

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FOLEY: Good morning, ladies and gentlemen. Welcome to George W. Norris Legislative Chamber for the seventy-third day of the One Hundred Seventh Legislature, First Session. Our chaplain for today is Senator Moser. Please rise.

MOSER: Good morning, Nebraskans, colleagues. Today's prayer comes from Father Joe Miksch from St. Isidore Parish in Columbus, Nebraska. Almighty, eternal, and ever living God, we ask your blessings upon us as we gather here today. As elected representatives of our districts, we come from the prairie-covered Sandhills, the wheat fields of southwestern Nebraska, the corn and bean fields of eastern Nebraska, from the cities of Omaha, Lincoln, Grand Island, Scottsbluff, Creighton, Gordon, Glenvil, Plymouth, Venango. The needs of our constituents may be very different. We also come from varied religious backgrounds and may not all share the same moral values. But, Lord, send your spirit of wisdom upon us. Help us listen intently to our constituents, even when they object to some of the positions we've taken. As members of this body, help us to listen with respect for one another, even when we strongly object to one another's views or values. Guide us, Lord, in our deliberations today. May the laws we pass be in accord with your will and for the best interest of all the people living in Nebraska now and in the future. May your will be done in all that we do today. We ask this in Jesus' name, amen.

FOLEY: Thank you, Senator Moser. I recognize Senator Aguilar for the Pledge of Allegiance.

AGUILAR: Please join me for the Pledge. I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

FOLEY: Thank you, Senator Aguilar. I call to order the seventy-third day of the One Hundred Seventh Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

FOLEY: Thank you, sir. Are there any messages, reports, or announcements?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

CLERK: I have nothing at this time, Mr. President.

FOLEY: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda. Members, please come to order. First item on the agenda, Select File appropriations bills. Mr. Clerk.

CLERK: Mr. President, Senator McKinney, LB411A. I have no amendments to the bill.

FOLEY: Senator McKinney for a motion.

McKINNEY: Mr. President, I move to advance LB411A to E&R for engrossing.

FOLEY: Members, you've heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB411A advances. Proceeding to LB485A, Mr. Clerk.

CLERK: LB485A, Senator, I have no amendments to the bill.

FOLEY: Senator McKinney.

McKINNEY: Mr. President, I move to advance LB485A to E&R for engrossing.

FOLEY: Members, you heard the motion to advance LB485A to E&R for engrossing. Those in favor say aye. Those opposed say nay. The bill advances. Proceeding now to General File 2021 senator priority bill. Mr. Clerk.

CLERK: Mr. President, LB241 was a bill originally introduced by Senator Vargas. It's a bill for an act relating to labor. It adopts the Meatpacker Employees COVID-19 Protection Act. The bill was introduced on January 11, at that time referred to the Business and Labor Committee, advanced to General File. I have no committee amendments. I do have other amendments to the bill, Mr. President.

FOLEY: Thank you, Mr. Clerk. Senator Vargas, you're recognized to open on LB241.

VARGAS: Thank you very much. Good morning, colleagues. Now, as many of you know, over the last year, I've been working closely with workers at meatpacking plants across the state, their families, and grassroots advocacy groups that represent the interests of these workers. Now what I've heard about, specifically what I've heard about what's happening in the plants, the treatment of the workers, the lack of follow-through on implementing safety and health measures across all

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

the plants, misinformation that everything had been fine, and the failure for the Governor to act and to bring us here today, and also for us to act. All of you know that this is not the first action I've taken to address this issue. Many of you have joined the calls with meatpacking workers across the last year so that you can hear directly from them about what they're experiencing at work. Now last summer, 23 fellow senators joined me in cosigning a letter to Governor Ricketts, asking him to take action on these issues. But nothing happened. I renewed our call to action before we resumed and paused the legislative session in the summer. But still nothing has happened. When we re-- reconvened in July, I attempted to suspend the rules to be able to introduce new legislation, and that motion failed, so I introduced AM3238. The result of AM3238 was not making it into law months ago. And what we've seen is an increase in the number of cases, hospitalizations, and deaths related to COVID-19 in our packing plants. Since August, over 2,000 more workers have tested positive for COVID-19. More than 20 additional workers were hospitalize-- hospitalized from complications related to COVID-19, and 6 more workers lost their lives. I do not take this lightly and neither should you. Now the most recent numbers that I can get from DHHS: 7,382 meatpacking workers have tested positive for COVID-19; 256 have been hospitalized; 28 have died. These are just the numbers that have been reported, and these are the numbers that represent not just the workers themselves, don't fully represent the community spread. Now I'm sure many of you have heard meatpacking workers or heard from them. You've heard from their families and their advocates over the past several months. I know they've communicated with the Governor and with employers about these concerns and issues, but their concerns and cries for help have not been fully acknowledged or addressed in the way that I think it should be. Now here's the context that I'm viewing all this through. It's based on data. It's based on what I've heard from countless meat work-- meatpacking plant workers across the state. Now the vast majority of meatpacking workers, they're not white. Most are Latino. Many are refugees and immigrants from other countries around the world. Eleven percent of the population in Nebraska is Latino, but at one time they represented 60 percent of our COVID-19 cases and more than 25 percent of all deaths. I really do want you to think about that. Consider the impacts that COVID-19 had in meatpacking plants, not just on those workers but in all the communities that it spread out. Consider what happened when family members and community members contracted COVID-19, and think about what those deaths mean to the family's financial stability and many of the things which we fight for here. You all know the issue of COVID-19 is personal to me, and it's not because I represent one of the largest Latino districts in the state. It's not just because that my parents

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

are immigrants. It's also not only because there are more people in poverty in my district than there actually are in the middle class. It's also because these stories of these workers hit very close to home to me. I've told you this. My parents came here from Peru and they worked in factories on the line, just like these workers have. It's why it's personal. And I know how hard it is to work in these plants under even normal conditions. I know how hard it is to make sure that you're putting food on the table and providing for your family, especially amidst this pandemic. I've seen what that looks like for families, and I don't want any other families to go through what my family has gone through over this last year. We should be doing everything we can to prevent that from happening, because even though-- and I've shared with you that my father passed away from this-- I still don't want people to go through that pain. And to my knowledge, I'm still the only person here that has had that close of a loss from COVID-19. Now, while we are incredibly grateful for the vaccine, we are not out of the woods yet. We have the opportunity to do something, and that's what we're doing here today with LB241. First, these changes are not permanent. I'm only asking for one year of temporary protections or safeguards. And to be honest, it is the absolute least we can do to help these workers and their families. As policymakers, we're often told to pick our battles. Colleagues, this is mine. The situation is urgent and demands action from all of us now. And it is difficult for me to even think about how different these numbers would have been if we had acted sooner. Now before we start, I'd once again like to thank all the employees and family members who testified at the hearing earlier this year. Your candor is appreciated, your stories. I know the vulnerability required a lot. I will never forget it. They risked a lot to be at the hearing and I want them to know that I understand and appreciate that, and I'm thankful for their courage in being there to share their experiences with us in a public setting. I'm thankful for the sons and daughters and significant others and family members that have formed coalitions across the state in protection of their loved ones working in plants. I'd also like to thank you all for hearing me out on this issue and for coming into this debate with an open heart and mind. I hope you know how important this issue is to me. I also hope you know that I like to be an honest broker, and my goal is to make sure that we move forward and try to continue to make something like this work for the betterment of workers across the state. Finally, my only ask to you is this. We've been operating with this sense of collaboration and trying to make bills work as they move along. The amendment that I filed has come directly out of the hearing. The amendment that you have, that's on, removes the largest opposition component of this bill, which is the six-foot social distancing. It also removes the ventilation

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

requirement. The remaining is what has been left, still puts safeguards in so people can get a test, get a vaccine, not be penalized for it, data reporting. And that information, those privileges, are the same privileges that you and I have right now. It is not what I wanted to do; it's what I think is necessary to do to move a version of this forward. I'm asking you to recognize that piece of it, because we're now voting on the amendment, not the original bill and not the amendment that has been filed previously. So with that, I want to thank you for focusing your conversation on the most recent amendment that was filed this morning, which many of you will be having in your hands in a second, that'll be handed out by the pages. Thank you very much.

FOLEY: Thank you, Senator Vargas. Mr. Clerk.

CLERK: Mr. President, Senator Vargas, you had filed an earlier amendment, and that's the first one. Do you-- do you want to take that up, Senator?

VARGAS: Well-- I'd like to pull that amendment.

CLERK: Mr. President, Senator Vargas would like to withdraw AM580.

FOLEY: Withdrawn.

CLERK: Senator Vargas would move to amend with AM1163.

FOLEY: Senator Vargas, you're recognized to open on AM1163.

VARGAS: Thank you very much. Colleagues, this is a-- an amendment that came out of a few visits to plants, off-the-record conversations with some of the plants, the hearing testimony, which is extremely enlightening and provided the right amount of information to make an informed decision here on some changes. I took that and brought this forward. There are some major changes that are presented in this amendment. The first is we originally had six-foot social distancing. We removed that provision largely because many of the plants shared that that was going to be their biggest op-- opposition to this bill. It was in the hearing transcript and the members of the committee had voiced that concern over and over again and pressed them if they were any other opposition to this bill. And there was another opposition to this bill that was as clearly articulated as the six-foot social distancing. Ventilation was one of the other components that went along with this. Both of those requirements are removed from this. What is left is configuring spaces in common spaces to allow for social distancing and language that makes sure that employers comply

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

with already existing federal rules and regulations for ventilation with OSHA. The other major changes here in this amendment are on the preventative measures like facemasks, screening provisions, screening provisions like we have screening provisions or we have screening provisions. If the CDC guidelines-- and the amendment changes this-- if CDC guidelines are lowered to a point where we have more stringent rules in place, the Department of Labor can simply lift those regulations and they won't apply anymore. The last thing we do here is we change the data requirement from weekly to monthly. The data is very simple. It is the number of positive cases and it is the number of deaths. And then we also ask any information or data they have on race or ethnicity to also be provided. That is what the amendment does, which was the major opposition in the bill. That is what we're going to continue to work on is this version of the bill, not the version that has been introduced or what you see in the committee statement. Now that what's left in the bill are commonsense practices that many of us have been able to exercise. If you or I wanted to go get a test, we can do so on work time. If we wanted to get a vaccine, we can do so on work time. Contract tracing, if you test positive and somebody around you tests positive, we want to make sure that the people around you get notification verbally or in writing in some way, shape, or form, and you have to maintain confidentiality, confidentiality so that people don't know who the person is that got infected. You have to do that contract tracing. You have to make sure that there is no penalizing people for exercising those rights. We have to continue to make sure that supplies are provided for the workers. There needs to be sanitizing stations. And then there's the ability to make sure that we continue to have the transparency, and the data provides that. This is a very pared-down version of the original bill, and that was intentional because I wanted to focus on the things that are more safeguards rather than anything else. So colleagues, I ask to support this bill and this amendment so we can move it on. And if there are questions or concerns with specific provisions in this bill, I'm happy to work on them between General and Select. We have given each other that level of deference and respect, because if there are, I'm happy to work on those. And some of you have voiced some of those off the mike in our conversations over the last couple of days. With that, I ask for your support for AM1163. Thank you.

FOLEY: Thank you, Senator Vargas. In the speaking queue are Senators Aguilar, McDonnell, McKinney, Slama, Brewer, and Ben Hansen. Senator Aguilar, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

AGUILAR: Thank you, Mr. President and members. First I want to start off by thanking Senator Vargas for bringing this forward. It's just as important to me as it is to him. In Grand Island I have 2,500 constituents that work at the meatpacking plant, and to this day, they still work in fear. Not everybody is vaccinated yet; not everybody's safe. I'm still asked questions like, why are we still doing this? It's-- it's over. I assure you, it's not over, and the fear that these people are carrying daily when they go to work is real. I'm asking you to be considerate of those feelings. We're only doing this for a year, and I think it's imperative that we hold people's feet to the fire for that year and allow these people to go to work with a clear conscience and not any fear of this. I'd give any of my time left to Senator Vargas.

FOLEY: Thank you, Senator Aguilar. Senator Vargas, 3:45.

VARGAS: Thank you very much, Senator Aguilar. I really appreciate your words. We've been having a lot of debate about a lot of different things recently. In particular, we've been talking about taxes. We've been talking about property taxes. We've-- and nobody's debating whether or not we need to have those debates. I hope you're not debating that, as well, with this. I welcome the opportunity to have this conversation on whether or not-- what aspects of this amendment can we push forward and move forward and work on this bill. But the crux of this conversation I also want to have is there is an inherent need to do something. If nothing happens over the next year and COVID-19, we slowly go back to normal and enough individuals get a vaccine, this bill won't affect anyone. They are safeguards. I hope that this bill affects no one. That is the intent. It's unusual to put something that is so-- for a year. But I do that on purpose specifically because there is an inherent problem. And just because it may not be something that we can relate to, isn't a reason that we shouldn't work on it and move forward with it or support it. Not all of us have the experiences that meatpacking plant workers have during this year. I've said this before. The Children of Smithfield are children and family members of Smithfield workers, as one example, that have organized because-- out of fear of retaliation for their parents-- to advocate for better protections for their loved ones. There are children, youth, loved ones that organized to try to ask for better protections. And what this bill is doing is doing some of the basic, basic measures of guardrails to ensure that, if there are plants not exercising all these things, which some of them are, but for the ones that are not or not adhering to their own standards, this is going to help protect more workers over the next year.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FOLEY: One minute.

VARGAS: And I am afraid, and the reason I'm afraid is some of us have not been affected by this. I don't know how many of you have looked at somebody that's been in the hospital that had COVID-19, that has actually dealt with the effects of this virus. Nobody should have to go through this, I don't care what job they have. But the individuals that are working in these plants, consistency is needed to then have further safeguards for them, and that is what this bill is; that is what it does. Voting for this is saying we want to try to do some protections for the next year just in case something were to happen and we have a further outbreak. And if nothing happens, this will affect no one. It is absolutely necessary that we look at the moral imperative in our soul and find--

FOLEY: That's time.

VARGAS: --a way--

FOLEY: That's time, Senator.

VARGAS: --to better protect workers. Thank you.

FOLEY: Thank you, Senator Vargas. Senator McDonnell.

McDONNELL: I know. And that's their plight. I understand.

FOLEY: Senator McDonnell.

McDONNELL: Thank you, Mr. President. Good morning, colleagues. I want to thank Senator Vargas for his-- his work over the last year on this issue. And I'd also like to thank Sue Martin. She's the president of the Nebraska AFL-CIO, and she's done a great deal of work. There's so many to thank that have come forward to say, let's- let's try to solve this problem, let's make this situation better for these-- these people that are going to work every day to feed their families. And the idea of safety in the workplace, and what we can do, and-- and everything that Senator Vargas has-- has-- has mentioned, I don't want you to think about LB241 anymore. I want you to look at the amendment, AM1163. He compromised on distancing in common areas for-- and spaces, ventilation, preventive measures, tracking and reporting, put a sunset on it for June of-- of 2022. And let's-- let's think about the-- the employer also. So you talk about meaningful democracy in the workplace where the employer and the employee work together to try to solve a problem. No one had a playbook on COVID-19. It wasn't like we could go back and say, oh, remember what they did, you know, 15 years ago when

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

this happened, and this is how they adjusted then, and we could-- we could pull it off the shelf and-- and get to work. No one-- no one really knew how to react to it. But people were definitely making mistakes. And I'm not saying these employers were making mistakes on purpose and trying to have these employees become ill, because it's not in their best interest. If we talk about just the economy and where we are today and trying to make these working conditions safer for these-- these people in these meatpacking plants, it helps all of us. It helps them. It helps their families. It helps the employer. It helps the state of Nebraska, based on we don't want to shut these places down. We don't want to have people that are going to become ill and miss work. These are very reasonable compromises to take a workplace and make it safer for all of us. Please read the amendment. Read AM1163, because there is a great deal of compromise, and give credit where credit's due on both sides: the employer and the employee working together to say, yes, things were terrible in March of 2020 and what we've done to improve it and what we can do up till it sunsets in-- in June of 2022. I'll yield the remainder of my time to Senator Vargas. Thank you, Mr. President.

FOLEY: Thank you, Senator McDonnell. 2:00, Senator Vargas.

VARGAS: Thank you very much. Colleagues, I want to try to remember and paint a picture for you. We've had an opportunity to do something and we haven't been able to make it happen-- the pandemic, the shortened session. But put that aside. We have an opportunity to do something right now, and that opportunity is very, very simple. Please read the amendment. The things in here are basic things that we would want any of our loved ones to have in the workplace: PPE; sanitizing stations; the ability to go get a test on work time with no-- not being penalized; the ability to get a vaccine on work time unless it's already provided already at the plant; data transparency being shared every month with the Legislature just for the next year. These are very common things that we and our loved ones have been afforded, but the people in these plants, some of them have been afforded this. But to ensure it's been consistently applied, that is why this is necessary. That is why this is necessary. We're not talking about some sweeping type of legislation that cracks down on meatpacking plant, because that is not the bill that I brought. That's also not my position. Our meatpacking plants provide jobs in our community. That is why I listened to the hearing testimony and removed their largest piece of opposition. And what is left, what we are voting on, what is left are basic things that we would expect our loved ones to have in their workplace.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FOLEY: That's time, Senator.

VARGAS: Thank you.

FOLEY: Thank you, Senator Vargas. Senator McKinney.

McKINNEY: Thank you, Mr. President. I rise in support of LB241 and AM1163. I support it because when the pandemic happened, I have a few friends and I have a cousin that work in the meatpacking plants in south Omaha, and they would call me and text me and ask me questions about, you know, safety and what should they do to kind of get their needs met. And one of my cousins, he helped, you know, stage a walkout because their needs weren't being met. And that's why I support this, because I, too, have constituents that work in these environments, and I would hope that they are properly safe-- I would hope that they are safe in the work environment and that they don't have to wonder whether going to work is going to be life or death. And I think that's what we have to think about with this legislation. It's only for another year, till we get out of this pandemic. And like Senator McDonnell said, it's not over yet. Everyone is not vaccinated, and it's going to take some time. So I think if we put this in place for the next year, it's-- it's a proper measure to-- to make sure that we get through this pandemic and we take care of all the Nebraskans that work in these environments. And I yield the rest of my time to Senator Vargas.

FOLEY: Thank you, Senator McKinney. Senator Vargas, 3:30.

VARGAS: Thank you very much. How much time do I have?

FOLEY: 3:20.

VARGAS: Thank you. Thank you very much, Senator McKinney, for those words. Again, I want to make sure we're-- we are very clear on what we're voting on. If you're looking at this bill and you're looking at the language of it, we're voting on basic things. So let's talk about these basic things, because that's what we're going to end up voting on: making sure that employers have face masks and/or face shields available free of charge; reconfiguring any congregate spaces to allow for social distancing- that is a lunchroom, for example, which most of them are already doing; it's making sure we have a standard, making sure they are frequently and routinely sanitizing their hands by providing hand-sanitizing stations, which already set up; making sure that they comply with ventilation, according to OSHA-- that's not a new standard-- that's already an existing federal regulation; making sure that you're screening an individual by taking a temperature check

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

and asking them either an oral or written questionnaire. Those questions are completely up to the plants and that test, that temperature check, is the same thing that we get every single day or we had gotten every single day. These are very basic things that we would expect our own loved ones and sons and daughters and grandkids to have at any of their future workplaces, especially amidst a pandemic. So putting this into place is not harming anybody. It's just reinforcing what some are already doing. Across the spectrum, there are plants that are doing good things and there are some plants that are not, some that are consistent and some that are inconsistent. I've learned from what has been working, and what you see here is that: basic parameters that provide protections to make sure we are doing everything we can for them. For those that are doing more of this consistently, this doesn't affect them at all. It only affects those that are not doing it consistently, are not applying. So it's a good thing that--

FOLEY: One minute.

VARGAS: --we would be voting for that. Thank you.

FOLEY: You still have 45 seconds, Senator.

VARGAS: Oh, thank you. So that's what we're talking about when we're looking at this bill. I'm imploring you to read it because voting on this is voting against some basic things that we would expect others to have. We're not voting on something that is going to hamper the industry. I would not want to hamper the industry. I want to make sure we have some guardrails in place for the next year, because when I look at the plant workers, I unfortunately see people that look like me, I see people that look like my father, I see people that look like individuals in my community, people that completely trust the system and sometimes don't know how to navigate and advocate for themselves.

FOLEY: That's time, Senator.

VARGAS: Thank you.

FOLEY: Thank you, Senator Vargas. Senator Slama.

SLAMA: Thank you, Mr. President, and good morning, colleagues. I rise today opposed to AM1163 and opposed to LB241. I-- I have two technical concerns here that I'll go more in depth on in a second. But I do just want to take issue with the fact that AM1163, a white-copy amendment, so a new version of the bill was dropped right as we came into session today. So when we're talking about reading the bill, literally no one

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

has had a chance to read the bill other than in the last 20 minutes. So that's part of the reason why I am getting it up to the mike today. Moreover, the meatpackers who are impacted by this white-copy amendment have also not seen it. In my quick review of the white copy, I still have two technical concerns. The first concern is we're still running into issues with our state law conflicting with OSHA. So from a legal perspective, in the simplest terms I can say, Nebraska is prohibited from asserting jurisdiction under state law that's already covered under federal law. I'd argue that these workplace conditions, those requirements are already covered under OSHA law. So in order to implement this statute, LB241, we'd have to apply for an OSHA waiver, get an approved OSHA act-- action plan. That's something that will take at least six months. We're looking at a sunset here of June 30, 2022, so we're talking about LB241 being in effect for maybe a few months at most. My second technical concern is we still have the six-foot distancing requirement in common areas in all of these meatpacking plants, and in these meatpacking plants we have hundreds of workers in at one time. And these common areas, these lunchrooms, these locker rooms, when you look at the square footage, it is literally impossible, if you want folks to be able to eat their lunch or access their lockers at the turn of shifts, to have that six-foot requirement, like logistically, even AM1163 is impossible to implement realistically. Now we do have some great news with COVID in our state. I've checked in with Lincoln Premium Poultry and Smithfield. Both of those companies have zero current cases among their thousands of workers right now. That's outstanding. Every single Nebr-- adult in Nebraska has access to the vaccine. The overwhelming majority of our meatpacking plant workers have received at least one dose of the vaccine and the majority have received both doses. They've been fully vaccinated. The temperature checks required in AM1163, several studies have been done. I can reference my sites on the mike if I need to get on again, but those have been found as generally ineffective at pinpointing COVID cases anyway. So I-- I can't imagine why we're adding that requirement when even us here in the Legislature have figured out that those temperature checks were ineffective at pinpointing COVID cases when they happened. So with that, I-- I would like to thank Senator Vargas with his work on this bill. I certainly appreciate his efforts and how hard he's worked to get the bill to this point. It's just not in a position that I can support and I'd encourage the body to vote red on AM1163 and LB241. Thank you, Mr. President.

FOLEY: Thank you, Senator Slama. Senator Brewer.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

BREWER: Thank you, Mr. President. I'm kind of in a quandary on this issue because I have both packing plants and I have lots of cattlemen, and anything that we do in this body that slows down the ability of them to be able to have a living because the cattle they produce can't get to market, that's an issue. And I want to thank Senator Vargas because he did sit down and talk with me last night. Now I would have to agree with Senator Slama that when I started looking through the document that we were given just a matter of minutes ago, which is the amendment, this amendment is dated 4-27-2021. It would have been so much more helpful to have this in our hand days ago, not minutes ago. And I don't think that's fair when you drop it and ask that we completely reset how we see a bill because of this new amendment. It makes it hard. And so if Senator Vargas will yield some questions, we'll see if we can sort things out here.

FOLEY: Senator Vargas, would you yield, please?

VARGAS: Yes, happy to.

BREWER: All right. Normally what generates an amendment to the bill is there's something about the bill that-- that is not acceptable to enough people to get the bill through. I'm assuming that's what generated this amendment. Correct?

VARGAS: That is correct.

BREWER: All right. And-- and I think you've done a good job of picking those out and-- and making corrections to them. When I toured the-- the plants in my district, one of the things I was trying to do is sort out the issues, like the PPE: Were-- were they getting the things they needed to safely do their work and protect each other from exposure? Now keep in mind, it's a-- it's a packing plant, so it's not necessarily a-- a sterile environment where you're able to have things perfect. When you wrote the bill, I guess, the first step was to tour packing plants and to understand how they work? Senator Vargas?

VARGAS: Yeah. Yeah, I didn't-- so is your question whether or not this is informed--

BREWER: So-- yeah. How many-- how many packing plants did you tour to figure out what was wrong and how to fix it?

VARGAS: So over the last couple years, I've toured packing plants in my community. I've seen what some of the-- protections have been in place. We also did send recommendations. We took a set of the recommendations from UNMC's recommendations and many of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

recommendations that we had actually sent to plants, and we had received back many of the things that they put into place, which is informing this legislation. So the things that we have seen be introduced, but not consistently, is what informed this legislation.

BREWER: OK, so let's-- let's focus just on that. Since the start of COVID, how many of the packing plants have you toured? Because we're trying to figure out are they doing things right and, if they aren't, what do they do wrong? And I'm-- my-- my situation may be different because my plants are smaller. They're not these megaplants like you deal with.

VARGAS: Yes. I toured a few of the plants in Nebraska, but as you can imagine, with COVID-19 and many other circumstances happening this last year, did not get to tour more than that.

BREWER: And I asked the plant in my hometown, I said, how many of the workers have had COVID and-- and do you administer shots? And-- and they seem to have data, but, again, it's on a smaller scale. Are you able to access any data on whether the plants provide vaccination and time off to get a vaccination?

VARGAS: So some plants provide vaccine days where they, you know, coordinate with the county health department or the state and then have a vaccine day. Some of them are sort of outsourcing it to a community health center and they're sending people there. But we have heard those instances of that. It's one of the reasons why--

FOLEY: One minute.

VARGAS: --in this we have that a vaccine--

BREWER: Thank you.

VARGAS: --can be allowed. You can do it on work time.

BREWER: OK, well, let's kind of wrap it up here, but you're-- you're-- you're getting to the questions I need. Do you have any data to know like over, say, the last 30 days how many cases we've had in the plants or-- or do they currently monitor that?

VARGAS: This is self-reported data. So there are some plants that have been very consistent over the last several months sharing data, and there are some that have not been consistent sharing data. It's totally up to the plants and whether or not they share data. So the-- what we do have is that the 7,600 people that have gotten COVID over

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

the last about seven-plus months here from these plants, that's the most up-to-date data we have from DHHS.

BREWER: Do you have any concerns about liability as an issue, as a result of this legislation?

VARGAS: I don't. I do think there's a separate bill that has to do with liability.

BREWER: OK. Thank you, Mr. President.

FOLEY: Thank you, Senators Brewer and Vargas. Senator Ben Hansen.

B. HANSEN: Thank you, Mr. President. Before I begin, I do want-- I do want to express that Senator Vargas has, prior to the amendment being dropped today, because I do have a little bit of concern with it being dropped so soon and be-- the ability to read it. But Senator Vargas has been-- has had open communication with the whole body about the bill, answering questions, and his heart is in the right place. And I appreciate his ability to communicate with all of us in a timely manner about this bill and answering questions. With that, that has already been shared on the floor by Senator Slama and Senator Brewer and others, are some of the logis-- logistical concerns of the bill that it does to these businesses, the constitutional concerns, the constitutionality of the bill, in-- in re-- in respect to OSHA rules and regulations and a state plan having to be implemented in a timely manner that Senator Slama brought up. But with-- with mine is-- is more kind of more the philosophical concerns of this bill. How far is too far and how much responsibility should government take for the people? This is a discussion I've had with city councils that I visited when it comes to mask mandates. In my opinion, when your heart is torn about what we should do, it's hard for us as representatives to trust the people sometimes. I mean, we-- we-- we all have big hearts. We all-- we all got in this position to take care of people, to help people. But how far should we take care of people? And sometimes when your heart is torn and you don't know for sure what to do, you sometimes have to trust the people and err on the side of liberty. And so when it comes to my philosophical concerns with this, is meatpacking plants today, who is tomorrow? Kawasaki plants? Manufacturing plants? Fitness facilities? Businesses like mine? Small businesses? Are we going to make them put dividers up everywhere? And so it's-- it's more-- not so much incrementalism. It's just, where does this start and where could it end? And I do have a couple-- actually just some concerns about the bill itself. I was wondering if Senator Vargas would yield to a couple of questions, please.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FOLEY: Senator Vargas, would you yield, please?

VARGAS: Yes.

B. HANSEN: So with the amendment-- I was trying to read it here-- you are reconfiguring the six-foot distancing. However, it will still be needed in spaces, including break rooms, lunchrooms and locker rooms, correct?

VARGAS: Yeah. The language is an employer shall reconfigure common and congregate spaces to allow for six-foot distancing, not to enforce six-foot distancing or mandate it.

B. HANSEN: OK, what about bathrooms?

VARGAS: If they can't allow for it in the bathroom, I think that that language is pretty clear then.

B. HANSEN: OK. And then-- and this is a question I-- I asked, if you remember, during the-- during the hearing. This bill pertains to the facility itself, correct, not so much outside of the facility?

VARGAS: Yes.

B. HANSEN: So the rules don't apply until they walk in the door of the facility?

VARGAS: Yes.

B. HANSEN: How about the parking lot when they're in the car? Doesn't apply to them there, right?

VARGAS: I-- I would imagine it does not.

B. HANSEN: OK.

VARGAS: And largely the reason is going to be because, well, it's outdoors. I think CDC has had some updated guidelines on being outdoors at this point.

B. HANSEN: Yep. And the goal is-- ob-- obviously we're being a little reactive with the bill, which makes sense. Is the goal with this to also be proactive, so not so much this year, but also in case something-- another virus comes along next year? Or is the goal to continue this past this year?

VARGAS: That is not the goal.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

B. HANSEN: OK, just--

VARGAS: The goal is for the-- the next year. It safeguards for the next year and it sunsets.

B. HANSEN: OK. And-- and again, I do appreciate you answering questions, because every time I've come up to you, you've answered questions and you've been open with your communication. I appreciate that.

FOLEY: One minute.

B. HANSEN: So again, I'm not so much against what the intent of the bill is trying to do, where-- where the heart-- where his heart is at. It's more of the philosophical concerns of the bill and what-- what-- you know, where-- what role should government play? How far should we go? And from my communication with all the meatpacking plants in the state of Nebraska, not all of them but the majority of them, that hire the-- the most amount of people, so far, that Senator Slama also mentioned, is that the-- the rate of positive COVID cases right now is slim to none. So it seems to me what-- what we've been doing so far has been working, and what they have been doing so far that the bill mandates that they do, from my understanding, all of them have been doing already, whether it comes to prescreen-- prework testing and sanitation, face-- facemasks, and even lot have been doing barriers in their-- in their communal areas and-- and break rooms. And so it seems to me that they've been doing a lot of this--

FOLEY: That's time, Senator. That's time. Thank you, Senator Ben Hansen. Senator Vargas.

VARGAS: Thank you very much. I want to try to respond to a couple things. One, we dropped the amendment. The amendment, if-- hopefully you're listening. The amendment includes changes that were presented in the hearing, and since then, from opposition. We've removed things. We didn't add more things. So the remainder of the bill is the same bill. We added things to make it easier. Removing the social distancing requirement on the floor, that was when the opposition presented in the hearing. Removing the ventilation requirements, that was presented in the hearing. This is not an "aha" amendment. And we largely bring amendments for discussion and making sure we-- we vet them. That's what this is. There are not new pieces in here that are requiring more of the plants. So when I'm hearing people questioning or their argument that this just got dropped, how in the world can we deal with this amendment, the amendment actually is reacting to what the opposition's testimony has been to be a better version of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

amendment. So hopefully that addresses any concerns that you're voting for something that, oh, I can't understand it. The second thing is people have said certain plants have already been utilizing many of these practices. Colleagues, I understand that. I'm completely supportive of it. Many of the things that I had learned from plants doing inform this bill, which is the reason why we want to make sure to put it into law for the next year as a safeguard. It's to ensure consistency. We bring bills all the time. We bring bills that are addressing issues. Even if the actors that do those issues fix them or get better at them, we still put into statute things to better protect Nebraskans. That is ultimately what we're talking about here. And despite what you might hear about the implementation of this, because this is very clear in terms of what is and is not going to be enforced and we're paring it down, we're not having issues with whether or not OSHA can or cannot regulate this. They're not playing a role in this right now. OSHA is playing a separate role. What we have in front of us is a pared down set of safeguards to better protect workers. And what I'm asking is for us to move forward on the amendment and the bill so that we can get to a place where if there are more things, for example, some of the things Senator Slama brought up, I'm more than happy to work on those between General and Select. I'm happy to work it on the next stage. And if it doesn't get addressed, then, like other bills, it won't pass. The changes that we've made here are in direct, and not reaction, in direct response to what we heard in the hearing testimony. And if you had been there, and Business and Labor members heard these things, that's what it is. So now we're looking at whether or not it is or is not going to affect plants, which is the wrong question. The question is not whether or not it affects plants, because what we heard is if they're doing everything they're supposed to be doing, which many of them are, this won't affect them. The question is whether or not we send a message to Nebraskans that have seen this happen across the country. This has been a hot spot in the past.

FOLEY: One minute.

VARGAS: And we've put into statute temporary safeguards for a year, for a year. They are asking for it. We've received 300-plus comments on our online system in support of this bill from all over the state, from nearly every single county in the state. These recommendations are informed by what plants are doing, UNMC's study, and also what many of-- the actual information we've received from plants. So now we're putting it in for a year to better protect workers, because any life that we can potentially save over the next year because of these safeguards, or less persons being hospitalized, is for the betterment

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

and the good of our state. So I'm asking you to read the amendment. It's not long.

FOLEY: That's time, Senator.

VARGAS: Thank you.

FOLEY: Thank you, Senator Vargas. Senator Lathrop.

LATHROP: Thank you, Mr. President and colleagues. I stand in support of LB241 and the amendment. I serve on the Business and Labor Committee, so I've had an opportunity to participate in a-- an interim study, the bill introduction last year and again this year. I've also been on a number of Zoom calls where packing plant families have had an opportunity to communicate with senators who chose to participate in the Zoom calls. And I think Senator McDonnell made a point earlier that nobody knew exactly what to do at the beginning of this pandemic. I want to make a couple of observations. The first is that you'll notice I'm-- I'm maybe the tenth person to testify somewhere or-- or to speak, somewhere in there. No one's demonizing the industry today. This isn't the industry are terrible people and they don't care. That hasn't happened. That's because this is about the worker. And during the-- during the throes of the pandemic, when it was at its worst, before we had a vaccine, we all ran these commercials on-- and saw these commercials on TV: Thank the essential workers. Thank the essential workers. These are the essential workers we're talking about. And I have to tell you, I have to tell you, having sat through three of these hearings and a couple more Zoom calls, I-- I've listened to these families talk. And, you know, I was thinking about what am I going to say, and Senator Moser said a prayer this morning. It-- it was similar to a lot of prayers that we started our day with, you know, we ask for wisdom to do the right thing, we want to listen to one another and do-- do your will, amen. And it made me-- because, I have to tell you, I don't stand on this floor and talk about my faith, almost never. But if I can distill my faith down to one thing, it is recognizing the dignity of every single human life, everyone. And how can we say to people who work in packing plants, most of whom don't speak English, look different than most of us do, we're not concerned about it? Every time I sat through one of those hearings, I thought to myself, this is where my beliefs, my faith meet policy, because today you need to pause for a second, pause for a second and think about the dignity of each one of these people who work in these packing plants. They go to work in the height of a pandemic to make sure that the cattlemen's beef gets processed and the food gets to the grocery store so you can eat it, and they did it and they were catching COVID while they were at work. Senator Vargas' bill is not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

demonizing the industry. He is talking about the worker. Those workers are human beings. And if our prayer in the morning means anything, if your faith is important to you, the cornerstone of that faith is recognizing the dignity of every person. And we can be for the industry and we can encourage them. We can give them business tax incentives. We can do what we need to do for business and it's important. But sometimes we have to pause and say, what about the worker?

FOLEY: One minute.

LATHROP: Today is not about demonizing the industry. It is about the worker. Let us today recognize the dignity of each one of those people that processed our beef, processed our pork, processed our chicken during the middle of a pandemic, and they did it while their person next to them on the line was dying, dying of COVID. Senator Vargas has pared this bill back. It is thoughtful. Most people in the industry are already doing most of the things that are-- or all of the things in the amendment. Take a moment and think about each one of these people as human beings and not just cogs in a wheel that bring the beef from your ranch to my table. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Morfeld.

MORFELD: Thank you, Mr. President. Colleagues, I rise in support of AM1163 and LB241 for a few different reasons. First, we often talk about our essential workers. We often talk about how important it is, the work that they do, and how we need to support them. We often thank them. But actions speak louder than words. We can thank our essential workers, but if we're not willing to put in place the protections, particularly for the people that process and create our food, then thanking our essential workers is meaningless unless we do something. Colleagues, this legislation strikes the right balance. I was in support of the original LB241. And for those that have brought up concerns about the amendment and just seeing it, that happens all the time. It's happened on some Education bills, quite frankly. And if you look at the handout that Senator Vargas sent out, it very-- it-- this is probably the most comprehensive explanation of an amendment that I've ever received from a state senator, whether it was dropped the day of or several weeks before. It, in detail on page 1, goes through everything that's in the amendment. And then on page 2, it has a side-by-side analysis. So if you have concerns about the amendment, just read the attachment that was sent out. It explains it in probably the most clear way that I've ever seen a state senator explain their amendment. Second, I will tell you, as somebody who runs an organization and also runs another business, that these are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

commonsense protections that should really be enacted in any workplace, during a pandemic in particular. My organization has over 100 staff and we work in what I would consider, during a pandemic, high-risk environments, schools, other places like that. And all of these things that are in here are pretty commonsense, things that, quite frankly, should be done already. And if there are plants that are doing this already, then good for them. I think that's great. But it's our job to enact laws not ex-- necessarily for the good actors but also the bad actors, so that there is a standard, a floor by which we have expectations that certain people follow and abide by. And these are very basic, very basic standards. These are standards that should be in place already, without a law, but definitely should be in place if they're not already, which requires a law. Colleagues, actions speak louder than words. If we truly support these essential workers, if we truly care about ensuring a supply chain of healthy, quality food and the people that make that possible, then we'll support this legislation. With that, I'll yield the remainder of my time to Senator Vargas if he so chooses. Thank you, Mr. President.

FOLEY: Thank you, Senator Morfeld. Senator Vargas 1:10.

VARGAS: Thank you very much, Senator Morfeld. You know, some people have talked to me and said, if they're already doing this, then why is it necessary? Senator Morfeld just shared why it is necessary. We put into statute, into law, standards. Standards are to protect individuals. They're not assuming the worst in everybody. They're also not necessarily assuming the best in everybody. They're assuming that sometimes safeguards are necessary and needed, especially when they're informed by policy. And if there are no issues that end up happening over the next year, I will be extremely happy and grateful. But if there are, and bear in mind there are COVID-19 variants that currently exist, these variants are affecting our lowest income and our individuals that are Black and Brown. And I am concerned because, if we do have another hotspot--

FOLEY: That's time.

VARGAS: Thank you.

FOLEY: Thank you, Senator Vargas. Senator Brandt.

BRANDT: Thank you, Mr. Lieutenant Governor. Thank you, Senator Vargas and the Business and Labor Committee for advancing this bill. I'm happy to be a cosponsor on this bill. In District 32, we have the Smithfield packing plant. Over 2,000 workers work at this facility. This proposal, as amended, is a very modest proposal. This does not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

affect the majority of packers because they are now doing a good job. Last year, in the fog of the pandemic, it took some time for management at these packing houses to get it right, and I believe most of the packers are there today. This bill is similar to every other bill that the Legislature passes. Ninety-five percent of the people out there are doing it right. We pass laws for that 5 percent that are not doing it right, have no intention of doing it right, want to resist to the very end. So the proposals in this bill, Senator Vargas has been more than willing to work with everybody. I know he has worked with me. We took out the six-foot on the floor proposal. He was very open to me explaining to him what happens in a packing house. That would effectively cut our chain speed in half. If we go back last year to April and May, in agriculture, this was devastating. I serve on the Ag Committee. I'm a livestock producer. Last year I had hogs and cattle. And I can tell you personally, I was quite concerned whether I'd have a home for those hogs and cattle. In the state of Minnesota and Iowa, they euthanized about 50,000 fat hogs because the chain speed slowed down in the packing houses, the hogs got too big for the shackles, and they had to dispose of perfectly good animals. So you had an impact on agriculture and then that drove down prices because they couldn't find shackle spaces. You were impacted in the packing houses because of the fog of the pandemic. People were trying to adjust to protect workers and it slowed chain speeds. And think about this. The grocery store shelves went empty in a lot of places. In Beatrice, Nebraska, right next to where I live, in the Wal-Mart, the meat section was cleaned out because there wasn't enough meat in Nebraska, a leader in red meat, to fill up our own grocery stores, because we couldn't get enough animals processed through there. So this is-- this is a real wake-up call, and I think this bill, LB241, is a-- is a step in the right direction. It-- it really just contains minimal protections for one year. And I guess I would ask for everybody's green vote on both the amendment and the bill, LB241. And with that, I would yield the rest of my time to Senator Aguilar.

FOLEY: Thank you, Senator Brandt. Senator Aguilar, 1:50.

AGUILAR: Thank you, Senator-- thank you, Mr. Lieutenant Governor and Senator Brandt. I want to speak directly to some of the opposition here, and what I want to say is from the heart. I wonder if any of you have lost a close friend to COVID-- I know I have, a very close friend-- and if you know any of these people that work in a packing plant that are no longer there; I do. That's important to me. Some of you are talking about government overreach. This is not government overreach. This is government protectionism. You need to be aware of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

that. And I don't think Senator Vargas could make it any more clear. This only impacts the bad players. If you go by the rules and you do what you've been doing, keep doing what you've been doing, this does not impact you. I support the cattlemen as much as anybody else in here. But how would they feel if a plant was shut down and there was nobody to cut steaks for them? I think they'd feel pretty bad. I ask you to support an LB241 and AM1163. Thank you.

FOLEY: Thank you, Senator Aguilar. Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Lieutenant Governor. I rise in support of AM1163 and LB241. I think there's been a lot of good points made here, in particular by Senator Brandt and Senator Aguilar right now. And kind of echoing those points, I'm in favor of this bill because it is a commonsense approach. I think Senator Slama made a point about how long it's going to take to implement some of these things. And what I wrote down to myself is, "We acted too slowly." Senator Vargas got up here at the end of his opening, and he talked about what he tried to do last summer: tried to get us to act. And I wasn't here, but I remember watching and I remember all the conversations we had as a country and as a community about preventative measures we could have taken and could-- but people opposed at the time for convenience's sake or whatever their personal reasons were to be opposed. And that got us to the point that Senator Brandt was talking about where we had a backlog in our industry. We started having scarcity on our shelves because we refused to take actions that were reasonable, scientifically based, that would have prevented slowdowns, shutdowns, and ultimately deaths. And so we should have acted sooner. We should have these types of things in place. If we had done that, then we wouldn't have the problems we have now. I got up here and I took my mask off right now. I've been vaccinated, got both vaccines, lucky, and I've gotten-- I'm two weeks past that. So I think by those standards, I'm fully vaccinated. But I'm still wearing a mask in-- as a preventative measure. And the reason that though we have reached a point where we are vaccinating large swaths of people and we still have to wear masks in public places and we still have these glass barriers up, is because we acted too slowly. We didn't take the actions at the time when we should have. And now Senator Vargas is presenting us with a bill. The reason that AM1163 is a new amendment here is he's addressing some of the concerns to make this more palatable to people who are objected to it and to make this easier to implement so we can actually make some positive strides. And so the reason this is important is we are not out of the woods yet. We are all feeling like the-- the sun is shining and the weather is getting nice and we're going to be outside and we can be together, we can go

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

see a few people. But the crisis is not completely past and we still have risk in front of us. And we have the possibility of backsliding into more and greater problems in the future if we don't take reasonable steps, if we continue to throw up roadblocks to asking businesses, asking people to take small preventative steps that will save lives in the long run, will help people, will keep our businesses open, will keep our employees safe, will keep our supply chain flowing, so that we don't have to be concerned about where our next meal is going to come from because the shelves end up becoming bare when the meatpacking plants shut down. And so I'm in favor of this. I'd ask everyone to vote for this. I think that there's-- well, there's a lot of people in the queue, so I think there's going to be a lot of discussion. But I think that Senator Vargas has made a genuine, sincere effort to address the concerns of opposition here. I think that he's done a fantastic job of bringing stakeholders together, and he's doing everything he can to make this a bill that will actually save lives in the long run. We've lost a lot of lives in this country and we've heard some stories about that. And it is-- a big portion of that is because we have refused to act in these reasonable sorts of ways. And so-- I'm sorry, did you say one minute, Mr. Speaker ?

FOLEY: One minute right now.

J. CAVANAUGH: OK, thank you. I-- I thought I heard you say something. So I would urge your vote on AM1163. I sat here and I was reading through it after everyone was talking about how they didn't have time to read it. I know we get a lot of paper on our desks throughout the day and a lot of changes to these bills and a lot of white-copy amendments. I-- I guess nothing in this jumped out at me as a huge change in terms of this bill, so it didn't change my position on it. I'm a co-sponsor of this bill. But I think this just makes it more reasonable, easier to implement. And we should-- should have done it. You should have done it, I guess, because I wasn't here. You should have done this last year, but now is the time to do it. The-- the only time better than yesterday is today to do something. And so today is our opportunity to pass this bill and to start making these positive strides and making sure that we have safety in our structures going forward so that we don't have the same problems we've had over the last year. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Cavanaugh. Senator Williams.

WILLIAMS: Thank you, Mr. President, and good morning, colleagues. First of all, I would like to thank Senator Vargas for his work on this, and in particular his work on this amendment, trying to bring it closer in line to what could be acceptable. Today our world is not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

back to normal. A year ago, as all of us know, sitting here, we weren't sitting here. We were sent home. The world changed and we all had to adapt. I'd like to give a big shout-out and salute to the meatpacking workers across our state and across our country, also to the ag producers in our country, and especially in our state, that clearly make a difference. And we saw what can happen to the supply line when across the country we had a few facilities that had to close. In particular, I would like to give a big shout-out to Tyson's in Lexington, in my legislative district. They employ 2,800 workers at their Lexington facility, and it is undeniable that last spring there was a significant spike in COVID cases tied oftentimes to their facility. What did they do? They quickly and aggressively attacked those issues and made significant changes, significant changes that have now resulted that the infection rate at Tyson's is equal to or lower than that in the entire community and area. In fact, I just checked this morning. As of today, right now, there are no positive COVID cases in the Lexington Tyson facility. So what did they do? Tyson worked with the Lexington Hospital and the community. They worked with Two Rivers Public Health and took numerous steps to prevent the spread of COVID. They worked with the CDC guidelines and often exceeded those CDC guidelines. They created barriers and required wearing face masks. They installed barriers between break room tables and recreational areas. They provided masks, gloves. They staggered shifts and breaks and reduced the line speed time so they could change how they dealt with people. They were barricading and-- and marked seating in common areas to require social distancing, using social distancing monitors throughout the facility also. They conducted testing. They did monitoring of employees when they came to work during their various shifts. They also conducted several vaccination clinics right in the facility in conjunction with Two Rivers Public Health. It's my understanding over half of the workers are now vaccinated, and they're continuing to do that into the future. One other thing that Tyson's is doing nationwide, and it's going to affect Lexington starting next week on May 12, is they're opening what are called bright blue health facilities located in their facilities to handle the healthcare needs of employees and their families. And most of this is done at no cost to the employees. Tyson's one of the good actors. I'm proud of that. I'm proud of them, and I don't like the idea that they then get caught under an umbrella with those that are the bad actors.

FOLEY: One minute.

WILLIAMS: And I'm sure we have some of those also. I'm listening. I'm hoping to find a path forward. I know how important this is to many

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

people in our state. I think the changes that Senator Vargas has agreed to make with the current amendment are significant, removing the ventilation issue, changing up the six-foot distancing, lessening the reporting requirements that are there. But when I have a facility that is meeting and exceeding all those things, it still becomes problematic. Thank you again for listening, and a shout-out to these employees that absolutely make a difference and keep our supply chain going. Thank you, Mr. President.

FOLEY: Thank you, Senator Williams. Senator Blood.

BLOOD: Thank you, Mr. President. Fellow Senators, friends all, I had actually not planned on speaking on this today, although I am in full support of both the amendment, especially when it becomes the underlying bill. But having heard some of what I did on the floor today and actually hearing some of the-- the conversations I heard prior to the bill on the floor this morning, I feel compelled to speak. So when the issue with the meatpacking plants and-- and the safety started at the beginning of the pandemic, my first move as a senator was to look to OSHA, as Senator Slama alluded to. But the U.S. Department of Labor actually soon made a public statement saying that OSHA has been clear that employers are and will continue to be responsible for providing a workplace free of known health and safety hazards. And so Senator Vargas is simply providing guidelines to make that happen and protect these very important workers. And he has said it and multiple senators have said it today, is that if you are a good actor and you are working hard, this really does not necessarily apply to you. Senator Vargas respects the fact that there are multiple meatpacking factories that are working hard to try and protect their workers. However, that was not originally the case when this started, and there are still many that need to comply with safety guidelines to protect these workers. And it's not a burden to them. To say so is just ridiculous because if it was a burden, then how could all of these factories that are good actors move forward to protect their workers? So I-- I just-- I-- I get really confused by some-- some of the things I hear on this mike. So as a member of the Business and Labor Committee in a-- in a district that has actually quite a few workers that work at the-- a-- a plant that's close by. I know that the point is not how many people have died, but who have died. So the meatpacking industry relies on vulnerable populations: immigrants, refugees, people of color and, frankly, those who may lack other employment opportunities. So as I started looking at OSHA and what their role was supposed to be to protect these workers, we all know that within eight hours employers have to report any death that's within their purview, anything that happens as a result of what's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

going on in their factory. And so usually within 8 hours, 24 hours, OSHA comes and reviews and makes a determination. But when COVID-19 hit, this broke down. And so we had workers dying because of the environment that they were in, that was an unsafe environment, and it wasn't being reported and it wasn't being acted upon. So OSHA really dropped the ball and finger-pointed back to the businesses. And that's been-- these deaths have been a direct consequence of the hands-off approach by OSHA. So we look to say-- at the beginning of this-- this debate, we said, well, it's OSHA's responsibility to make sure that these guidelines are put into place and it's going to be very problematic and it's going to not-- they're not going to be able to get it done in a timely manner. OSHA is saying, nope, we don't have time for this. And so it is appropriate and it is right that Senator Vargas has stepped up to the plate to help these workers. He is not asking anything that is unreasonable. He is not asking anything that's going to raise the price of your steak.

FOLEY: One minute.

BLOOD: But it's like Senator Lathrop said. We are talking about people, vulnerable populations, unfortunately, because that's just the nature of the beast. There have-- has been ample opportunity for government to step in outside of the state, and they've chosen not to do so. And it is well documented, and I'd be happy to share any of that documentation with you. But I can tell you that we had an opportunity to help these workers at the federal level a long time ago and everybody looked the other way. And with all due respect, why do you think that happened? If there were middle-class white people working in those factories, I think it would have been resolved a lot sooner, and that's just the truth of the matter. Seems that we tend to turn a blind eye when we're talking about minority populations that come from different places than we do. I praise Senator Vargas for working so hard on this and his enthusiasm, his research, his negotiating--

FOLEY: That's time.

BLOOD: --with people involved.

FOLEY: Thank you, Senator Blood. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President. Good morning, colleagues. I rise in support of LB241 and Senator Vargas' amendment, AM1163. As somebody who was on the Business and Labor Committee both last year and this year, had two hearings on this issue, and a number of stakeholder groups had a number of meetings in the interim and during session with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

both the industry and with the employees, and from-- some of the debate today has kind of diverged from what I think even I've been hearing from the industry and from the employees, from very much what I heard from anybody who was able and willing on the industry side to come forward, they thought this bill had a lot of kind of confirming the things they did. And their main hesitations were the things Senator Vargas has agreed to take out of the bill. So if there's actually any industry groups, any lobbyists still pushing against this, I would be curious to know if that's, in fact, true; and if that is true, you know, what remaining provisions of the bill are their opposition; or if it is just foundational. In meetings with me, it has never been proven-- or not proven, sorry. In meetings with me, any opposition or hesitation to this bill from the industry hasn't been kind of the foundational issue. They've gotten the safety concerns. We have safety concerns in all sorts of other ways. We have a person in the Department of Labor whose job it is to go and do meatpacking plants and help meatpacking workers with safety and other issues. This is an issue the state wades into regularly. And this is unique, kind of, pandemic-specific requirements in an industry that is already well overseen and well legislated by the state. And I bring that all up to say is that I know people are concerned about the industry or the impact of the industry, and some people want to make sure the industry isn't being slandered or badmouthed. And again, I don't think any proponent of the bill that I've heard so far on this mike has said that. I think there are a lot of good-faith actors. I think there are a lot of people who are trying real hard. And I have to take them at their word when they come into the Legislature, when they come into our committee hearings and say some of the things that Senator Vargas put in, like the-- like the flex-- the-- the-- the initial inflexibility of the six-foot standard was the real problem and if we took that out, it would be-- it would be better, it'd be something that we wouldn't oppose or we could live with or, you know, I know there were some caveats. If there's still a problem with that, there's still a problem with that, if we're getting to the point where we've weakened and amended and watered down the bill, it gets to the point for me of if-- if not this, then what? You know, if not this, then what? From the other side, talking to plant employees and listening to them testify at multiple hearings, there is the real sense that the state has failed them. You know, maybe by now many plants have stabilized with vaccine rollout, things have gotten there, but there was a quite a long period in which we as a state were just simply not doing what they would view as even the minimum, the-- anything. And there was a real concern that there had been-- you know, as a group they had been abandoned. And as a senator who was, you know, not in session much of last year, as a senator who never had an opportunity

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

to introduce a bill, really, after the pandemic had started-- I know we did some things with amendments and suspending the rules-- it was frustrating to, you know, talk-- frustrating and disappointing and heartbreaking to have just meeting after meeting, conversation after conversation where, you know, tell them over and over again maybe next year--

FOLEY: One minute.

M. HANSEN: Thank you, Mr. President-- maybe next year, maybe in January we can do something. And we're now at the point where we're in early May, a full year later, a full year after all this, you know, eight, nine months after some of our first hearings on this issue, and we're still kind of struggling to just even get base consensus on is this a real issue that we as a Legislature should do something about. So the question I kind of pose to the industry, the question I pose to the body, you know, if not this, then what? There's an entire group of our-- of our citizens, of-- entire group of Nebraskans who have felt abandoned for a year now. And what are we going to do to reach out and help them? Thank you, Mr. President.

FOLEY: Thank you, Senator Hansen. Senator Aguilar.

AGUILAR: Thank you, Mr. President, members. I want to tell you a little bit about what it was like living in Grand Island when we were referred to as the COVID hotspot of the nation. It was pretty scary. I mean, you didn't even want to go to the grocery store. You never know where you were going to pick up germs, COVID-19. But Grand Island, JBS, Swift, and the Central District Health Department turned that around. They did yeoman's work in turning that around. And I want to publicly thank JBS for their efforts in that, as well as the other partners. And I'd also like to thank publicly Tyson Foods for the efforts that they've done in Lexington. You should be proud of that company, Senator Williams. But the important part we're talking about here is, OK, there's two good players to this point. There are still bad players out there, and that's why we need to step up and do this for one year, just one year. And you play by the rules, it doesn't impact you. Senator Vargas has made that explicitly clear. So what we're asking is just give us a year, folks. We can make this happen. It's not going to hurt anybody to play by the years-- rules. Mr. President, I'd yield the rest of my time to Senator Vargas.

FOLEY: Thank you, Senator Aguilar. Senator Vargas, 3:20.

VARGAS: Thank you very much. I appreciate individuals that have been talking about the bill, talking and pulling me and actually talking

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

about the contents of the bill. I come back to we are all very privileged in a way that we get to be senators. We also have a set of experiences and work that it is a privilege to have. Some of us are bankers; we're teachers; we're lawyers; we're small business owners; we're-- we're farmers; we're former doctors; we are all sorts of things. And the protections that are in this, the-- the-- the guardrails in this, are the same guardrails that you would have in your own work or you would provide as an employer or that you would want for your loved ones. And it's putting that in because there's not always consistency across the industry. Nobody is saying that people are black and white, either bad or good. I hate getting on the mike and talking about things that are bad or good because that, it reeks of just the politics side of things. It's why I drafted this and worked on the amendment. I'm thankful for Senator Brandt, thankful for the words of Senator Aguilar and many others that have gotten on the mike because doing something is critical, because if something were to happen between now and then, we can't come back in to do something about it. There is an imperative that we have, which is we are considered to be a part-time session. We can only put in laws during these times. It is why it's even more important, because then something will be in place for one year. We're voting for basic protections for one year, basic protections that we would expect for--

FOLEY: One minute.

VARGAS: --our own loved ones. And doing that is only, only going to further send a message to Nebraska that we can stand up and do something that is both pragmatic, reasonable, and that demonstrates compassion. I know we all have compassion. We bring bills that are driven by addressing an issue, and this is driving to the issue of health and wellness and not assuming the worst in people or the best, assuming that our job is to put in safeguards because our job is to react to what's happening across our state. That is our job. That is what I'm asking you. And that's what this vote is about. That is what is in the contents of this bill is about.

FOLEY: That's time.

VARGAS: Thank you.

FOLEY: Thank you, Senator Vargas. Senator Hunt.

HUNT: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. Good morning, Nebraskans. There have been many great points made by proponents of this bill, many of whom have worked with Senator Vargas over the past year, alongside him, as an ally in this effort to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

guarantee safety for the essential workers that we say are so important and so foundational to our economy. Senator Vargas has been there consistently for the last year, along with so many others in this body, in the battle to get those protections for them. I have been helping to count votes on LB496, which is a bill that's coming up later today. And that's a bill to require DNA collection of anybody who's been arrested, not convicted, not, you know, found guilty, but just arrested, to collect their DNA and keep it. And one thing I've noticed listening to this debate, as I work on that, is that all the heroes of freedom and all of the opponents to big government, to government overreach, are the ones who are in support of that DNA bill. So I-- I would ask you to, you know, check your consistency there and-- and think about, when you talk about freedom and when you talk about individual responsibility and you talk about government overreach, who are you talking about? You're talking about yourself. You're talking about, you know, straight, white, Christian men who you think don't do anything wrong, who are never going to be in trouble with the law, who are never going to be in a position of poverty, who are never going to have to work in a job like at a meatpacking plant, like the people that LB241, amended by AM1163, seeks to help. People who are complaining that they haven't had time to read the amendment, well, it's 10:38 now and you need to get to reading. You need to get to reading or you need to get to listening. And Senator Vargas has explained this amendment thoroughly. And if you haven't had time to read the amendment, he's provided a very thorough point-by-point explainer of the amendment. If you haven't had time to listen, just take a look at the amendment. And if none of that works for you, colleagues, you need to have a little trust in your colleagues. Senator Vargas has been working on this bill for over a year. We've been hearing from packing plant workers. We've had listening sessions accessible to every member here. I have gone to the listening sessions. I have met with the meatpacking workers. I have heard about their problems firsthand for a year. And the people complaining about this bill and saying the amendment was dropped too soon are not people who I saw at those listening sessions, I'll add. Senator Vargas has made huge compromises in good faith to address opposition of the plants, and he has pledged to keep working with opponents to Select File. Now we've got some liars on this floor, but Senator Vargas is not a liar. He's not someone who works in bad faith, and to say you can't support it because the amendment was dropped this morning is working in bad faith. So if you're worried about what's in the amendment because you haven't taken the opportunity to do the reading or you haven't taken the opportunity to go to any of the listening sessions to hear from the people who are impacted by this bill, get to reading, get to listening. The people complaining about not having

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

time, I haven't seen them sitting down reading. I've seen them walking around socializing. And I don't know how much easier anybody could make this for you to understand. It's only a year. I've also heard some senators on the fence or thinking about opposing this bill because maybe they're doing so out of some sense of loyalty to the plants in their district or they've visited the plants in their district and they feel like those plants are doing basically a good job. To those senators I would point out that it's easy for the lobbyists, for these meatpacking companies to take you on a tour--

FOLEY: One minute.

HUNT: --and put on a good show for you. But keep in mind these packing plants, many of which are multinational corporations, have a lot of money to spend to make this look good to you. You know who doesn't have a lobby, who doesn't have high paid people to make everything look good is the workers and the people who are affected. And there are many plants who are doing a good job. Maybe-- maybe almost every plant is doing a great job. But I want to be the one to acknowledge that some are not. If it's true that the plants are earnestly doing a good job of implementing safety measures and caring for the health of their workers, then why would they care about this bill? If they're doing everything right, no problem, pass LB241, we're going to be good. It doesn't punish anyone who's doing the right thing. It just raises the floor for those who aren't. I'm sure there are plants who are doing the right thing and that's commendable. And those plants shouldn't care one way or another if this bill passes, if they're already doing the right thing.

FOLEY: That's time.

HUNT: But don't let them scare you by throwing their weight around. Thank you.

FOLEY: Thank you, Senator Hunt. Senator Bostelman.

BOSTELMAN: Morning, Nebraska. Thank you, Mr. President. I want to thank Senator Vargas for his work on this bill and continued work that he's had over the summer and over this time. I want to thank the employees of Cargill in Schuyler, thank them for their dedication, for their concerns, for their work. Sympathies to the families who have lost loved ones, as well as sympathies to Senator Aguilar for this friend that he lost. I want to tell you that during this time I've been-- I've been engaged pretty heavily with what's going on in-- in Cargill in Schuyler. Currently, Cargill, just for perspective, they have 36 plants across North America or United States, 28,000

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

employees, and they have 24 positives out of 28,000 employees. Management has and is listening to their employees, and I want those employees to know that management repeatedly has stressed to me their importance. I have walked through the plant several times. General Manager Sammy Renteria and myself recently went through the plant, just before we went into session this year. I can tell you that Cargill in Schuyler was way ahead of the curve on their safety measures and things and the concerns for their employees early on because they saw what was happening in Colorado. So they started immediately putting up the tent, started scanning people, taking temperatures, providing sanitation within the facility, moving the lunchroom. Their-- the number of things they have done is significant. I understand there's concern from the employees who work there. They understand that as well. One of the things that we identified in some of the Zoom meetings that we had was language, communication, because some of the employees were fearful, because I don't think they were-- I know they weren't receiving the information that they should have been receiving in the way that they should have and understanding what that information was. Some of the-- some of the people don't speak English. Some of the people don't read the language which they do speak, so we need to do illustrative information to them. So there's challenges that they had there as far as reaching out to those. They're now using-- or they have-- they implemented this a long time ago on ways to reach out to those who don't read the language which they speak or into the English language as well. I will say, when you're in that plant, if you're concerned about race, there are people, Caucasian, Black, Brown. It's across the board. Everyone is concerned there. So communication was an important thing that we took on to make sure people understood, had signs up throughout the plant. There are signs throughout that plant. There is hand sanitizer throughout the plant. If you go to that plant today and you would have went to the plant a long time ago, there's a large tent out front. You walk in, you get screened, your temperature is taken, you're given a mask. If something-- if you have a high temperature, you don't feel right, there's a nurse. You go talk to them. If you need time off because you have COVID, they gave you that time off. They made sure their people were taken care of and they continue to work on that. There were Zoom calls. UNMC went through the facility. Public health department has gone through the facility, the mayor, the county officials--

FOLEY: One minute.

BOSTELMAN: --the local hospital. They've all gone through that facility. I have worked in Schuyler on-- in the food pantry. I have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

given money. I have given food. I have given clothes, toys. My wife works up in that community providing the needs-- to meet the needs of the people. We work extremely close with the community, and I understand there's concerns. But I also understand that Cargill is doing and has done everything that they can and what's in the bill and beyond to take care of their people. Concern, I guess, with this is, is that if we would pass this bill-- and-- and the amendment does make the bill better. But if you pass the bill, we're still talking maybe into next year before you can actually implement it.

FOLEY: Time. Thank you, Senator Bostelman. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. I rise in support of LB241 and AM1163. I would support the bill as written, but I appreciate the work that Senator Vargas has put into this. I want to start out by expressing one of my greatest regrets in my career so far in the Legislature. At the end of our session in August, Senator Vargas did not come to me. I heard that he was looking for someone to put his amendment onto their bill. So I went to him because he was just too much of a good person to come to me and ask me if I could put this amendment on my bill when it was on Final Reading. And so what we did was we pulled back LB1060, which was my priority bill last year. It was the hair discrimination bill that the Governor actually pa-- signed into law yesterday, a much stronger version of it from Senator Terrell McKinney. But he had vetoed my version in August and I had 27 votes for that bill. And Senator Vargas had an amendment that had a hearing in Business and Labor that was similar to this bill, and he had 27 votes for his bill. But the thing is, is that we didn't have the same 27 votes, so to attach his amendment onto my bill would have killed both of our bills. And my regret to this day is that I didn't just let him take over my bill because it would have passed. You all would have voted for it because we were at the peak of the pandemic and the crisis, and you would have voted for it. And we've all gotten comfortable. We've gotten vaccinated. We've gotten a little bit back to normal and we have the luxury of distancing ourselves from those workers because we aren't being bombarded every single day with the numbers of deaths and the hospital lack of space and ventilators. Things are getting better, but that doesn't mean that the people that work in these plants don't still deserve protections and safety. It is my greatest regret that I didn't give up my bill that day, and I am forever sorry to Senator Vargas for that. I hope that you all will join me today in getting 25 votes to this bill to the next-- to Select. Everyone talks in this body about getting things from General to Select, work on things between General and Select. And I think that there is no one in this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

body that is more trustworthy in that endeavor than Senator Vargas, that he will work with everyone between General and Select. And then, if he doesn't get to a-- everyone to a satisfactory position, you'll probably kill it. But at least we've all tried to do something really good for people in Nebraska. I get the concerns about government overreach and business regulation, but we aren't responsible to the businesses. We are responsible to the citizens of the state. So--

FOLEY: One minute.

M. CAVANAUGH: Thank you. So many people in this body talk about the second house, the people. I'm tired of hearing people talk about how the voters, the constituents are the second house and then you never do anything to help them. You constantly vote against them for business interests. The morality of that is extraordinarily flawed. Senator Lathrop mentioned his faith this morning. My faith drives me deeply to my core in everything that I do, and I-- it is because of that that I so deeply regret not giving up my bill last year and why I emphatically, enthusiastically will be voting for this bill today. Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Pansing Brooks.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. I rise in wholehearted support of LB241 and amendment-- I-- I rise in lukewarm support of AM1163, and I say that because it's the most innocuous amendment I can even imagine that's being brought to the floor. Everybody running around like chickens with their heads cut off about, oh, my gosh, what has Senator Vargas done? It's pretty darn clear what he's done if you look at the second page of-- of his summary, which if you know Senator Vargas, he's really good at explaining every single thing about his bill, and he makes sure that we understand what happened before and what happened after. And people are talking about their faith. Senator Lathrop talked about that the basic tenet of faith was dignity. I believe, for me, the basic tenet of faith is love, love for other human beings, love for people in our state, love for Nebraskans. And taking care of people? I'm so happy that Tyson and other companies have-- have done a good job and that they're following through and actually having greater requirements. That's wonderful. Thank you for doing it. But meanwhile, we know there are stor-- there is story upon story of companies that were not doing it. We heard from the workers. We had all sorts of-- of Zoom meetings last summer about all of this. And now we're getting vaccinated and it's-- you know, we're getting out of the whole-- the whole crisis in a way. But it's a crisis. It's a crisis of spirit when we do not take care of the most vulnerable and least powerful around us and among us. That, my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

friends, is a crisis of spirit. It's a pandemic of spirit. We have done a lot of good work, a lot of good work supporting corporations and businesses. I've been in favor of all of that. My husband and I have a practice in corporate law. We want businesses to thrive. We understand that. But in the same instance, I want our people to feel-- feel loved, supported, understood. We worked my first year in the Legislature and made sure that-- that we passed the vertical integration of the pork industry. Remember that? The pork industry was thrilled. They were able to sell the pork that they raised and they were able to dress the pork that they raised. So we have done a lot of good support of these industries, but we have the people speaking out to us. We have the heart of our communities speaking out, who help our communities thrive and grow, who pay taxes, who work in our community. And now we've [SIC] just saying, well, you know, we're going to have six-foot distance in break rooms and locker rooms and lunchrooms. Oh, my gosh, what a terrible thing to impose upon corporations. In the break rooms we have-- Senator Vargas took out the part that talked about the areas in the production lines, so-- and then he's got a part in it--

FOLEY: One minute.

PANSING BROOKS: --that says that they're going to have ventilation as-- as required by OSHA. Again, I am lukewarm on this amendment. Senator Vargas has given a lot. I feel like if you're all-- if all the companies have asked for all this and Senator Vargas has done this and then you're all still sort of like, well, you know, OSHA requirements, oh, well, you know, the locker room requirements, that's a lot to require of a company, that's a ton to require of a corporation. Baloney. Baloney, colleagues. You are not dealing truthfully on this. We must care for our fellow citizens, our fellow human beings, our fellow Nebraskans. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Pansing Brooks. Senator Brewer.

BREWER: Thank you, Mr. President. Well, I mentioned earlier that I would have liked to have had this amendment. Some have gone on the mike and said, well, that's baloney, you can read it. I have read it and highlighted it while still getting an Exec knocked out here, but I still have questions and we're going to-- we're going to slowly go through these. Now the other thing that does become disturbing here is because some want to say, OK, because I'm not foaming-at-the-mouth in love with this bill, I somehow either don't love the Lord or other people. So let's try and just face the facts here and not get all emotional. Now on the issue of the commissioner, it's mentioned in here this is the Commissioner of Labor. Now at one time, I thought

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

this was not going to apply to anybody in my district. It turns out, because this includes all employees, I have a plant that this does affect, so I've taken an interest in it. Now one of the first things that I think we need to address is, what bad thing is happening that causes us to take this action? Now I agree. I think in the spring that when COVID came, we were ill prepared. The plants were-- were in some cases ill prepared, but also they were struggling to get the resources they needed. Everybody was struggling to get to sanitizer, the gloves, the masks, all of that. Now, if that's not corrected now, then, yes, I think we do have a problem. The reason I ask about the question, how many plants have you toured, I think if we don't go and see what's the truth, the ground truth of what's going on, then we can't pass legislation to correct it because we don't even know if it's a problem. But if that's happened, then let's take and look at the bill and go through it. Now most of these things that were mentioned earlier, distancing, the break rooms, lunch rooms, all that, I would hope that if there was an issue, we would know about it by now. Each senator who has a packing facility in their district should have had a chance to tour and confirm one way or the other on this. I have, and my folks have, have followed the guidance and they haven't had any issues. The thing that concerns me-- and, Senator Vargas, can we go to page 4, line 7?

FOLEY: Senator Vargas, would you yield, please?

BREWER: All right. What I'm going to do is I'm going to read through this and I'm going to ask you to help me to understand why we're putting this requirement on. The employer shall provide such data in a monthly report to the Department of Health and Human Services, the Department of Labor, the Business and Labor Committee of the Legislature, the Health and Human Services Committee of the Legislature, and-- and such data in this report shall be submitted in the form and manner prescribed by the commissioner. Where else do we identify a group of employees and employer that have to provide these kind of reports to the Legislature?

VARGAS: We don't, but the reason is these other employers haven't had the type of hot spots we've had in the meatpacking plant industry. We differentiate. Just-- I was a teacher. You differentiate instruction. You focus on where the need is. This is where the need has been and exists, so that's why we need data to be informed. And this data applies to monthly COVID-positive cases and deaths.

BREWER: And-- and you think this is a reasonable number of reports to require monthly of employers?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

VARGAS: I-- I think it is completely reasonable to request a monthly report of the number of positive COVID-19 cases and deaths. I do think that, yes, that is.

BREWER: OK. Let's-- let's talk a little about the fines here.

FOLEY: One minute.

BREWER: The deadline shall be set-- discretion of the-- of the commissioner and shall be no later than 45 days after the date of the insurance of the-- issuance of the citation. The administrative penalty shall be not less than \$5,000 in-- in the case of the first offense and not less than \$50,000 in the case of a second subsequent violation. Is this fine to the company or individual?

VARGAS: This is fined to the company, and this language specifically is in alignment with other labor laws, specifically the Contract Registration Act. Those fines are the same level of fines that we find in other labor laws in our own state statutes.

BREWER: Would there be a fine to an individual who refu-- refused to wear PPE or anything like that?

VARGAS: There are no fines to the individual.

BREWER: OK.

FOLEY: That's time.

BREWER: Thank you.

FOLEY: Thank you, Senator Brewer and Sen-- Senator Vargas. Senator Vargas, you're recognized, your third opportunity.

VARGAS: Thank you. I appreciate Senator Brewer for asking these questions. I think they're the right questions and I'm happy to work on things that help clarify this between General and Select. The question in front of us is not whether or not there is an inherent fire or problem or not at all. The question is, is there an industry that is more susceptible to COVID-19 and a virus based on the current state of affairs of COVID-19? And the answer is yes. The data has shown us that this industry is a high-risk industry for COVID-19 across the country. Congress has entered into congressional hearings on this. States have been doing what we're doing right now and debating this as well. But we have one of the largest number of meatpacking plants of most states in the country. When there is an industry or a specific place where it's beneficial for us to put in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

safeguards but also making sure that we are keeping attentive, that is with the best interest of the people of Nebraska. That's what this is. The components that we were talking about are basic components. I want you to think about any of your bills where you ask Game and Parks to give you data or you ask DHHS to provide you with data or you even ask-- even within our LB1107, we ask businesses to get a lot of money for incentives and we ask them to provide data. We ask them to then provide information. I'm supportive of that. Asking for data and asking for these things isn't a large ask of these entities, of these companies. It is the only thing that makes sure that our state can react. And keep in mind, the Department of Labor getting that information, and us, is information, and information and knowledge is power. That's what is important here. We're voting on whether or not a pared-down version that focuses on basic protections is the best and the right thing that we can do to react to one of the highest-hit populations of COVID-19 in our state. As much as I get elected to vote on issues that you care about, that we work on, and allowing people to work on issues through General, through Select and other things like that, which we've done on things, I'm also asking you to consider this isn't the Cadillac version of what I would normally put in; it is the version of what I'm putting in that I think is the most reasonable. And moving to Select sends a message that this matters and those individuals matter. The 28 people that passed away, that's data; that's not the stories of those 28 people. The 250-plus people that were hospitalized, that's data; that's not stories. The countless people that tested positive, that data, if it happened in our own neighborhood or in our own workforce, would cause us to act. We would want to act. But not all of us have that experience of meatpacking plants. Some of us do and those that have, you've heard many of them speak up in support of this bill. That's what I'm asking of you, to move it to Select so that we can work on the bill, if there are things that you want to have changed, to then make it a better bill. I specifically reacted to what we heard in the opposition testimony, and I think that's what we should be doing. What I'm asking you is to look to the conscience of the Legislature and find that compassion to do something. Doesn't matter if you were a teacher and you believe we needed-- all teachers are doing everything they can. We still put things in place for teachers.

HILGERS: One minute.

VARGAS: We put things in place for workers through the Workplace Misclassification Act. We put protections in place in a lot of other instances, and we do it because there was a problem and there is a necessity to do more. And this is no different. Many people have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

gotten on the mike and said, my plants have been doing these things. Well, luckily, this won't affect them at all, not an iota, because if they're doing what they're already doing, they're going to be unaffected by this. And it's not something I want forever in statute. It's something just for the next year. I don't think that's an unreasonable request. I think it's actually a reasonable request, so I'm asking you to do the same things that you would expect for your own loved ones in the workplace. And that's what this act is now doing for the next year. That is what I'm asking you to vote on. And I have been working on it for a year. I have been informed by what individuals have shared with me are the best practices. I have learned it from the plants themselves.

HILGERS: That's time, Senator.

VARGAS: Thank you.

HILGERS: Thank you, Senator Vargas. Senator Groene, you're recognized.

GROENE: Thank you, Mr. President. I stand in-- stand in opposition to LB241. This Legislature's duty is not to do the work of the OSHA or the Department of Labor or union negotiations or insurance companies coming in and inspecting, and-- and-- which they do and ask for upgrades. The system worked. It was amazing to me how quickly it worked in the packing plant industry. I haven't heard of any deaths lately unless-- and I also read a news story about Grand Island, Hall County, being one of the lowest, over the last period of time, of infections. Now I'm going to get in trouble because it went-- the infection went through it fast, the community. We had deaths, sadly, but we reached herd immunity pretty quickly in the community. Packing industry reacted. Senator Vargas, could I ask you a question?

HILGERS: Senator Vargas, would you yield?

VARGAS: Yes.

GROENE: When-- when you say 28 deaths, that's 28 packing plant workers who passed away in the state of Nebraska?

VARGAS: Yes, from COVID-19.

GROENE: When was the last death?

VARGAS: I don't know off the top of my head, but we had deaths between now and August.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

GROENE: And you said that. Thank you. And then also-- forgot my second question. I'll think about it. But--

VARGAS: No, that's OK.

GROENE: Oh, yes, I know what the question was. You said about the good players. Can you name me a packing plant that is a bad player in the state of Nebraska?

VARGAS: A bad player?

GROENE: Well, you said, if your packing plant is doing it and then-- and then they're not going to be harmed by this legislation, can you name me a bad player, why we need this legislation, who is not protecting their workers?

VARGAS: I'm not going to stand up--

GROENE: Thank you for your answer.

VARGAS: --here and I'm going to talk about bad players or not, because--

GROENE: Well, thank you, because I don't--

VARGAS: --the point of this is not to call out individual--

GROENE: Sure. thank you.

VARGAS: I don't like [INAUDIBLE].

GROENE: It's my time. But I don't think you can name one. I don't think you can name one in the state of Nebraska who is not protecting their workers, who is not follow-- following OSHA regulations. And there's another player involved here called the public health district, who puts regulations in their area, and they have to follow those also, that packing plant. This bill is empathy in legislation. We feel for somebody's loss. It's not necessary. We have a system in place: OSHA, I will repeat it, the local health district, the-- the employer themselves who care for their workers, the union who represents them. We don't need it. We are sticking our fingers in areas where it doesn't belong. We have a national-- Mr. Fauci, who gives directives. I don't see in this legislation what if you have a bad employ-- employee, he just likes to visit and is always breaking the rules about six foot. Can they-- he be fired? Can they be fired? Or if an inspector comes in and sees this individual visiting with somebody in the break room, and laughing and might be a husband and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

wife that works there or br-- two brothers? By the way, I had two brothers work in the meatpacking plant in their lives. One came home from southeast Asia after the war and worked there for quite a while; another one worked through his 50s. His nickname was the white guy in a packing plant in Denison, Iowa. So I've lived it. Where I grew up, the packing plant in West Point, in Schuyler, was right between our areas. If you didn't go to college, you went to the packing plant to work because it was the highest paying job in the area.

HILGERS: One minute.

GROENE: Those-- those guys came out of-- my fellow graduates from high school were driving brand-new cars and-- 'cause back then the pay was good, comparable. But anyway, this bill isn't necessity-- necessary. It's an empathy bill, call it that, that we feel. We're fixing something that doesn't need fixed. It's already there. Until somebody tells me a bad player in the state of Nebraska, a packing plant that is not following the rules and looking after their employees, if you can point that company out, I might consider voting for LB241. But until then, this isn't our purview, where we belong and where our fingers should be passing legislation. Thank you.

HILGERS: Thank you, Senator Groene and Senator Vargas. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. Good morning, colleagues. You may not know, but on May 10, 1869, was the day that the transcontinental railroad was extended from coast to coast. And of course, Nebraska, right in the middle of the country, became a-- a meatpacking area, and the train transportation enabled that to occur. Over 150 years ago, Omaha and Nebraska have been the leading producer of cattle, no question about it. And all those cattle have been coming into south Omaha. And south Omaha has a colorful history of an im-- immigrant area. And the Italians, the Czechs, the Germans, all of those folks came into this area. And of course, right now, south Omaha is-- is just a wonderful Latino area and it's a vibrant community. OneWorld is the health center that serves that area of Omaha, and OneWorld and the Unicameral has had a good association where I've been on the board now for almost six years; Senator Vargas just joined the-- the board; Senator Hilkemann has been on the board; and Senator Mello has been on the board. And so we do have a-- a good history. Could I have a gavel, Mr. President? Could I have a gavel? Thank you. OneWorld has been active in-- in-- with regard to vaccine and COVID-19. OneWorld went to five meatpacking plants in Omaha to vaccinate employees, vaccinated over 3,000 workers; 95 percent of them were minority populations. OneWorld is now shifting focus to smaller

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

vaccination events at churches and schools. OneWorld has given over 25,000 total vaccinations and 53 percent of our patients are fully vaccinated; 30 percent of the patients, ages 16 to 18, are already vaccinated. It's a great history. OneWorld needs to be commended for the great work they've done with regard to COVID-19. So with that, please support this bill. It's a good amendment. I think it's a realistic amendment. LB241 deserves your support. I would yield the balance of my time to Senator Aguilar.

HILGERS: Senator Aguilar, 2:21.

AGUILAR: Thank you, Mr. President. Thank you, Senator McCollister. I just want to talk for a brief minute and ask my colleagues to look around them here in this Chamber. Tell me what you see. Do you see protective panels? Do you recall having to come in every morning to get your temperature checked? And we're not even essential workers. The people we're fighting for right now are. That's the big difference here. Why don't they deserve the same protection that we get? I think they do. Senator Groene asked for the name of a company that's a bad player. I would contend that any company that had workers in the hospital and workers died was a bad player. Have they cleaned up their act? Of course they have. Are they going to do it for the next year? I don't know. Senator Groene doesn't know. We're asking you to put this in place so that we make sure it doesn't happen. Thank you, Mr. President.

HILGERS: Thank you, Senator Aguilar and Senator McCollister. Senator Moser, you're recognized.

MOSER: Thank you, Mr. Speaker. Good morning, colleagues and those in Nebraska listening in to our discussion this morning. I don't think there's any doubt that COVID caught a lot of us off guard, not just the packinghouses but everyone in the country. And from my experience, what I've learned from food processors in my district and-- and what I've seen firsthand, the companies have responded to protect their employees just as soon as it was evident that there were problems. They worked with the local health districts and developed-- and the University Nebraska Medical Center in Omaha to come up with a plan to protect their employees and protect their businesses. And, you know, one plant I was in, they had thermal imaging software running when you walked in the building. They could read the temperature of all of the people, both employees and visitors, coming into the building to see whether they were feverish or not. They put up Plexiglas shields between the workstations. They separated the eating areas in the cafeteria and staggered the times so that there wasn't as many employees in the cafeteria at the same time, I think they've made

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

adjustments to protect their employees. Those employees are-- are important to the businesses, and the businesses are doing everything they can to protect them to the point where some of the businesses now have lower levels of COVID than the rest of the county or the town that they operate in. So, you know, that's just my perspective. I know this is a passionate issue and I'm not going to-- I'm not going to get into the discussion of-- of that. You know, I've known a lot of people who suffered from COVID, but I think that these food processors have responded to the challenge and made every effort they could to protect their employees. Thank you.

HILGERS: Thank you, Senator Moser. Senator McDonnell, you're recognized.

McDONNELL: Thank you, Mr. President. I would like to put an amendment on-- on this bill that says give Senator Vargas a chance to continue to make improvements, compromises between General and Select. We discussed yesterday consumption tax, and all we were asking yesterday was one more round to answer more of your questions that Senator Erdman could not, at that moment in time, and continue to think of questions. If we look at what Senator Vargas has done, again, this sunsets in a year, sunsets in June of-- of 2022. He's made compromises on distancing, common space, ventilation, preventative measures, tracking and reporting, and he's willing to make more compromises between General and Select if we can give him 25 votes. Now why should that be so difficult? Because you do not have to accept his compromise on Select; you just have to-- have to give him one opportunity to work on those compromises and continue to improve this bill. And if it works, if it really works and we have an opportunity to make that improvement-- and for the companies out there, give credit where credit's due, all of the work they've done, all of the improvements because no one had a playbook, no one had-- had a book on how to handle COVID-19, so everything they've done, all of the great work, all of the things they've done to protect their employees because it is in their best interest. The healthier those employees are, the better they're going to-- they're going to do their job. They're going to stay in business. And for our whole economy, it's going to help all of us. But for those that haven't done it to this level, why is that so bad if we have something in place for a year that says follow these rules? And most probably are doing it right now. But for those that aren't and how much this impacts those individual people and their employer and all of us, based on how it impacts the-- the economy, as essential workers, I believe this is worth-- this is worth 25 votes today to give Senator Vargas the opportunity to continue to compromise. He's-- he's willing to compromise. There's no doubt. He's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

proved it. Look-- look at the amendment. Look how much the bill has changed. So give him a chance to work on those-- those issues that you-- you have your concerns with. Give him an opportunity. But mostly, let's put something in place that's fair, that helps the-- the-- the employer. But again, as I mentioned this morning, the employer and the employee, that relationship, bringing that meaningful democracy to the workplace because the employee wants to work, the employee wants to be safe, the employee doesn't want to take anything home to their families, and the employer wants them there. This is mutually beneficial. So please consider giving Senator Vargas a-- a green vote so he can continue to work on this legislation. And it will help all of us, from the employer to the employees to the-- the whole state of Nebraska and-- and our economy. I'd-- I'd yield the remainder of my time to Senator Vargas. Thank you, Mr. President.

HILGERS: Senator Vargas, 1:30.

VARGAS: Thank you very much. Thank you very much, Senator McDonnell. You know, I take to heart what I've heard here on-- on the mike. I also take to heart even what Senator Brewer said. I'm not up here sharing the stories of workers, and part of the reason is there's just too many of them. There's too many of the workers. The people that saw the testimony, it was painstaking. It's painstaking because they don't necessarily always feel like they have a voice. I don't like badmouthing anybody here on the mike, let alone a company, so that's why I'm not talking about any specific plant, even though we have workers talking about most plants at any given time, even in the last three months. The more important thing is not to police, to point a finger--

HILGERS: One minute.

VARGAS: --and say you're wrong or right. The more important thing is to learn from what has been done and put something into statute temporarily, for a year, to avoid further loss. And if something were to happen more, which it could, which is happening across the country right now-- it's happening in other countries right now. We understand that variants move and that's what I'm the most worried about. So colleagues, I'm asking you to put in place commonsense, very basic things into law for the next year. That's it.

HILGERS: Time.

VARGAS: If you want to talk about the stories--

HILGERS: That's time, Senator.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

VARGAS: Thank you very much.

HILGERS: Thank you, Senator Vargas. Senator Slama, you're recognized.

SLAMA: Question.

HILGERS: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Please record, Mr. Clerk.

CLERK: 36 ayes, 0 nays to cease debate.

HILGERS: Debate does cease. Senator Vargas, you're recognized to close on your amendment.

VARGAS: I've been serving this body for five years. I'm really proud of the work that we have done over these last five years. I know some of you are new and some of you are in your last set of two years. I have voted on a lot of different things that impact beyond my experiences, beyond the populations that I've worked with, and I've largely done that because I care about the integrity of this body. I love this body. And I do genuinely love the people in this body. We might have ideological differences at times-- well, we do have ideological differences. But on this issue, I view it as I do as a teacher. When you have something that's not working for a set of your kids, you try to figure out what you can do to improve things for your classroom. Even though everybody else might be OK, we do put standards in place for the betterment of individuals in the workplace, we do that in the betterment of so many other industries that we care about. Be it banking, insurance, education, we have done that. It is fundamentally clear, based on the data, that the high-risk populations and the high-risk sectors is the meatpacking plant industry. It's also fundamentally clear that we know what-- some things work. We know that there are plants that are doing certain things and have been doing it judiciously and some that are not doing it consistently. And I know that because I get the calls from workers and their kids over the last year. I get their pleas. I get their emails. I get their tears. I'm afraid to do X, Y, and Z. I'm afraid to speak up. And so what we brought forward here is not what they would have asked for. It's the thing that brings the most common, basic decency to do for the next year that we would want for our own loved ones. If you've read it, you know it's the same things that we would expect for ourselves. That's what this is about. Now I brought this because this high-risk sector and the high-risk individuals that are also working are the ones putting food on our tables. They keep things going in our state and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

they don't ask questions. They work. They are hard workers. And COVID-19 has hit us all in many different ways, but hearing the stories that our refugee community, instead of focusing on refugee resettlement, they were helping refugees pay for funerals because loved ones died that worked in the plants, that that became a new service offering for the Refugee Empowerment Center, or that the son and a father both worked together and then the father died and the son couldn't live with working in the plant anymore, and the solace that I can provide them is that we're going to put a basic set of protections in place for the next year that will expire, that I would want for my own son and daughter, that's what this vote is about. And it's also a vote in confidence that you know, if there's more that we need to do between General and Select, you know I'm going to do it. I've kept my word on everything that I've told people, be it a cloture vote--

HILGERS: One minute.

VARGAS: --working on an amendment, working on a bill, standing down on a bill, I have been an honest broker. I don't think anybody can tell me that I haven't been. And in this, I give you my word in the same exact manner. And the lobby knows that too. So if-- at the end of the day, this vote is more about compassion, not whether or not you think people are good or bad or employers are good or bad, because I'm never going to stand up here and say that, but that there is something that we can do and it's worthwhile moving it forward to ensure we can do that thing, because I keep my composure in here, even though some days I lose it thinking that I'm the one that lost somebody to this virus in this body. And I have to somehow maintain that level of hope and integrity this body can still work for the betterment of people that have been the most disaffected, even though we might not have had those same experiences.

HILGERS: That's time, Senator.

VARGAS: Thank you.

HILGERS: Thank you. Senator Vargas. Question before the body is the adoption of AM1163. All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under call-- under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk.

CLERK: 34 ayes, 2 nays to place the house under call.

HILGERS: The house is under call. All unexcused senators please return to the Chamber. All unauthorized personnel please leave the floor. The

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

house is under call. Senator Clements, please check in. All unexcused senators are present. The question is the adoption of AM1163. All those in favor vote aye; all those opposed vote nay. Senator Vargas, for what purpose do you rise?

VARGAS: [RECORDER MALFUNCTION] order.

HILGERS: A roll call vote-- did you say regular order, Senator?

VARGAS: Yes.

HILGERS: A roll call vote in regular order has been requested. Mr. Clerk, please call the roll.

CLERK: Senator Aguilar voting yes. Senator Albrecht voting no. Senator Arch voting no. Senator Blood voting yes. Senator Bostar voting yes. Senator Bostelman voting no. Senator Brandt voting yes. Senator Brewer not voting. Senator Briese voting no. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting no. Senator Day voting yes. Senator DeBoer voting yes. Senator Dorn voting yes. Senator Erdman voting no. Senator Flood voting yes. Senator Friesen not voting. Senator Geist voting no. Senator Gragert voting yes. Senator Groene. Senator Halloran voting no. Senator Ben Hansen voting no. Senator Matt Hansen voting yes. Senator Hilgers voting yes. Senator Hilkemann voting yes. Senator Hughes. Senator Hunt voting yes. Senator Kolterman voting no. Senator Lathrop voting yes. Senator Lindstrom voting no. Senator Linehan voting yes. Senator Lowe voting no. Senator McCollister voting yes. Senator McDonnell voting yes. Senator McKinney voting yes. Senator Morfeld voting yes. Senator Moser voting yes. Senator Murman not voting, Senator Pahls voting yes. Senator Pansing Brooks voting yes. Senator Sanders voting yes. Senator Slama voting no. Senator Stinner voting yes. Senator Vargas voting yes. Senator Walz voting yes. Senator Wayne voting yes. Senator Williams voting yes. Senator Wishart voting yes. 31 ayes, 13 nays on the amendment.

HILGERS: AM1163 is adopted. I raise the call. Returning to debate on LB241, Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. Speaker. Didn't realize I'd be this quick in the queue. Well, I'm happy to see that the amendment was adopted, a little disappointed that more people didn't support the amendment since, if this moves forward, that's what the bill is and I thought everyone agreed that the amendment made it better. But c'est la vie, I guess. I rise in support of LB241 as amended. And one of the things that I reflect upon with this bill and the comments that people are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

making today is my first year I had a bill and it was the Healthy Pregnancies for Incarcerated Women's [SIC] Act. And I went around. I worked that bill really hard and everybody kept telling me over and over again that it was unnecessary, that it didn't do anything. And what the bill did was say that if a woman is pregnant and in incarceration, that she shall not be shackled; and if she is shackled for specific reasons that necessitate it for her own safety or for the safety of others, that it should be documented. And people just kept saying to me over and over again, we don't need this, we don't need this, we don't need this, this isn't happening, but we didn't know if it was happening or not because it could happen and they didn't have to document it. So I went around and I talked to everyone in this body that was here at the time, and I worked on the committee members and I worked and I worked and I worked and I worked and I worked. And I even had to convince Senator Ernie Chambers that we needed this. That's where I was at with that bill, but I finally got it out of committee. The committee supported it. We moved it forward. And then the YRTC-Geneva happened and there was a pregnant teen when the Geneva campus closed down, and they shackled all of those girls when they transported them to Kearney. But they didn't shackle that girl. She drove separately. She had her own escort because of that law that this body passed. We impacted at least one life with that bill, and that is valuable. And-- what? OK, I am going to yield the remainder of my time to the Chair.

HILGERS: Thank you, Senator Cavanaugh. Seeing no one else in the queue, Senator Vargas, you're recognized to close.

VARGAS: Thank you very much. I appreciate the individuals that voted for the amendment. It's become the bill. Like I've said, I-- I really do honor this body. I care about my colleagues. I feel like I've demonstrated that in these past five years. It's the only way that this body works. And your word is pretty much everything. I'm more saying that for the people listening, because that means it is still incumbent upon me to listen to the individuals that brought more concerns for the bill, because I'm happy to work on them. That includes for the people outside of this body in the lobby. It means the world to the people that have been outside watching this, watching the state of Nebraska, people from all over the counties, listening to us on whether or not we think it's worthwhile to continue on and have a debate about something that has fundamentally hit a population that we may not always understand. And so I appreciate those of you that have been able to support the amendment and that could support LB241 to move on because it gives us that opportunity to do just that. And for everybody listening out here, this Legislature can work, but only

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

if we allow it to. And I'm really thoughtful and appreciative of that fact. And in honor of my dad, I-- being hospitalized for 30 days is a memory I will never, ever forget, and I always think that there's something else that could have been done, basic things could have been done, maybe could have saved him, and I just hope that we can learn from that lesson. And so with that, I ask for your support for LB241. Please vote green. Thank you.

HILGERS: Thank you, Senator Vargas. The question before the body is the advancement of LB241 to E&R Initial. All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk.

ASSISTANT CLERK: 28 ayes, 5 nays to place the house under call.

HILGERS: The house is under call. All unexcused senators please return to the floor. All unauthorized personnel please leave the floor. The house is under call. Senator Gragert, please check in. Senator Pansing Brooks, please check in. All unexcused senators are now present. The question before the body is the advancement of LB241 to E&R Initial. Senator Vargas.

VARGAS: Roll call, regular order.

HILGERS: Roll call vote in regular order has been requested. Mr. Clerk, please call the roll.

ASSISTANT CLERK: Senator Aguilar voting yes. Senator Albrecht voting no. Senator Arch voting no. Senator Blood voting yes. Senator Bostar voting yes. Senator Bostelman voting no. Senator Brandt voting yes. Senator Brewer not voting. Senator Briese voting no. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting no. Senator Day voting yes. Senator DeBoer voting yes. Senator Dorn voting yes. Senator Erdman voting no. Senator Flood voting yes. Senator Friesen not voting. Senator Geist voting no. Senator Gragert voting yes. Senator Groene. Senator Halloran voting no. Senator Ben Hansen voting no. Senator Matt Hansen voting yes. Senator Hilgers voting no. Senator Hilkemann voting yes. Senator Hughes. Senator Hunt voting yes. Senator Kolterman voting no. Senator Lathrop voting yes. Senator Lindstrom voting no. Senator Linehan voting yes. Senator Lowe voting no. Senator McCollister voting yes. Senator McDonnell voting yes. Senator McKinney voting yes. Senator Morfeld voting yes. Senator Moser voting no. Senator Murman voting no. Senator Pahls voting yes. Senator Pansing Brooks voting yes. Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Sanders voting yes. Senator Slama voting no. Senator Stinner not voting. Senator Vargas voting yes. Senator Walz voting yes. Senator Wayne voting yes. Senator Williams not voting. Senator Wishart voting yes. Vote is 27 ayes, 16 nays on advancement.

HILGERS: LB241 is advanced. I raise the call. Mr. Clerk, for items.

ASSISTANT CLERK: Mr. President, amendments to be printed: Senator Hilgers to LB561. Additionally, LR21 [SIC-- LR121] from Senator Hunt, that'll be referred to the Exec Board for referencing-- or, excuse me, an additional-- a letter: Pursuant to Rule 4, Section 8, please refer LR121 to Referencing Committee for the purposes of referral. That's all I have at this time, Mr. President.

HILGERS: Thank you, Mr. Clerk. Next bill on the agenda.

ASSISTANT CLERK: Mr. President, next bill, LB132, introduced by Senator DeBoer, it's a bill for an act relating to school finance; creates the School Financing Review Commission; provides powers and duties and declares an emergency. Bill was read for the first time on January 7 of this year and referred to the Education Committee. That committee placed the bill on General File with committee amendments. When we took the bill up yesterday, an amendment by Senator DeBoer was adopted. Currently, there's an amendment from Senator Linehan pending, Mr. President.

HILGERS: Thank you, Mr. Clerk. Senator DeBoer, would you like to take a minute to refresh us on LB132?

DeBOER: Yes, colleagues. So this is the School Finance Review Commission. We were talking yesterday. This is the benefit of having an evening. So Senator Linehan and I have talked, and some others, about a potential direction to go here, and I think we've come up with the rough outline of where we're going to-- where we're going to go with this that-- that I think is probably agreeable to a variety of folks, which would address the issues that I heard yesterday. It would-- it would be fairly hypocritical of me to try to build a commission premised on the idea of getting to consensus if I don't have consensus in the authorizing statute to build that commission. Therefore, I think what we have now is a little closer to consensus, so I appreciate all of your concerns that I heard yesterday. I appreciate Senator Linehan. We're still working out all the details, but it looks something like what we'll do is put in senators, as opposed to other folks, and have this be a group of senators. So I'll let Senator Linehan talk also about this, and I will get back on the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

mike to say a little more detail, but I don't want to take advantage too much of my one minute for explaining.

HILGERS: Thank you, Senator-- Senator DeBoer. Senator Linehan, your amendment is pending, but you're next in the queue, so would you just like to take your time or would you like a minute to refresh?

LINEHAN: Thank you, Mr. Speaker. So I want to thank Senator DeBoer, and Senator Walz, and others for working on this since we left last night at 8:00. I will withdraw my amendment. What Senator DeBoer has explained to me is-- addresses what I-- I thought was-- what I was most concerned about is putting it outside the legislative body. Now the group will be made up of only senators, and I think we'll work on that between now and Select of exactly how that comes together. But I think this addresses the issue, too, because here-- here's what-- we cannot say-- I don't think it's OK and I think it's not even true at this point. We can't say that it's too complicated for us to do it on TEEOSA and to review it. It's a billion dollars. It's over a billion dollars. Plus, with all the other education funding, it's more like \$1-- and the property tax credit, one and two tiers, it's more like \$1.4 billion of our budget. So we need to review this. We need to study it. We need to understand it. I think the idea of having people-- and all of it-- Revenue touches it, Appropriation touches it, Education certainly-- Committee needs certainly be involved in this. And I think it's a very good idea for a group of senators to work together collaboratively with all the stakeholders coming in and find some solutions. So I'm very supportive of moving this to Select and working between now and Select to come out with exactly what this is going to look like. Thank you, Mr.--

HILGERS: Senator Linehan, you-- you said the amendment--

LINEHAN: Oh, withdraw my amendment, yes, please.

HILGERS: AM1203 is withdrawn. Mr. Clerk, for an amendment.

CLERK: Mr. President. Senator Brandt. AM1247.

HILGERS: Senator Brandt, you're recognized to open on AM1247.

BRANDT: Thank you, Mr. Speaker. We are going to withdraw this amendment. But before we do, there's a few things I guess I would like to say about this. What this amendment is, is LB454, and it's a bill that probably should have passed earlier this week. It had 23 votes. Subsequently, it sounded like there were other people that would have supported it. There was some confusion. This was a bill that would

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

have helped rural Nebraska schools, those 159 schools out there that do not receive any equalization aid. We listened to Senator Matt Hansen last night make no apologies for supporting Lincoln Public Schools and the money that they get. I'm also of the same mindset. I make no apology for supporting the 13 good public schools in my district and the-- and the five private schools, and the money they don't get. And we're going to keep hammering on this. This bill is not dead. It's just dead for the moment. It's still around next year. There's things that-- that we need to be aware of, we need to take into account. And you all got a letter yesterday with the ag leaders. And this is the Nebraska Farm Bureau, the Nebraska Soybean Association, the Pork Producers, the Wheat Growers, the State Dairy Association, Cattlemen, and the Corn Growers. This is everybody outside of Lincoln and Omaha and a lot of the industries in Lincoln and Omaha. This is the economic driver for the state. And we had a lot of discussion on LB132, and it focused on the current TEEOSA formula. And this new commission that Senator Linehan, Senator DeBoer are going to get together and form or LR or whatever they decide the shape it's going to be, it needs to be results-oriented. We need to have a bill come out of this that focuses on this inequity in the state. And I do believe most of my urban colleagues see the inequity of these kids in these 159 school districts that probably represent about 20 to 25 percent of the children in the state. These are-- are-- are school systems that have no AP classes, they have no swimming pools, they have no equalization aid, and they have no meaningful support from this body. So it is-- it's my hope that that is going to happen. We need to invest in our kids just like we invest in infrastructure, bridges and broadband. This is-- this is one of the things left to do as a state. And with that, I would withdraw AM1247. We'll fight another day.

HILGERS: Thank you, Senator Brandt. Did you say that you were withdrawing AM1247? AM--

BRANDT: Yes.

HILGERS: AM12-- AM1247 is withdrawn. Mr. Clerk, for a priority motion.

CLERK: Mr. President, Senator Friesen would move to recommit the bill to committee.

HILGERS: Senator Friesen, you are recognized to open on your motion.

FRIESEN: Thank you, Mr. President. So I didn't take a speech class, I didn't take theater, so I just can't ramp up when I'm angry. So I'm going to work myself into it a little bit like Senator Chambers maybe

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

does sometimes. We've spent seven years trying to address how we fund K-12. We go through the-- the list here and we look at OPS and they get \$284 million in state aid. And at the same time, we're discussing how we can give tuition credits to get people out of the schools that aren't performing and get them into a private school so they can perform. And at the same time, we don't send any state aid out to a number of-- 180, 160 rural districts get basically nothing. We have a school that isn't performing and yet we want to pull kids out of there and put them in a different school because they're not performing, but not everyone can leave. This isn't gonna-- that wouldn't have helped all those kids. And if you look at the poverty level and some of these schools in rural Nebraska, we're giving them nothing because it doesn't measure up high enough in TEEOSA. They're still paying property taxes to live in those small towns in that rundown trailer house. And we sit here and we spend \$100 million building something in Omaha or somewhere else that philanthropists can readily fund with the multitude of millions they have sitting in their pockets right now. But we're going to do a shovel-ready project so we can get some things built in the larger communities and we're not going to fund K-12 the way it should be funded. LPS, \$115 million; Bennington, \$14 million; Scottsbluff, \$16 million state aid to education. There's a lot of others that's \$51,000, gets down to 0.5 percent of their budget, 0.5 versus 45 percent, 27 percent, 52 percent, 36 percent. Go through the list of schools, and so if we want to-- maybe if we want to address public education, maybe-- maybe I might be more with Senator Linehan than I thought. Maybe when we transfer a kid from public school to private school, we take \$10,000 or \$15,000 away from state aid to OPS. We use that money to transfer and create those scholarships. We'll see how many kids transfer then to private school. We don't need to give a tax credit to a rich donor. We have a rich donor. It's the state of Nebraska. We're giving OPS hundreds of millions of dollars and they're failing. And we have no performance requirement. We just keep giving them money. We keep shoveling it in there. The other day, somebody made a comment we can't just keep throwing money at the situation, but you're not throwing money to rural Nebraska. You're throwing it to a failing school system that can't educate their kids to read. When we spend money here, we could get rid of our \$211 million, and we're going to be a food fight at the end, giving tax breaks to Warren Buffett. Yeah, I'm getting a little pissed. We do a performance audit on the ImagiNE Act. We don't do a performance audit for Omaha Public Schools. If they don't meet the requirements of education K-12, we just look the other way and keep talking about how we're going to fix it. At least in rural Nebraska, I think we're giving our kids a good education. And we pay for it. So I'm going to have a little bit more of a longer conversation as we go forward here. I'm not done yet. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

I think it's something we need to have a little bit more discussion on. And I'm not opposed to coming up with a group to do this, but I have met with people over the last three or four years, different groups, and we talk a good talk and then we bring something to the floor and it gets killed. We always lacked revenue. We lack the will. We can't stand up to the teachers union who won't get rid of those teachers who don't deserve to be in that profession. We talk about schools that are overspending, but yet 80 percent of their budget is controlled by the CIR and something that the school boards really have no control over. And then we tell them we're overspending. My schools aren't. Some of them maybe are. Go to your school board. But if it's because of wages and because of the CIR, let's look for a different solution. But we're not going to do that. By the time we get around to next year, we'll be looking at a different fiscal forecast, probably. Who knows? It might be up; it might be down. A flip of the coin, and we'll be back to saying, oh, we don't have the revenue or let's raise the revenue, let's broaden the sales tax. But no, we're going to be talking about cutting income tax next year. Maybe we'll cut the corporate rate this year, too, yet. We've moved a lot of things on to Select so we can talk about them a little further, but we didn't move LB454 to Select so we could work on it and see if we could get it in the budget. We don't care about rural kids. We don't care about the meatpacking plant workers' kids who are living in those small towns, who don't have good English language-learner programs because they're too small and don't have the funding, don't have daycare programs, preschool, because they fund themselves and they get no help from the state. So I hope we get some more discussion on this. I think Senator Wayne could weigh in. I think we can talk about some of the north Omaha schools. Senator Vargas can talk about the south Omaha schools. We talk about how successful they are, and we keep throwing money at them. Sounds to me like if-- we were supposed to stop throwing money at a problem if we weren't fixing it; waiting for that to happen. So let's talk a little bit more before we decide how we're going to fix this commission. I'm not opposed to the idea, I don't think. I haven't heard all the details, but I'm not convinced it's going to do anything. I've been here too long. I'm too cynical, seen too much vote trading, deal making, and we don't focus on our priorities. Thank you, Mr. President.

HILGERS: Thank you, Senator Friesen. Mr. Clerk, for items.

CLERK: I have just an announcement, Mr. President. Banking Committee has a confirmation hearing at noon today in Room 1507. Senator Blood would move to recess the body until 1:30 p.m.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILGERS: Colleagues, we'll pick up on LB132 with the queue intact after lunch, Senator Erdman and Senator DeBoer and Senator Friesen and others. You've heard the motion. All those in favor say aye. Opposed say nay. We are in recess.

[RECESS]

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

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

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

CLERK: I do. Government Committee reports LB489 to General File with an amendment attached, and a confirmation report from the Banking, Commerce and Insurance Committee. That's all that I have.

FOLEY: Thank you, Mr. Clerk. Members, the speaking queue was preserved over the noon hour. We'll just pick up right where we left off. Senator Erdman, you're recognized.

ERDMAN: Thank you, Mr. Lieutenant Governor. Good afternoon. I want to say hi to Don out there in Angora. I appreciate you watching, Don. This is an interesting discussion we're having today about-- on a commission that Senator DeBoer wants to form. I visited with her off of the mike earlier and I listened to what Senator Linehan had to say about starting a commission or a LR or whatever, committee with just senators. I don't believe, as Senator Friesen alluded to, that senators will accomplish the purpose. We all have our biases, and we all understand TEEOSA, and we all understand we've got to protect TEEOSA. What we need to do is we need to take the \$200,000 that Senator DeBoer has in her fiscal note and hire an outside, independent economic firm to study school funding in the state of Nebraska. We don't need anyone on that study that is involved with education. We need to know how much money we need to raise and then we allow that committee to come with the best solution on how to raise those dollars. And that's not what a committee of senators will do. That's not what the committee that she had originally set up the commission would do. That is the answer, because Senator Friesen stated it quite correctly, we will accomplish absolutely nothing. And at this time of the session every year, it seems like people start using their linebacker voice. And I would call Senator Friesen's voice his outside voice. He was very passionate about what he spoke about. But unless we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

have an independent firm do this study, we will not accomplish what we need to accomplish. So that's where I'm at. And I need to hear more about what Senator Linehan had in mind. Secondly, I want to congratulate Senator Vargas. He was able to pull off what I couldn't, and that was to get people to vote for his bill to advance from General to Select for more discussion. Senator Vargas, you did a nice job. You should be congratulated for your efforts. That's exactly what I was trying to do yesterday, but it didn't work. So I'm here to apologize to all the people in Nebraska that this body didn't have the intestinal fortitude to move that bill, the consumption tax bill, from General to Select, to have a discussion and answer questions. And so those people who live in Senator McKinney's district, and Senator Wayne's district, and my district, and all those districts who are looking for property tax and income tax relief, I'm sorry to report that you're not going to get it through this Legislature. And I will also report to you, you will never get it through this Legislature. But one thing I will tell you, I appreciate you watching yesterday. I appreciate the emails, the texts, and the calls that I received. And those of you who voted not voting and not-- and voting no yesterday, I want to thank you for firing up the people in the state of Nebraska like they have never been fired up before, understanding the lack of intestinal fortitude in this room and the lack of respect you have for the second house. So thank you for that because those people are fired up. And Senator Briese, you have mentioned several times that those people are going to put something on the ballot that you're not going to like. Well, I can tell you right now that it's coming to a fever pitch. These people are fired up and they have-- they have already informed me of what they're going to do. They also said this: Those people who didn't vote for that property tax relief or a chance to talk about it when you come up for reelection, they're going to remember that. Now, I didn't say tha; they said that.

FOLEY: One minute.

ERDMAN: Whether they will or not, I don't know. Did you say one minute?

FOLEY: One minute.

ERDMAN: So they may carry through with that; they may not. But that may be a difficult place for you to be. You choose. In fact, you've already chosen. So we'll move forward with this. And I'm not going to vote for this bill unless it absolutely involves someone else outside this body to look at how we fund schools. Thank you.

FOLEY: Thank you, Senator Erdman. Senator DeBoer.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

DeBOER: Thank you, Mr. President. Senator Erdman and I did talk, and I did say that that's something I would look into, into hiring a consultant that would be able to do some looking at this. I think that's a next year sort of a situation. Senator Erdman is on Appropriations and we agreed that maybe to try and figure out the whole thing and get that all done, that might take an extra year to work on. In the meantime, because I didn't want to take too much time on the mike the last time, I did want to kind of outline sort of what I'm looking at here. Someone said that we want a results-oriented committee. I also want that. And that is why one of the things, as I'm working on this with the various people in the body between now and Select, I will work on making sure that, amongst other things, there has to be a report. And it can be a majority-minority report where you have folks who say this is what we think, and then there's a minority opinion, something like a dissenting opinion in a Supreme Court case where it says this is what the other folks thought. But we're going to-- I'm going to try to make sure that there's a report in here. I would like that report. I haven't had the chance to ask Senator Hughes, I don't know where he is, if I can get a little time at Leg. Council to make that report to-- to the rest of the senators at Leg. Council, which will be in the fall this year. I want to make sure that we conduct listening sessions in all three congressional districts as part of this. I think that's important to have collaboration with stakeholders. I think we need to come up with some findings and recommendations. I think we need to have times when stakeholders can come and speak to us. And I think there needs to be times when we can have a discussion with them. That was one of the things that was most important to me about having the commission was making sure that this is a consensus-building device, even though we won't necessarily get to unanimity, at least we'll try to get a little bit further by listening and working collaboratively together. So I've tried to do that now with the makeup of this commission, listening to concerns and making it as it is. I will continue to do so. So the board's a little crazy. Let's say-- let's-- I would ask you to vote against the Friesen motion to recommit to committee. It's sort of indifferent how you vote on the committee amendment, since we're going to be changing the bill drastically between General and Select, so dealer's choice on that one. And then if you can vote for LB132, knowing that I'm going to work with everyone to make it a senators-only group that will be working on this. If you have any questions, I'm going to stand around here so that I can answer them. And with that, thank you, Mr. President.

FOLEY: Thank you, Senator DeBoer. Senator Friesen.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FRIESEN: Thank you, Mr. President. I'm kind of going to leave off-- start out where I left off. We'll just talk about a little bit the poverty rate of different places. And, you know, you can talk about the Lincoln Public Schools here have a 45 percent poverty rate. The Lincoln area average is only 25 percent. But it's-- we can-- I got it broken down by legislative district, and I think most of you have seen that. But when you get to what just kind of really gets to me is you have places like Central City, 44 percent poverty rate; and .9 percent of their budget comes from the state, .9 percent. Sargent Public Schools, 59 percent poverty rate; 1.1 percent of their needs comes from the state. Harvard Public Schools, 95 percent poverty rate; 6.6 percent of their budget comes from the state. We keep talking about how we need to properly fund K-12. I've talked about this for seven years now and I think we're going to spend a little more time talking about it. And I know this commission, however it might be formed, might be the answer. I don't know that it will be. I'm-- with one year left here, I'm not counting on it because I've seen how long it takes to get something that's actually worthwhile done here; it takes a while. But we sit here and, for the first time since my freshman year, have money on the floor to spend. And for all the years that we came here, every time there was a new class elected to this body, they talked how important property tax relief was, the number one thing they heard when knocking on doors, everyone maybe, except a couple of Lincoln senators. Lincoln has done a good job of they have supported their schools. They-- not a problem. But I've not heard that from any other senator talking about how we fund our K-12 education. And we had heard over and over that's a spending problem. Well, it's not a spending problem in rural Nebraska, and I don't think it has been. And if you look at how a school board can control, what, about 20 percent of their budget at most, and we saw what health insurance costs and everything else, labor costs have done over the past few years, and how all of the equalization aid left those schools in the last 10 to 15 years and all got shifted east here, and we did nothing about it. We sat on our hands and watched. And I said six years ago that eventually property taxes would be going up in the cities as housing valuations shot up, which they would again after the collapse, and you would see property taxes shooting up. Well, with a housing shortage now, I'm thinking that probably you're going to see 10 to 15, 20 percent increases in housing costs and you're going to be losing state aid. Your equalization is going to be leaving. But ag land values haven't dropped. And so I don't think there's going to be any shift anywhere. It's just going to save the state some money. But I have a feeling within the next couple of years there's going to be some urban senators wanting property tax relief. Good thing I'll be gone. I look at what we're spending it on and I, you know, the shovel-ready

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

projects, this is great. I don't-- for some reason, I don't see Omaha listed on here at all.

FOLEY: One minute.

FRIESEN: I-- I would-- I would think this sheet would include a project in Omaha. But yeah, we've got them scattered all over the place. We're going to do sports facilities. We're going to renovate some theaters. We're not talking about adding any money to K-12 education for the nonequalized schools. Nothing. Silence. All they read about is in the newspapers, that we tried again one more time; we tried. And we tried to put spending controls in place. That was the answer. Let's do LB408. That's the answer to property tax relief. That didn't go anywheres. I could have predicted that at the beginning of the session. We're going to proceed ahead. We're going to create a group that studies it again, and I'm not going to oppose it. But my hopes of getting something done in the next year before I'm gone is pretty small.

FOLEY: That's time, Senator.

FRIESEN: Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Senator Lathrop.

LATHROP: Thank you, Mr. President and colleagues. Good afternoon. I'm in opposition to the recommit motion. I do want to take a moment just to thank Senator Linehan and Senator DeBoer. Both of them came together to resolve-- to resolve the--

FOLEY: Excuse me, Senator.

LATHROP: --problems. Yeah.

FOLEY: Members, please come to order.

LATHROP: --to resolve the problems that Senator Linehan expressed last night about having non-senators on a committee. It really does once again represent sort of the best way we operate, which is coming together, respecting one another's positions and concerns, and then coming up with a solution, which I think they've done. I look forward to having this bill move to Select File. I do want to say one other thing, which is I hope in this process I have listened to Senator Wayne and Senator McKinney talk about this-- the students that struggle in their legislative districts. I don't think it's unique to their districts, but I think it is prevalent not only there, but in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

some other school districts in the state. I hope that this group will focus and pay attention to not just TEEOSA at the district level, but what do we have to do at the schoolhouse level to ensure that the resources are going to those particular schools in the state that face so many great challenges because their students come to the schoolhouse with so many challenges in their life, whether that's poverty, whether it is their family situation, many things, the inability to speak and understand English. Those things present challenges. And I hope that we will study that at sort of the schoolhouse level as we take another look at how do we finance public education in this state. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Day.

DAY: Thank you, Mr. President, and good afternoon, colleagues. I-- I punched in earlier when Senator Friesen was introducing his motion to recommit, which I oppose. I support the underlying bill, LB132. And I heard the frustration in Senator Friesen's voice. And I-- I understand where he's coming from. He's frustrated. His constituents are frustrated, just like Senator Wayne is frustrated and his constituents are frustrated. I'm frustrated. My constituents are frustrated. That's the whole point of this commission, though, right? We're all frustrated and we've been trying to figure out how to solve this problem for years, and nothing has worked. So if-- I genuinely believe that getting 20-some of us in one room and forcing us to discuss the school funding problem that we have and coming at it from different perspectives and trying to come to some kind of a compromise on that, on how we're going to move forward on fixing school funding and fixing property taxes should have been done a long time ago. I feel like it's something that we should be doing every session, coming down and sitting together and being like, these are the major issues and this is how we're going to move forward with it. Instead, nobody talks to each other. We show up in session. We-- we shoot fish in a barrel. We throw bills at the problem, and then we argue on the floor and we argue about education versus property taxes. And then nothing gets passed and nothing gets done. This is the perfect opportunity to get everybody in the room. And I love the fact that it's just senators now. Right? It removes a lot of the undue influence that-- that everybody was worried about, that honestly I was a little worried about with the commission. And I think it probably makes some lobbyists squirm a little bit. But that's the point, right? I hope they are squirming because that's not what we're here for. We're here to bring our constituents' frustrations and anger to the table and talk to other adults who are elected to do the same thing and figure out how we're all going to work together to come to an agreement on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

how we're going to fix the problem. It's really disheartening to sit here and listen to people say that they don't think that we can do that. And maybe it's-- maybe it's naive of me or maybe it's very Pollyanna of me to think that we can. But I think we're better than that. I think that we're all frustrated and we're all angry about this. But I think we're better than that. We're better than just saying, well, it won't work, nobody is going to be able to come to an agreement, so let's not even bother doing it at all. You don't get to stand up here and grandstand about property tax relief and then not vote for a commission that is specifically to work on the problem, to come to an agreement. So I think-- and Senator DeBoer can correct me if I'm wrong-- but the whole point of this is to get us in a room, discuss the problem, come to some kind of an agreement on how we're going to solve the problem so that we can move forward and stop arguing with each other on the floor about what we think the potential solution is and eventually not getting anywhere. So I would encourage your red vote on the motion to recommit and your green vote on the underlying bill, LB132. Thank you.

FOLEY: Thank you, Senator Day. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President, and good afternoon, colleagues. I'm going to be in continued support of LB132, including stopping the recommit motion today. I do have to say, in contrast to the previous speaker, I'm not excited that it's switching over to a group of senators. I think this body has proven, time and time again, its inability to come to a collaboration on-- on property taxes. And I'm not necessarily optimistic that just getting the same group of us again to argue together again and not reach any compromises again is less than-- going to be less than fruitful. That being said, I haven't seen the amendment. I haven't seen the plan so I'm going to reserve final judgment. But the idea of bringing together people who actually work and live in the education field to help steer and work in education policy seems like such a no-brainer. I am still in continued surprise and frustration that Senator DeBoer's bill got such frustration yesterday. But as I said, in the spirit of collaboration and working together, I'm happy to support it on General File, get there, look at the amendment, and I'll probably support it, regardless of any reservations that I have. I do want to say I do agree with something Senator Friesen has said is, you know, he and I came in, in the same class, elected in 2014, and we'll go out at the same time. And I do think we are going to spend our entire eight years and have our solutions, quote unquote, on property tax to be dumping money into Property Tax Credit Fund and a few fix-it bills like changing bonding valuations and whatnot. And we're not going to get to the substantive

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

real reform that people want, in part because of the influences that people have on this process. And people have been very critical of the schools influencing this process. I want to remind people of an influence that has killed other property tax bills in the past, being the Governor and the Governor's Office. There's been mentioned already that maybe we should just hire a tax consultant, to use \$200,000 to hire a tax consultant to go look at that and figure out what we should do. I guarantee you anybody, if we just grab an actuary or whoever and ask him to run the models and what we should be doing, I guarantee you there's going to be some tax that they're going to identify as being too low, probably some version or metric or exemption in income tax, and recommend that we raise that and dedicate it to public education. And we all know that's going to be a nonstarter in this body. So we could talk about, you know, getting the experts in, understanding what is, you know, talk about balancing the three-legged stool. You know, if one leg in the three-legged stool is too long, it probably means one's too short. And again, that's probably income tax. That's not something I plan to vote for or expect to even have the light of day in this committee or this body. But again, that's when we're saying we'll hang our hats. So it's like, well, let's just get an expert to fix our system. You know, we've had some pretty dedicated experts. We've had some pretty thoughtful bills come in and, for a variety of reasons, you know, raising some dedicated revenue to give to unequalized districts, no, no, no revenue increases across the board regardless. OK, that's not the fault of the school administrators, that's not the fault of Lincoln and Omaha senators; that's the fault of the executive branch. So if we're just going to kind of be airing grievances on why we haven't done tax reform, why we haven't done the needed things in this body, let's be honest and let's group in all of the, you know, guilty parties. Senator Friesen and others know that I've spent a considerable amount of time working on these issues, trying to understand these issues. I've jumped off a cliff once or twice and-- and on something that maybe even wasn't great for Lincoln but was good for the state of Nebraska. And I'm willing to continue to do that and continue to look for that. But until there's actual some give and take, and not just take and take, from-- collectively in this body--we're going to be stuck in this quagmire where the best we can do is we get some federal money, we get some, whatever it is--

FOLEY: One minute.

M. HANSEN: --corn prices go up, we get a little extra income revenue, sales revenue, tax revenue, and we throw it into the Property Tax Credit Fund. That's-- that's where we're at. That's where we're at and that's where we're going to be until, again, we comprehensively look

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

at tax reform. I think-- I'm disappointed Senator Brandt pulled his amendment and it's thoughts that aren't germane here, because I think without doing something on school financing this session more than studying it, without at least moving the needle a little bit, I think we should probably be pretty skeptical and hold back on other tax changes just to preserve our options for next year. So I'll-- I actually have more to say, so I'll punch in. Thank you, Mr. President.

FOLEY: Thank you, Senator Hansen. Senator Bostelman.

BOSTELMAN: Thank you, Mr. President. Twenty-three votes, 23 votes, 2 votes shy of voting to sunset TEEOSA. Think about it again, folks. Things have to change. Things have to be done. I appreciate Senator Brandt talking about LB454, putting it on. I appreciate Senator Friesen now with his recommit and his discussion. I don't support his recommit, but I do appreciate it. And I want to talk about it just a little bit, because I think you need to understand what our rural schools are seeing and what LB454 would have done for them. One of the schools in my school district has a \$7.2 million budget. They get \$49,000 from the state; \$7 million, \$7.2. They get \$49,000. Gee, thanks. LB454 in my district-- in my district, LB454 would have brought \$7.5 million to my district. And since we're on LB241 this morning, we're talking about Schuyler, Schuyler has the largest elementary school enrollment in the state of Nebraska, the highest. They also have a 58 percent free-or-reduced-lunch program. Schuyler would have received \$1.4 million in LB454. Do we care about those kids? I can tell you, I'm in Schuyler. I provide, at the food bank, food for these families. We help distribute that food. I help work in that community in different areas for community-based opportunities, at Christmastime giving gifts and food to families in need. Yet we want to spend millions of dollars on everything else. We-- we've got-- we're playing Santa Claus this year because we have extra money. But we don't want to give it to-- to our schools that-- in rural Nebraska that don't get anything or very limited. You know, Senator Groene's district, in LB454 he would have got \$5.5 million for his schools, \$5.5 million. He likes to bring up Schuyler, so I'll bring up his school districts. So in my school districts, we have a 21 to 58 percent between the schools, free and reduced lunches. Why is it that we can't do something for rural Nebraska, for other schools? Why can't we do something for the schools in south Omaha or other areas that need the help? Why is it we continue to fight? Why is it we continue to have people on this floor who have people who have need? But we say, no. Think about it. Things have to change. Something needs to be done. I told Senator DeBoer I'd give her a green vote on General because I was hoping we would be able to find something that we'd be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

able to work on. And I will continue to support her in that effort. And I hope you can find that you do something similar and do the same. With that, I yield the rest of my time to Senator Friesen.

FOLEY: Senator-- oh, excuse me. Senator Friesen, you've been yielded one minute.

FRIESEN: Thank you, Mr. President. I'll have my light on and I'll-- I'll talk a little bit further about things. But again, it goes back to the fact that we have-- there's a lot of poverty in rural Nebraska. And no one likes to talk about it a lot because I think there's even a lot of families who don't apply for free and reduced lunches. They're too proud to do it. They just send their kids to school. They don't talk about it. And I don't think there's any schools out there that just offer free and reduced lunch to all their kids. That could happen in some schools. I don't doubt that. But again, we have poverty issues out there. We talk about school funding and we've done property tax relief. But that has gone to all property taxpayers, everyone. That hasn't been targeted to rural areas. It hasn't been targeted to urban areas. It's been across the board. Everyone gets a piece of that. And as valuations change either one of those funds, it's going to shift in how it gets distributed in the future. The current Property Tax Relief Fund will get distributed according to valuation as valuations go--

FOLEY: Time, Senator.

FRIESEN: --in the cities. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Senator Briese.

BRIESE: Thank you, Mr. President. Good afternoon, colleagues. I support the new version of LB132 that I think Senator DeBoer has described. And I, too, was concerned about the composition of the original commission described in the original version of LB132. And I appreciate the work of Senator DeBoer and Senator Linehan and others in arriving at what I would consider a good compromise. And this compromise really is going to put this issue where it belongs and that's in our hands. It was-- it's our job to take care of this. And we were elected to lead on issues like this; it's our job to do so. And this new proposal, as it's been described, will allow us to do our job. I would suggest the committee makeup include a cross-section of the body because, if the committee proposes something, it's going to take a representative cross-section of the body to support this thing, to get it across the finish line. And I share the frustration of Senator Friesen and Senator Erdman, Senator Groene, Senator Linehan, and others on our efforts to achieve meaningful and substantial

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

property tax relief. I think back to LB1084, LB312, LB289, I think it was LB974, LB1106, and then this year LB408 and LB79 and LR11CA and then Senator Friesen's LB454. We've had some success around the issue or, excuse me, around the edges. And-- and we did make some nice strides in LB1107. But what is the lesson from the failures we've had? I think the lesson really is, the takeaway really is that meaningful and substantial property tax relief, property tax reform or education funding reform, it really is a tough nut to crack. And we're going to find that true with this commission or this group of senators that we're talking about. But we have to try; it's our obligation to do so. And who knows? You know, we may have the perfect storm brewing here. We've got a lot of folks talking about comprehensive tax reform. You know, we have Blueprint Nebraska talking about it, the chamber talking about it, the Revenue Committee talking about it, various senators talking about it, and others. And we learned last year with LB1107 that the marriage of property tax relief to business incentives to the NExT Act working together, we can get some things done. So next year, I could envision a package, a package deal of comprehensive tax reform that includes education funding reform; a package of comprehensive tax reform that reflects the urgency of the property tax issue. And so Senator Erdman and Senator Friesen, I appreciate your angst. I share your angst. But I would submit there are opportunities ahead. And rest assured, and I'm confident you will also, that we will all continue working on this issue. But I oppose the motion to recommit to committee and I will support LB132 with the understanding the changes are going to be made to reflect a different package or reflect a package of senators working on this issue. Thank you, Mr. President.

FOLEY: Thank you, Senator Briese. Senator Groene.

GROENE: Thank you. I still stand in opposition to LB132 and I'll probably vote for MO60. I had a conversation off the mike with Senator DeBoer, too, but I was under the understanding it was going to be an LR brought to probably the Education Committee. And then-- and then I told her I'd gladly be part of it. But I'm not in favor of a legislative bill that is appointed by the Exec Committee and then we have another commission, but an LR would be fine. Earlier in the debate, it was mentioned that I'd put one together, an LR basically on my own as Education Chair and who was on it? And it was Speaker Scheer, Senator Wayne, Brewer, Geist, Briese, Friesen, Lindstrom Linehan, Hilgers, Clements, and myself. And all of those individuals, I think Senator Linehan had mentioned, were chosen mainly because they had introduced legislation in the past affecting TEEOSA and property taxes. So it was that we started not as freshmen, we started in a master's class. Everybody had a good background on TEEOSA. And we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

based it on, starting point was from the Nebraska Tax Modernization Committee. And if you looked at LB1106, it had a big part of the Tax Modernization bill and a little bit of everybody's bill in it, of those 10 people. Foundation aid was something I sought and Senator Wayne sought. Basic funding was something Senator Friesen sought for those smaller schools with declining enrollment where there was a floor. Folks, that was the answer and it still is. And I plan on bringing it back next year. And one reason I have a real concern about if we create a commission, because I can hear it now in my last year down here and Senator Friesen's. Well, no, no, no, no. Don't bring any bills on TEEOSA. We got to wait until the committee comes up with their recommendations. No, no, no, no. Let's wait to see what the report is and let them come up out of the Education Committee after the report is filed because it was in there with the bill, with a bill. I can't go there. I can go with an LR where some senators are put together like we had done in the past and come up with some ideas. And the people on it don't need to be from Revenue and they don't need to be from Education and they don't need to be from Appropriations. They need to be senators who have a background and an understanding of TEEOSA because we're not starting on the ground floor. Maybe Senator Flood would be on it because he brings the knowledge from eight years ago when some of those things happened that created this mess. And I'm going to talk sympathetic towards Senator Friesen's bill. I probably should have voted for it, because when I leave this place where I'm going to live, that would have been great for me and the school district I will live in and retire in. And he had every right to bring it because we talked about the average in adjustment the other day-- \$30 million to about 16 schools for no other reason, because in a moment in time back in 2008, where we stand here or what we did on LB1107, they needed 33, they needed 33. And some urban senators said, let's give me-- give me some payola. You give me this average in adjustment, we'll bring you 33 votes, not any rational reason of funding of our schools. Just give our schools more money. Senator Friesen's bill was similar, no rational reason--

FOLEY: One minute.

GROENE: --it was fully funded. Give us some money. Maybe we should have passed it. Then rural schools would have got this money. Averaging adjustment schools would have got theirs because there's an awful lot of things in TEEOSA that makes no sense but are in there because of politics to get the 33. LB1106 a year ago was the answer, but deals were made. Votes were traded. And we lost 18, the rock and a hard place we had when we had enough votes filibustering. The chamber won again with their money and got their LB1107 and I'm not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

complaining, I got the rural tier in there and a couple other things that I agreed to. And Senator Kolterman worked with us. But the grand bargain was LB1106 and a remake of TEEOSA, didn't happen. We got this J.C. Penney plan where you get a credit on your property taxes, no control of spending, no equity in school funding,--

FOLEY: That's time, Senator.

GROENE: --just a credit.

FOLEY: Thank you, Senator Groene. Senator Pahls.

PAHLS: Thank you, Lieutenant Governor. Senator Friesen, a while back you did hand out and I read the number of schools that free and reduced lunches, and I think I was pretty clear that I was sort of shocked throughout the state how many schools that have children in need that are classified either free or reduced lunch. So I get that. But also when I was doing some investigating on one of the other bills, I found out that the state has identified 116 schools that need improvement, and many of them are in Omaha, but a good many of them are throughout this state. And I did rattle off a number of them last time and I won't do that again. So throughout the state, we have 116 schools that need improvement. Actually, the State Department has a plan to help those schools. And I have 2018-2019, a priority school progress plan for Schuyler Community High School. There are schools out there that are utili-- are being investigated and taking a look at it and trying to be helped. To me, 116, if we would take the schools that need improvement and find a way to approach that through TEEOSA, we'd be hitting a lot of those schools that you have concerns about in the rural area. I think there are avenues of making changes. I've been in the past, too, TEEOSA's always-- everybody's always blaming TEEOSA, giving it a real hard rap. Maybe that group of 8 to 10 senators can take a look at that without-- with people from the outside giving some input, but it's still being with the-- the senator group making that decision. I think I'm more optimistic than some people are because I think I told you before, I'm here to help the whole state. In fact, when I made that comment, and this you ought to love, Senator Groene, you ought to love this part, NSEA was so unhappy with me, they spent thousands of dollars to get me not elected. So I'm not-- every once in a while when people say you're, I'm an educator, but the NSEA did not support me. I'm not fighting for NSEA. My whole life has been dealing with the-- the students, the children. That's just what I'm made of. I am optimistic. I think we sit down and take a look at that and with the idea that we are going to help all students throughout the state as much as possible. I believe in a fair, as we say, and balanced program on all taxes. If you haven't picked up on that, there's- I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

think sometimes we are skewed in some parts of the state on taxes. We need to make a balance of that. And maybe if we can correct this formula that is more fair and balanced, as some people may want to say, that probably would even justify that change, would help the local property tax. So I'm-- I'm approaching this in an optimistic way of let's make some changes and see what we can do. Yes, there have been bills that have failed this year by a few votes. But isn't that-- that happens every year. That's not unique to this year. I can remember a number of years ago there were some bills, I thought man alive, they missed by one or two votes. They keep coming back. That's why we meet every year, is to clean up what we did not do in the--

FOLEY: One minute.

PAHLS: --year-- thank you-- the year before. This is not one and done. This is to me, this is a rolling thing that we're trying to improve. Apparently, we haven't been very successful in the past in some people's eyes. I can't say that because I haven't evaluated it, but it didn't take me too long to start delving into it to find out we have a number of schools right now who have not been as successful as they need to be. And there's an evaluation of that. The state has the information we need to utilize it. It's already there. Schools need to report. I've always believed we need to hold education, our schools accountable, not just say, here's the money. OK, let's see what the improvement is, never been against that concept. I think it's a great one. And I think if we even use the premise of helping--

FOLEY: That's time, Senator.

PAHLS: --the schools that need improvement, be--

FOLEY: Thank--

PAHLS: --one step forward. Thank you.

FOLEY: Thank you, Senator Pahls. Senator Friesen.

FRIESEN: Thank you, Mr. President. Again, I am-- I am cynical, but I am going to support LB132. I'm going to support whatever the amendment is that fixes it or I supported it before we made any changes. Somebody's going to have to look at something because we have not been able to get it done. So my first year here, you know, you're a freshman. We had a large class. We had money for the floor to spend and it was gone in the blink of an eye. We spent it and I don't think we spent three hours on the budget total, and it was passed and moved on. And we all sat there looking around like, wow, that was quick.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Since then, we've kind of gotten educated and we had some pretty good fights over the years over the budget. We've spent some late hours here trying to work on things, but we never had any revenue. We were always cutting. We were trimming, not really cutting. We were lowering our increases because we didn't have money. And I was always told, well, someday, you know, our revenues, we're going to grow our way out of this. We're going to grow our way out of lower taxes. We're going to grow our way to property tax relief. And so finally, money comes along. We had unbelievable amounts of revenue coming in, in a COVID year where everybody thought we'd be down. And here we go. We're going to do property tax relief and we cut income taxes. Whoa, pull back on the reins. Where are we headed? Where were our priorities for the past six years? Where-- mine haven't changed. Just like that, we were cutting Social Security taxes. I've got the intestinal fortitude to vote against that. Well, you know, we can pass a portion, cut the cost a little bit. I'm willing to compromise. We cut the veterans' taxes, I even voted against that. I think we could have done better. It helped about 12 percent of the veterans. There's a lot of people who served and not getting a tax cut. They put their life on the line. There's a small percentage are getting a tax cut, not a, you know, we could have worked through something there. But it's not a, you know, we did half of it last year, half of it this year. I've been consistent, I think, and I'm not perfect. I've voted for things that I maybe differed on, I've maybe changed course on. But every time that we've talked about something, you know, we couldn't increase revenue. That's a no no. So once we cut a tax, it'll never be back and we'll never raise it. That's done. And every time I've proposed something or Senator Briese's proposed something, Senator Linehan has proposed something, Senator Groene's proposed something, OPS and LPS bring down the hammer. And they say, no. No, we're going to keep everything we're getting and we're not going to share. But it's funny, they don't come in when we weigh in on tax cuts. I've never seen them at a hearing. It's amazing. Somehow I think that impacts our General Fund, but I don't know. They've never been there for that hearing. We've cut our revenue, not a-- not a peep from them. You would think that affects our General Fund. That's what I've been told. If we give money to these small rural schools, that takes money out of the General Fund. That puts TEEOSA at risk for not being fully funded. I think you've all heard that. But I guess these other cuts don't put the General Fund at risk.

FOLEY: One minute.

FRIESEN: I'm-- I'm a little shocked. I'm going to have to look into that further to see how that works. But we spend \$1.1 billion on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

TEEOSA. OPS gets \$284,511,000. Lincoln gets \$115,494,000. Don't put us at risk as all the rural schools out there lost all their equalization aid over the last ten years. Not a peep. Everybody sat on their hands. Don't want to mess with TEEOSA. We don't understand it. And here we are today. We're going to go round and round. We're going to create another group that looks at it, studies it and tells us that we should probably come up with a way to give some more money to the rural schools. Huh.

FOLEY: That's time. Thank you, Senator Friesen. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President. And good afternoon again, colleagues. One of the things that I wanted to rise and talk about, I know the kind of the tone and tenor of LB132 has shifted since Senator Linehan and Senator DeBoer kind of worked out their tentative agreement or their agreement to agree or however we're framing at the moment. But now, as I said before, in the spirit of collegiality and-- and moving things forward, I'm happy to support that and see what their amendment they come up with. What I did want to talk about was some of the stuff that came up yesterday's debate, kind of before the topic moved. And there was an express frustration, a couple of different people framed this so I'm not responding to necessarily any individual senator, but so much the tone and comments. But the question was kind of posed as if we've spent so much money on education, why haven't they solved poverty yet? And I think that was kind of something that had come up on the floor and people hit variations on it. And fundamentally, that's part of the reason that I think educators need to be inherently involved in this, in part because it's not necessarily education's goal to solve poverty. At the moment in the state of Nebraska, I'm not sure if it's anybody's obligation and goal to solve property. If it's somebody's, it probably should be ours as a state Legislature. And I know a number of us work on that, and a number of us have brought many bills. But there hasn't been the mood and the desire to do some of the things that I think are inherently needed. But I bring all this up to say is the kind of fundamental shift in focus of what we are expecting our schools to do and what we're expecting our schools to wade into. There are things we could do as a Legislature to support people and families in general that would remove huge obligations and remove expenses from schools. And that's the things we could think about and we could do. And that's part of why I think this repeated argument about school funding, where we actually have very few educators in the room and involved, and people are so dismissive and confrontational to school administrators, school board members, dismissing them out of hand, not wanting to talk to them at all is part of the recurring problem we get to. Just like

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

this morning, you know, we talked about, you know, how can you know what's going on in a meatpacking plant if you haven't been inside? You know, how-- how are we so confident we know what's going on in schools when it's pretty clear so few of us are willing to talk to our school administrators or willing to at least believe them, believe our teachers when we talk about what is needed or their expertise? So that's something I just kind of want to frame and refocus on this debate. I get the sense this is moving forward. I get the sense that there's just a couple of us talking repeatedly so we can move on fairly soon. But that's something I do want to frame and phrase that, again, I keep touching upon and touching upon and touching upon is we keep trying to solve what is fundamentally an educational policy issue through revenue changes. And that is a, at best, clumsy way of doing that. And it's part of the reason it is so fundamentally hard to get consensus in this body. Time and time again, people will, like, list off programs that Lincoln Public Schools offers as if they're unnecessary or-- or, you know, unneeded. And yes, I get the fundamental argument that, you know, you cannot have a focus program and people still, you know, complete the high school diploma. I get that. But how am I supposed to go to my constituents? How am I, as a Lincoln senator, supposed to go to hey, there's this program your children are actively using you actively like; maybe you moved to this town to access the school district-- district because you knew it had these options. We've decided that taxes were too high elsewhere in the state. So instead, we're going to cut your program. We're going to, you know, hammer you, use you as a punching bag to fund property tax relief elsewhere.

FOLEY: One minute.

M. HANSEN: Thank you, Mr. President. And that is fundamentally why again and again and again, I think this method of trying to solve education policy through tax changes through the Revenue Committee has been flawed for the-- repeatedly. Maybe a bridge of senators, maybe a good representation of the Education Committee and Revenue Committee, maybe some joint things together can get us there. But again, we've tried that and we fundamentally haven't broken the shift from a solely property owning, largely ag-focused issue to really, in my mind, allow many of the other people who don't work in ag to meet the parents of children, you know, in this conversation about what we want our school districts to look like. That's why some of the amendments that have been proposed have like, you know, we're going to eliminate educators and put extra business owners on. It's like, well, how about parents of the kids? How about, you know, how about maybe like a high school

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

student themselves? You know, there's lots of other perspectives that are needed and valid that we should incorporate.

FOLEY: That's time, Senator.

M. HANSEN: Thank you.

FOLEY: Thank-- Senator Hughes.

HUGHES: Thank you, Mr. President. Good afternoon, colleagues. I want to take a moment to thank Senator Friesen, Senator Briese, and others on the Revenue Committee who've been there for the last several years trying to do the heavy lifting to get property tax relief for rural Nebraska. Those are committee-- that's a committee I have not served on, but I do appreciate their efforts. But colleagues, I want to talk about the poor families in rural Nebraska. You know, there are, regardless of whether you're on a farming community or not, there are poor families out there. There are farmies-- there are farmers who are going broke all the time. We have this misconception about rich farmers. There are poor farmers going broke every year because you can't make it. The margins are too thin. We're looking at record high corn prices coming up. Believe me, we will pay dearly for that. The price of inputs for that corn crop are already beginning to spike. The state of Nebraska needs to support all of its citizens when it comes to education. We've had that discussion and there's a lot of misconception about a low-levy district. Your levy doesn't mean anything. You don't pay taxes in levy. You pay taxes in dollars. Just because there's-- I happen to live in a low-levy district, my tax dollars that I pay are extremely high. And there's also the misconception that farmers get a tax break. We have all these tax breaks. We're small businessmen. We have the same tax breaks that other small business and businessmen take advantage of. Question of whether farmers pay sales tax. We don't pay sales tax on our inputs because that's a business input in the manufacture of the final product, not any different than any other company. Income taxes, when we make money, we pay income taxes. When we don't make money, we don't pay income taxes, no different than any other business. But property taxes, we are treated differently. One of our main inputs into production is the land. I've been very blessed to be a successful businessman. That's part of why I'm down here, is I can afford it. Certainly the \$12,000 a year and the per diem we get is not enough to pay to do this job. So I've been fortunate enough to have the ability to be here and not have to worry about the salary and the per diem to make a living. But the point I want to make is half of my retirement is tied up in land. The other half is tied up in stocks in the stock market. Every day when I get up, if I make money on my retirement, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

pay income tax. If I make money on my-- if my stocks appreciate, I pay income tax. But if my stocks go down, I don't pay anything. With property taxes, you pay whether you make money or not. That's what's frustrating. That's extremely frustrating that I'm paying tax every day on a portion of my wealth, regardless of whether I make money on it or not. If I make money, I pay taxes twice on it. That's some of the frustration that we're having.

FOLEY: One minute.

HUGHES: Thank you, Mr. President. I'll yield the balance of my time to Senator Friesen.

FOLEY: Senator Friesen, about 45 seconds or so.

FRIESEN: Thank you, Mr. President. You know, I had a run around with a listening session with Senator Hansen, Senator DeBoer, and Senator Lathrop, I think. And, you know, I did appreciate that. And we did learn a lot. And I met with a lot of the large schools. But again, I appreciated that time spent and we did listen. So with that, I am going to pull the recommit to committee motion and I do support LB132. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. The motion to return to committee has been withdrawn. Continue discussion, Senator Murman.

MURMAN: Thank you, Mr. President. I would just like to repeat that I voted this bill out of committee because of frustration over our high property taxes that we have in this state. I didn't like the makeup of the committee, but just totally out of frustration, I voted it out. And I appreciate Senator DeBoer now working to completely change the makeup of the committee and especially with Senator Friesen removing his-- his recommit motion, I will support the bill. But I do still have some concerns about it. You know, my frustration was based on that we needed more assurance of agriculture, rural and especially taxpayer representation on the committee. And as Senator Briese mentioned, the true responsibility to solve our school funding problem and our high property taxes in this state falls on the Legislature. And with the new makeup, I think that's very appropriate, that that's the way the committee will be. But I do have a concern yet about the, how long the committee lasts. I think there needs to be a quick sunset on the committee or on the commission, I should say. I'm afraid that, as Senator Friesen mentioned, that if the commission would go on to 2030 or even for two or three years, the Legislature will just-- can use that as a convenient reason or even an excuse for not doing anything about school funding, or at least very little about school

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

funding or property tax problems with this committee still doing their work. So I think there's a big urgency to get it done and the end of this year or maybe at the most, well, I think the end of this year would be good because we don't need just another excuse for-- for not getting the work done that we need to do here in the Legislature. And I just want to reiterate that I really like the handouts that Senator Friesen gave out yesterday. I've always suspected that the income in-- in the urban district, urban school districts compared to rural districts was at least as high, if not much higher in urban districts. And those handouts really showed that. I didn't analyze them real close. But just at a quick glance, I think there's quite a glaring difference there. The urban districts do have quite a bit higher income. So that is not an indicator that they should get more state aid for the school districts. Also, the free and reduced lunch handout was very telling. I do have a performance audit being done that compares equalized and unequalized school districts as to poverty levels in-- in each, and the handouts did show that, again at a quick glance, that poverty, as indicated by free and reduced lunch, is higher in greater Nebraska than in urban-- urban districts, school districts. Of course, there is poverty all over the state-- urban, rural-- but not a big difference between the two. But just a quick glance in-- in comparison, I think it's at least as high, if not higher, in rural school districts.

FOLEY: One minute.

MURMAN: So, again, with the sunset and the urgency of getting something done both with school funding and a more balanced funding of our schools, I definitely can support this, at least to Select File and we'll see how it turns out there. Thank you, Mr. President.

FOLEY: Thank you, Senator Murman. Mr. Clerk.

CLERK: Mr. President, Senator Groene would move to amend, AM1246.

FOLEY: Senator Groene, you're recognized to open on AM1246.

GROENE: Thank you, Mr. President. My amendment, as I've said on this floor, my frustration with the stonewalling and the tactics of the, I would say the leadership-- I would say the leadership in the bigger school districts, with apologies to Senator Pahls. I'm not throwing everybody into this classification. But the ones that are-- well, Senator Pahls and the ones like him are out there taking care of kids and worrying about the hallways and their employees. There are some who focus on politics and the money. And when I was on the Education Committee for six years, they were the biggest roadblock, as I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

ascertain, to finally accomplishing what needed to be done in-- in TEEOSA reform. So my purpose of this amendment was to remove them, their presence from the existing committee makeup. And so I struck "school administrator" in the smaller schools and inserted and appointing some of the local agriculture producer, which most of those districts are rural districts. And in the mid-sized schools, struck "administrator" being appointed to a "local business owner." And then in the larger school district struck "school administrator" and insert "an individual working in private business." Because what we are looking at here is the finance of our schools, how we finance our schools, not the needs side of it. And these individuals who I would put on there have-- know both sides of the ledger. They would understand the tax system because most of these would pay all three taxes. They would pay property taxes on their businesses, sales tax and income tax. And they know the diversity and how that should be made up and which is the most burdensome to them. So anyway, I, if this went forward, which I hear it is, and AM555, which I will not vote for, if this thing goes forward, then there should be with the promise made by the introducer to look at an LR and makeup change, then I believe we should vote down AM555 because voting AM555 would say that we're looking to improve the existing bill. And the existing bill is what I hear is not going to be the makeup if we take it to Select. So which I didn't say earlier, but I'm not going to support anything unless the needs side is left out of it. The existing language of this legislation talks about early childhood and diversity in education and after-school programs and about anything else; that's on the needs side. I happen, after six years of set-- going on seven, the needs side of the formula I guess is about as best you're going to get. There's some things that need to be removed and adapted to, but it pretty much covers a very wide array of schools from 100 students to 51,000, all fitting under one formula. When you're going to fix a problem, you get down to the-- the variable that you need to fix. It's impossible, which we've found in this body, to try to fix six or seven variables with one bill so-- because you get too many diverse opinions. So this thing, if it goes forward and if there's any side, LR by senators, it needs to focus on the funding side of the equation only, where the funding comes from. The-- I was talking to Senator Gragert and he brought over a note he was doing some figuring. And he said, why don't we go one third, one third, one third? And I said, well, you're back to where this whole thing started back with the Tax Modernization Committee, where our tax system was always-- the catch phrase was a three-legged stool, where they should be equal. They are not equal in Nebraska. The property tax leg is way too long versus our sales tax and our income taxes. But we keep chipping away at the sales tax. We're going to do one on the drinking water, take-- make that leg

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

shorter again. We're going to do some on some ag equipment. We're going to-- we do that so easily here. But when we try to do the property tax thing to actually change it, what you are charged, we just don't seem to be able to do it. Instead, we give credits. And income tax credits and just plain credits against your property taxes, which isn't-- it's good, but it really doesn't fix those most aggrieved by high property taxes. We talked about Gretna agriculture the other day. We need to fix TEEOSA where-- because it is 70 percent. And you throw in bonded, bonds and bonded debt and the ESUs, what we pay for the ESUs and what we pay for community colleges, it is the big chunk of property taxes by far. So if I'm going to support anything, it's going to-- I'm just one senator, but it's going to focus on how we fund and where the funds come from for public education, not the needs side. That means the administrators don't even need to be in the room because all they want to talk about is needs. They just want more money. Sorry, but that's been my experience. And they want more property taxes, and they want more income taxes, and they want more sales taxes. Life is easy when you manage things when the money flows easy. I used to manage it in places, and tell you when things are good, it's easy to manage. But that isn't the managers we need in our public education. We want-- we need the ones that are the old-fashioned administrator, used to take pride in lowering the levy because they did such a good job of managing their personnel and negotiating the union contracts. Those are rare to find anymore. I happen to know a couple, but I don't want to, you know, blackballed in their society and their-- by mentioning names, but they do exist. So I would like to hear a few, a little debate on this. I'm not filibustering it and I'm not going to do it all by myself. I'm-- I'm willing to if I'm in the room to help write an amendment, I will gladly work with Senator DeBoer and Senator Linehan to do so, because I've been there before. Not bragging, but I probably could become a consultant on TEEOSA after I leave here if I wanted to. But I have studied the issue, tore it apart, studied the history of it over the last 30 years, and found the flaws and know where the waste is. But again, I will work with whoever, and I'd appreciate a little debate on this and we'll go from there. And I will see if it needs to be withdrawn or vote on it. So thank you, Mr. President.

FOLEY: Thank you, Senator Groene. Senator Groene, you're actually first in the queue, if you care to speak to the-- your motion.

GROENE: Not really, but I will. I'm going to try to forward all of you, not tr, I think my staff is smarter than me with the computer, a link to the report to the Legislature of LR155, Nebraska's Tax Modernization Committee that came out in 2013. Take a look at that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

And things haven't changed since 2013. Sadly, we had an opportunity to fix it last year with LB1106, but not no sour grapes, but I was locked out of the room. We got what we got after that. But we need the base and we need to start with that as the base, the Nebraska Tax Modernizations finding. There was a lot of effort, a lot of work put into that study. And I just said the variables haven't changed since then. And then we need to look at the legislation as-- that's what we did when I had those 10 senators put together. Look at the bills and the knowledge. You know, Senator Scheer, he's not here anymore, but he had a couple of bills on TEEOSA and him and Senator Wayne got along really well on that one issue. I don't know who disliked option enrollment more, but he was on the state school board, even on a local school board, and he knew the subject well. But he got tripped up, too, by the same folks we all got tripped up by, the administrators, not so much the administrators, but the senators who jump when they call. I've told some senators, how many constituents do you have? How many of them do you jump for when they call? Do you jump when the county commissioner calls you? Do you jump when the county sheriff calls you, elected officials? Or do you only jump when a government employee hired by an elected school board calls you? Always wondered about that. Anyway, but we're not going to get anything done unless some senators hang up on them and start listening to taxpayers, start listening to actual individual school board members, not the school board lobby and we can get something done. We could really get something done. So anyway, thank you. That's enough said.

FOLEY: Thank you, Senator Groene. Senator Albrecht.

ALBRECHT: Thank you, President Foley. I just rise in opposition to all three on top of that board there. Again, if this is going to be just senators, I don't see any reason why it would be a bill. Last night I said my piece, I'm not going to stand up three more times or talk about anything else. But it's great that everybody came together. It's great everyone's realized it. But we have a lot of work to do. And I do believe we can get this done during the interim. I'd like to be a part of it if this is all we're going to talk about is the financing part. There's certainly a lot of other things that we could talk about on the education side, but that's for the Education Committee. Again, I'll be a red light on all three. Thanks.

FOLEY: Thank you, Senator Albrecht. Seeing no other members in the queue, Senator Groene, you're recognized to close on your amendment.

GROENE: I'm probably going to pull it and I'd encourage people to vote no on AM555. Because if the-- if the word is, we keep our word and this is going to change completely, there's no need for that amendment

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

at all. Why would you improve something on Select that's going to be completely different? And I'd just soon vote no on LB132. As Senator Albrecht just said, words were spoken about an LR and that doesn't need a bill. Thank you. I pull the amendment or--

FOLEY: Without objection, AM1246 has been withdrawn. Any further motions or amendments, Mr. Clerk?

CLERK: I have nothing further, Mr. President.

FOLEY: Senator Walz, you're recognized to close on the Education Committee amendment.

WALZ: I'd like to withdraw that committee amendment, please.

CLERK: Uh-uh.

WALZ: Oh, you can't.

FOLEY: Senator Walz, you're recognized.

WALZ: Thank you, Mr. President. I would just encourage the body to vote no on AM555. Thank you.

FOLEY: Thank you, Senator Walz. Members, the question before the body is to adopt or not adopt AM555. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 1 aye, 35 nays on the committee amendments.

FOLEY: AM555 committee amendment has not been adopted. Any further discussion on the bill? Senator DeBoer, you're recognized.

DeBOER: Thank you, Mr. President. Senator Halloran, thank you very much for your vote there of confidence. I appreciate the lone vote from Senator Halloran, who likes to always do exactly what he's been told apparently so. Colleagues, I wanted to ask Senator Walz to withdraw the committee amendment as a show of good faith that I am, in fact, going to make the changes that we've been discussing this afternoon when this goes between General and Select. So without the committee amendments, it goes back to an even further back green copy. I will be making those amendments. Happy to talk to anyone who has ideas. And I appreciate your vote to Select File to-- and at that time, I will present an amendment which reflects all of these discussions. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FOLEY: Thank you, Senator DeBoer. The question before the body is the advance of LB132 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 37 ayes, 5 nays on the advancement of the bill.

FOLEY: LB132 advances. Next bill, Mr. Clerk.

CLERK: Mr. President, LB132A, Senator DeBoer. It's a bill for an act to appropriate funds to implement LB132.

FOLEY: Senator DeBoer, you're recognized to open on the A bill.

DeBOER: Thank you very much, Mr. President. Obviously, this A bill is going to change based on what happens. I would like the chance to take this over to Select, too, just because if we're having sessions where the senators go and listen to others in other legislative districts, it's possible we'll need some small amount, very nominal amount in order to do that. So if you will pass this to Select this time, I will bring an amendment for this as well. So I'd appreciate your green vote here. Thank you.

FOLEY: Thank you, Senator DeBoer. The question before the body is the advance of LB132A to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 34 ayes, 6 nays, Mr. President, on the advancement of LB132A.

FOLEY: LB132A advances. Items, please.

CLERK: Thank you, Mr. President. Amendments: Senator Blood to LR107; Senator Flood to LB595. Study resolutions: Senator Wayne, LR125; Urban Affairs Committee, LR122, LR123, LR124 [SIC-- LR124, Senator Wayne]; LR126 is by Senator Wayne. Those are all study resolutions. And a new A bill, LB432A by Senator Linehan. It's a bill for an act to appropriate funds to implement LB432. That's all that I have, Mr. President. Thank you.

FOLEY: Thank you, Mr. Clerk. We'll now proceed to the next bill, General File 2021 committee priority bill.

CLERK: Mr. President, four hundred and-- excuse me, LB147, a bill introduced by Senator Kolterman. It's a bill for an act relating to retirement. Amends numerous sections; changes provisions relating to the treatment of charges under the Nebraska State Funds Investment Act; provides duties and responsibilities for the Public Employees Retirement Board; it changes work billing and payment provisions;

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

provides a transfer and transition of the management and administration of the retirement system, as prescribed under the Class V School Employees Retirement Act. The bill was introduced on January 8 of this year. At that time, referred to the Retirement Systems Committee, advanced the General File. I have committee amendments, Mr. President.

FOLEY: Thank you, Mr. Clerk. Senator Kolterman, you're recognized to open on LB147.

KOLTERMAN: Thank you, Mr President. Good afternoon, colleagues. Before I, before I start my opening on the bill and the amendment, I'd like to take a few moments to talk a little bit about the process. These bills have been worked on, the culmination of what you're going to see today have been worked on for over eight years. Prior to me, Senator Nordquist managed the committee. I've been managing it for seven years, been Chair of the committee. And I'd like to thank both, both my past and present committees, because a lot of work has gone into these-- this bill. And I'd also like to thank my legal counsel, Kate Allen, my clerk, Katie Quintero. And a lot of this can be attributed to the cooperation between Omaha Public Schools, the Better Together Coalition and Dr. Cheryl Logan, the current superintendent of schools at Omaha. There's two parts to this bill. The first part deals with the transfer of the OSERS plan to the administration and management expertise of the Public Employees Retirement Board, known as the PERB, and NPERS. And they will ensure that OSERS plan is managed in compliance with IRS requirements and with the efficiencies of an entity that successfully administers the judges, the State Patrol, the school, the county, and the state retirement plans. It also achieves the goal of eliminating the many support services and oversight that Omaha Public Schools provides in the administration of the OSERS plan. Eliminating these responsibilities for OPS, the school district allows the OPS School Board and the district to focus on what I believe are there-- should be their core duty, and that's educating 57,000 students. I'll share with you, as we go on this afternoon, some of the history of the OSERS legislation. But I want you to know a couple of things right up front. I have actively opposed any bill that proposed to merge the OSERS plan with the school plan, and I've actively opposed any legislation for the state to take on any liability of the OSERS plan. The Governor and I have been in total agreement in opposing such legislation for over seven years now. This is the important part of the bill. LB147 in its present state is a merger-- is not a merger and, and we do not assume any liability for OSERS' funding obligations under LB147. Let me repeat that. LB147 is not proposing a merger, and the state does not assume any liability for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

OSERS' funding obligations under this bill. I understand and share concerns about the stake-- state taking on any liability for the OSERS plan. The bill very clearly specifies that OPS retains full funding obligations for the OSERS plan and the state will not take on any funding obligations for the OSERS retirement system. If you want to read that, it's on page 49 of AM926, and it says this: At no time and under no circumstances shall the state of Nebraska be liable for any funding obligations of the Class V School Employees Retirement System. The school district remains at all times and in all circumstances solely liable for all funding obligations and responsibilities under the Class V School Employees Retirement Act. I would also like at this time, I passed out some, some briefings. I'd like you to take a look at the resolution that's in those, those notes. Resolution 21-011. That's a confirmation by the Omaha Public Schools Board of Education and their superintendent, just what I read. This is really just a culmination of a long, careful, deliberate process. I've been consistent-- and I arrived in the Legislature seven years ago-- that I'm-- I was absolutely opposed to the state taking on any liability for the OSERS plan. We've, I've been consistent in opposing every effort to merge the plan with the school plan. I'm confident this bill will receive OP-- will relieve OPS from administrating a retirement system while ensuring that OPS remains solely liable for the funding. And I am confident that this bill does not put the state at risk for any financial obligations of the OSERS plan. I have a lot of confidence in NPERS, the PERB and the NPERS staff. I want to let you know that I bring this bill with extreme confidence in the Nebraska Public Employees Retirement System, NPERS, which administrators-- administrates six retirement systems under the direction of the Public Employees Retirement Board, the PERB. The NPERS staff is, is a superb staff working for us as state government. They are extraordinarily conscientious about staying on top of and keeping the committee well-informed about IRS compliance issues, actuarially funding policies that need to be addressed, and providing data to the committee about policy issues that may negatively affect the funding of any of the plans. The 51 NPERS staff provide excellent service to over 142,000 plan members. They are well-trained, dedicated employees who implement the retirement plans consistent with the state and federal laws and in compliance with the IRS requirements. They are guided by a very engaged PERB board members and are supervised by a very capable director, Randy Gerke, and under the excellent legal guidance of their legal counsel and deputy director, Orron Hill. These are the reasons that I feel confident about bringing this bill to you to transfer the management of the OSERS plan. I know that the OSERS members will be well-served by the expert staff, and I am confident the change in this is in the best interests of the OSERS plan members.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

The second part of this bill, which everybody has seemed to lose-- they call this the Omaha Public School transfer. But there's a really key part, second part to this bill. The second part of this bill gives the legis-- the, the legislation authorizes an increase in the number of days a retiree may sub during the mandatory break in service period and still ensures that an IRS required bona fide separation of service occurs. We have achieved this goal by doubling the days a retiree can sub in every school district in the state. However, since this, this amount of substitute service is at the upper limit of what the IRS allows, I feel very confident in working with the PERB and working with OPS and OSERS that, by making the change from four days during their waiting period to eight days, still keeps us in compliance with the IRS regula-- regulations, and it and it creates an opportunity for people that are in the retirement mode to continue to sub. There are actually five bills inside of this bill, and I could talk about each one of those in at, at a lot of length, but I've given you a copy of the first page that talks about some of the history of what we've done, going back to 2016 up until today. I can tell you that in 2016, we took over the management--

FOLEY: One minute.

KOLTERMAN: -- of the investments. And at the same time with the management of the investments, we have-- that, that was a very clean, carefully planned out process and we were able to take it over. We've been managing the money for now three years. And I will tell you that our Nebraska Investment Council does a tremendous job with that. I believe I have time now for the amendment and would be willing to start that, if that's all right.

FOLEY: Yes, Senator, you're welcome to open on the committee amendment.

KOLTERMAN: Thank you. At the same time, in 2019, after, after we'd managed the plan, the investments for several years, Omaha Public Schools, Dr. Logan came to me and said, we would like you now to manage the plan itself. We don't want you to take on the liability, we want you to manage it. Oh, and by the way, when we took over the investments, that bill passed 47 to nothing in this body in 2016, 47 to 0. And it was signed by the Governor. In 2019, Omaha Public Schools came to me and said, we really like how the, how the PERB and NPERS manages their plans. We know we've had some problems with our plans, we know that there's some history here that needs to be corrected. Dr. Logan said, could you take a look at, at a study of what it would cost for you to take over the management of our plan? Again, it was the management of our plan, not to take over the liabilities, take over

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

the management. We did that study under LB31 in 2019 at the request of Omaha Public Schools. That bill passed 47 to nothing, and again was signed by the Governor with no objections. So that brings us to today. In 2020, after looking at that last fall, my committee took a look at what we had heard from the 2030-- LB31 in 2019, the study was completed and Omaha Public Schools paid for that entire study. I believe it was \$147,000. Again, we have not cost the taxpayers of the state one nickel. Everything that's been paid to date has come from OPS. After 2020, we had-- we heard the response from the LB31 study, and that was done in conjunction with OSERS and NPERS, and they brought recommendations that we move forward with the transfer of management. From then, they put together the coalition I talked about yesterday, the Better Together Coalition. They, they, they brought in people from all around the district. They had taxpayers, they had members of the board of education, they had the OSERS board, they had retirees, OEA, NSEA. All kinds of people were involved in that process. And they came to us and said, we would like you to, to take a look at moving forward with the transfer of management. So that moves us to LB147, which is, in essence, AM926. That becomes the bill. In LB147, you can see there that we require some IRS studies. We reinstate some OPS Board of Education authority to administer the plan. We establish the duties and responsibilities before and after transfer of the OSERS management to the PERB. We specify that OPS at all times and in all circumstances maintains sole funding obligations, and we specify the transfer is not a merger of OSERS with state school retirement system. With that, I would prefer that we just dialogue about this. I'm open to questions anybody might have. I look forward to explaining why I think this is necessary, and I would hope that we can adopt AM926 and LB147 and put Omaha Public Schools back on track to be an educating facility, not a retirement management facility. Thank you very much, colleagues.

FOLEY: Thank you, Senator Kolterman. A long list of senators in the queue. Senator Wishart, you are first.

WISHART: Thank you, Mr President. Colleagues, today I rise in support of AM926 and the underlying bill. And I want to thank Chairman Kolterman for his tireless work on leading our retirement systems and policy and ensuring that we have fiscally sound systems in our state. I do have a question for Senator Kolterman, if he would yield.

FOLEY: Senator Kolterman, would you yield, please?

KOLTERMAN: Yes, I would.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

WISHART: Thank you. Senator Kolterman, recently the Governor publicly stated that he was concerned LB147 was a slippery slope. If you could elaborate on how this bill is or is not a slippery slope, that would be very helpful. And I'll yield the rest of my time to you for that.

FOLEY: Senator Kolterman, you've been yielded 4:00.

KOLTERMAN: Thank you, Mr President. Thank you, Senator Wishart, I appreciate that question. You know, I've worked very closely with PRO and the Governor's Office on this bill. And, and I don't think I'm incorrect in saying that they like most of the bill. They're just concerned about this might get the nose under the, under the tent and we would end up taking on the liability. And I've been pretty straightforward about this bill. The Governor is opposed to NPERS taking on the management of the Omaha school retirement system. He's concerned that it means the state may take on the nearly \$1 billion in unfunded liability for the OSERS plan. But again, I want to share with you what it says right in the bill. At no time and under no circumstances shall the state of Nebraska be liable for any funding obligations of the Class V School Employees Retirement System. The school district remains at all times and in all circumstances solely liable for all funding obligations and responsibilities under the act. Now, I don't see any loopholes in that language and, and OPS has confirmed to me repeatedly that the school district retains that liability for the OSERS plan. And you can see that in the resolution that they passed. And, and, yeah, you're right, the Governor has called this a slippery slope, claiming that if it's passed then the Legislature could choose at any time to enact legislation to bail out OPS for its financial responsibility and that billion dollars of liability. But let's take a look at what, what would have to occur before that would come about. The Governor's slippery slope would require, at a minimum, 25 senators and the Governor agreeing to take on nearly a billion dollar liability, or 30 senators to override a Governor's veto, determined to take on that liability for the Omaha school retirement system. If there's anybody in here that thinks that's going to happen, I'd like you to, I'd like you to stand up and raise your hand, because I don't see that happening. And really, I don't see this as a slippery slope. To me, it looks more like an uphill obstacle course with a lot of side speed bumps. So I, I don't see that. I don't see how in, in, on earth we would agree to take on a billion dollars worth of liability, especially after OPS has said, we accept that, we know that. But we-- you're already managing our money, you agreed to that. Now we just want you to manage the plan. I hope that answers your question, Senator Wishart. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FOLEY: Thank you, Senator Kolterman. Senator Clements.

CLEMENTS: Thank you, Mr. President. Regarding LB147, I will not be voting for it. It does have some good parts to it, but I'm more cautious. I'm not ready to take over the management. Once we have the benefit accounts and are paying the monthly pensions, the next step would be a merger. The \$800 million liability is a risk. They're only about 64 percent funded and it would be tempting for them to want to merge with the state plan that's better funded. And if that happened, it would require large state contributions. This bill does have a part that I like. It does require a compliance audit that the Omaha plan-- see if they're following the IRS guidelines. I think Senator Kolterman said that they have not had an IRS audit since 1951, and the rules are very strict on pension plans whether you follow the IRS guidelines. Substitute teaching is the main one. Whether a person comes back after retiring and substitute teaches too much, they could have to pay back all of the retirement benefits they've received. And so there's not been an audit in many years. This bill does have a requirement for that, but they should have done it already. They can do it without legislation. And there was an attempt to merge the OPS and the state retirement plans by Senator Nordquist in the past. Would Senator Kolterman yield to a question?

FOLEY: Senator Kolterman, would you yield, please?

KOLTERMAN: Yes, I would.

CLEMENTS: Were you aware that Senator Nordquist had a proposal to merge the state and the OPS plans?

KOLTERMAN: Yes, I was. Do you, you want me to talk about that a little?

CLEMENTS: Yes. Would you? Would you?

KOLTERMAN: Sure. I appreciate that, Senator Clements. Back in 2016 when-- or actually '15, when I got here, Senator Groene and I were put on the Retirement Committee as freshmen coming in, and Senator Nordquist was Chair of the committee at that point in time. He introduced LB448, and it, it did, it did, in fact, talk about a merger of-- it had us taking over the ARCs and it had us taking on the new employees, I believe, of the plan. If, if a person was hired by OPS, they came into the state teacher retirement plan. That bill did not advance. We killed it by unanimous consent on Select File and it didn't pass. And we were opposed to it then. I was opposed to it then and we were able to stop it on the floor of the Legislature.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

CLEMENTS: It did pass General File, though, is that right?

KOLTERMAN: Yeah. Originally it was set up to be a shell bill, a placeholder bill. It did advance from General File. And I don't remember all the history about it, but it, it did restructure some of the administration and governance of the, of the body-- or of their, of their plan. It moved the investment authority from Class V to the state. It aligned the benefits of the Class V more in line with the state's plans. There was a lot of good in it, but the funding parity, didn't-- we couldn't agree to it.

CLEMENTS: All right. Thank you, Senator Kolterman. Well, there-- that is my point. It, it has been tried before. And this is, I agree that this bill does not merge the liabilities--

FOLEY: One minute.

CLEMENTS: -- in the state plan. But once we are, we have all the teacher benefit accounts and we're paying the monthly benefits and manage it, I also wonder if we make a mistake paying out a benefit, if the state will have a liability created by not quite figuring out what the benefits should have been if we don't pay them correctly. Thank you, Mr. President.

FOLEY: Thank you, Senator Clements. Senator McDonnell.

MCDONNELL: Thank you, Mr. President. Good afternoon, colleagues. Before I ask Senator Kolterman a couple of questions and yield him some time, I want to announce that at dinnertime tonight, 6:00 to 9:00 p.m., you can join Senator Erdman. As I mentioned, he was going to continue to work on consumption tax, he is buying dinner at the Hruska building. And also Art Laffer will be there also to answer any questions you might have on consumption tax. Senator Kolterman, I've served with you now for the last four months on the Retirement Committee, and you've served seven years. I've learned a great deal in the last four months. And your work ethic and the time you've put into this issue and and other issues for our retirement systems throughout the state of Nebraska has been commendable. I would like to, I would like to say that with, with your leadership and what you continue to, to work on and how you approach this bill and other bills, it's a great example to all of us. And this is not easy. These are not easy decisions to make and, and they're not easy problems to solve. But I believe you've done a good job working with others, getting input over the last seven years and trying to solve a number of problems. So Senator Kolterman, I would yield you the remainder of my time. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

FOLEY: Thank you, Senator McDonnell. Senator Kolterman, 3:40.

KOLTERMAN: Thank you very much. I appreciate those kind words, Senator McDonnell. First of all, I want to, I want to answer a couple of things that Senator Clements brought up. First of all, liabilities. We would-- you talk about an inaccuracy of paying out something that perhaps we, we shouldn't pay out. That, that problem exists currently. I mean, even, even for the NPERS plans, the current plans the PERB handles, that, that exists. And so I don't see a lot-- yeah, we're taking on more responsibility, but we're getting paid to do it. I don't see that being a major issue. And quite honestly, there have been mistakes been made, but they're very few. In fact, and bragging a little bit about our, our plans, we're ranked very high in the nation when it comes to the administration of our plans. So I don't see that as a major concern. And I was going to tell you under LB448, when we moved to General File on that merger, it was-- the merger was stricken from the bill and it was replaced by the transfer in investment authority. I also want to say, you mentioned the fact about subs. The substitute issue came up several years ago. We talked about the substitute issue and trying to, trying to set some parameters about who could sub and who couldn't sub. The current status allows for about four days a month when you're in that retirement window of 180 days or six months. What this is going to do, it's going to double that period of time. It's going to allow you to work up to eight days in that, eight days a month or 48 days in that 180-day period of time. It really helps all of our school districts throughout the state who are, who are drastically searching for subs. And I believe that's why we have the support of, of the school administrators and the NSEA and the school boards on this, because substitutes are hard to come by. And I don't need to tell you any more about that. As far as what's gone on, I appreciate Senator McDonnell talking about the past seven or eight years. The committee has been working for eight years on this stuff. And I'll give you an example of some of the things that we've done for the OPS and OSERS legislation. The medical COLA and the state service annuity for OSERS retirees has been eliminated for new employees,--

FOLEY: One minute.

KOLTERMAN: -- which only OSERS members receive. And the OSERS retirement age has been raised from 62 to 65. In addition, we reduce the COLA from 2.5 percent to 1 percent. We raised the minimum requirement age to 60 to qualify the rule of 85. We-- final salary is averaged over five years instead of three, and in the past five years before retirement placed a cap on earnings that will count towards the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

calculation of a member's retirement benefit. This is to avoid spiking. So we've worked very hard at not taking away from the current staff. A promise made should be a promise given. But any new hires have moved into a different tier, and they've become more in line with what we do as a state. So we're already working with OPS to make the necessary changes to help get their plan more in line financially. So I hope that's helpful information to you.

FOLEY: Thank you, Senator Kolterman Speaker Hilgers.

HILGERS: Thank you, Mr. President. Good afternoon, colleagues. Just a brief scheduling update for today. As I mentioned yesterday and actually all week, we will go late tonight. So at around 6:00, we will stand at ease. We'll do what we did last week. We're going to stand at ease, we won't even recess for 30 minutes. And they're going to come back at 6:30 and continue to move. Depending on our progress, that could be around 10:00. It might be later. It might be a little bit earlier. It will be totally dictated by the progress that we make after that. But you should, at least in your mind, be thinking 10:00 or afterwards. So 6:00 to 6:30, we will be at ease, but then we're going to get back to work after that. Thank you, Mr. President.

FOLEY: Thank you, Mr. Speaker. Senator Lindstrom.

LINDSTROM: Thank you, Mr. President. And good afternoon, colleagues. I rise in support of AM926 and LB147. I want to thank Senator Kolterman, Kate Allen, and Katie Quintero and all their hard work on the committee. As some of you know, I serve as Vice Chair of that committee and have served in that role for a number of years now. And this has been quite the journey to where we are at today with LB147. As Senator Kolterman spoke of when we started to have this discussion with OPS, OSERS and the PERB, one of the first discussions we had was looking at the investment side of things, which to me was, was the biggest piece of this particular puzzle in the fact that we were dealing with a situation that went back for a number of years. I want to say-- I think the plan started in 1909, we had issues going, dating back to 1950, and we're now resolving those issues with this bill. We had looked at the investments, if you all remember, '08, '09, the OSERS trustees made certain investment decisions that put, put the plan, I wouldn't say in jeopardy, but put it into a situation that was woefully underperform-- underperforming what the state plan was doing. And that came with alternative investments that were illiquid, so that when the market rallied the years following '09, it was not able to catch up. So as we looked at that, we felt that the professionals over at Nebraska Investment Council were much more qualified to deal with that particular issue. And so far that was a very, very good decision,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

and they have been able to turn things around. We're not, still not out of it, as, as we're still dealing with about, I want to say 20 percent of the investments are still in alternative investments. But they will correct that in the following years to come, which again puts us in a good situation. We did a study back in 2019 with LB31 to examine what this would look like. I can tell you, over the years that I have served as Vice Chair and sat on this committee, the discussion of taking over the unfunded liability has never come up. Not once has it ever been spoken of. This is only to deal with maintaining the integrity of the plan. What the PERB will be able to do is handle the administrative costs-- or not costs, but administrative side of things, which is essentially sending out checks to the retirees. There's not much more than that. There might be some education components to it, but they are simply doing some of those things. The bigger side, like I, like I mentioned, was dealing with the investments that was part of this step one. Step two would be handling the administrative side, which LB147, amongst other things, does and is a good step forward. Like I, like I said, I've never had a conversation about taking over the unfunded liability, nor would I ever support that. I think that that would be foolish for the Legislature to ever support that. Not to mention it's in statute that Omaha Public Schools must pay the ARC payment, the actual required contribution. That is in statute. So to say that this is somehow a slippery slope or some end-around way of, of putting and having the state pick up the unfunded liability is simply not the case and is not something that has ever been talked about, nor would I ever support. I did want to ask Senator Kolterman a question, if he would yield, please.

FOLEY: Senator Kolterman, would you yield, please?

KOLTERMAN: Yes, I will.

LINDSTROM: Thank you, Senator Kolterman. If you could, could you just go into, and I'll yield you the rest of my time, just what we do in the fall, getting up-to-speed and looking at the plan funding levels? If you could discuss that a little bit for the body, I'd appreciate that.

KOLTERMAN: Thank you.

FOLEY: Senator Kolterman, 1:20.

KOLTERMAN: If I don't get done, I'll finish up my next time that I'm given. I would just like to say that back in 2014, Senator Mello, Senator Heath Mello introduced LB759. Now LB759 was a bill that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

requires any, any Public Employees Retirement Committee to, to take a look at the unfunded liabilities of pension plans. And we've done that every year since 2014, and we typically do that in the fall of every year. And they, they know that this has to happen. In the last few years we've had-- I'll give you a 2020 as an example. Underfunded pensions plans were Douglas County, Eastern Nebraska Health Agency, Lincoln Police and Fire, Metro Area Trans-- Transit, Omaha Civilians, Omaha Police and Fire, Omaha Public Power District, Omaha Public Schools. Now, they come in every year with their, with their funding man-- and they, and we ask them a lot of questions. Things like, what's your assumed rate of return, what your actual investment return, what's the--

HUGHES: Time, Senator.

KOLTERMAN: --member and employer contribution rates?

HUGHES: Thank you, Senators Lindstrom and Kolterman. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. Good afternoon, colleagues. I think many of us have received emails regarding the OSERS operating costs versus what the state would provide. Would Senator Kolterman respond to that question? And I yield the balance of my time to him, Senator Kolterman.

HUGHES: Senator Kolterman, 4:40.

KOLTERMAN: Thank you, Mr. President. Thank you, Senator McCollister. Yeah, that's been an issue. And in fact, we have the support on this transfer of management from all parties except for the retirees. I will tell you that, that the people that are retired at OPS, that are getting their pensions, they, they, they felt like they were going to be losing an office in Omaha and they were concerned about that. And I addressed that directly with them and they opposed it at the hearings. But here's the reality of the situation. When we took a look at cost comparisons of the, of the OSERS staff versus the NPERS staff, once they take over the plan, at the current time, the salaries of the OSERS plan are, they have four full-time employees. With their benefits, it's \$483,296. They're highly paid people. Now, if we move this plan to NPERS, they will have, they, they spread it out a little bit more to more people. They will have nine people working on the plan. That nine people, with their benefits, will be \$436,743. That's still less. We've got nine versus four with them. Then if we take the, the management and we throw the management in, we have, we would have seven plans to manage instead of six. And so we have three management

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

team: the legal counsel, the administrator and another. And if we, if we prorate that one-seventh, that adds another \$25,000 to the, to the situation. So we'd be still be looking at \$471,000 versus \$483. So we'd be adding the equivalent of about nine employees plus administration to this plan for less than what they're doing right now. In addition to that, our investments have, have-- the cost of the investments have come down significantly. We estimate that on an annual basis, as part of the LB31 study, we would save about \$250,000 a year in doing this. I hope that answers your question.

HUGHES: Thank you, Senator McCollister and Senator Kolterman. Senator Stinner, you're recognized.

STINNER: Thank you, Mr. President. Members of the Legislature, I first want to thank Senator Kolterman for all his work. I think he's really kind of taking you through all the meetings and analysis, discussion that we've had over a very long period of time. I also want to say, first of all, that I am in support of, of the legislation, both the amendment and the bill. I do sit on the retirement committee and have for the last, I guess, going on five years right now. But I do want to dispel some of the notions that this is a slippery slope or a start of taking over the pension liability for OPS. That was never in the discussion. I think that OPS, OSERS are abundantly aware that this Legislature will not take over that liability. Now somebody could have, at some future date come with a bill. I can't stop that, and I'm not clairvoyant. But I will tell you-- and I vaguely remember Senator Nordquist attempting to do that. And I can tell you that it passed to Select File, and then when we found out and when it was disclosed what that liability was, I believe it was roundly defeated. So let's get rid of that notion, it has nothing to do with this bill. Anybody at any particular point in time can, can come with a bill of that, trying to, to merge the state plan with OPS. Now I do want to say this, that in our budget currently we provide 2 percent to the state retirement plan for teachers, both for OPS as well as the state. And there is a considerable history behind this. And I would like to have Senator Kolterman actually take you through the history, because I think he has more knowledge and more, is more rounded in this subject. So I'm going to yield my time to Senator Kolterman to kind of take us through this, this history that we have of supporting the teacher retirement.

HUGHES: Senator Kolterman, 2:53.

KOLTERMAN: Thank you, Senator Stinner. The important thing about this is, and many people have asked me, we put, we put-- and ever since we started doing this, we did it with OPS retirement, as well as the state education retirement plans going back to 1984. In 1984, we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

started putting 0.7 percent into teacher retirement as a state contribution to help make sure that these plans were funded adequately. In 2009, that went up to 1 percent. And then in 2013 it went up to 2 percent. But in 2013, when it went up to 2 percent, the teachers, I believe, put some more money in it, or the educators put some more money in it as well, and we adjusted the benefits. That was all negotiated. At the present time, it's an expensive item. It's an expensive item in our budget. I think this year-- and Senator Stinner can correct me-- but I think it's somewhere in the neighborhood of \$50 million that we're putting into education retirement systems. So much of that goes into OPS, just like it does for the State Education Association. But the situation is, if we wouldn't be doing that, that money has allowed us as a state to continue to meet our ARCs, actuarially required contributions. It's allowed us to keep our plans competitive and highly, highly funded. So history will show-- the other slight thing I would say is there is no way we could dis-- if we discontinue that, all we're going to do is hurt the plans because it helps us keep the ARCs down, it helps us get closer to being 100 percent funded. People say to me, I've-- ever since I've been here, and ever since I've been Chair, why don't we just quit funding that? And I would say to you, if we quit funding that, it's going to take longer to get there. And the other side of that is that amount is, is a significant amount. We have not had an ARC in the school plan since 2014 simply because we're funding it adequately, and clearly that's important. So that's a little bit of the history behind that. If we quit, the sooner we can get it paid up, the sooner there's, there's opportunities. But we, we're probably close to a billion dollars away from being fully funded, even though we're highly funded. Thank you.

HUGHES: Thank you, Senator Stinner and Kolterman. Senator Vargas, you're recognized.

VARGAS: Thank you very much. Colleagues, I stand in support of LB147 and AM2-- AM926. Part of the reason, and some people might remember this, Senator Lindstrom and I worked on trying to provide some-- a bill that was going to provide some additional tool for flexibility, for beginning to shore up the balance and address some of these issues that Senator Kolterman talked about. Now, in the end, I think this is a good bill. It's doing the right thing. I'm used to in my previous work working as an education consultant, and I've seen that we are a bit of an outlier when we look at a lot of other public school districts, being managed separately. And we're going to continue to manage it separately, the only difference is who is going to be managing the system. But we're still responsible for it. So I ultimately am in support of this bill. I think it's the right thing to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

do. I think it's common sense, and I do not see the slippery slope argument right now because anything that were to happen is ultimately going to still be made by the elected individuals in this body or those who will be elected in the future. If that happens, it's going to have to go through the same process, and there will be the ability for those that say this is not the right thing for us to do because it might turn into that. You can stop it if you don't think it's the right thing to do. You've heard some people say that on the mike, that they don't support that. And if it is something you support, you can fight for it. We're solely dealing with the management. It's still a separate plan, all liability is still with Omaha Public Schools, and they're still having to pay that, those ARC payments like we put in statute in the past couple of years. I commend Senator Kolterman for his work on this and the Retire-- Retirement Committee. And I will yield the remainder of my time to Senator Kolterman, should he like-- want it.

HUGHES: Senator Kolterman, 3:00.

KOLTERMAN: Thank you very much, Senator. I appreciate your support. I would like to talk just a little bit about the comparisons of where this, this really went south. And up in-- from 1999 until 2008, Omaha Public Schools ran a really, really well-managed and really invested-properly school plan. After 2008, when the market corrected itself, they moved to, as Senator Lindstrom said, they moved into some alternative investments and they locked in their losses. And, and, and since we've taken over that program as a state in managing their investments, we've been able to get down to only 20 percent of those alternative investments are left. And I would, I'd like to compliment the Nebraska Investment Council and Michael Walden-Newman for their diligence in trying to move us out of those and get us on equal footing with the state education retirement plan and the rest of our plans. But we have at the present time, we just heard a report from Michael Walden-Newman, the estate investment counselor, and he indicated that we have about 20 percent left in those alternative investments and they should be washed off the books sometime in the next couple of years. So again, I think we've done the right thing in managing their investments. I think it's prudent for us now to take over the management of the plan. And, and I say that because I know that we can do a job, we can do it competitively, we can do it fairly. And I just have tremendous respect for the people that are managing the investments. One last thing that I want to talk about is this is not just an investment by us.

HUGHES: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

KOLTERMAN: The people that are in the pension plans for the state of Nebraska, and I'm talking about all of them, we payout \$67 million, \$67 million a month that's going into the Nebraska economy from these retirement plans. That's a lot of potatoes, folks. That helps us every day. When these pensioners get their benefits, they turn around and they put it back. And yeah, they might even pay a few property taxes with it. So with that, I appreciate the, the support that we've heard, look forward to any more questions that might come about. Thank you.

HUGHES: Thank you, Senator Vargas and Senator Kolterman. Senator Wayne, you're recognized.

WAYNE: Thank you, Mr. President. And colleagues, I'm probably the-- I actually am the only one who was on the OSERS board at a point in time in this body. And in 2016, Senator Clements, OPS initially wanted to study and then Senator Nordquist had bumped it up to a merge. And it wasn't just this body who defeated it, OPS board themselves did not want to move forward with that bill. And the reason was, was what Senator Stinner said, we haven't worked out all the liability. It was during that time we started finding out a little bit more what was going on on the OSERS board as far as some of our funds and how they were being managed. And we began to make changes at that time. So what I will tell you is we talked about education quite a bit on this floor this year. And the reason you should support this bill is real simple, OPS should focus on educating kids, not managing a retirement system. It's really that simple. At the end of the day, I was on the OSERS board for, I think, a year. Those meetings were all day, they lasted from 8:00 to about 6:00. They consisted of man-- fund managers coming in and telling how things were going. So if you were a working person, which most of the board was, it was literally two board members, and most comprised of teachers and other, other individuals. They weren't really there all day to kind of understand everything. And when they were there, we asked questions about why are we investing in foreign countries that build steel ships and things like that? We won't get into the details, but my point is, is that this has been a lot of due diligence on behalf of Senator Kolterman and this body over the last four years trying to come up with a way to make sure that OPS's focus is on educating kids, not trying to manage a pension system. Here's another little reason why this needs to happen. We often had a lot of teachers leaving OPS to go to Millard and Elkhorn, and part of the reason that was is because they could double-dip. They could stay at OPS for 10 years, take a break, go to Millard and then build off of Millard's retirement of the state, so they would actually get both pensions. So hopefully, if this were to occur as new teachers come on, that double-dipping won't likely occur down the road. And that was

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

main-- one of the main reasons we, we would struggle to have teachers is because it was an incentive for them to go to a different school district because of our pension. That's the-- I mean, we lost a lot of teachers, senior teachers who were vested for 15 years and then went to Millard or Elkhorn or Bellevue. And what would happen is we would lose all that knowledge and then, 15 years later, when they retired, they were double-dipping from both. So there's plenty of practical reasons of why, why we need to do this. But on the 2016, it was just 'cause we started finding out that there were more debt, that we were having some problems with some of our pension fund managers. If you'll recall, there was a lawsuit with one of the managers that was kind of involved in a Ponzi scheme. So there was multiple things going on in 2016 through actually 2020 that Senator Kolterman and this committee has taken, I think, a lot of time to flesh out and put enough behind this to make sure it happens. So just if anybody has any question of how it worked or why we got to this point from our board's perspective, I'll be more than happy to answer those questions. And with that, I'll give Senator Kolterman-- I'll yield Senator Kolterman the rest of my time, if he wants it. Thank you, Mr. President.

HUGHES: Senator Kolterman, 1:05.

KOLTERMAN: Thank you. I appreciate your support, Senator Wayne, and, and I think we're in the same boat. And if you were to talk to the people behind the glass, they would tell you that their main ob-- their main priority in moving this is to get in the education business full-time. I do have one little correction, though. This bill, since it's not a merger of plans, it will allow a teacher that's working for OPS to come to work for the state and qualify-- they still have to go through the whole qualification process, but they would be able to to start into a new plan, if they so desired, after they retire from the other. We haven't taken that ability away. But and so I just want to make sure that that's on the record correctly. But he's absolutely right, this, this is, this has been a long time in coming. A lot of work has gone into this. OPS-- I'll tell you, until-- there was all kinds of challenges with this bill-- or with the management of that plan. And until Dr. Logan got here and put together this Better Together Coalition and brought everybody to the table--

HUGHES: Time, Senator.

KOLTERMAN: --nothing would have happened. Thank you.

HUGHES: Thank you, Senator Wayne and Senator Kolterman. Senator Erdman, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

ERDMAN: Thank you, Mr. President. Sorry about that, I was trying to get a question answered about, about this bill. Senator Kolterman, I wonder if you would yield to a question.

HUGHES: Senator Kolterman, will you yield?

KOLTERMAN: Absolutely, I will.

ERDMAN: OK. Senator Kolterman, here was a discussion I was having with Senator Briese and Senator Flood. We're going to be the overseer of the distribution of the funds, is that correct?

KOLTERMAN: Yes.

ERDMAN: OK. So hypothetically, let's say that something happens in the distribution was a glitch. We don't make the right distribution and there's a problem and we, we make the wrong distribution, and it's several million dollars, \$20, \$30 million, whatever it is. The people that were, that were harmed by that, will they sue OPS or will they sue us because we're the ones that made the wrong decision?

KOLTERMAN: They would sue the plan.

ERDMAN: Say that again.

KOLTERMAN: They would have to sue the plan.

ERDMAN: They would sue the plan.

KOLTERMAN: In other words, the plan, the NPERS plan or just like it, just like it would be now if we made a mistake with the state retirement or we made the mistake with the State Patrol, they'd have to sue the plan that's administer-- the, the plan administrators. Yes.

ERDMAN: Even though if we're the manager of the plan and we made the mistake they would still sue the-- the plan would be responsible for our errors?

KOLTERMAN: Yes. And that's why we, we have errors in omissions coverage with the state to take care of those types of mistakes, as it currently states. And they have that as well.

ERDMAN: OK. So we, we currently manage their funds, is that correct?

KOLTERMAN: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

ERDMAN: And we manage their funds because they weren't getting the return that we were getting, and so they asked us to do that?

KOLTERMAN: They came to us in 2016 and asked us to take over-- actually they came to us in 2015 and asked us to take over the management of their funds as well as transferring the plan. But we didn't take the-- we didn't do anything that year. The next year we came back and we took on the management of the funds.

ERDMAN: OK. Is their fund fully funded?

KOLTERMAN: No.

ERDMAN: How much short are they?

KOLTERMAN: One billion dollars.

ERDMAN: Wow. OK, so then--

KOLTERMAN: Our isn't, by the way, ours isn't either though.

ERDMAN: Say that again.

KOLTERMAN: Our plans aren't fully funded either.

ERDMAN: OK. Are they that short?

KOLTERMAN: Well, we're probably a billion short, but our plan is a little bigger than theirs.

ERDMAN: OK. All right, thank you. So if we take over this, this portion of it, then we have the full management of the funds and the distribution. Would that make it easier for the state to merge that in with us or not?

KOLTERMAN: I, I don't think it would, Senator, simply because it's going to, as I-- you might not have been here when I talked about this earlier. We'd have to have 30-- I would tell you, for us to take on the liability, that type of liability, it would take 33 votes and a vote-- and a signature of the Governor to get that done. I don't see that happening.

ERDMAN: OK.

KOLTERMAN: But they could do that now. They could come to us next year and say, we want you to take over the invest-- or we want you to take

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

over the liability. And it would come to the vote of the, of the, of the-- just like it would right now.

ERDMAN: Has there ever been a time when they, when they asked us to do that?

KOLTERMAN: Yeah, they tried in 2015 and that's when we said, no way.

ERDMAN: OK.

KOLTERMAN: We, we soundly beat it down.

ERDMAN: OK.

KOLTERMAN: But, but we did, we did pass the investments, 47 to nothing, and the Governor signed it.

HUGHES: One minute.

ERDMAN: OK. What year was that?

KOLTERMAN: 2016.

ERDMAN: OK. All right, thank you for answering my questions. Thank you, Mr. President.

HUGHES: Thank you, Senator Erdman and Senator Kolterman. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. I'm just going to make a few comments here, and if somebody wants to respond, they can. And just from some emails that I've received, I know in, in 2017, LB548 was an attempt to merge the systems also, I think. So-- so the way I understand it, and I think Senator Wayne touched on a little bit, but I don't think what Senator Wayne said was quite right, because right now they don't manage the fund anymore. There's just a few employees that are-- they distribute the money. They have a computer system, and they're the ones in charge of sending out the dollars because the state of Nebraska does manage that money. So there's just a matter of a few jobs that are being transferred here, or-- and Senator Kolterman is, is shaking his head, so he can go into the details of this. But at some point when the state takes over, we're going to get a new software program to handle this to, to be able to distribute these funds. And then I just, just want to know the cost of this merger and who's going to be, who's going to be paying for it, because everybody keeps saying that it won't be the state paying for this, it will be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

OSERS that pays for all the costs of the merger. So I'll yield the rest of my time to Senator Kolterman.

HUGHES: Senator Kolterman, 3:30.

KOLTERMAN: Thank you. Thank you, Senator Friesen. I hate to be shaking my head, but first and foremost, we don't manage their, their plan right now. All we manage is their investments. And so, so their-- what's happening is OPS and OSERS works hand in hand, and OPS has discovered, while they're not charging OSERS everything that they could be charging them, that they have people on payroll. They actually write the checks and send out the checks based on what OSERS tells them. But then they write, they get their money from us to do that. So it's a convoluted way of doing business. All we're, all we're saying is, yeah, there will be, there will be some new employees hired at the state, but they're going to be getting rid of them on their side. And when Senator McCollister asked me, we're going to be able to hire about nine people compared to what they're paying for, for four right now. I mean, that's, that's how much they're overpaying their people. There's a lot of, there's a lot of, there's a lot of things-- there's a lot of hidden costs that nobody realizes is going on. And that's one of the reasons they came to us and said, could you please manage this? So it's just, it's economies of scale. As far as the computer system is concerned, the state's going to have to be looking down the road at our own system to manage the six plans that we currently manage. And so they will be able to take advantage of the fact that if we have seven, we split that among seven plans instead of six. So again, it goes back to economies of scale. They're going to-- if we let them continue to manage their own plan, they're going to have to upgrade their computer system, just like we have to upgrade ours on a regular basis. So I think they see the value of having us manage it, having us spread it over seven plans instead of six. It brings down the administrative costs. It's just a win-win for everybody. But thanks for the question.

HUGHES: Thank you, Senator Friesen and Senator Kolterman. Senator Williams, you're recognized.

WILLIAMS: Thank you, Mr. President. And good afternoon, colleagues. Appreciate all the work that Senator Kolterman and the investment committee have, have done on this and also appreciate the discussion that we're having here. This is a big discussion and a big decision for us to be making. I have a, a few very simple questions that I think isolate and focus on the issues that are important, if Senator Kolterman would yield.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HUGHES: Senator Kolterman, will you yield?

KOLTERMAN: Yes, I will.

WILLIAMS: Thank you, Senator Kolterman. The first one is we're dealing with the transfer of the plan, the transfer of the management of the plan. Will the state expend any state dollars for that transfer?

KOLTERMAN: The answer is no. And let me-- can I expand on that just a little bit?

WILLIAMS: Yes.

KOLTERMAN: Back when the LB31 study was going on, we had estimates of what it would cost internally to transfer these-- to transfer the plan. And the time frame is about two years. So we said we will not pay for any of that. So right-- and the other thing, OPS has been paying ahead on their ARC payments since we made it in statutes that they had to pay. They paid-- just they've been paying ahead. But they decided they would budget money to take care of all transfer costs and they've been putting it in their budget and trying to get it set up so that when the time comes, the money will be there for them to pay all the transfer costs. And so no state funds and no plan funds will be administered to take care of that. It will all come out of their budget.

WILLIAMS: OK, thank you. Next question. As part of this transaction, you're requiring an IRS audit, which has not been done for a long time. Will any state funds be used to pay for the IRS audit?

KOLTERMAN: No, our, our plans do an IRS audit on a pretty regular basis. Usually about every, they do a compliance audit about every eight years, the six plans that we administer. And they have not had one done, so as part of the deal in part one of the bills, we're requiring them to do that. They've already started the process. They'll have that done before the end of the year so that we know what any challenges that might exist, and that can come out of their plan fees at the present time and that will, that will cost the state zero dollars.

WILLIAMS: So again, no state dollars for that purpose?

KOLTERMAN: No.

WILLIAMS: Ongoing management. Any plan like this has ongoing management. Will any state dollars be used for the ongoing management?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

KOLTERMAN: No, any, any ongoing management fees will come out of, out of their plan, just like the management fees currently come out of the six plans that we administer. And their-- and it's a cash account. So that's why when we keep our fees down as a management company, the PERB and the NPERS manages it, that all comes out of the plans. And so they won't have any expense on the part of the state of Nebraska.

WILLIAMS: So again, for this entire transaction, the transfer to start with, the IRS compliance audit and the work getting ready for that, and then the ongoing management, you've answered no state money goes into that. The last question I'd like you to focus on is the one I think that is of most concern to some people. And I'm not sure why, because you have specific language in the bill. But as I understand it, the state assumes no liability for either the shortfall now in the plan or any additional shortfall that might come in the future. Is that the case?

KOLTERMAN: That's absolutely correct. It states in the bill, and I think I talked already about--

HUGHES: One minute.

KOLTERMAN: --the fact that there's, there's-- we put specifically in the bill that we won't accept any financial liability of the unfunded part of the bill-- of their plan. And we also, and they have also put in a resolution that they're not asking us to do that.

WILLIAMS: Thank you very much. Thank you, Mr. President.

HUGHES: Thank you, Senators Williams and Kolterman. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. President. I heard Senator Wayne talk about transferring of teachers retiring from the Omaha district and going to a different district and taking benefits there and talking about how this would be, would help reduce that problem. But from my understanding, the going back to work after you've retired is only with that same employer, which if they went back to work in an Omaha public school, that they would, would be restricted from doing that. But would Senator Kolterman yield to a question?

HUGHES: Senator Kolterman, will you yield?

KOLTERMAN: Yes, I will.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

CLEMENTS: Yes, I was wondering if this change is going to make it harder for a teacher to retire from Omaha Public Schools and go to a different district. Will, will this make a difference?

KOLTERMAN: No, I-- and I addressed that right after he said that, you might have been out of the room, but--

CLEMENTS: Oh, all right.

KOLTERMAN: It won't-- they, they can go from one plan to the other, just like if you work for the state right now, you could go and work for OPS and be eligible once you meet their criteria for another retirement plan.

CLEMENTS: All right. Thank you, I had not heard you say that. And I just wanted to clarify that for the record, that it's really only going back to work part-time for the same employer is what's prohibited. And that substitute teaching has some strict requirements that they can't do an excessive amount or they'll have to repay all their pensions. And that's why the compliance audit is important to see that. And ongoing, if the state is managing this to do some tracking of teachers who retire and track whether they're continuing to teach too much and substituting. The only other comment I had was two of the testifiers that we had for this bill in the committee that were from Omaha that were proponents, kind of ended their comments by saying this is a good first step. And I think maybe they were thinking it was a good first step to try to getting the, get the plan better funded. But I was wondering if it was a good first step to the next step being to take over the liabilities. They didn't specify what they meant by that, and I did not ask. But I'm still going to be cautious about this. And thank you, Mr. President.

HUGHES: Thank you, Senator Clements and Senator Kolterman. Seeing no one else in the queue, Senator Kolterman, you're welcome to close on AM926.

KOLTERMAN: Thank you, Mr. President. As I started out saying, the bill has two different parts to it. The first part deals with the management of the OSERS plan. And I'd like to address what the senator just said. First step. I think the first step was taken in 2016 when we took on the management of the investments. And we've done a tremendous job and that process went seamlessly. And I think they're happy, and I can tell you the investment council has done a tremendous job. I would say this is probably a second step. And the second step is they realize they have a problem and they want-- they came to us because they see us as the best of the best. We have a reputation on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

my committee and this body with expecting excellence out of our retirement plans. And I believe we're providing excellence in our retirement plans. And in turn, we're dumping a lot of money back to, into our Nebraska economy. Everybody wants to be aligned with the winner, and I will tell you, the Nebraska Investment Council and NPERS and the PERB board are winners and we've got the best of the best management. So it didn't surprise me that they wanted us to manage this for them. But let me just say this, they know that they've got a billion dollar problem looking over their shoulder, that's no secret and I'm not trying to make it a secret. The fact of the matter is they're underfunded. But I can tell you, the last three years, if you sat on my committee, you know how much effort they've made and how willing they've been to work with us on trying to turn this around. That's what we're supposed to be doing here as a Legislature. We're supposed to be working with these, these municipalities. We're supposed to be there for them not to work against them. I think this is the second step. I don't look at the third step of us bailing them out. I think they know they've got a problem and I think they're going to work on how they're going to turn that problem around. But let me ask you this, if you were a business person and let's-- just we know that Omaha has philanthropy coming out of their ears and they're good to the people in Omaha. If you're a philanthropist, do you want to contribute to something that's not being managed properly? I see that as the third step, I don't see the state taking on this liability. I see that as a step that people in Omaha will step up to the plate and say, we want to help out Omaha Public Schools. Let's take care of Omaha, let's take care of our teachers, let's take care of our bus drivers, let's take care of our, our people that clean the floors and our administrators. But that won't happen if it continues to be mismanaged or not managed as efficiently as we can do it. So that would be my concern there. And, and as I said, at no time and under no circumstances shall the state of Nebraska be liable for any funding obligations of the Class V Employees Retirement System. The school district remains at all times and in all circumstances solely liable for all funding obligations and responsibilities under the Class V School Employees Retirement Act. I don't think I can make that any clearer. They understand it, my committee understands it. And I, I believe that, that we need to make this happen.

HUGHES: One minute.

KOLTERMAN: We will also be helping every other school district in this state by giving them a larger sub pool to pull from. That's important. And then finally, the partnerships that have been developed on my committee with the different, with the committee and the different

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

people that we're working with are invaluable. And those partnerships need to be continually nourished and we need to work hand in hand with each other. So with that, I would hope that you can help me advance AM926, LB147, and let's show the people in Omaha that we want to be their partners and work with them. Thank you very much.

HUGHES: Thank you, Senator Kolterman. Colleagues, the question before us is the adoption of AM926 to LB147. All those in favor--

KOLTERMAN: I would like a call of the house and a roll call in reverse order, please.

HUGHES: Colleagues, there's been a request to place the house under call. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 23 ayes, 3 nays to place the house under call.

HUGHES: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Groene, please check in. Senators Matt Hansen, Bostar, Pansing Brooks, Bostelman, Ben Hansen, the house is under call. Senators Pansing Brooks, Senator Bostar, the house is under call. Mr. Clerk, there's been a request for a roll call vote in reverse order.

CLERK: Senator Wishart voting yes. Senator Williams voting yes. Senator Wayne voting yes. Senator Walz voting yes. Senator Vargas voting yes. Senator Stinner voting yes. Senator Slama voting no. Senator Sanders voting no. Senator Pansing Brooks voting yes. Senator Pahls voting yes. Senator Murman voting no. Senator Moser voting no. Senator Morfeld voting yes. Senator McKinney voting yes. Senator McDonnell voting yes. Senator McCollister voting yes. Senator Lowe voting no. Senator Linehan voting yes. Senator Lindstrom voting yes. Senator Lathrop voting yes. Senator Kolterman, voting yes. Senator Hunt voting yes. Senator Hughes voting yes. Senator Hilkemann voting yes. Senator Hilgers voting yes. Senator Matt Hansen voting yes. Senator Ben Hanson not voting. Senator Halloran voting no. Senator Groene not voting. Senator Gragert voting yes. Senator Geist not voting. Senator Friesen not voting. Senator Flood voting yes. Senator Erdman voting no. Senator Dorn voting yes. Senator DeBoer voting yes. Senator Day voting yes. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Briese not voting. Senator Brewer voting no. Senator Brandt voting yes. Senator Bostelman not voting. Senator Bostar voting yes. Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Blood voting yes. Senator Arch. Senator Albrecht voting no. Senator Aguilar voting yes. 32 ayes, 10 nays on the amendment.

HUGHES: The amendment is adopted. Mr. Clerk.

CLERK: Senator Kolterman, AM295 is to be withdrawn, right, Senator? I have nothing further on the bill, Mr. President.

HUGHES: Seeing no one in the queue, Senator Groene, you're recognized.

GROENE: Thank you, Mr. President. I hadn't said anything--

HUGHES: I raise the call.

GROENE: What's that?

HUGHES: I raise the call.

GROENE: Then I fold. Anyway- [LAUGHTER] Anyway, I was on the committee for six years and I gained a lot of respect for the superintendent of schools down there in Omaha. And at that time-- I don't know if he's chairman anymore-- Marque Snow of the OPS. And Cheryl is the superintendent, they're very, very good people. The superintendent is an old-fashioned business manager. Earlier in the debate, I mentioned some superintendents I respect. Sometimes you hear things coming out of Omaha, OPS, about why did they do that about COVID and stuff. Let me tell you, it wasn't her, it was the board. But that's just a sidebar. So with that as a rationale, I trusted them when I was on the committee to do the right thing and not to try to, you know, mislead, to sugarcoat, to put honey on it. They were honest and upfront, but that's the good side. The other side of this issue is-- Senator Kolterman mentioned it-- they're underfunded by far, but they have still 20 percent of the assets that are valued. Book value is not what it is worth on the open market. So they're really underfunded more than what the book value tells you. And I've been around long enough to watch the Flint, Michigans and the public cities go broke. Let me tell you, the retirement plans never go broke. Government always bails them out. There will be a time if this market drops again. You've all seen the market the last few years, so it's kind of got a little frosting on this value of these because it's not sustainable. I don't think it is. So there's going to come a time when this state will probably bail them out. Does this make it easier to that, for that to happen when everything's in place? Let's be honest, we already bail them out with 2 percent. We put 2 percent matching right now to a retirement that really wasn't the state's responsibility. So we have a linkage there already where we are financially bound to this OSERS

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

retirement, whether you like it or not, but we are. So Senator Lindstrom, in 2017, brought a, brought a bill that we would do that. And I don't blame him, he represents that school district. So there will be somebody in the future who brings it when things get tough and there will be money transferred because urban outvotes rural. So how do you stop that? I mean that, between here and Select, I think we ought to look at something. There may be, I haven't had a chance to read it, but we all should read it and see if there's a better stopgap measure to put in to, to make it absolutely sure that because we're wording on how we manage it, because basically we're doing all the work. We're investing--

HUGHES: One minute.

GROENE: --doing the investing. We're also now going to do the, the benefit payouts and the paperwork and the application of those that are retired and to pay out the cash value when somebody passes away. So anyway, I, I guess I'm rambling here, but there's a lot more to this than just what we're doing here. There's a linkage here that's, that is not going away and it keeps, keeps getting closer and closer. So I'll probably support it on General File, but I'd like to see, to have a chance to read it closer. Thank you.

HUGHES: Thank you, Senator Groene. Senator Moser, you're recognized.

MOSER: Thank you, Mr. President. I was wondering if I could ask Senator Kolterman a question.

HUGHES: Senator Kolterman, will you yield?

KOLTERMAN: Yes, I will.

MOSER: So going forward, well, not just going forward, but presently, who controls the amount that Omaha teachers can draw from their retirement? Can Omaha sweeten that if they want to, or what-- who controls that?

KOLTERMAN: We do.

MOSER: So--

KOLTERMAN: It's negotiated, but we, we put in statute what the plan-- we have to approve the plan statute that changes the plans.

MOSER: Could you speak up a little bit, so I can hear you better?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

KOLTERMAN: The, the statutes defined it, so if they bring us a change, it has to be approved here.

MOSER: Is--

KOLTERMAN: That's why we have cut benefits tremendously over the last six years and taken away benefits for new hires. We cannot change the benefits that have been promised to the people that are already in an older plan.

MOSER: Are the current Omaha retirement benefits similar to what the rest of the state are?

KOLTERMAN: Over the last six years, we have moved them closer and closer to mirror our plans.

MOSER: They're still above it a little bit?

KOLTERMAN: Over the last six years, we have brought them closer and closer to mirroring our plans.

MOSER: Yeah, you got it closer. But are they coming up from the bottom or down from the top?

KOLTERMAN: Well, a person that's hired today has virtually the same type of benefits that they have in our plans.

MOSER: OK, that's, that's the answer I was looking for. OK, thank you.

HUGHES: Thank you, Senator Moser and Senator Kolterman. Senator Lindstrom, you're recognized.

LINDSTROM: Thank you, Mr. President. I'll be brief. I was just going to correct the record as far as the bill that was brought from a couple of years ago was not to take over the unfunded liability. The bill was to do pension obligation bonds. And I guess in hindsight, I would just say it would have worked. But that being said, at that time, if you remember Senators Williams, Stinner and Senator Kolterman fought that pretty hard and ended up killing that bill. So I just wanted to set the record straight that, that-- I did, it was not-- I did not bring a bill to take over the unfunded liability, it was to issue pension obligation bonds to the plan. Thank you, Mr. President.

HUGHES: Thank you, Senator Lindstrom. Seeing no one else in the queue, Senator Kolterman, you're welcome to close on LB147.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

KOLTERMAN: Thank you. And, and it's hard to believe Senator Lindstrom and I are still good friends after we killed his bill. Anyway, this has been good dialogue. I really appreciate it. Again, I had 32 votes. I thought we could get better than that. But the reality is that's a, that's a good showing. I'm open to answering any questions somebody might have. This is a very intricate conversation and you can't do it justice in an hour, hour and a half, two hours. It's taken us eight years to get where we are. There's much more inside this bill. Senator Groene was on my committee with me for six years. We had a great working relationship, he asked a lot of good questions. He understands what we're trying to do here. I'd appreciate your green vote. And let's-- by the way, we do help out Omaha Public Schools, and that is our job here to make sure that our school districts have every advantage they can get. And all we're talking about is a management agreement, a management agreement that will help Omaha Public Schools. It will help everybody that's in their pension, it will, it will relieve much of the cost. And finally, we're also adding or doubling the sub pool. That's huge. That's key to each one of your districts. Thank you.

HUGHES: Thank you, Senator Kolterman. Colleagues, the question before us is the advancement of one-- LB147 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

CLERK: 31 ayes, 5 nays.

HUGHES: LB147 advances. Next item.

CLERK: May I read a couple of things, Mr. President?

HUGHES: Of course.

CLERK: Thank you. LR127 by Senator Hilkemann. It's an interim study resolution. Amendments to be printed: Senator Brewer to LB51, Senator McDonnell to LB407. Mr. President, next bill is LB496, a bill introduced by Senator Hilkemann. It's a bill for an act relating to DNA Identification Information Act. It requires collection of DNA samples from persons arrested for crimes of violence. Introduced on January 19 of this year. At that time, referred to the Judiciary Committee. The bill was advanced to General File. I have Judiciary Committee amendments as well as other amendments, Mr. President.

HUGHES: Thank you, Mr. Clerk. Senator Hilkemann, you are recognized to open on LB496.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILKEMANN: Thank you, Mr. President. Colleagues, I hope you've had a few moments to look into the information that I've shared with you by email regarding LB496. There's also going to be a handout being passed out by the pages at the present time. Senator Lathrop will introduce the white-copy amendment, so I will use this time to just give you an understanding of what we hope to accomplish with LB496. This is a bill that I believe will help Nebraska be smart on crime by using DNA to exonerate the innocent and identify individuals responsible for unsolved crimes. The bill requires that DNA be collected when an individual is arrested by a felony crime of violence. It defines crime of violence and enumerates those specific crimes currently in statute. It specifies the DNA sample shall be collected by a law enforcement official at the receiving criminal detention facility during the booking process, that such DNA sample shall be collected by a buccal cell collection kit. In other words, a swab of the inner cheek of the mouth. It also provides for expungement if an individual is not ultimately convicted or should be exonerated. Nebraska already collects DNA from individuals convicted of felony crimes and uploads those samples to the national forensic DNA database known as the Combined DNA Index System, or CODIS. This law has resulted in linking an inmate to four rapes in Omaha in the early 2000s and another to an unsolved burglary in York. Utilizing this tool at an earlier stage of the process has prevented crimes and saved lives in states that have put it into law. The city of Chicago conducted a study that followed eight convicted felons and found that if their DNA had been taken at the time of their first felony arrest, 53 rapes and murders could have been prevented because there's-- these serial rapists and murderers would have been identified sooner and taken off the streets before they could rape and kill again. I first heard of the collection of DNA upon felony arrest in 2015 at NCSL. I heard the testimony of James Tillman, a man who spent over 18 years in prison falsely accused, who was exonerated with DNA evidence. Just a few days ago, we were reminded of such a situation right here in Nebraska with the Beatrice Six. The U.S. Supreme Court, in, in *Maryland v. King*, upheld arrestee DNA testing findings that the government's interest is identifying arrestees, including discovering one's criminal history, weighed stronger in favor of collecting DNA samples. The court compared the police practices of taking photographs or collecting fingerprints of arrestees and finding that DNA collection merely served the same function more effectively. The nationwide average cost, all inclusive, for an offender DNA sample is \$35. An independent, academic study conducted at the University of Virginia found that for every \$35 sample placed into CODIS, taxpayers save \$27,000. In working with the Attorney General's Office on this litigate-- this legislation, it was proposed that funds from the State Settlement Cash Fund be utilized to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

cover the cost of this bill. You will see this transfer reflected in the A bill resulting in a zero General Fund impact. I believe that it's impossible to quantify the true cost of what we can accomplish with this bill. What is the cost of a life saved, of justice delivered, or of, of freeing someone falsely accused? The price tag for the Beatrice Six was \$28.1 million, money that cannot ever come close to replacing the time lost to those folks. By adopting this smart-on-crime bill, we will join 31 other states, including our neighboring states of Kansas, Missouri, Colorado, and South Dakota. I encourage you to support AM1054 and move the bill, as amended, to Select File. Thank you, Mr. President.

HUGHES: Thank you, Senator Hilkemann. As the Clerk stated, there are committee amendments. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President, colleagues. LB496 was heard by the Judiciary Committee on March 4. The committee voted to adopt AM1054 on a 7-0 vote with one member present and not voting and advanced LB496 on a 6-0 vote with two members present not voting. AM1054 replaces the original bill and makes two major changes. First, the sample would be collected when an adult is charged with a crime. The sample could not be tested until there's been a judicial determination of probable cause. And second, the expungement process is simplified. The record would be expunged when the supporting charge is dismissed. All of these changes were done to allow this process to more closely reflect the process that the Supreme Court passed on in Maryland v. King. Let me try to put that in simpler terms. What this bill would allow currently-- and this was a bill passed by Senator Avery when I was here years ago-- when a person is convicted of a felony, we take a swab and we put their DNA into the database described by Senator Hilkemann. That's current law and that's current practice. This bill would provide another window of opportunity and here's how it would work. If you have been arrested on a violent-- a crime of violence, you are brought into the police station and you are booked. During the booking process, they take your fingerprints, right? That's also common practice. They would now also take a swab from the inside of your cheek. That swab could not be placed into the computer database until after you have had a preliminary hearing. That is a hearing at which the court would determine whether there is probable cause to believe you have committed the particular violent crime and then bind you over to the district court for trial. At that point, after a probable cause determination is made, the DNA sample would be placed into the database. You might be a hit. Maybe they find that you were also the guy that committed a rape or you were involved in a murder in another jurisdiction or maybe even this particular jurisdiction. It

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

only applies to adults. That sample would remain in the database until or unless charges are dismissed or you are acquitted, in which case the, the sample would be taken out of the DNA database. These changes were made, as I said, to have our process and Senator Hilkemann's bill more closely reflect the decision from the United States Supreme Court in Maryland v. King when they passed on the constitutionality of this process and whether it was an unlawful search and seizure. And with that, colleagues, I would encourage the support of AM1054 as well as LB496. Thank you.

HILGERS: Thank you for your opening, Senator Lathrop. Mr. Clerk for an amendment.

CLERK: Mr. President, first of-- first amendment to the committee amendments, Senator Wayne, AM1083.

HILGERS: Senator Wayne, you're recognized to open on AM1083.

WAYNE: Thank you, Mr. President and colleagues. Colleagues, I just hope you take a little bit to listen to what I'm about to say and, and just kind of open up your minds a little bit here. Last week, we voted to allocate \$4 million to Gage County for the Beatrice Six. I believe the argument Senator Erdman made in many of those was that these are state laws and the counties are simply enforcing them. Therefore, it is our responsibility to help make it right. We understood last week, as we understand today, that sometimes our justice system gets it wrong and sometimes we as a state and lawmakers have a chance to get it right. And today we have a chance to get it right. AM1083 allows an individual to file a motion for a new trial when evidence that was constitutionally barred from being presented at the trial becomes available after the trial. That's all this bill does. This bill simply says that if testimony comes out later and that evidence was constitutionally barred that you could not use it at trial, a judge may-- let me repeat, may allow for a new trial. The key to this amendment is real simple. We are just allowing a judge to access all the information and make a determination of whether the new information that is available should go in front of the jury, a new jury, for a trial. So many of you don't have criminal backgrounds, so I'm going to try to explain this in a real life situation, how it can occur. The Fifth Amendment says you don't have the right to incriminate-- you don't have to incriminate yourself. You can't be compelled to testify against yourself. So essentially, that means-- let's say Senator Moser commits a crime-- or is alleged, arrested that he committed a crime, but Senator Wayne actually knows who did it and may have been there himself, but I have a right, even if Senator Moser subpoenas me, not to testify in his trial. I have a right because I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

don't want to incriminate myself. But let's say I'm later arrested and I exercise [SIC] my right not to do Fifth Amendment in his trial, but I decide to testify in my own trial and I say it was me and me alone. I did it, but it was self-defense, that-- or I was protecting Senator McKinney from somebody invading his property. The jury believes me and I'm innocent, but Senator Moser was convicted because I exercised my right to self-incrim-- not to self-incriminate and he didn't get to hear that testimony. Underneath this motion, he gets to file a motion to the judge saying hey, listen to what Senator Wayne said. If there is material enough evidence there that the jury should have heard it, I get to have a new trial. That's all this amendment does. It says if somebody else finally waives their privilege and constitutional right and talks, Senator Moser should be able to have his day in court to make sure the jury hears all the evidence and not be penalized because somebody used their constitutional right. Now frame this in the context of criminal justice. At the end of the day, our justice system is about being just. It goes back to 1760s when we were not even really all the way formed as America when it said we want to make sure one person-- I'll read it. It's better to have ten guilty men go free than to convict one innocent man. And the reason that was the core of our system is because it's not about protecting efficiencies. It's not about making sure people feel good. It's about making sure the individual, the individual has their day in court and they can exercise their constitutional rights. Why is the individual so important? Well, that goes back to who we are as America. America simply says that the community is best served when the individual is best served, that if we make sure the individual rights are served by everyone in this body, then as a body, we will act and do better. That's our foundation to who we are and all we are saying in this, in this motion-- and I'm going to ask-- talk a little bit more about it. We are simply saying again that if evidence is found later down the road that was constitutionally barred, that there was no way for the jury to hear it because somebody else was exercising their constitutional right-- and I-- and there's other rights that could be exercised, but let's just say constitutional right-- and later that right is waived, you have the ability to ask the judge, look at everything and if you feel the jury should have heard that, then let me have a new trial. And we even limit it to just Class I felonies. That means the murders and not even manslaughter. It's the heinous crimes where most of them plead out, most of them don't go to trial, but if there is a trial and there is a constitutional testimony that you can't get in, you are at least given the option to go back to the judge and say please look at this and let me have one day fair in court where all the evidence comes in to the judge. This isn't a big stretch. We aren't being soft on crime. We are not allowing guilty

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

people to go free. We are not reducing sentences. We are giving our judges the ability to look at all the evidence and if it's material, if it could have changed the outcome of a case, to allow that to go to the jury. You've already been convicted, Senator Moser, because I didn't testify, but now I testify. You hear evidence for the first time that exonerates you. You should be able to file that motion to go back in court to have your day. This is not new to us, colleagues. We actually did this when we look at DNA exonerations. We said if there are evidence out there that is so material, they should be able to apply or at least file a motion for a new trial, and let it go back in front of the jury because it may or may not let them go. There could be eyewitness testimony that would still convict them, but if there is such evidence like DNA, they should be able to file a new motion. Well what else evidence is so important? How about ones that are constitutionally barred? And I'm gonna give you a procedure of how it works. If I as an attorney ask Senator Cavanaugh, who represents somebody, I'm going to subpoena your witness and he tells me-- or your client-- and he tells me he's going to invoke the Fifth Amendment, I can't even bring him to court. It's not like the movies where you get somebody on the stand and you say you did it and they say I plead the Fifth. That will never happen in real court because our U.S. Supreme Court said, over and over, if you know a person is going to invoke their Fifth, you can't even bring them to court because by invoking the Fifth Amendment, it is so prejudiced to whoever is being charged that they will for surely go free because the jury is going to say he invoked his Fifth, so he must have did it. So the Supreme Court says you can't even bring him to the dance. So there's no way for you to even get that evidence into court. That's why this is so critical. There's no other path. And does it happen a lot? Not at all. I've only found one or two cases that it actually happened. It's not going to open the floodgates. It's not going to harm anything that we do, but it will make sure we live up to the principles of our justice system about being just, and it will also make sure that we live up to the principles that we put forth in our Constitution when we laid out all these Bill of Rights about the individual having their day in court. So I'm going to say it one more time. AM1083 allows an individual to simply file a new motion for a new trial. It does not guarantee them a new trial, and they can only do it when evidence could have been-- or could not have been presented, that was constitutionally barred at their trial that later became available.

HILGERS: One minute.

WAYNE: Again, that later became available. This is very narrow. We've only limited it to Class I felonies. It's a very narrow amendment.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

It's not a big ask, but for those who may have fallen to this, for a defense attorney who may have fallen into this, this is a big deal because you could have somebody spending life behind bar because somebody else exercised their constitutional right and they never got to present that to court. There's a problem with the procedures, there's a problem with the system, and this amendment does a small thing to fix that. It allows somebody for a motion for a new trial that still has to go before a judge, which may or may not even be granted, only if there is evidence that was constitutionally barred at the time of their trial that later became available.

HILGERS: That's time, Senator.

WAYNE: Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne. Debate is now open on AM1083. Senator McKinney, you're recognized.

McKINNEY: Thank you, Mr. Speaker. I rise in support of AM1083. I'm opposed to AM1054 and LB496. I support AM1083 because I think if there is something that a judge could see that could free an individual, that judge should be able to see that information. I don't think anyone should sit inside of a prison, knowing that they're innocent, for any amount of time, a day or 50 years. And I think as us-- us as legislators, as senators, we should think about that as well. How, how comfortable are, are you to sit here and allow for an individual to sit inside of our state prisons knowing that they're innocent or possibly innocent and give them the opportunity to sit in front of a judge and present the evidence and for their case to be heard? I think we have to think about that when we-- especially when we talk about the mass incarceration issue that we have in this state and the prison overcrowding. No, this won't free everybody or free a bunch of people, but one person is one person. It's one less person inside of our prisons and I think we need to think about that. I'm opposed to A-- LB496 just because it just makes me uncomfortable reading the bill and thinking about it, knowing that an individual could be arrested and swabbed for their DNA and it's placed inside of some type of system. And me being a Black man in America and knowing how the criminal justice system has never been in our favor and, and almost everything has been used against us-- and there's many people that have been exonerated throughout the years because of misconduct in the criminal justice system. And this just screams that for me and I don't know how to fix that, fill in that intuition inside of my stomach when I think about the bill that this is going to be used improperly; and I almost guarantee it. And history says that to me, so it will be hard for me to support the bill, but if AM1083 gets on, I could support it, but I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

don't love the bill. I just honestly don't feel comfortable with it because I just see that it, it can be abused and it probably will be abused because history has shown us that-- especially for my community that it's going to get abused and we're, and we're going to be disproportionately affected by it. And I know they're saying this is an exoneration bill, but it's not. It has nothing to do with exoneration or innocence. You know, we already have a DNA innocence law passed by Senator Chambers and Senator Pansing Brooks that allows for wrongfully accused or convicted individuals to seek DNA testing to establish innocence. I guess we kind of have to really think about what are we trying to do here? I love Senator Wayne's AM1083. I don't love the bill, but I'm willing to support the bill if AM1083 gets on, because I think if we can let anybody out of the criminal justice system, even one person, you know, we're better off as a state, and I'll feel better as a senator representing my community. But the bill overall, if it's without AM1083, just gives me an uncomfortable feeling that this would disproportionately affect my community and I'm almost 100 percent sure it will. I know people will stand up and say it--

HILGERS: One minute.

McKINNEY: --won't, but you'll have to prove me wrong and it's going to be hard to do, especially with the history of the criminal justice system and its relationship to my community. So I know we'll have a conversation about this for the rest of the day probably, but I would ask you all to open your minds and think about what we're doing today and at least open your hearts and minds. Thank you.

HILGERS: Thank you, Senator McKinney. Senator McDonnell, you're recognized.

McDONNELL: Thank you, Mr. President. I rise in support of LB496 and AM1054. I appreciate the time that Senator Hilkemann has dedicated to working on this legislation and I yield the remainder of my time to Senator Hilkemann. Thank you, Mr. President.

HILGERS: Senator Hilkemann, 4:45.

HILKEMANN: Thank you, Senator McDonnell. I want to thank Senator Lathrop and the committee for the hard work that they did on this bill. We worked to make this bill better, palatable for the entire committee. We had six votes to vote it out of committee. We had two persons present and not voting. It is important that as lawmakers, we try to strike the right balance in our effort to make our state a safer place to live. Changing the process to follow a determination of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

probable cause rather than just following an arrest strikes that balance and I-- that's why I encourage you to support AM1054. I also want to take this opportunity to give an example of how this law has worked in another state and then walk you through the whole CODIS process and how that would deliver a match. First, a warning. The story I'm going to describe may be disturbing to some, however, to understand the true gravity of what it is at stake, I feel it's important to share here. Over a period of 25 years, Chester Turner murdered more than a dozen women in the Los Angeles, California, area. During the time he was committing these heinous crimes, he was arrested 21 times, but never was his DNA allowed to be taken until he was finally convicted of the rape of a woman he left alive. Once this DNA was taken and uploaded to CODIS, it was matched to the unsolved rapes and murders of nine women, two of whom were pregnant. Most of these women would still be alive if his DNA had been taken at the time of his first felony arrest. During the investigation of these cases, detectives reviewed similar solved cases. David Allen Jones had served 11 years wrongfully convicted of three of those murders. He was released with the apologies of the state when Chester Turner's DNA matched those crimes. One cheek swab taken at the time of felony arrest could have saved the lives of 11 women and spared an innocent man from spending over a decade in prison. Now, how does this whole practice work? From the cheek swab, the saliva is analyzed to extract only 20 markers, 20 out of over 3 billion in the DNA strand. These specific markers are noncoding, which means that they contain absolutely no genetic information or other personal identifying characteristics whatsoever. When these 20 markers are entered into CODIS, a randomly generated specimen identification number is assigned. The individual's name does not go into CODIS, only the specimen identification number.

HILGERS: One minute.

HILKEMANN: When a match is made between these 20 markers and the markers from a crime scene, the state that took the sample is notified. The state holds an offline, highly secure computer that gives the name identified by the specimen identification number. That name can only be released to the law enforcement agency that is investigating the matched crime and it can only be investigated as an invest-- as an investigative lead. If there is enough collaborating evidence found to prosecute that person, another DNA sample is taken to verify the first one was correct and it is that sample that is then used as evidence in court. The CODIS database is safe. It is protected by the FBI state-of-the-art encryption and firewall technology. CODIS

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

profiles are not shared with other types of databases and are not part of the criminal history record.

HILGERS: That's time, Senator.

HILKEMANN: They're also-- thank you, Mr. Speaker.

HILGERS: Thank you, Senator Hilkemann and Senator McDonnell. Senator Blood, you're recognized.

BLOOD: Thank you, Mr. Speaker. Fellow senators, friends all, I wanted to say that I stand in support of Senator Hilkemann's bill and the amendment, but I have to say that I do not. I more than likely would have supported Senator Wayne's amendment, but then that would mean I'd have to support the underlying bill and I cannot do that in good faith. With that said, I want to explain why. Senator Hilkemann and almost everybody in this body, with very few exceptions, signed on to LR107, and I listened to the hearing today over my lunch hour. And every single person in there said do not violate my constitutional rights. And I may not be doing it justice because some of them were a lot louder than that, but they were very clear, do not violate my constitutional rights and that's why you have to support this legislative resolution. And so the more I thought about it and the more I looked at this bill, I realized that you indeed were violating their Fourth Amendment right with this bill, the right of the people to be secure in their, their persons, houses, papers, and effects against unreasonable searches. So that's my first problem with this bill. If you claim to want to protect people's constitutional rights, you cannot support this bill. And I'm sorry, Senator Hilkemann, because I think you're a fantastic senator, but this is one time I totally disagree with you. Then for those of you that were worried about property taxes, guess what this is? It's another unfunded mandate that we're handing down to local government and asking them to figure out how to pay for it. And granted, there is that DNA grant money that's available, but that is likely not going to be able to pay for all of this. Here's the issues that I'm having, and I may talk again about this: basic human error. Remember what happened to the ex-CSI chief in Omaha who tampered with evidence? That was not that long ago. He's in prison now. Privacy rights, which I just touched down on, racial disparities, which Senator McKinney touched down on, and linking innocent people to crimes. I hate bad guys, just like you, and bad guys that do bad things belong in prison when they've been prosecuted. Now I remember last year, I think it was Senator Cavanaugh, Machaela Cavanaugh, had a bill in reference to untested rape kits and it probably-- I think it went into Senator Matt Hansen's bill, if I remember correctly-- I could be wrong-- and it was because

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

we had so many untested rape kits. So I remember, too, there was a reporting mechanism. It took me a long time to find Omaha's, by the way, but right now, in the last report, Omaha had over 1,000 untested rape kits. Lincoln had over half of their rape kits also untested. One of the concerns that I have is that how are we expecting these labs to manage the increased influx of samples from a new source of DNA and again, pre-conviction DNA that we think violates the Fourth Amendment? How are they going to handle this extra workload when they can't handle what they have now? A thousand victims, potential victims, have their rape tests that have not been tested, but yet into the mix what we're going to throw it in-- what we're going to throw into this mix are people that we're not sure whether they are guilty or not guilty, but we're going to take their DNA. That's not right. So, you know, I--

HILGERS: One minute.

BLOOD: --again, it's a hypocrisy issue for me. We can't talk about property taxes and give an unfunded mandate. We can't talk about the Constitution, yet ignore people's rights to privacy. And I know we could get into a whole constitutional debate about this with all the lawyers in here and I'm aware of both sides of this issue, but this is where I stand. And is it right of us to continue to put more stress on the labs when they can't handle what they have now? So those are issues I'm going to be talking on. I have a lot of information I want to share with you. I'm sorry, but I cannot support the Judiciary amendment nor the underlying bill. And with that, I'd have to say I also cannot support Senator Wayne's amendment because that would be supporting the bill as a whole. I may go ahead and just vote for his amendment because it's a good effort, but I most definitely won't be able to move it forward beyond that. Thank you, Mr. President.

HILGERS: Thank you, Senator Blood. Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. Speaker. Well, I rise in support of Senator Wayne's amendment, AM1083, but opposed to AM1054 and the underlying bill. So there's a quote that's quite popular in a lot of case law and I couldn't find where it originally came from, but the quote goes, there's always a temptation in criminal cases to let the ends justify the means, but as guardians of the Constitution, we must resist that temptation. So the problem with this bill is it is very much letting the ends justify the means. It is saying-- Senator Hilkemann, I-- and I respect what he's attempting to do here and I respect the objective of this bill and I have talked to him about this bill and I've talked to almost everybody, I think, in here about this bill and my problems with it. This is allowing the ends to justify the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

means. We are trying to-- we're going to undermine people's individual rights to privacy by letting the ends justify the means here because there are a lot of stories of where doing this sort of thing would perhaps end in a conviction or an arrest or a solved crime. But there are countless other people in between that who will be caught up and be-- have their DNA taken, have their, their personal space-- so basically, they will take a swab, as Senator Hilkemann described. I recall a number of people opposed to swabs this last year, but we can't let the ends justify the means. But at this moment, I'd rather talk about-- I want to talk about Senator Wayne's amendment and why it's important. Senator Wayne described kind of the fundamentals of his amendment and what it does, but what-- where we're at in this bill is this is a bill that will tilt the criminal justice system further away from being just. It will unbalance the system in the favor of prosecution, incarceration, conviction. What Senator Wayne's bill-- amendment does is pushes the balance a little bit further back the other way to rebalance it. It makes a correction to a problem that we currently have in our criminal justice system. It will help balance out the net effect of this bill, which is why I'm in favor of Senator Wayne's amendment and like Senator McKinney, that I would-- if we adopt Senator Wayne's amendment to this bill, it makes this bill as a whole better, makes the criminal justice system stronger, and will have the effect of, of helping people have an opportunity to have their-- the facts of their case heard. We all agree that the criminal justice system has its flaws, but it works best when all the evidence is presented to an impartial trier of fact, whether that's a jury or a judge, and they get to decide. And there is a, a anachronism in our criminal procedure that does not allow for some evidence to be presented, as Senator Wayne illustrated-- described, that this bill addresses. So this bill-- his amendment solves, attempts to address one very small portion of the unjust nature of our system and seeks to correct that for a very small group of people who are incarcerated on serious offenses. It is narrowly drawn to affect only those convicted at trial of the most serious offenses who were not able to present all the evidence that is in their case because another individual exercised their constitutional rights--

HILGERS: One minute.

J. CAVANAUGH: --against self-incrimination. And so it's a, it's a simple bill. It solves part of the injustice in our system. It balances out LB496 and AM1054 to a degree that I think will help bring more people to the table to vote for this bill, but without AM1083, I don't see myself-- I'm with Senator Blood on this. I would not support this bill and I will talk about it further later, but I would

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

encourage you to vote for AM1083 because it is a commonsense, logical rebalancing of the justice system back to where it should be, which is to allow people to have their evidence heard before they are sent to prison for the rest of their life. Thank you, Mr. Speaker.

HILGERS: Thank you, Senator Cavanaugh. Senator Wayne, you're recognized.

WAYNE: Thank you, Mr. President and colleagues. I, I'm-- one thing I'm good at on this floor is reading the floor and I know people aren't engaged. People are ready to go get some dinner. People are-- just kind of had a couple long days and they're-- a long night coming and, and not engaged, but I, I want to, I want to mention one thing to you and I hope, hope everybody just takes a pause and, and listens. The most important number this year in this body, the most important number this year in this body is not the \$1.5 billion we're going to give to property tax relief. It's not our annual budget. It's not the, the 471 kids who didn't get scholarships. The most important number this body needs to recognize-- and I'm going to say it every day from here on out-- is 11,348,640. Let me repeat that number: 11,348,640. That's the number of minutes an innocent man has been sitting in our correctional facility; 700-- 7,881 days an innocent man has been sitting in our correctional facility for the issue that we are talking about. So I'm going to give you a fact pattern if people don't understand how this works. Three people were arrested. One person actually did the crime. The first person had a trial. In that trial, he was found guilty. He was found guilty because the person who actually committed the crime had a trial after him. At his trial, he got up and testified that not only was the first person that was convicted not there, but him and somebody else who was already arrested-- getting ready to await the third trial-- were the actual ones there. At trial, he testified that it was self-defense and a jury, a jury not of his peers-- a all-white jury-- found him innocent in self-defense. This-- the third trial occurs. This individual testifies again at the third trial, says the same story. The third person was innocent, found innocent, not guilty because the person who actually did the crime, alleged crime, was found innocent in self-defense. Only because the second individual exercised their constitutional right not to testify in the first trial, we have somebody sitting in our correctional facility for a crime they did not commit, for a crime that two separate jurors-- two separate juries found to believe it was self-defense. Think about that. Juries of your peers in two separate times listened to an individual testify, who was cross-examined twice by the county attorneys, and they were found not guilty, that it was a clear case of self-defense. So all the people

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

who are avid gun-right owners, think about that, that by the luck of the draw-- or in this case, the bad luck of the draw-- one of the co-conspirators, the accessories to this crime went first and the person who allegedly did it couldn't testify or would not testify and no attorney would allow--

HILGERS: One minute.

WAYNE: --him to testify if they have any type of competency because you don't want prosecutors to have a free bite at the apple. You wait for his own trial, which occurred. So the most important number we're dealing with in this body is 11,348,640 minutes that a person who is innocent is sitting behind bars. And this doesn't give him a free walk, this allows a judge to look at all the evidence and make a determination and that judge still may say no to a new trial. It's an opportunity for him to finally get his constitutional due process rights in the court system that wrongfully convicted him. So this is very similar to DNA. This is an opportunity for somebody to prove themselves, which shouldn't be their burden, but to prove themselves innocent.

HILGERS: That's time, Senator. Thank you, Senator Wayne. Senator Wishart, you are recognized.

WISHART: Thank you, Mr. President. I rise in support of AM1083 and I will be supporting the underlying bill. On General File, I gave Senator Hilkemann my word on that and will stay true to it, but I will listen to the debate today on LB496 and, and make a decision after General File on where I'll stand on this legislation. But getting back to AM1083, you know, we have been talking a lot about Corrections reform, prison overcrowding, and one thing we should make sure of when we're trying to address this issue that's been plaguing our state for many years-- as long as I've been here-- is that we should not have innocent people within our Corrections system spending their life behind bars. That's why I support Senator Dorn's bill about Gage County. I feel a sense of obligation as a state for us to ensure that the people who were wrongfully convicted in that instance are paid the dollars that they deserve. There's no amount of money that can pay for the life that they lost behind bars, but it's the least we can do as a state to make sure that county can pay restitution. And in this case, there is a person behind this bill, behind AM1083, a person who deserves us as a body today to acknowledge the suffering that he's been through and right a wrong. And so I really hope that everybody here today will be voting in favor of this amendment. When we're talking about DNA, we're-- there's also a side to helping people who are innocent get out of our Corrections system who are wrongfully

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

convicted. So this amendment is a good balance to the underlying bill. It makes it better in my mind. With that, I'll yield my time to Senator Wayne.

HILGERS: Senator Wayne, 2:45.

WAYNE: Thank you, Mr. President. Thank you, Senator Wishart. Again, I can keep going on and on on why this should happen, but what, what it really comes down to is-- I'm going to give you a little more facts about this particular individual. He was 17 years old when he was sentenced to life. The Supreme Court said you can't sentence a juvenile to life. He was resentenced in 2016-- '15-- '16 and at the resentencing, he was sentenced to another 60 to 80 years. And at the time, it was because the judge cannot take into account any of this new evidence. And maybe that doesn't mean a lot to a lot of people and again, I know-- I'm looking at this room and I know we want to vote and we want to get out of here and just move on, but I can't think of a greater injustice that we as a body can fix today. And again, this is not about reducing somebody's sentence. This is about giving a judge the ability to look at all the facts of a case. I would hope that all of us wouldn't want that to be able to happen if we know one of our loved ones may be charged with the crime. We want to look at--

HILGERS: One minute.

WAYNE: --everything that we can look at to make sure we're making the best decisions as a judge or as a jury when whether to convict or not convict. And this case isn't, isn't what this whole amendment is about, but it is a byproduct of what can happen if the system isn't allowed to correct itself. What the Supreme Court of Nebraska said in this case was we know you have no opportunity to actually bring this evidence into court. We know you can't do anything about it, but you knew about it at the time and under the statutes, there's no way for you to bring it in, so therefore, you don't get a right to a new trial. You don't even get to ask for a new trial. The Supreme Court acknowledged that and it's all statute driven.

HILGERS: That's time, Senator.

WAYNE: Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne and Senator Wishart. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. Speaker. You know, this bill is on the floor out of kindness and I'm one of the people in this body that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

really tries to promote being kinder and gentler to one another. Senator McKinney and I were present not voting in the committee and that's out of kindness. We didn't want to just slam Senator Hilkemann's bill because we really adore Senator Hilkemann. But this bill is problematic. And when we, when we hear the case about oh, well, we, we want to make sure that, that somebody who-- whose DNA is collected might be-- might have committed some other crime and we can catch them for that, that sounds great, doesn't it? It all sounds great, but then you go back to the fact that our system, our justice system is built on the ideal that people are innocent until proven guilty, innocent until proven guilty. This bill is a, is a, is a perversion of the ideal that we are innocent until proven guilty. People-- even if a person is arrested or charged with a crime, they are still entitled to due process. We're all entitled to due process and we all can have our day in court, but gathering this DNA because a prosecutor has decided to charge someone with something, our, our system doesn't work that way. Right now, people can collect DNA evidence if somebody has been found guilty and sentenced. So what, what's going to happen with this bill? All sorts of innocent people and guilty people are going to be in a pool of DNA just out for the world to see. This is way more than a fingerprint. DNA is, is, is what makes us. It's the stuff from which we can be made. We know that. DNA is necessary for cloning. I don't want my DNA out in somebody's place just because somebody decides to charge me with something. Judges could also order that DNA be taken from, from someone if there's probable cause to believe that they have committed a crime, not just because they've been arrested. And remember all the discussions that we've had on rape kits and how there's a backlog on rape kits and how there's all this-- you know, we've got to spend more money to get the rape kits tested and, and, and to make sure it happens at a quicker speed? Well, can you imagine-- there are about 5,000 DNA tests taken now. Imagine how many tests we're going to have just sitting out there because we don't have the money or the people power to test more quickly and get everything decided and then throw out the ones that we, I guess, don't need anymore. And who's going to oversee that those are, those are-- that those tests that are, are not-- do not find somebody guilty, that they, that they have been destroyed? And how do you do it? It doesn't say so. It's, it-- what's the process to get rid of it? Are you supposed to write a letter to the State Patrol? Do you send it to the director? Does the county attorney get a copy of the letter? Who is in control of, of getting rid of that DNA that is out there? I don't want my DNA-- I'm purposely not taking a, an-- a D-- what is that? DNA and me? Something-- those tests. I don't want to know that stuff because I don't want some private company to have all of my information.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILGERS: One minute.

PANSING BROOKS: I am highly concerned about-- and I, and I adore and I understand the good heart for which Senator Hilkemann is bringing this, but this is a very scary bill for our future. If you all believe that the government should stay out of our lives and not have total control and power over us, then make sure you aren't accidentally arrested. The one thing-- the best thing I learned in law school, don't be at the wrong place at the wrong time. And what Senator Wayne talked about, Earnest Jackson, we should all memorize and know that name. Earnest Jackson is sitting behind bars, an innocent man because of the travesty of some of our laws like this. Senator Wayne's bill must be amended for this to even go forward. I also have an amendment that makes sure that children, yes, children are not going to be given a DNA test.

HILGERS: Time, Senator.

PANSING BROOKS: Thank you.

HILGERS: Thank you, Senator Pansing Brooks. Senator Geist, you're recognized.

GEIST: Thank you, Mr. President, and I'm actually opposed to AM1083. I just have some concerns with the amendment. It allows for new evidence that's discovered at any time to allow for a new trial on convictions in Class I, IA, and IB felonies. I voted no on this bill in committee and didn't want this bill to come out of committee. And it's not because I don't have an empathetic bone in my body or I don't care about what's going on with Earnest Jackson, but when we make law, there's a reason that we are where we are and making an exception because of an individual, which I understand is-- this is an indelicate situation, but there's precedence for where we are. And in some of the testimony that was given in front of the Judiciary, it was said that, that changing this, this ruling and the-- that what the judge could, could take under advisement would encourage perjury. It, it could encourage perjury to allow a new trial once codefendants have determined that testifying is no longer harmful to themselves. They may say whatever they think might help their codefendant, even to the point of pinning all the guilt on themselves, knowing they're safe from a retrial and then such testimony would be untrustworthy and should not be encouraged. And that's just a quote of, of what was told to us in the, in the hearing and it just-- I think we need to be careful changing the existing law from where we are today. I just have red flags, hesitation about that. I don't in any way question or-- no, I don't want to say it that way. I'm going to say I don't condone that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Mr. Jackson is in, in prison at this time, but I don't think that this is the way to handle that situation. Thank you, Mr. President.

HILGERS: Thank you, Senator Geist. Senator McCollister, you are recognized.

McCOLLISTER: Thank you, Mr. President. Good afternoon again, colleagues. I was with Senator Hilkemann when we heard the presentation by the mother of a girl that was murdered, and her testimony was very compelling and testified that lives would have been saved if there had been some kind of DNA processing of this individual that, that murdered her daughter. So, you know, I'm in favor of the underlying basis for this bill, based on that testimony. I am sympathetic to the argument that Senator John Cavanaugh made. I would ask him to yield to a few questions. Oops, not here.

HILGERS: Senator John--

McCOLLISTER: Oh.

HILGERS: --Cavanaugh, will you yield?

J. CAVANAUGH: Yes.

McCOLLISTER: Thank you, Senator Cavanaugh. You mentioned that you're supporting AM1083 and with that amendment, you're supporting the bill. Is that correct?

J. CAVANAUGH: Well, I, I said if we adopt AM1083, that I think that it sufficiently balances out what I consider the injustice that is perpetrated by the underlying bill with putting a more just justice system, more just court system in place so that I would be able to support it because it would, on balance, be a more just system. So yes--

McCOLLISTER: OK.

J. CAVANAUGH: --if we adopt AM1083, I would, I would vote to advance the bill.

McCOLLISTER: And then, of course, you agree that the committee amendment, AM1054, goes a long way in protecting the rights of, of innocent people. Would you agree?

J. CAVANAUGH: You mean further than LB496?

McCOLLISTER: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

J. CAVANAUGH: It goes further than LB496, but I would not describe it as going a long way to defend the rights of innocent people, no.

McCOLLISTER: What other guarantees or protections would you like to see included?

J. CAVANAUGH: Well, in-- other changes I'd like to see the bill-- I mean, that's a really long conversation, but I think that raising-- well, the-- if we are going to go this way, I don't think we should be collecting evidence from people who are not convicted. We have a structure in place already where if you are convicted of a felony, we do collect your DNA and that is the example that-- Senator Hilkemann handed out a, a news article about just exactly when that system worked, functioned as it's designed to function--

McCOLLISTER: Thank you, Senator.

J. CAVANAUGH: --so, yeah.

McCOLLISTER: One last thing I'd like to mention before I close, I introduced a bill, LB269, and that would obligate the, the Parole system to publish a list of those folks convicted who have been in the prison system for 30 years, age 60 years or above, who are convicted of nonviolent crimes and who-- another list of those people that have medical conditions that would warrant their release. We talk about overcrowding in our prison system and we have a good number of people in our prison system that no longer constitute a risk, a risk; 60--year-old people, maybe for a crime they did 40 or 50 years ago and they're still in prison. It makes no sense. Those people that are-- lives are starting to close out because of a medical condition, they are not a risk either. We ought to let them out and reduce some of the overcrowding we have in our prison. So I'd encourage at some point that this bill be moved out of the Judiciary Committee and come to the floor because I think the bill is compelling. Thank you, Mr. President.

HILGERS: Thank you, Senator McCollister. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President, colleagues. I want to talk about both the bill and the amendment, starting with Senator Hilkemann's bill, and you've heard some folks stand up and talk about constitutional rights and the, the fact that somehow this might be offending the Constitution. I just want to be clear about something. This same process was passed upon by the United States Supreme Court. They did it in an Opinion that's entitled Maryland v. King, decided by

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

the Supreme Court in 2013. So to be perfectly clear, the Supreme Court determined that, yes, this, this implicates one's freedom, right to be free of an unreasonable search and seizure, but under the circumstances, it's lawful and constitutional. So the second thing I want to talk about is Senator Wayne's amendment and I am supporting Senator Wayne's amendment. It, it is a bill that I supported as it came out of committee. What Senator Wayne's amendment does is amend our new trial statute. So if you are-- if you've been convicted, you can petition the court under certain circumstances for a new trial. You can say there was prosecutorial misconduct or juror misconduct or one thing or another, but the circumstances that Senator Wayne has described don't fit within our new trial statute. And this amendment would allow for a very, very narrow, almost very unique circumstance where, as Senator Wayne has described, an accomplice goes to trial before a shooter. He wants to call the shooter at trial to be a witness and he can't call him because the shooter has taken his Fifth Amendment privilege and exercised it. And so the accomplice, who is convicted of the very thing the shooter is charged with, gets convicted and when the shooter goes to trial, they're acquitted. So it seems-- it, it boggles the mind to imagine that someone would be convicted of being an accomplice to a murder when the shooter is acquitted. But there isn't any way for that first person, the accomplice, to come into court and say, hang on a minute, let's call the shooter, take some testimony, and decide whether I'm entitled to a new trial. By the way, this doesn't get this person out of prison. It gets them a motion for a new trial and they can come before the court and say judge, these are the circumstances. If I could have called the shooter, I would have, but he took the Fifth and by the way, a jury acquitted him. This really does smack to me of an injustice-- someone who is currently incarcerated in our, in our system for a crime as an accomplice that the shooter was acquitted on. So I think it is , it is a consequential bill. It's the reason we put it out of the committee. I would encourage your support of AM1083. I will offer one more thing because I've had a number of people ask me this. Is this a poison pill that Senator Wayne is putting on the bill to try to kill it? No, it's not. We're at that time of the year-- we're on day 73. People have exhausted the priorities and now they're looking for an opportunity to amend their bills on bills that are germane and potentially moving towards passage.

HILGERS: One minute.

LATHROP: --perfectly acceptable process for Senator Wayne to undertake and I think his amendment requires our, our careful and serious consideration. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILGERS: Thank you, Senator Lathrop. Senator Flood, you're recognized.

FLOOD: Thank you, Mr. President. Good evening, members. I was really made aware of this this morning at about 10 a.m. and was-- you know, Senator-- a couple of senators shared that this was coming. I'll start as it relates to LB496. I support the underlying bill as it relates to the collection of DNA evidence. I remember thinking about all this probably five or six years ago and then my 12-year-old at the time decided he wanted to know his heritage and the, the cat's out of the bag. He did 21 and Me with the help of his mother and so they already know about our Irish heritage at that company. But I think this is akin to the fingerprint evidence of the 1930s that J. Edgar Hoover started with in the crime lab at the federal level. This is the new, this is the new fingerprint and it's going to solve crimes and it's going to hold people accountable and I think-- I, I do support the measured action that has come out of the Judiciary Committee. What I really want to speak to is LB-- AM1083 because, as Senator Wayne and Senator McKinney have pointed out, it is mind-numbing when you think about someone going to prison and their codefendants-- and in this case, there were three of them-- the second one is acquitted and there's this issue of him not being able to testify at the trial of Mr. Jackson. And I, I have spent some time looking into it. I read the 2002 case, the direct appeal, and then the 2017 case, following the resentencing under Miller v. Alabama and I, I would offer a couple of thoughts. If the executive branch is listening, the Legislature wrestling with a topic like this in the environment we're in, this is a very difficult question. And it's, it's a question that makes me wonder are we doing the right thing? And I went back and I looked at the 2002 direct appeal and the Supreme Court at that time hadn't seen a case like this and they essentially said it was a, a case of first impression. And the court even acknowledged in its Opinion back in 2002 that this is a novel question. And as Senator Geist stated, their response is that if we were to, if we were to allow a retrial on this matter, it would encourage, quote, perjury to allow a new trial. Once codefendants have determined that testifying is no longer harmful to themselves, they may say whatever they think might help their codefendant, even to the point of pinning all the guilt on themselves, knowing that they are safe from retrial. Such testimony would be untrustworthy and should not be encouraged. But as Senator Geist also pointed out, this is a really difficult set of facts and as I look at the question of not available testimony versus newly discovered testimony, what I find the most troubling here is that the district court in Douglas County, following the U.S. Supreme Court in Miller v. Alabama that said hey, if you get life without parole or, you know, you get a life sentence as a 17-year-old, that needs to be reviewed by

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

a court. And in this case, you've got the issue where you've got two defendants, two codefendants that didn't do time, one obviously acquitted, and you've got a defendant here, Earnest Jackson, that was convicted of first-degree murder, but not with use of a weapon to commit a felony. Now the jury specifically considered whether he used a weapon to commit the felony and that speaks to the fact that there was a question as to whether or not he was the shooter. Now you can't be convicted of first-degree murder without using a weapon if you're involved in a murder, but in this case, the jury specifically found that he, he wasn't using a weapon. The second thing--

HILGERS: One minute.

FLOOD: --that is interesting to me is at the time this case was called up, it was by docket number and not by the alleged shooter first. And so here's my pitch. Like, at the end of the day, if the executive branch is listening, we could be on a path to change the law. The Board of Pardons needs to look at this guy's case. There is a constitutional remedy for things like this and the Board of Pardons should take Mr. Jackson's case and they should sort through these facts because if, if things like this go unchecked by this-- by the branch of government that's responsible for, for remedying harms like this, we have no choice in the Legislature but to act to prevent what is perceived as quite an, an injustice on some level. For me, the injustice was when the district court of Douglas County got this case back, they hammered him with 60 to 80 years with all these other factors. Now, that was a subjective choice by a district court judge in Douglas County, but 60 to 80 years when the other--

HILGERS: Time, Senator.

FLOOD: --two defendants didn't do time-- thank you.

HILGERS: Thank you, Senator Flood. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. Speaker. Good evening, Nebraskans. Good evening, colleagues. Count me among the senators who respect and adore Senator Hilkemann, and I respect his thought process and his intentions behind introducing LB496, but unfortunately, this bill is not one that I can support. I'm sympathetic to the person who this bill was inspired by, whose story Senator Hilkemann and Senator McCollister heard at a legislative conference. I don't know if it was CSG or NCSL, but one of the conferences where-- we go to where we get ideas for bills and we network with other lawmakers around the country. And those are places where we find a lot of ideas for bills, and this is one of them. I also applaud and respect the intention of the people who think that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

passing LB496 is going to do something to help women, but frankly, that view is patronizing and the view of many-- frequently older, always white, you know, frequently very conservative men in this body who want to help women by doing things that women specifically aren't asking them to do for us is a pattern that I see repeated, unfortunately, in LB496. What women want to be protected is for things like rape kits to be tested. According to the Omaha World-Herald, in Omaha alone, there are hundreds of backlogged, untested rape kits and I don't even-- I don't know statewide. I don't even think we have a database of them in-- oh, Senator Blood says we do have a database, so-- with the fiscal note on LB496 of \$829,692 for the next fiscal year, I would ask how many rape kits could that much money go toward testing? Another thing women want is access to emergency contraception when they do survive an assault and I have a bill to do that that is in the Health and Human Services Committee. And these are bills-- there are bills that we've introduced that can do more for victims, more for survivors of any kind of violence without targeting innocent people that matter greatly to Nebraskans explicitly. Next, I would push back gently against what Senator Lathrop said, that the Maryland case said that a law like this was legitimate and not a government overreach in terms of search and seizure. The Supreme Court heard a Maryland law similar to this and said it was legitimate, but it was a different bill from this because the Maryland law requires that the sample can't be uploaded into a database until a judicial officer determines there was probable cause for arrest. We don't have that in LB496. Another difference is in Maryland for expungement, the law provides for the automatic destruction of the sample if the charges that are brought don't lead to a conviction. LB496 does not have that. In Section 6 of the bill, it reads, "A person whose DNA record has been included in the State DNA Data Base pursuant to the DNA Identification Information Act, request expungement on the grounds that." And then the new matter is the charge on which the authority for including such person's DNA record was based has been dismissed. So that's meant to, to help people who are found innocent or who, who don't have charges brought against them to expunge their record. But honestly, what that really is, is a chore for innocent people. So it's apples and oranges. We can't say that the decision on the Maryland law would go the same way for our law. It's not the same kind of law. Colleagues, to gather DNA before a conviction is circumventing the judicial process. We might think that we are saying with this bill we're just collecting evidence and information to help solve and prevent future crime.

HILGERS: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HUNT: I think it's offensive to call this a prevention bill because what we're actually doing is relying on officers in the field in a very tense and scary time to make a snap decision that can easily brand a person as guilty forever, whether or not they were rightly arrested and convicted. I have a few more things to say on this amendment. This amendment speaks to an issue that's very important to my constituents. I've been contacted by dozens and dozens of people over the summer, in the interim. One guy even came to my office and he asked if he could do a Facebook Live with me to talk about this issue and I did. So I know this is a real problem that Senator Wayne is seeking to solve. A pardon is not the solution. Pardons require an admission of guilt. We don't pardon innocent people. What we need to do is pass this law so that a problem like what has happened in Nebraska does not happen again for any other accused person and it's a good amendment to this bill. And I'll share more of my thoughts on that on my next time on the mike. Thank you, Mr. President.

HILGERS: Thank you, Senator Hunt. Senator Hilkemann, you're recognized.

HILKEMANN: Thank you, Mr. Speaker. I want to tell you just a little bit about myself. There are times I wish I were an attorney so I could understand some of these legal issues, but I spent 40 years helping people as a podiatrist and I'm proud of the career that I had. When I came to this body, three issues were very important to me: public safety, public health, and that we live in a safer Nebraska. I have brought bills many times for eliminating texting, primary offense for seat belts, none of that ever gets done-- seat belts on our school buses, none of that's been happening. I look at this LB496 as making Nebraska a safer state. I am also-- I am very compassionate about the case with Earnest Jackson. I am compassionate about all people who are in-- that are falsely accused or imprisoned. We need to deal with this. This is one way that we can help in that situation is by collecting the DNA at the time of arrest. I can tell you yesterday, AM1083 was brought to me and I was-- said if you, if you-- that they-- if you will support this coming onto this bill, we will-- we won't, we won't do a filibuster on this bill. I talked to the Attorney General's Office and I talked to the county attorneys. If AM1083 is added to my bill, it is a poison pill. It will kill this bill. I ask you, members of the body-- I thank Senator Flood for eloquently saying what he said. I thank you for the kind words, Senator Pansing Brooks and Senator Hunt. But folks, I'm very passionate about this. We will save people's lives. We will save people from being falsely convicted. We will save people who have been convicted and can now be exonerated. Let's move Nebraska to, to the new-- we talk about the new science,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

the new technology. DNA is the new science. The fingerprints we've been doing for years. We take a photo. We have innocent people's paper-- picture appears on the same story and we say nothing about it. Believe me, if I were an innocent person, I'd rather they had my DNA than pasted my picture on the front of the Omaha World-Herald or the Lincoln journal or any publication. I would ask this body--

HILGERS: One minute.

HILKEMANN: --to vote against AM1083, please. Does not mean I do not have compassion for this individual, but if we do that, this was-- if we allow this, according to the persons that I have gotten some counseling from, this is going to create uncertainty for victims in settled cases. This is a poison pill to my bill and I ask you to vote against AM1083. Thank you, Mr. Speaker.

HILGERS: Thank you, Senator Hilkemann. Senator Flood, you're recognized.

FLOOD: Mr. President, I'll give my time to Senator Wayne.

HILGERS: Senator Wayne, 4:50.

WAYNE: Thank you, Mr. President. Thank you, everyone, for getting out of the queue. I would like to get a vote on this and I, and I just want to, want to mention a couple of things. First, to Senator Geist and those who think that somehow by doing this, we're going to open up a new level of perjury, news flash, if there are three conspirators, that perjury chance already exists. If somebody goes first and gets acquitted, they can later come back and say I'm the one who did it. That exists today. Mine doesn't-- this amendment doesn't encourage it, doesn't do-- the same risk exists today. To the next point about making their job easier as prosecutors-- because that's what we're talking about really when we talk about perjury because at the end of the day, if somebody gets up and lies on the-- under oath, that is a crime. You can charge them with perjury, but this isn't about making it easy. It's never been about making prosecutorial lives easy. It's about protecting the individual and that is what's fundamental to our Constitution. This is not some crazy idea or a, a poison pill. It's just not. What I actually am trying to do with this amendment is save your bill because there-- you don't have enough to get through eight hours of debate. I'm trying to bring opposite sides together and say is this issue big enough to where we can accept this bill? That's what this is about as far as why I did this on this, on this bill. I believe in it, but at the end of the day, why is it that the AG or county attorneys can dictate what we do in this body? And what was so

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

interesting is many of the people who are believing the AG and the county attorneys today are the same ones yesterday arguing about the educational establishment, that they shouldn't be in here running this body, that senators should make the decisions. But what I'm hearing from the people who are opposed to this is the AG and county attorneys, so what's the difference? Let's be a little consistent today. If we want senators to decide our TEEOSA problem, then let senators decide what should be the best way forward on motion for new trials. And to the idea that the Supreme Court has ruled on this, we pass statutes every day in this body to correct a ruling of a Supreme Court or something that we do new. Every year, this body has passed something to correct an injustice that we perceived happened in the courts. That's pretty much fundamental to what the Judiciary Committee does, is they try to approve statutes that either have misread or they believe was an unjust outcome or how to make the court systems better. And this isn't about one individual. We can talk about that individual all the time, but what it's really about is that individual was-- and what happened in his case is a byproduct of a flawed process, a process that we need to protect our rights. When people drafted our Constitution and these amendments, they weren't thinking about, at the end of the day, we got to be tough on crime because we got a campaign going. No, they're thinking about what is right for the individual to make sure the government does not intrude, does not invade--

HILGERS: One minute.

WAYNE: --our lives, make sure that people who are convicted are convicted by their peers with all the evidence that needs to be in front of them, to make sure that the individual, the individual can have their day in court before they're locked up. And how is a person getting their day in court if some of the most important evidence never got to the jury? The most important evidence never got to the jury because they exercised their constitutional right. They didn't lie and deceive. They exercised their constitutional right, something that we all believe in and took an oath that we're going to uphold, that we all say is fundamental to who we are as individuals. So we are going to penalize somebody--

HILGERS: That's time, Senator.

WAYNE: Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne and Senator Flood. Senator Lathrop, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

LATHROP: Thank you and I may be repeating some of what Senator Wayne said, but I feel like I want to respond to Senator Hilkemann. Senator Hilkemann, this is not-- does not-- adopting this amendment doesn't have to mean that your bill is dead. It only means your bill is dead if we roll over and allow the county attorneys to say kill it. There is no reason both of these can't advance to Select File together, none. Senator Wayne has brought this bill to the Judiciary Committee and it came out of the Judiciary Committee, and so did LB496, but you should understand if Wayne's amendment gets adopted, that doesn't mean that your bill is dead. It's only dead if we, if we concede and turn over to the lobby the decision on whether to advance the bill. I, I think Senator Wayne made a good point, which is we stand in here and we say we need to bring it inside the glass. We need to make these decisions. And I have to tell you, as the Chair of Judiciary Committee, I've been on that committee for 11 years and for every bill, every bill that doesn't increase the penalty, they come in and say it's the end of the world if you do this. You are opening the floodgates. Crime will run rampant. That's what they say to us on every bill unless we're increasing a penalty. This is a common refrain and, at some point, I have to say-- it's like the, it's like the boy that cried wolf. Everything is the end of the world. This one isn't, this one isn't and there is no reason adopting this amendment should affect the progress of LB496 to Final Reading. Senator Flood made this point, which is this guy could have gotten a pardon. The Pardon Board meets. We had to have Senator McCollister move them along to get them to meet regularly and actually do what they're constitutionally required to do. I don't know that they've commuted a sentence since I've been a senator or pardoned anyone. We can't, we can't just say we're going to turn the other way. And, and finally, and maybe most importantly, this does not exonerate someone. This allows them to file a motion. They file a motion, they go in front of the district court, they still have plenty of hurdles to clear before this person will ever see freedom. Senator Hilkemann, I'm with you on LB496. I'll be with you on LB496. I'll stand up with you on LB496, but I am, I am going to vote for LB1083 and it does not have to be the end of your bill. Thank you.

HILGERS: Thank you, Senator Lathrop. Seeing no one else in the queue, Senator Wayne, you're recognized to close.

WAYNE: Call of the house.

HILGERS: There's been a request to place the house under call. The question is shall the house go under call? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

CLERK: 21 ayes, 1 nay to place the house under call.

HILGERS: The house is under call. All unexcused senators, please return to the floor. All unauthorized personnel, please leave the floor. The house is under call.

WAYNE: Thank you, Mr. President and colleagues. AM1083 allows an individual to file a motion for a new trial when evidence that was constitutionally barred from being present at trial becomes available. This only allows a motion for a new trial. It still goes before a judge and that judge could still determine that a motion for a new trial should not be granted. William Blackstone in 1760 said it's better to have ten guilty men go free than to convict a single innocent person. That is the core elements of our criminal justice system. That is the core foundation to our America that we know best. This does not change our core system. Rather, it just ensures that we are protecting the innocent and, and preserving our overall justice. Again, this bill is a simple bill. It says that if evidence that was constitutionally barred from being presented at trial and becomes available after that trial, you have the right to file a new-- for a motion for a new trial and you may get denied. You may have it granted and have your day in court. At the end of the day, colleagues, sometimes our courts get it right, sometimes our courts get it wrong. Sometimes this country gets it right, sometimes this country gets it wrong. We have to look no further than DNA. We have to look no further than the separate, but equal doctrine. We have to look no further than juveniles being sentenced to life in prison. As lawmakers today on this vote, we have a chance to get it right. This is a fundamental principle in our Constitution and this goes to the core of our justice system. AM1083 does not encourage perjury, does not change the risk that is already there, and it's not a poison pill to this bill. It simply allows an individual to file a motion for a new trial when there is new evidence that cannot be presented at trial becomes available after trial. I would encourage you to vote green on AM1083, and with that, Mr. President, I'll ask for a roll call vote in reverse order.

HILGERS: Thank you, Senator Wayne. A roll call vote in reverse order has been requested. The question-- has been requested. The question before the body is the adoption of AM1083. Mr. Clerk, please call the roll.

CLERK: Was that reversed, Senator? All right, thank you. Senator Wishart, voting yes. Senator Williams, not voting. Senator Wayne, voting yes. Senator Walz, voting yes. Senator Vargas, voting yes. Senator Stinner, not voting. Senator Slama. Senator Sanders, voting

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

no. Senator Pansing Brooks, voting yes. Senator Pahls, voting yes. Senator Murman, voting no. Senator Moser, voting no. Senator Morfeld, voting yes. Senator McKinney, voting yes. Senator McDonnell. Senator McCollister, voting yes. Senator Lowe, voting no. Senator Linehan, voting yes. Senator Lindstrom, not voting. Senator Lathrop, voting yes. Senator Kolterman, voting yes. Senator Hunt, voting yes. Senator Hughes. Senator Hilkemann, not voting. Senator Hilgers, not voting. Senator Matt Hansen, voting yes. Senator Ben Hansen. Senator Halloran. Senator Groene. Senator Gragert, not voting. Senator Geist, voting no. Senator Friesen. Senator Flood, voting no. Senator Erdman. Senator Dorn, voting yes. Senator DeBoer, voting yes. Senator Day, voting yes. Senator Clements, voting no. Senator Machaela Cavanaugh, voting yes. Senator John Cavanaugh, voting yes. Senator Briese, not voting. Senator Brewer, voting yes. Senator Brandt, voting yes. Senator Bostelman, voting no. Senator Bostar, voting yes. Senator Blood, voting yes. Senator Arch, not voting. Senator Albrecht, voting no. Senator Aguilar, voting yes. 24 ayes, 9 nays, Mr. President, on the amendment.

HILGERS: The amendment is not adopted. I raise the call. Colleagues, we're going to stand at ease. We will, we will come back and return to debate on LB496. We will stand at ease for 30 minutes.

[EASE]

HILGERS: OK, we'll move to the next amendment.

CLERK: Mr. President, Senator John Cavanaugh would move to amend, AM1274.

HILGERS: Senator John Cavanaugh, you're recognized to open.

J. CAVANAUGH: Thank you, Mr. Speaker. So AM1274 is partially a technical amendment and partially a substantive amendment. So how much time do I have? I'm sorry. Is this is a 10-minute?

HILGERS: Ten minutes.

J. CAVANAUGH: OK. So what AM1274 does is makes one small fix to the large number of problems that I have with this bill, which is that this bill has a section that says the DNA will not be collected until after a probable cause hearing has been held. And so in my experience, there are two times in which a person in a felony case has a determination of probable cause. There's a determination when they are detained initially and they go before a judge and have their bond hearing set and the judge finds probable cause for detention. And that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

is clearly not, I think, the intent of this bill and it is-- would be a much too early on point at which to attach this piece of legislation. So what this amendment does is clearly defines the probable cause hearing as that second hearing, which is what we call a preliminary hearing, where there is at least some evidence adduced and an opportunity for cross-examination. And the judge at that time finds probable cause to bind the case over to district court. And so this is-- that's a pretty, I think, a small technical change, clarifying, making sure we know which point we mean when we talk about probable cause. And I don't believe Senator Hilkemann has an objection to this bill or this amendment. The other portion of this amendment is a bill that I had that was reported out of Judiciary, I believe, 8-0. And that bill is a, more or less a technical bill, but it is essentially putting into statute the court rules that are currently in place where if someone appeals a conviction from the state, the Supreme Court of the state of Nebraska to the U.S. Supreme Court, their opportunity to appeal on ineffective assistance of counsel is effectively tolled, meaning they don't have to exercise that right for a year. And that is by court rule, but is not by statute. And so under this amendment and this, that which adopts my bill, would put into statute that if you have a case that you've taken to the Nebraska Supreme Court and are currently awaiting a judgment from the U.S. Supreme Court that your right to appeal is tolled until-- for ineffective assistance of counsel is tolled until the conclusion of the Supreme Court case. So you get a year from that date. This just codifies or puts in the statute the current court rules, clarifies it in a way that makes it-- there's a notice requirement that the county attorneys requested to ensure that they are notified that the-- that-- that that appeal is pending the U.S. Supreme Court. So they are aware of the tolling. There was no objection from the county attorneys on this bill. This bill would address basically those limited circumstances where someone has gone through all of their appeals all the way to the Supreme Court and may file an appeal on the basis of ineffective assistance of counsel after that. So that's what this amendment does. And so I would urge your green vote on AM1274. But as to the underlying bill and where we're at, at this point, even if we adopt AM1274 and I told Senator Hilkemann this, I think we should adopt AM1274 because it makes this bill better. It makes the laws of the state of Nebraska better. But without the bill, the amendment we just voted on, Senator Wayne's amendment, I don't think I can support this bill going forward. There a lot-- I think we're looking at a lot more changes we need to make to AM1054 and LB496 going forward before it goes into law. And if it's going to go into effect, I will be working to make sure it's the best law that we possibly can. But I do not think that the state of Nebraska should pursue this route of collecting DNA from

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

individuals before their conviction. We have a system in place. Senator Hilkemann actually handed out some articles here that describe when the current system has been used and works as it is designed to work, and where we've collected DNA from persons who are convicted, we have run it through the system and we have found the-- the other cases that they were implicated in. Those are after instances of conviction. And in one of those cases, we had this DNA for close to a decade before we even ran it against the list. I know some other people are probably going to talk about this issue, but we have collected a whole bunch of DNA, either in pending cases in-- as a result of convictions that we have not tested. So one of the issues attempting to be addressed by Senator Hilkemann's bill is expediency. And just to say that we want a more expedient process does not actually create that expedient process. What we're doing is we are-- we are forfeiting constitutional rights and constitutional protections in the interest of convenience and expediency where it's not going to yield much of a benefit because of the fact that we are so far behind on other cases. One-- the second article I believe it is that Senator Hilkemann handed out is about a homicide from 1983 and an individual who was convicted in 2007, I think, and released from the penitentiary in 2018. So that is somebody who's been in the system for a decade before they made that connection. And so this is not a question of whether or not we're going to find that right at that point in time, unless are we going to take a bunch of people who have not been convicted, swab them, put their DNA ahead of other DNA that we have in the system of previously convicted people of rape kits, of other offenses, just because we-- we want to find out if not-- of people who are not yet convicted are implicated in crimes? That doesn't make sense either. We have people who have been convicted who we are taking their DNA. We already have that system. So that's one problem that I have fundamentally with this bill. We also have a system where we collect DNA through search warrants. And we collect-- we-- we go through due process, which some people are probably familiar with, where we have a-- a system where we identify reasons why we would want someone's DNA. We make an argument. We-- we go to a judge and we say to that impartial magistrate why we think it's important to-- to impede on that individual's privacy rights to collect that DNA. And in this case, my understanding of this collection method is nonevidentiary, which means even if you collect someone's DNA in this situation and you find that they are a potential match for an unsolved case, that you will still have to go, then go get a warrant to come and take-- take their DNA again and test it against the known sample that you have at that point. So it-- it isn't an evidentiary. It isn't going to be admissible in courts. It is something that is just to put people on a list and probably spend a lot more time talking about this, because as I've said and a number of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

other people have said, they do not like this bill. But I just want to be clear that I brought AM1274, and I told Senator Hilkemann this originally, that I think we should adopt AM1274. But I wish that I could vote for this bill with an amendment that I-- that I proposed. I will vote for AM1274. But barring other substantial changes to this bill, I still will not be for it. So I just want to be honest with everybody about where I'm at. But I think if you are in favor of this bill, you have an obligation to make sure that it is the best law that we possibly can pass. So whether you agree with my position or not, if you're going to vote for this bill, I think you should vote for AM1274 and make sure that it is part of the law going forward. And I think that we should continue to try and make this bill as good as possible before it becomes enacted as law. So at this moment, I'm still opposed to LB496 and AM1054. But I would urge your support for 12-- AM1274 at this time. Thank you, Mr. Speaker.

HILGERS: Thank you, Senator Cavanaugh. Debate is now open on AM1274. Senator Blood, you're recognized.

BLOOD: Thank you, Mr. President. I'm really disappointed to see the floor so empty. People across the street having a steak dinner instead of being here. But I'm going to go ahead and-- and put my questions on the record anyway. I guess it makes it more of a presentation than a debate. So fellow senators, the few of you that are in here, friends, all, I do stand in support of Senator Cavanaugh's amendment, but I am still really not sure about the amendment from Judiciary and Senator Hilkemann's bill, LB496. I would ask that Senator Hilkemann put pen to paper because I'm going to ask my questions. There are a lot to ask and I don't want to have him yield because I think it's too much to ask in five minutes. But if I can get the questions answered tonight, I could change my mind about this bill. So I would hope that someone can walk me through the expungement process for preconvic-- preconviction DNA. Will the sample be destroyed and their profile removed from the database if found innocent? Does the arrestee need to request the expungement of the record? And how do they do that? Because that's not clear in the bill to me. And will this be automatic if the arrestee isn't charged with a qualifying crime? So the process to me and I've read that bill over and over again and I'm still not finding it. So I would really like those questions answered. Also, when arrestee-- arrestee refuses to provide DNA, does Nebraska require the arrestee to consent voluntarily without penalty for refusing, or is law enforcement allowed to use reasonable force? Is refusing to give DNA sample a crime in itself? I couldn't find that in statute. So if someone knows the answer, I'd like to hear that. And if so, is it punishable by imprisonment, a fine? So in Nebraska, are DNA profiles

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

automatically submitted and entered into the national database? Again, something I can't find. Some counties are so overwhelmed they also use private labs. In fact, Senator Cavanaugh and I were just talking about this and they don't qualify then to submit DNA data to the NDIS because they're not certified in the same way. So then will we have this black hole of data that's not going to get passed on? So as part of my research, I read the Congressional Research Service report that they issued in January of this year in reference to the use of DNA and how-- the role it plays in the criminal justice system. So the report to me, it's a really long report and I encourage you to read it, is that the consequence of expanding the collection and use of DNA has resulted, which we talked about already multiple times, and an increased burden on crime labs-- labs leading to a backlog of untested DNA samples. Myself, Senator Cavanaugh, Senator Pansing Brooks, I believe Senator Cavanaugh, we've all talked about this. So what is the priority for testing, especially when we have over a thousand rape tests that are untested in Douglas County right now? So these delay results, they-- they-- they result in efforts to apprehend and prosecute alleged offenders and to exonerate wrongfully convicted individuals. So if we're going to delay these results, are we creating a secondary problem? I'm not sure I said that sentence right. So these delays result in efforts to apprehend and prosecute alleged offenders and to exonerate wrongfully convicted individuals, in case I didn't say it clearly. So these are the questions that I have. If I can get really solid answers to all of these questions and I know that they're a lot of questions, but that-- that tells me that there's something mechanically that needs to be fixed in this bill. And then lastly, I would really encourage somebody to bring forward an amendment that makes this a funded mandate. If this is really important to our state,--

HILGERS: One minute.

BLOOD: --then we should be paying for this because this is another property tax issue. We can't keep passing things down to local governments and expecting them to pay for it and then expecting our property taxes to go down. I don't like bad guys. I have one family member that was held hostage that ended in a gunfight. I have another family member that was brutally attacked and raped. I don't like bad guys. But bad policy doesn't change the fact that there's still going to be bad guys. What it's going to do is going to create issues for the law enforcement system, and they've got their hands full already right now. So with that, thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILGERS: Thank you, Senator Blood. Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. Speaker. I might re-explain my amendment because now there's people trickling in, but I could also talk about a few other things. So on that last amendment, Senator Wayne's amendment, which is the one that I think matters to a number of people, we got to 24 votes. It was very close to having enough votes. And I heard people say, and on the mike so everyone heard, that we couldn't vote for it because the county attorney said we can't. And Senator Wayne and Senator Lathrop addressed that. And, you know, I guess I would plead new guy here and say I thought that we were a separate branch of government. County attorneys actually are not state government. They are county officials elected by the members of their constituency in their counties. But they have no authority over what we do here. They are the same as any other interest on the outside of this room, which some people have talked quite a bit about the power and influence of those interests on the outside to affect the outcomes here. And I have been clear all along on every bill that I voted on that I make no promise to anyone about how I'm going to vote, that I vote the way that I think is the right way to vote. And on this bill, I was willing to compromise to vote for this bill that I dislike because I thought that Senator Wayne's amendment was so important. And that is probably the first real compromise I was willing to make at that level in this body. And the county attorneys came in and told enough people here that if they voted for it, that it would kill this bill. And I guess my question or thought is, is our job here to appease that particular interest group or any one particular interest group, or is it to make the best law and the most just state that we can? And it's my belief that this bill harms the interest of justice and does not help it. And Senator Wayne's amendment that we just voted on that the county attorneys said we couldn't have and we acquiesced would have improved that state of affairs in this state. It would have made Nebraska a more just state. You heard the one example about the one individual who is being unjustly held by our state because of the-- the system, how the system works. And we were seeking to correct the system, not just for him, but for others, but very narrowly constrained to only affect those most seriously charged. And that was unacceptable for some reason that I didn't hear. I didn't hear a reason why that amendment was bad. I heard that it was a poison pill because some interest group doesn't like it, some-- some group that is not in this body and who is not a coequal branch of the state of Nebraska, not someone who is empowered to veto this bill, not someone who is empowered to vote on this bill, not someone who is empowered to make those determinations about what is the law of the state of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Nebraska. We don't ask county attorneys for a opinion on laws. We ask the Attorney General, although my understanding is that they were opposed to it as well. But-- and we go before the Supreme Court of the state of Nebraska to determine the legality. But we didn't give ourselves the opportunity even to find out if the Governor would be so opposed to making the law more just in the state of Nebraska that he would veto this bill.

HILGERS: One minute.

J. CAVANAUGH: We had a threat and that was enough. And if we're going to acquiesce to every threat from someone outside this room, I'm not sure what we're doing here because there are plenty of people who don't like things in here and we should do them anyway, because our job is to decide what is the right laws for the state of Nebraska and how do we make this a better place. And that's what Senator Wayne's amendment would have done. But again, AM1274 is an amendment that will make this bill stronger, but not strong enough for me to support the bill. So I would support you-- encourage you to vote for AM1274 if you want to make this bill better. But it's not going to convince me to vote for the bill. Thank you.

HILGERS: Thank you, Senator Cavanaugh. Senator Matt Hansen, you're recognized.

M. HANSEN: Thank you, Mr. President. Good afternoon, colleagues. I want to be 100 percent clear and the people aren't in the Chamber, very few of us are. I get that. I understand that so I'm not talking to you guys. I don't even expect you to be listening right now. I want to talk to the public because I want to be 100 percent clear what just happened on that last vote. There is someone we know for a fact is innocent, and we voted down an amendment that would give them maybe a slim chance of getting a new trial. We voted that amendment down for the sheer fact that the county attorneys opposed it and their opposition was based on the fact that more people might commit more crimes if we, in a case specific scenario, allow for a new trial. This wasn't a pardon. This wasn't clemency. This wasn't wading into the [INAUDIBLE]. It was creating-- fixing a statutory loophole or closed loop or whatever you want to call it. It was a dead end. And for the sheer fact, for the sheer fact that that might encourage other people to lie on the stand, we had to kill a bill and leave an innocent man in jail longer with no plan of ever resolving the issue. That's what happened. That's what happened. That was the whole point of that vote. And that was the only opposition to that amendment we had said was the county attorneys told me to oppose it and it might encourage perjury. Which if someone's going to perjure themselves, like, they're going to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

perjure themselves, it's already a crime. I think Senator Wayne actually made it a harsher crime, too. So there's some double, triple irony layered on top of this in recent years. And I bring this all up to say we have been taking a licking, some of us on this body, getting yelled at and screamed out on this microphone that the education lobby is ruining taxes in the state of Nebraska and we need to grow a backbone and stand up to these high paid-- high paid, whatever, local officials and then literally on the microphone, I can't support a bill that inarguably would advance the cause of justice because the County Attorneys Association told me we were going to kill the bill over it. Much like the education, much like the school boards, much like the school administrators, the county attorneys don't get a vote in this body. They get to advocate, they get to call us, they get to testify, of course, and their perspective is valued. But if we think that they have some sort of magical ability to snap their fingers and just kill legislation dead without a second thought, we should reevaluate the level of scrutiny and discretion we give those folks, just like we should if any other group routinely has that ability. There is somebody we all just know to be innocent, his-- the person who everybody knows fired the gun was acquitted in self-defense. It was self-defense. Self-defense is something that is strongly advocated for by members of this body. Somebody is in prison because of a self-defense case. And we all know he didn't even hold the-- fire the gun. And yet for the sheer fact that he might have a procedural option to get out of jail, prison, to get out of prison, be more specific, for the sheer fact that we might give him a procedural option to just renew his case and present the facts as we now know them, it's a poison pill. It's, you know, sinister. It's all sorts of these things we can't even consider it. We-- we-- it's just a nonstarter. That's where we're at. That's where we're at. And meanwhile, so we've already indicated and know that we're willing to knowingly keep an innocent person in jail, prison, or knowingly able to keep an innocent person in prison in addition to that, that's relevant to this context on the baseline of LB496--

HILGERS: One minute.

M. HANSEN: --because we are knowingly taking DNA samples from innocent people. Some of them might later get convicted. But again, you're-- you're innocent until proven guilty. And this is at the time of arrest. This is at the time of arrest. So these are people who, under the letter of the law, are innocent at the time we're taking their DNA samples and will instead give them maybe a convoluted process to undo it later. So we're both going to hold an innocent person in jail and not give him even an option of getting out. And we're also going to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

create this cumbersome government database of people who, at the time where they're arrested, they're still presumed innocent. This is flipping the justice system on its head. And this is something that's going to deservedly take some time here on the floor of this body. Thank you, Mr. President.

HILGERS: Thank you, Senator Hansen. Mr. Clerk for a motion.

CLERK: Mr. President, Senator Wayne would move to bracket LB496 until May 28 of 2021.

HILGERS: Senator Wayne, you're recognized to open on your bracket motion.

WAYNE: Thank you, Mr. President. And, colleagues, I made no mistake about it. I don't like this bill. I think it's a bad bill. And we're going to have a long dialogue. And this is-- this is nothing personal at all. But when I read this bill and this amendment, I have a lot of questions. And part of it is most people don't actually practice. And so I'm thinking about who do I ask to get answers? For example, if I'm charged, Senator Hilkemann, if I'm charged, or Senator Lathrop, with one of the crimes that are listed in here and you take my DNA, but I actually plead down to a misdemeanor because it was a bad case, what happens to my DNA? Is it still listed because I was charged, even though I wasn't found guilty of the crime that I was actually charged with? Do they still get to keep my DNA? And how do I get a petition to do that? What's the rules and the regulations around that? Do I have to hire an attorney to get that done? That's a basic question, and I'll ask Senator Hilkemann to yield to a-- to yield to a question and answer that question, please.

HILGERS: Senator Wayne, did you say Senator Hilkemann or did you say me?

WAYNE: Senator Hilkemann.

HILGERS: Senator Hilkemann, will you yield?

HILKEMANN: Yes, I'll yield to the question.

WAYNE: So if somebody is charged with a violent crime and they later find out from a motion to suppress and everything else, it's a bad case but they plead it down to, let's say, disorderly conduct. Is my DNA still in this database, even though I wasn't convicted?

HILKEMANN: No, it's not.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

WAYNE: So I have to be convicted of the crime, the underlying crime, because I don't see that in the bill. Can you point to a specific section where it says that?

HILKEMANN: Yes, we've got-- I'm looking at right now to-- believe it's on page 6. It's on page 6, line 3.

WAYNE: Page 6, line 3, and what does that say?

HILKEMANN: "If the charges for the crime of violence or burglary are determined to be unsupported by probable cause, the DNA sample shall be immediately destroyed and notice that the sample was destroyed shall be sent to the person whose DNA sample was collected and counsel of record for such person."

WAYNE: See, that's the problem. I actually been charged and I actually met the probable cause requirement because I had a preliminary hearing that was bound over to district court. But at district court I actually pled to a lesser charge. So by the letter of the law, even though I didn't get convicted of that crime, my DNA is still there based off of this statute because I've-- I've met the probable cause requirement, but I didn't get convicted of that exact crime. So, again, based off of page 3 and what you're saying, I'm-- I'm still going to have my DNA, even though I was only convicted of disorderly conduct. Do you see a problem with that?

HILKEMANN: Yeah, it-- in that case, you would still-- it's still going to be-- you're going to be-- that's why we have this bill written as it is that-- that so if a person does plead down on that case, that's when they're not-- that isn't even going to be submitted at that point.

WAYNE: That's not what your section says. It says if I meet the probable cause requirement, but I didn't have enough evidence to be found proven not guilty, so I pled down to something else. I am meeting your statutory definition and requirements, which is probable cause.

HILKEMANN: Well, I guess we're reading--

WAYNE: So let me back up and explain to everybody how the criminal justice system works. I am charged with a felony. I sit in county court. They find an arraignment. After the arraignment is done, I get set for a preliminary hearing. At the preliminary hearing, there has to be probable cause in order to be bound over to district court on those felony charges. So there is a finding that there is probable

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

cause to be bound over to district court where I will have trial. What I am saying to you is that a motion to suppress, which typically happens or a witness comes forward, there is already a finding of probable cause that meets this definition. So my DNA is take-- taken or taken, although I may plead down to a simple speeding ticket misdemeanor. Is that your intent under this bill? And Senator, it's not fair to you because you didn't-- you're not-- you don't practice every day in-- in this arena. So, Senator-- Speaker Hilgers, may I yield the question to Senator John Cavanaugh?

HILGERS: Senator John Cavanaugh, will you yield?

J. CAVANAUGH: Yes. Yes.

WAYNE: I should never ask the question I don't know the answer to. We know that as an attorney. But is that your reading of the law how I'm reading it?

J. CAVANAUGH: I'm sorry, I was-- walked over. Could you read it-- repeat your question?

WAYNE: So on page 6, it says a person's DNA sample is to be collected. If the charges for the crime of violence or burglary are determined to be unsupported by probable cause, the DNA shall be immediately destroyed and notice that the sample was destroyed shall be sent to the person who the DNA sample was collected and the counsel of record. In a criminal proceeding on a felony, there is a probable cause finding at the preliminary hearing, correct?

J. CAVANAUGH: Yes.

WAYNE: Even though I get bound over to district court, I could actually plead down to a misdemeanor nonviolent crime, correct?

J. CAVANAUGH: Yes.

WAYNE: But I would still meet the definition that would allow them to not destroy my evidence because there was a probable cause finding.

J. CAVANAUGH: Yes.

WAYNE: Do you think that's a problem in this bill?

J. CAVANAUGH: Yes.

WAYNE: Can you explain why?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

J. CAVANAUGH: Well, if the intention of this bill is only to collect DNA from persons accused of serious offenses for whatever reason, that they this will catch up people who are, as you just point out in that example, only really ultimately convicted of misdemeanors or less serious offenses, which perhaps was the correct charge they should have been charged with initially. And so they were overcharged and therefore were caught up by this law or should not have been charged with anything to begin with and pled for sake of expediency. And so this will catch up even more people than we're talking about. And-- and therefore and this does not create an out for those exact circumstances, which is quite common. The scenario you just pointed out happens all the time.

WAYNE: Thank you. And, colleagues, the reason I filed this motion to bracket is because there are some serious concerns with DNA evidence. There are a lot of people, my colleagues were joking earlier about, this is the new chip and those who are wondering about chips being placed in people's arms, you're-- you're literally talking about if you are charged with a crime, charged, and there is a probable cause finding-- let me just explain to you what a probable cause finding is for those who don't know. When a cop pulls you over and says, I, I want you to get out the car, I'm going to search the car because I think I smell marijuana or I think you can have a gun in the car, that is enough probable cause to do a search. That is the lowest burden you can have in a criminal justice system. It goes scintilla of evidence, which is usually used in mediation or arbitration at some points; probable cause; then you have preponderance, clear and convincing; and then you have reasonable doubt. And there are some others in there that we don't really use, reasonable doubt being the highest in a criminal case. What we are allowing under this bill is if you are charged and you will have a finding of the lowest, the lowest level of criminality intent, your DNA can be taken and stored forever. And the only way it cannot or be-- or be destroyed is if you're found not guilty. The problem is 90 percent of the cases in the criminal court system plead and they plead to a different charge--

SLAMA: One minute.

WAYNE: --or a lower charge. So even if you plead, you are stuck with your DNA being housed, housed forever. And the question is, do you really, really believe that the government's going to destroy your DNA along with the database to support that? I just don't have faith in that happening and I just see the practical problems of how we do criminal law in Nebraska, why this causes a lot of concern to me. And I just gave you a real-life example of somebody who is going to be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

caught up in a DNA collection who did nothing violent at all. And I could pull up on JUSTICE, which is our system, and I can find eight or nine cases where it was a violent crime, then they get all the facts, and all of a sudden it's dropped to something nonviolent.

SLAMA: That's time.

WAYNE: Thank you, Madam President.

SLAMA: Thank you, Senator Wayne, Senator John Cavanaugh, and Senator Hilkemann. Senator McKinney, you are recognized.

McKINNEY: Thank you, Madam President. I stand in support of the bracket motion, still opposed of the bill, and this is why. I think that vote showed why I have been extremely skeptical of any conversations of acting in good faith and getting through the process of doing the studies for criminal justice reform in this state. Because once we get those reports back or those studies, the county attorneys are going to stand outside of this body and tell a bunch of senators no to a bill, and then the reforms that we waited for are not going to be passed. But we're still supposed to try to build a prison. That makes no sense to me. We just voted to let an innocent man sit in prison and we're supposed to be OK with it because the county attorneys don't like it. That's my problem with the talks about criminal justice reform in this state. It-- it's-- it's like hollow to me honestly. I don't trust it. Because when we have an opportunity to do right as a body, we don't do right because the county attorneys and the Attorney General doesn't like the-- like the bill. Please make that make sense to me. But we're supposed to-- we're supposed to trust that we'll go through a CJI study and other studies for the rest of the year, get some findings and some results and some policy suggestions. I probably will bring a bill, Senator Lathrop will bring a bill; and then the county attorneys and the AG will crowd the room and say no to the bill. And then when it gets to the floor, they'll stand out in the Rotunda and a bunch of senators will say no to that reform. But we're supposed to act in good faith and act parallel and supposed to believe in this proposal to build a prison. This is why I don't trust none of this. I don't trust the process because we just voted to keep a man in prison pretty much. But we're supposed to trust a process and say, hey, we'll agree to these studies and it's going to be great. And then once we get the studies and the findings, everything's going to be married. I don't believe it. I don't trust it. I honestly don't. What's wrong with allowing a man to get justice and be released? Everyone in here knows he's, I would hope you realize that he's innocent. And if you don't, I don't know what kind of world you're living in. But for the most part, most people I've talked to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

have admitted that he was wrongfully convicted. But instead of doing the right thing, this body caved to the county attorneys. But I'm supposed to trust that we'll go through a process on a parallel path, act in good faith, get these studies done, get policy reports, and next January, when we introduce bills that the county attorneys and the Attorney General won't crowd the Judiciary Committee and say no to every real policy reform that we need to change the criminal justice system in this state. Please tell me why I'm supposed to trust that. If somebody can explain it to me, I'll be happy. But I don't think you can. Who can trust that? It makes no sense. It's disheartening, like honestly, like what world do we live in that we vote to keep a man in prison because some prosecutors--

SLAMA: One minute.

McKINNEY: --tell us, no, no, we don't like it? I don't get it. So we'd rather keep a man in prison than do the right thing. And then I'm supposed to trust that we'll get policy suggestions in October or December and that I introduce a bill or Senator Lathrop or somebody on the Judiciary Committee and the county attorneys and the AG won't walk in and say no. And then a bill gets to the floor and it gets shut down because we're going to cave to the county attorneys and the Attorney General. How am I supposed to trust the process? Because the process just failed a man again, and we all should be ashamed of ourselves. Thank you.

SLAMA: Thank you, Senator McKinney. Senator Lathrop, you are recognized.

LATHROP: Thank you, Madam President. I want to try to cover a little bit of ground here. First, AM1274, offered by Senator John Cavanaugh is, I believe, a friendly amendment. It clarifies-- part of this process is that once a probable cause determination has been made, that the sample can then be included in the database. What is happening or that typically happens or-- or will happen at what's called a preliminary hearing. So Senator Cavanaugh's amendment clarifies that that happens at a preliminary hearing. So it also includes a bill that we moved out of the committee dealing with the timing if you appeal to the United States Supreme Court. I think that came out 8-0. I thought it would be a consent calendar bill. It's part of that amendment. I hope you will accept AM1274. I do stand opposed to the bracket and I do want to address an argument Senator Wayne made, which was what happens if I have a preliminary hearing, I'm included in the database, and then I plead down to a misdemeanor nonviolent offense? At that point they dismiss the felony. Right? And right in the bill in Section 6 it says that that-- the-- the reasons

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

that it can be expunged and one of-- one of them is "The charge on which the authority for including such person's DNA record was based has been dismissed." And so what that would mean is if you plead down to a misdemeanor, they dismiss the felony and that would open the door to having the DNA sample no longer included in the database. In fact, the State Patrol is obligated, shall purge the data in that event. So I just wanted to make that clarification. Thank you.

SLAMA: Thank you, Senator Lathrop. Senator Machaela Cavanaugh, you are recognized.

M. CAVANAUGH: Thank you, Madam Chair or President, sorry, Madam President. OK. So I was supporting Senator Wayne's amendment to add his bill from committee, that was voted out of committee onto this bill. And I am in very staunch opposition to this bill. I-- so one of our colleagues asked me if I cared about sexual assault victims. I care very deeply about sexual assault victims. I think that we as a body should be doing everything within our power to aid and support victims of sexual assault. But just like with everything else that we do, we cannot and should not give up our judicial structure and people's rights. Just because you're arrested does not mean you're presumed guilty. And I don't really appreciate this bill being packaged as a victim's rights bill. I looked at the committee statement and I saw two entities missing from it. The two advocacy groups that we all work with the most on victims rights did not come in support of this bill. They didn't even send a letter in support of this bill. This is not about victims of assault. This is about making our justice system even more skewed than it already is. We've heard from some lawyers on this. Senator Wayne and Senator Cavanaugh are two well-practiced lawyers in the courtroom in defense. And I didn't need them to tell me that this was a bill that I would not support. I knew that on my own. But hearing them talk about this and the process with this and hearing Senator McKinney talk about this and the process with this, I don't know how anyone, including Senator Hilkemann, can feel OK with that. This is an unacceptable bill. This is a bill that I will not tolerate. I will not tolerate the inherent racism that will come with the implementation of this bill. I will not tolerate the burden that it puts on people who are wrongly arrested of crimes. This doesn't help victims. This just perpetuates a system that is already flawed and broken. And you can dress it up however you want. You can put the amendments on however you want. But this is not a good bill and I will not be supporting it. And I will be talking about this--

SLAMA: One minute.

M. CAVANAUGH: --for as long as it takes. I'm sorry.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

SLAMA: One minute.

M. CAVANAUGH: Thank you. --for as long as it takes. In looking over this bill, it's clear that there are a lot of significant questions about process. There's questions about how the DNA is collected. I can't even tell if it's legal. It says you "shall have a DNA sample collected by a law enforcement official at the receiving criminal detention facility during the booking process." Is that-- is that even legal? Is it legal to force somebody to turn over their DNA when they're being booked? Currently, is it legal? Can Senator Cavanaugh, well, I guess I'm almost out of time. Can you just nod one way or the other? Is it legal?

SLAMA: That's time.

M. CAVANAUGH: Nope, there we go.

SLAMA: Thank you, Senator Cavanaugh. Senator Hilkemann, you are recognized.

HILKEMANN: Thank you, Madam Chair. First of all, I'd like to say that the amendment, not the bracket bill, but the amendment that Senator Cavanaugh has. He says it makes the bill better, and we're certainly going to encourage people to vote for. I want to make a good bill better and so that we will be encouraging people to vote for Senator Cavanaugh's bill if we ever get to that. You know, this bill is not new. Thirty-one states have already, are already doing this bill. I brought this bill one of the first-- the second year that I was here in the Legislature. And at the time I worked with the AG's Office. And we-- it was a bill that frankly had lots, lots, lots of problems with it; and it never made it out of committee. So we worked with this time, I've been very grateful to Senator Lathrop. He has been very forthcoming with me. He met with Jayann Sepich when she was here. She's the mother of-- of-- of Katie, who this bill is regarded to. They gave me a good hearing when we were there, so I want to make this bill better. I'm taking a lot of flak because AM1083 was lost. That was essentially LB24. It had a 6-2 vote in committee and could well have been prioritized, but it was not prioritized. This is my priority bill; and, therefore, I ask you to certainly not bracket this bill. I think we can certainly work with Senator Cavanaugh. There are a couple of other amendments that have been filed on this bill, one by Senator Pansing Brooks, that we would certainly be willing to have added to this particular bill. You know, part of this whole thing that trying to come up with a technicality, in many-- in most states they just do this with the felony conviction even before the probable cause is determined. And therefore, we have tried to work with this. We've

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

tried to make this-- we've tried to make this bill so that it is palatable. I just think there are so many positives to this bill, this will save lives. This will help in solving unsolved crimes. This will help in-- in-- in finding-- in prosecuting cases. In the Sepich case, it was over \$200,000 was spent trying to locate the killer of their daughter. And if there had been the DNA evidence there, this person was there and committed a crime just shortly after killing their daughter. The DNA was under her fingernails. If that had been available, that person may well have been caught.

SLAMA: One minute.

HILKEMANN: This is-- Madam Chair, thank you, I'll turn the rest of my time back to the Chair. Thank you.

SLAMA: Thank you, Senator Hilkemann. Senator John Cavanaugh, you are recognized.

J. CAVANAUGH: Thank you, Madam President. So I'll try and answer a couple of the questions that I've heard bouncing around out here. And I may just start in reverse order. Senator Machaela Cavanaugh was asking whether they can currently collect someone's DNA at booking. And under the current law, that would not be possible without a search warrant. And that's really the problem with this bill, is that it would expand these types of searches without a warrant, without a search warrant. So-- and then Senator Lathrop made a point in addressing Senator Wayne's bill or Senator Wayne's comment. So in my experience, which is vast-- I know Senator Groene says I don't brag about being a lawyer-- but I've spent quite a bit of time in courtrooms. And believe it or not, a lot of criminal cases resolved. But when you plead a case down, they do not dismiss the felony. It-- you can try to get a felony dismissed and you can work that as part of the deal. But it is-- I don't know if I've ever seen it happen. What happens is they amend the charge down to whatever the lesser charge is. So there is no-- there's no charge that stands dismissed. So Senator Wayne's point about once you get past that threshold, there is no escape clause here that says once-- it says once the case, if the case is dismissed, then the DNA would be destroyed. But in many circumstances where this happens, the charge is pled down and there is no dismissal. And there we have seen time and again where the system gets corrupted, even when we are explicit about what we want the actors outside of this room to do. And so if we are leaving that sort of gap in this law, that is going to get abused and those records are not going to be destroyed. So you will have-- this will, in effect, create a large number of individuals who are convicted of misdemeanors that are not on this list that have their DNA recorded, not destroyed,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

because it complies with the letter of this law. So I respect and I appreciate all of the hard work that Senator Hilkemann has done. And I truly do understand the perspective he's coming from. As he says, this will save lives. This will save-- this will help solve cases. But as I said in my first comments, that we have to stay away from that temptation to bend the Constitution to our will to get the outcomes that we want. The Constitution is a protection and that it protects both the people we like and the people we don't like. And it is meant to do that. By protecting the people we don't like, it protects all of us. And that is the fundamental cornerstone of-- Senator Wayne alluded to the statement of it's better to let 10 guilty people go free than to convict one innocent person. And I tell you, I've-- I've said some variation of that many times in voir dire or in-- in courtrooms. And the point of that is because the-- the system is so stacked, once you are in it, you are more likely to come out with a conviction than an exoneration of some sort. So Senator Hilkemann talked about the ability to use DNA to solve these cases. We just had that conversation about the Beatrice Six. They had DNA. They tested DNA against the individual who ultimately found out was-- was guilty of those crimes. But because they didn't get a conclusion there, they needed someone so badly to convict, to charge, to hang that murder on that they found those six people and they convinced one of them that they were guilty,--

SLAMA: One minute.

J. CAVANAUGH: --convinced them to testify. I'm sorry, one minute?

SLAMA: Yes.

J. CAVANAUGH: OK, thank you. --convince them to testify against the others to get that conviction. So you hear me say repeatedly that the system is tilted against justice. It is tilted against the accused, and this further tilts it that way. And we have an obligation here not to go with what we want, what is expedient, what gets the outcomes that we want, but the things that preserve the Constitution, preserve the rights of everyone. And this bill does not do that. So I'm in favor of the bracket motion. I am against this bill and I will continue to talk about it and I will try to make it better if we do seek to adopt it, which is why I brought AM1274. Thank you.

SLAMA: Thank you, Senator Cavanaugh. Senator Matt Hansen, you are recognized.

M. HANSEN: Thank you, Madam President. And good-- good evening again, colleagues. You know, I rise in continued opposition to LB496. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

didn't weigh in on the first amendment, Senator Wayne's amendment, because honestly, I wasn't sure if that amendment was good enough to inspire me to vote for the final bill of this. Because as has been laid out, this is pretty-- strikes the heart of Fourth Amendment protections against unreasonable searches and seizures. We're-- I know it's only a cheek swab most likely, but we are, you know, doing what people would consider a medical procedure against somebody's will for the sheer allegation of a crime before, preconviction. If people want to talk about mask's being tyranny, I'm sure being shackled and held down, having something shoved in your mouth seems pretty tyrannical, just to tie a nice bow on everything that's been happening so far today. And I bring that up to say that that's the kind of thing we're dealing with. This is a pretty system heavy, heavy-handed force of government where agents of the state are maybe rightfully, maybe wrongfully, you know, accusing you of a crime, holding you in custody, and taking DNA samples from you. And your recourse, if they're wrong, is maybe if you proceed, you can later get it expunged. And I will let you know, I mean, there's whole legal clinics to help people clean their records because getting your record expunged is not necessarily something just the average individual has the ability to walk into a courtroom and sort out and handle. We're going to keep talking about this for a while, and I know people are going to start wrapping themselves up as this bill is protecting survivors of sexual violence, protecting survivors of assault. And I understand that might be a true, genuine intent. And I don't begrudge people from saying that. However, just to remind folks, I had a bill, my priority bill last year both contained the updates to the sexual assault evidence kits, which many police departments in cities across the state have been really underutilizing, which makes me skeptical of this DNA evidence, even if collected, would be put to good use. But that was a priority bill of mine last year, as well as a new crime to protect children from sexual assault by teachers. I mean, these are things that I've been willing to go on the record and stand for. So before anybody starts on the microphone doing what they've been kind of doing out in the hallway, saying what they want to say about wrapping themselves in survivors of sexual violence, let's-- let's be honest. There are many ways of looking at this. And just because we have a Fourth Amendment, a heavy hand of government concern for what we're doing here doesn't mean that we are not sympathetic or we are not unwilling, willing to work on [INAUDIBLE] I think people who know, who know and are interested in this know where people stand. As Senator Machaela Cavanaugh pointed out, some of the key advocacy groups for survivors didn't even testify on this bill in any capacity, to my knowledge. So I bring this all up. This is because it weighs in what we were talking about, it's-- it frustrates me in this body where people are going to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

talk about the overreach of government and government messing up people's lives and on and on and on when we talk about taxes, we talk about education. And then all of a sudden we get to criminal justice and it's just that concern dissipates. That concern is not there. Whatever goes, you know. If-- if the police pulled you over, you must have deserved whatever comes next, even though, as we just pointed out in the prior amendment and the case history we've walked through, we know there are innocent people in prison right now.

SLAMA: One minute.

M. HANSEN: So we're weighing these conflicting things. We're weighing these conflicting things. And if-- if-- If we're going to insist that people who have not been convicted are having DNA harvested from them, being retrieved from them, but at the same time aren't willing to extend an olive branch to a couple individuals, one individual who we know is innocent, who we know is wrongfully in prison, why-- why would anybody who has skepticism or worries about this bill believe that there's-- there's going to be good progress or this is going to be utilized well? I believe the senators bringing this have the best of intentions. I don't believe the results in the field are going to be as rosy as some of the speeches on this floor. Thank you, Madam President.

SLAMA: Thank you, Senator Hansen. Senator Wayne, you are recognized.

WAYNE: Thank you, Madam President and colleagues. Understand that I said from the beginning, I just didn't like this bill. This is not me and my feelings because a bill didn't pass. I'm used to-- I mean, I think we've had-- Senator Brandt, I think we were counting. I think we have three or four that have always been like 21, 22 this year and not-- not get it across the finish line. But Senator Friesen, I told you, broadband baby, we're coming back. We got a good one on that. I think we can cross the finish line on that. No, but-- but I genuinely did not like this bill with the DNA in it. And so I don't think everybody heard how things are done. And Senator John Cavanaugh said it. You actually don't dismiss the count, you amend it down. So what happens in that scenario is if you, let's say you have three counts. Count one is a felony, count two is a felony, and count three is a felony. And you plead down, let's say you plead to a misdemeanor or to one of these felonies that are not listed in the violent felony in this amend-- in this bill. It actually shows up on JUSTICE. It actually shows up in the criminal system. It actually shows up on your-- on your reports. It says "charge" and it has the initial charge. And then under it it says "amended to." So it's not a dismissal. And because it's not a dismissal, you still have to give

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

your DNA. Senator Lathrop, would you yield to a question? And this is a question I'm genuinely asking because I don't know the answer.

SLAMA: Senator Lathrop, would you yield?

LATHROP: Yes. And I'll try to answer the question if I can.

WAYNE: Because I'm doing research on the fly as I'm researching more of this amendment. So what happens if somebody says no to giving their DNA?

LATHROP: Yeah, I heard that question before. I don't know the answer. I don't know. Maybe one of our criminal defense lawyers could answer that one.

WAYNE: Senator Cavanaugh.

SLAMA: Senator John Cavanaugh, do you yield?

WAYNE: I just want to say it's so wonderful having another criminal defense attorney here that when I don't know the answer, I can ask you.

J. CAVANAUGH: Yes, I'll yield.

WAYNE: So what happens currently? So like I know in DUI situations, if you refuse, there's a refusal statute and you-- you get charged underneath that. What happens if you refuse to give your DNA?

J. CAVANAUGH: Well, so it's probably more akin to the current DNA felony statute, which I don't think there is a technical statutory fix, but the Department of Corrections basically will punish people until they agree to give it. So they had a problem. If you read that one of the articles that Senate Hilkemann handed out, they had a number of refusals and they got that number down by basically administratively sanctioning people. I do think that there's the additional possibility that they could do it by force or they could-- they could charge you with an additional charge of resisting or a refusal or an obstruction of justice.

WAYNE: OK, we might get a-- I do agree with what I just heard. Most likely, they'll probably get a court order, maybe do it by force or hold you in contempt.

J. CAVANAUGH: Right. They could do that too.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

WAYNE: So let's talk about how things are actually charged here. Here goes a good one. There are four individuals in a car and they all are felons. We'll go with that one since we passed a bill for Senator Groene last year that allows felons if they have a hunting permit to carry a bow and arrow and a sword. We'll go with that. There is a gun in the car. What is constructive possession?

J. CAVANAUGH: Is that a question to me?

WAYNE: I'm sorry, what?

J. CAVANAUGH: You're asking me that question?

WAYNE: Yeah.

J. CAVANAUGH: OK.

WAYNE: What is constructive possession?

J. CAVANAUGH: Well, it basically means that each one of the people in the car could be charged with that gun separately or at the same time if they all could potentially have possessed it.

SLAMA: One minute.

WAYNE: So-- so it's constructive. And so when we see oftentimes, and I'm just using that as a hypothetical, if there was a robbery and there were a group of individuals there, typically, how do you see people getting charged, the whole group or just the one who committed the robbery, even though I had nothing to do with it? What do you typically see in your criminal practice?

J. CAVANAUGH: Oh, they would charge as many people as they could.

WAYNE: Right. So we charge as many people as we could. And as long as it's not dismissed, I have to submit to DNA underneath this bill.

J. CAVANAUGH: Yes.

WAYNE: So even though they later find out that, you know what, you were just-- you sped away in a car because you were trying to get away. You didn't want to participate so we charge you with speeding, I still have to give my DNA.

J. CAVANAUGH: Yes.

WAYNE: Because I was originally charged.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

J. CAVANAUGH: Yes.

WAYNE: And they amended it down.

J. CAVANAUGH: Yes.

WAYNE: And not dismissed it.

J. CAVANAUGH: Yes.

WAYNE: And there was a probable cause finding.

J. CAVANAUGH: Yes.

WAYNE: Is that good policy?

J. CAVANAUGH: No.

SLAMA: That's time.

WAYNE: Thank you. Thank you, Madam President.

SLAMA: Thank you, Senators Wayne, Lathrop, and Cavanaugh. Senator Wishart, you are recognized.

WISHART: Thank you, Mr. President. First of all, just to reinstate I do have some concerns with LB496 from the discussion that we're hearing. But I did give my word to Senator Hilkemann that I'll support this on General File. And I think he's put a lot of work into it. I commend him for that. And I do think that there is a way forward with this legislation. So I will be helping it on General File. But I did want to speak to what happened before we took a break on Senator Wayne's amendment. I had a chance to connect with one of the family members of Earnest Jackson. They're watching. And to come one vote short on a bill to help somebody who it seems is innocent, have a trial so they can get out of prison, out of an 80-year sentence, one vote short. I think this is probably one of the most disappointing votes I've seen happen in this Legislature, to be honest. And I'm with Terrell. I'm with Senator McKinney. If we can't vote to help an, what seems to be innocent person get a new trial to get out of prison, how can we have any faith in this body helping to reduce overcrowding and sentencing reform? How would we ever have any faith in this body to do that? With that, I'll yield my time to Senator Wayne.

SLAMA: Senator Wayne, you are yielded 3:00.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

WAYNE: Thank you, Madam President and Senator Wishart. So I'm going to-- I don't do this very often because part of my job on this floor is to know the rules at all the times. And so I'm going to apologize to the Jackson family. I should have switched my vote to present not voting and filed a motion to reconsider. And that falls on me. I was still short one, and I'm not sure I could have made up that one, but that falls on me. But I did plan on not winning the first vote so I have here a white copy amendment to strike LB496 entirety and replace it with the Earnest Jackson amendment. And again, it's not about Earnest Jackson. It's about the process that leads to somebody being in prison for over 20 years for a crime they didn't commit when two other people were found innocent and one admitted to the crime and said it was self-defense. And that is a substantially different amendment that we could do that and we probably will tonight. And what will happen is if I get 25, I'm sure the sponsor of this bill will not move forward with-- with that in mind. And I respect that. I respect that because he is the controller of his bill. And if there is a poison amendment, which I don't think this is, I would pull my bill and make sure it didn't move forward. And colleagues, this is not me being disrespectful to the senator.

SLAMA: One minute.

WAYNE: It's me upholding the core belief that nobody should sit behind bars for over 11 million minutes, 7,884 days for a crime they didn't commit. Why wasn't this prioritized? Well, it didn't get out of committee till late, primarily because I was working with the AG. And I actually told the AG they can draft any amendment they want, just get this person an opportunity to have a motion for a new trial. And I didn't get that back until after the priority deadline. So what I don't do is prioritize a bill that is still in committee, never have and never will. But now that this bill is actually out of committee, I will always try to find a way to move it forward this year. I respect the senator. I've actually voted-- actually, my daughter was very upset with him because she's--

SLAMA: That's time.

WAYNE: Thank you.

SLAMA: Thank you, Senators Wishart and Wayne. Senator Hunt, you are recognized.

HUNT: Thank you, Madam Chair. Good evening, colleagues. Without Senator Wayne's amendment, I cannot support this bill and I support the efforts to prevent the passage of the bill. If we are one vote

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

away from giving a chance to a man who we know is innocent, who is imprisoned here in Nebraska and we couldn't get one more vote for that, for this amendment that was on a relevant bill, everything happened right, except the vote on Senator Wayne's amendment, then this isn't something that I can support to move forward. Proponents of the bill, LB496, have said that this is a bill that makes us safer. I would ask, makes who safer? Who's us? Who's the us that's made safer by this bill? We know that police and law enforcement are more likely to arrest people of color. That's not saying anything about an individual officer or an individual policeman or policewoman. It's just a statistical fact. When you look across the broad data around arrests in Nebraska, more people of color proportionally are arrested. And also more people of color, specifically Black people, experience violence from the police. So how do we know that if a police officer stops someone and sees that they have this DNA on record from a past incident, even if they weren't guilty, even if there was no conviction, even if nothing came of it, how do we know that that won't cause that officer to be more likely to make another arrest? And how do we know it won't cause that person to suffer violence or suffer from an unjustified arrest? There is a provision in the committee amendment in the bill, of course, to have people who are found not guilty, who are exonerated, who-- who turns out they didn't do anything wrong, but they've had their DNA collected against their will, that there's a provision in the bill that they can apply-- let me find the language. There's a provision that they can request expungement, so the language is a person whose DNA record has been included may request expungement, but it doesn't say anything in statute about how they request expungement. Do they ask the sheriff? Do they request it to the county attorney? Do they request it to Santa Claus? How is it that they get their DNA expunged from this database? And how is it that we can expect people who have been arrested and cleared and found completely not guilty, whether it's from a traffic stop or from a protest that, by the way, we've got a bill in this body that some people want to call protests like a riot and be arresting everybody who gathers to exercise their First Amendment rights because we've got feelings about the Black Lives Matter movement around here. How do we know that some of these people who are arrested who did nothing wrong aren't-- are going to get their DNA record out of this database? It's a chore. It is not good governance and it's not good legal practice for the state to authorize law enforcement to compel DNA from people who are innocent. And then when they're proven innocent, when they're not guilty and they did nothing wrong, they have to do a chore and take time off work and find childcare and get in the car and make the trip--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

SLAMA: One minute.

HUNT: --to track down and figure out which it doesn't say in statute, so that's hard, how they get their DNA record expunged from the database. Colleagues, this bill creates chores for innocent people. A proponent of the bill also said, I'd rather they have my DNA than put my picture in the newspaper. Because, of course, when you're arrested, they take your picture, they take your fingerprints now. Well, under this law, under this bill, LB496, what you get is both. You still get your picture taken, you still get your fingerprints, and now you also get your DNA taken. So that-- that's not a point that makes sense in support of the bill. Another proponent says that DNA is the new science and this is the way to exonerate people. Well, then why don't we collect everybody's DNA? I've introduced an amendment based on the logic of LB496--

SLAMA: That's time.

HUNT: --to collect the DNA of every Nebraskan.

SLAMA: That's time.

HUNT: And we'll get to that later. Thank you, Madam President.

SLAMA: Thank you, Senator Hunt. Senator Machaela Cavanaugh, you are recognized.

M. CAVANAUGH: Thank you, Madam President. OK, so I know I'm a Cavanaugh, but I'm not a lawyer. But I read this-- this bill, I've read the amendment, the committee amendment, and I'm going to be a little critical here for a minute of the Judiciary Committee. I do not understand how you moved this bill with this amendment to the floor. It does not take a law degree to go to page 6 of this amendment and read line 22 to 23 "shall have a DNA sample collected by a law enforcement official at the receiving criminal detention facility during the booking process." "Shall" not "may," "shall." So you no longer need a warrant. You no longer need probable cause. We're just circumventing our current judicial system and basically setting us up for, well, we don't know. We heard the two criminal defense attorneys talking. They didn't know exactly what would happen. Would more crimes or resisting arrest be put upon the individuals or would they be held in contempt of court? We have no idea. This is-- can I have a gavel? Colleagues, this is a poorly written bill. And you all should take five minutes to read the seven pages and come to realize that this is a waste of our time. I'm disappointed in the Judiciary Committee for passing this out as it is. And I'm just disappointed in Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Hilkemann for pushing this forward. This creates all kinds of problems, all kinds of problems. You maybe are creating new crimes. You're maybe creating new lawsuits for the state or for the-- the-- not the state, for the local municipalities and counties, because this is clear as mud, a bucket of mud. I just-- frankly, I'm-- I'm angry and disappointed in this entire thing. This isn't worth our time. This isn't worth our energy. This should be thrown in the trash and we should be doing much better than this. Our judicial system is a mess and we're trying to make it even easier to incarcerate Black and Brown people because Senator Hilkemann said it would help victims of sexual assault, which it does not. I am disappointed, I am angry, and I am disgusted by this. And I just really wish people would engage in this conversation because you all are willing to vote for it without even reading it. But I suppose you all put your names on a resolution without reading it as well. So that's the standard we hold ourselves to, Nebraska, your Nebraska Legislature. We don't want to take the time to read the documents in front of us. We're just going to go ahead and do a green light on them. This is so disappointing. You all could have pulled it up on your computers while I was talking or you can pull it up on your computers while the next person's talking because we're going to be here until the end.

SLAMA: One minute.

M. CAVANAUGH: We're going to be here until we're done with this bill. Senator Hilkemann and the Judiciary Committee made the decision that they wanted us to take eight hours of this bill on General. They want us to take four hours of this bill on Select and however many hours or minutes we have on Final, because I'm going to take every minute I have on this bill, because this bill is not worth passing. And the only reason I would ever consider passing it is if we had amended Senator Wayne's bill onto it. And even then it would have been a very, very bitter pill to swallow, but at least an unjustly incarcerated man would have his day in court. Thank you.

SLAMA: Thank you, Senator Cavanaugh. Senator McKinney, you are recognized.

McKINNEY: Thank you, Madam President. I rise again against this bill. And again, I repeat it again. I don't know if you guys were in here. We took a vote to not allow an innocent man to seek justice in our-- in our judicial system because of the county attorneys. But I'm supposed to have good faith that after we get these studies done this year, that the county attorneys won't return to the Judiciary Committee and oppose every bill that comes off that study. I don't trust it. Please convince me, but you're going to have a hard time.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Also, it was pointed out that nobody knows what happens if you deny to submit your DNA. So hypothetically, thinking as a human, I probably could be held down against my will when somebody takes my DNA. How is that humane? It's not even spelled out in the bill. We're talking about protecting people. But what about our human rights? It's not even clear in the bill if I deny what will happen. Maybe I'll get held down and, you know, tied to a chair, held on the ground. Nobody knows. It probably could happen. A lot worse things have happened in the past. We-- I just don't understand what we're doing here. We get up every week and talk about, you know, being for the people of this state and putting people first and advocating for our communities. But this doesn't advocate for your community, especially not mine. Because when I look at the jail and prison populations, a lot of people from my community are inside. So it doesn't take a rocket science-- scientist for me to just assume or come to the conclusion that a lot of people from my community are probably going to be subjected to this. And, you know, we're OK with keeping innocent people in jail. So there probably will be more innocent people arrested and incarcerated because of this. So why would I support this? Why would I trust the process when we can't even give an innocent man a right to seek justice because the county attorneys oppose it and the AG opposes it? It makes no sense. But everyone wants to act in good faith and say, let's do the right thing and work together and all these things. And it all sounds good. Let's work on a parallel path and all this. Great words, but honestly, I would just be real as possible. We're going to get the CJI study, the master plan study, and we're going to get some-- some recommendations and I'll bet anything that the county attorneys and the AGs will crowd the Judiciary Committee and say no to everything. Or if they don't say no to something, it's going to be a dumbed-down version of whatever is supposed to happen. Because the last time we did a study, we didn't even do everything that was suggested and which is why our problem is what it is today. I don't trust the process. I didn't trust it then. But I was willing to, I don't know, kind of listen. But I definitely didn't trust it. And I think I said it previously. I just don't trust it. I can never trust the process of the criminal justice system, especially when things that happened today happen. And we're just supposed to move on and say, hey, maybe next year Earnest will get a chance. Maybe next year it will happen. Oh, maybe Earnest should just go in front of the Pardons Board and admit that he did something that he didn't do just to get out. It makes no sense. I would never admit to something that I didn't do just to get out of something.

SLAMA: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

McKINNEY: And I don't believe in that philosophy. So, you know, I support the motion to bracket. If Senator Wayne brings the white copy amendment, I'll support that too. Because at this point, I don't like the bill. I will never like the bill. And I just don't have faith in the process anymore because we're-- this body just voted to keep an innocent man in prison. And I'm supposed to support the process and let these studies go and hope that the county attorneys don't come oppose something and the body shuts it down because we want reform, but I don't have faith in it. Thank you.

SLAMA: Thank you, Senator McKinney. Senator John Cavanaugh, you are recognized.

J. CAVANAUGH: Thank you, Madam President. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure shall not be violated; and no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized. That is Article I, Section 7 of the Nebraska Constitution, which directly mirrors the Fourth Amendment to the U.S. Constitution that we're kind of debating here today. And we had a mention, at least, of the U.S. Supreme Court finding in Maryland v. King that this particular type of search was OK under the Fourth Amendment. And I just thought it might bear mentioning that the constitutional rights afforded to us under the United States Constitution are extended to the states through the Fourteenth Amendment. And the reason for that is some of the things that Senator McKinney was articulating, which is that we don't-- we can't trust that certain people will protect all people and will extend the rights afforded them under the Constitution. However, what that means is, though, that those protections are a minimum threshold extended by the U.S. Constitution. We have the same language in the state of Nebraska that, of course, we should adhere to. But what it-- it-- the thing we need to keep in mind is that the U.S. Supreme Court has authority to interpret what is the minimal acceptable rights and protections under the U.S. Constitution. They do not have the authority to say that the state of Nebraska cannot further protect the rights of, the Fourth Amendment rights of our citizens. And so we are not obligated to do this. If the U.S. Supreme Court had said we couldn't do it, then we couldn't do it. But we are not obligated because the U.S. Supreme Court says that we could do it. I probably will get back on to talk about my specific problems with Marilyn v. King at a later point, but I wanted to address something that I thought might resonate with a few people in this body. We're talking about making a restriction on a constitutional right, which is the Fourth Amendment. There's a lot of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

people here who obviously cherish the Second Amendment. And I would point out that if we use the same logic of saying we can save lives by restricting these rights, I think people here would be standing up fighting against that. There were 178 gun-related deaths in the state of Nebraska. I think that's a yearly average. I don't think that's necessarily last year. That's 178 lives that could be saved if we had no guns. I don't think anyone here is saying we should take away everyone's guns. Right? But by the logic that lives could be saved by restricting people's access to guns, then we should do that. Right? That logic, that logic bears out. So I think we need to be careful about these conversations and say the expediency, the ends justify the means. Right? We have constitutional protections. We all want them to protect us at all times and in all places from all violations. Right? And we are only afforded those protections if we afford them to everyone. And we are under no obligation to diminish those protections because 31 other states have chosen to do so. We are under no obligation to diminish those protections of our citizens because the U.S. Supreme Court said that it is OK for those 31 states to do that. We are-- only have our obligation to our citizens to protect their rights as we see fit, as we think is appropriate. And this is not an appropriate thing to do to diminish the rights and protections of our citizens.

SLAMA: One minute.

J. CAVANAUGH: So this bill has a lot of other problems and I will continue to talk about them and I will continue to point out my issues with the logic behind it. But just keep in mind that because somebody else is doing it doesn't make it a good idea. Just because the Supreme Court says we can do it doesn't mean we have to do it. And our Constitution is meant to protect, to put protections on top of those afforded by the U.S. Constitution, not below them. So thank you, Madam President.

SLAMA: Thank you, Senator Cavanaugh. Senator Matt Hansen, you are recognized.

M. HANSEN: Thank you, Madam President. As we talk about the bill, I'm going to take an opportunity to read some of the bill into the record and then talk about it specifically because some of the scenarios we're walking through on the microphone, some of the-- the what ifs, which, if we pass will become reality, are spelled out in less than clear language here in the bill. So I'm starting on page 5, line 20, and we'll go from there. So "An adult who is charged with a crime of violence or burglary on or after the operative date of this act, who does not have a DNA sample available for" the "use in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

the state DNA Sample Bank, shall have a DNA sample collected by a law enforcement official at the receiving criminal detention facility during the booking process." I'm going to stop there for a moment. So it is a requirement that, one, they're being charged with a crime that (a) a law enforcement official does it, not necessarily a healthcare provider or anybody else, a law enforcement official does it. And it has to happen during the initial booking process. There's no wiggle room. It's-- it's a requirement. And that is why the what happens if the process doesn't go well? What happens if the person refuses or doesn't cooperate? Is it obstruction of justice? Are they going to get strapped down, have their mouth forced open? What happens? If we're going to send and require our law enforcement to get in the situation where they are required to do this, probably to someone who's having a very bad day, we should know exactly what and how and what they're capable and allowed to do. Is it going to be an expectation that you have a noncompliant person, you know, shackled and their mouth forced open or a cheek swab is taken? Or do you just charge him with obstruction and wait till they calm down and get it at another time? I don't necessarily know which one of those would be the better public policy, but we should sure-- for sure let our law enforcement officials know which one of those we would prefer them to do, because right now it's silent and there's going to be some sort of messy case law from that. Reading again, continuing where I left off, "If the first appearance of such person in court for the alleged crime of violence or burglary is not due to arrest but by citation or summons, the court shall order collection of a DNA sample." Stopping the reading again. That's a reminder to everybody that just because you're charged with a felony doesn't necessarily mean you get taken to jail. Depending on the process, depending on the thing, you might not, you know, you might get a summons. You might never-- you might appear in the courtroom without having gone through the booking procedure at jail, which is why there's provision to catch those people. I understand that. But that's even less clear. The court shall order the collection of DNA sample. Does it happen in the courtroom? Does the bailiff do it? Do they get remanded to the jail right then and there? You know, for example, in Lancaster County, do we go from the courthouse out to West O in the jail and have them swabbed at the jail and taken back to the courthouse? What's the level of expectation? What's the level of expectation? Is this something they can agree to schedule at a future date? Is that something they can, as part of their pretrial-- pretrial, I'm forgetting the term, pretrial release agree to go to community corrections, you know, within the next 48 hours to get the cheek swab when they're ready? Like, can you go to a different provider like-- like-- like what is it? Or because in my mind, without specifying or clarifying any of these scenarios, we're

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

going to get put in a situation where we're going to be trucking people to the jail in scenarios where we don't need to for the sheer fact of doing this cheek swab because we're both requiring the court to order it and we're requiring law enforcement to do it. And we're specifying in some scenarios where it has to happen and we're not specifying other scenarios where it has to happen. So maybe it goes back to the first scenario,--

SLAMA: One minute.

M. HANSEN: Thank you, Madam President, --which is why I say at a minimum, we need to let our law enforcement know what we expect of them. You know, are we-- are we-- is this-- is this going to be a thing that is required, you know, use of force? Because law enforcement, again, are required to do this. It's a "shall," the court shall order this. What's the expectation and what's the expectation when we know we're giving a scenario in which we have a reluctant or obstructionist or hesitant person? Is that an additional crime? Is that something they can use force on? What can they do and what can they not do? These are all things we owe it to our court system and our law enforcement to be clear in the statute. Thank you, Madam President.

SLAMA: Thank you, Senator Hansen. Senator Pansing Brooks, you are recognized.

PANSING BROOKS: Well, again, I have-- there's so many things to talk about and, you know, I don't think anybody intended what the repercussions are from this bill. I'm-- I'm concerned about, you know, I haven't done the 23andMe and people say, oh, well, you know, even if you're innocent, they're just going to take your DNA. Well, I looked up on the Internet and there are 23 reasons not to give your DNA. And among them are the results may not be accurate. For those of you listening to Senator McKinney and Senator Wayne, it says that the-- that it's more accurate for people of European descent than those outside of Europe. So not only are we talking about taking DNA tests of people who have not been proven guilty, but we know we have a higher percentage of African-Americans being, and people of color, who are being tested. And the statistics show that they have a higher inaccuracy rate for people not of European descent. For people of color, they have a higher inaccuracy rate. How does that sit with all of you? We already have overrepresentation of people of color in our prisons, in our justice system, and now we're going to impose this test that has a higher inaccuracy rate than for whites. I don't feel good about that. Going on, it says that racists are weaponizing the results. White nationalists have flocked to commercial DNA companies

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

to vie for the highest race purity points on extremist websites. How's that feel to you all? DNA tests cannot be anonymous. You could jump through hoops to try to mask your name and location, but DNA is a unique marker of your identity that could be mishandled no matter what. You can also jeopardize the anonymity of your family members who don't even know that you've been tested and all of a sudden their markers are now in the system. I don't think we even understand how far DNA testing goes. We've been-- we were careful enough at the beginning that we only allowed it for a guilty sentence. But now we're going to get it on every single person who comes in. And I've heard people say, oh, don't worry about that. If you're not guilty, it's no problem. It is a problem. You're now in the system. Your family is in the system. People can own the information. Now we'll hear, oh, no, they would never give it to anybody else. But they're also not going to process it immediately. And somebody has to do the testing. It could be hacked. I know that's surprising to some of you, but that information is highly valuable and could be hacked. So if you accidentally get picked up for something that you didn't do but you get charged, too bad for you. Your information is out there. You become the product because your genetic code and my genetic code is valuable. We become the product that people sell without even our knowledge or our willingness to agree to it. And we have no understanding for what purpose it might be sold. The other thing is that big pharmacies want--

SLAMA: One minute.

PANSING BROOKS: --our DNA. It's completely valuable for Big Pharma to have our DNA and know what's going on, let alone the insurance companies. So before you agree to something you don't understand, this is like, you know, people didn't understand autonomous vehicles and so they didn't want to vote on it. Well, we don't understand the extent to which DNA will be used. And we should be highly careful about voting on this. And again, when we think about the fact that there's an overabundance of people of color who are arrested and placed into the system, this is going to hurt those-- the people of color even more and put them subject to the system at an even higher rate, exactly what we've been trying to fight against. We need to be working for all Nebraskans.

SLAMA: That's time.

PANSING BROOKS: Thank you, Madam President.

SLAMA: Thank you, Senator Pansing Brooks. Senator Hunt, you are recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HUNT: Thank you, Madam Chair. It sounds like we're going to take this conversation until 10 p.m. and then we'll take it for a few hours tomorrow after we have a break overnight so we can get to the full eight hours of debate and see where people are on a cloture motion. I support the motion to bracket. Without Senator Wayne's amendment, which failed by just a vote, there's no way that I can support LB496. And I know there's many colleagues who feel the same way. Colleagues, a wrongful arrest could happen to anyone. I think that a lot of the people who are inclined to support LB496, which allows or requires anybody who is arrested when they're arrested to get swabbed for DNA and for that DNA to be put in a database, I think the people who support this bill think that that could never happen to them because they are not the kind of people who have ever been targeted by law enforcement or they don't have family members who have been wrongfully arrested, or maybe they had an exchange with a law enforcement officer and the officer let them go. I can think of four or five examples from when I was age 15 to 18 or 19 where I had an interaction with law enforcement and I was breaking the law and the cops let me go home or the cops knew my parents and said, you know what? We're going to talk to your parents about this, young lady. This is small town stuff. This is stuff that a lot of people from rural Nebraska can relate to. So when the cops know your family and the cops know you, they let you go or they say, you know, this is your warning when you're young and you're making mistakes. I could have easily had something worse happen to me in-- in custody of law enforcement or whatever else. And I'm aware of why that probably didn't happen, and all of you are, too, but a wrongful arrest could happen to anybody. And just because we don't have a big representation in this body of Black and Brown people who know what it's like to be targeted by police and know what it's like to be wrongfully arrested, if it hasn't happened to them, someone they know, I think that maybe it's a-- it's a problem of perspective that makes people support this bill when they don't really understand the harm that it can do. A lot of proponents of LB496 were all mark of the beast, and you're never going to put that in my body; my body, my choice, etcetera, when we were talking about COVID testing and vaccinations, which, by the way, in Nebraska, COVID tests are not mandatory. Vaccinations are not mandatory, and they never will be. And I'll-- and I'll bet the farm on it, like, they will never be mandatory in Nebraska. But now the same people who are against those public health measures want to create a huge database of people's genetic code. So, colleagues, which government tyranny do we accept? We don't accept tyrann-- what was the-- what was the bill we had up today, this morning? Oh, Senator Vargas' adopt the Meatpacking Employees COVID-19 Protection Act. Opponents of that bill were saying, this is government tyranny; this is intrusion in private business, blah, blah, blah. But

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

then they're up here supporting a bill to say people who are innocent, not guilty, did nothing wrong, have to put their DNA in a database. So which government tyranny is OK, colleagues? You can think what you want, but I'm just asking for a little bit of consistency.

SLAMA: One minute.

HUNT: And some of you are fooling yourselves if you think that the prosecutors in this state are going to agree to any kind of sentencing reform after they do their CJI study and whatever they're doing for the siting and planning for the new prison. If we can't even get Senator Wayne's very modest, technical, commonsense, procedural change to close a legal loophole implemented in statute, if you think that any of the prosecutors or anyone in the executive branch is going to be willing to work with you after the little CGI [SIC] study that they're doing to be nice and make a show that they're working in good faith when they're not, they win like this all the time and they're going to win next year too. And I'll continue the conversation at my next time on the mike. Thank you, Madam Chair.

SLAMA: Thank you, Senator Hunt. Senator Hilkemann, you are recognized.

HILKEMANN: Oh. I'm being distracted back here, Madam Chairman, Chairperson. You know, I-- a lot has been made about the prioritization of bills. This is my priority bill. I prioritized this bill on March the 11th. It was not reported out of committee until April 21. I took a heck of a chance. I knew that there was some opposition on that committee, but I talked to them and I decided that this would be my priority. So let's look at some of the priorities that have happened. We've had people talking about these tax incentives were prioritized. Hair discrimination was prioritized. Audiology, speech, language pathology, interstate compact was prioritized. Good cause for voluntary leaving employment; Healthy and Safe Families and Workplaces Act; Universal Residential Land-- Landlord and Tenant Act. Were these important? They were important enough to be prioritized, more important than prioritizing LB24 apparently. Now we have a senator trying to gut my bill so that they can then put in LB24, which they could have prioritized themselves. Let's talk about prioritization. Earlier this evening, Senator Machaela Cavanaugh gave a rather scathing report of me saying she was ashamed that I would even bring this report. Last year, my priority bill was LB532, which was to change provisions relating to harassment protection, sexual assault protection orders and domestic protection orders because I thought it was good to protect people who were being assaulted with these protection orders. And I heard of horrible cases

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

where that was coming from. I'm wondering if Senator Machaela Cavanaugh would take a question.

SLAMA: Senator Machaela Cavanaugh, do you yield?

M. CAVANAUGH: Yes.

HILKEMANN: Senator, whose bill was LB532 that I prioritized last year?

M. CAVANAUGH: It was mine. It was the year before but, yes, it was my bill.

HILKEMANN: Thank you. I just-- I don't mean that as a gotcha. We have priorities. I think that this bill is very important and will provide-- it will exonerate people that should be exonerated. It will save people's lives, it will help law enforcement solve crimes. We're trying to nitpick things on this bill, folks.

SLAMA: One minute.

HILKEMANN: I ask you to look at the bill as we're bringing it forth, as amended by the Judiciary Committee. I ask you to defeat the bracket motion when that vote comes up. And I want you to continue to support-- I want you to support the Judiciary amendment and move LB496 forward. Thank you, Madam Chairperson, Chairman.

SLAMA: Thank you, Senators Hilkemann and Cavanaugh. Senator Machaela Cavanaugh, you are recognized. And this is your third opportunity.

M. CAVANAUGH: Thank you, Madam President. Yes. Senator Hilkemann did prioritize my sexual assault protection order bill, domestic violence protection order bill my fresh-- first year. And I am still extraordinarily grateful to him for doing so, which is part of the reason that I am even more disappointed that this bill is here in front of us today. This isn't a question of whether or not Senator Hilkemann cares about victims of assault or victims of crime. This is a question about whether or not we should be debating this bill, I would say as written, but I'm not going to be so disingenuous because I can't see a path forward for a version of this bill that I would accept. And it's not out of maliciousness for Senator Hilkemann. He knows that I adore him as a colleague and a person. And this is about what I think is right and what I think is wrong. And I think this bill is wrong. And, yes, I did have some scathing things to say about it, not just about Senator Hilkemann prioritizing it, but about the Judiciary Committee moving this out of committee. I feel that it was reckless and irresponsible of the committee to do so. And I feel that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

is reckless and irresponsible of this body to vote for this. And I clearly feel very strongly about that, and I also feel very strongly about the fact that it is unacceptable in my mind to use victims of sexual assault as a prop in why something that is reckless and irresponsible should be passed into law. It's manipulative. Whether that's your intention or not, it is manipulative. And I, for one, do not appreciate it. I don't want to vote for this bill. I don't care about any of the amendments. Some of them make it better, some of them, I don't know what they do. I'm a little bit interested in Senator Hunt's bill on guns on here, but we seem to have a fast and loose relationship with the Constitution, and I'm not comfortable with that for sure. I respect people's rights to bear arms and I respect people's rights to due process. And I don't think creeping into any of those arenas is appropriate. So I will fight. I will actually fight this on the floor. There are a lot of things that I have opposed in this body that I've worked to not move forward. I will fight for every minute that I get to not move this forward. And, Senator Hilkemann, I feel you knew that there were going to be problems with this bill because you never talked to me about it. This is not a good bill. And I hope that since the last time I was on the mike, you all took the seven minutes or however many minutes you needed to read the seven pages of this bill and come to understand some of the problems. Most of them can be found on page 6 or I'm sorry, I apologize, page 5. This-- Senator Hilkemann said that this is going to help people get off for crimes. If there's probable cause, there's a warrant, your DNA is collected. I don't-- how does this get you off for a crime?

SLAMA: One minute.

M. CAVANAUGH: We already-- we already. Thank you, Madam President. We already have due process for how we collect DNA when somebody is detained. We already have due process, but we are just with the stroke of a pen, going to change that due process. And none of you have read that? None of you are asking questions of the defense attorneys in the body? I'm going to just give the rest of my time back to Madam President, because I'm sure we'll be voting on something at some point and I'll get back in the queue then. Thank you.

SLAMA: Thank you, Senator Cavanaugh. Senator Blood, you are recognized. Senator Blood, you are recognized.

BLOOD: Thank you, Madam President. Fellow senators, friends all, I'm not sure I stand in favor of the bracket, but I'm considering it right now. I've already expressed how I feel about the rest of what is up on the board. I want to tell a quick story, fellow senators, friends all. Tonight, someone gifted me a beignet that I shared with my friend,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Senator Vargas. And it made me think about a trip that I took for training in reference to children and education with Senators Crawford and Senator Hilkemann. And I knew Senator Hilkemann, but I didn't know as much as I-- I do now after that trip, because when we were done with training, we had a little bit of time. I have cousins from New Orleans, so I know the area really well. And I suggested that we go to this hole in the wall jazz club. And boy, Senator Hilkemann was actually game and we had the best time. And when we were done, we had a sidewalk artist type a little poem about our visit to New Orleans, which I still have. And I learned that Senator Hilkemann probably has one of the biggest hearts of any man I know. And I respect that. And I know that his bill really is coming from a place of truly making the world a safer place to live. But with that said, earlier when the Chamber was still relatively empty because people were across the street eating, I gave him a long list of questions. And I'm hoping that now if I yield some time to him, if he would take it and answer the questions that I had asked earlier, because I still have issues with the mechanisms that support this bill and how it's going to work.

SLAMA: Would you like Senator Hilkemann to yield to a question or yield your time?

BLOOD: I would like to yield time. I actually, I want to ask him a question. I'm asking that he would take, yield-- sorry, it's been a long day. Can I please yield time so he can answer those questions?

SLAMA: Senator Hilkemann, you've been yielded 2:45.

HILKEMANN: Thank you, Madam President. Senator Blood, we have your questions. I have not-- I've actually been a little bit preoccupied back here with this-- I'm trying to follow all this discussion. I do not have the answers. We will get those answers for you.

SLAMA: Thank you, Senators Blood and Hilkemann. Senator Wayne, you are recognized.

WAYNE: Thank you, Madam President. I had a lot I was going to say, and then I'm kind of just listening to all the conversations. I know we're uncomfortable. It's 8:30. I know we want to get out of here. And I know many people are thinking about what does this vote mean outside the body or around their dinner tables. I made it clear in the beginning of these conversations that there were a lot of people who just didn't like this bill. And people got on-- other senators got on the mike and said, if we could do X we'll, we'll work with you from General to Select to try to make this better. But without it, everybody was pretty clear, at least what I heard on the mike,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Senators, that they didn't like this bill and they wanted to go the distance. I filed two different amendments to try to figure out how to bring people along. And I understand people are wanting to go home. But there's an individual who doesn't get the opportunity to go home. There is an individual who every day is in a six by six for a crime they didn't commit. Now people could say somebody lied, I saw that on Twitter, he's probably lying. Well, the fact pattern is really simple. The person who actually did the alleged crime confessed and said it was self-defense. And a jury of his peers agreed, not just once, but the second time the individual testified in front of a new jury for his co-conspirator. So while I can take the 24 loss, I filed the bracket motion because I don't like the bill. I don't like the bill because there is going to be a disproportionate number of people affected by this unjustly. I don't like the bill. And I know people have committed to helping first round and I've actually done that. I've actually done that on a-- on a bill my first year with Speaker Hilgers, LB68, a gun bill, gun preemption bill. And if you'll recall, Senator Chambers ran over to me and said you just gave them a victory to destroy our community. And I stayed on the bill and I was the 33rd vote. The problem with being a W or B, Senator Brandt, is when you go regular order, you are the 33rd. And the problem with being the 33rd is nobody really cares about the other 32, because there were some other Democrats who voted on that bill, too. Nobody cares about the other 32, they just remember 33. So it was all my fault, although there were some other people who voted green, too. And I took that. But I took that because I wanted to stay at the table and try to negotiate.

SLAMA: One minute.

WAYNE: Because there was a fundamental belief, and I had a community that, half side out the city, half inside the city, and when they would drive into Omaha, they would be violating crimes. I mean, they would be committing crimes because they didn't register their handgun. But this is different. The fundamental purpose of this bill is to get DNA when somebody is charged. That charge, every, every stat shows disproportionately affects my community. That's completely different. And there are a lot of people who are allies who have committed to this. I understand. And if you get through cloture today, you don't have enough on Select File. And we'll be right back here again. So as somebody who's been in these situations, I figured out a path forward by negotiating to make sure it gets done. There's been a lot of talk on the floor--

SLAMA: That's time.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

WAYNE: Thank you, Madam President.

SLAMA: Thank you, Senator Wayne. You have your close remaining. Senator John Cavanaugh, you are recognized, and this is your third opportunity.

J. CAVANAUGH: Thank you, Madam President. And I always like to know the update of where I'm at in my order. So I talked about the Constitution last time, and I talked about other potential erosions of constitutional rights that we should keep in mind as we seek to erode constitutional rights here. And I just would reiterate, because I-- it seems to keep striking me whenever somebody makes an argument in favor of this bill, there is always a temptation in criminal cases to let the ends justify the means. But guardians of the Constitution, we must resist that temptation. So again, Senator Hilkemann's arguments, though appealing, are an erosion of the Constitution that is unmerited here. So there's the case, *Maryland v. King*, which is where the U.S. Supreme Court said that this type of search under the Fourth Amendment is minimally intrusive and therefore does not require a warrant. That is the 2013 opinion. And I would just-- there's a few things that jumped out at me in that opinion. One of them was that that was a DNA collection basis based off of 13 loci was their program. We are now at a point where we're talking about 20 loci, which we haven't really delved into. But I know Senator Hilkemann had a handout where it talked about that this isn't really a personal identifying information, this is just 22 loci. And there's a whole conversation about junk DNA. But basically we are, we have expanded the number of data points of information about individuals we are capturing. And that made me think about this other case, which is *U.S. v. Carpenter* [SIC], which is an opinion from 2018, I believe, that was decided. And there are a number of factors in there that, that I thought about. But here's one quote that I thought was interesting. As Justice Brandeis explained in his famous dissent: The court is obligated as subtler and more far-reaching means of invading privacy have become available to the government to ensure that the progress of science does not erode the Fourth Amendment protections. So in *Maryland*, they found that the, the search was minimally intrusive and the information captured was not sufficient to implicate the Fourth Amendment to require a search, search warrant. But in *Carpenter*, they found that the capture of cell phone data was such, and so the technology, of course, on the, on DNA has evolved since that opinion in *Maryland v. King*. And so has the opinion of the court about the extent of technology affecting data. The reason I'm talking about this is we're having this whole conversation and saying that this is OK under the Constitution, under the federal, the U.S. Supreme Court. I'm not entirely certain that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

that would be true going forward if this, if this goes to the court and gets challenged, that one, the court has turned over and changed and we, I think, are familiar with the fact that they are more willing to overturn their own precedent, that the fact that the technology has, has expanded and capturing more, the fact that the entire landscape of DNA has changed. I think Senator Flood talked about that someone in his family went to one of these DNA websites and, and got their DNA tested. There are stories out there where the states like California, I think it was, used one of these publicly available DNA databases to match against a, a case. And that is a potential avenue, a potential expansion wherein these captured DNA could be matched against these publicly available databases and it could be a further intrusion of people's liberties that were not imagined in Maryland v. King. And my point is that--

SLAMA: One minute.

J. CAVANAUGH: --the technology continues to evolve and expand, that the court has become more restrictive, at least as it pertains to this, and I think rightfully so, I think Carpenter was rightly decided. That- that is a consideration here, too. We shouldn't hang our hat on this past interpretation and that we should be more circumspect, more suspicious of the fact that this is a good idea just because of that. I think regardless that we shouldn't go forward, but I don't think you should all imagine that this is settled law and that we will not have a contestation of this that would not be successful. Thank you, Madam President.

SLAMA: Thank you, Senator Cavanaugh. Senator Matt Hansen, you are recognized for your third opportunity.

M. HANSEN: Thank you, Madam President. Would Senator Hilkemann yield to a question?

SLAMA: Senator Hilkemann, do you yield?

HILKEMANN: Yes, Madam President, I will.

M. HANSEN: Thank you, Senator Hilkemann. Senator Hilkemann, last-- on your last time in the mike, you listed off a few senators priority bills. Do you remember doing that?

HILKEMANN: I did. I meant, I did, I mentioned some bills that were prioritized. That's correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

M. HANSEN: OK, and what was your point in your intention of doing that?

HILKEMANN: What was my intent? All of these issues were more important than LB24 [SIC], which could have been prioritized by any one of those individuals. I, as I clearly said, not that these aren't important, but these issues were more important than LB24 [SIC], which you're now trying to use to, to take down my bill.

M. HANSEN: All right. Thank you, Senator Hilkemann, that's all. I appreciate you clarifying that. I did want to say, for example, one of the priority bills you listed off was mine and the Healthy and Safe Family Workplaces Act, which, among other things, is a protection for-- the premise of safe workplaces, is safe time, which is victims of domestic assault-- violence, domestic abuse, stalking, sexual assault, so on, to be able to, you know, handle situations related to that. It's to, you know, get medical attention, maybe attend a court date, get-- have time to attend a protection order hearing. And I wanted to bring that up because obviously this, I take it for granted that this is an issue you care about deeply. That bill, the reason I'm talking about it is a bill I prioritized. It's a bill that was filibustered in the past and I thought was worthy, especially in light of the COVID-19 pandemic, of having some discussion on sick and safe leave policies in the state. And I bring this up, and I wanted, I wanted to clarify, because there are people who generally agree on the right priorities in terms of protecting the public or protecting vulnerable sections of the public. I think we agree and have similar goals for that. That being said, I still do have concerns with LB496. And I want to be 100 percent clear, I'm lukewarm on LB496 even if the Earnest Jackson, or LB28, does get attached. I just thought there was a compromise, and I figured once you worked out a compromise with Senator Wayne, my objection and my hesitation to the bill wasn't going to matter. So I was just kind of letting that play out in front of me. I didn't realize it was viewed as a poison pill. I definitely don't think it needs to be. I think, I don't think Senator Wayne is intending to take down your bill. I understand you're the introducer, Senator Hilkemann, and you get to decide what is and is not a poison pill. Which is a long way to get to the point. But there are many of us who have, as we've laid out concerns about LB496, we're going to be asking our law enforcement, we're going to be asking our courts to do some pretty new procedures and potentially some pretty intense situations. And what they're allowed to do and why is important. Those are-- I share with Senator John Cavanaugh, kind of the same fundamental concerns of even if this doesn't break the letter of the Fourth Amendment, it certainly does, to my mind, break the spirit of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

the Fourth Amendment. I know we've weakened that many times over the years through various court rulings. So this isn't necessarily a surprise. But at the end of the day, you know, we're talking about the, the-- what role should big tech, what role should government databases play? I wanted to be with, with, with, with-- with a bill like this and with the specific intent of grabbing people who were not convicted yet. And as we know, a number of people who get initially charged either never get convicted or get convicted of significantly lesser charges than were initially filed. It is not uncommon and it is not unheard of for people to, you know, err on overcharging and sort it out later. And maybe, you know, similarly, the standard to file charges is, is, is a much lower or looser standard than obviously an eventual conviction. And that's my, that's some of my main hesitation with this bill. We're roping people into a government database on kind of, at this point, kind of initial charges with other people in other situations would refer-- sometimes refer to as mere accusations. And that's problematic and that's problematic on its own.

SLAMA: That's time.

M. HANSEN: And I don't think-- oh, thank you, Madam President.

SLAMA: Thank you, Senator Hansen. Senator Pansing Brooks, you are recognized.

PANSING BROOKS: Thank you, Madam Chair. First off, I, I'm so grateful and proud of Senator Wayne for bringing his amendment to discuss the whole Earnest Jackson debacle and travesty. I'm so grateful for that because it should be something we speak about on the floor of our Legislature. When somebody is erroneously and egregiously put into, into prison and we aren't willing to get the information out because of the timing of the cases, that's not a democracy. It's not a justice system. I just want to thank him, and I also think that we're not done with that. We will be discussing that further. It is important that we continue to speak Earnest Jackson's name and to continue to fight for him until justice is done. So the other thing is that I wanted to talk some more about DNA. And I just had somebody who's highly involved in cybersecurity send me an article from Reut-- from Reuters that says, from March, that says "China is scooping up DNA data to target foreign spies and you, the U.S. government says. In February, the National Counterintelligence and Security Center released an unclassified version of its report on Chinese intelligence efforts against U.S. citizens. The report provides a scathing breakdown of how China has been stealing data, including DNA files, which are like a biological ID of your health data and medical background, to pursue its economic, security and foreign policy goals." On the face of it, China is using

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

legally and illegally acquired health data "as part of an effort to become the global leader in biotechnology and medicine. But that data theft reflects a more sinister ambition. In addition to financial gains, China is using stolen data to target dissidents, foreign intelligence officers, and even its own citizens, including ones spying on their government. In data, China sees control; in control, it sees security." China's interest in stolen data isn't new, but it was only in the 2010s that it ramped up its data collection efforts. The Chinese government's interest in data exceeds traditional security norms. For example, in 2015, the U.S. government revealed the Chinese-- that Chinese hackers broke into the U.S. Office of Personnel Management and stole sensitive data, including security background forms, fingerprint records, and health and financial data for millions of current and former U.S. officials and applicants for federal jobs. That all goes on. So again, well, if I get arrested and I'm innocent, what will it hurt me? What will it hurt me if China or some other government or some other entity with a, with malicious intent hacks the information and takes it? We need to slow this down, that means this bill, LB496, means that innocent people will be giving their DNA. I'd like to ask a question to Senator Hilkemann.

SLAMA: Senator Hilkemann, do you yield?

HILKEMANN: Yes, I'll yield, Madam President.

PANSING BROOKS: Thank you, Senator Hilkemann.

SLAMA: One minute.

PANSING BROOKS: So I know you care so much about the people that you heard and the work that you heard, but I also know you're a scientist and that you are, that you are, that you know about science.

HILKEMANN: Right.

PANSING BROOKS: So would you have concerns if you gave your DNA to an entity and couldn't control what happened to it?

HILKEMANN: Well, Senator, that's one of the things about the CODIS, it is a very safe system.

PANSING BROOKS: So you're 100 percent sure CODIS could not be hacked?

HILKEMANN: So far have there ever been any-- has there ever been a breach of the CODIS system?

PANSING BROOKS: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILKEMANN: To my knowledge, there's never been a breach of the CODIS system.

PANSING BROOKS: To your knowledge. So but the problem is you wouldn't have expected the U.S. government to be hacked and all of that information and DNA data and healthcare data to be hacked, correct?

HILKEMANN: Well, I would certainly hope not. But that is, that has been a con--

SLAMA: That's time.

HILKEMANN: --that's been a concern of mine when we come to electronic health records.

SLAMA: That's time.

PANSING BROOKS: Thank you so much. Thank you, Madam Chair.

SLAMA: Thank you, Senators Pansing Brooks and Hilkemann. Senator Hunt, you're recognized, and this is your third opportunity.

HUNT: Thank you, Madam President. Good evening, colleagues. I want to continue the conversation that Senator Hilkemann and Senator Matt Hansen started about priority bills. Colleagues, we don't have an obligation to undermine the Fourth Amendment just because someone prioritized it. Maybe this is a problem related to COVID times. We haven't been socializing as much as we typically would. I still feel bad for the freshman senators this year who haven't been able to benefit from the, you know, the camaraderie and the relationship building and the friend-making and the eating and drinking and the things that we do to get to know each other here in the body, to understand what each other's priority bills are, to understand what drives us and matters to us. I remember my first year, Senator Arch came up to my office and he sat down with me and he, he asked me pretty directly about some things that we disagreed about. And we had a personal conversation about where we were coming from, and we emerged better friends because of it. And that's a typical thing that happens in the Unicameral. But we haven't been doing that this year. I didn't know about LB496 until it was out of committee. At no point did anybody talk to me about it. Nobody counted my vote. Nobody asked me about it, the, the introducer or any of the sponsors. No one came up to me and said, hey, Megan, we've got this bill. It could really help sexual assault survivors. Is this something you could support? Like, I was never lobbied on this. And I don't support it, and I don't feel obligated to support it, to support it. And I would also-- I didn't

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

like the point that was made about how Senator Hilkemann has brought priority bills in the past pertaining to domestic assault and abuse, so now that means that we owe you a bill that violates and undermines the Fourth Amendment. Like introducing bills pertaining to sexual assault got you some bona fides and now you've earned a bill that undermines privacy rights and targets the rights of Black and Brown people, and undermines their right to be free from police violence. The bill that Senator Cavanaugh introduced that Senator Hilkemann prioritized two years ago that they were talking about, I remember that bill. That bill made it easier for people to apply for protection orders. It made it so that if an application for a protection order was dismissed, it would be dismissed without prejudice, which means that the applicant could reapply if there were problems with their application. They didn't put the right address or they did something clerically wrong, which is a common problem with people who are English as a second language or who are non-English speakers, that they could reapply for their protection order. It also said that the court where the petition is filed could decide to issue a temporary protection order without giving notice to the respondent if the petitioner thought that the respondent might be violent or might harm them, if they thought they could be in some kind of harm if the petitioner or the respondent was noticed-- notified, among other things that bill did. That bill that we debated for those protection orders, colleagues, was the only time in my time here in the Legislature that I cried. It was the only time that I had an emotional response to a bill that kind of came out of nowhere and was really so upsetting to me. And I'll tell you why. This was a bill that Senator Cavanaugh introduced. I've filed many protection orders before. I, I ran a retail store in midtown Omaha that got a lot of traffic. I was always in there. At the time that I ran the store, I was running for office. And if you know the first thing about me, sometimes I say things that are kind of controversial or politically unpopular.

SLAMA: One minute.

HUNT: And I, I mean, I've filed many protection orders in my day, so I know how it goes. But the reason that bill made me so emotional is because man after man stood up and talked about the bill and talked about how they knew someone who faced domestic assault or domestic violence and how they, they supported this bill because they knew they had to stand up for those women. But we introduce bills all the time that support victims of sexual assault, that support single mothers, that support the reproductive rights of people who survived sexual assault, and those very people who stood up and said we have to protect women are the ones who killed those bills. And it made me very

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

emotional to see the hypocrisy when women ourselves are asking you what we want and you do not give it to us, and instead you say, let's make a database of the DNA of Black people. That's not what women are asking for to be safe. Thank you, Madam Chair.

SLAMA: Thank you, Senator Hunt. Senator Lathrop, you are recognized.

LATHROP: Thank you, Madam President. And good evening, colleagues. So I haven't spoke since we had the vote on the Wayne amendment. And my obvious sense, I think it's obvious to everyone, there are a number of people that are very disappointed in that vote, including me. That was important to me. But since then, since then, the, the-- I'd like to talk about the debate that's happened since then. And not to diminish the disappointment that people experience after that amendment, but the, the debate that I've listened to since that has suggested that either myself or the Judiciary Committee generally doesn't have any regard for the Fourth Amendment, and that couldn't be further from the truth. You can not like this bill. That's your prerogative. You can look at it and say DNA is somehow different to me than fingerprints and photos and other things that happen during the booking process, that may be-- that's your prerogative as well. But I can tell you that this-- there's a U.S. Supreme Court case says you can do this and it doesn't violate someone's right to be free from an unreasonable search or seizure, because that's what the U.S. Supreme Court has said. And, and the suggestion that they may reverse themselves because now we have new members of the court is, I'll just say, a fantasy. It's not going to happen. The court's gotten more conservative in the last four years. So as we go forward, understand, and I think it would be too strong to say I take offense at some of the things that are said, because I think people have some concerns. But to suggest that this thing is a, a wholesale violation of people's constitutional rights and somehow I, as the Chair, or the committee led a bill onto the floor that's violating people's right to be free from unreasonable search and seizures and that we simply don't care about such matters, it really is no better than those who would wrap themselves in the flag and point at others and call them unpatriotic. Soon we will be through the queue and on to the bracket. Again, when we get to the Cavanaugh amendment, AM1274, I would ask for your support and your continued-- for those of you that support LB496, I would appreciate your continued support of that and the Judiciary Committee amendment. Thank you.

SLAMA: Thank you, Senator Lathrop. Senator Hilkemann, you are recognized, and this is your third opportunity.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILKEMANN: Thank you, Madam President. I just have a couple of things I want to clarify. I didn't get this done in my opening, but I want to tell you just a little bit about the CODIS, because the CODIS database is safe. It is protected by the FBI's state-of-the-art encryption and firewall technology. CODIS profiles are not shared with other type of databases and are not part of the criminal history record. They are also not accessible by third parties such as the Department of even Homeland Security. DNA profiles are only searched against the persons or unidentified remains index. Since the inception of the CODIS system, there has never been an incidence of misuse, nor has there ever been a breach of the database. Colleagues, DNA is the most powerful tool available for identification and forensic investigations. Because of its ability to align physical evidence found at a criminal scene to a single person, it is often referred to as a digital fingerprint. This method is so precise that it can assure pinpoint accuracy down to one in over a billion. And unlike fingerprints, which can only be found if a suspect touches something, DNA exists in every cell of the human body, from hair and blood to skin and tears, and can be shed or deposited while committing a crime. That means it is often the only means for accurate identification. Knowing that so many individuals have been falsely convicted due to eyewitness identification, or other less effective means, makes me even more committed to this issue. And before I get off, Madam President, I, I have a confession to make. I've been making a mistake. I've been calling it LB24. It's actually LB28. It's LB28 that was added as the amending area. And Senator Cavanaugh talked about that Maryland was with 13 loci and we now have 20. Folks, that actually makes it even more accurate. There is absolutely no, no way from those 20 numbers that the gender or race of an individual can be identified with those 20 loci. And so I just wanted to point those several facts out and thank you, Madam Chair.

SLAMA: Thank you, Senator Hilkemann. Senator Blood, you are recognized.

BLOOD: Thank you, Madam Chair. Fellow senators, friends all, many of you were not in the Chamber when we started debating on this bill. I should say that I'm not sure I support the bracket, the bill, as it stands right now, unfortunately, I cannot support. And here are the questions that I had and why I can't support it. And I was hoping to get answers. And I know that Senator Hilkemann is very involved in the conversations that are going on on the floor right now, but it's hard for me to support something that has so many questions. And some of this has already been asked on the mike, but I'm just going to refresh everybody that wasn't here and tell them what they missed earlier

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

today at 6:30. So the questions are in this exact order. Can you walk me through the expungement process for preconviction DNA? Will the sample will be destroyed and their profile removed from the database if found innocent? Does the arrestee need to request expungement of the record? Will this be automatic if the arrestee isn't charged with a qualifying crime? Two, when an arrestee refuses to provide DNA, does Nebraska require the arrestee to consent voluntarily, voluntarily, without penalty for refusing or is law enforcement allowed to use reasonable force? Is refusing to give a DNA sample a crime in itself? If so, is it punishable by imprisonment or a fine? So in Nebraska, are DNA profiles automatically submitted and entered into the national database? I know that some counties are overwhelmed and we've talked about this already on the mike, I know. And then they use private labs, and they don't qualify them to submit their DNA data to NDIS, which is concerning if we're really worried about criminals. And then I talked about the Congressional Research Service report that was put out in January that I read, and the report was specifically on the use of DNA by the criminal justice system. And one of the things that it said clearly is that the consequence of expanding the collection and use of DNA, has, has resulted in an increased burden on crime labs leading to a backlog of untested DNA samples. These delays result in efforts to apprehend and prosecute alleged offenders and to exonerate wrongfully convicted individuals. So it's all things that have been talked about on the mike, but I still haven't heard these answers. So I brought that up at 6:30. It's 9:00 now. I don't have any answers. I can't understand the bill if the mechanisms show me that it's not functional. And I find that concerning because we talk about getting things resolved on the floor. We talk about moving things through to Select. But in order to do anything like that, I have to have answers. So I don't think I'm going to get them today, and that's concerning for anybody who's innocent. And I know that Senator Hilkemann thinks this will help innocent people. But if I was innocent, I would submit to a DNA test because I'd want to prove that I'm innocent. Right? So I'll have the choice to do that. I don't necessarily have the choice to do that with this. I prefer to have a choice. And then I started looking at some of the other states and the issues that they've had pertaining to bills like this. And what has happened is-- Ohio is one of the states, by the way, where people's DNA was supposed to be released from these databases because they were found to be innocent, because they weren't guilty, because they weren't involved with the crime. And guess what happened? Seven, ten years later, they're still in the database. They're still in the database. And in order to get out of that database, they have to go to a judge. Now they didn't commit a crime, but you're going to make them go to a judge. And I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

assume anytime there's a court, and I don't know, because I'm not a lawyer and I don't pretend to be a lawyer, Senator Lathrop--

SLAMA: One minute.

BLOOD: --I would assume, though, there's going to be some kind of court costs involved with that. I find it hard to believe that a judge would just do it as a goodwill offering. But maybe I'm wrong on that. Maybe that's like part of their job title. So lots of questions not answered. Lots of issues with other states, I'm starting to find out. We've got lots of time on our hand and you've given me way too much time to research this. So I hope we get to a vote on something because I've got way too much information in my head today. Thank you, Madam President.

SLAMA: Thank you, Senator Blood. Speaker Hilgers, you are recognized.

HILGERS: Thank you, Madam President. Good evening, colleagues. I have a brief scheduling announcement just so we know what we're doing today and tomorrow. As I mentioned earlier today and this week, we will go to 10:00 tonight. It looks like it's more likely than not, probably far more likely than not, that we will continue to be LB496 until 10:00. We will-- it is, it is impossible for us to get to a cloture motion this evening. And so what we'll do is stop at 10:00 and then tomorrow morning we will just continue with the remaining couple hours that will be on LB496 if it goes to cloture. I know the last week or two I had conveyed that at the end of this week, these long weeks, that we were going to, we were going to go through a lunch hour and go till 5:00, 4:00 or 5:00, 6:00 on the last day of the work week. We did that last week, if you remember. But tomorrow we are not going to do that. Tomorrow we will end at lunch, at noon or around noon, 11:45 or so, whenever it is we get done with this or whatever progress we've made. Going into a short weekend, I think we've had a long week, so I think it's important to get done a little earlier tomorrow. So tomorrow, just for your scheduling, especially those outstate, we will be done by noon tomorrow going into the next week so. Or so just to recap, we're going to 10:00 tonight. When we come back up tomorrow, we will be going where we left off on LB496 and we will go to completion on that. And then most likely just pick up on the agenda where we are this evening. If you have any questions, please let me know. Thank you, Madam President.

SLAMA: Thank you, Speaker Hilgers. Seeing no one wishing to speak, Senator Wayne, you're recognized to close on your bracket motion.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

WAYNE: Thank you, Madam President. It was fun, things got a little chippy, a little heated. And just for everybody watching, it was not Senator Groene and I getting cheap-- getting chippy and getting heated. Just-- I know for years, people watching at home always saw it was Senator Groene and I. That one didn't happen. So congratulations, Senator Groene. Yes, I'm ready to go till midnight. I got my second wind. I've been training for Kilimanjaro, I'm ready to go. Legs are feeling good. This is-- legs were hurting yesterday. Today, legs are feeling good, so I'm here for the long haul. However, as I said before, it wasn't my intention to filibuster this bill. I just didn't like it. But there were a lot of people who don't like it with me, and when a lot of people have a lot of things to say, eight hours really isn't that hard to, hard to go, especially when you get a break for sleep. So I think that's where we're at. I think maybe there's a way to move this bill forward. I'm not sure. As long as you take DNA without being convicted with the probable cause finding, it's really hard for me to, to do that based off of what I see. To put it in perspective, I have probably done 500, 600, probably a thousand probable cause hearings, preliminary hearings. I won one. And I won that one only because the grandma came in and testified that she gave her grandkid a credit card to go to Wal-Mart to buy some stuff. They charged him with a felony for having stolen financial transaction devices. So it's kind of hard to argue. But it's also interesting because those same 500 to a thousand, we actually-- I probably won some trials. I know I have. Or we plead down to something not even close to what they're being charged with. That's the problem the way this bill is written, is because there's a probable cause finding, and that is the lowest level you can go in criminal proceedings. And I don't think there's a workaround for that, Senator, because that's your basis of allowing the DNA tests. Because if it's anything else, like beyond a reasonable doubt, that's what we currently have. That is the problem. That is the fundamental problem when I look at the disproportionate minority contact across the state about whose DNA is going to be swabbed for a probable cause finding. And I don't think people understand that because they don't deal with it every day, but you can go up to courtroom 625 on the sixth floor and see how many are won, and then come back a month later and see how many are either dismissed or pled way down. They overcharge on purpose because it's the easiest way to get a plea. When somebody is sitting for 60 days and they can get time served, they want to go home, kind of like Earnest Jackson. They want to go home. So they take a, a plea rather than sit there for six months. Think about this. Last year we had to pass a bill to make sure that they have a hearing, or at least a trial or hearing because oftentimes they sat in jail longer than the sentence. We passed that bill. We had people sitting in jail longer

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

than the sentence because it was that slow to move it through. But we're going to trust this system right now with all the things we see going on with it, we're going to trust it. That's the problem. That's why people who are in the system have-- and I say in the system, working in the system like myself and Senator Cavanaugh and people who know people who are working in the system-- have a problem--

SLAMA: One minute.

WAYNE: --have a problem with this bill. We are taking DNA essentially from somebody who is getting a traffic stop and they go inside of a car. That's their probable cause. Probable cause is I think we might have committed a crime, so now I get to search you. That is the standard. I think there is enough evidence that you committed a felony and we're going to swab your DNA. Next, we're going to give them chips. I just kind of wanted a laugh there, but we're not in a laughing mood. So with that, I will withdraw my motion to bracket. Thank you.

SLAMA: Thank you, Senator Wayne. The motion is withdrawn. Returning to debate on AM1274. Seeing no one wishing to speak, Senator John Cavanaugh, you are recognized to close.

J. CAVANAUGH: Thank you, Madam President. So AM1274, I introduced, I don't know, three hours ago, and a lot of folks weren't here. And Senator Lathrop has refreshed us on what this amendment does. This is a friendly amendment, though I have expressed my dislike of the bill. I feel strongly that we should make bills better if they're going to become law. And I actually was spending some time discussing with counsel over there's ways that we can solve some of the problems that have been raised. And I was clear with Senator Hilkemann when I talked to him about bringing this amendment that this amendment doesn't solve all my problems with this bill, but I do think it's an amendment we should adopt. But basically, it, it clarifies the question about when a probable cause hearing is, which I think is an important distinction that this bill requires. And it additionally has putting into statute the court, the currently court rules, procedure, for post-conviction tolling on appeal. So I won't rehash all that. I know everybody is super interested in that particular topic, but this is an amendment that helps make this bill better and it makes good law. And so I'd ask for your green vote on AM1274.

SLAMA: Thank you, Senator Cavanaugh. The question is, shall the amendment to the committee amendment to LB496 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

CLERK: 31 ayes, 0 nays on adoption of Senator Cavanaugh's amendment.

SLAMA: Thank you, Mr. Clerk. Mr. Clerk for items.

CLERK: Thank you, Madam President. Before we proceed, a new resolution, LR128, offered by Senator Brewer. And then I have a series of amendments to LB496 from Senator Hunt to be printed. Madam President, returning to LB496, Senator Pansing Brooks would move to amend with AM1285.

SLAMA: Senator Pansing Brooks, you are recognized to open on your amendment to the committee amendments.

PANSING BROOKS: Thank you, Madam President. Well, good evening, members of the body. Again, just like Senator Cavanaugh, this is a friendly amendment that clarifies that juveniles are not part of the DNA collection in LB496. I have spoken with Senator Hilkemann about this amendment, and he is supportive. While it is the intent that this bill only apply to those age 19 and over, I thought we needed to have explicit language to that effect. Other states have moved forward with similar legislation and also have specifically exempted juveniles. So I ask you to vote for AM1267 [SIC-- AM1285]. As you know, I will continue to fight for Nebraska's kids with every step that I have left in this legislative body, and we need to make sure that they are protected. The discussion was about cold cases and obviously you can't have a very cold case on a juvenile. So I hope you'll support this amendment. Thank you very much.

SLAMA: Thank you, Senator Pansing Brooks. Debate is now open on AM1285. Senator Wayne, you are recognized.

WAYNE: Thank you, Madam President. So I am in favor of the amendment, I still am opposed to the underlying bill, but this is kind of the point. We're talking about a database that is going to be forever. We're talking about a database, Senator, that may not have gotten hacked, but nobody thought our-- many of our companies believe they're not going to be hacked and they still end up getting hacked. But nobody thought, and this is what happens in committees when you're dealing with complex bills and a lot of things, but we oftentimes think things are clear and they're not. For example, I passed a bill that I thought was pretty clear and judges later down the road said, no, we didn't understand what you said. And so I appreciate Senator Pansing Brooks bringing an amendment to make sure that it only applies to adults, the true meaning of adults. But what's interesting about that, the case that we were talking about earlier, he was only 17 years old when he was convicted, just find that ironic. So Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Pansing Brooks, would you-- do you want any more time? No, don't need any more time? OK, I'll keep talking. So DNA was used a lot to exonerate individuals. The reason why DNA has been used a lot to exonerate individuals, it was because it was hard evidence to cast doubt. Hard evidence to cast doubt. The issue I have right now is there is hard evidence to cast doubt, but we're afraid of politics. We're, we're afraid of politics because we are thinking about reelections and moving up, instead of doing what's right. So I'm not going to talk a whole lot on this amendment because there's a lot of amendments. But I am going to talk on each one of them. We'll get to 10:00, we'll come back tomorrow, and we'll start this conversation again. But the question is to all the people who are committed to this bill, do you think it's OK for somebody to take your DNA because somebody believed you might have committed a crime? That's the standard we're talking about tonight: probable cause. And with that, I will yield the rest of my time to Senator Erdman.

SLAMA: Senator Erdman, you're yielded 2:08.

ERDMAN: Senator Wayne, I really appreciate that, and I don't know what else to say. Thank you.

SLAMA: Thank you, Senators Wayne and Erdman. Senator Hunt, you are recognized.

HUNT: Thank you, Madam President. That was cute. I am in favor of this amendment, AM1285, and remain opposed to LB496. What seems to be happening, what seems to be happening, in my estimation, from conversations I've been a part of and conversations I've heard here on the floor tonight, Nebraskans, is Senator Wayne introduced an amendment to allow judges to consider new evidence when there's new evidence that comes up. And this would specifically help the case of a person who we know is incarcerated right now, who we know is innocent. And that vote failed by one vote. There were like eight, six or eight members who were not voting. Any of them could have changed their vote or any of them could have filed a motion to reconsider that vote. I believe according to the rules, they still could, but nobody has filed that motion. And to many people in the body, this is interpreted for what it is, which is a huge miscarriage of justice. When we have an opportunity to help somebody who we know is innocent and we neglect to take that opportunity, that's something a lot of people take offense to. And it's also something that people rightly feel like we've really let the people of Nebraska down. So it feels in that way like a dereliction of duty as well. So the reason we're having trouble getting members to support that amendment, whether that's by filing a motion to reconsider or maybe we could reintroduce that amendment on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

Select File or maybe we could introduce an amendment to completely replace LB496 with that bill, there's lots of different kind of weird ways that we can try to fight to get that amendment voted on again. But the introducer and other members of the body think that putting that amendment on LB496 is a poison pill. But we're kind of between a rock and a hard place here, because if that amendment doesn't get on LB496, we kill the bill. If the amendment does get on LB496, then it sounds like there's a group of conservatives who will kill the bill because they're listening to county attorneys, they're listening to the executive branch, and they're not thinking independently or listening to the people of Nebraska. So I think that we are at a little bit of a stalemate, playing chicken a little bit. And I don't think that anybody is going to back down. So we're going to take this eight hours and the bill will probably fail. And we'll see how the sour grapes shake out for the rest of the session. Here's a question about LB496 that I think needs to be addressed. The committee amendment-- let me grab it. The committee amendment is unclear on how the DNA sample is going to be collected. Senator McKinney, you know, shared a hypothetical, you know, theory that if this were to happen to him, you know, perhaps a police officer would be holding him down and compelling a cheek swab from him. As a Black man, that's probably realistic. You know, that's something that we know happens. So what the bill says, is an adult who is charged with a crime of violence or burglary, which is kind of a strange thing, too, to me. So in the language of the bill, this is only supposed to apply for people who are arrested for crimes of violence. And the bill on page two kind of enumerates all these different types of crimes that are considered crimes of violence. But colleagues, burglary is not necessarily--

SLAMA: One minute.

HUNT: --a crime of violence, right? It could mean. You know, it could be a relatively victimless crime. And burglary is also the kind of charge that can really be trumped up. Like, you know, it can be one of those things where the actual thing they did was, did not really rise to the level of a burglary. Anyway, it says, the court shall order the collection of a DNA sample. The DNA sample collected under this subsection shall not be tested or placed in the state DNA database until after a judicial determination of probable cause on the crime of violence or burglary has been made or a hearing to determine probable cause has been waived, unless requested or consented to by the person whose DNA sample is to be collected. If the charges for the crime of violence or burglary are determined to be unsupported by probable cause, the DNA sample shall be immediately destroyed and notice that the sample was destroyed--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

SLAMA: That's time.

HUNT: Thank you, Madam Chair.

SLAMA: Thank you, Senator Hunt. Senator Hilkemann, you're recognized.

HILKEMANN: Thank you, Madam President. All right, I had a conversation with Senator Pansing Brooks last evening. She was concerned about the definition of children. We looked at the bill, it says: an adult. And I'm willing to work to make this bill better. And Senator Pansing Books brought this, this AM1285. I, I think it's a good-- it, it, it clarifies things. I think I'm fine with it to be added to this bill, and so I will be voting for Patty Pansing Brooks's amendment to, to AM1054. Thank you, madam.

SLAMA: Thank you, Senator Hilkemann. Seeing no one wishing to speak, Senator Pansing Brooks, you are recognized to close on your amendment to the committee amendment. Senator Pansing Brooks waives closing. The question is, shall the amendment to the committee amendment to LB496 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

CLERK: 32 ayes, 0 nays on adoption of Senator Pansing Brooks's amendment.

SLAMA: Thank you, Mr. Clerk. The amendment is adopted. Mr. Clerk.

CLERK: Madam President, thank you. Senator Hunt would move to amend. Senator, I have AM1289 in front of me.

SLAMA: Thank you, Mr. Clerk. Senator Hunt, you are recognized to open on your amendment to the committee amendments.

HUNT: Thank you, Madam Chair. What I want the body to consider is what may happen if we follow LB46 [SIC-- LB496], to its logical conclusion. What this bill allows us to do is collect DNA from people who are arrested but are not found guilty, are not convicted, are possibly innocent. And if they are found innocent, it's really troublesome and difficult for that person to get their DNA out of the database. And the bill, as introduced and as amended by the Judiciary amendment, doesn't really provide a framework or any guidance on how a person who is not found guilty can get their DNA out of that database. So that to me is a problem. And when you boil it down, what this bill means is we are collecting DNA and storing it when it belongs to innocent people. I would be interested in an amendment to this bill that requires a reporting component that says we are going to audit the DNA database

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

every year and report to the Legislature what percentage of DNA samples in that database belong to people who were found innocent or who are not guilty or who are exonerated or whatever. Because I would bet you, dollars to donuts, that anybody who's found not guilty, the majority of those people are not going to go back and get their DNA out of there. You know what people hate to do? Fill out forms, wait in lines, drive to government buildings, get on the phone. You know, take it from me, I'm lucky that we have staff here at the Legislature. And not every state legislature gets staff, which is nuts to me. But I don't like to fill out a form. I don't want to get on the phone, I don't want to be on hold. I don't like the bureaucracy. And I know many of my colleagues agree. We introduce a lot of bills to get rid of red tape, and to stop government bureaucracy, and to remove some of the friction that prevents good governance and from government working well and actually serving the people that it's meant to serve. This bill is not good governance in that way. It introduces a layer of friction to the judicial process, to the criminal justice process, that we are using to punish innocent people. When an innocent people who gets caught in the net, who is wrongfully arrested, which happens all the time, gets caught in the net of LB496 and their DNA is sitting in a database somewhere, do you think they're getting home from their second job, taking care of their kid, making food, which, by the way, we're all sick of making food after the last year. I'm sick to death of cooking my own food. I can't wait to go back to a restaurant. But a lot of you all won't get vaccinated, so that's going to take some time. So after they do all of the things that they need to do to live and run their lives, you think that they're going to go to a government building or make a call or fill out a form to get their DNA, which was unfairly collected in the first place, out of a database so that they can go on with their lives as they were before they were wrongfully arrested? I think that we need a reporting element to say, year by year, how much DNA is in this database that belongs to innocent people. And we probably need a provision in this bill if it's going to pass-- if this gets to Select File, I'll introduce an amendment to do this, to say if the person is innocent, it will automatically be removed from the database, and they will not have to waste their time and go petition for it to be removed. However, even if that gets adopted, how do we audit the system to make sure that that's actually happening? How do we make sure that if we say automatically if a person's innocent, their DNA has to come out of the database, that we know that's actually going to happen? That's something that's going to take workers, it's going to take human power, manpower, it's going to take money paid by taxpayers. And by the way, the taxpayers are paying the bill for this as well. And you think we're not going to take LB496 eight hours, we'll take LB496A

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

eight hours, too, the bill that funds this bill. So the fiscal note of LB496, in fiscal year '21-22, it's \$423,846. In '22-23, it's \$829,692. So that's how much taxpayers are going to be compelled to pay to store the DNA and collect the DNA of innocent people, potentially. And introducing a reporting requirement would certainly add money to the bill. It would make it cost more, which would make it harder to pass, and it would give a lot of people in here an excuse to say, oh, well, I think that we should be collecting the DNA of Black and Brown people erroneously when they haven't done anything wrong, but it costs too much money to report it and keep track of it and do reporting on who's actually in there, if they're innocent or guilty. So that's not something I'm going to support. I can already see the future. I know exactly how that conversation is going to go. So colleagues, if we're talking seriously about a bill that says innocent people are going to have their DNA compelled from them, coerced out of their mouth and put in a database that will be there for who knows how long until they do the chore of going to get it out, then let's take that to its logical conclusion. I've introduced a couple amendments. This isn't the one that I meant to come up first, but I would love to speak on it, and I would love to get to a vote on it. And then we can move on to my other ones. But what AM1289 does is it says that a candidate for elective office who does not have a DNA sample available for use in the state DNA sample bank shall, at his or her own expense, have a DNA sample collected by the sheriff before his or her name may be placed on the ballot. What LB496 does is it moves all of these DNA samples that are taken from people who are arrested, whether rightfully or wrongfully or convicted or guilty or innocent, and it puts them in the state DNA sample bank. And the purpose of the sample bank, ostensibly, according to introducer and to proponents, is to cut down on crime and to be preemptive and proactive about catching people who are committing crimes. If we want to reduce corruption in government, if we want to make sure that we have accountability for the folks who are publicly elected officials who are here to serve the people, who are ideally servant leaders, who aren't voting the way the billionaire Governor said to vote, who aren't voting the way the county attorney said to vote, who aren't voting the way any of the six-figure-earning lobbyists who give us all free food and drinks say to vote, then I think we ought to put our DNA in the bank as well. I would volunteer to put my DNA in the bank, and I think that anybody in this body is a hypocrite if they're voting for a bill saying that an innocent person would have to submit their DNA to a database with no accountability, but they wouldn't be willing to do the same thing. Because, colleagues, nothing is preventing you from getting wrongfully arrested, just like somebody who would be affected by LB496. You only think that you're never going to get wrongfully arrested because most

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

of you are old white men. And statistically, when we look at who gets arrested, that's not usually what you see. I also want to address some of the objections, the rebuttals to the objections to this bill that was made by the introducer and other proponents of the bill. There are a lot of problems with the bill, philosophically, morally, technically. But again, I want to also caveat this and make sure people understand this doesn't mean that I doubt the good intentions of the introducer or that I don't empathize and take seriously the experience and plight of people who experience violence. Nobody could look at me and look at the bills I introduce and the--

SLAMA: One minute.

HUNT: --causes that I advocate for in the Legislature and say that I don't take, you know, survivorship and victimhood seriously. One thing that proponents of the bill have said isn't true, is that we're taking the DNA and building a database of innocent people. We literally are. The collected information that comes out of people's cheeks that we're swabbing and we're putting into this, into this database, that's going to include both innocent and guilty people. That's the purpose of the bill. We already collect DNA evidence for all people who are convicted of all felonies. This would allow for the collection of people who have not been convicted and are therefore innocent, because in this country we have the standard of innocent until proven guilty. Even if someone is suspected of a crime, that doesn't mean that their DNA should be coerced by the state.

SLAMA: That's time.

HUNT: Thank you, Madam Chair.

SLAMA: Thank you, Senator Hunt. Debate is now open on AM1289. Senator Wayne, you are recognized.

WAYNE: Thank you, Madam President. Colleagues, I'm going to ask some random questions of people just to make sure everybody's engaged, because I shouldn't be the only one talking. But what I'm going to ask is how many people actually know the definition of probable cause? I just really want people to know what that means. Probable cause is not even more likely than not. It actually just simply means that you probably committed a crime, that a reasonable, prudent person may think that a crime has been, crime happened. That's literally the lowest burden one can find. And here's a secret, Senator, here's a secret that when a judge signs for a warrant, probable cause is needed to sign for that warrant. So my question is, is the signing of a warrant of probable cause finding enough to meet this, this definition

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

laid out or do they really have to wait till the preliminary hearing? It seems like there's conflicting language there because it is a probable cause finding when there's just a search warrant. So they issued a warrant for your arrest, there is a probable cause finding at that moment. And if they issue a warrant for your arrest, I guarantee you you will be bound over to district court, because if one judge already found probable cause in an affidavit, another judge will not likely overrule them, at least at the county level. So just the issue of a warrant, practical matter, means you're going to get your DNA swabbed or taken. Senator Cavanaugh, will you yield to a question?
Senator John Cavanaugh.

SLAMA: Senator John Cavanaugh, do you yield?

J. CAVANAUGH: Yes.

WAYNE: And I hope colleagues who are real conservative listen to this conversation real quick.

J. CAVANAUGH: Oh boy.

WAYNE: Do you know what the good faith exception is?

J. CAVANAUGH: Yes.

WAYNE: Can you briefly explain it at a high level of what it is?

J. CAVANAUGH: So basically, if officers file for, say, a search warrant or a warrant and they-- and it's granted, they search, then it's later discovered that was based on some mistake in fact, they can basically get a new warrant or that evidence will still be admitted because they relied on that warrant in good faith. And so that evidence that was collected but based on mistakes, which would undermine the probable cause of it, would still be admitted because it was, it was obtained in good faith.

WAYNE: So looking at this bill, do you think this might expand or decrease the good faith exception?

J. CAVANAUGH: Well, I think it certainly would expand opportunities for police to conduct investigations and then rely upon those investigations in good faith. I, yes, I think there's a chance for that.

WAYNE: So theoretically, if a cop or the police decided to run your DNA instead of just holding it, and they claim they thought the law

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

allowed me to do it, would that potentially fall underneath the good faith exception?

J. CAVANAUGH: I think yes. I'd have to think about it, but I think that there's a scenario under which if they run it and then they find that that person is a match, and then ultimately the DNA should have been thrown out and they shouldn't run it or something along those lines, I think there is a potentiality for them relying upon that as a good faith exception.

SLAMA: One minute.

WAYNE: My-- colleagues, my point of it is, is that underneath current case law and criminal case law, if a officer or a agency reasonably relies on what they believe the law says, even if it's completely wrong, i.e., we're going to run your DNA because we think we can, even though the bill's intent says you have to wait till they're convicted, that evidence can still come in and that DNA is already taken and put in a database. And there's no mechanism to get that out because they relied in good faith. That's what concerns me about this bill, is that it expands good faith in my, in my opinion, to now to your DNA. We are allowing people who are not convicted to potentially accidentally run, or intentionally run, and rely on good faith. And if you were to do a Westlaw search, is what a lot of attorneys use, you will see good faith exceptions all over. In fact, there's about 400 cases that allow officers who incorrectly rely on the law--

SLAMA: That's time.

WAYNE: Thank you, Madam President.

SLAMA: Thank you, Senators Wayne and Cavanaugh. Senator John Cavanaugh, you are recognized.

J. CAVANAUGH: Thank you, Madam President. Well, you know, I think I'm rising in opposition to Senator Hunt's amendment, but I don't know. It's an interesting idea. So I share Senator Wayne's concerns about the expansion of the good faith exception. I kind of wanted to touch on a similar topic area, which is just searches in general and the requirement of warrants and then warrant exceptions. And so we have a number of exceptions that we have created to allow for searches in certain circumstances. And generally the circumstances are what we would call exigent, which means that there is some emergent situation that would prevent the ability to go to a magistrate, a judge and-- an impartial individual and say, this is what we, we think, this is why we need to conduct this search and, and we need your consent to do it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

And that is the process that we do to ensure that individuals' rights are preserved. And we do that when we-- in all circumstances, except in emergency situations where there is an exception. So we have the exception, for instant to arrest, which we search individuals because for the safety of officers, to make sure the person doesn't have a weapon, or perhaps the preservation of evidence to make sure that they don't have some sort of evidence on them that they might destroy in the process of be-- of the arrest or transport. We have warrantless arrest exceptions. Of course, when you arrest somebody in hot pursuit or when they're in the middle of committing a crime, we don't require that the officers then go get an arrest warrant, take the person into custody under that arrest warrant. We allow them to arrest them based off of that emergent situation. We have search warrants that allow us to search homes, right? But we also have circumstances where we can search when it is an emergent situation if we arrest somebody in their home and we can, we can search certain areas. But when it comes to things like DNA, we require that you get a search warrant to get a buccal swab of somebody. There's a structure for that. And that is because the DNA is not going to be destroyed, because the person exists and they're going to continue to, I guess, produce DNA. It will be part of their body. So there's not an exigency question there. And, and there's certainly not an exigency question here presented by the objective of this bill, being that we want to go and search-- we want to take these people and search them against an existing database just to see if they're out there. So the, the, the reasons that we allow for this type of search is not present in this case. There is no, no timeliness necessity. And I touched on this earlier with one of the examples that Senator Hilkemann handed out, which was a case where some of this DNA was collected a long time ago and it wasn't tested until much later. And so it was from a, it was from a cold case from 1983, from DNA collected about a decade ago that was just released and revealed. It was in the paper today, Senator Hilkemann handed it out as part of this. But so there was not a timeliness question there. So, and I think Senator Blood alluded to or somebody talked about, Senator Hunt has talked about the backlog of testing that we have. So we have lots of tests that need to be done, we have lots of cases that need to be compared against information that we have. So we have enough work to do. It's not like we have extra time sitting around needing to fill with more testing. So the, the general reason that we go around and the warrant requirement, that we go and ask with particularity why we need to conduct this search and, and probable cause, the reason we don't-- well, the reason this is saying we don't need that--

SLAMA: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

J. CAVANAUGH: --is because we are eliminating the probable cause requirement of the search itself. So there's a probable cause requirement that you are, that you are charged with a crime. That is the probable cause requirement here, it is not probable cause that this DNA is, is being captured and tested for purposes of that investigation. This is DNA that's being tested, captured and tested for purposes of no investigation or every investigation. It is literally a fishing expedition where we're just trying see if these people match against this. So it does not meet the standard of exigency that we have-- or any other exceptions to the warrantless requirement. If we want to capture all these people's DNA, they can file a search warrant. They can ask for, with particularity, why they want this person's DNA. We can subject it to the constitutional rigors that we subject every other search to in these sorts of situations. There is no necessity for this exception. And this, that is one of the reasons I am against this law, this bill, and probably against Senator Hunt's amendment. But I haven't decided yet. Thank you, Madam President.

SLAMA: Thank you, Senator Cavanaugh. Senator Hunt, you're recognized.

HUNT: Thank you, Madam President. I heard a couple of people saying I'm sitting here looking at my phone and I'm on the camera because Senator John Cavanaugh is talking. And someone's like, oh, she's just getting text, so people tell her what to say. She's getting texts from the lobby so people can give her her talking points. And trust me, there's nobody in the lobby who is helping me with something like AM1289. So that's not what's happening. You know what I'm actually doing on my phone, since people brought it up? I am helping a woman via my d-- my direct messages, my DMs, on Twitter who has not gotten her unemployment insurance still from the pandemic. And this woman lost her job during the pandemic. She's a server, she's a single mom. She suffers from some different medical conditions. And she follows me on Twitter, and we have been DMing and talking about her claim. And tonight I had someone from my staff reach out to the Department of Labor and inquire about what's going on with her claim so we can get that settled for her. And as much as so many of my colleagues kind of drag millennials or they criticize our activity on social media-- me especially, I've beared the brunt of a lot of that-- you have no idea what an important tool that is for reaching our constituents where they are and being accessible to people in a way where they actually know how to contact you and they can rely on you to be there. And for me, you know, that's one really great use of that channel. So anyway, don't worry, I wasn't getting my talking points from the lobby, and I will not be expecting a check for this type of stuff that I'm doing. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

was just helping someone with their unemployment. So I wanted to talk a little bit more about some of the rebuttals to the objections to LB496. I have a concern, for example, that DNA-- and this is a concern that Senator Pansing Brooks was sharing as well-- that DNA contains very private information. How is it safe to put this DNA, this private information, the most private information that we have, into a government database if someone hasn't been convicted of a crime? And what Senator Hilkemann and proponents of LB486 have said is that it's not really your DNA that's put into CODIS, it's a DNA profile. And they're contending that that's not the same thing. But that's not really true. Just because the CODIS database doesn't list a complete identification match, you know, even if it's not your complete genomic sequence that's being put into CODIS, that doesn't mean that that information can't be matched and combined. Nebraskans, don't be fooled, this is a database of people's DNA and matching information. This is a government-controlled database of your DNA. If it was not that, if it was not a usable receptacle of DNA for matching purposes, then it wouldn't even be useful. Then we wouldn't even be debating LB496. And it wouldn't help solve any crimes and it wouldn't help deter any crimes and it would be useless. So that point is medically inaccurate and factually inaccurate, and also just doesn't make any sense when we're talking about the ends and the purpose of the bill. Another thing that I heard said in response to concerns, for example, my concern that it's wrong to take DNA from someone who has not been convicted of a crime, proponents have responded that, well, we take pictures of people who are arrested, even if they're not convicted. We take their fingerprints. And what I want to tell people who say that--

SLAMA: One minute.

HUNT: Thank you, Madam Chair-- is it's really foolish to equate a photograph with DNA. A photograph is not the same thing as DNA. Fingerprints are not the same thing as DNA. Photographs and fingerprints are allowed to be collected to confirm identity. But DNA goes further. Already, arrestees can be strip searched for the protection of jail staff and to maintain order in our jails and our prisons, not necessarily to be searched. DNA is not merely a series of numbers, it's a complex molecule that contains all of the information necessary to build and maintain an organism. It's the molecule that describes life. It's the key to our lives and it's unique to all people. Nothing is more unique or more personal. So it's not like a photograph. It's not just like a fingerprint. And I'll continue on my next time on the mike. Thank you, Madam Chair.

SLAMA: Thank you, Senator Hunt. Senator Hilkemann, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

HILKEMANN: Thank you, Madam President. I want to talk to the people of Nebraska right now. I want to tell you how proud I am to be serving in this body. How proud I am of, of my colleagues. Since 6:30 tonight, there's only been maybe seven or eight people speak, but on our last vote we had 44 members of this body that were still here at almost 10:00 at night. They were here until 8:00 last night. They've been here since 9:00 this morning. I'm very proud that, that even though they're-- that they have stuck around for this debate in case there are votes that are necessary. Nebraskans, I am proud of this body. And I hope you are, too, and I want to thank all of you who have stayed late tonight for this discussion. That being said, we're getting told about all the horrible things that this is going to do. Let's talk about some of the actual facts that have happened. We're going to take-- talk about the state of New Mexico. This became law in January 2007 in the state of New Mexico. Since that time, there have been over 1,400 cold cases have been matched to felony arrest DNA. The first match was to the first sample taken under the new law, which was taken one hour and 14 minutes after the law took effect. It matched a double homicide. James Mancuso has since been convicted of both of those murders. Israel Diaz was arrested for burglary and his DNA matched to a rape and murder of an 11-year-old girl. The match also exonerated Robert Gonzalez, who had been jailed for over two years awaiting trial for that murder. Jedidiah Rose was arrested in April 2014 for embezzlement of a motor vehicle. His DNA was taken under Katie's Law, and it matched the DNA found on a bloodied Band-Aid at the scene of a 1996 murder of Richard Brodbeck, who had been murdered on his 44th birthday. Until Rose was arrested, Broderick's murder had gone unsolved for 20 years. When confronted with the DNA evidence, Rose confessed to the murder. That's why I'm passionate about this bill, folks. That's why I'm passionate about this bill. This bill was implemented in Colorado beginning in September of 2010. Forty cold cases were matched to arrestee DNA samples in the first four months, nine of which were to cold case rapes. Robert Howard Bruce was arrested in Colorado for a felony and his DNA was taken.

SLAMA: One minute.

HILKEMANN: His DNA matched to several cold case rapes. And as a result of this DNA match, Bruce has been convicted of five counts of rape, 10 counts of burglary, 2 counts of sexual battery and 1 count of forcible sodomy in Oklahoma going back to 1985. He has also been convicted of eight counts of rape in New Mexico going back to 1991. William Costello, a successful real estate broker with powerful political ties in Colorado, was arrested for felony assault after a political argument resulted in an elderly man breaking his hip. Under Katie's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 6, 2021

law, his DNA was taken and it matched crime scene DNA in the rape of three teenaged girls, one as young as 13. Costello was arrested for these crimes and he actually committed suicide in his custody.

SLAMA: That's time.

HILKEMANN: Thank you.

SLAMA: Thank you, Senator Hilkemann. Mr. Clerk.

CLERK: Madam President, I have no items. Senator-- Senator Wishart would move to adjourn until Friday, May 7, at 9:00 a.m.

SLAMA: Thank you, Mr. Clerk. The question is, shall-- the question is, shall the Legislature adjourn until 9:00 a.m. tomorrow? All those in favor say aye. All those opposed say nay. The Legislature is adjourned.