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Floor Debate
February 25, 2013

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the thirty-first day of the One Hundred Third Legislature, First Session. Our chaplain for today is Pastor Darin Corder of the Bennet Community Church in Bennet, Nebraska, Senator Wallman's district. Please rise.

PASTOR CORDER: (Prayer offered.)

SENATOR GLOOR: Thank you, Pastor Corder. I call to order the thirty-first day of the One Hundred Third Legislature, First Session. Senators, please record your presence, roll call. Mr. Clerk, please record.

CLERK: I have quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR GLOOR: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, your Committee on Government, Military and Veterans Affairs reports LB98 to General File with amendments; and LB372 indefinitely postponed, those reports signed by Senator Avery. I have a confirmation report from the Government Committee. And I have a series of hearing notices from the Judiciary Committee and the Transportation Committee. And new resolutions: LR70 by Senator Sullivan and LR71 by Senator Wallman; those will be both laid over at this time, Mr. President. That's all that I have. (Legislative Journal pages 507-509.) [LB98 LB372 LR70 LR71]

SENATOR GLOOR: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, legislative confirmation reports, Mr. Clerk.

CLERK: Mr. President, the Health and Human Services Committee, chaired by Senator Campbell, reports on the appointment of Eileen Dakan to the Commission of the Deaf and Hard of Hearing. (Legislative Journal page 480.)

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Campbell, you're recognized to

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open on your confirmation report.

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. The Health and Human Services Committee held a confirmation hearing on Thursday, February 14, on the appointment of Eileen Dakan to the Commission for the Deaf and Hard of Hearing. Ms. Dakan is a new appointment to the commission from Kearney, Senator Hadley's district. Ms. Dakan has suffered hearing loss herself and brings that personal experience and background to her new role. The members of the Health and Human Services Committee were impressed with Ms. Dakan's desire to make a difference in the lives of those affected by hearing loss. She spoke quite passionately about a hearing loop system that was available when she was in college and how important it is to involve new technology for those who are experiencing hearing loss. She will be an articulate and effective advocate on the commission. The Health and Human Services Committee respectfully asks for your confirmation of Ms. Dakan's appointment. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Campbell. Is there any discussion on the report? Any senators wishing to be recognized? Seeing none, Senator Campbell, you're recognized to close. Senator Campbell waives. Members, the question is the adoption of the report offered by the Health and Human Services Committee. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 510.) 37 ayes, 0 nays, Mr. President, on the adoption of the Health Committee confirmation report.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, a second confirmation report from the Natural Resources Committee involves the appointment of Mick Jensen to the Nebraska Game and Parks Commission. (Legislative Journal page 487.)

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Carlson, you're recognized to open on the report from the Natural Resources Committee.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. February 20 we had a confirmation hearing for Mick Jensen of Blair who is employed by Great Plains Communications. This is a reappointment to the Game and Parks Commission, a nine-member commission. He represents District 3. We had a good session with him where he discussed what he feels are the issues with Game and Parks Commission. He served well in his first term. He is very community oriented. He had some good ideas as to how these challenges should be met for Game and Parks Commission. And the committee was very satisfied with his response to these questions. We believe that he should be confirmed for his reappointment and I would

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ask for your support. Thank you.

SENATOR GLOOR: Thank you, Senator Carlson. Is there any discussion on the report? Seeing no senators wishing to recognize, Senator Carlson, you're recognized to close on the report. Senator Carlson waives. Members, the question is the adoption of the report offered by the Natural Resources Committee. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 510-511.) 40 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR GLOOR: The report is adopted. Continuing with the agenda.

CLERK: Mr. President, Senator Mello would move to withdraw LB586. [LB586]

SENATOR GLOOR: Senator Mello, you're recognized to open on your motion to withdraw. [LB586]

SENATOR MELLO: Thank you, Mr. President, and members of the Legislature. As members of the Legislature, too often we forget that many of the laws that we pass depend upon the promulgation and implementation of rules and regulations by executive branch agencies. In the past, important legislation has been passed by this body only to have its timely implementation delayed because the appropriate state agency has yet to even begin the rules and regulations process. LB586 was originally introduced to address just such a delay in the rules and regulations for licensed child-care centers and would have adopted in statute the proposed updates of those rules and regulations which have been approved by the Department of Health and Human Services, but had yet to be finally approved by the Governor. Last updated some 24 years ago in 1989, these regulations were in dire need of update to bring our state into compliance with a number of changes in state and federal law. For example, the proposed rules would have brought our state into compliance with the 2006 requirements that child-care employees obtain training on child abuse, neglect, and shaken-baby syndrome. Perhaps more importantly, these changes would have put in place long overdue criminal history background and sexual offender registry checks for child-care employees. The lack of these simple protections in our regulations are a contributing factor to the fact that Nebraska is currently at the bottom in national rankings for the protection we afford children in licensed childcare. With the Governor giving his approval of the newly revised regulations last week, LB586 is no longer needed. The importance of some of the updates in these rules and regulations, however, cannot be overstated and serve as an important reminder of the need for the Legislature to monitor the implementation of rules and regulations by the executive branch. While LB586 is no longer needed at this time, I will continue to evaluate what we can do to enhance our child-care infrastructure across the state. I would appreciate

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your support on the motion to withdraw LB586. Thank you, Mr. President. [LB586]

SENATOR GLOOR: Thank you, Senator Mello. Members, you've heard the opening on Senator Mello's motion to withdraw. Are there senators wishing to be recognized? Senator Chambers, you are recognized. [LB586]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is the first time I've really looked at Senator Mello's name, but if you look at the "M," there are two uprights and a small "v," so if you left the two uprights, straighten the small "v" into a straight line and dropped it midway, Mello becomes Hello. If you leave the first upright where it is, remove the small "v" in the middle, and split that second upright into two parts and put one at the top and one in the middle it becomes "fello." And if you take all of the portions of "M" except the upright and join them to that upright and curve the bottom like a hook it becomes "Jello." Senator Mello, you have given me much to think about this morning and I'm going to write a rhyme for you to apologize for what I've just done to your name this morning. [LB586]

SENATOR GLOOR: Thank you, Senator Chambers. Other senators wishing to be recognized? Seeing no one, Senator Mello, you're recognized to close. Senator Mello waives. Members, the question is, shall LB586 be withdrawn? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB586]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the motion to withdraw LB586. [LB586]

SENATOR GLOOR: LB586 is withdrawn. (Visitors introduced.) Continuing with the agenda, Mr. Clerk. [LB586]

CLERK: Mr. President, Senator Seiler and Senator Adams introduce LR65. (Read LR65 by title for the first time.) [LR65]

SENATOR GLOOR: Senator Seiler, you are recognized. [LR65]

SENATOR SEILER: Thank you, Mr. President and members of the Legislature. I rise to bring this resolution to honor Ardyce Bohlke. I've known Senator Bohlke since she moved to Hastings in the mid '70s. What an outstanding lady she was. She was elected to this Unicameral in 1992 and reelected in 1996. She served as the Chairman of the Education Committee and spearheaded many of the laws that we have on the books right now that we are governing under in education. Her funeral will be tomorrow morning at 11:00 at the First Presbyterian Church in Hastings. We'll all rise for a moment of silence and then we can proceed on the LR. (Moment of silence.) Thank you very much. I move that LR65 be passed. Thank you. [LR65]

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SENATOR GLOOR: Senator Adams, you are recognized. [LR65]

SPEAKER ADAMS: Thank you, members. I think Senator Seiler has said all that needs to be said. I would simply remind all of us that we are part of a unique institution and certainly Ardyce was a force in this body when she was here. I'm sure of that. And if nothing more, we recognize that we're all part of this institution. Thank you, Mr. President. [LR65]

SENATOR GLOOR: Thank you, Senator Adams. Senator Krist, you are recognized. [LR65]

SENATOR KRIST: This lady was a grandam of the Legislature. She...the first time I met her, took me under arm and said you've got a lot of shoes to fill, but don't try to do it all in one year. She was a lady of wisdom and I respect her immensely and we will miss her. Thank you. [LR65]

SENATOR GLOOR: Thank you, Senator Krist. Other senators wishing to be recognized? Seeing none, Senator Seiler, do you wish to close on your resolution? Senator Seiler waives. The question is, shall LR65 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LR65]

CLERK: 44 ayes, 0 nays, Mr. President, on the adoption of LR65. [LR65]

SENATOR GLOOR: LR65 is adopted. Continuing with the agenda, General File. Mr. Clerk, items for the record. [LR65]

CLERK: Thank you, Mr. President. New resolution, Senator Avery offers LR72. That will be laid over at this time. New A bill, LB363A by Senator Avery. (Read LB363A by title for the first time.) I have a hearing notice from the Education Committee signed by Senator Sullivan as Chair. And I have four (sic--five) confirmation reports, three from Education and two from Natural Resources, Mr. President. That's all that I have, thank you. (Legislative Journal pages 511-513.) [LR72 LB363A]

SENATOR GLOOR: Thank you, Mr. Clerk. Moving to General File.

CLERK: Mr. President, LB363, bill originally introduced by Senator Avery. (Read title.) Bill was introduced on January 18, referred to Government, discussed briefly on the floor on the morning of February 22. Mr. President, Senator Avery opened on his bill, committee amendments were presented, those committee amendments are still pending. (AM166, Legislative Journal page 422.) [LB363]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Avery, would you refresh the body's memory about LB363 and the committee amendment from the Government, Military

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and Veterans Affairs briefly, please. [LB363]

SENATOR AVERY: Thank you, Mr. President, I would be glad to do that. This bill is a straightforward attempt to close a loophole in our public records law that was created in 2000 when a bill was passed that removed the language prohibiting agencies from charging staff time to produce public records to requestors. Since that time, the Attorney General has interpreted the statute to allow agencies to charge for staff time when filling a public records request, including time for attorneys to review the records. The result was that this loophole was taken advantage of by public entities and in many cases the public records were so expensive to acquire that it effectively disemboweled a very important part of our public law. And it became difficult, if not impossible, for many people to gain access to those records. If you will indulge me, Mr. President, I would like to take this opportunity to answer some of the questions that were raised on Friday. If you prefer, I will stand down and wait until others have had a chance to speak, but I do want to do that. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. We have members in the queue. Members, you have heard the opening on AM166 to LB363. Members in the queue include Price, Chambers, Nelson, Sullivan, Dubas, and Schumacher. Senator Price, you are recognized. [LB363]

SENATOR PRICE: Thank you, Mr. President, members of the body. I'm up here at the mike today because another member asked me my position as a committee member on this bill. And I know that Senator Avery has been covering it quite well. But I wanted to let you know, we had a situation in Bellevue where a citizen made a request for records. And that request...he was required to put over \$600 deposit to get, eventually, what amounted to 14 pieces of paper. Six hundred dollars plus for 14 pieces of paper because of the legal costs that were attributed to that information and that retrieval. And what I found amazing is that the...these legal costs are being paid to an entity that is already on the books getting a salary and they're salaried. So my question was, did the city get a reimbursement of salary? You know, you're really trying to...the shell game of where dollars go. We the people are paying our public servants, just like ourselves, to do their job. If in the course of your job you do your job, you shouldn't be able to bill it again. In a way, that's like a double billing. And I don't believe that's what we're in the business of in public service. That is a private enterprise. They'll do what they do, but we're not in that. So, I supported the bill. I appreciated what Senator Avery and all the entities who came before the committee, it was like the proverbial herding of cats when you get all the various interest groups to agree to something. And again, that speaks volumes. If you can get interest groups that are almost diametrically opposed to each other to agree on something, there must have been a lot of work done. That doesn't mean always. But in the final analysis for myself, when a citizen is required to pay over \$600 before they even start and at the end they get 14 pieces of paper, there is something wrong, something broken, and I didn't ever see any reimbursement back to

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the political subdivision for the \$600-plus that was paid. We already pay them; that should be what we do. And for that reason I'm supporting this bill and the underlying...the bill and the amendment. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Price. The Chair recognizes Senator Chambers. [LB363]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I support this bill. And it's regrettable that it has to even come before us based on what these elected officials are doing. Either when we put something into the statutes we mean it or we don't. The public is the one contemplated by that word preceding "records," "public records." They don't belong to the custodian. That word means that you are entrusted to hold something that does not belong to you. It does not say the "owner of these records." And I think what is being shown by what these different entities and individuals are doing is a total contempt, disrespect of, and disregard for the Legislature. We don't show up on their radar screen. They have no fear of any consequences from us when they gut legislation that we put on the books for the benefit of the public. When you run for office, you talk about serving the people. Then you come here and you go to sleep or you become fearful or you think that our job is to represent municipalities or counties or county officials. That is not our job. We represent the people. And when these entities undermine legislation we put on the books to benefit the people, you all may sit back and swallow spit and take it, but I'm not engineered that way. If somebody is going to insult the Legislature, then I feel a responsibility as a member of the Legislature, regardless of how I might feel about individuals or the Legislature itself on occasion. Then I'm going to speak on behalf and in behalf of the prerogatives of this body. And I think one of the worse places for public officials to offend is when they're trying to withhold information from the public. I had started last week to embark upon a long discussion, but I changed my mind, based on analogizing what these officials are doing to the statement that the power to tax is the power to destroy, when they can willy-nilly, on whim do what I consider not only unethical but immoral things to keep the public from having access to that which belongs to the public. They have been given the position by this Legislature, and not discharging its duty of oversight to not only amend statutes, but to abrogate them; to do away with them; to thumb their nose at the Legislature. When we were little, if you thumbed your nose, this was bad. But what the county officials do is do it in tandem. They put both hands up so they can doubly thumb their nose and let them...let you know how little they think of you. What could be more important than letting the public know? Why do we have to have public hearings on every bill? Why? Why are all of our hearings open? Why is the Unicameral called the most open political body of a legislative nature in the country? Because the doors are open to the public to see what it is that we're doing as we do it. [LB363]

SENATOR GLOOR: One minute. [LB363]

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SENATOR CHAMBERS: Then we're going to let some pipsqueak public officials tell us to go jump in the lake and we jump, don't even know how to swim. I am ashamed of the Legislature, but here is where I'll modify that a bit. Maybe not everybody knew how atrociously these officials are behaving. But now that we know, all excuses are taken away. Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Nelson, you're recognized. [LB363]

SENATOR NELSON: Thank you, Mr. President, and good morning, colleagues. I stand in support of this bill generally, but I do have a question or two for Senator Avery if he will yield. [LB363]

SENATOR GLOOR: Senator Avery, would you yield to questions from Senator Nelson? [LB363]

SENATOR AVERY: I will. [LB363]

SENATOR NELSON: Thank you, Senator Avery. You may be going to this, but I'm...in the committee statement and summary you referred to "staff time." And yet in the bill itself you're talking about existing salary or pay obligation to the public officials or employees with respect to the first six hours of searching. And I think for the record and perhaps for guidance for our public officials, what are we talking about here? Are we talking about one staff member, or several, are we leaving that up to the discretion of the head of the department, the agency, or the office? And I think you made reference to the Attorney General's Office where at one time he had 15 staff members working on a lot of requests for e-mails going back for years and years. Where are we on this, or how would you describe what is expected here? [LB363]

SENATOR AVERY: My understanding would be that the six hours are accumulative. They do not have to occur consecutively; you don't have to tie up a single staff person for six straight hours. You can inform the requestor that I can only afford to put a staff person to work on this for one hour a day. And then after...at the end of the six hours, you start charging and the requestor knows that. And the requestor has 10 days to accept it or to challenge it with the Attorney General. [LB363]

SENATOR NELSON: Well, I take it from your answer then that we're talking about one staff member spending six hours of time, perhaps intermittently. [LB363]

SENATOR AVERY: It could be more than one, but the...you couldn't have two people working on it and charging only one hour. It would be two people working and that would be two hours. If two people spend one hour, you would be able to count an hour

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for each staff person. [LB363]

SENATOR NELSON: So we've got two right there? [LB363]

SENATOR AVERY: Right. [LB363]

SENATOR NELSON: Okay. So you could put three members on it then for two hours and we've fulfilled the requirement. [LB363]

SENATOR AVERY: That's correct. [LB363]

SENATOR NELSON: All right. I think that answers my question and for the record, Senator Avery, and I thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Nelson and Senator Avery. Senator Sullivan, you are recognized. [LB363]

SENATOR SULLIVAN: Thank you, Mr. President, and good morning colleagues. To sort of pick up where I left off last week and just some of my concerns about the bill in general, here is another situation of where the actions of a few, I think, really cast a blight on the whole arena, if you will; and particularly in the situation of many of the counties in my district, smaller counties, it has the potential to provide yet another challenge for them when they're already cash strapped and have limited staff to deal with. And that is what I said about me...a broad brush of saying that all these public officials who are, in my mind, trying to do the best job that they can to not only service the public, but save taxpayer dollars that this is almost in some ways can be kind of an impediment. I've heard from several assessors in my district and it appears to me they're being very reasonable in the fees that they charge. And they are trying to serve the public. And they are trying to do their jobs in the right way. And when we talk about these being public documents and the requestors being taxpayers of Nebraska, I think we also need to keep in mind that some of those requests are not coming from Nebraska taxpayers. They're actually coming from out of state and they're being requested solely for the profit of an individual business that may be requesting the information. So I'm still having some problems with the six-hour limitation. You know, when you think about a request coming in and just the conversation that was going on with Senator Nelson and Senator Avery, in a small county with maybe one person designated to do this work, even an hour a day...and what happens if there are several requests or that they come in back to back? Suddenly, they might be dealing with three or four requests and suddenly it's a half day of work that they've devoted to this. Along those lines, I think that it was generally felt on the part of the assessors, or any public official, that having this information on the Web site was a good thing. But sometimes that's not enough for some of these requestors. They can go after the information on the Web site, but they come back to the county and say, well, that's really not what I want; I

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really need to have it done by you so that I have this hard copy and this data available. Well, where do you cross the line and who makes the decision? The information is there on the Web site, but that's not enough for the requestor. And along those lines, I do have a question for Senator Avery. I know that, ultimately, he is going to be addressing some of these things, but one quick question for him. [LB363]

SENATOR GLOOR: Senator Avery, would you yield? [LB363]

SENATOR AVERY: I will. [LB363]

SENATOR SULLIVAN: Thank you, Senator Avery. It's been brought to my attention that there have been agreements on the part of requestors and the public official that they asked for the information, it's doable, but it's going to require some additional time. So an arrangement has been worked out between the office and the requestor and they've agreed to pay a certain amount for this data. Well, what happens if this legislation is passed and can they still charge that amount up-front, or do they have to wait for the six hours of time allotted before they can start charging? [LB363]

SENATOR AVERY: They would still have to wait the six hours. But they would not have to assign all those six hours to one staff person; they would not have to assign it to two or three. They could spread it out through the office, and they could spread it out over a number of days. So it's not an issue of having to expend those seven hours, or six hours, with one person sitting in one place doing all of this at one time, the same day. They had the option of spreading that out. And the fact is, that... [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR AVERY: ...if they're going to be doing this anyway and charging for it, obviously, they're able to it. The only thing we're really talking about is whether they're going to be able to sell the public records. [LB363]

SENATOR SULLIVAN: Thank you, Senator Avery. Well, I think that there are some gray areas here that I still do not feel comfortable with. And the six hours still bothers me as presenting an undue burden, particularly for our smaller counties with very limited staff. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Sullivan and Senator Avery. Members in the queue: Dubas, Schumacher, Avery, Wallman, Chambers, Davis, and others. Senator Dubas, you're recognized. [LB363]

SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. I'm going to pick up where Senator Sullivan left off. I mean, I certainly support the underlying concept of this bill, especially for those counties that maybe have taken advantage and

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done things, maybe, that haven't served the public good. But as I've heard from my assessors in my district, they've given me multiple examples of what they do to accommodate public requests and helping the public find the information that they need, because they do understand that they work for the public and their taxpayer dollars are supporting their efforts. The concern that I'm hearing from my assessors is now with this six hours being a known factor, if there will be now an expectation of...especially from companies like title search companies, both within the state and outside the state, who will come in and say, this is the information that I want, and, you know, I'm entitled to this six hours of research that you can't charge me. So, you know, I appreciate what Senator Avery has said about the offices' ability to spread those hours out over, you know, a series of days or weeks or whatever it takes and maybe not have to assign it to one particular staff person. But if Senator Avery would yield to a question, I would appreciate it. [LB363]

SENATOR GLOOR: Senator Avery, would you yield? [LB363]

SENATOR AVERY: I will. [LB363]

SENATOR DUBAS: Along the line of that, now we...are we creating that expectation that either I as an individual or especially a company that is coming in and is looking for this information, whether to help a particular client or even to use that information for profit, are we establishing that? Okay, now every county is obligated to that six hours of free research time? [LB363]

SENATOR AVERY: Well, they're already obligated to provide those records. And every county would have to conform to this law. It means the first six hours of staff time that would be devoted to retrieving these records or copying the records would have to be provided at the expense of the entity, public entity. After that six hours they could start charging. Now I would point out that we do have, in this bill, and this was part of the negotiations, a provision that allows the counties to put this information on their Web site. If it's on the Web site, all they have to do is tell the requestor, it's available at this Web site, here is the address. And that's all their obligation and that does not cost a great deal of money. [LB363]

SENATOR DUBAS: I know several of my counties are talking...they're not there yet, but they are looking at putting more of this information on the Web site. I know that that will be helpful. And I also asked them the question when people come in and ask for this information, do you just automatically say, yes, I'll get it for you; or do you tell them, okay, you have the ability to, you know, come in and look through the record books or what have you? So they are telling their people that are requesting this information that up-front. But again, going back to that, now we've taken what has been kind of an assumption in the past and we're actually putting hard numbers to it. But your feeling, if I'm understanding what you're saying, because you're giving that county that flexibility to

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say, okay, we can do this, but it's going to take us seven days or ten days or two weeks and I can only give you one staff person who can give you X amount of number of hours a day, you're feeling that's taking away that expectation of the hours that are free?
[LB363]

SENATOR AVERY: Well, the law states now, and we don't change this part of the law, that a requestor has the right to come in and view the documents free. They can visually inspect the documents free; they can make their own copies; they can go to a room and study the documents. It's those people who want copies, hard copies, that cause the problem because there is where the expense is. And what we're saying in this law is that, well, okay, we will give you six hours of staff time to prepare these documents for you, but after that, we're going to have to start charging you. [LB363]

SENATOR GLOOR: Thirty seconds. [LB363]

SENATOR AVERY: We think that's a reasonable amount of time. [LB363]

SENATOR DUBAS: Thank you, Senator Avery. I do have some more questions and I will follow up on my next time at the mike. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Dubas. Senator Schumacher, you are recognized. [LB363]

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the body. I rise in support of Senator Avery's efforts. And my support echoes back to a situation, before I even ran for the Legislature, when a local insurance agent came to my office and said, I've been writing insurance for this particular public body for many years and I just lost the bid to an outfit that came in and bid. And he says, I think this local government body really is getting shortchanged. I don't think they understood what kind of policy they have now. And he said, before I accuse them of that, I'd like to have the facts, and I'd like to have the declaration sheet and a little information about the policy that they have now and how it was priced. And he said, I went to the local body and I asked them for that information. He says, I know it couldn't have took them 20 minutes in order to generate it. He says it was not that hard; it involved the policy and the declaration sheet and some other things. He was told if he wanted that information it would cost \$10,000. And I said, well, we all know that's a ridiculous figure and the local official is just running you in circles on that. I said, you do have the right under the law to sue them and maybe even get attorney fees in the event that you win. And he said, Paul, I'm living in this community. I don't want to sue the government. I don't want to cost the taxpayers money. I just want something very, very simple. And he says, I think that the taxpayers got the short end of this deal. Well, he didn't want to sue and the government was saying \$10,000, so it ended there and that was the end of it. That should not be the way government works. And what we have here is that unfortunate situation that on either

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end of the spectrum you have people who take advantage of the system. Very, very true, there are some organizations, some groups, that think they can spin this system in circles. They'll do it, particularly if they think it is for free. They overexercise those rights. Fortunately, in most areas of Nebraska, that is a very minimal thing; people are good citizens and they exercise common sense. But it does exist and it can and I can understand why a few very legitimate concerns are there that once in a while somebody will come in and cost somebody six hours of time. On the other end of the spectrum, apparently emerged an officialdom that if you didn't want to follow the will of the Legislature and the directive of statute, that what you could do is just think up some outrageous number and say this is what it's going to cost you, as a deterrent to doing your job; as a deterrent to giving the public access to records. Now I'm not particularly happy about the six-hour deal. In fact, I'm not so sure it shouldn't be or couldn't be circumvented pretty easy. I think of the story of the young lawyer who showed up before St. Pete and he was bellyaching that he was there way too young. And St. Pete said, well, I checked your billing records and you're at least 84 years old, because what this young lawyer was doing is every time he picked up a file it was an hour, even if it just took it to move it from one side of the desk to the other. So you can fudge those numbers and six hours may be easy to be circumvented, but it may be the best that we can come up with unless somebody has a brighter idea as to how to bill out that time. [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR SCHUMACHER: But I think that we need to do something because it has become way too cavalier for the part of the custodian of the document to, for whatever reason, and the reasons may not always be good reasons, to not comply with the will of this body. And if we just had a world where everybody acted in good faith, we wouldn't have these tough questions. But we don't have that and that's why we get the big bucks to call the shots here. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Avery, you're recognized. [LB363]

SENATOR AVERY: Thank you, Mr. President. Let me walk you through some of the things that our negotiating team did to address the concerns that have been expressed here today and last Friday. We understood early on that small communities would have some difficulty with what we were trying to do. So first of all, we put a provision in the bill that says if the public record is on the Web site of the public entity, then the public entity does not have to provide copies of the record unless the requestor does not have access to a computer. So for the assessors out there who are worried about this, if they're getting a voluminous request from out-of-state real estate interests, they have computers. All you have to do is inform them that this is available on the computer and this is the address and you have met the terms of this bill. This was intended to help

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small communities with requests, both large and small. And that, we thought, would go a long way toward assuaging some of their concerns. If the requestor wants extensive records from the, say, county assessor and those records are on the Web site, the county assessor can simply direct the requestor to the Web site and does not have to print out hard copies and charge for them or charge staff time to do that. Now, it is true that not all of the counties, small communities, have Web sites. But I would point out that the Nebraska Association of County Officials has made it clear to these counties that they will host Web sites for them. And the price is tiered so that smaller counties are charged less for this hosting activity and it is approximately \$100 a month. Now I would submit to you that counties can afford \$100 a month to have NACO host a Web site for them and they would be able to put these documents on the Web site. Another issue that has been raised is what will a small community do when they receive a large request that will take several hours or even days to complete? There are two provisions in the law, or in this bill, that will assist the small communities. First of all, it is perfectly acceptable under the current law for the custodian of the record to tell the requestor that they will have to wait for a period of time; will only be able to devote maybe one hour or two hours a day to this request until the request is completed. This means the request may take several days or weeks to fulfill. There's nothing in the public records act that requires a request to be filled immediately. For small communities that have a single staff person, they may only be able to allow one or two hours a day, or maybe one or two hours a week to be devoted to this task. Second thing is, that there is a provision added to this bill that clarifies if a public entity needs to hire additional help to fulfill the request, that is part of the actual cost of making the copy. In other words, if a small community needed to hire a contractor to fulfill a request or pay someone overtime to complete the request, these expenses can be charged to the requestor and they can start charging that immediately because they are part of the actual costs of making the copies. It is not required that a public entity wait six hours to charge for this time. So I think that a lot is being... [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR AVERY: ...made of this that should not be of concern to small communities. Read the bill; read deeply into it because it is specifically designed to address these concerns. Every hour of overtime and every hour of a contractor's time may be charged to the requestor, every hour. And that can start immediately. I want to assure all of you, and all of the small towns and cities and counties that we listened to their concerns in the negotiations. We added several provisions to address them. And this was approved by NACO. NACO was there during all of these negotiations. We worked very hard on this bill. Nobody appeared at the hearing to oppose this; not a single assessor contacted our office until this bill was scheduled for General File debate. So I think that... [LB363]

SENATOR GLOOR: Time, Senator. [LB363]

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SENATOR AVERY: Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Senators in the queue: Wallman, Chambers, Davis, Kintner, Carlson, Dubas, and others. Senator Wallman, you're recognized. [LB363]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Fellow constituents, I'm here today, and regarding this bill, it's a good bill. And we heard testimony; we shouldn't need this. I'm for local control, always have been. But we had people come to us in the committee hearings and Senator Avery worked hard on this. And it seems like there is abuse of this practice. I went to a different state, wanted real estate records for a big county in Arizona and what existing sales were and what the price was, I got that in less than an hour. So it shouldn't be a big deal, even to our smaller counties, I don't think. I can see where apprehension, nobody likes to be told what to do, but newspapers, and I run on accountability, and we should have accountability and it should be transparent. All these things should be what we're all about. And why should we have a little trouble with this bill? I don't know. I do not have trouble with this amendment or the bill. And I will vote green. Thank you, Mr. President. [LB363]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Thank you, Senator Wallman. Senator Chambers, you're recognized. [LB363]

SENATOR CHAMBERS: Mr. President, members of the Legislature, and for Senator Campbell (sic) and those others who are worried about the little counties and their small staffs, I can understand all of that. But you have to look at what is the greater good for the greater number. Are we operating to benefit the common good? Maybe there are some more fundamental questions that cannot be dealt with in the context of this bill. But there might, simply, be too many counties in the state of Nebraska. There might have to be a reorganization as far as the makeup and configuration of counties. But I'm not in favor of giving the big wrongdoers a pass to protect some smaller counties. That is not going to happen as far as I'm concerned. Maybe there will be enough people on this floor to vote to let the big shots go through riding the A-dress hem of Little Orphan Annie, but not I. I'd like to ask Senator Avery a question or two. [LB363]

SPEAKER ADAMS: Senator Avery, will you yield for a question? [LB363]

SENATOR AVERY: Yes, I will. [LB363]

SENATOR CHAMBERS: Senator Avery, one thing that cannot be charged for is the pay

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for a lawyer who is trying to find a way not to have to comply with the law...or the request, is that true? [LB363]

SENATOR AVERY: That is correct. [LB363]

SENATOR CHAMBERS: Do you think that there are big companies, big operations who are listening or will be aware of this discussion and decide that since...if you hire a contractor to do this, they will contract all of this out, then charges can be made at the very beginning. Do you think there are big outfits who will not see that and will not take advantage of it? [LB363]

SENATOR AVERY: That is possible. And I'm sure there are some small counties out there that would hope so. [LB363]

SENATOR CHAMBERS: I'm talking about the big ones who would do it,... [LB363]

SENATOR AVERY: Well,... [LB363]

SENATOR CHAMBERS: ...like some of these who charge these exorbitant rates when they could provide the information without taking forever and without charging that much money. Let's say the University of Nebraska, what would stop them from hiring a contractor at whatever cost the contractor would charge and then the charges could begin at the instant the request is received and then the contractor runs up these expenses? [LB363]

SENATOR AVERY: There would have to be a reason to hire a contractor and I would think that reason would be that they didn't have the staff and the time they could devote to that with ordinary staff personnel. [LB363]

SENATOR CHAMBERS: Is that in the bill currently? [LB363]

SENATOR AVERY: I will have to check to see. It may not be there in explicit words, but it is implied that a contractor is when you do not have the ability to meet that request with current personnel. It's the same...the same thing with... [LB363]

SENATOR CHAMBERS: Okay, that...that runs a red flag up to anybody who would be thinking that they've got a loophole created from the discussion. And that's all that I wanted to ask you and you gave an answer. I'm supporting the bill as it is. But if people can work out something without crippling the bill to deal with these other small brush fires, I will see what they come up with. But before I get to the charging, I'm concerned about the probation office. Now I had said when the Chief Justice came before the Judiciary Committee to get a judges' increase that I wouldn't try to punish the good judges for the bad. But if the courts are not going to oversee what the probation office

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does and they can ignore requests, then I think that's a judge not doing his job. [LB363]

SPEAKER ADAMS: One minute, Senator. [LB363]

SENATOR CHAMBERS: I want a judge to be paid when he does his job. Now I'm going to find out if the probation office is under the Supreme Court and if it is, I'm going to talk to the Chief Justice. I'm tired of having people call me and tell me that that probation office refuses to even respond to requests for public information and it's public based on specific statements in the statute. And if I have to bring these cases on the floor and expose by name the ones who are doing it, I will do it. And I will stop every attempt to give an increase in salary to the judges. We start by giving the chief judge an increase, and then everybody else, based on that, will get theirs. I'm tired of that. These complaints come to me and I have a responsibility once it comes to me to try to do something about it. So either they're going to do it, or I'm going to expose them on the floor of the Legislature and I will fight everything they bring that will benefit them. I'm for the people, not judges, not for people who work in the probation office. [LB363]

SPEAKER ADAMS: Time, Senator. [LB363]

SENATOR CHAMBERS: Thank you, Mr. President. [LB363]

SPEAKER ADAMS: Mr. Clerk. [LB363]

ASSISTANT CLERK: Mr. President, I do have an amendment to the committee amendments. Senator Larson would offer AM389. (Legislative Journal page 514.) [LB363]

SPEAKER ADAMS: Senator Larson, you're recognized to open on your amendment. [LB363]

SENATOR LARSON: Thank you, Mr. President. AM389 to the committee amendment essentially takes the six hours and moves it down to one. I had extensive conversations with many of my county assessors over the weekend and as much as they would like to take it clear down to zero, and I probably would as well, I think I understand what Senator Avery is attempting to do with this bill; and it's not that I'm against the bill because I think he and Senator Chambers and everybody else who has rose in support of the bill has legitimate concerns, but at the same time I think the rules, Senators, that have been contacted by our county assessors, I think, we have very legitimate concerns as well because I know...I had a conversation with my Boyd County assessor this weekend and, you know, some of these counties they only have one person in the office and I understand that Senator Avery says they can work an hour one day and an hour the next and an hour the next. Well, it still totals six. It still totals almost an entire day. And as we're looking at our county, you know, our county budgets, and county

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government, I understand they are there to serve the people, and they are there to do open records requests, and most of the time they're providing this information for free anyway. But I know, again, one of my assessors had a story that there was a for-profit corporation from Oklahoma that request all the records of the entire assessor's office. And, you know, they can't be reasonably expected to do, again, the first six hours of work for free for this for-profit corporation that should be coming up and coming in person and getting the records that way. So, essentially, what it does is it takes six hours to an hour to try to alleviate some concerns for rural Nebraska and those county assessors' offices that are having a harder time with the six-hour limit on this. Thank you, Mr. President. [LB363]

SPEAKER ADAMS: Thank you, Senator Larson. Senator Davis, you're recognized. [LB363]

SENATOR DAVIS: Thank you, Mr. President, and members of the body. One thing that I really want to point out about this, it's not just about counties; it's about cities, school boards, fire districts, NRDs, townships, any public entity, and so you're really taking a big step in doing this. And in my mind, this is an unfunded mandate on the state's part to the counties and the cities. I'm extremely opposed to the idea. I understand where the thinking comes from and I support the mentality that goes behind that. But the imposition that you're going to put on these tiny counties that are strained fiscally anyway is going to be huge. I would support Senator Larson in his amendment. And I'll yield the rest of my time. Thank you. [LB363]

SPEAKER ADAMS: Thank you, Senator Davis. Senator Kintner, you're recognized. [LB363]

SENATOR KINTNER: Mr. President and members of the body, I see this bill came out of committee with one present and not voting. And I'd like to ask Senator Bloomfield a question. [LB363]

SPEAKER ADAMS: Senator Bloomfield, would you yield to a question? [LB363]

SENATOR BLOOMFIELD: Yes, I would. [LB363]

SENATOR KINTNER: Senator Bloomfield, can you tell me why you did not vote for this? [LB363]

SENATOR BLOOMFIELD: Yes, I can. Thank you, Senator Kintner. A lot of the reasons I did not vote for it have already been expressed by Senator Sullivan and Senator Dubas and others. I, too, believe that these records need to be given out free if possible. But we need to remember as we go through this process that the same people that we are trying to protect, the public, the Nebraska public, are the people that are

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paying through their taxes to fund these offices that we're now telling they have to do six hours of free time. So I think we may be robbing Peter to pay Paul here. But there are things in this bill that, like the six hours, that bother me. I originally thought maybe we could get it down to two. I will support Senator Larson's amendment taking it to one. But another thing that this bill does, it does...does not do is to put any limits on the entities that are asking the questions. They can come in for six hours today on a subject, come back in for six hours tomorrow on just a hair bit different subject; or one person come in and ask for six hours and another person from the same company can come in and ask for six hours. There are no limits to prevent people from going ahead and abusing our public entities as they are now. These prohibitive charges that we've seen are ridiculous. We need to have something that extinguishes that. But I'm not sure this is the answer. I was a "not voting" in committee because of those reasons. And as the bill is written now, I'll be a "no" vote on the floor. [LB363]

SENATOR KINTNER: Thank you, Senator Bloomfield. I think this is a real honest attempt to solve a real problem. I'm not sure we quite hit it on the...the nail on the head on this. But it certainly is something I would consider voting for if we can amend it to protect the smaller counties that don't have the manpower to do this type of thing. I yield the balance of my time to Senator Larson. [LB363]

SPEAKER ADAMS: Senator Larson, you're yielded 2 minutes. [LB363]

SENATOR LARSON: Thank you, Mr. President. As Senator Kintner said, I think, you know, this is a concern and whether, you know, it's a drop in the bucket to maybe Douglas County assessor office that has how ever many employees, or Lancaster County's, an hour or six hours is miniscule. It's not something that is going to be an issue. But you get out to Boyd or Rock or Arthur or Thayer, it is going to be different. It is going to be different for those counties because they're going to have a harder time providing the manpower to do things of this nature. And like I said, a lot of these counties that are providing the open records, they're providing most of them for free anyway. But it's just...when we start putting things in statute that say they have to do the first six hours for free, I think it's very concerning that the way that our property tax dollars are going to be used in a number of these things, especially as we hear moving forward how we need to be austere with our budgets... [LB363]

SPEAKER ADAMS: One minute. [LB363]

SENATOR LARSON: ...and things of that nature. And again, hopefully we can have a good discussion on the bill. I think we've moved towards that. I can support it with the hour limit, but at six hours I currently could not. Thank you. [LB363]

SPEAKER ADAMS: Thank you, Senator Larson. Senator Carlson, you're recognized. [LB363]

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SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to address Senator Avery if he would yield. [LB363]

SPEAKER ADAMS: Senator Avery, would you yield to a question? [LB363]

SENATOR AVERY: Yes, I will. [LB363]

SENATOR CARLSON: How are you responding to AM389? [LB363]

SENATOR AVERY: Well, I intend to oppose it, because I think that it violates some very hard-fought negotiations and compromises that were made along the way as we worked on this bill dating back to last summer. The assessors in the small counties never said a word. They didn't object to anything that was going on at that time. And NACO endorsed what we were doing. NACO was at the table from the beginning. A few county assessors decided that they don't like this because it's inconvenient for them or may be expensive. And mostly, they haven't read the bill, Senator. The bill provides safeguards in there for...in this bill, for the particular circumstances they will face. And I think that going down to one hour, essentially, makes the...what we were trying to do very, very different. We were trying to make it possible for people to have access to these records in a reasonable amount of time, at reasonable costs. This, I think, would violate that. [LB363]

SENATOR CARLSON: All right, in the bill itself, when we refer to six hours, how is six...and I know six hours can be determined by three people giving two hours apiece, or six people giving an hour, but how is an hour determined? What makes up an hour? [LB363]

SENATOR AVERY: This is not my amendment, but I presume 60 minutes divided any way you have to divide it among as many people as you think you need. [LB363]

SENATOR CARLSON: Well, we're used to...or at least I'm used to having service work done and if it's any part of an hour, it's an hour. That's what the charge is. [LB363]

SENATOR AVERY: I would hope that's not contemplated in this amendment. [LB363]

SENATOR CARLSON: Okay. Do you have any...to bring up Senator Bloomfield's concern, should there be a limit for an entity to come in and make several different requests on the similar material? [LB363]

SENATOR AVERY: Well, we addressed that in our discussions and we decided that a...we started with the premise that the records belong to the public and that public entities are simply custodians. So you start with that principle. And then we talked about

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the possibility of multiple requests, each request would be a separate request and would have to be honored by the public entity. But still, we thought that if we have reasonable rules on what...how counties and entities can charge and charge for what and how much, that was reasonable. And we believe that the bill, as it was negotiated, is reasonable, and that everybody in the state can comply with it without great burden. It will be inconvenient for some counties. But a lot of times what is in the public interest might be inconvenient for a public entity. [LB363]

SENATOR CARLSON: Okay, thank you, Senator Avery. And this is good discussion this morning and I'm listening. How much time do I have, Mr. President? [LB363]

SPEAKER ADAMS: You have 1 minute, 38. [LB363]

SENATOR CARLSON: I'll yield to Senator Lautenbaugh if he would want. [LB363]

SPEAKER ADAMS: Senator Lautenbaugh. [LB363]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I have been having some discussions with others as well. I do share the concern about these smaller counties and the burden this might be on them. And I think as I've said at length earlier in the session, I'm a great friend of greater Nebraska and looking forward to spending time with Senator Sullivan this summer, so with that said, I would like to possibly explore whether or not we could make some differentiations among political subdivisions by population. [LB363]

SPEAKER ADAMS: One minute. [LB363]

SENATOR LAUTENBAUGH: Thank you, Mr. President. So that the ones that are smaller, if you will, that the six hours would be a burden, maybe could go down to one hour. But some way to differentiate so that we're not hurting the smaller entities and treating them exactly the same as the larger entities that can more readily absorb it. I'd probably pursue something like that on Select File. I will not try to pursue that on General File. But I'd like you all to think about it maybe. Thank you, Mr. President. [LB363]

SPEAKER ADAMS: Thank you, Senator Lautenbaugh. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR65. Senator Dubas, you're recognized. [LB363 LR65]

SENATOR DUBAS: Thank you, Mr. Speaker. You know, I take a little exception to the comment that county assessors are contacting us because this is going to be inconvenient for them. I can provide you with a long list of work that the county assessors in my district have done when requests have come into their office. And I

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believe most of the time they're going above and beyond because they recognize these are public records that belong to the public. And so I found my county assessors, anyway, to be as accommodating as they possibly can be. Again, where their concern comes in is now that we are putting a number in there, where in the past maybe it's been more of an assumption of what people were entitled to, that it will put an undue burden on their ability to provide the service to whomever is asking for it. I believe Senator Avery had referenced something about contracting this kind of work out, and I apologize that I missed it if he did, and so if he would yield to a question. [LB363]

SPEAKER ADAMS: Senator Avery, would you yield? [LB363]

SENATOR AVERY: Yes, I will. [LB363]

SENATOR DUBAS: Thank you, Senator Avery. I caught something as I was working and visiting with somebody else, you were referencing a county's ability to contract this kind of work out. So if a county, maybe, received, especially a smaller county, was receiving more requests than they were able to handle that they could either bring in a former employee or contract specifically with someone who could do just specifically that research and they could start...they could charge the requestor for that person's time from the very first minute. Am I correct with that assumption? [LB363]

SENATOR AVERY: Absolutely. And I...that was a...that was put in the bill specifically to deal with a small community problem. And if you needed to bring in an outside lawyer, that would also fall under the same provision, you could charge immediately the fees that the lawyer would incur. [LB363]

SENATOR DUBAS: So just to clarify, I'm a county assessor and I'm getting too many requests and I've got my staff doing other things and I have someone that I know can do this kind of work, I can call them up and say, can you come in and do this research; we're going to charge the requestor X amount of dollars and that charge starts from the moment that person starts doing the work. [LB363]

SENATOR AVERY: That would be an added cost that is covered in this bill. But it has to be actual added costs. You can't inflate the hourly wage, you can't inflate the fee of the lawyer, has to be actual added costs. [LB363]

SENATOR DUBAS: Right. [LB363]

SENATOR AVERY: But that was put in there specifically address a lot of the questions that we're talking about this morning. [LB363]

SENATOR DUBAS: Okay, thank you. I'm going to kind of go a different direction with my next question. And it deals with the city of Lincoln and the Department of Roads, the

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charges that they have for accident reports. And I believe now the city of Lincoln is charging for those accident reports, even though it is under the actual cost of providing the reports; and they are also including the amount of time that it takes for an officer to investigate the accident, as well as doing the paperwork. If this bill passes, will the Department of Roads and the city of Lincoln be able to continue to charge the fee that they charge for this type of work? [LB363]

SENATOR AVERY: They will not; and the city of Lincoln talked to me about this. They came in late after we had already finished our negotiations, the bill was drafted. They came in and said, oh, by the way, we want to be able to continue to charge \$15 per accident report. Essentially, they're using the accident report...they're selling this public document in order to raise money to fund the program paying the cost of the police to prepare the reports. The police are already being paid to investigate the accidents... [LB363]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB363]

SENATOR AVERY: ...and to prepare those reports. We think that is unreasonable and violates the spirit and the letter of the public records law. [LB363]

SENATOR DUBAS: So they would be able to continue to charge a fee, but only after the requirements of this bill have been met. [LB363]

SENATOR AVERY: Yes. [LB363]

SENATOR DUBAS: And they can only charge for the...not for the officer's time, but just for the actual physical report and what it took to put that report on a piece of paper? [LB363]

SENATOR AVERY: That is correct. [LB363]

SENATOR DUBAS: Thank you, Senator Avery. [LB363]

SENATOR GLOOR: Thank you, Senator Dubas. Senator Sullivan, you are recognized. [LB363]

SENATOR SULLIVAN: Thank you, Mr. President. Oh, if we just had a world where everyone did the right thing, applied reasonableness and common sense and appropriate due diligence. But as we've had the discussion here today, that isn't always the case. I actually rise in support of Senator Larson's amendment. And I'm not sure how it's going to end up; but it's certainly good to talk through this, because I think we're

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seeing that, I wouldn't call them loopholes necessarily, but some gray areas that I think need to be addressed. Case in point, Senator Avery talked about if it's on the Web site that satisfies a request, but as I've heard from assessors, the comeback from the requestor may be, well, that's not...I really need it in a hard copy form so I'm going to continue with my request. Under the assumption of an interpretation from what Senator Avery said, I would take that to mean that the county official can come back and say, okay, it's on the Web site, therefore, it's available to you, anything more I'm going to have to charge you, and I can start billing that immediately. Senator Avery, if you've heard that recount that I just gave, is that appropriate? Would Senator Avery yield for a question? [LB363]

SENATOR GLOOR: Senator Avery, would you yield? [LB363]

SENATOR AVERY: I will, but I'd have to have the question restated because I was having my ear bent by someone else. [LB363]

SENATOR SULLIVAN: Thank you. I should have given you a heads up. But my comment was, when you referred to the fact that if the data requested is on the Web site, the county official can say to the requestor, it's on the Web site. [LB363]

SENATOR AVERY: Correct. [LB363]

SENATOR SULLIVAN: The requestor may counter by saying, well, yes, I know, but I really need it in this form, therefore, I'm requesting you to produce it in a different format. Can the county official then counter and say, all right, I'll do it, but the clock starts running right now and I can bill you for this because I'm going to have to hire some outside help to do...have this for... [LB363]

SENATOR AVERY: Absolutely, absolutely. But the response...let's say it's an outside, for-profit request, the response I would give them, it's on the Web site, here is the address, go to the Web site and prepare your own documents. [LB363]

SENATOR SULLIVAN: Okay, that helps. I still go back to Senator Larson's amendment because I think that there is the potential for numerous requests coming into a county, and, whereas, under the six-hour limit they could stretch it out over a period of time, but what if they had three or four requests come in at the same time; I'm not saying that is likely, but it is possible; and, therefore, potentially, could tie up a staff person's or staff persons' time over even several period...several days. So, again I think this conversation has been good. Depending upon how this amendment goes forward, I would certainly entertain more discussion from now until Select File carrying forward Senator Lautenbaugh's comment that maybe we can provide some additional help to the smaller counties. Thank you. [LB363]

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SENATOR GLOOR: Thank you, Senator Sullivan. The following senators are in the queue: Avery, Schumacher, Chambers, Schilz, Bloomfield, and Larson. Senator Avery, you are recognized. [LB363]

SENATOR AVERY: Thank you, Mr. President. I think that, sometimes, what we have seen with some entities, and I'm not going to accuse everybody of this, is that they abused the law that was passed in 2000. And that's what got us to where we are today. They were...the ability to charge that was given to them lawfully in 2000 for records was actually used as a vehicle to deny public access to records. Now that, I think, needs to be corrected. We must have access to public records if we're going to have accountability. Accountability in government is fundamental, absolutely fundamental to the functioning of a democracy. If the citizens of a democracy do not have the ability to know what government is doing through transparency laws, then there is no way that the citizens of this state or any other state can hold their elected officials accountable. That's what public records laws are all about: the ability of citizens to hold their elected officials accountable. Without that ability, without accountability, then institutions of government soon lose their legitimacy, because people will not trust the government anymore. They will not trust the way the government operates and there they will not trust what government does. So this, I think, is fundamental to a government that is accountable to the people. Let me give you some examples. I know I've done some of this previously, but let me do some more of this, examples of abuses of the 2000 law that we're trying to correct. We're trying to close this loophole. In June of 2011, the Grand Island Independent newspaper requested e-mails that were sent by city staff and public...and the public over one month to all ten Grand Island City Council members. The Independent made a request that led to an estimate of \$1,283. Of that \$1,283, a total of \$725 was for photocopying costs, despite the fact that the request was actually for electronic records in the electronic form on a disc. They were still going to charge \$725 for that. The remaining \$558 was for computer run time, programming, and what a private attorney said that the city...and what a private attorney would charge to handle the request referred to as "analysis." All right, the Independent was able to negotiate the copying cost to \$1 which is the city's published rate for purchase of a computer disc; and they eventually paid \$559.24 for the records. This is what we need to be focusing on, these abuses of the ability to charge. I gave you an example, I think it was last Friday, of where a private agency outside the government asked for a public record from the Department of Human Services and the estimate came back that it would cost \$126,340 to respond to their request. Quite unreasonable. We must protect the public's right to these documents. The public owns them, and the entities are the custodians. They work for us. And built into the cost of these public records already is the cost... [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR AVERY: ...of the personnel who manage those records, and the personnel

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who will retrieve those records. We're trying to set a reasonable standard here, create reasonable balance between the public's right to know and reasonable access to those records that are held by the custodians in the public entities. We believe this bill is a good bill. It was produced by hard negotiations over many, many months in which the assessors and the counties had an opportunity to be at the table. They were represented there by NACO's negotiator. And we believe that it is time for us to move on with this bill. And if there are some things that we can do between now and Select File, I'll be open to any suggestions that make sense and we will negotiate with all parties. So I'm urging you to reject this amendment, AM389, and approve AM166. [LB363]

SENATOR GLOOR: Time, Senator. [LB363]

SENATOR AVERY: Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Senator Schumacher, you are recognized. [LB363]

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the body. I think we sometimes get engulfed in our own rhetoric. The issue seems to be that look at the little counties don't have the personnel to meet these requests. But so far with the exception of one example, Senator Larson's example of some outfit from Oklahoma, we haven't heard that the little counties are being besieged by lots and lots of requests. Those numbers would be kind of interesting to know. And it's my understanding that right now, most of the smaller counties are being real decent about it. They're not cooking up these huge numbers, in fact are providing a lot of the data for next to free. And that's the way it should be. I think there's a level of common sense that prevails in smaller counties that sometimes doesn't when you get bureaucratic regimes in place. But let's take the example Senator Larson used, that this outfit in Oklahoma request a bunch of records, all the records in the office or something like that. Well, \$150 isn't going to deter them from making the request. The request is going to be made. Somebody is going to have to process it. And from my experience in county government, at least in the smaller counties and with the county and small-town officials, they're pretty jealous about who gets to take things out of books and staple them together for fear they won't get put back in the right place. I think that those people with or without a fee are going to do the work. They're going to be reluctant to find, or even if one were available, a Kelly girl or Manpower-type assistance to come in and mess around and pull things out of binders or whatever. So they're going to do the work. We're not talking about whether or not they're going to save time or not save time. They're stuck with doing the work as a practical matter unless it's just a deluge which we haven't seen much evidence of. That being the case, what it boils down to is revenue. Occasionally if they charge \$25 an hour, which would be about \$52,000-a-year employee--and I don't think many of them in smaller counties make that kind of money--but if they were to charge the \$25, on the

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occasional time that somebody comes in with a six-hour project, we're talking about \$150. I think that we are probably extending ourselves a bit here in making a bigger deal about this than what it really is. Once if the county has additional, because of a big expense has to bring somebody special in or has to eat \$150 once in a while, that may be the cost of democracy. And the only reason you would try to raise that, shorten the hours or raise it, is to deter requests. And these are, after all, requests of the public's information. The idea that Senator Avery has to put these things or encourage these things to go on the Web so you can say, hey, don't bother us here, go sit down at your computer, at your iPhone, whatever, and get the records that way, it'll encourage counties to move in that direction which they probably should be moving anyway. So I think that one hour, particularly if you bill like the 84-year-old lawyer billed, isn't very much time. And the public's right to know is a pretty important thing. Thank you, Mr. Chairman. [LB363]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Chambers, you're recognized. [LB363]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I really like to listen to Senator Schumocker, Senator Schumaker. I've heard his name pronounced both ways. I've even read about it in the paper. But I enjoy listening to him. I wish I hadn't listened to him talk about that lawyer going and talking to St. Peter, because that brings to mind anybody who's gone to law school, a lawyer joke. There was a fence, a wall separating the domain of St. Peter from the domain of Satan. So when the wall fell into disrepair on St. Peter's side, he would get contractors and others to fix the wall. And when it fell into disrepair on Satan's side, then Satan wouldn't do it. He'd just laugh. He said, I'm not going to do it and you can't make me. So St. Peter said, well, I have a remedy for that. I will sue. And Satan laughed even harder because he said, you won't be able to find a lawyer on your side. But at any rate (laughter) getting back to this bill, he made a good point that there has not been any indication that all these little counties, all these assessors are having a problem. And I was in this Legislature 38 years before I left, and let me tell you how this works in little places, maybe not all of them. One person will see something as a problem and notify everybody else and say all you all are right too. I've bet nobody can stand on this floor and say that the assessors perceived a problem, they got together and had a meeting and decided they should raise an issue. I bet it can be traced to one individual. That would be a wager. Now I don't gamble but that's just a suggestion. Now talking about these companies who might ask for this information. Suppose the public streets are there. You have an out-of-state cab company that sends a lot of cabs through your city picking up fares, and it even runs all your little taxis out of business. Are you going to say the streets are public but you're not supposed to use them? If the records are public, they're public for everybody--everybody! Do away with the public records bill then and everything else you don't like. But I'll tell you this much. What you might see is the first rural/urban split. I am not going to docilely stand here and let a few little county

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assessors change everything that's going to affect far more thousands of people in the cities than all those little counties put together. That is the hardball that has to be played, and that's what comes up when you talk about rural/urban splits. Senator Larson wants to say, well, I got a county assessor who doesn't want this. Well, I've got a lot of people in Omaha and Lincoln and other cities who don't want to pay those exorbitant costs that they're having to pay. So let the little counties do what they think they can do and we will see if the rurals can gather enough clout to undermine what is needed in the cities and for the greater number of people to accommodate them. And my view is that they won't prevail. Senator Lautenbaugh had mentioned basing this on population in the county. You have to be careful of not having an unconstitutional classification. There would have to be a basis for doing that other than saying that it's inconvenient for some county assessors and the Legislature needs a way to get something done in a collegial fashion. I don't believe the county assessors had a meeting. I don't believe any substantial number of them came together. As I say, I believe one person probably incited these people because Senator Avery has said over and over and over, they could have sat at the table,... [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR CHAMBERS: ...they chose not to, and NACO was representing all of the counties, even the little ones. Well, why didn't they go tell NACO this is what we want you to do? We can't come, but this is what we want? I'm going to watch and see how this plays out. But I'm not going to be one of those who says to show that I like rural activities, so to prove that I'm for the rurals, I'm going to vote for something or support something that hurts the greater majority of the people. This is not that kind of issue. If it dealt with a particular right, say water rights or a pipeline coming through and hurting rural people or eminent domain being used in the wrong way, then you wouldn't have a stronger friend than I am. But on something like this, no way, Jose or Josetta, or I should ask Senator (laughter) Janssen just how I should express that from here on out. [LB363]

SENATOR GLOOR: Time, Senator. Time. Thank you, Senator Chambers. Senator Schilz, you're recognized. [LB363]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I've listened intently here for a while now and heard the arguments on both sides. And we've been sitting here talking today, you know, and most of the conversations revolved around counties. Remember, the bill as I see it says public entities, unless that's changed. Senator Avery, would you yield to a question? [LB363]

SENATOR GLOOR: Senator Avery, would you yield? [LB363]

SENATOR AVERY: Yes, I will. [LB363]

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SENATOR SCHILZ: Thank you, Senator Avery. And I'm really just doing this to make sure that I'm not saying something out of turn. This does, this bill still does apply to public entities, correct? [LB363]

SENATOR AVERY: Yes. [LB363]

SENATOR SCHILZ: Thank you very much. [LB363]

SENATOR AVERY: All public entities. [LB363]

SENATOR SCHILZ: Absolutely. Thank you very much. So we're not just talking about small counties. We're talking about school districts. We're talking about irrigation districts. We're talking about municipalities, NRDs, ag societies, SIDs. We're talking about any group that can levy a tax. And so I think that it does make some sense to talk about this. I think it does make some sense to look at this, because some of the things of...when I look out, yeah, I'm from rural Nebraska and I'm...it's okay with me. I'm all right with that. I like it. I have an irrigation district that my farm is underneath. There's three people that serve on the board. Okay. They volunteer for everything. They don't have a staff. So guess what? Somebody demands a public records search, they go and they have to pay an attorney or somebody, an accountant, or somebody to do that. Is that fair that those charges are put against all those payers of that tax? That's the questions we're talking about. And what does that do to that tax over time? So I think it's broader than just the counties. I don't believe it's an urban/rural split. I think that you can find this situation anywhere within the state of Nebraska. I do like Senator Lautenbaugh's idea. I know that we've done other things where we've placed this on the population and looked at that. But it does enter in some other questions when you start talking about all these other entities that could be folded into this. So I think we need to move cautiously. I think the discussion needs to continue to continue to find the best way because I do agree. The records are public. The records need...or the people, the citizens need to have that opportunity. But we also have to be mindful that there is a definite cost to this and that it will be borne by someone. Thank you very much, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Schilz. Senator Bloomfield, you are recognized. [LB363]

SENATOR BLOOMFIELD: Thank you, Mr. President. Again, I did not vote on this in committee. I think we are overprotecting the entities that asked for this question without giving any protection to our public entities. There is no requirement anywhere in this bill to restrain the people asking for this information. But we put restraints on everybody in the public entity whether they have abused it or not. We're going after the multitude again for the sins of a few. And there's got to be a better way to do this than with a

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shotgun. We need to be able to narrow this down some. The public needs to be able to get the information without paying an exorbitant price. But I think maybe there should be some limits put on both sides. And that's something that this bill does not do and it needs to. And, again, I will be a red light on this bill as written. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Bloomfield. Senators in the queue: Larson, Karpisek, and Avery. Senator Larson, you're recognized. [LB363]

SENATOR LARSON: Thank you, Mr. President. I think Senator Schilz brought up a great point. This isn't just counties. This is anybody that has that taxing authority on the local level, and I think that's something that we have to be very mindful of. Senator Schumacher brought up a point that, you know, six hours' worth of a county assessor's time or whatnot is only \$150. That's just, you know, just \$150. Like I said, when I'm out there talking to my constituents, I don't hear that much about the income taxes or the sales taxes; it's the property tax dollars. And that is what we're really talking about here, is it that, you know...and Senator Schilz brought it up, the irrigation district has three volunteers. When they have an open records request, it's going to be the property taxpayers that feel that. And now mind you that most of them are providing it for free right now, but I don't like when somebody says, oh, it's only \$150 and that's the cost of democracy. I think we have to be very mindful of those that we represent and those constituents that send us here. Senator Chambers brought up some constitutionality concerns possibly with treating counties differently. You know, I really like Senator Lautenbaugh's idea. And maybe I'm drawing the wrong parallel here, but, you know, I wasn't here when the Legislature put...allowing some counties to do all mail-in voting instead of actually having polls. If a county was under a certain size, they can send their ballots in. Are we...and I would say that's treating...you know, that's treating democracy different than just this. I mean, you have one county that can have 65, 70 percent voter turnout in a primary whereas the rest of them that don't have all-mail voting or all-mail voting, they only have 20 or 30 percent. So how are we...I mean, we're distorting the candidates that can be elected to the Legislature. I think that's very concerning and if we're going to talk about treating counties differently, I mean, maybe that needs to be changed as well if we're going to talk about that. Third of all, something that I think is very interesting is right now in the insurance business, you go to your local county and you request an accident report for an insurance agent. County charges \$4 for each accident report. I know Senator Scheer said that in Madison County, and I'm sure other counties charge other things. Talk about the revenue lost in just, you know, simple record...you know, going and filing a record. I mean, now under Senator Avery's bill, the first six hours are free. So not only are they losing that revenue, whether it's \$4 times 100 accidents or however many accidents there are, not only are they losing that revenue, they also have \$150 is just the cost of doing business. This bill in essence, I mean, has a direct effect on property taxes and the more and more we look into it, and the more and more that our levies are going to up not only in rural Nebraska but urban Nebraska as well. And it's something that I think is very concerning, especially...I mean,

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I try not to just pay lip service to the people in District 40 that I want to lower their property taxes or at least fight against raises in their property taxes, and I think this does both. So like I said, as is right now at six hours, I will not support it and hopefully we can continue to have discussion on AM389. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Larson. Members in the queue: Karpisek, Avery, and Chambers. Senator Karpisek, you're recognized. [LB363]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I did vote this bill out of committee and had a little bit of thought about it before I did and have since. It seems to be the number of hours that is the sticking point. I guess my biggest thing is voting it out was there was no opposition. So I guess, I think the things were worked out prior to the bill coming. I think six hours might be a little much. I think one hour probably isn't that much. But I wonder how often do they get these requests. I don't think that they come in very often. I could be wrong. And I know that they're busy. And I don't know that the smaller ones are any busier than the bigger ones because in the bigger counties, there's more people to come in to ask for more records. So I think they're all busy. But it comes down to public records. Now if it's someone that really needs it and is really doing something with it, great. But if it's someone who's just maybe trying to cause a problem, I don't know though how you can define that and how you can split that up. I guess my main point that I wanted to make is that there was no opposition to the bill. Now we're getting a lot of e-mails saying that's too much. I don't know what a good number, they haven't said a good number. Some of them had said leave us alone, let us run our offices the way we want to. Well, although I love that idea, some people have been running their offices astray and that's why we're here talking about this bill now. I do agree with Senator Bloomfield that it's probably a few bad actors that have put us in this predicament. So I'm listening. I don't know that we're on the right number of hours here. I think that's probably the only disagreement of where we are on this bill. But when you want public records, they are public records. I don't know if (laugh) you can go in every other day and ask for a whole new set of things. If you have to wait a week, I'm sure you don't have to. But I hope that we can get somewhere on this. I thought we were there. That's why I voted it out. I appreciate everyone concerned for the people at the county level and all levels of government. But when it's public, it's public. And I hope that...I do hope that we can come to somewhere in the middle on this. Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Avery, you are recognized. [LB363]

SENATOR AVERY: Thank you, Mr. President. I have been talking to the supporters of this bill who were a part of that negotiating team and formed the backbone of the coalition that is behind this bill. And we have come to the conclusion that in order to move this bill along, we are willing to compromise down to four hours and that we ask

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you to defeat AM389, approve AM166, then advance the underlying bill to Select File. In the meantime, we will prepare an amendment to reflect that agreement we just reached. With that, I would ask that you vote against AM389 and then advance the amendment, AM166, and then the bill, underlying bill. Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Senators in the queue: Chambers, Davis, and Kintner. Senator Chambers, you're recognized. [LB363]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there's no assurance that this bill cannot move with the six hours. You've had a few assessors put the fear in you. You've had a few people on the floor put fear in you. All you need are 25 votes. You don't have to back off and run. But I had nothing to do with the negotiating of this bill. So if those who have negotiated it are going to back off, then let them back off and I'll leave it alone as I did with that safe haven bill. I told those people, all right, that's what you want, whatever you want, go ahead and get it and I'll let you have it. And I stayed away from it. And they got what they wanted. They got what they asked for, but it turned out not to be what they wanted. So I will leave this bill alone for a reason, but I'm not going to tell you what it is. But as for what Senator Larson said about treating counties different ways based on population, that's true but you have to look at what it is you're talking about. Is a court going to say because a county is small, then a citizen has to pay more to get a public record than in a large county? And how will that citizen pay more? Because after a shorter period of time, that citizen has to start paying money for it. In a big county, a populous county where people might make more money, then it's got to go a larger number of hours and they pay less to get a public record. And you say that is a constitutional classification? Senator Larson now is a constitutional lawyer. Follow him. But I think for myself, you don't have to go by what I say. I just want you to think. You all aren't accustomed to fighting for a long period of time before you get tired and give up when what you're fighting for supposedly is a principle. I do believe that public records and their availability to the public should be a principle. And that's what it is with me. But, again, I have nothing to do with this bill. I know that when bills come out here, they belong to all of us and we can do what we please. But there are a number of moving parts connected with bringing this bill to the position where it is, trying to continue moving it. Brothers and sisters, when I'm fighting for something, I don't wear kneepads. That means I don't crawl. And I have no reverse which means I don't back up. You're going to whip me and you're going to whip me more than once. You're going to have to whip me all session and continue to whip me and continue to whip me and you will get tired before I will because I can take more than you can dish out. But I can also dish it out and I'll dish out more than you can take. There is nobody who has a string on me. Nobody can make me do anything. But there are some of you who have got things you've got to do. You've got other concerns. You've got other considerations. And sometimes you have to sound like a fool because you want to run for governor. I'm not going to let the state obey the federal government on any gun...what is that word I'm trying...any gun regulation law. That's what I'm going to do and, by god, I'm going to run

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for governor on it. I'm talking about myself. If Nebraskans are that stupid, I need to throw my hat in the ring. Not only will I not go for any regulation by the federal government, I will do away with the regulations that exist right now. Every one of them! Everybody can have a gun! In fact, in the way that they offered two chickens in every pot, two guns for everybody with pearl handles. And the government will subsidize you in getting those guns. [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR CHAMBERS: And there's no age limit either. We're not going to be like some people say when you're 80-something years old, which is what I'm close to being now, I got to take a test to drive. No tests of any kind. You're an American citizen, fine. You're not an American citizen, fine. Do you live in America? That's good enough. Now if I have a principle, I'm going to fight for it. But I have got to let these people who are pushing this bill handle their business the way they want to handle it. But as for Senator Larson's amendment, that is ridiculous. That is preposterous. And if you vote for that amendment, I will be surprised (laughter). But I know some people will, because even a clock that's stopped is right twice a day. I want to watch and see how this plays out because it's going to show me what I'm going to be dealing with, with this Legislature, for the rest of the session. [LB363]

SENATOR GLOOR: Time, Senator. [LB363]

SENATOR CHAMBERS: Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Davis, you're recognized. [LB363]

SENATOR DAVIS: Mr. Chairman, members of the body, it's not often we get to see the silver-tongued devil get tongue-tied, so congratulations, Senator Chambers. We have a fiscal note in this bill and it's not an insignificant amount of revenue, but I don't see anything, any estimate as to what it's going to cost our counties and our cities and our school districts, and I'd really like to know that before I would willingly rush into a piece of legislation that could impose significant costs to them. I'm not in favor and interested in subsidizing entities like title companies or other attorneys to have our county officials do the work for them that they're going to bill. Would just urge the body to really think about this, and maybe we need to look at this and get a little more information in our hands before we just willy-nilly jump into a bill that's going to be something that hurts our counties and our communities down the road. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Davis. Senator Kintner, you're recognized. [LB363]

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SENATOR KINTNER: Mr. President, members of the body, I did like the two guns for everyone. I just don't like the government paying for it. But, Senator Avery, I have a question if you could stick it. [LB363]

SENATOR GLOOR: Senator Avery, would you yield? [LB363]

SENATOR AVERY: Yes, I will. [LB363]

SENATOR KINTNER: Just so I know, what documents now are not on-line? What documents have to be copied? I'm not sure where that division is. Do you know? [LB363]

SENATOR AVERY: I don't know what all 93 counties do in that regard, but I do know that the vast majority of counties do keep their records on-line. I can't tell you which counties don't, but I do understand that there are some that do not. But as I said before, NACO is prepared to host those Web sites if they don't have a Web site and only charge them \$60 to \$100 a month to host it. [LB363]

SENATOR KINTNER: Thank you. Senator Larson, will you take a question? [LB363]

SENATOR GLOOR: Senator Larson, would you yield? [LB363]

SENATOR LARSON: Yes. [LB363]

SENATOR KINTNER: Can you explain to me what counties that you're familiar with don't have Web sites and don't put stuff on-line? Can you explain that to me? [LB363]

SENATOR LARSON: You know, a lot of the rural counties might have very marginal Web sites. You know, a county such as Rock or Boyd will have your general contact information of how to call your county assessor. When you have, you know, a county like Keya Paha that only has 700 people in the county, it's almost cost-prohibitive to put all the information on the Web site, whereas, you know, you have the one person in the office to build a high-functioning Web site, such as Douglas or Lancaster, it's just more difficult. [LB363]

SENATOR KINTNER: Thank you, Senator Larson. I yield the balance of my time to Senator Larson. [LB363]

SENATOR GLOOR: Senator Larson, 3 minutes, 7 seconds. [LB363]

SENATOR LARSON: Thank you, Senator Kintner. You know, I really appreciate the discussion that we continue to have on AM389, and it's something that I think needs to be discussed, especially moving forward as it goes from Select File or from General File

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to Select File in terms of what that specific time limit is or can we get possibly classification of the smaller counties or the ag societies or the irrigation districts or the NRDs, if we can somehow draw something up to help them. At this time though I look forward to working with Senator Avery and the four hours that he proposed, and I'll withdraw AM389. [LB363]

SENATOR GLOOR: Thank you, Senator Larson. So ordered. Senator Larson, you are in the queue. Senator Larson waives. Is there anyone else who would like to be heard on AM...the committee amendments to LB363? Senator Chambers, you're recognized. [LB363]

SENATOR CHAMBERS: Mr. President, have I spoken three times on this amendment? [LB363]

SENATOR GLOOR: This would be your last time on the committee amendment, Senator Chambers. [LB363]

SENATOR CHAMBERS: All right. And in my and our considerations for today, and maybe the world will end before tomorrow, but in any case, these types of issues should be looked at first from the standpoint of the underlying principle. Should there even be such a thing as public records? Once any information is committed to a form or format which can be stored by an agency or an entity, nobody should have access to it anymore unless they pay for it. And everybody will pay the same amount. And the amount ought to be so prohibitive that the riffraff cannot afford it, but the ones who really need that information can obtain it. Why even talk about public records? When you run for office, you're always out there talking about, you're for the people this, you're for the people that. Then when you come in here, I'm for the counties, I'm for the NRDs, I'm for the SIDs, I'm for all these organizations. You don't even know who's on them. You might know somebody on one that you're aware of. Then all this talk about the people is out the window. Then when people criticize politicians for lying, you don't want them to point the finger at you. Well, where's all the talk and concern about the people? It exists and we do it until we have to do something on behalf of the people. We don't want to make decisions that are offensive to some people. We want to please everybody. And you can't please everybody. Otis Redding had a song. He said, I can't do what ten people tell me to do, so I guess I'll remain the same. And for white people who don't know who Otis Redding was, Ricky Nelson. He said, you can't please everyone so you got to please yourself. See, whether they're black or white, they come to that conclusion--except politicians. But I'll tell you who politicians will please. Who are the big shots? Those will be pleased. I say again, "Daddy" Warbucks doesn't need you; Little Orphan Annie does. But you always kowtow to "Daddy" Warbucks and Little Orphan Annie is left out in the cold. Why do you think she's an orphan? I watch the way the Legislature becomes supine. And when everybody agrees, the Legislature is right there. When it takes anything in the backbone of a consistency stronger than that of Jell-O or

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an overripe banana, the Legislature hasn't got it. Folds and knuckles under. Well, you're knuckling under everybody else. I'm going to make you knuckle under to me all session. That's what I think I'm going to do. Principles mean nothing. So I'm going to play by the rules you established. I didn't vote in favor of the rules when you adopted them. If you check, I didn't vote. I play by the rules, but there are rules that are written and there are rules that exist by virtue of tradition. In England, they call it common law. It grows up over a period of time. This is what people do. We're going to treat that like the law. Well, you laid the law down to me because I'm 1 out of 49. The 48 of you are teaching me the rules that will be played by. Now you're imposing the rule. Can you live with the rules you're imposing? You're going to impose a law, then I'll impose the order. How about that? And the order will be what I say it is. Is that arrogant? You better believe it's arrogant. You better believe that it's arrogant. Is it egotistical? Absolutely! Without an ego, you cannot survive. Ego simply means self-confidence, self-respect, knowing what you're capable of and doing it in the face of any and all opposition. [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR CHAMBERS: You all are the ones knuckling under. Why you get mad at me because I call what you're doing what it is? Is it knuckling under? Yes. Is it crawfishing? Yes. How fast are they crawfishing? Like a jet-propelled crawfish. They move forward an inch at a time. They crawfish 120,000 miles a second, backing up. I'm proud of this Legislature. I really am, because you're living up what I thought you were and what I said you were. So how can I not be proud? You don't like it, then do something about it. I will do what I say. You will mumble and grumble under your breath and to each other, then challenge me and put me in my place. As I was told before I came down here, there was a clique which was going to put me in my place. Let's start doing it now. Don't grumble and mumble. Tell me to my face. Tell it to everybody. [LB363]

SENATOR GLOOR: Time, Senator. [LB363]

SENATOR CHAMBERS: I'm going to listen to what the Chair tells me. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Chambers. Are there other senators who wish to be recognized? Seeing none, Senator Avery, you're recognized to close on the committee amendments. [LB363]

SENATOR AVERY: Thank you, Mr. President. Let me remind you that the committee amendment makes two clarifying changes to the original bill. First, the amendment provides that the actual added cost used as a basis for calculation of the fee for records will not include any charge for staff to physically redact information for the first six hours. A clerk can do that after six hours until, of course, we amend it later on. In other words, the staff time to physically redact information from records will be allowed to be charged

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only after the first six hours. The second change provides that the fee for records will not include any charge for services of an attorney to review the requested public record seeking to a legal basis to withhold the public records. Senator Chambers commented on this a couple of times. This is a narrowing from the original bill which prohibited the custodian or any officer or employee or contractor of the office to charge for reviewing the public record seeking a legal basis. With this amendment, only services of attorneys are prohibited from being charged for this purpose even after six hours of time. Again, there were no opponents to this amendment and no opponents to this bill. With that, I would ask you to advance AM166 and the underlying bill, LB363. Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Members, you've heard the closing on the committee amendment to LB363. The question is, shall the committee amendment to LB363 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB363]

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB363]

SENATOR GLOOR: The amendment is adopted. [LB363]

CLERK: I have nothing further on the bill, Mr. President. [LB363]

SENATOR GLOOR: Discussion on the advancement of LB363 to E&R Initial. Senator Chambers, you're recognized. [LB363]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I've said all I have to say on this bill today. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Chambers. Are there others who wish to be recognized? Seeing none, Senator Avery, you're recognized to close on the advancement of LB363. [LB363]

SENATOR AVERY: Thank you, Mr. President. I remind the body that we will be working between now and Select File on an amendment that will add language reducing the hours from six to four. This represents a compromise. And, I can tell you, compromises sometimes hurt. I've said in here before, if you're going to get something, usually you have to give up something. So we are giving up something in order to get this bill advanced. And I hope that you will agree with us that we are moving in the right direction. This is itself a worthy bill and I urge you to support LB363 as amended. Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Senators, the question is the

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advancement of LB363 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB363]

CLERK: 35 ayes, 1 nay, Mr. President, on the advancement of LB363. [LB363]

SENATOR GLOOR: The bill advances. Mr. Clerk for the record. [LB363]

CLERK: Mr. President, several items. Natural Resources Committee, chaired by Senator Carlson, reports LB203 to General File with committee amendments attached. I have confirmation hearing reports from the Retirement Systems Committee signed by Senator Nordquist. Hearing notices from Appropriations, those offered by Senator Mello as Chair. Priority bill designation: Senator McCoy selected LB613 as his personal priority bill for this session. I have a Reference report referring certain gubernatorial appointees to standing committee for a confirmation hearing. New resolutions: Senator Crawford offers LR73; that will be laid over. Enrollment and Review reports LB211A to Select File. Enrollment and Review also reports the following bills correctly engrossed: LB24, LB28, LB29, LB32, LB36, LB40, LB67, LB78, LB135, LB137, LB147, LB164, LB207, LB207A, LB209, LB210, LB213, LB214, LB250, and LB336. All of those reported correctly engrossed. I have a series of amendments to be printed to LB590 from Senator McCoy. Name adds: Senator Dubas to add her name to LB634 and to LR40; Senator Bolz to LB241; Senator Bolz to LB323 and LB620. (Legislative Journal pages 514-523.) [LB24 LB28 LB29 LB32 LB36 LB40 LB67 LB78 LB135 LB137 LB147 LB164 LB203 LB207 LB207A LB209 LB210 LB211A LB213 LB214 LB241 LB250 LB323 LB336 LB590 LB613 LB620 LB634 LR40 LR73]

And a priority motion, Mr. President. Senator Adams would move to adjourn the body until Tuesday morning, February 26, at 9:00 a.m.

SENATOR GLOOR: Members, you've heard the motion to adjourn until 9:00 a.m. tomorrow morning. Those in favor say aye. Those opposed say nay. We stand adjourned.