would go into the real estate broker's trust account anyway had LB347, two years ago, not gone into effect. This...and as Senator Carlson just talked about, you have a lot of money coming in and out at different times through these trust accounts that our banks across the state handle. This would, in practice, I believe, each, you know, buyer, seller, whoever the parties involved, have to authorize, sign off on, it's my understanding in practice that's how it's been done, to my knowledge; and if I'm incorrect in that, I'll be happy to correct that on the record at some point. But to my knowledge this has been required that they'd have to sign off on this just for the purposes of the fact that that interest...those would allow to become interesting bearing for purposes of putting this money towards education, homebuying education for Nebraskans. Does that answer your question? [LB72]

SENATOR SCHUMACHER: It does, Senator McCoy, as to your knowledge of this. Senator Chambers aptly pointed out something, and that is, words have power; and they have really a lot of power when they light up green lights on that board up there. So maybe we should read what the law says. And the law, as it sets forth in 81-885.21, says, at least certainly the way I read it, that this is the way it's going to be unless the parties have further otherwise agreed in writing. So it's not...they don't have to consent. This is the way it is unless they know enough, think enough, to come forward and say, nah, you know, it's my 27 cents and I don't want to give it up; it should go to the buyer or the seller. So I think we need to take some advice from some wisdom here, and that is to read the entire context. Right now, I am pretty sure that the default situation is that it goes into this fund unless somebody barks. And we need to know the answers to such things because, you know, it does make a difference whether you steal a little or you steal a lot. If it's by consent, it's fine. If you can work around it and you have knowledge and informed consent, it's even better. So I'd certainly like to have this clarified for sure. It appears to me that... [LB72]

PRESIDENT SHEEHY: One minute. [LB72]

SENATOR SCHUMACHER: ...we're not clear. Thank you, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Nelson followed by Senator Chambers. Senator Nelson. [LB72]

SENATOR NELSON: Thank you, Mr. President. I'd like to address a question or two to Senator McCoy. [LB72]

PRESIDENT SHEEHY: Senator McCoy, would you yield? [LB72]

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SENATOR McCOY: Yes. [LB72]

SENATOR NELSON: Thank you, Senator McCoy. Since we're going to be looking at this down the road here, I'm wondering if you have any information on the amount of money that's involved here as far as what's remitted to the foundation. Senator Carlson talked in terms of a low rate of interest. But if we're talking about purchase of a \$300,000 home, the down deposit could be 5 percent, which is \$15,000; or 10 percent, \$30,000. And that's quite a bit of money to put into the trust fund. Do you know what the incidence is of the number of people that do agree to have that interest...that it be an interest-bearing and paid into the foundation? Do you have any numbers on that? [LB72]

SENATOR McCOY: Well, Senator Nelson, as I said earlier, so in 2012 it's my understanding that \$2,000 was placed into this fund through one realtor being active. I apologize that I don't know off the top of my head how many different people would have been involved in transactions with that one realtor that were part of that \$2,000 that went into the fund, but it was one realtor that contributed to that overall number, and that's...I could get that more specific information, and I assume that would involve knowing... [LB72]

SENATOR NELSON: All right. Thanks. I missed that statement apparently. I didn't realize that it was such a low figure. So that tells me that it's not that well-known or working that well, and that more time is needed for people to become aware of this option and to join in with contributing interest money from the account. Would that be true? [LB72]

SENATOR McCOY: Well, I think so, Senator Nelson, and that's my hope is that some additional time will hopefully allow some other real estate brokers and banks to be involved with this program. And if it doesn't happen, well, then that would get back to the original fundamental issue of sustainability, and that would maybe show that it's not sustainable; and in which case, in my view, it would go away and probably ought to. My hope is that it will be sustainable. [LB72]

SENATOR NELSON: All right. But at this time there is nothing close to the amount of money that might be needed to help people with affordable housing and things of that sort. Would that be correct? [LB72]

SENATOR McCOY: Well, again you go back to the original grant was \$50,000 that started this fund. And the hope would be that, yes, it becomes sustainable and then you really can affect true funding of quality education for home ownership down the road. [LB72]

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SENATOR NELSON: All right. Thank you, Senator McCoy, and thank you, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Chambers. [LB72]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. I'm not going to link my colleague's name with mine because I don't know how that would play in his district, but he raised a crucial point which I did not have the opportunity to verify because I haven't been able to read all of these bills yet and the original language or others that may tie in. I would like to ask Senator McCoy a question based on what was brought out earlier. [LB72]

PRESIDENT SHEEHY: Senator McCoy, would you yield? [LB72]

SENATOR McCOY: Yes, I would. [LB72]

SENATOR CHAMBERS: Senator McCoy, that language which says that this action will occur unless somebody takes action to disallow it, would you be willing--and you don't have to answer now because there are people you probably will want to talk to--to alter that language so that it becomes an affirmative duty to notify the individuals whose money will bear interest to which they will not be entitled? In other words, it's like saying if you don't say anything then I can take \$10 out of your check; as opposed to saying, if you agree, I will take \$10 out of your check. Since there is a benefit accruing to a third party from money belonging to Mr. A or Ms. B, they should be put in a position to be notified and take an affirmative decision to do that. Would you be in favor of that change of language? And if you do not have an answer right now that you'd like to give, will you talk to whomever you know of who would be interested in this bill and then let me know what their decision is? [LB72]

SENATOR McCOY: Certainly, Senator Chambers. And if I may, I don't want to take up your time, but may I address what you're speaking of? I think that perhaps what you're asking about is in the green copy of the bill, page 2, lines 11-13. And perhaps I need to articulate it a little better, and that would say that...well, I'll go up a couple of lines. I'll start in, I guess, on line 9 where it says, "his or her associate brokers, or his or her salespersons on behalf of his or her principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing." So I think the affirmative position that you're speaking of, Senator Chambers, the affirmative position would be that in writing as it's happened in the practical implementation of this with the one realtor so far, it's my understanding with some clarification from the parties involved, which I got a moment ago, that not only is that being in the practical application of this required as is outlined in those lines of statute in the choice to not have that interest go to this nonprofit for homeowner education, but the practical



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application is that that choice is also made to affirmatively do that in writing as well. So if we need to modify this in order to indicate that, I don't see any issue with that; and, in practice, I believe that's already been done...or being done, I should say. [LB72]

SENATOR CHAMBERS: Thank you. [LB72]

PRESIDENT SHEEHY: One minute. [LB72]

SENATOR CHAMBERS: I'm through. Thank you, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Seeing no additional requests to speak, Senator McCoy, you're recognized to close on LB72. [LB72]

SENATOR McCOY: Thank you, Mr. President and members. And I appreciate the legal analysis from Senator Schumacher and also from Senator Chambers on this issue. I again wouldn't have any concern with adding in, between General File and Select File, amending this to require an affirmative, in-writing position that the parties involved would have to choose this; in practice, that's already happening. That choice has to be made in writing if the parties involved do not wish to participate in this, so I think that would be a commonsense and practical extension of this, and I would be happy to address that if LB72 would seem by the body to advance. So with that I would ask for your green light to advance LB72. Thank you, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Senator McCoy. You have heard the closing. The question before the body is on the advancement of LB72. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB72]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB72. [LB72]

PRESIDENT SHEEHY: LB72 advances. We will now proceed to LB100. [LB72 LB100]

CLERK: LB100 is a bill by Senator Watermeier. (Read title.) The bill was introduced on January 10, referred to the Banking, Commerce and Insurance Committee, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB100]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Watermeier, you're recognized to open on LB100. [LB100]

SENATOR WATERMEIER: Thank you, Mr. President and members of the body. I bring before you this morning LB100. The purpose of LB100 is to bring state law into conformity with the current provisions of federal law relating to automatic teller machines, ATMs, and specifically, their fee disclosure requirements. Under current law, financial institutions operating ATMs are required to display notices in two separate

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places notifying customers that they might be charged fees for withdrawing cash from the ATM. One notice is required to be posted in a prominent and conspicuous location on or at the ATM, but the second notice required to appear on the screen of the ATM or on paper notice issued from the machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction. The requirements of our state law essentially codify the ATM disclosure provisions of the federal law. Congress recently adapted legislation, H.R.4367, which eliminates the requirement that ATM fee notices be affixed to or displayed on ATMs. Congress recognized that the requirement was no longer necessary since ATM operators are separately required to disclose fees on ATM screens, and consumers have the right to decline the transaction without being charged. Furthermore, the requirement under federal law that the fee notice be posted on the ATM had exposed banks to frivolous class-action lawsuits. It had been estimated that approximately 2,000 lawsuits have been filed across the country alleging noncompliance with the posted disclosure requirement. It had been insinuated that individuals may actually seek out ATMs with missing placards. The nuisance value of the lawsuit frequently resulted in financial institutions settling the case rather than incurring expenses associated with litigation of the claims. Therefore, LB100 will allow Nebraska law to remain in conformity with the current provisions of federal law in respect to ATM fee disclosure requirements by eliminating the requirement that the ATM fee notices be posted in a prominent and conspicuous location on or at the ATM. Consumers are provided with adequate protections since they continue to receive a notice that appears on the screen of the ATM, or appears on a paper notice issued from the machine prior to consummating a transaction for which a fee may be imposed. The public hearing was held last week on LB100 and no one testified against the bill. LB100 was advanced from the Banking, Commerce and Insurance Committee on a unanimous vote. I urge your favorable vote on advancement of LB100. Thank you, Mr. President. [LB100]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Thank you, Senator Watermeier. We will now open for debate. Senator Harms is recognized. [LB100]

SENATOR HARMS: Senator Watermeier, would you yield to just a couple of questions, please? [LB100]

SENATOR WATERMEIER: Certainly. [LB100]

SPEAKER ADAMS: Senator Watermeier, will you yield? [LB100]

SENATOR WATERMEIER: Yeah. [LB100]

SENATOR HARMS: Senator Watermeier, the bank determines the surcharge, is that

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correct? [LB100]

SENATOR WATERMEIER: The bank determines it, yes. [LB100]

SENATOR HARMS: How much is that surcharge and what kind of a formula do they use? And what is the amount they actually charge, is what I'm after? [LB100]

SENATOR WATERMEIER: Well, the amounts will vary from 50 cents to, I think, a maximum of \$2.50, but it is unlimited. There is...and the formula, I'm not aware of right now. But the way the process works is if the bank owns the ATM machine, or it's their ATM, they can charge fees to, I'll call them foreign customers, people that are not...don't have an account at that particular bank. They must charge that same fee to everybody within the state. [LB100]

SENATOR HARMS: Senator, do you think that...first of all, will this be consistent all the way across the state? [LB100]

SENATOR WATERMEIER: Yes, it will. [LB100]

SENATOR HARMS: Will the charge or the surcharge be consistent all the way across the state? [LB100]

SENATOR WATERMEIER: The charge or surcharge will be consistent. [LB100]

SENATOR HARMS: So in Scottsbluff, Nebraska, if I use my ATM, and that surcharge is \$2, if I had an account here in Omaha or in Lincoln, would it be a surcharge of \$2? That's really what I'm trying to find out. Is it consistent across the state of Nebraska? [LB100]

SENATOR WATERMEIER: That fee would be consistent to which I will say "Bank A" has that policy inside of their bank. "Bank B" may have a different policy. But they will charge the same fee to each one of their foreign customers; and I'll say foreign if they don't have an account in that bank. [LB100]

SENATOR HARMS: Okay, thank you, Senator. [LB100]

SPEAKER ADAMS: Senator Harms, you have additional time, have you concluded? [LB100]

SENATOR HARMS: Yes, I'm sorry, yes, Mr. President...Mr. President, I'm complete. [LB100]

SPEAKER ADAMS: Senator Chambers is recognized. [LB100]

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm having an amendment prepared, but I will tell you what that amendment would do, and maybe in the discussion, while I was otherwise occupied, Senator Watermeier explained why that notice should be done away with, so I will ask him at this time. [LB100]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Senator Watermeier, would you yield to Senator Chambers? [LB100]

SENATOR WATERMEIER: To replace the notice will...to remove the notice that has...need to be on a paper on a machine has some history to it. And I didn't explain that in my opening, but I will go back. If you think about ATMs back in the late '80s and the early '90s, many of these machines were not very large and the screen was not very big. And at the time those were out, there was a thought process that they needed to be noticed with a piece of paper on there. Well, in many of the places in which they were placed, the paper would be torn off, there would be...because of even weather, they could be lost. And so there's kind of two things going on here. You have a progression in time which has allowed for all of the warning to be now placed on the screen, and then also now we're becoming into conformity with the federal law. [LB100]

SENATOR CHAMBERS: You said that if it's paper, then something could happen to it, is that the bulk of what you said? [LB100]

SENATOR WATERMEIER: If there was a paper notice on an ATM,... [LB100]

SENATOR CHAMBERS: Right. [LB100]

SENATOR WATERMEIER: ...many times they would be discarded because of weather or just time would go by. [LB100]

SENATOR CHAMBERS: But the notice, with your language, you're striking the requirement for a notice which says "on or at". "On" it could mean on the screen. Is that notice still going to be required to be given? [LB100]

SENATOR WATERMEIER: The original language said: one of, or both places. And now we're going to replace it with just one, so you don't have to have two. So now we're going to go with just one notice which it can be on the screen, which a customer can be...will be given a menu and say, do you want to be charged \$102 when you're required...when you're asking for \$100, so you know that \$2 of that is a fee. Or it can be a separate piece of paper that will come out of the machine and tell you that. So you are

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given a chance at that time to say no. [LB100]

SENATOR CHAMBERS: Where in the bill does it say that this notice is still going to be given? Or is that contained in some federal legislation that is being referenced? [LB100]

SENATOR WATERMEIER: Well, I'm going to have to apologize for that one, on specifically where the language is at in the bill. [LB100]

SENATOR CHAMBERS: Well, let me look at this in view of what you said. The notice shall appear on the screen at the automatic teller machine, or appear on a paper. So this would require that if they're not going to use the paper, the notice would be on the screen which the individual using that machine would see. Is that correct? [LB100]

SENATOR WATERMEIER: That's the way I take it. In the bill...on page 5 of the bill on line 4, that's the way I would read it. [LB100]

SENATOR CHAMBERS: I think that probably takes care of the concern I had. But I read the committee statement and it just indicated, as I understood it, that a notice was going to be done away with. It would no longer be required. It was just a certain form of the notice which no longer is required, it's surplusage now, but...if it were left in. With that language stricken, that you strike on page 5, we leave the requirement that a notice appear on this machine that this surcharge is going to be made. Is that what this notice will consist of? [LB100]

SENATOR WATERMEIER: I think you have described that right. [LB100]

PRESIDENT SHEEHY: One minute. [LB100]

SENATOR WATERMEIER: Senator Chambers, I think you've described that correctly. [LB100]

SENATOR CHAMBERS: I couldn't understand you, would you talk into your mike. [LB100]

SENATOR WATERMEIER: Yes, Senator Chambers, I think you've described that correctly. [LB100]

SENATOR CHAMBERS: How do I know that that information about the surcharge is what this notice will consist of? And again, if I read the whole bill, maybe I'd see it. [LB100]

SENATOR WATERMEIER: It's my understand that that's what the federal law will do is it will require it to be either posted on the screen, so if you're asking for \$100, it will

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come up and say your account is going to be charged for \$100 plus the fee that the bank can impose. [LB100]

SENATOR CHAMBERS: Okay. [LB100]

SENATOR WATERMEIER: It's either going to be on the screen and/or pitched out with a small piece of paper like your deposit slip confirming that. [LB100]

SENATOR CHAMBERS: Thank you. And with that explanation I don't need to offer the amendment that I was preparing and may have put on the Clerk's desk. I'm satisfied with the explanation given. And thank you, Senator Watermeier. [LB100]

SENATOR WATERMEIER: Certainly. [LB100]

PRESIDENT SHEEHY: Thank you, Senator Chambers. [LB100]

CLERK: Senator, so may I assume you want to withdraw the amendment that you had filed? Thank you. [LB100]

PRESIDENT SHEEHY: FA1 is withdrawn. Additional members requesting to speak on LB100 is Senator Karpisek, followed by Senator Smith. Senator Karpisek. [LB100]

SENATOR KARPISEK: Thank you, Mr. President, and members of the body. Would Senator Watermeier yield please? [LB100]

PRESIDENT SHEEHY: Senator Watermeier, would you yield to Senator Karpisek? [LB100]

SENATOR WATERMEIER: Yes. [LB100]

SENATOR KARPISEK: Thank you, Senator Watermeier, and don't want to make too much of this on your first bill, but what a way to start, right? Senator Watermeier, this doesn't really have anything to do with the amount of money that they're going to charge for the transaction, does it? [LB100]

SENATOR WATERMEIER: No, it doesn't. [LB100]

SENATOR KARPISEK: It just says that there will be one place that will tell you how much that fee will be, whether it's \$1.50 or \$2. [LB100]

SENATOR WATERMEIER: There will be one place where it will tell you that and you'll have a chance to back out of the transaction at that time. [LB100]

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SENATOR KARPISEK: So most normally on the ATMs I've seen, it's been on the screen. Do you have any idea...are there ATMs still in use that it's not on the screen? [LB100]

SENATOR WATERMEIER: In a discussion with the banking industry, we came to that assumption, and maybe that's dangerous, but we came to the assumption that with the history of ATMs that they have all had been replaced with newer machines, bigger screens, obviously, touch screens as well, and so those warning at that point in time will be right there on the screen rather than having to use the paper. [LB100]

SENATOR KARPISEK: Thank you. And I think that explains a lot of it to me. While we're on the subject, I wish we could do something about how much some of these ATMs charge, because I've seen a great variance and I think, sometimes, it might have to do with the amount of distance between that ATM and the next one, or if it's in a network with other banks. But seeing some that are upwards of \$3 and I think that is an awful lot if someone is going to go get a \$20 bill out. But that's not what this bill is about. Just want to get a little shot in on that. Thank you, Senator Watermeier. Thank you, Mr. President. [LB100]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Smith. [LB100]

SENATOR SMITH: Thank you, Mr. President. Would Senator Watermeier yield to a question? [LB100]

PRESIDENT SHEEHY: Senator Watermeier, would you yield to Senator Smith? [LB100]

SENATOR WATERMEIER: Yes. [LB100]

SENATOR SMITH: On page 5 where you talk about that this would appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine, I appreciate what you're trying to do here, and I wholeheartedly agree that the old way of doing it was probably...had a more potential for error than not. But in the case here that...I've been to a number of ATMs where they may be out of paper. And this is a situation where I'm assuming that the reason it would be printed on paper rather than on the screen would be, maybe, because a screen was too small or it was not conducive to displaying that charge, is that correct? [LB100]

SENATOR WATERMEIER: That, or it is still an older machine. [LB100]

SENATOR SMITH: Okay. Is there any way that...how would I then be made aware of the charge if the machine was malfunctioning and it was not printing paper? So can we just make it mandatory that it is presented on the screen of the machine and take that

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other piece out of there where, you know, we are dependent upon a piece of paper being printed from a machine? [LB100]

SENATOR WATERMEIER: Well, that is a question I can introduce to the industry, but I couldn't answer it right now. [LB100]

SENATOR SMITH: All right. I would appreciate it if you could, maybe, just ask them and entertain that, maybe, in the next round. [LB100]

SENATOR WATERMEIER: I can do that. [LB100]

SENATOR SMITH: Thank you. [LB100]

PRESIDENT SHEEHY: Thank you, Senator Smith. Senator Gloor. Senator Gloor waives. Seeing no additional requests to speak, Senator Watermeier, you're recognized to close on LB100. [LB100]

SENATOR WATERMEIER: Thank you, Mr. President, members of the body. I appreciate your time on this and the education that I will learn shortly after. I think it's a simple bill. It gets us into federal law and I believe it serves a good, simple purpose. Thank you. [LB100]

PRESIDENT SHEEHY: Thank you, Senator Watermeier. You have heard the closing. The question before the body is on the advancement of LB100. All those in favor vote aye; opposed, nay. Have all voted who wish? Record, Mr. Clerk. [LB100]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB100. [LB100]

PRESIDENT SHEEHY: LB100 advances. We will now proceed to LB146. [LB100 LB146]

CLERK: LB146 was a bill introduced by Senator Gloor. (Read title.) Introduced on January 10, referred to the Banking, Commerce and Insurance Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB146]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Gloor, you're recognized to open on LB146. [LB146]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. LB146 will provide continuity in the law that governs certain remittance transfers. Specifically, LB146 would make a needed adjustment in the Uniform Commercial Code section 48-108 which I'll refer to from now on as UCC Article 4A. This change is needed because the Dodd-Frank Wall Street Reform and Consumer Protection Act made



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amendments in the federal Electronics Funds Transfer Act, EFTA, that have unintended consequences for UCC Article 4A. UCC Article 4A governs a specialized method of payment referred to as a funds transfer, but also commonly referred to in the commercial community as a wholesale wire transfer. The amendments in this bill are recommended by the Permanent Editorial Board for the Uniform Commercial Code. Similar bills will be appearing in legislatures across the country. If amendments like this bill are not created or enacted, then there could be legal uncertainty for a class of remittance transfer currently governed by UCC Article 4A. More than 20 years ago, UCC Article 4A was drafted to govern transfers between commercial parties. At that time, the federal EFTA governed only consumer wire transfers. UCC Section 4A-108 was originally drafted with that in mind. When the Dodd-Frank amendments to the federal EFTA go into effect, the federal EFTA will govern remittance transfers whether or not those remittance transfers are also electronic funds transfers as defined in the federal EFTA. The result will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of UCC Article 4A even if the remittance transfer is not an electronic fund transfer that is not a consumer remittance transfer. Thus, a number of important issues in those remittance transfers will be governed either by UCC Article 4A or by the federal EFTA, key point. The proposed amendment would revise UCC Section 4A-108 to provide that UCC Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the federal EFTA. In summary, here are the key parts of this bill. Congress identified a problem, that being the need to provide additional protections for senders of remittance transfers; things like confidentiality; dispute resolutions. Congress, with Dodd-Frank, allows remittance transfers to be governed in part by the federal EFTA providing consumer protections to senders of remittance transfers in the form of disclosure requirements, dispute resolution procedures. The solution crafted by Congress does not consider remittance transfers to be electronic funds transfers creating a problem under state law by allowing such transfers to fall entirely outside the coverage of UCC Article 4A. LB146 solves the problem created by Congress by reinstating coverage under UCC Article 4A for remittance transfers that are not electronic fund transfers under the federal EFTA, thereby ensuring that state law will govern the relations between banks, originator banks, intermediary banks, beneficiary banks, that are part of the payment claims in connection with these transfers. The bill contains the language of the recommended fix from our uniform law commissioners to restore the balance between state and federal law and thereby close any gaps in consumer protection. Thank you, Mr. President. [LB146]

PRESIDENT SHEEHY: Thank you, Senator Gloor. You've heard the opening to LB146. The floor is now open for discussion. Seeing no requests to speak, Senator Gloor you're recognized to close. Senator Gloor waives closing. The question before the body is on the advancement of LB146. All those in favor vote aye; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB146]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB146. [LB146]

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PRESIDENT SHEEHY: LB146 advances. Speaker Adams, you're recognized for an announcement. [LB146]

SPEAKER ADAMS: Thank you, Mr. President. Members, as you can see we have worked through the items on General File today that were on the agenda. We're going to continue to take things in worksheet order. Tomorrow's agenda is relatively small at this point, so we will begin at 10:00 a.m. rather than 9:00 tomorrow. We'll begin at 10:00 a.m. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Adams. Mr. Clerk, messages on your desk.

CLERK: Thank you, Mr. President. New resolution, Senator Mello offers LR44, that will be laid over. I have hearing notices from the Business and Labor Committee and the Urban Affairs Committee and the General Affairs Committee signed by their respective Chairs. A motion from Senator Larson to LB654 to be printed; Senator Schumacher to LB84 and LB85 amendments to be printed. Name adds: Senators Ashford and Murante to LB125. Senators Schilz and Lautenbaugh to LB204; Senator Davis to LB613. (Legislative Journal pages 306-310.) [LR44 LB654 LB84 LB85 LB125 LB204 LB613]

And I do have a priority motion. Senator Carlson would move to adjourn the body until Tuesday morning, January 29, at 10:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Tuesday, January 29, at 10:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.