

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate May 11, 2021

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

**CLEMENTS:** Thank you, Mr. President. Please join me in prayer as we open this day the Lord has made. We read in the Bible, bless the Lord, oh, my soul, and all that is within me bless his holy name. Bless the Lord, O my soul, and forget not all his benefits. O Lord, you have searched us and known us. You know our sitting down and our rising up. You understand our thoughts. You comprehend our paths and you are acquainted with all our ways. Let the words of our mouths and the meditations of our hearts be acceptable in your sight, O Lord, our strength and our redeemer. We ask for wisdom and knowledge that we may deal with the business of the people of Nebraska wisely. As we start this day, we thank you, Heavenly Father, for your lovingkindness and for the blessings we have received. Thank you, Lord, for creating us with a purpose. Help us to recognize our gifts and use them wisely. We pray today for understanding to make decisions that honor you and that benefit our state. We ask you to watch over and protect our families and our state and national leaders. We pray for protection over the first responders and the military who keep us safe. As we honor you, may you continue to bless the great people in the great state of Nebraska. In Jesus' name we pray, amen.

**FOLEY:** Thank you, Senator Clements. I recognize Senator Blood for the Pledge of Allegiance.

**BLOOD:** Please join me in the Pledge of Allegiance. 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 Blood. I call to order the seventy-sixth day of the One Hundred Seventh Legislature, First Session. Senators please record your presence. Roll call. Mr. Clerk, please record.

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

**FOLEY:** Thank you, Mr. Clerk. Do you have any corrections for the Journal?

**ASSISTANT CLERK:** No corrections this morning.

**FOLEY:** Thank you, sir. Any messages, reports, or announcements?

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**ASSISTANT CLERK:** No, none this morning, Mr. President.

**FOLEY:** Thank you, Mr. Clerk. Members, while-- Senator Suzanne Geist would like us to recognize Dr. Rachel Blake of Lincoln, Nebraska, who is serving us today as family physician of the day. Dr. Blake is with us under the north balcony. Doctor, if you could please rise, like to welcome you and thank you for being here today. Now move to the first item on the agenda, General File appropriations bills. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, LB147A, introduced by Senator Kolterman. It's a bill for an act relating to appropriations; appropriates funds to aid in the carrying out of provisions of LB147.

**FOLEY:** Senator Kolterman, you're recognized to open on LB147A.

**KOLTERMAN:** Good morning, colleagues. Thank you, Mr. President. The A bill on LB147 consists of all cash funds. It includes funds for the transition and transfer of the OSERS management to the PERB over the next two years. All transfer costs are paid by the OPS school district and absolutely no General Funds are expended. I would hope we could approve LB147A. I ask for your green vote. Thank you.

**FOLEY:** Thank you, Senator Kolterman. Debate is now open on the bill. Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. Good morning, colleagues. I stand in support of LB147A. I appreciate Senator Kolterman's work on this bill, and the fact that there are no General Funds on this A bill is terrific and I just am enthusiastically in support. Thank you.

**FOLEY:** Thank you, Senator Cavanaugh. Continuing discussion, Senator Groene.

**GROENE:** Thank you, Mr. President. I just want to make a comment. I still have serious concerns about LB417, and I want to correct the record. Senator Lindstrom and I had a back-and-forth about a bill that was introduced in 2017 that would have transferred the liability-- future liability and-- and ma-- comingled the two retirement funds. There was a bill. It was LB548. It did exempt the state from prior ARC payments and losses but into the future. So my point then is my point now. It happened in the past. It will happen in the future that an OPS senator will bring bills to unite the two retirement plans. And this is not an attack on Senator Lindstrom. He-- he represents that district and he brought that bill when he was back a rookie like I was. But they will continue to come and they will continue to try to

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mingle the two, and the taxpayers of Nebraska will be liable for ma-- for sure, for future losses or ARC payments and probably, more than likely, within time, for anything in the past. It just will happen. So I just wanted to make that-- make sure that I clear the record that there was a bill in the past to merge the two plans. Thank you. It was LB548 back in '17-18.

**FOLEY:** Thank you, Senator Groene. Senator Erdman.

**ERDMAN:** Thank you, Lieutenant Governor. I appreciate it. Good morning. I listen to Senator Groene's comments, yes, and I do remember that, Senator Groene. I have issues with LB147 as well. I think that this is the camel getting his nose under the tent. I've said that before. I will say that again. It will be in the future we will merge these and we will be responsible for these. I don't care what kind of indemnification we try to put in the legislation. That's how it works here. We-- we introduce it this year, this way, and then we make the switch over and sleight of hand, and I am not in favor of LB147. I won't be voting for LB147A. Thank you.

**FOLEY:** Thank you, Senator Erdman. Senator Kolterman, there's no one else in the queue other than yourself. You may either speak to the bill or close to advance the bill.

**KOLTERMAN:** I'll just close.

**FOLEY:** Please proceed.

**KOLTERMAN:** I appreciate the debate on this. The more attention we can bring to this, the better off it's going to be. The reality is, if there's one person in this room that absolutely thinks we could spend \$1 billion to help bail out Omaha, I'd like to have you stand up and start clapping. It's not going to happen, folks. And since day one, since I've been here, I fought to-- to avoid that. But the idea of managing an investment plan to save that district several hundred thousand dollars a year and do it in a cost-efficient way and-- and let them be educators instead of retirement plan administrators, is what this bill is all about. And, oh, by the way, in addition to that, we're going to double the sub pool, which every district in the state needs. So with that, there are absolutely no General Funds expended under this program. Omaha Public Schools has been budgeting for two years to put money away to facilitate this transfer, and they've done everything that we've asked them to do. So with that, I would hope that we could advance LB147A, and I look forward to Select File discussion. Thank you very much.

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**FOLEY:** Thank you, Senator Kolterman. Members, you've heard the debate and the close on the advance of LB147A. The question before the body is the advance of the bill. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk.

**ASSISTANT CLERK:** 26 ayes, 3 nays on advancement of the bill.

**FOLEY:** LB147A advances. Proceeding to the next bill, LB432A, Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, LB432A, introduced by Senator Linehan, is a bill for an act relating to appropriations; appropriates funds to aid in the carrying out of the provisions of LB432.

**FOLEY:** Senator Linehan, recognized to open on the bill.

**LINEHAN:** Thank you, Mr. President. This is just what the-- the A bill's just to cover the cost of implementing LB432 according to Department of Revenue, so I'd ask for your green light on LB432A. Thank you.

**FOLEY:** Thank you, Senator Linehan. Discussion on the bill? Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. So LB432, which we're going to be getting to on Select File today, is the bill that had something for everyone to love and hate. And I am not in support of the A bill because I'm not in support of the bill itself. I'm just looking at the fiscal note because oftentimes we move A bills and-- and the-- the text is just appropriating the funds. And there aren't a lot of funds necessarily to appropriate in LB432 because it's cutting revenue, not generating revenue. So this bill will be cutting the corporate income tax rate. And it looks like the impact to the General Fund in this year is \$5.9 million and then the following year \$23.2 million and then \$39.4 million and then \$45 million. So this harkens back to, in a lot of ways, LB1107, which was a bill that everybody could hate, had something in it that everybody could hate and ended up getting 40-some votes as a result. And I appreciate the strategic move to do that. And this is doing that yet again, putting in things that people feel like they have to vote for because they feel public pressure to vote for certain things that are in this bill, even though they oppose the tax cut in this bill. And this tax cut, we just keep doing this. So we're going to cut corporate income taxes the year after we passed a massive tax incentive for corporations. So when do we stop doing so much for corporations and start doing something for

people? We can't pass paid sick and safe leave because it would be too much of a burden on companies. How can it be a burden on companies when they keep getting taxpayer dollars, when they keep getting tax incentives and tax cuts? How can that align philosophically? We can't give people food or housing security or heat, but we can keep giving corporations tax cuts and tax incentives. We're double dipping in taxpayer dollars here and I am diametrically opposed to doing so. Just trying to get back in the queue here. So this A bill is what makes that possible. Well, actually, no, passing the bill makes it possible. The A bill is what makes the \$70 million-- \$70,000 possible. So I-- I suppose I shouldn't say that I diametrically am opposed to the A bill because I don't know what the \$70,000 is for, possibly something with the NEST account or the firefighters that's in here. Expenditures, ah, one time, implement provisions of LB432 as amended, there's no basis-- OK, so it doesn't explicitly say, but I have to go down the page to see what the \$70,000 is for, something to implement this bill. So we're-- the appropriation on here is actually quite small. It's just \$70,000. Of course, there's the unfunded mandate for local municipalities in here, for the firefighter piece of it, which is something that people feel like they can't vote against. I-- I did not realize that we weren't paying for that. I thought the Firefighter--

**FOLEY:** One minute.

**M. CAVANAUGH:** --Cancer Benefit Act was going to be something that we were at the state level going to be paying for, which I would support. I don't support putting more unfunded mandates down to a local level. And then there's, of course, the income tax credit that is nonsensical and it doesn't work in implementation, which is why I've brought an amendment to change that, to actually serve families that are in grief from a-- a severe loss. Yeah, so this-- this is not great, everybody, and this bill is on-- this A bill is on General File, which if the rules that I recall are correct, means that we can talk about this A bill for eight hours.

**FOLEY:** That's time, Senator.

**M. CAVANAUGH:** Thank you.

**FOLEY:** Senator Erdman.

**ERDMAN:** Thank you, Lieutenant Governor. I appreciate it. That was an interesting conversation, Senator Cavanaugh. I-- I-- I'm a little confused. So when you really start to realize that corporations are owned by people and people pay the taxes, when we give a corporation a

break, you're in-- you're incentive-- incentivizing that corporation to hire more people and employ more people. And without corporations, we don't have jobs. And so what they did, when they originally started with income tax, they were having a difficult time with people having to write a check for income tax. So they come up with a real, real slick way to get you to pay your taxes so you never know how much you pay, and that's called withholding. And then they wanted to raise the income tax on the individual, but they knew that wouldn't be very wise. So what they did, they implemented corporate income tax and everybody said, tax those evil corporations because they wake-- make way too much money. And so one could say that if you eliminated all corporate income tax, we probably wouldn't lose any tax revenue because the people are the ones that pay the taxes. And so we stand up here and talk about these evil corporations and how much tax dollars they get incentivized to do whatever they do and when in reality people are the ones who pay the taxes. So we need to do a little research to see what corporate income tax really is all about and who does pay the taxes. The problem is taxes. It's not who pays them. The problem is the taxes. And we continuously focus on those who collect and spend the taxes rather than those who pay the taxes. And when we change our focus, we'll have a better tax system. Thank you.

**FOLEY:** Thank you, Senator Erdman. Senator Matt Hansen.

**M. HANSEN:** Thank you, Mr. President, and good after-- good morning, colleagues. I was rising to kind of continue some of the thoughts on LB432 and just highlight that my continued, I guess, hesitation or opposition to the underlying bill. To Senator Erdman's point, Senator Erdman, I've noticed you do it before, I've noticed other senators do it before, where you directly put words in people's mouths that they don't say, including throwing around the word "evil" corporations. I don't think anybody has ever described a corporation as evil other than people attacking a straw man argument on this floor. We can have a debate about tax policy and we can have different tax rates for corporations than we do individuals, and there could be good policy reasons for that that don't come into a moral judgment of good and evil. So if you-- if that's the way you view the world, I understand it, but that's not the way everybody else views it. And if-- if that's how you want to characterize corporations, feel free, but that's not how the rest of us always feel. And I say that because, obviously, like, I want businesses to thrive in Nebraska, I want our economy to grow, I want a lot of things to happen, and I don't view businesses and corporations as an enemy or something that has to be torn down or whatever, despite the-- whatever people say or try and characterize the strawman arguments they set up so they can knock down on this

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floor. But we as a state of Nebraska actually have to, you know, do and control some things and in order to do so, have to have some tax revenue. I know it's the goal for some to basically eliminate all tax revenues in the state of Nebraska, some more expressly or directly than others, and have kind of like a bare bones, as little as we need. And other of us already are viewing us as striking some over the last few rounds of budget cycles, having pretty struck and pretty eliminated or underfunding or not doing many programs that the state of Nebraska probably already needs. And this isn't some sort of, you know, pie-in-the-sky dream or goal or whatnot, but it's just, you know, when we have programs that we all ex-- we all agree should exist and we all agree are underfunded and we all agree they should exist and we all agree they're underfunded for decades, for years, for my entire eight-year career, you know, it's kind of hard and kind of frustrating just to see tax revenue change with-- and not be-- you know, not consider any debate or discussion on that tax revenue to be fair or, you know, informed. You know, we've-- how many times have we stood up on the floor and said we're not funding schools appropriately? How many times have we acknowledged that we have a huge developmental disabilities wait list and on and on and on and on? And then all of a sudden we're going to do a giant income tax bill and, you know, that's something that a future Appropriations Committee is not going to have to spend on priorities of a lot of people in this body. If that's 33, if that's 25 people feel that way, I mean, that's-- you're going to prevail later in the day. But, you know, we owe it to our constituents to have some level of measure of scrutiny and some measure of-- of caution when pro-- proceeding with pretty substantive tax changes, also when pretty substantive tax changes are proposed for next year as well, and we just did pretty substantive tax changes in August as well, so putting all those points in the record. I don't necessarily think we're planning on taking this A bill eight hours, but certainly my opposition to LB432 at the moment wouldn't stop me from doing that maybe on a Select File or so if needed. I understand the \$70,000 is computer programing. If I understand the logistics of A bills, I think stopping it would be pretty effective at stopping some of the changes in the mainline bill. So with that, thank you, Mr. President.

**FOLEY:** Thank you, Senator Hansen. Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. So I thank Senator Hansen for his comments. I never said that corporations were evil. And, yes, corporations are ultimately, at the end of the day, owned by human beings, sometimes hundreds, if not thousands, of human beings, stockholders, a board, etcetera. What I said is that-- why give

corporations a tax cut and a tax incentive? Why are we double dipping for these corporations? And it's something that I find to be fascinating that we're trying to do. And I agree with Senator Erdman that we need to cut government waste. I can go through that budget with you, Senator Erdman, and I can show you where we are wasting money, and there's a lot of it. I've said on this floor many times that I might be the most fiscally conservative person in here, a little tongue-- tongue in cheek, but not actually, because the more I talk about our fiscal policies, the more I come to realize that people are willing to go where the wind blows here and to enact fiscal policies that benefit just a certain population. And I guess I'm a little bit more black and white about fiscal policies. I don't think that we should give corporations tax incentives to pay their employees not a livable wage so their employees qualify for government programs like SNAP and childcare subsidies and LIHEAP and rental assistance and then give them tax cuts. We're subsidizing these businesses three different ways. But then I hear this capitalist conversation that we should let the market decide, let the market correct itself. How-- how is-- how is government propping up corporations letting the market decide anything? If your business needs this much help from the government, from taxpayer dollars, that is not capitalism, that is corporate welfare to a T, and I don't believe in corporate welfare. I believe that the government exists to help the citizens that it serves, not the corporations that exist within its borders. I don't think that corporations are evil. I quite enjoy ordering things online from various entities. I like to get my groceries from Hy-Vee, which is a corporation. I like to buy my kids clothes at Target, just like lots of other people. Corporations aren't evil. I just don't think that corporations need to be subsidized more than human beings who are in poverty. This-- this fake argument that we should be propping up corporations but we have to make it so hard for people in poverty to get access to government resources, and we make it easier and easier every single day for corporations to get access to government resources and government funds. Where's the report? Where's the report on LB1107 and how it's working? Where's the report on this tax cut and how it's going to work and how it's going to benefit and how it's going to stimulate the economy? Where's that requirement? Where are the hoops for them to jump through? We make all of these stipulations for poor people.

**FOLEY:** One minute.

**M. CAVANAUGH:** We make it impossible for poor people to get out of poverty. We make poverty a full-time job so that you can never get out of poverty because you have to work so hard to live in poverty, but,



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sure, let's cut corporate income taxes some more. That makes sense, not to me, but apparently it makes sense to enough of you. I'll get back in the queue. Thank you.

**FOLEY:** Thank you, Senator Cavanaugh. Senator Wayne.

**WAYNE:** Good morning. Thank you, Mr. President, and good morning, colleagues. This is why I don't really get on the floor, because people say things and I feel like I've got to speak, so I'm going to go back down to my office after this. You know, I'm all for corporate tax breaks. I'm all for tax breaks in general. What bothers me about how we do taxes and tax credits and things in this body is we continue to just put Band-Aids on our overall tax structure. And what I find interesting is what we sunset and what we don't sunset. For example, most tax credits we always try to sunset, except for the Property Tax Credit Relief Fund. But then when it comes to corporate tax breaks or income tax breaks or any other tax breaks that we try to lower the actual amount, we don't put a sunset, but the net effect is still the same on our budget. The net effect is identical. Whether we lower our tax rate, we know how much it's going to cost; whether we incentivize different things through tax credits, we know how much it's going to cost, but we don't sunset the latter. And I don't understand why. Senator Erdman, if the belief is, we lower tax rates, more corporations will come and they'll hire more people, then why not put a sunset and some reports on it to figure out if that's true, like we do our tax credits? My point is, is that if it hits our budget the same way, why don't we treat it identical to figure out what's really working from a tax policy perspective and what's not? If we just get rid of tax credits altogether and just cut all taxes completely, maybe that's the answer. Maybe the answer is we just keep all our tax rates the same and increase our tax credits. My point is, is we don't have a clear idea because we've never actually monitored it or measured it. It kind of reminds me of TEEOSA, kind of reminds me of option enrollment. We just do things that cost the state money and we don't think broadly about whether it works or not. So if we lower this tax rate in-- and I don't intend to spend time on a A bill. But if we lower the tax rate, how do we know, Senator Erdman, that corporations will grow? How do we know what companies will come here because of our tax rate versus because of the ImagiNE Act? That's what I'm trying to figure out from a policy perspective, and we've never seemed to have an answer on that. So I'm not necessarily opposed to the underlying bill. I'm not necessarily thrilled about the-- the regular bill, LB430-- LB432, either, but it's a struggle for me when it costs-- when I-- when I struggle to fight for \$8 million in tax credits for our most impoverished area for development and we can, at a snap of a

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finger, cut \$100 million from our budget off of lowering taxes, there's no guarantee that those corporations will come into my district or anybody's district. There's no guarantee that we're going to actually pick up anything. These corporations could be operating with the same people under the same conditions, and all we're going to do is give them more profit. That's a-- that's what could happen. So it's just-- it's just interesting that we continue to put Band-Aids and dance around the big issues around our tax policy. And-- and I've-- and I've said this multiple times and I'm going to-- I'm going to add a-- a sentence to it. As a body, the most important document we have is our constitution. The second most-important document--

**FOLEY:** One minute.

**WAYNE:** --we have is our budget, because that says what's-- what we value. And in that budget, and it's the third sentence, is our tax credits and our tax policies. So that's also how we value or what we think is important as a state, and all I want to see is some actual reports or something that actually shows tax policy makes a difference and how that tax policy, whether it's tax credits or tax rates, makes a difference, because really what I only see is if there's no income tax or no corporate tax versus if we have it. But I don't know what the percentage is do to really, really make a difference. And that's what I would like to see at some point this body tackle, is real data with real reporting that maybe future Legislatures can come back and grapple with. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Wayne. Senator Friesen.

**FRIESEN:** Thank you, Mr. President. I think it's a good opportunity again to talk about our-- our revenue picture and where we might go this year versus next year. Senator Wayne had some good comments. When we look at the corporate taxes, and-- and I do have a-- a C corp, and so I understand as a domestic-located C corp, that's different than somebody who does international business. But again, I-- I don't feel, in all my discussions with CEOs and everyone else, that the corporate tax rate has been an issue. Corporate taxes here are basically charged on earnings made in Nebraska, and so it goes back to those corporations. If-- if most of your business is done out of state, it has no impact on your own taxes whatsoever. And a decision to locate here, the comment made is always we need a stable tax policy. I've never really had a business say that the taxes in our state, you know, other than they-- they may be burdensome in their total, they want a stable tax policy. So I've-- I've long been an advocate for lowering

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corporate taxes. I have said in the past that I would take them down to zero because corporations are tax collectors and everything we tax them is a pass-through. I continue to believe that. But at this point, I don't think it has an impact on businesses coming or staying in our state because of these rates. And I know at the federal level they're talking now of increasing corporate taxes and-- and everybody wants to jump on the evil corporation tax bandwagon and let's tax corporations more. I'm not advocating for that, but I am advocating for holding our taxes the same. And until we want to address overall comprehensive tax reform, which we were always told would be next year, I didn't want to really tackle it this year. And if it's an issue that comes up next year and we can come up with something that's-- that's reasonable, I'm-- I'm all-- I'm all in. I'm listening. But when I calculate my corporate taxes, basically you're looking at a rate that is never going to be the advertised rate. I know there's been a quote that if you have a good accountant-- you don't even need an accountant. When I file my federal corporate tax return, all of my state and local taxes are deductible, 100 percent, on my federal return. And so that 21 percent federal tax obligation is reduced because of that so, therefore, since we're coupled to the federal taxes, my state tax obligation is reduced. And so the effective rate is always, always going to be less than our advertised rate. So to say that our advertised rate is deterring corporations from coming here or staying here is a false narrative. If anyone wants to start a business today, including me, I would not use the C corp strategy. It's best to use either a S corp or a subchapter S as a preferable entity in which to form a new business. And that's why most of our businesses in this state are formed under that scenario.

**FOLEY:** One minute.

**FRIESEN:** There will be very few see C corps formed in our state just because it is no longer what you would call the best option to use in forming a new business. And so, again, I-- I look at this and only-- there's probably 1,600-some corporations that are impacted, that even pay over \$100,000 in state tax, and I think the majority of those would be located out of state. So we're going to give a tax break to a corporation that's headquartered out of state of Nebraska and yet their earnings are coming from here. And I don't think they'll quit selling in the state just because of their tax obligation. So I think it's a good discussion to continue and to see once where we want to head in our overall tax policy. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Friesen. Senator Moser. Senator Moser, you're recognized.

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**MOSEY:** Thank you, Mr. Lieutenant Governor. Well, as part of this discussion, I just think I have to stand up and talk a little bit about how the system works. For-- for the state to have money to spend, somebody somewhere has to buy something or make a profit to pay the tax to make it work. So we can't just give away childcare or give away whatever for everybody for every purpose, I mean, every social service thing that we can think of, because we have to keep in mind that too much drag on the system is-- it could, you know, kill the golden goose. We spend about a third of our budget already on healthcare, Medicaid, HHS kind of things, and it's around \$1.75 billion every year. So I don't think that we're neglecting those areas. We have to have it add up. A state has to run like a business so that the taxpayers can survive and so that the people who need help can get along. I understand there's a balance there and I appreciate that there are some senators in this body that always think that there's not enough money spent on healthcare, childcare, developmental disabilities. And I appreciate that we have those people to keep us aware of those needs, but I'm one of those who comes from the business sector and I think business needs to make a profit to pay the tax to make the rest of the state work. This corporate tax adjustment is only on the top rate. The first \$100,000 is at a lower rate. And, you know, you think of these corporations as being these big, impersonal-- I won't say evil because that makes people mad, but impersonal moneymaking machines. The tax that we make on corporations is about a sixth of what we make on individual taxes. And my little store is a C corp. It's been a C corp since 1945. And so I pay some corporate tax, not a lot. I'm not paying the maximum rate, I'll-- I'll give you that much of a clue. But any profit I make, I pay tax on. And then if I try to take some money out in dividends, then I have to pay tax on that, so, you know, having a corporation is not the panacea to business success. It's-- it gives you some liability protection and it gives you some tax benefits in what's deductible and what's not. But again, I-- I appreciate those who-- in the body who are concerned about the-- the needs of Nebraska citizens. But keep in mind, citizens pay tax that make the state work, and so we have to stick up for them too. Thank you.

**FOLEY:** Thank you, Senator Moser. Senator Machaela Cavanaugh, you're recognized, your third opportunity.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. So this is the A bill. I haven't put any amendments up. This is my third opportunity. This is the only time I'm going to-- last time I'm going to talk on this bill. Others can do what they're going to do. I did want to go back to Senator Erdman's comment about government spending. And on

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February 4, 2021, this year, the Omaha World-Herald, Martha Stoddard, had an article: The auditor cites \$21 billion in errors, puts a rare disclaimer on Nebraska's financial report. So the Ne-- the state of Nebraska end-of-the-year financial report contained more than \$21 billion, with a "b," in errors, according to a management letter released Tuesday by the State Auditor's Office. As a result, the office took the highly unusual step of putting the disclaimer-- the state's comprehensive annual financial report for the year that ended June 30. The disclaimer said state auditors were unable to verify the accuracy of the financial report. Assistant Deputy Auditor Craig Kubic-- Kubic-- sorry if I'm-- I am definitely butchering that-- said the auditors issued the disclaimer because they found problems with the state's accounting process, not with mismanagement of funds. We didn't see big issues with monies missing or fraud, he said, but when the state doesn't get a clean audit option, it's a big deal. The annual financial report came out December 17. Tuesday's management letter focused on the Department of Administrative Services and its Accounting Division, which is responsible for putting together the annual financial reports. According to the letter, the Accounting Division made major errors in financial statements, footnote disclosures, and other documents supporting the financial report. So this goes on. We-- yeah, we're not great as a state managing money. DAS has got lots of problems. Senator Kolterman is trying to at least attempt to fix some of the procurement problems but can't get that bill out of committee. And I believe he's introduced that bill before. There's a lack of transparency in some of our spending and there are lots of places where we are overspending and there are lots of places where we are underspending and there's lots of places where we're requiring studies for things and then there's lots of places where we're not requiring studies to see why we're do-- if what we're doing is actually effective. Now, when we passed LB1107, it was my understanding the argument that was made on this floor by a great deal of you was that we had to do that. We had to have those corporate tax incentives to keep corporations here and now we have to cut corporate taxes. As far as I am aware, ConAgra did not leave Nebraska because of our corporate tax incentives and they did not leave Nebraska because of our corporate tax cut-- taxes. So I feel like we're throwing spaghetti at the wall with these tax policies. And before we start making broad changes in tax policies, why aren't we doing a study? Why aren't we being more judicious with how we're spending or cutting our revenue? We require this of things that are much less significant, that are usually paid with federal funds or at least matching federal funds. We require so many hoops to be gone through to get those things passed, but when it comes to taxes for corporations or tax incentives

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for corporations, it's just open for business for anyone to come and-- and with their hand out--

**FOLEY:** One minute.

**M. CAVANAUGH:** --and take tax dollars, take-- take revenue from the state. I mean, Senator Lowe has said numerous times that he doesn't think we should be giving hands out, we should be giving hands up, and all I see are corporate hands out constantly on this floor. And I just think that's bananas. Thank you.

**FOLEY:** Thank you, Senator Cavanaugh. Senator McCollister.

**McCOLLISTER:** Good morning, colleagues. Thank you, Mr. President. Here we are looking at LB432, the A-- the A bill, and I see so many revenue deductions coming into the State Treasury, I-- I have to express some concern. You know, too much of a good thing, you know, it seems like the analogy of a drunken sailor, or something like that, that might apply. In my first year, we had an adequate amount of money in the budget, but year two and three of my tenure here we were short of money. And it's my concern that we're going to deplete our revenue stream to such an extent that in future years we're going to suffer greatly for that, and I'm bothered by that. I had thought a week ago when we discussed this, we're going to rationalize all these revenue deductions and come up with an overall plan that didn't totally detract from our revenue stream, and so far I haven't seen that occur. And so these bills, LB432, LB64, LB347, we're talking about some significant money, at least a continuing amount of money of at least \$100 million a year. LB347, which is coming up. It's \$107 million. Where is the plan? I think we need to see what the plan is to deal with these revenue deductions that are-- are-- we're-- we're looking at now. It's a wonderful thing to be giving out these-- these deductions, but we need to make sure that we can afford it in the long run. Thank you, Mr. President.

**FOLEY:** Thank you, Senator McCollister. Senator Linehan, you're recognized to close on the advance of the bill.

**LINEHAN:** Thank you, Mr. President. I appreciate the discussion and I assume we'll have more when we get to the actual bill. Again, this is-- this is not really debatable. I wish that the Revenue Department didn't have to charge for making changes, but they have to charge to make changes. And that's what this is. It's a charge, computer charge to make changes, the Revenue Department; it has actually nothing to do with real tax policy, which we, I assume, will be debating when we get

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here in a couple of minutes. So I would ask for your green vote on LB432A. Thank you.

**FOLEY:** Thank you, Senator Linehan. The question before the body is the advance of LB432A to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 29 ayes, 0 nays on advancement of the bill.

**FOLEY:** LB432A advances. Proceeding to LB529A.

**ASSISTANT CLERK:** Mr. President, LB529A, introduced by Senator Walz, is a bill for an act relating to appropriations; appropriates funds to aid in carrying out the provisions of LB529; declares an emergency.

**FOLEY:** Senator Walz, you're recognized to open on LB529A.

**WALZ:** Thank you, Mr. President. And members of the Legislature, as a reminder, LB529 is setting the education allocations of lottery dollars for the next five years. This A bill is making the appropriation of cash funds to accompany it. The allocations of lottery dollars are for the Nebraska Opportunity Grant Fund, which is Nebraska's only need-based financial aid program for postsecondary students. It also provides financial aid to the Community College Grant-- College Gap Assistance Program, the Access College Early Scholarship Program, the Excellence in Teaching loan forgiveness program, the Career-Readiness and Dual-Credit Education Program, and the Door to College Scholarship Program. In addition to all of these important higher education programs, LB529 provides equally vi-- equally vital programs for K-12. It supports after-school/summer programs through the Expanded Learning Opportunity Grant Program, distance education incentives, assistance for poverty students for AP testing fees, as well as behavioral training and support for teachers. There will be a Select-- there will be Select File amendments on the lottery bill that will also require an amendment to LB529A. The Fiscal Office will prepare this amendment, which should not be substantially different, and have it ready on Select File. In the meantime, I ask you for your vote on-- to advance this bill today. Thank you.

**FOLEY:** Thank you, Senator Walz. Is there any discussion on the bill? I see none. Senator Walz, you're recognized to close. She waives closing. The question before the body is the advance of 529A to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 30 ayes, 0 nays on advancement of the bill.

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**FOLEY:** LB529A advances. LB649A, Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, LB649A, introduced by Senator Flood, is a bill for an act relating to appropriations; appropriates funds to aid in the carrying out the provisions of LB649.

**FOLEY:** Senator Flood, you're recognized to open on the bill.

**FLOOD:** Thank you, Mr. President. Members, good morning. This is the accompanying A bill on the bill that we passed and advanced yesterday to E&R Initial, LB649, which adopts the Nebraska Financial Innovation Act. It transfers mon-- funds from the Securities Cash Fund to pay for the start-up costs only for the digital asset depository institution bank charters and the process. I'm confident the Nebraska Department of Banking and Finance has a good handle on where they're going. And in speaking with its director, Kelly Lammers, they're confident that with this startup money, they can establish the regulatory framework that will allow us to have digital asset banks in Nebraska. I urge your advancement of LB649A. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Flood. Discussion on the bill? Senator Erdman.

**ERDMAN:** Thank you, Lieutenant Governor. Good morning. As you may have seen in the Omaha World-Herald, there was one vote against the bill yesterday and there's probably one vote against this today. But I was wondering if Senator Flood would yield to a question.

**FOLEY:** Senator Flood, would you yield, please?

**FLOOD:** Yes.

**ERDMAN:** Senator Flood, the fiscal note says like \$780,000 this year and \$300,000 next year. I'm doing this from memory, so I may be off a few dollars. And then it goes on. The A bill goes on to say no more than \$261,000 can be used for salaries and per diems. Is that correct?

**FLOOD:** It does say that \$712,489 shall be used from the Securities Cash Fund and then-- in year one and \$397,000 in year two. The actual A bill-- oh, yes, it says total expenditures for permanent and temporary salaries, per diems from funds shall not exceed \$278,000 in year one and \$278,000 in year two.

**ERDMAN:** So that means that out of the-- the original distribution, the \$1 million or whatever those two first numbers added up to, no more than that \$261,000 can go toward salaries?



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**FLOOD:** That's-- that's correct--

**ERDMAN:** And that--

**FLOOD:** --in each year, in each year.

**ERDMAN:** Is that permanent, those-- are those employees permanent going forward even after the next two years?

**FLOOD:** Well, I think the department's reasoning here is that they anticipate they'll have a number of applications for digital asset banks or digital asset departments within existing financial/banking institutions, and that the assessments assessed on these applicants and new digital asset banks will then fund the agency's regulatory operations going forward.

**ERDMAN:** OK, so then the current-- the cash fund, you're going to draw this money out of, where does that money come from?

**FLOOD:** It comes from the-- well, it's the Securities Cash Fund, the Financial Institution Assessment Cash Fund.

**ERDMAN:** OK. Do you know what the balance, or is there sufficient funds in that fund?

**FLOOD:** There are sufficient funds in that fund. I talked to Senator Stinner and-- and he was the one that directed me in this direction. He said that it is more than sufficient to handle this type of an expenditure.

**ERDMAN:** OK, thank you.

**FOLEY:** Thank you, Senators Erdman and Flood. Senator Williams.

**WILLIAMS:** Thank you, Mr. President. Good morning. And-- and thank you for those-- those questions and clarifying comments, Senator Erdman. I just wanted to be sure that everybody understands that the fiscal note is a cash fund fiscal note coming out of money that is collected at the Department of Banking from the industry participants. The banks are participating in that; the securities industry participates that; and-- and-- and of course, the new digital asset deposit institutions will participate. First of all, under the bill, they have to pay a \$50,000 fee for application on the front end, and that will help with that, those fees. But just for your information, these are cash funds, not general tax dollar funds. Thank you, Mr. President.

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**FOLEY:** Thank you, Senator Williams. Is there any further discussion? I see none. Senator Flood, you're recognized to close. He waives closing. Question before the body is the advance of LB 649A to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please.

**ASSISTANT CLERK:** 36 ayes, 1 nay on the advancement of the bill.

**FOLEY:** LB649A advances. Proceeding now to Select File 2021 senator priority bill, LB64.

**ASSISTANT CLERK:** Mr. President, LB64. With respect to LB64, there are no E&R amendments. Senator Friesen would move to amend with AM1359.

**FOLEY:** Senator Friesen, you're recognized to open on AM1359.

**FRIESEN:** Thank you, Mr. President. So in the past couple weeks, we've been talking all about our revenue stream and how we're going to look to change maybe in-- next year, how we do school funding. And it's not that, you know-- Senator Stinner, it's not that we haven't done a lot for property tax relief, but I think there's some in the urban area who are looking for more relief as residential housing costs skyrocket in these next couple years. We're seeing the results of that now already. Values are shooting up, property taxes will be going up, and state aid to those residential homes will be going down because of-- taxes will be increasing to pay for their schools. And so for those schools at \$1.05 right now, in the next couple years, they're going to see some pretty hefty increases if assessors keep raising the value of those properties. So as we see, the shortage of housing is going to happen over the next couple years. I mean, we've seen costs of new housing going up. There's going to be a lot of pressure put on us to do something about property taxes, but we seemed a little bit more concerned about cutting our revenue stream this year with corporate taxes and-- and Social Security taxes. And so I'm wanting to talk just a little bit about how we look to our future years of revenue and what this amendment would do, or from what I understand, what the next amendment that's following me will do. And I think it-- it takes the fiscal note down to where it's more manageable, it's more targeted, and it accomplishes a little bit what we want and yet may not give a tax break to the-- somebody making a lot of money on top of their Social Security. So when we look at our future revenue streams in this state, we are always, right now, I'd say dependent on the CARES Act money, the-- there's going to be, you know, some infrastructure dollars coming in. There's a lot of federal dollars pouring into this state and right now, I don't know that we actually know what our real

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economy is. We are, I think, kind of based on false reality that the federal government can keep borrowing money and pouring it into the states to stimulate the economy and Nebraska's economy has done really well under COVID. Yes, there's industries that have been hurt really bad and the restaurant industry, tourism industry, hotels have been hurt and others have thrived. So I don't know if-- if the balance there-- if we just have not seen the damage yet or whether the damage was real. Those with good-paying jobs that worked in some of the industries, the insurance industry and a lot of those others, work from home. And actually those individuals probably made more money than they've ever made in the past because they didn't go out. They didn't have to drive to work. They didn't go to the restaurants. They didn't go on trips. They didn't fly to Cancun for a vacation. They stayed home. And therefore, they're seeing their incomes actually go up. And so maybe our revenue, it's-- compared to a lot of other states, is going to do really well, but we really don't know that. I think going into this year, we all thought our revenue was going to take a huge dip. And each year-- each time the Forecasting Board comes out with a new forecast, it was up and it was up. Corporate taxes were up. Sales tax collections were up. Our revenue has exceeded our expectations, but at some point in time, we all know that comes to an end. My first year here, we had our cash reserves built up to what I would call exceptional levels, \$760-some million, I believe. We had money for the floor to spend and within a year, we had depleted our reserves down to the \$330-some million level and we were struggling to cut the increase in spending to where we could manage to live within our means. So it can happen fast and that's why I think it's-- it's time to be a little more cautious this year because if we do some of these longer-term cuts to our revenue-- and I'll go back to the one that indexed it for inflation, I've had Senators from the past tell me that that was probably one of the biggest mistakes they did. And I won't necessarily agree that it was a mistake, but it changed how our revenue streams looked going forward. Back then, as income increased, we would slowly build up a huge reserve and then at that time, the Legislature would give some sort of tax relief somewhere and dole it out and-- and kind of fix it. And then the inflation would do its thing again and a few years later, we-- the Legislature could offer some relief again. So when we indexed it for inflation, we took all that money off the table and Legislatures since then haven't had that, that building reserve happen. It's now more dependent upon the actual economy. And so when we saw the ag economy go down-- and if you would have looked back just to last August, we would have said we were in for another couple of years of a down economy in the ag industry. And now that has suddenly turned around through a series of events, but I

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don't know that it's going to be longer term that we're going to actually see a revenue increase because of this. We'll, we'll have to wait and see if this is a one-year thing or two or a three-year shortage of commodities and that's dependent on the weather and everything else. But what I'm seeing, at least in the ag industry, is tremendous inflation and I think that's going to be coming to the rest of the-- the business world as we have a shortage of parts, we have a shortage of equipment, and we can't find employees. So I am concerned that going forward, we have this picture in our mind of where we're headed and what future legislators might have to deal with when I'm gone next year. So I'm reluctant and I think Senator Stinner is-- shares my reluctance of looking at these cuts to revenue streams that could impact future Legislatures. So I think we need to be cautious, we need to be thoughtful, and I'm hoping that we can have a discussion on this, this amendment, this bill, and to see once-- if that's the future of where we'd like to go. And just knowing that I think Senator Stinner has an amendment following, I will withdraw this amendment from the bill. Thank you, Mr. President.

**FOLEY:** Senator, you wanted that amendment-- amendment withdrawn right now? Senator Friesen, were-- were you withdrawing that amendment right now?

**FRIESEN:** Yes, you may withdraw it.

**FOLEY:** Very good, AM1359 has been withdrawn. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, next amendment from Senator Stinner, AM1360.

**FOLEY:** Senator Stinner, you're recognized to open on AM1360.

**STINNER:** Thank you, Mr. President, and members of the Legislature. I'm presenting a-- an amendment that basically what we're trying to do is, is create guardrails and a way of taking a look at what we really want to do is provide an exemption for people who pay Social Security. The idea is to retain and attract those-- those individuals to be competitive with the other states that have exempted Social Security. So that's what the Legislature is trying to do with the-- with the-- with the bill. My amendment really kind of takes a look at, OK, let's go out five years. And it appears, based on looking at the numbers both this year and through the-- the next biennium and the out-years, that we have the capacity to service all of these dollars that we're talking about. But at the end of five years, what this is, is intent language to take a look at the next portion. So we go up to 50 percent

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exemption, then we stop and we take a look and we put intent language in here that basically "renumerates" what we're trying to do over the ten-year period of time. So that's-- that's what the amendment is about. It's a safeguard amendment. I think it gets done what we want to get done, but still allows us to take a real hard look in-- in a five-year period of time. With that, I'd urge you to vote green on this amendment.

**FOLEY:** Thank you, Senator Stinner. Discussion on the amendment.  
Senator Groene.

**GROENE:** Thank you, Mr. President. So the way I understand the amendment, it's into the future, next-- AM1360. So I want to ask Senator Stinner a question.

**FOLEY:** Senator Stinner, would you yield, please?

**STINNER:** Yes.

**GROENE:** So basically, we can't-- I'm-- I'm assuming this amendment comes that we can indebt-- put burdens on future Legislatures. So this amendment just gives an intent that somebody will introduce a bill in the future.

**STINNER:** Yes, it does.

**GROENE:** Thank you. Thank you. I-- I kind of liked Senator Friesen's amendment. I'm all for-- if I'm going to cut taxes, it's going to be for the retirees and Social Security. We need to do that. We need to keep retirees here. But the-- I kind of liked Senator Friesen's concept. I would like to see-- in accounting, there's a term first in, first out, last in, first out. I would like to see first in and first out on this, that if you, you made \$100,000 taxable, that you then figure the-- your-- you figure what you would have paid taxes if your Social Security was the first in at the lower rate and then you get a credit for that. Right now, the way things are, if you make a lot of money and-- and you're making-- I think if you've maxed out 28-- around \$3,000 a month, \$3,600-- \$36,000 that-- when you take that off of there, that's the high-end taxes that you're taking off. I would rather see it on the first in, first out, but maybe an amendment will show up. But I haven't read the entire bill as, as affected by Senator Stinner's amendment, which I like. It's just basically saying we're-- the next Legislature or legislators into the future can see if we can afford it. I kind of would just like to put it in and have it there

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and-- but I would love to see a first in, first out on the taxation credit. Thank you.

**FOLEY:** Thank you, Senator Groene. Senator Lindstrom.

**LINDSTROM:** Thank you, Mr. President, and good morning, colleagues. I rise in support of AM1360 and want to thank Senator Stinner and other members of the body for having the discussion on this particular bill. Like I said, between General and Select, we were looking at what the forecast numbers were that Thursday. I believe it was \$90 million. And looking at the fiscal status, I had spoken with Senator Stinner, Senator Linehan, PRO, Fiscal Office, discussed a lot of different options on whether or not we could make this work and the feedback came, came back positively. And so this is-- for me, AM1360 is a prudent amendment to this bill to give the Legislature the ability to look here in five years. I know with other bills coming up ahead of this one or in front of this one, there are going to be changes to a few of them. So when you're looking at your fiscal sheet, I think it -- we'll-- we'll be in a lot healthier position when it comes to the impact and-- and the variance on the minimum reserve should look a lot better here probably in the next week or so. But again, I want to thank Senator Stinner and Senator Bostar for working with me on this amendment and I do think it helps the bill. So I would encourage your green vote on AM1360 and your voice vote on LB64. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Lindstrom. Senator Friesen.

**FRIESEN:** Thank you, Mr. President, and thank you, Senator Lindstrom. I-- I know that you really wanted to take the whole bite. I sympathize with that, but I think this is the-- the alternative that appeared to be the best to me. I appreciate you-- willingness to support this and I thank Senator Stinner for bringing it. Again, it's just looking longer term on our revenue source and-- and what things we're going to do and sometimes we take too big of bites and sometimes we, as I've been told, you need to take a half a loaf, I guess. Whoever said that to me will recognize that phrase, but it's something that sometimes we don't do here. We-- we try to take big bites and I-- I think everyone supported the idea of-- of lowering that tax on Social Security recipients, but I think this was done in a more responsible fashion and so I do support the amendment and LB64. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Friesen. Senator Dorn.

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**DORN:** Thank you, Mr. Lieutenant Governor. Would Chair-- would Senator Stinner yield to some questions?

**FOLEY:** Senator Stinner, would you yield, please?

**STINNER:** Yes, I will.

**DORN:** Yeah, talked to you a little bit here off the mike. Looking at the fiscal notes, we had an original fiscal note that came with the bill and since then, we've had a second one on, I believe, May 4 here. And in-- you said that in year five, the first five years, it lays out the amount \$15 million and I think \$31 million, but in year five, we're up to \$73 million. What your amendment does then is it requires the Legislature to stop and evaluate and if we proceed on, we would have to approve that?

**STINNER:** Yes, that is correct.

**DORN:** So when I looked at the fiscal note there, it-- it-- it shows the amount that we would, I guess, conceivably expect to lose-- not lose in revenue, but not collect in revenue because of this proposal. So we can see the numbers of the first five years, exactly what they're projecting this to be. And I thank you very much. I thank Chairman Stinner of Appropriations and Senator Linehan-- Senator Lindstrom, excuse me, Senator Lindstrom, for working on this amendment and bringing this. The original fiscal note that came out with this note was about twice as high as this. When you compare the two, I agree with Senator Friesen here that we are in a situation right now where the state of Nebraska-- where we are having a strong revenue year, very strong revenue year. We could go a lot of discussions of why or what's all going on. I think some of it can be tied back to, I call it our COVID funding, our CARES Act and stimulus funding. I think what people really need to be aware of is, though, long term. Where will we be at in three and five years? What will the revenue stream be coming in? What have we done or what have we passed as a legislative body to, I call it, keep us in a strong position when we do get out there in future years? We do not know exactly what the revenue will be. We don't know what will happen with the economy. We don't know a lot of things, but when we have-- or in any good business plan, when you have strong revenue, you need to plan for the times when you may not have strong revenue. So I think we need to be very prudent as a legislative body. We need to be very, very much aware of not only this year, what our revenue is, but what will our revenue-- where will that end up in, in future years? I thank them very, very much for working

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on this amendment and coming forward with this. I plan to vote green for this.

**FOLEY:** Thanks, Senator Dorn. Senator Stinner, you're recognized to close on your amendment. He waives closing. The question for the body is the adoption of AM1360. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 37 ayes, 0 nays on adoption of the amendment.

**FOLEY:** AM1360 has been adopted. Is there any further discussion on LB64 as amended? Senator Lindstrom.

**LINDSTROM:** Can I do a roll call vote in regular order, please?

**FOLEY:** When we come to a vote on LB64, you want a roll call vote? Any further discussion? Did you want to close, Senator Lindstrom? He waives closing. The question for the body is the advance of LB64. A roll call vote has been requested. Mr. Clerk.

**ASSISTANT CLERK:** Senator Aguilar voting yes. Senator Albrecht voting yes. Senator Arch voting yes. Senator Blood voting yes. Senator Bostar voting yes. Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer. Senator Briese voting yes. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting yes. Senator Day voting yes. Senator DeBoer voting yes. Senator Dorn voting yes. Senator Erdman voting yes. Senator Flood voting yes. Senator Friesen voting yes. Senator Geist voting yes. Senator Gragert voting yes. Senator Groene voting yes. Senator Halloran voting yes. Senator Ben Hansen, not voting. Senator Matt Hansen. Senator Hilgers voting yes. Senator Hilkemann voting yes. Senator Hughes voting yes. Senator Hunt. Senator Kolterman voting yes. Senator Lathrop voting yes. Senator Lindstrom voting yes. Senator Linehan voting yes. Senator Lowe voting yes. Senator McCollister voting yes. Senator McDonnell voting yes. Senator McKinney voting yes. Senator Morfeld voting yes. Senator Moser voting yes. Senator Murman voting yes. Senator Pahls voting yes. Senator Pansing Brooks voting yes. Senator Sanders. Senator Sanders voting yes. Senator Slama voting yes. Senator Stinner voting yes. Senator Vargas. Senator Walz voting yes. Senator Wayne voting yes. Senator Williams voting yes. Senator Wishart voting yes. Vote is 44 ayes, 0 nays on advancement.

**FOLEY:** LB64 advances. Proceeding now to Select File 2021 committee priority bills, LB432. Mr. Clerk.



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**ASSISTANT CLERK:** Mr. President, LB432. First, there are no E&R amendments-- excuse me, first of all, there are E&R amendments, Mr. President.

**FOLEY:** Senator McKinney, for a motion on the E&R amendments.

**McKINNEY:** Mr. President, I move that the E&R amendments to LB432 be adopted.

**FOLEY:** Motion is to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments have been adopted. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, the next amendment, from Senator Linehan, AM1080, I-- with a note she wishes to withdraw.

**FOLEY:** It's withdrawn.

**ASSISTANT CLERK:** In that case, Mr. President, next amendment, Senator Williams, AM1127.

**FOLEY:** Senator Williams, you're recognized to open on AM1127.

**WILLIAMS:** Thank you, Mr. President. Good morning, colleagues. And first of all, I would like to thank Senator Linehan for allowing me to attach AM1127 to LB432. AM1127 is actually LB254, which is a bill I brought to the Revenue Committee this year. It is a simple bill that extends the sunset date for the Beginning Farmer Tax Credit Program from December 31, 2022, to December 31, 2025. The Beginning Farmer Tax Credit Program was first enacted clear back in 1999 to provide assistance to individuals seeking entry into the farming business. The program is designed to encourage owners of agricultural land, equipment, and livestock to enter into a three-year lease agreement with beginning farmers by providing the owners with a refundable 10 percent income tax credit. This has been a very successful program over this period of time. Over 550 beginning farmers have taken advantage of this program over the 20-year history; 175,000-plus acres have been put into production and used in this program. You may recall, as we talked about on the microphone earlier today, the Legislature adopted sunset dates on all the major business tax credit programs back in 2015 and provided that the Legislature's Performance Audit Committee conduct a performance audit for each program every five years over the course of that period of time. Initially, the sunset date for the Beginning Farmer Program was put at December 31, 2019. In 2016, the sunset dates were extended for various programs at the request of the Performance Audit Committee and the sunset date for

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the be-- for the Beginning Farmer Program was extended to the 2022 date. Again, this amendment simply extends that and matches it then with the audit program's five years. So when the audit-- the performance audit program is looking at the bill, it will match with the sunset date. There is ample evidence of the success of this program, and I would encourage your adoption to extend this program these three years. The-- there was no opposition testimony at the hearing. The Revenue Committee did advance this bill 8-0. And I would encourage your green vote to adopt AM1127.

**FOLEY:** Thank you, Senator--

**WILLIAMS:** Thank you.

**FOLEY:** Thank you. Senator Williams. Discussion on the amendment? I see none. Senator Williams, you're recognized to close. He waives closing. The question before the body is the adoption of AM1127. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 37 ayes, 0 nays on the adoption of the amendment.

**FOLEY:** AM1127 has been adopted. Anything further on the bill, Mr. Clerk?

**ASSISTANT CLERK:** Next amendment, Mr. President, from Senator Machaela Cavanaugh, AM1313.

**FOLEY:** Senator Machaela Cavanaugh, you're recognized to open on your amendment.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. Colleagues, this is an amendment to strike the tax incentive-- or tax credit for the stillborn tax credit, and it replaces it with new language. And this is a serious amendment. This isn't a hostile amendment. I did attempt to talk to Senator Albrecht about her original bill, but she expressed to me that she wasn't interested in working on it. So this is what I worked on that I think is a very strong policy to serve the purpose of what Senator Albrecht is trying to achieve here. It creates a fund. It's for the Parents of Stillborn Children Assistance Fund. And this fund would be administered by the Department of Health and Human Services and it would make grants to families who have a stillborn child and it would reimburse those families for the funeral express-- expenses related to the-- the death of that child. This fund would be appropriated through the Legislature and it would also-- could receive revenue from gifts, bequests, donations, and other contributions from

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public or private sources. And then the state would basically-- if a family suffered a loss, they would submit a death certificate and a-- and the funeral expenses and they would get reimbursed right away for it. I-- I imagine this to be something where we could even see about working with the funeral companies across the state where they would just submit the bill directly to the state for qualifying expenses so that the family never had to pay out-of-pocket expenses. And this, I think, seeks to help-- for me, this seeks to help those families that are-- are grieving and can't cover those expenses, which they are-- I looked up the expenses for funerals. The average cost of a funeral in Nebraska is between \$7,000 and \$10,000. So I put a cap on this that it would be a maximum of \$10,000 and a-- also a cap of \$1.5 million. I took the number of the assumed deaths every year, stillborn deaths every year of 150 times the \$10,000. That's why I got to \$1.5 million. That-- I-- that was just what I thought was appropriate. And I think a more robust conversation over that amount is-- is more than valid, but I do believe that this, meets the needs of families that are suffering and helps them pay for the funeral expenses and doesn't make them wait and go through the tax credit process. So I hope that you all will join me in-- in taking this amendment forward, and I thank you for your time.

**FOLEY:** Thank you, Senator Cavanaugh. Senator Albrecht.

**ALBRECHT:** Thank you, President Foley. Good morning, colleagues. I ask that you reject AM1313. It is not a friendly amendment and it tries to gut the original tax credit. My bill, LB1157-- or LB115-- I'm sorry. My bill, LB597, which was amended into LB432, is a good bill. It simply extends an existing structure to help families who lose a child to stillbirth with a one-time tax credit that is comparable to what they would have received had they had-- had the child been born alive. There's nothing that we can do to take away the loss of these families' experience, but we can acknowledge their loss, as well as the financial burdens that they've incurred, such as medical costs, hospital bills, and other expenses preparing for a child that they would never bring home. Again, we're simply providing some financial relief to grieving families in need by extending them a one-time tax credit. This is something multiple other states have done. And so I would ask for a no vote on AM1313 and a yes on the underlying bill. Thank you, President.

**FOLEY:** Thank you, Senator Albrecht. Senator Linehan.

**LINEHAN:** Thank you, Mr. President. I, too, would ask for a no vote on AM1313. Has been-- and I'm sure we'll visit again more about this

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today, but the Revenue Committee tried to be very careful about what they brought to the floor and what we could fit into the budget. And Senator Albrecht's bill, original LB597, had a \$300,000 fiscal note. And it is a tax credit refundable, so that means even if you don't owe taxes, you still get the \$2,000, but it's something that fits into the bigger picture of what we've done here. A whole new program that Senator Cavanaugh-- it's very thoughtful of her to bring this forth, but it's not like in the big picture here. When Chairman Stinner gets his pencils out, doesn't fit in what we've got, so I'd ask for your no vote on AM1313. Thank you.

**FOLEY:** Thank you, Senator Linehan. Senator Blood.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I actually stand in support of Senator Cavanaugh's well-thought-out amendment and am waiting to hear some of the other amendments in order to say whether I support the underlying bill. But I really hope people are listening today because what I'm hearing Senator Albrecht says is that all her tax cut is doing is acknowledging the loss and providing those family-- families relief. But the thing is, is that you're providing that relief at the end of the year when they file their taxes so that they can relive-- relive that trauma all over again. Senator McCa-- Senator Machaela Cavanaugh was very, very thoughtful in her approach. She wants to do the same thing, but she wants to give them immediate help. Funerals are expensive. The trauma involved with having a stillborn child and having to bury that child is not trauma that I feel we should be carrying through to tax season. If it's really about the families, if it's truly about the families, this fund is spectacular. What I really like about it is that somebody like Senator Albrecht, who feels so strongly about this issue, could donate to this fund, this grant fund. She could bequeath money to it after she dies. Everybody in here could give money to that fund if it's really important to them. I-- I-- I find the fact that this is considered an unfriendly amendment kind of silly. This is a serious subject that we've talked about and that a lot of people are uncomfortable, especially the men in this body, who feel that they just have to support it no matter what. And I get that because you-- you don't bear children, but you do lose children as the spouse or significant other of somebody who has lost a child. Think about the position that you're going to be put in should that happen to you or if it's happened to you. Would you rather have a tax break at the end of the year, or would you rather have money granted to you to bury that child and take care of funeral expenses? And ultimately, it would be great if it was run through the funeral homes where they could just have a one-sheet form that they hand to the family and say, here's an

opportunity to receive grant funds to help you bury that child, to help you through your trauma, to help you through this difficult time. You know, I-- I think it's interesting because I remember one time I had to amend something onto Senator Albrecht's bill, and I remember explaining it as this isn't an unfriendly amendment, this is a "every man and woman for himself at the last minute" amendment. Sometimes towards the end of the-- the session, we have opportunities to add bills; we have opportunities to amend bills. It's not necessarily meant in unfriendly fashion. What Senator Cavanaugh has done, if you have actually read the amendment, is very thoughtful, very kind, a very loving approach to these families. And that's exactly what we were told that this-- this-- I'm going to call it a rebate, because that's what I think it is-- this rebate at the end of the year was supposedly meant to do. Which one do you think is kinder, waiting until the end of the year to get a kickback based on the fact that your child has died or being embraced at the time of the death, being given an option--

**FOLEY:** One minute.

**BLOOD:** --provided through a grant program that you yourselves could donate to, and getting that handled at the moment so that family doesn't have to worry about that at tax time. If it's truly about acknowledging the loss and providing them relief, we need to do it at the time that that child's life is lost. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Blood. Senator Cavanaugh, you're recognized to close on your amendment.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. This may be an unwelcomed amendment, but it is still intended to be a genuine amendment. I know that this was important to Senator Albrecht and I understand the significance and importance of what she's trying to accomplish, and I tried to find a path forward that I felt met the needs she was trying to meet. And as I said in my opening, I will say in my closing. I picked the amount that I picked based on her fiscal note of a hu-- that said 150-- an average of 150 stillborn deaths a year in Nebraska. And I looked at the-- what it costs for a funeral and I took that number. And I am not opposed at all to putting up an amendment after this to amend this to be down to \$2,000 a family. That won't cover the cost of a funeral, but if that's more amenable, I think that that's something that we should do. This makes it easier and less traumatic for families to get tho-- that-- those financial resources that they need to have a memorial for their loss, their lost child. And I actually think that in creating this and moving this

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amendment forward, and if you took the time right now while I'm talking to look at this amendment, it creates an opportunity where we could expand this to the loss of a child within the first year, because so many people bring a child into this world and-- and they have medical complications and they lose that child quickly. And, yeah, you might get that tax credit for the child that's born alive, but you still, again, don't get it until a year and a half later and you still want to have a memorial for that child. And this bill, if we wanted to amend it to be up to a year loss, this bill could help so many families. And it opens up the opportunity for people to make donations to the fund so that we can open it up to more families. I am not trying to have a hostile amendment here. I am trying to make Senator Albrecht's vision a reality and expand upon it in a way that I feel is compassionate. So I really hope that you will consider voting for this. And if not, I probably will bring this as a bill next year because I do feel very strongly about this. I think this is an important thing. And I'm not trying to be snarky or undercutting Senator Albrecht's bill. I truly believe that this is a good amendment, and I thought long and hard about it. So I really, really hope everyone will give this actual consideration. And with that, I will yield the remainder of my time and do a call of the house, roll call vote, reverse order.

**FOLEY:** Thank you, Senator Cavanaugh. There's been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, please.

**ASSISTANT CLERK:** 16 ayes, 6 nays to place the house under call.

**FOLEY:** The house is under call. All senators please return to your desk and check in. The house is under call. All senators please return to the Chamber and check in. The house is under call. Senator Groene, check in, please. Senators Lathrop, Morfeld, and Bostar, please return to the Chamber and check in. All unexcused members are now present. The question before the body is the adoption of Senator Cavanaugh's AM1313. A roll call vote in reverse order has been requested. Mr. Clerk.

**ASSISTANT CLERK:** Senator Wishart not voting. Senator Williams voting no. Senator Wayne not voting. Senator Walz not voting. Senator Vargas. Senator Stinner voting no. Senator Slama voting no. Senator Sanders voting no. Senator Pansing Brooks not voting. Senator Pahls not voting. Senator Murman voting no. Senator Moser voting no. Senator Morfeld not voting. Senator McKinney voting yes. Senator McDonnell voting no. Senator McCollister not voting. Senator Lowe voting no.

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Senator Linehan voting no. Senator Lindstrom not voting. Senator Lathrop not voting. Senator Kolterman not voting. Senator Hunt. Senator Hughes voting no. Senator Hilkemann not voting. Senator Hilgers not voting. Senator Matt Hansen voting yes. Senator Ben Hansen voting no. Senator Halloran voting no. Senator Groene voting no. Senator Gragert voting no. Senator Geist not voting. Senator Friesen voting no. Senator Flood voting no. Senator Erdman voting no. Senator Dorn voting no. Senator DeBoer not voting. Senator Day not voting. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Briese not voting. Senator Brewer. Senator Brandt not voting. Senator Bostelman voting no. Senator Bostar not voting. Senator Blood voting yes. Senator Arch voting no. Senator Albrecht voting no. Senator Aguilar voting no. Vote is 5 ayes, 23 nays, Mr. President.

**FOLEY:** AM1313 is not adopted. I raise the call. Next amendment, Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, next amendment, from Senator Linehan, AM1182.

**FOLEY:** Senator Linehan, you're recognized to open on AM1182.

**LINEHAN:** Thank you, Mr. President. This is a simple amendment. It just-- it's technical to clarify the filing dates under the firefighters' portion of the bill. So it's-- it's just technical. It's four lines. I can read it: on page 4, line 18, strike "no later than January 1, 2022"; on page 5, strike beginning with "Beginning" in line 2 through line-- "2023" in line 3 and insert "on or before December 1, 2023, and on or before December 1 of each year thereafter." So I would appreciate your green vote on AM1182. Thank you.

**FOLEY:** Thank you, Senator Linehan. Discussion on the amendment? Senator Machaela Cavanaugh. She waives the opportunity. Senator Linehan, you're recognized to close on the amendment. She waives closing. The question before the body is the adoption of AM1182. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. Record.

**ASSISTANT CLERK:** 39 ayes, 0 nays on adoption of the amendment.

**FOLEY:** AM1182 is adopted. Next amendment, please.

**ASSISTANT CLERK:** Mr. President, next amendment, from Senator John Cavanaugh, AM1346.

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**FOLEY:** Senator John Cavanaugh, AM1346.

**J. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. Good morning. I think this is the first time I've talked today. It's hard to remember anymore. So AM1346 seeks to strike the corporate tax cut that is a portion of this bill. If you recall, on General File we had a long discussion about this, and I think Senator Friesen kind of referenced it earlier on LB64. We talked about these sorts of tax cuts. We had a long conversation. We pulled out a portion of a very, I-- I thought, and I-- I'm happy we pulled it out. I thought was a very bad idea to give the-- the GILTI tax cut to offshored funds. And we-- Senator Linehan, agreed, I think, ultimately, or at least pulled it out, and so I appreciate that. And I kind of stopped fighting the bill at that point because Senator Stinner said that he was going to work on a compromise going forward and I wanted to see where that went. We-- come today, I don't think there's been any compromise offered. I offered an amendment at about 10:00 this morning where there was no change made to the structure of the corporate tax cut here. So this amendment just pulls out the corporate tax cut. I agree with Senator Friesen that we should have this as a bigger, broader conversation. There's a lot of folks here who had-- who have talked about LB1107 last year, which obviously I wasn't here for, and how we've made these changes to corporate tax incentives. And this is-- a lot of the arguments for why we need this corporate tax cut is to encourage businesses to come here. That does not seem to be borne out by any data. And so the question is-- when you look at the fiscal note on this-- I just did the math-- over the next five years, this tax cut will cost us \$113 million. And the question we all have to ask ourselves is, is that the best use of \$113 million? Can we invest \$113 million in something else in the state of Nebraska to actually get a better return? We're talking about business here, return on investment. So can we do the-- find a-- a different way? I think that we can. I think there's a lot of ways we can do that. And in the last discussion on this bill, we had-- Senator Flood brought up an example of a company in Norfolk called Nucor. So, of course, I pulled the SEC filings, the annual report of Nucor, just to see what they had to say. And so I looked through and it's quite an impressive company, actually. Senator Flood, I think, you know, pointed to them as a good example. I actually think they are a great example of companies we should be talking about and be looking at. And so in their 2021 SEC filing, they have-- it's about 170 pages, but on page 12, they have a section called Human Capital and they say: We consider our team the most important part of Nucor and believe that our culture and the encouragement that we provide our teammates to grow core, expand--



expand beyond, and live our culture provides us with a competitive advantage. They're talking about an asset that is people. And when we're talking about-- we've had a lot of conversations about how we get-- how we grow Nebraska, how we build businesses in Nebraska, how we get more people to move here, Nucor, who is this example that we're talking about, points specifically to the importance of that-- that capital, that infrastructure, people. We need to invest in people. We need to build workforce. So they go on, on page 13, talk about our teammates. They have 26,400 employees. That is across many plants, not just here in Nebraska, of course. And they say that at Nucor, we believe to-- in pay for performance. They're incentivizing people for the work that they're doing. They have a-- a profit sharing under-- they put in 10 percent before federal taxes. the-- so they're concerned about federal taxes. They don't mention state taxes here. When Nucor seeks to hire qualified and talented individuals as teammates, we-- while Nucor seeks to hire qualified and talented individuals, teammates, we also believe in developing the skills of employees of our workforce by providing educational and on-job training in additional [SIC] to-- to safety training. And they also go on to talk about how they want to hire-- promote from within, have people learn the process before they go up to management positions. What they're saying there is they prefer to hire people who already know how to do certain skilled labors and-- which means they are looking, companies like Nucor are looking, for a skilled workforce. They're looking for enough employees to fill a facility. They--they want people; they will train them, but they prefer to hire them already trained. We also believe in recruiting and hiring the best talent available and continue to provide us with a more diverse and capable workforce. We've had a lot of conversations about diversity and opportunity to get other types of people to come to Nebraska. Senator Hunt, who often talks about this topic of we need to create a culture in the state of Nebraska that draws people here who have different life experience, different interests than what we're all talking about, these are things that we can invest in, in the state of Nebraska, that will actually draw people here, will incentivize businesses to come here. They don't talk about in this-- this report about how they built these factories or they've expanded any of these plants because of the state corporate tax structure. They talk about convenience. They talk about strategically located near customers and resources. They talk about the-- the workforce. They talk about everything but the state corporate tax climate. That's one company, and it's a success story that we're talking about. I ha-- have seen-- I've heard people talk about a lot of the infrastructure we want to build in the state of Nebraska. I've heard Senator Flood specifically

talk about building-- expanding the-- the state highway between Omaha and Norfolk, which I'm in favor of. I think that's something we should do. And Senator Groene and I had this conversation earlier where he correctly pointed out that state highways are paid through the gas tax fund. But as I have often said on this mike, money is fungible and when we choose to spend it on something else, means we can't spend it on these things. And so if we choose to give a corporate tax cut of \$113 million over the next five years, that's money we can't spend on building other infrastructure. That's money we can't spend investing in workforce training. That's money we can't spend on education. That's money we can't spend on all of these things that actually draw employers to the state of Nebraska. That is money we can't spend on building the type of community that will have the workforce of the future that we want. That's going to be the next step. I know that certain people here have been to events talking about what we need to invest in, in the state of Nebraska. I know that the-- the major corporations in the state of Nebraska have said we need to focus on these particular things: infrastructure, skilled job training, building our workforce. Those are the things that the big companies that are based here want. They are not asking for a co-- a-- a tax cut. They are asking for us to build the workforce. They have the trouble filling these jobs. And so that's where we would be better placed to put \$113 million. As Senator Groene, again, pointed out, I have the places I would like to spend it, and I think I've made it abundantly clear what those things are. I think that if we invest in improving the lives of our fellow Nebraskans, that will have that follow-on effect of success in school, stability in job performance, stability in housing, better lives for everybody. Those are the things that I think we should spend it on. But I think other people, reasonable people, can disagree about what's the best way to grow the-- the business climate of Nebraska. But it is not a 1 percent tax cut to the top business earners. That is not the thing that is actually going to make a difference. These companies, and I talked about this the last time, it's about 1,900 of our corporations, 8 percent of all corporations in the state of Nebraska, and you know what they're paying that tax on? Just the-- the revenue generated in the state of Nebraska. So Nucor, who is located in Norfolk, pays only corporate income tax on the revenue generated by the sales in the state of Nebraska. They strategically locate themselves in Norfolk for a number of reasons. I think it-- it has to do with the infrastructure, the roads, the rails, those sorts of things, but it has to do-- this is a facility that recycles steel into, I think it's called, bar. And then they do-- they turn it into products and they strategically placed these around the country to be close to that ma--

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that raw material, the recycled material, but then also close to customers. And so they're shipping inside the state of Nebraska. I'm sure they're shipping into Iowa, South Dakota, maybe as far as the Western states as well. But they are not generating all their sales in the state of Nebraska, but they are only paying this tax on the sales generated in the state of Nebraska. That goes for every other company. Companies are not-- they did not site in Norfolk because of the corporate tax climate here. They sited in Norfolk because of geography, because of the workforce that they could get there, and that is the feature--

**FOLEY:** One minute.

**J. CAVANAUGH:** --that we need to focus on and that is where we need to be investing. We need to make sure that the infrastructure, if we build up the infrastructure to Norfolk, if they-- are they going to be able to make more sales? Are they going to be able to reach more customers? Are they going to focus-- expand that plant so that it can sell into Kansas now or Missouri because they ha-- now have the infrastructure that allows them to do that? Those are the types of things we can spend \$113 million on over the next five years that will actually pay those dividends and return more than \$113 million in jobs generated, in revenue generated. That is what we should be focusing on, not on a 1 percent tax cut just to the revenue generated in Nebraska. No one is going to move here because of that tax rate. No one is going to change whether they sell into the state of Nebraska because of that tax rate. There-- this is just another window dressing on taxes that is not actually going to solve this problem. So I'd ask for your-- your green vote on AM1346, and then we can move on to vote for the re-- the remainder of LB3-- LB432, which is generally good on-- on the whole. Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Cavanaugh. Seven senators in the speaking queue. Senator Linehan, you're first.

**LINEHAN:** Thank you, Mr. President. I'm a little dumbfounded that all of a sudden we look at fiscal notes and we're reading in five years. We've been I don't know how many days into the session and we talked about the biennium. So all of a sudden, we're talking about five years. This is not like a huge step. All this bill does is bring the corporate rate down to the top individual rate, which is what an LLC or a sub S corporation pay. Why do we think it's fair that because you're organized as a corporation, you should have to pay a higher rate than an LLC or subcorporation? And on top of that, you pay a corporate rate, the corporation pays it, then they pay out dividends

and then it's taxed again. I would argue that corporate taxes are-- and it has been argued, it's a double taxation. And who does it double tax? It tax those with retirement accounts, teachers, firemen, police, anybody who's invested in the market with their retirement account. That's who we're taxing here. And complaining about LB1107? I was not-- I don't like incentives. Why do we have to have an incentive? We have to have an incentive plan because our taxes are too high. So for those who are arguing we aren't looking at the big picture, that is exactly what the Revenue Committee is doing, looking at the big picture. We should not depend on an incentive package that picks winners and losers. We've got one. I would like to work toward we don't have to have one, that we don't decide who gets an incentive and who does not, or the Department of Economic Development. I would like to say to anybody that wants to come Nebraska, whether you're S corp, an LLC, or a C corp, this is our highest rate. And I'm hopeful-- no surprise here, guys-- that we get it below 6.84; 6.84 for a state tax rate is not a low rate. We are bordered by two states that have no taxes, income taxes: South Dakota and Wyoming. All the states around us have a lower corporate tax rate than we do, all of them except for Iowa, who is gradually and soon will be below ours. So let's see, we don't like incentives, but we're not willing to drop the corporate rate so we don't have to depend on incentives. We want to be competitive. We've heard on LB1107 the fix we had to have because so many of our companies are on-- on the borders with other states. And we don't want to take this baby step? This is a baby step on tax reform. The first year-- first year is \$5 million, almost \$6 million. I can go to the appropriation books and all kinds of things in the appropriations bill that we spent \$6 million on. Nobody even questioned it. And this idea that it's money we can't spend, it's not our money. Every-- all the dollars we have here, by law, people have to pay, doesn't start out as our money. What can we do with our money? We don't have any money except for taxes that we take from people by law. And I do believe that we're better off leaving people--

**FOLEY:** One minute.

**LINEHAN:** --with their money. Is that one minute?

**FOLEY:** Yep, one minute. One minute.

**LINEHAN:** So if we want to argue about whether we want to be a high-tax state, sixth in the nation, you want to move us on up there so we could be number one, or do you want to head us back in the right direction where we get somewhere, where people look at Nebraska, whether it's Social Security taxes, property taxes, income taxes, they

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want to live here because we're not taxing them out of their home or we're not taxing them so they want to move to Missouri or Colorado or South Dakota or Wyoming, all where they would pay less in those taxes? I do want to do taxes whole, but if the Legislature tells me today we can't take this by-- tiny baby step, I'm not very hopeful. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Linehan. Senator Friesen.

**FRIESEN:** Thank you, Mr. President. Again, let's-- let's talk about our bigger picture in tax policy in this state, and I think every one of us here, every year that we ran for election, heard that property taxes were the biggest issue to face the state. Over and over we heard that. Everyone came here and talked about it, and we all said that's-- it's-- you know, it's a tough job, can't get there, but instead we're talking about cutting income tax rates. In all my times, I guess, talking about issues in my district, corporate tax rate never once came up. The individual income taxes' rates never came up. It was property taxes, and yet this year we're cutting Social Security tax portion, we're cutting corporate taxes, we are cutting our revenue stream, and for most people we still haven't addressed adequately the property tax issue. We have not addressed school funding. We just keep talking about it, and so, again, as you look at how you might approach going into next year or the future years, not knowing where our revenue stream is, is it wise to cut corporate taxes? I have been a long proponent of cutting corporate taxes. This year, I've changed my mind. I don't think it's something we should do. I think we should focus more on looking ahead and see once where we're at in the next couple years. We've talked a lot about next year, looking at overall tax policy, which this would be a part of. And slowly, if we nickel and dime it to death, maybe we don't have to talk about taxes next year. But when I look at the-- the number of corporations who this would affect, it-- there's 1,624 corporations that pay over \$100,000 in taxes, and I would say the majority of those by far are located out of state, is where the most dollars go. So I-- I'm-- I'm struggling with this one because I think is-- corporate taxes, when I've talked to CEOs that want-- that have either moved here or are expanding here, what they want is a stable tax policy. They've never complained about the rate. And I think the-- when I look at this and-- and you-- the effective tax rate, there isn't a single corporation in this state who pays the advertised rate. And I-- I would-- I would make an educated guess of some sort that their effective rate is probably already lower than our personal tax rate. Corporations, and it's been said on the floor numerous times, don't pay taxes; they collect taxes, but they don't pay taxes. And I think when I-- when we've had some Revenue

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hearings in the past, I have asked if there are corporations located in the state that have a negative effective tax rate and, yes, it is possible and there may be. So to say that our corporate tax rate is keeping corporations from being here, and I dislike incentives as much as the next person, but it was a compromise and I see a lot of people on both sides of the aisle voted for that. They had no problem giving away tens of millions of dollars in revenue.

**FOLEY:** One minute.

**FRIESEN:** And yet now many of them obviously are maybe thinking maybe we need to give away more revenue. We're not going to reform the Imagine Act. But, yeah, if we eliminate all corporate taxes, that's one less thing that they can redeem their tax credits on. But they will just redeem them in wages and sales tax and other incentives and again we'll have companies here with a negative effective tax rate. And so let's keep talking about lowering income taxes and pushing off the property tax issue to some other year, and let's see once if the pressure builds next year, with valuation of houses increasing 10, 15, 20, 30 percent, if maybe that pressure actually tells us that property taxes and how we fund schools are a big issue. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Friesen. Senator Groene.

**GROENE:** Thank you, Mr. President. I stand in support of AM1346. I'm looking at this practically. I've got my calm voice because we're talking about it a not-- inanimate object, a corporation that has no true ownership, direct ownership. Its existence-- it's an it. And I see no practical reason to do this. You cut taxes for corporations for one reason, jobs. We are one or two in the nation historically on low unemployment. People don't want to live here because of high personal taxes; workers do not want to live here. So we don't need to fix an unemployment problem at all. I heard on the floor the other day on Senator Erdman's consumption tax that two major insurance companies, Aflac and Progressive, are considering domiciling here-- that's huge-- no mention, no complaint about our corporate income tax. We as a small state have picked-- our predecessors here in this body have picked certain industries to try to attract. Insurance is one. We've done S corps, wise decisions in trying-- instead of trying to go after these massive companies like Apple, which Apple, nice liberal company, we bought their computers, is in the Caribbean somewhere or the "isle" of Jersey, I understand, to avoid all taxes with their-- with their domicile. There's no reason to cut it-- low unemployment. And the biggest reason? State Chamber said they would expect-- support LB1106,

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good re-- changing of our policy on how we fund our schools, property tax relief. They deserted us. And now we've got a tax credit, which can disappear really quick when revenues fall and it'll be the biggest target of urban Nebraska to cut in the budget, and the corporations, to cut in the budget is property tax relief. It sits there with a big red sore on it to change that legislation on the credit. I am here protecting revenues to protect property tax relief. And I know my friends on the left-- I'm going to use that term because it's accurate-- are protecting revenues for their social issues. I understand that. I'm protecting revenues. But there's absolutely no reason to cut because we don't have unemployment problem. We give massive-- what we do have is one of the most lucrative tax abatements in the Imagine Act, and we have that because our corporate taxes are high. It's a cause and effect. But we have one of the most lucrative tax abatements in the Imagine Act and the act that preceded it. We take care of them. If you look at the revenues on corporate income taxes recently, they were in '20-- '19-20, they were \$391 million. Individuals paid \$2,400,000,000; sales tax paid \$1.8 billion; corporations paid 313 or whatever, 3-- 391, which would probably be-- I'm assuming that's after the abatements from the economic development Imagine Act, would probably be twice that or darn close, I think-- not twice. I believe when I-- last time I seen the report, the credits are climbing close to \$200 million a year, so revenue should have--

**FOLEY:** One minute.

**GROENE:** --been over \$500 million, but \$200 million-plus is being abated, and that will grow with the Imagine Act. There's absolutely no policy here, reason at all to cut corporate income taxes, none. So why-- why are we doing it? We're being nice to an inanimate object, a corporation? And don't tell me about we-- I end up paying it in my retirement account. The best performing businesses are domiciled in California and-- and New York and other states with high corporate tax rates. The huge ones are. So a little-bitty Nebraska is going to make a difference on your-- your retirement account? Really? And their corporate income tax rate? I don't believe so. Show me a good policy reason to cut this tax and I might look at it. I don't see it. Unemployment? Growth? We're growing. Yes, individual plans--

**FOLEY:** That's time.

**GROENE:** --to get people to--

**FOLEY:** That's time, Senator.

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**GROENE:** --locate certain places--

**FOLEY:** That's time, Senator.

**GROENE:** Thank you.

**FOLEY:** Thank you, Senator Groene. We'll pause the debate for a moment. Items for the record, please.

**ASSISTANT CLERK:** Thank you, Mr. President. Notice of committee hearing from the Government, Military and Veterans Affairs Committee. Additionally, announcement: the Revenue Committee will meet in Exec Session at 11:15 under the north balcony; Revenue, Exec, 11:15, north balcony. Thank you.

**FOLEY:** Thank you, Mr. Clerk. Continuing discussion, Senator Flood.

**FLOOD:** Thank you, Mr. President. Good morning, members. I am in support of LB432. I am opposed to AM1346 from Senator John Cavanaugh. We look at this bill and we wonder, well, what are we trying to accomplish here? And the people that pay these taxes have Nebraska businesses. They have connections to Nebraska. Senator Cavanaugh brought up Nucor Steel. With all due respect, Nucor Steel, for all intents and purposes, probably wouldn't have chosen to be in a cornfield outside of a community of 25,000 in the middle of rural Nebraska with a 1955 road system and a short-line rail to the main line in Columbus. But what they found was some of the best worth--work ethic in America, and they're continuing to expand. They're expanding again. And the reality is we've sold the Nucor Steels on the-- on the value of Nebraska. But there's a lot of companies that look at Nebraska and they look at that rate and they compare us to Iowa. They compare us to South Dakota, which, by the way, is a pretty tough comparison. They-- they compare us to a lot of other states. And when you're looking at a spreadsheet, a rate above 7 percent is tough. I am for property tax relief, but I'm also for income tax relief. I'm for corporate income tax relief. I'm for individual income tax relief. I want to see it flow through on a S corp. I want people that have LLCs to enjoy a lower tax rate. And I think this is part of the equation. This is part of the analysis, the calculus we have to do to be competitive. The property tax business? It's hard to argue that this Legislature hasn't made it a priority. We have in the Revenue Committee. We tried to do it in LB408 to limit the growth of spending. But what you see coming out of the Revenue Committee is broad based. And I hope in my time here in the Legislature, as I work with Senator Linehan, the members of the Revenue Committee, we can make more



progress, not just on property tax but also the burden we have, individual income taxes with corporate income tax. When you live 55 miles south of the South Dakota border, I can't tell you how many people eye living or locating in a-- in a state like that with zero. Do I think we'll get there? No. Do I think we should try to get there? No. I think we should try to reduce the burden, pair the corporate rate with what somebody with-- with an LLC is paying. Out of all the things out there, I do have a C corp. I question each day as to why that was ever created for all the reasons that we've explained here. But the reality is there are a lot of Nebraska businesses-- Senator Friesen's talked about it-- that have a C corporation. Reducing that rate to match the top rate for the highest income bracket in individual income taxes on a flow-through with an S corporation makes sense to me. I am going to vote for this. I think that it's easy to stand around a tree and say, hey, there's all these people over here that we don't know that are paying the tax. Well, those people create jobs, they make decisions about whether they're going to make investments in our state, and they make sizable investments in our state. We have to realize that we are in a global war for people, for jobs, for companies, for talent, for investment. And if we want to remain competitive, if we want to take steps toward being a place where we have high-wage, high-skill jobs, these are the kinds of decisions we have to make. And for that reason, I am definitely going to oppose Senator John Cavanaugh's AM1346. I'm going to do it on behalf of my district, which I think wants this kind of relief for-- from-- from the best corporate citizens in America, Nucor Steel. And I'm going to support LB432 as it moves on its way to Final Reading. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Flood. Senator Matt Hansen.

**M. HANSEN:** Thank you, Mr. President. And good morning again, colleagues. Colleagues, I do rise in support of Senator John Cavanaugh's amendment, AM1346. I in many ways agree with some of the predecessors before me, preceding speakers who talked about this, including, you know, just kind of the simple notion of-- of competing priorities. When we hear about the tax priorities from our constituents, lowering the corporate income tax rate isn't the one we all ran on and all-- one we all continue to run on. Doesn't mean we can't examine it, but I think upon an examination it doesn't hold up. In many ways I agree with Senator Groene. Show me the policy reason that this is going to improve or is going to attract. We already know we have one of the highest engaged workforces. We have a very desirable thing. As Senator Flood just said, many work-- companies choose to work here already due to the other things other than our tax

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structure that we pro-- provide. And the reason I comment on all of this is, as you may remember, I did share my opposition to this bill or opposition to components of this bill on General File. And ultimately, we let the bill go through with the intent of hopefully there be some changes coming on Select File. If you all remember, on General File, I believe it Senator Stinner, but kind of stood up and announced we will solve this, we'll make it work, we'll fit it in the budget, you know, an amendment will be coming, or we'll look at it. Similarly, there was some notions and some promises on the tax credit that's Senator Albrecht's bill, that there'd be some work or some changes that we could look at. I understand if you have negotiations, you don't get there, nobody agrees to anything. I understand. I'm not holding people or accusing them of not working. But my opposition to this bill has continued, was continuing, and changes to this bill to get to the point where I could support it so far have not happened. I think with AM1346 this is something I could support or certainly would not feel the need to take to cloture, and that's something we need to look at. Colleagues, it's been kind of interesting talking to a number of you off the microphone, listening to your speeches. I think Senator Machaela Cavanaugh kind of had it right of we've struck the-- maybe at risk of striking the right balance where nobody particularly likes the bill, nobody particularly likes the bill but they've-- all like one or two pieces enough that they'll might hold their nose and go for it. And I'm sure there's a handful of people who like every component, don't get me wrong, but-- but certainly not 25, certainly not 33. And I think that's something we need to look at. So, colleagues, if you're in support of the portions of the bill and if you want the bill to pass with the components you want, I would seriously consider supporting or asking questions or considering Senator Cavanaugh's amendment in the sense that-- in the sense that, you know, I use the metaphor of the Christmas tree a lot on General File, but in the sense of, you know, one too many ornaments can take the whole thing down. You know, already today we've seen two amendments that a number of people feel strongly about doing two different provisions of the bill, and we're going to have to look at that and look at that as we go forward. Ultimately, you know, when we talk about corporations and why they choose to look at a state, you know, it's kind of interesting, the debate we kind of get. So, you know, is lowering the corporate tax rate recruiting inter-- you know, international, multinational corporations to come and build new things in Nebraska? Is it to help small local Nebraskans? Is it to lower or improve retirement pensions?

**FOLEY:** One minute.

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**M. HANSEN:** I understand a bill could have a multifaceted impact and outcomes, but right now it's kind of been pitched as a panacea. It's going to do everything. And I think, you know, upon closer reflection, you know, a 1 percent change or-- or a small change in corporate taxes isn't going to do much in many asp-- aspects other than limit the amount of money that future Appropriations Committees get to allocate for state priorities. And again, again and again, I keep talking about this on taxes. When we repeatedly acknowledge that we are not fully funding, we're not adequately funding, we are not supporting K-12 or pre-K through 21 or whatever you want to frame it as, when we know over and over again there's been an eight-- seven-, eight-, nine-, ten-year recognition of this, I don't know why we would be rushing through any sort of large tax reduction without some coherent policy that we all understood and all agreed to, as opposed to the revenue bill has enough things together that I'm willing to vote for it. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Hansen. Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. Colleagues, I rise in support of Senator John Cavanaugh's amendment, AM1346. So it just seems like-- why? We just passed-- there's a thing being passed around from the Platte Institute on parity for Nebraska's top business tax rates. OK. Why? Is this to get companies to stay here? Because I thought that's what the tax incentives were for. So why are we doing this? Why are we cutting corporate tax rates, because there's money on the floor? There's a lot of things we could be doing. We could be cutting income tax rates for individuals. We have income tax down to the lowest amount of income. You still pay income tax in Nebraska. We could be recalibrating how we do income tax in Nebraska to help individuals with that burden. Why are we doing a corporate tax cut before cutting taxes for individuals right after doing corporate tax incentives where we don't require the wages that those corporations pay be high enough that their employees don't qualify for social programs? This is nonsense. This is nonsense, and it continues to be nonsense and we continue to have these circular conversations and just rail about how important it is to cut these taxes. I'll cut taxes for people. You want to cut taxes for individuals? Let's do that. If you make under \$50,000 a year, let's cut your taxes; let's make them zero. Why don't we have that conversation? We want to have tax reform. Let's make Nebraska friendly to low-income people so that people who move here, who make those wages at those companies-- how about, if you work at a company that gets a corporate tax incentive, you don't have to pay income tax? I mean, let's get creative and let's help people. And corporations might be owned by people, but they are still not people.

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Just like nonprofits are not people, corporations are not people. People are people; corporations are corporations. This computer is not a person; even though it is owned by a person, it is still not a person; a person owns it. I-- I don't know if this amendment is going to pass or not. The apathy in this room today is palatable. [SIC] People just want to move on and get done with the session and just bulldoze our way through and pass things and without standing up for something, anything. I would like to see this body stand for something--

**FOLEY:** One minute.

**M. CAVANAUGH:** --whatever it is. We don't though. You don't-- we don't have to-- like it doesn't have to be what I want us to stand for. I want us to stand for something, and tax reform takes engaging and bringing people on board and having conversations with diverging opinions and having all voices represented, and we're not accomplishing tax reform this year. We're just trying to get through so that we can all go home. Thank you.

**FOLEY:** Thank you, Senator Cavanaugh. Senator Briese.

**BRIESE:** Thank you, Mr. President. Good morning, colleagues. I rise in opposition to AM1346. For me, the priority in this body should be property tax relief, property tax reform, education funding reform, and other tax relief would take a backseat until we get our property tax burden in line with that of residents in our neighboring states. But it doesn't work that way. We cannot legislate with tunnel vision. For me, this bill is about balance, finding a balance in our approach as we legislate to try to bring everyone along, try to bring all Nebraskans along. And we made a significant step last year with LB1107 on property tax relief, and we're continuing to work on that issue and we will continue to work on that issue. We also brought along much of the business community and the Imagine Act portion of LB1107 last year. And-- and we're moving along other Nebraskans in other ways. We brought along our residential water customers in LB26, LB544 for urban development, LB40 for rail infrastructure, LB366 for small businesses. And I could go on and on, but that's kind of the tip of the iceberg. But the point is, I could oppose anything that doesn't advance the cause of property tax reform and relief, but I believe we must strike something of a balanced approach and this bill is consistent with that balance that I see is necessary. And as businesses make investment and expansion decisions, a reduction in the corporate rate can make more Nebraska-- make Nebraska more attractive as a location to make those investments and expansions. And to the extent that corporate tax

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reduction incentivizes additional investment and-- and expansion, that's good for all of us. It's good for Nebraska, helps us grow our state. And so I oppose AM1346 and I will be supporting LB432. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Briese. Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. So far it's been pretty good discussion. I appreciate everybody's points. It's-- I-- I-- it's always-- I guess I find it funny when I'm on the same page as Senator Groene, and Senator Groene make [SIC] a lot of good points, I thought, and-- but I would take issue with the fact that I do want to spend-- I want to priori-- put-- prioritize different things. But I-- I wouldn't mind putting this money into property tax relief. I think that would be a better use of this money than a corporate tax cut. So I guess that's where Senator Groene and I agree in terms of the rank of priorities. I would like to invest in people, the human capital, human infrastructure of the state of Nebraska. But I do think that property tax relief would-- would rank higher for me above tax cuts for businesses, because I don't think that the evidence is clear that this would actually increase business investment in Nebraska. The question is, that I kind of posed at the beginning, what is the return on investment on this? And if we want to talk about the fiscal note, I know it's over five years in-- in the fiscal note, and I guess I don't-- I didn't know that was a divergence from standard practice, but it's about \$40 million a year, I think, is what this will cost us. And so-- or maybe it was \$20 million, I guess, maybe \$40 million a biennium. But the question is, are we going to get that-- are we going to recoup that money in the-- in business growth as a result of this reduction, or would we be better served to take that money and invest it in things like people or infrastructure? Senator Flood pointed out that he didn't think Nucor located in Norfolk because of the-- the infrastructure there. That's kind of my point, is, I think, if I read their-- their-- their corporate paperwork properly, I think they started there and have grown and are now sited somewhere like North Carolina, I think. But they-- they are there because of geography but are hampered by our infrastructure. And so we need to capitalize on our geography, but we also need to build the infrastructure to allow businesses like Nucor to fully capitalize on that. And that type of investment, If we invest money in that type of infrastructure, it doesn't just help the one business. It helps all the businesses that are able to use that infrastructure. If we improve our-- our workforce, that helps all businesses; that helps all people of Nebraska, not just the limited 1,900 companies that fit into this category. And so the question is whether we can find different ways to

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spend this money that will actually increase our return on investment. I've had conversations about SNAP benefits and the amount of money when we spend \$1 on SNAP returns something like-- it was \$1.47 or something like that back into our economy. And so that is a pretty good return on investment. What is the return on investment? I'm looking through the-- this handout that we got. I don't see exactly what the prospective increase in investment in our state as a result per, you know, dollar of reduction is, just has a, I guess, oblique reference to consensus among academics say the tax negatively affect employment levels. I-- I don't know what that's based on, doesn't have a cite, but I guess I would just be-- I would be curious, I would actually be curious, to see some sort of study, academic, rigorously based study that would say for each dollar in corporate tax cut a state imposes, that you can see what amount of reinvestment in that state. That would help me to decide--

**FOLEY:** One minute.

**J. CAVANAUGH:** --I guess, whether or not this is a valuable proposition. But just sort of saying companies like less taxes? Well, of course they do. I do too. Everyone wants to-- to pay less taxes. A lot of people say the-- you know, the best tax is the one you don't have to pay, which is the appeal of the consumption tax is you can control the amount of tax that you pay. It's the appeal of things like gambling, because the money that it-- it generates can be money that I'm not putting in because I choose not to do that. The same goes for taxes on things like alcohol and tobacco. Those are things we choose-- people can choose to-- to participate in or not and which is why we can-- we often find it easy to shift money to that, to tax-- taxes to those purposes. But we all don't want to pay taxes. The key is to find the structure that derives the most benefit for the most people, and there is not evidence that I've seen that says this will derive--

**FOLEY:** That's time.

**J. CAVANAUGH:** --a good amount-- I'm sorry, time?

**FOLEY:** That's time.

**J. CAVANAUGH:** Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Cavanaugh. Senator Linehan.

**LINEHAN:** Thank you, Mr. President. I handed out the Platte Institute on corporate taxes because I happen to know Senator Groene is a founder of Platte Institute and he wanted the information, so I

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thought it would be good to share. Balance, talk about balance and talk about infrastructure, so I'm leaning on my row partner here, Senator Clements. Nebraska spends \$400 million a year on roads, half of which is federal, so that's \$200 million Nebraska spends on roads per year. We have passed \$20 million and \$20 million in broadband infrastructure expansion in this biennium, so that's \$40 million plus \$200 million, so now we're-- it's 200 every year, right, sir?

**CLEMENTS:** Yes.

**LINEHAN:** So that's \$440 million on infrastructure. We are at \$1.4 billion on K-12 schools funding. It's-- it's not that we're not spending any money and spending money on infrastructure, significant money on in-- infrastructure. And it is-- it does-- we can get studies, and I've seen plenty of them, about corporate tax rate. But all you have to-- if you look at the map and you see that if I move to Colorado and set up business, I'm at 4.55; if I move to Nebraska, I'm at 7.81. Even if we pass this bill, we'll still be behind Colorado. Kansas has reduced theirs. This map is dated. We are-- west-- sorry. We are out of step with all the states around us: South Dakota, Wyoming, no-- no income taxes; Kansas, 4 percent; Missouri, 4 percent; Colorado, 4.63 percent; North Dakota, highest rate, 4.31 percent. So even after we go through this, if somebody is looking at tax rates, which they do, guys, people do look at tax rates, especially corporate people who have an ob-- obligation for their business interest to look at these things, we're going to-- even after this bill, we're still going to do more work. As far as Senator Machaela Cavanaugh, I'm all in if you want to bring a bill next year to reduce individual rates. I agree that our top rate starts too low. I think our income taxes are too high across the board. When I ran for Legislature four years ago and this last year, I agree property taxes are way too high, but so are income taxes. Again, number six in the nation from the top of being the highest tax state, that is a number that should concern us greatly, number six. And I'll go back through who's ahead of us: New York, Connecticut, New Jersey. We're not-- we're not anywhere near where we should be if we want to be competitive in the Midwest. And again, this is a baby step. The Revenue Committee plans on bringing significant reform next year. I agree that we need to do reform of our school financing. I've worked on that every year since I've been here. I-- I think the state should fund K-12 at-- differently and at a higher number than it is now. We are at \$700 million-plus in property tax relief. We-- we-- we need to change it structurally--

**FOLEY:** One minute.

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**LINEHAN:** --I agree, but this is a baby step to get us-- like, we'll have all the rates. Whether you're a C corp or an LLC or an S corp or an individual proprietor, you're all-- will start at the same line. That's what I'm trying to accom-- we're trying to accomplish here. Let's get us all at the same line so the highest rate is the same for everyone, and then we can come back over the summer and next year and try to bring all those rates down-- that's what the point is-- and at the same time, look at school finance and look at property tax relief. There is no real property tax relief until we redo the school finance, and I think everybody that's here knows that. So there's a lot of work in front of us. These are just little steps, but it is part of a bigger plan. This isn't like one-offs, like everybody keeps saying it's one-offs. It is not. It's a step in the right direction. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Linehan. Senator Friesen.

**FRIESEN:** Thank you, Mr. President. So, again, I'm going to-- I'm going to talk a little bit about the corporate taxes and how they may impact businesses. And according to the Institute on Taxation and Economic Policy, 83 percent of the tax cut would flow out of the state, leaving just 17 percent for Nebraskans. Cutting the rate is also unlikely to result in any economic growth. Both the Congressional Budget Office and Mark Zandi, co-founder of Moody Analytics, have found that corporate tax cuts aren't an effective way to stimulate the economy, with the CBO writing that increasing the after-tax income of businesses typically does not create much incentive for them to hire more workers in order to produce more because production depends principally on their ability to sell products. Nebraska's corporate tax is based on sales in the state, not the location, so companies can't reduce their liability by moving. Again, we talk about Nebraska is a-- it's called a single sales factor apportionment, and if they sell their products out of state they do not pay Nebraska income tax. And so, again, a company can move, they could move to South Dakota if they want, but if they're going to continue to do business in Nebraska, which they all will because they're making money, they're going to get taxed at our rate. So it-- it's a pass-through. I agree with that. I'm not arguing that point. But we have to remember that most of those sales, some companies, at least, probably happen out of state. And for those companies headquartered out of state, they're making money in Nebraska, I don't know why we wouldn't tax them on their profits here, because they're going to continue to sell me equipment, tractors; they're going to continue to sell products in Nebraska because it's a market that they can't give up. And so when you're talking about who this impacts, we go-- we look at there's



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19,685 C corps in the state of Nebraska; 1,624 of them actually pay the top rate, which would be over \$100,000; and our advertised rate of 7.81 actually turns into an effective tax rate for those that have paid-- and this is in 2017. The effective rate was 6.12, which is already lower than our personal rate. So I-- I fail to see how this is inequitable, and then that's not taking into-- I don't think it's taking into account the ImagiNE Act or the Advantage Act or LB775 of the day, because those would reduce further a company's liabilities in paying tax. So if they could bring their incomes down below \$100,000 by using tax credits they've earned under all of these, they would effectively be paying the absolute lower rate in corporate taxes and it would even be lower than the 6.12. So again, we already have a rate that's lower than the personal rate and it doesn't take magic or an accountant to even come up with this. This is just the way it is. When we follow the federal tax code the way we do, our effective rate turns into this. So when you look at those 1,600 companies and you average those out, the effective tax rate basically is 6.1 percent, which is already considerably lower than our personal rate. Now C corps do have some additional tax advantages sometimes.

**FOLEY:** One minute.

**FRIESEN:** It just depends on what kind of business you're in and, you know, how you want to model your corporate structure, whether it's in an LLC or a subchapter S. And currently I'm talking to accountants. Most businesses would form at least under an LLC or a subchapter S. At some point in time, they may want to change into that C corp factor, but right now it's more advantageous to be a C corp or an L-- or an LLC or a subchapter S. So when we're looking at these rates, they have absolutely no impact on businesses either locating here or staying here. That is a myth that we have to get past. We have to look at this as it is a tax that we depend on for some revenue to help balance that three-legged stool. And we look at the different methods we have. This is one of them. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Friesen. Senator Stinner.

**STINNER:** Thank you, Mr. President. Members of the Legislature, I guess I have to explain myself as it relates to this bill. I know I stood before you early on saying, yes, between General and Select, we would work on trying to figure out how to stage the tax in so that the fiscal note would not-- would not be too impactful relative to what we were trying to do. Not knowing all the fiscal notes that were out there and still not having a 100 percent assurance as to the fiscal note, if you turn to your green sheets, we're \$1.7 million in the

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negative right now. Now already Senator McDonnell has agreed to lower his ask from 25 to 15; that gives you 10. You're at a positive. So when I sat down and talked to Fiscal, when we ran the numbers, the maximum amount, if you phase it in today, would be \$41 million. Obviously, that's a large number. Obviously, strategically, when you have \$245 million or so to spend, you need to be strategic and purposeful. And I talked about that last Friday, I believe. So what are we trying to do right now? What-- what is our job right now? It's to be strategic is to take those dollars and make sure those short-term dollars end up as long-term benefits. And I look at the three areas, the three big areas from the revenue side, and we already are in the process of passing exempting military pay. And of course, that fiscal note's about \$27 million for this bi-- next biennium, and it grows a little bit as well. And that's all in the name of workforce and having a quality workforce, being able to compete with the Iowas who do not have-- the-- the-- who do not tax them. And we've got all kind of empirical evidence that shows that indeed we can attract and retain that workforce by doing some of these things. So it's about growth; it's about workforce. Social Security, now we did put a guardrail so-- on that so that it doesn't grow to such a large number without having some due diligence performed by this Legislature. But that's about retaining and being competitive, and it's targeted toward retirees. And now we go to the corporate side. Do we want to be competitive or don't we want to be competitive? And we can do all kind of different analysis, but our stated rate for the state of Nebraska is now 7.85. That's what people make decisions on. They don't do it on effective tax rates or deductions or anything else. They look at the stated rate when they're going to make decisions. And so the decision today is to bring it to parity at 6.85 at a cost of \$41 million. That will be your total cost. Now over that five-year period of time, of course, OpenSky is promoting, you know, it's over \$100 million. I think if you add it all up, it's \$103 million. That's a really unusual way of doing it, because you do have revenue and you do have years and you do have expenses to correlate with that. But the total cost is \$41 million. It's not chump change. It's something that we can talk about. I'm not the bill sponsor. I'm not the introducer. I'm not the head of Revenue. But I would offer this, is don't abandon corporate. Don't turn your back on it. We have to be competitive. We have to be strategic. Now, if that takes us taking a look at restructuring maybe some of the rate decreases so that we start this process--

**FOLEY:** One minute.

**STINNER:** --that we have a look in, that we have intent, I think that's an important part of this. But again, it's not my decision, it's not

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my bill, but I certainly am more than willing to open up a discussion that says, OK, we'll step this down, we'll stage it so that it's more acceptable to the entire body and makes a lot of sense with the appropriate look-ins. I think this is an incredibly important decision. I think we have been strategic in the-- in the-- the way we're spending money. Forty million dollars on broadband out of General Funds, that's a lot of money, but it's strategic. It needs to be done. If we're going to go to the next level, if we're going to compete, if we're going to retain the population and-- and stem some of that outmigration in rural Nebraska, we need quality broadband. Forty million is a step in that direction.

**FOLEY:** That's time.

**STINNER:** Thank you.

**FOLEY:** Thank you, Senator Stinner. Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. So I appreciate what Senator Stinner is saying about the money being available, but I still am opposed to the corporate tax cut because it's not about whether or not the money is there in the budget. It's about whether or not this is what we should be doing with that money. And we're not just doing it today or next year, which is why I believe the Fiscal Office did the multiple year outlook, because this is about changing something permanently. There's no sunset on it, as far as I am aware. Maybe I'm wrong. It's permanent, so that's why we would have multiple years out, and we can't predict what our revenue is going to be multiple years out. But we-- what we can predict is how much revenue we're not going to get here because we're permanently cutting it. And so I just-- I just don't know why we would do this now when there are so many priorities for tax reform in this body and in this state. I keep hearing about property taxes and-- and now we're doing corporate taxes and we're doing corporate tax incentives. And I feel like a broken record, but I think it's really important and valuable to talk about the fact that this-- this doesn't really meet the needs of the people of Nebraska. And I have a paper. One moment. So my first interim, I introduced a interim study to look at the unrealized offsets for some of our social programs, and the intention was to have a conversation in the body about what it means when we don't maximize access to our government programs, like, well, Medicaid expansion, first of all. So healthcare, food, rental assistance, heating assistance, what are the unrealized offsets that we are leaving on the table by not doing those things? And if we have money on the floor, doing those programs, will we get more revenue for the state? But there's a philosophical divide

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in this body about how we want to approach revenue and taxes. I want to cut taxes. I very much want to cut taxes, but first I want to fix our house. Got to have your house in order first. First and foremost, we got to have our house in order. And to have our house in order, we need to have im-- Medicaid expansion fully implemented the way the voters intended. We need to have access to food and healthcare and housing and heat and education. All of those things are going to translate into more money for the state. There was the ALEC study about the commu-- investment in community mental health as opposed to prisons, and they have saved money and generated revenue as a result in the state of Texas. We need to get our house in order, and we need to have difficult philosophical conversations about how to do that--

**FOLEY:** One minute.

**M. CAVANAUGH:** --where we leave our prejudices behind us and we have a real conversation about how to approach governing this state and how to be good stewards of tax dollars. And I don't see those conversations happening because we're just having ad hoc meetings with people that are like-minded. No one in this body has invited me to a meeting to talk about taxes or revenue that is diametrically opposed to me in these views. You all just wait for me to talk about it on the floor. You have meetings with other people, but you never meet with me, and then you're surprised and aghast that I'm in opposition to these-- these things. There's a simple answer. Let's work together. Let's not just fight it out on the floor. Let's negotiate as a body in a collective, cohesive manner.

**FOLEY:** That's time.

**M. CAVANAUGH:** Thank you.

**FOLEY:** Thank you, Senator Cavanaugh. Senator John Cavanaugh, you're recognized, your third opportunity, Senator.

**J. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. So I'm trying to remember where I left off. But Senator Friesen always makes good points. The one that he pointed out, that was 83 percent of the tax cut that we're contemplating here, will go outside the state of Nebraska, which, again, goes to what I said about Senator Groene's point, is that I would rather invest in property tax relief, because it would stay in the state of Nebraska, than invest in companies that are going to take it out of the state of Nebraska. And then there's talk about how we tax profits or dividends and things. Again, that is money that could be paid to individuals outside the state of Nebraska,

but there's a lot of-- in this conversation, people are talking past each other because we just have a, I guess, a fundamental disagreement about what this means. Those of us that are against this are saying we think there may be a better way to spend this money, the way-- a better investment that is going to derive a better benefit, more benefit to the state of Nebraska, than the--- cutting the corporate tax rate. And the folks who are in favor of it say we need to appear competitive; we need to encourage businesses to come here by doing this, that-- but Senator Friesen, of course, pointed out that this is a tax on businesses conducted in Nebraska, not businesses sited here. And so the-- I guess I'm by no means an expert on this subject matter, but I guess I can employ logic. And when it comes to investments and we're talking about businesses, and I kind of latched onto the one that Senator Flood talked about, which is this Nucor, and I just keep thinking-- think, if we take this money and we invest it to allow a business like that to grow, we are not going to necessarily derive this corporate income tax from that growth in business because they-- the growth might be in sales outside of the state of Nebraska. But the benefit we will derive from that investment is the more employees they hire and pay, the better pay for those employees, the other carry-on businesses that are associated with that expansion in em-- employment base in that community, the property taxes associated with those folks and their investments in that community, the employment tax, income tax from those employees. So that-- that is what we're talking about when we say invest in infrastructure, invest in people, invest in growing these businesses. It's not necessarily about we grow these businesses and we are going to capture more business revenue. It is we capture more total revenue and we grow the economy of the state as a whole. But when we cut the corporate tax rate, it doesn't necessarily do that. It do-- there may be no change in behavior as a result of this cut because the companies, the 83 percent, are businesses that are making sales into the state of Nebraska, are deriving income from conduct in the state of Nebraska. Senator Groene talked about Aflac and-- well, I don't remember which other one, but they-- whether they come inside here or not is not changing the fact whether Aflac sells insurance in the state of Nebraska. They're selling insurance in the state of Nebraska because they make money selling insurance in the state of Nebraska. If they come and site here, it's about other things and about what-- what other-- other incentives we've talked about that they can derive. But we are talking about whether this 83 percent that goes out of the state of Nebraska is enough of a benefit to cut it for-- it-- to-- of loss, to cut it for the 17 percent, if we are going to create the other-- the climate that's going to increase business overall, that we're going to derive the-- the general benefit.

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**FOLEY:** One minute.

**J. CAVANAUGH:** That's-- that's the calculus. I'm sorry, one minute? One minute? Thank--

**FOLEY:** One minute.

**J. CAVANAUGH:** Thank you. So that-- that's the question we are trying-- conversation we're trying to have is this is a balancing question about whether this is the right balance to strike, whether this is the right policy for us to pursue. It-- it's not so much that anybody is against corporate taxes-- tax cuts. Again, I would be fine with cutting taxes for everyone, but it's a question about whether this is the maximum benefit that we can derive from this particular amount of money and change in our policy. If we could apply it somewhere else and get more of a benefit, that is our obligation, is to find the maximum benefit we can derive for the most people in the state of Nebraska, and this is not demonstrably that. And so that's why I would ask for your green vote on AM1364-- or AM1346. Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Cavanaugh. Members, there are currently eight senators in the speaking queue. The speaking queue will be preserved over the noon hour. We'll pick it up at 1:30. Mr. Clerk.

**ASSISTANT CLERK:** A few items, Mr. President: a Reference report from the Executive Board referring LR130 to the Executive Board. Name add: Senator Matt Hansen would add his name to LB64. An announcement: the Redistricting Committee will meet today, Tuesday, May 11, 2021, in Executive Session at 12:30 in Room 1524; Redistricting today, 12:30, Room 1524. Finally, Mr. President, a priority motion: Senator Albrecht would move to recess the body until 1:30 p.m.

**FOLEY:** Members, you heard the motion to recess till 1:30. Those in favor say aye. Those opposed say nay. We are in recess.

[RECESS]

**HILGERS:** 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.

**WILLIAMS:** Mr. Clerk, record.

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

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**WILLIAMS:** Thank you, Mr. Clerk. Speaker Hilgers, you're recognized.

**HILGERS:** Thank you, Mr. President. Good afternoon, colleagues. I've spoken now to Senator Stinner, Senator Linehan, Senator Friesen, and a few others. I understand that there has been an agreement amongst a number of those senators on LB432. That agreement will take some time to get up to Bill Drafters and get drafted and come back down. In order to save and be efficient with the-- the limited time that we have left in this session, what we're going to do is we're going to pass over LB432 and start with LB495. Whenever that amendment is down, whenever that-- the bill is complete, subsequent to the amendment coming down, we're not going to switch back in the middle of another bill. But when that amendment comes down, at my first available opportunity, we will go back to LB432. I do understand also the-- the queue has been kept. That may be a moot point down the road. But just so you know, we're going to skip past LB432 to allow time for this amendment to get drafted. And we will come back to it today at the first available opportunity if that makes sense. Thank you, Mr. President.

**WILLIAMS:** Thank you, Speaker Hilgers. Mr. Clerk, for items.

**ASSISTANT CLERK:** Thank you, Mr. President. Legislative-- your Committee on Enrollment and Review reports LB100 and LB561 as correctly re-engrossed and placed on Final Reading. Additionally, amendment to be printed: Senator McDonnell to LB566. That's all I have at this time, Mr. President.

**WILLIAMS:** Returning to the agenda.

**ASSISTANT CLERK:** Next bill, Mr. President, LB595. First amendment-- excuse me, first of all, there are E&R amendments.

**WILLIAMS:** Senator McKinney for a motion.

**McKINNEY:** Mr. President, I move that the E&R amendments to LB595 be adopted.

**WILLIAMS:** Members, you've heard the motion. All those in favor say aye. Opposed say nay. E&R amendments are adopted. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, Senator Albrecht would move to amend with AM1227.

**WILLIAMS:** Senator Albrecht, you're recognized to open on your amendment.

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**ALBRECHT:** Thank you, President. Good afternoon, colleagues. AM1227 gives greater precision to the sales tax exemption contained in this bill, which was included in the original version of LB595. The amendment changes the terms "enzymes, yeast, and related products used in the process of manufacturing ethyl alcohol" to "all catalysts, chemicals, and materials used in the process of manufacturing ethyl alcohol and the production of coproducts." We want to be clear that the exemption is intended for all of the inputs used in ethanol production and the production of coproducts such as dried distillers grains. This amendment simply tightens the language and provides greater clarity to both the Revenue Department and the producers. I thank you and I urge you for a green vote on this amendment.

**HILGERS:** Thank you, Senator Albrecht. Debate is now open on AM1227. Senator Pahls, you're recognized.

**PAHLS:** Thank you, Mr. President. I have a question or two for Senator Albrecht.

**HILGERS:** Senator Albrecht, would you yield?

**ALBRECHT:** Sure.

**PAHLS:** Thank you, Senator. Now when you talk about exemptions, I notice there are a number of them in LB595, because we have included a number of bills in this. Am I correct or am I reading that wrong?

**ALBRECHT:** Yes, sir.

**PAHLS:** OK, and you made some changes in the one dealing with ethanol, that was the original bill, LB595?

**ALBRECHT:** Yes.

**PAHLS:** OK, now as I'm going through, because I see there are other bills that have been amended into it. LB182, which deals with taxes on towers and structures for Internet. LB350, which deals with some sunsetting, some dates for the sale of-- sale or lease of motorboats, personal watercraft, etcetera, for Games and Parks.

**ALBRECHT:** Um-hum.

**PAHLS:** And then LB672, which deals with agricultural machinery. You've included some additional ones. I'm looking at-- some of them would be the basically header trailers, haulers, transports, and seed tender trailers. Is that right?



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**ALBRECHT:** Yes.

**PAHLS:** OK, now I'm looking at all of these bills together because I'm-- I'm looking at tax exemptions. First of all, I'm not against the bill. I'm just looking for clarification. If I look at the fiscal note in the 2020-- '21-22, do I see, like, seven-- over \$7 million? Am I reading that correctly?

**ALBRECHT:** Yes, I would imagine so.

**PAHLS:** And then in '22-23, that's over \$12 million?

**ALBRECHT:** Yes.

**PAHLS:** Now, is that all of those bills wrapped together? Is that-- am I reading this fiscal note correctly with all of these bills, all the basically tax exemptions? I know it's the ones-- the one dealing with Game and Parks, that's actually, that's extending the sunset. But I'm just trying to figure out that in 2021, it's \$7 million, a little over \$7 million, and 2022, it's a little over \$12 million. I'm just-- I'm just trying to say, am I reading that correctly?

**ALBRECHT:** I'm looking at the fiscal note as we speak. I did go into Senator Linehan's office today and ask if they had an update from the Revenue Committee. And I'm-- I'm thinking that they were still waiting on some numbers. A lot of the, the information just on the bill that I'm presenting from the ethanol--

**PAHLS:** Yeah.

**ALBRECHT:** --is the numbers can look skewed somewhat just because you had the Advantage Act dollars and they could--

**PAHLS:** Right.

**ALBRECHT:** --put those into credits so these numbers can change, you know, as we move forward. But, yes, that's approximately.

**PAHLS:** I'm just trying to figure out if, if I'm reading this fiscal note correctly or if with additional adding-- I, I-- I'm assuming this is the correct number for all of them. But you're indicating this may not be the--

**ALBRECHT:** Well, I'm just talking about the one that I'm presenting. You'd have to ask the presenters of the other bills what their fiscal note is.

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**PAHLS:** But it is under LB595. That's the--

**ALBRECHT:** Right.

**PAHLS:** --the overall bill. They're all under that. Well, OK, I-- I will look into that a little later on. But the point I'm trying to get across, that, you know, we're talking about-- thank you, Senator. We're talking about property tax. We're talking about corporate tax. We cannot forget about all the exemptions that--

**HILGERS:** One minute.

**PAHLS:** --thank you, that we're-- all these exemptions that we're creating. I'm not saying that we should not be, but like the one on farm-- on LB672, that started in 1967. We're still giving additional exemptions for agricultural machinery equipment. Once you start giving these exemptions, you're taking money out of the pot, so if you want property tax relief or corporate tax relief, you got to leave something in the pot so we can move it around. We continue to give exemptions, and I'm not denying that they're not needed because it starts out-- as an example of an exemption, may start out \$100 and keeps going up every year. It keeps adding on. It doesn't just stop this year. These exemptions that--

**HILGERS:** Time, Senator.

**PAHLS:** Thank you.

**HILGERS:** Thank you, Senator Pahls and Senator Albrecht. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. Speaker. I'm still trying to figure out what Senator Albrecht's amendment does. I do agree with Senator Pahls that we keep making exemptions and just doing a little bit here and a little bit there and a little bit here and a little bit there. And pretty soon we're going to have nothing left for that precious property tax relief for farmers, but I guess that's how we want to do things in this body. I wanted to speak to what just happened when we came back from lunch of pausing on LB432 debate, because apparently somebody-- some people have made a deal and I'm opposed to the deal and I'm opposed to LB432. I just want to make it clear to this body, because people are complaining about time and how much time we have left in the session and how much time we're taking on things. I gave this body an opportunity this morning, a genuine, sincere opportunity to fix the part of LB432 that I had the most difficulty with because I didn't think that it was a good use or approach to the problem. And

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five people voted for it. And I have made it very clear from the beginning that I oppose the piece of LB432 that is the stillborn tax credit. I remain opposed to that. I will continue to be opposed to it. And so I will continue to take every minute that I have on LB432 and it's A bills until we are done with it this session even if it passes. I have an amendment on LB432 that strikes out that portion of LB432. I'm certain that it will fail miserably because no one in this body has the will to actually stand up for good public policy. I shouldn't say that, five people have the will to stand up for good public policy. So don't come complaining to me when I'm taking all of your time. I am taking your time because I am trying to push you, every single one of you, to be better, to do good public policy. And if you think that Senator Albrecht's stillborn tax credit is good public policy, then argue that on the floor. Don't tug at heartstrings about grieving families because nobody gave a damn about grieving families this morning. So don't tell me that that's the reason that you're going to vote to keep her piece of the bill in there when you didn't vote for my amendment. So tell me what the argument is that this is good public policy and I'll sit down. If somebody can make that argument to me, I will sit down. I mean, I'll sit down on this. I'll sit down on this amendment. I'll sit down. So argue it to me on the merits of it. I challenge this body to do that. You want your time back, that's how you get your time back, argue the merits of that bill. Why is that bill good public policy? Where in statute-- in tax statute is parent defined? Feel free. In the meantime, I'm going to look at all of the amendments that are on this bill on Select File, and I am going to have a robust conversation about them. And I am not going to stop until somebody can argue in favor of that piece of policy. So we've got LB595, and Senator Albrecht's amendment amends page 7,--

**HILGERS:** One minute.

**M. CAVANAUGH:** --thank you, lines 19 to 21, I believe. And I'm not clear on what the amendment actually does. And I missed Senator Albrecht's opening on it. So I'm sure while I am refreshing myself with it, I will hear others talk about it and I will get back in the queue. Thank you.

**HILGERS:** Thank you, Senator Cavanaugh. Senator Pahls, you're recognized.

**PAHLS:** Thank you again, Mr. President. And I also want to thank Senator Albrecht, because the question I had, this fiscal note, if it included all of the bills and she informed me it did. That's how I had

interpreted it. I just wanted to make sure. Again, I am not fighting the, the need for exemptions. I'm just saying we have to continue to take a look at them. Because to be honest with you, the bill that I prioritized this year, Senator Wayne's bill, it deals with tax exemptions on water. So I'm not the complete innocent angel here. Well, I don't-- well, that would-- I would not be classified an angel anyway. But I'm-- I'm trying to get the point across that is this morning we talked about balance. I heard several people, I think Senator Briese made-- we need to take a look at all of the different taxes. I agree. But we also have to take a look at all the exemptions or extensions that we do give out because, again, that takes less of the, of the pool. And I-- I'm going to bring up property tax again, just like you've heard me say this before, Douglas County, it's a champion when it comes to property taxes. They collect more property taxes there than 70 other counties. So it is a significant factor to us. But what I'm thinking about exemptions like one of these-- some of these, I said, are extensions from 1967 and we're still adding on. So we need to be aware of what we are doing. Because when you talk about exemptions, you could say, oh, it's \$100 or it's \$1,000, it's \$10,000 or it's a million or what it is now, all the exemptions we have, we're talking about billions in agriculture, business, some we give to nonprofits. We, we have-- that little pile is getting smaller and smaller, but we all still want some reductions in some of our other taxes. Again, to me, it's a sense of balance. And I do like the idea we're thinking about that as a Legislature, this Legislature is not going to strap some of the future Legislatures. I hope we do not for because like, say, some of you will be gone here in another year. So that's going to leave those of us who are still here to, to try to wheel and deal to get things accomplished. But again, we keep taking that away. And what I'm going to-- now this I'm speaking to the public. You need to do this. I suggested you do this before, look up [revenue.nebraska.gov](http://revenue.nebraska.gov), [revenue.nebraska.gov](http://revenue.nebraska.gov). You're going to see all the taxes that we create in the state of Nebraska. You, you would be amazed and, and you'll get into and one tax I will talk about in the near future is the Doc Stamp for those people who sell real estate. You know, so many dollars per thousand dollars, I think it's two, two and a quarter that we charge for a thousand for that Doc Stamp. Do you have any idea where that money goes? It's really interesting. A lot of it does go to different areas like dealing with housing, but part of that goes to mental health. I think you need to start looking in and seeing how we are spending your money and you would never think about selling real estate that, that would deal with some of these topics. And then you start looking at others, you might just be surprised. We

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talked to the insurance premium tax. We collect thousands of dollars that go into the General Fund that we--

**HILGERS:** One minute.

**PAHLS:** --disburse. Did you say time? I'm sorry.

**HILGERS:** One minute.

**PAHLS:** OK, thank you. It's same way with lottery, the-- the dollars that we do use in different funds. It's legit. It's needed. But I think you would really be surprised at some of the things that we do to try to make things work up here. And apparently they're trying to do that on one of the bills that, that we have sort of, sort of dispersed with some of the discussion so they can work out some agreement. But like on this particular, LB595, it's really interesting, the four or five bills that have been put inside that. Some people call it Christmas trees, Christmas tree bill. I don't call it that. I call it, call it an Easter egg bill because you're hunting for that Easter egg. Each bill has a little bit of-- of stuff in it that sort of get lost.

**HILGERS:** It's time, Senator.

**PAHLS:** Thank you.

**HILGERS:** Thank you, Senator Pahls. Senator Machaela Cavanaugh, you're recognized. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. Speaker. Someone in this body, not surprisingly a woman, is willing to have the conversations that this body should be having about what's good policy. Thank you to Chairwoman Linehan for your willingness to have this conversation with me. I'm going to yield the remainder of my time right now back to the Chair so that I can continue my conversation with Senator Linehan. Thank you.

**HILGERS:** Thank you, Senator Cavanaugh. Seeing no one else in the queue, Senator Albrecht, you're recognized to close. Senator Albrecht waives closing. Question before the body is the adoption of AM1227. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Please record, Mr. Clerk.

**ASSISTANT CLERK:** 31 ayes, 0 nays on adoption of the amendment.

**HILGERS:** AM1227 is adopted. Next amendment.

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**ASSISTANT CLERK:** Next amendment from Senator Flood, AM1225.

**HILGERS:** Senator Flood, you're recognized to open on AM1225.

**FLOOD:** Mr. President, I'd like to withdraw that amendment.

**HILGERS:** It's withdrawn. Next amendment.

**ASSISTANT CLERK:** In that case, Mr. President, next amendment from Senator Linehan, AM1250.

**HILGERS:** Senator Linehan, you're recognized to open on AM1250.

**LINEHAN:** Thank you, Mr. Speaker. OK, AM1250 is it just adds broadcasters, so it would strike line 13 and insert: (A) Internet access services, agricultural global positioning system locating services, or over-the-air radio and television broadcasting licensing by the Federal Communications Commission, including antennas studio transmitter and link systems. For the purposes of this subdivision, studio transmitter link system means a system which serves as a conduit to deliver audio from its original studio to the broadcast transmitter. So this just puts the broadcasters in with the other carriers here, so we're not leaving them out by accident. So I'd ask for your green vote on LB1250 [SIC AM1250].

**HILGERS:** Thank you, Senator Linehan. Debate is now open on AM1250. Seeing no one in the queue, Senator Linehan-- oh, I'm sorry, Senator Pahls.

**PAHLS:** Thank you. Senator Flood, may I ask you a question?

**HILGERS:** Senator Flood, will you yield?

**FLOOD:** Yes.

**PAHLS:** I heard broadcasters, so that really made me think of you. I'm just going to ask you a-- a question. Do, as a broadcaster or a-- a person in that area, do you get any tax exemptions?

**FLOOD:** Yes, we do.

**PAHLS:** Could you just-- could you give me an example? I-- I can't recall them.

**FLOOD:** Well, the sale of advertising is exempt from sales tax in broadcasting.

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**PAHLS:** OK, that's, that's all you know. Thank you.

**HILGERS:** Thank you, Senator Pahls and Senator Flood. Senator Linehan, you're recognized to close.

**LINEHAN:** I'm getting some questions of which I will answer as we move on here, but I'd ask for your green vote right now, please, on this amendment. Thank you.

**HILGERS:** Thank you, Senator Linehan. Question before the body is the adoption of AM1250. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Please record, Mr. Clerk.

**ASSISTANT CLERK:** 34 ayes, 0 nays on adoption of the amendment.

**HILGERS:** AM1250 is adopted. Next amendment.

**ASSISTANT CLERK:** Mr. President, next amendment from Senator Flood, AM811.

**HILGERS:** Senator Flood, you're recognized to open on AM811.

**FLOOD:** Thank you, Mr. President. Members, this has to do with a matter that was introduced in front of the Legislature. I believe the bill number was LB233. This amendment represents the same content that was in AM-- or that was in LB223 [SIC LB233]. It relates to peer-to-peer rental cars, rental and lease of automobiles, trucks, and trailers, the-- whereby, the tax shall be collected by the lessor on the rental or the leased price. This amendment basically clarifies the law and policy of taxing of the service of renting a vehicle by specifying that if there is a peer-to-peer rental of a vehicle made through a digital platform or other medium, the tax shall be collected on the rental price by the party facilitating the rental. This is the law. This has been articulated in a November 13, 2020 letter from the Nebraska Department of Revenue to a Catherine E. French at Lamson, Dugan and Murray. I have a copy of that which I'll distribute. I intend to pull this amendment. But, you know, as-- as I look at this matter, the Revenue Department has already essentially held that the tax shall be collected by the, by the electronic or the, the web device that manages this peer-to-peer transaction than remitted to the state. And that the responsibility to remit that tax comes from the app itself of the, of the company that arranges this peer-to-peer rental and not the actual rental party that contracts for the service. And with that, I will withdraw this amendment. Thank you, Mr. President.

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**HILGERS:** AM811 is withdrawn. Returning to debate on LB595. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. Speaker. So just trying to work on a motion here while I'm talking. LB595. Today is May 11, 2021. OK, so, OK, so Senator Linehan is looking into my question, and I have also reached out to others to look into my question. So if my question is answered as to why this is good public policy, though, I shouldn't have to look outside of this room for that answer. I think it was like 33 people that voted for that amendment on General File to attach back when we divided the question-- well, not me, but when others divided the question, like 33 people in this body voted to keep the stillborn tax credit in the package. But I don't see anyone besides Senator Linehan trying to make an effort to say why they voted for that, why that was good public policy. No one? Nope. All these gentlemen that voted for a stillborn tax credit, not a one of you can get on the mike and say why it's good tax policy? Well, then I guess it's not good tax policy. Guess you were all voting with your heartstrings and-- and not with good public policy in mind. I like it to be a nice combination of both. I just-- I would love to know how this works, how this tax policy is going to be implemented. And I can't get an answer to that, which I find very fascinating. The introducer hasn't been able to give me an answer to that. I have the Chairperson of the committee looking into an answer in that. Everyone in this body voted for it and they can't give me an answer to that. But I should just sit down and let bad tax policy pass. I suppose, that's what the rest of you are doing. You're not taking the time to even learn what the tax policy you're passing does, nor taking the time to learn what my amendment did. Yeah, my amendment had a \$1.5 million fiscal note, which I said we could change. We could have amended it down to \$300,000 and had it be the same fiscal note as the original tax credit. But still, nobody even talked. Nobody engaged on it. OK, so: Provide and change sales and use tax exemptions for certain products and agricultural machinery and equipment, exclude certain income from gross receipts, and change funding for and require reports regarding the Game and Parks Capital Commission [SIC]. OK, let's see here. The Game and Parks Capital Commission Maintenance Fund [SIC] is created. The fund shall consist of money credited to the fund pursuant to Section 72-27,132 [SIC], transfers authorized by the Legislature, and any gifts, grants, bequests, or donations to the fund. The fund shall be administered by the commission--

**HILGERS:** One minute.



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**M. CAVANAUGH:** --and shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure within the statutory authority and administration of the commission. Any money in the fund available for investment shall be invested by the state investment officer prior to the, the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. On or before December 1, 2021, and on or before December 1 of each year thereafter through 2027, the commission shall electronically submit a report to the Clerk of the Legislature and the Revenue Committee of the Legislature. The report shall include a list of each project that received funding from the Game and Parks Commission Capital Maintenance Fund under subsection (1) of this section during the most recently completed fiscal year and a list of the projects that will receive such funding during the current fiscal year. I'm assuming I'm out of time. I'm out of time? No.

**HILGERS:** Two seconds.

**M. CAVANAUGH:** OK. Hi.

**HILGERS:** Time, Senator. Mr. Clerk for a motion.

**ASSISTANT CLERK:** Mr. President, Senator Machaela Cavanaugh would move to bracket the bill until May 2-- 20, excuse me.

**HILGERS:** Senator Machaela Cavanaugh, you're recognized to open on you're--

**ASSISTANT CLERK:** May 20.

**HILGERS:** --recognized to open on your motion.

**M. CAVANAUGH:** Thank you. It's May 20. Sorry, if my handwriting wasn't that good. OK, so I did wait until the amendments to this bill were adopted before I put a bracket motion up. So we'll just hang out on this bill for a little while and maybe somebody will have time to find an answer to why this is good public policy. I see at least Senator Slama is in the queue. So maybe that's-- she's going to explain why this is good public policy. But until then, I will just continue doing what I'm doing. So: Transfers may be made from the Game and Parks Commission Capital Maintenance Fund to the General Fund at the direction of the Legislature through-- I'm going to skip ahead to see where there's-- OK, so on page 2, line 11, it adds section 7 of this act shall be known and cited as the Nebraska Revenue Act. OK, same thing on line 16. So where are the changes to this bill? I'm down on page 3, capitalizing "The" on page 4, line 4. OK, line 11, or the

gross income received-- OK, wait I'm going to read the previous paragraph: The gross income received by political subdivision of the state, an electric cooperative, or an electric membership association for the lease or use of, or by a contractor for the construction of or services provided on electric generation, transmission, distribution, or street lighting structures or facilities owned by a political subdivision of the state, an electric cooperative, or an electric membership association; or the gross income received for the lease or use of, of towers or other structures primarily used in conjunction with the furnishing of Internet access service. Interesting. And just looking around, see if my Transportation and Telecommunications Committee members, be interested in their thoughts on lines 4-- or page 4, lines 11 through 13. The gross income received for the lease of the towers primarily used in conjunction. So OK, was going to ask-- OK, so I'm just-- in reading over this bill on page 4 of 46, lines 11 through 13, I have questions. I have actual questions about what we're doing here. So maybe eventually people will make their way back to their desks to answer questions on their bill. But until then I guess I will just continue on with my opening. So OK, the commission shall electronically submit a report, lists of projects receive funding from Game and Parks. Are we cutting taxes or what does this bill do? The gross income received, but what does that mean? The gross income received from provision, installation, construction, servicing, or removal of property used in conjunction with furnishing, installing, or connecting of any public utility service specified in subdivisions of this section, community antenna of this section, subcontractor for a public utility, the division does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under this subdivision does not apply to. So are we exempting the income for the lease and use of towers from taxes? The gross income received for the lease or use of towers or other structures primarily used in conjunction with the furnishing of Internet access service. Well, hopefully somebody will explain if lines 11 through 13 on page 4 mean that we are exempting the income you get for leasing a tower from taxes. But I honestly don't care that much. OK, so page 7, lines 5, this is where people are going to care: Agricultural machinery and equipment means tangible personal property that is used directly in cultivating or harvesting a crop, raising or caring for animal life, protecting the health and welfare of animal life, including fans, curtains, and climate control equipment within livestock buildings, or collecting or processing an agricultural product on a farm or ranch, regardless of the degree of attachment to any real property; and agriculture-- agricultural machinery and equipment includes, but is not limited to, head trailers, head

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hurler-- haulers, head-- header transports, and seed tender trailers and excludes any current tractor model as defined in another section not permitted for sale in Nebraska pursuant to these sections. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or consumption in the state of enzymes, yeast, and related products used in the process of manufacturing ethanol-- ethyl alcohol. So that part seems to be expanding our agricultural sales input taxation. I think I said that kind of in a clunky way, but that's the gist. We don't want to double charge on inputs, so that's why there's always a conversation over fees for service and whether or not we're double charging on that. Mr. Speaker, how much time do I have left in my opening?

**HILGERS:** 3:20, and you're next in the queue after.

**M. CAVANAUGH:** OK, I'm going to take myself out of the queue and get back in so that others can talk. OK, so this is 46 pages, I'm only on page 15, 16. I mean, I'd like to think that everyone in here read this whole bill, but since you couldn't be bothered to read my two-page amendment this morning before you voted no, not, not voted present not voting, but actually voted no on it. Yeah, I'd be, I'd be shocked if anybody outside of the committee and the introducer read this bill. So on page 28, this is where we see more changes on line 4, they cross out a refund of all sales and use taxes for tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales. And then it says or an exemption from all sales and use taxes after-- or for a tier 2, tier 4, tier 5, or tier 6 project imposed under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813, and 77-6403 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for purchases, including rentals, occurring during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment, except with the exemption-- except that the exemption shall be for the actual materials purchased with respect to subdivision-- the taxpayer is at or above the required levels of employment and investment. Well, I'm kind of curious what that means. The required levels. What, what are the required levels of employment and investment in this bill and where are those defined? Oh, I guess with respect to subdivisions (2) (a) (iii), (iv), and (v)--

**HILGERS:** One minute.

**M. CAVANAUGH:** --thank you-- of this section. The Tax Commissioner shall issue such rules, regulations, certificates, and forms as are appropriate to implement the efficient use of this exemption. Upon the

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execution of the argument or, for any taxpayer whose agreement was executed prior to the operative date of this section, within sixty days after the operative date of this section, the taxpayer shall be issued a direct payment permit under section 77-2705.01. I think I have like 30 seconds left. So if-- if my efforts on LB432 had failed, just if we had kept going on LB432 and my efforts had failed, I would have kept this to LB432. But since we decided that people brokering deals was more important than our normal process, that's why I'm taking time on LB595 as well. And I will again take time until I get my answers on LB432. Thank you.

**HILGERS:** Thank you, Senator Cavanaugh. Debate is now open on the motion to bracket. Senator Slama, you're recognized.

**SLAMA:** Thank you, Mr President. Good afternoon, colleagues. I wanted to rise today and just briefly answer Senator Cavanaugh's question about why Senator Albrecht's bill as amended on LB432 is good public policy, and the core of my argument is it gives consistency to our tax policy. So if I were to have a baby in the next few years, hopefully that is a while down the road, and unfortunately, the baby passed away. It took one breath and it did not survive. I would receive a tax credit for that child. However, if the same baby did not take that first breath of life, same age, same period of gestation, there would be no tax credit. This merely gives our statute's consistency. And I-- I hope that answers Senator Cavanaugh's question. I-- I think it's pretty clear to the rest of the body about what that means. But I, I think Senator Albrecht's bill is great and gives some necessary consistency to our policy and is very, very good policy. And with that, we have other bills up today. I'd encourage Senator Cavanaugh if she wants to talk with me personally about why this is good policy, I'd be more than happy to go into more detail with her off the mike. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Slama. Senator Moser, you're recognized.

**MOSER:** Good morning. Good afternoon, I guess. Time is going so fast here, we're having so much interesting conversation. The-- the definitive answer about the value of the AM1313 was the vote. It got 5 ayes out of 49. So 44 senators either voted no or present not voting or there were a few excused. They felt that the amendment wasn't of value and so they voted against it or they didn't vote. And I think we all are disappointed when things don't go the way that we think they should go. But part of being a senator is understanding the landscape and understanding where other people are at. Our opinions on life are formed by the things that we learned growing up, by the training we

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received from our parents, from what we learned from our friends as-- as we age. We-- you have to make adjustments and have to realize that there's room for disagreement. And because somebody disagrees with you, you can't throw a tantrum and-- and sabotage debate on everything else because you're mad about one thing. You lost 5 to 44. And if you can't figure out that math, what are we doing here? Thank you.

**HILGERS:** Thank you, Senator Moser. Senator Groene, you're recognized.

**GROENE:** Thank you. I've supported LB595, but if you ask me if it's good tax policy, no, it's rotten tax policy. I agree with Senator Pahls, all these, these exemptions we give are just absolutely terrible. I've seen it here before, been here going on eight years. I'll never forget my freshman year, Senator Gloor at that time was Revenue Chair, and he stood up with a list and shook it about exemptions and told us it was now a terrible ideal. And then later in the session, we voted on it and more exemptions that came out of his committee. It's the same thing here, when I was on Revenue last year, two years, we had a whole list of things. We fought and took a lot of abuse, physical abuse. I don't know if it's physical, but it felt like it because we were going to take all these exemptions away for property tax relief. A year later, we got coming out of the committee a bunch of exemptions, but that's the game we play with the lobby. The lobby's got to get-- go back to their groups and say, yeah, look what I got for you this year. So they bring these exemptions and then they go celebrate and they go to their annual meeting and their group that they represent and say, look, I got you these tax breaks. And then the lobby gives money to the politicians and they run again. That's how this system works. It's always worked from beginning of time. The-- some of these exemptions, you know, and I'm forced to accept some because I do believe the ethanol one. That's an input cost. I don't know why it was ever taxed. But most of them, I think most of the farmers would tell you, you give them good property tax relief and they would gladly pay more sales tax. But the game we play, we do more exemptions every year. We're going to do water, on public water. We're going to do that exemption, which I believe is a terrible policy. It's-- somebody's got to pay for the-- ask the people in Flint, Michigan, somebody needs to pay for the infrastructure and taxes do that. But anyway, I don't know. We do this every year. There's always a senator that's wise enough to tell us about the exemptions we do and we do too many and the Tax Foundation when they come in and do studies and everybody-- Nebraska, you got way too many exemptions. You could lower your rate to 2 or 3 percent on sales tax if you got rid of your exemptions. But then the lobby takes us to dinner and says, well, I got to do this for my lobby and if they can get me this exemption,

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it'll make me be a hero to the people who hired me. So we pass exemptions. It's an awful, awful system and eventually, I don't know who's going to end up paying the taxes, but seems like our new cars. But did you know we're about 7th in the nation, I believe, with the oldest car fleet in the popu-- the reason is, is our taxes on our new cars, people don't buy new cars because they have to pay sales tax on them. So I'm rambling here, but, no, it's terrible tax policy. Awful. It's the worst thing you could do is just keep creating exemptions and narrowing the tax base. And then maybe Senator Erdman will be a hero and we'll get a consumption tax that everybody pays the same amount, the 2, 3 percent on everything. A transaction tax-- you know, if you did a transaction tax, it'd be about a quarter percent on everything. Farmer sells his corn, he pays a transaction tax on what he gets for it. Every-- everything that's gets sold would get a tax and we'd be down to it'd be so minuscule that people wouldn't even notice they're paying it. There will be in this body an attempt to raise the--

**HILGERS:** One minute.

**GROENE:** --sales tax rate pretty darn soon because they'll have to when the revenues from the federal and the printing presses stop in Washington. I'll bet you there's going to be an attempt to raise it. Somebody's got to pay. But I'm glad term limits because I'm turning into one of these, you can't use that term anymore, but double-minded. I'm going to support this bill. Thank you.

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

**M. HANSEN:** Thank you, Mr. President. And good afternoon, colleagues. Colleagues, before we kind of disparage other senators and talk about throwing tantrums, let's kind of keep in mind where we're at at this body. I, like many other senators, have to sit here and listen to all sorts of different nonsense and people just making up straw men and all sorts of different things that happen in this body. Because this is our right, we all get the same opportunities to talk to offer motions, to offer amendments. That's what happens. And there are times where I groan and-- and think people are just absolutely wasting time or, you know, people are beating a dead bill, you know, dead horse. That's something we get to do. And to dismiss an individual senator repeatedly use terms like tantrum when specifically in reference to Senator Cavanaugh, who, while that was happening, was reading the book of the statutes and talking to the committee Chair. She was doing the work of a legislator and the need of this body. If you're impatient, if you're disgruntled, that's fine. But I bet there's a lot of people

who couldn't even explain to us what Senator Cavanaugh's amendment did earlier. But there's a lot of people who were present at voting who had no idea what it was, which I don't begrudge people who are uninformed to just duck a vote with present not voting. But I mean, that was probably more generous than what we're going to end up passing by making it a grant rather than a tax credit with certainly higher dollar value. In any case-- in any case, as somebody who has listened to a number of senators talk about a number of things, including very wildly misinterpreted or misconstrued wouldn't probably flat out lie. Having a senator take some time to make a point on a bill that is very personal to hers, seemed very appropriate, and we probably should be careful in what we criticize. Thank you, Mr. President.

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

**M. CAVANAUGH:** Thank you, Mr. Speaker. I'd like to start by thanking Chairwoman Linehan. When I said what I intended to do today, she immediately came over to talk to me. And then I saw her and others up at the President's desk pulling books and getting information, information that senators who voted for the stillborn tax credit should have had when they made that vote, questions that they should have asked, answers that they should have sought. And nobody does me a courtesy very often in this body anymore anyways. But I would have thought you would have done me the courtesy of at least listening to the explanation of what my amendment was this morning before voting no. Because the intent behind it was to make the intent behind Senator Albrecht's stillborn tax credit more accessible to families that are grieving. I don't have sour grapes over that. I have sour grapes over the floor debate being interrupted and superseded with this bill because of a deal that some people made. Because there was a perception that in that deal being made that we would give time to those individuals to get their amendment in order. We don't afford that to Senator Pansing Brooks when people are filibustering her bill at 10:00 at night, I'm hand writing a floor amendment, a very lengthy floor amendment. But we do it in the middle of the day, in the middle of a filibuster on a bill, because as far as I could tell, a couple of gentlemen got together and decided that's the thing we do. There's my sour grapes, Senator Moser. The patriarchy is my sour grapes, the misogyny of this body and how it slips unnoticed by so many of you so often. Senator Slama, I apologize. I did not hear all of your explanation because I was speaking with Senator Linehan. But I do appreciate you taking the time to share your perspective on this bill. Senator Matt Hansen is correct, this is a deeply personal bill to me.

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And I want to make sure that it is done right. That is all. And because Senator Linehan has done the work that I asked of this body, I'm going to pull my bracket motion. I'm going to sit down and read the materials that she has given to me. I'm going to educate myself on whether or not Senator Albrecht's bill is good, sound public policy. And I'm not going to make the rest of you sit here while I educate myself. Hopefully, you'll take the time to educate yourselves as well. What we do here is serious business, and I take it seriously, but it doesn't appear to me that you all do. You vote very flippantly. I don't vote on things that I don't understand. I don't vote for things that I don't understand. I ask questions when I think it's appropriate and I sit down and I listen and I listen a lot on this floor. I am on the floor almost always. Very rarely am I not on the floor.

**HILGERS:** One minute.

**M. CAVANAUGH:** I am always paying attention, always trying to learn, always trying to do better, always trying to come to a consensus, always trying to find a way to support my colleagues even when I disagree with them on policy. I'm not here to argue with anyone or fight with you. I'm here to make good public policy. And I might have to argue and fight with you to make that happen. But that's not my go to. But I do not appreciate the misogyny that I see in this body every single day, and I appreciate that the women in this body today stood up and fixed the situation. I will pull my bracket motion. Thank you, Mr. Speaker.

**HILGERS:** Thank you, Senator Cavanaugh. The bracket motion is withdrawn. Returning to debate on LB595. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. Speaker. I think I stand in support of LB595. I'm not sure yet, but I've-- I've been listening to the debate and I'm a little confused and it's something Senator Groene said. He said he supports LB595, but prior to saying he supported it, he said it was awful tax policy. So I-- I'm really at a loss when I hear people stand up on the mike and say something is awful policy, but yet they support it. I think it kind of speaks to what Senator Cavanaugh just said, is that there tends to be this weird thing in the body this year where people just go ahead and vote for it because they've either been told they should vote for it or they don't know not to vote for it. I know from some conversations people don't always understand what the bill does. It just-- it reminds me of a Nintendo game that I remember kids playing. And if you've ever played Nintendo, you know who Mario is. But Wario was actually his arch nemesis. And whenever things don't



appear the way they should in our family we always say, well, that's like a Wario world. Like if Senator Moser were driving in a red car and next to him somebody that looked just like him but with a different hair color and maybe different colored glasses and a different colored car, that would be his Wario. And then, of course, he might be villainous because certainly Senator Moser is never villainous or rude. And so when I hear comments like I support a bill, but it's awful tax policy, I really question what we're doing in the body today. I want to also commend Senator Linehan for stepping up to the plate, because I think that it's not always heard clearly what people are asking for on this mike. I clearly heard Senator Cavanaugh say, please show me why this is good policy. And all I heard were certain individuals grumbling about it, nobody actually taking on the challenge. You guys need to start listening to what people are actually saying on this mike. You may not like the way it's being said or who's saying it, but if it's a true plea for you to step up to the plate and share information, take that opportunity. Because with all due respect, boy, we could go home a lot earlier on a lot of nights if you did that, which also was said to you, by the way. So I just wanted to stand up because I'm confused when somebody says this is awful tax policy, but yet I support the bill and now it makes me have doubts about whether I should support this bill or not. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Blood. Senator Groene, you're recognized.

**GROENE:** Senator Blood, I don't know if anybody in your-- in your education ever taught you about deductive reasoning, you don't pick-- cherry pick statements, you-- you listen to the entire debate and the words out of your opponent and you combine them. This is awful tax policy, but it's the best we have offered to us. I said farmers would rather take property tax relief, we're not giving them enough. So then I have to support awful tax policy in its place. That's deductive reasoning. It ties in with wisdom and common sense. Senator Pahls says it's-- it's awful tax policy. Senator Gloor told me. Senator Linehan said it in the past when we-- when we went through all the exemptions a year ago. Giving exemptions as tax policy is awful tax policy, but it's what we do around here over and over again. And I fully defend Senator Albrecht's bill about the stillborn. I've said over and over on this floor, when I am told some-- a lady is pregnant, I instantly switch gears and I am talking and-- and visiting with two people, not one, two human beings. So if we're going to give a deduction for child deduction, we should give it for a child who was stillborn to that family. That's just common sense to me. So I fully support that. I wish we could get rid of exemptions, but right now it's the game we

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play. And that's politics, as I'll repeat, Senator McDonnell likes that statement, this is making sausage, but there's way too much bologna in this sausage, but it's the best thing we have in front of us to try to limit the spending because we're going to give, what, \$17 million. That surprised me, how much the fiscal note for this bill is in '24-25. We couldn't give another year of Social Security tax deduction because the-- the price was getting too high. If we wouldn't have done this one, we could have easily extended Social Security tax deductions for up to 60 percent or so instead of stopping at 50. That's good tax policy. Said it on the floor before, everybody gets a tax break or nobody does. Everybody or nobody. Picking winners and losers is not good tax policy, but it's what we got before us. So I've got to support overall bad tax policy just to have a reasonable tax policy. It's called deductive reasoning, Senator Blood. I have to do that here. We all have to. Well, not all of us. Some of us do and that's why compromise happens. Thank you.

**WILLIAMS:** Thank you, Senator Groene. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, you shouldn't poke sleeping lions. Again at this time, I'm not sure that I stand up in favor of this, but I do appreciate Senator Groene's mansplaining deductive reasoning to me. Thank you so much for that, Senator Groene. So I used my deductive reasoning, which, by the way, I linked to your premise. So I clearly understood what you were saying, but you just didn't like the way I do my deductive reasoning, apparently. I heard you say, and you've repeated it multiple times, that it's bad tax policy. So I-- I'm not really sure what you were trying to-- to really express to us. Maybe-- maybe who knows what the heck's going on in there. So here's what I heard on your last statement. So just like Washington, D.C., let's just throw all the good and the crap into one bill and shove it down everyone's throat. That's what I heard on this last statement on the mike, Senator Groene. That's my logical conclusion. Here's a crap load of stuff I don't agree with, but I'm going to go ahead and take the good with the bad. And I don't care about the crap and I'm just going to shove it down everybody's throats. So I just want to make sure that I let Senator Groene know that I understood his mansplaining as far as deductive reasoning goes. And I'm so appreciative of him giving me that explanation. And now I can, I can die peacefully having this information. And with that, I would yield any time back to you, Mr. President.

**WILLIAMS:** Thank you, Senator Blood. Senator Hunt, you're recognized.

**HUNT:** Thank you, Mr. President. I think we're about done with the debate on LB595. I'm fine with this bill. I don't have a big problem with it. And, you know, I'm grateful for the stakeholders who worked out the questions that were on the bill between General and Select here. This isn't one that I have a big stake in. But I wanted to read the legislative resolution that I introduced yesterday pertaining to climate change. These resolutions that I've introduced are in response to LR107, which was introduced by Senator Groene and cosigned by 30 other senators, many of whom didn't read the resolution. It's a very partisan and very poorly written and very aggressive legislative resolution that I don't think should be voted out by the Legislature because it, it doesn't embody the spirit and tone that we embody here in the Legislature that we should anyway. So in response to this, I've been filing several different legislative resolutions. I have another one to file today pertaining to voting rights and voter suppression. But the one I filed yesterday is LR130, which pertains to climate change. And I wanted to read that into the record in case that any of my resolutions aren't voted out to the floor for full debate as we expect LR107 to be. LR130: Now, therefore, be it resolved by the members of the One Hundred Seventh Legislature of Nebraska, First Session: 1. That we hereby reaffirm our solemn oaths of office by expressing a firm resolution to maintain and defend the viability of our planet and its natural resources from the urgent existential threat of climate change and to support legislation that will move Nebraska toward a clean energy economy. 2. That we are greatly alarmed that a faction of the state and federal legislative leaders have failed to acknowledge the established science of climate change, higher frequency of extreme weather events, and growing effects of climate change on the economy of the United States. Further, this failure by state and federal legislative leaders is a betrayal of the United States Declaration of Independence, which declares the right to quote, life, liberty and the pursuit of happiness, unquote, which is contingent upon a habitable planet and a natural environment capable of sustaining human, animal, and plant life. 3. That we express distress at the Donald J. Trump presidential administration's actions to abandon protections for public lands and roll back Environmental Protection Agency rules. 4. That we are grateful for President Joseph R. Biden's leadership in swiftly and decisively taking action to revoke the permit for the dangerous proposed Keystone XL Pipeline construction project, which would threaten to wreak environmental havoc on its path through Nebraska and his directives issued to protect air and water quality and public lands across this nation. 5. That the Legislature requests cooperation from the Governor of Nebraska, the Attorney General, the President of the United States,

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the President pro tempore of the United States Senate, the Secretary of the United States Senate, the Speaker of the United States House of Representatives, the Clerk of the United States House of Representatives, and the presiding officers of each of the legislative houses in the several states in taking decisive action to prevent further damage to our planet and ecosystem. 6. That the Clerk of the Legislature shall transmit copies of this resolution to the Governor of Nebraska, the Nebraska Attorney General, the President of the United States, the President pro tempore of the Senate, the Secretary of the United States Senate, the Speaker of the United States House of Representatives,--

**WILLIAMS:** One minute.

**HUNT:** --the Clerk of the United States House of Representatives, and to the presiding officers of each of the legislative houses in the several states. That legislation-- or that legislative resolution is LR130 that I introduced yesterday. And the other two legislative resolutions that I introduced last week should be scheduled for a hearing on Tuesday, I understand. It's not on the calendar yet, but my office got a call about that. So we'll have those hearings. And then I have another resolution to introduce today around voting rights that will also get a hearing in the Executive Board, I expect. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Hunt. Seeing no one in the queue, Senator McKinney for a motion.

**McKINNEY:** Mr. President, I move that LB595 be advanced to E&R for engrossing.

**WILLIAMS:** Members, you've heard the motion. There has been a request for a record vote. Mr. Clerk. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

**ASSISTANT CLERK:** Voting aye: Senators Aguilar, Albrecht, Arch, Blood, Bostar, Bostelman, Brandt, Brewer, Briese, Clements, Day, Dorn, Erdman, Friesen, Geist, Gragert, Groene, Halloran, Ben Hansen, Hilgers, Hilkemann, Hughes, Hunt, Kolterman, Lathrop, Lindstrom, Linehan, Lowe, McCollister, McDonnell, Moser, Murman, Pahls, Sanders, Slama, Stinner, Williams. Voting no: none. Vote is 37 ayes, 0 nays on advancement.

**WILLIAMS:** The bill does advance. Speaker Hilgers, you're recognized.

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**HILGERS:** Thank you, Mr. President. We are going to go back now to LB432. That amendment has come down for debate and so I appreciate the body's patience skipping to LB595 and now we're back on LB490-- LB432. And then after that we'll pick up with LB630 on the agenda. Thank you, Mr. President.

**WILLIAMS:** Thank you, Speaker Hilgers. We are going back to the queue as it was when we left on LB432. In the queue are Matt Hansen, Linehan, McCollister, Clements, and others. Senator Matt Hansen, you're recognized.

**M. HANSEN:** Thank you, Mr. President. I would yield my time to Senator John Cavanaugh.

**WILLIAMS:** Senator John Cavanaugh, you're yielded 4:54.

**J. CAVANAUGH:** Thank you, Mr. President. Thank you, Senator Matt Hansen. As folks can tell, I guess from a lot of the movements, there was some discussion over lunch where we've come to, I think, a-- a compromise as it pertains to my amendment. So I'm going to withdraw my amendment. We're going to work through some other stuff. And then I think Senator Linehan will ultimately offer an amendment at a later time. So I'd move to withdraw AM1346 at this time.

**WILLIAMS:** It's withdrawn. Next amendment. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, next amendment from Senator Machaela Cavanaugh, FA45.

**WILLIAMS:** Senator Machaela Cavanaugh, you're recognized to open on your amendment.

**M. CAVANAUGH:** Well, this is what some people would probably call sour grapes, but it's not, this is to strike Section 10 of the bill. I'm not going to belabor the point. We can go to a vote or-- or people can filibuster the amendment. This strikes the-- the stillborn tax credit. I think that there is a better path forward for enacting this type of policy. And I appreciate the diligence of the Chairwoman in getting me the information that I needed to feel comfortable that this was at least something that can be implemented. I still don't agree with the-- the approach, which is why I would still like to strike it, but I will let the body decide and move on from there. Thank you.

**WILLIAMS:** Thank you, Senator Cavanaugh. Senator Linehan, you're recognized.

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**LINEHAN:** I just over the noon hour, Senator Stinner and I worked with some other senators, including Senator John Cavanaugh, for a compromise on the corporate income tax, and it should be coming to your desk right now. It's AM1374 to LB432. In keeping with my sharp pencil partner, Chairman Stinner, we're going to slow it down so you can read it instead of going the whole 7.81 down to 6.84-- thank you, Senator Clements, 7.81 down to 6.84 in one year. We're going to go in the first year down to 7.50, then in '23, down to 7.25. Then it would be the intent of the Legislature, they would have to come back and look at it to finish off the going down to the same parity by the end of 2025. So I would ask for your support on amendment AM1374 to LB432 when we get to it.

**WILLIAMS:** Thank you, Senator Linehan. Remaining in the queue, Senator McCollister, Clements, Machaela Cavanaugh, and others. Senator McCollister, you're recognized. Senator McCollister waives. Senator Clements, you're recognized.

**CLEMENTS:** Thank you, Mr. President. I was in support of dropping the corporate rate immediately, but I will support this gradual amendment. And so I did want to comment about corporate income tax. Corporations don't really pay income tax. They do raise their prices to their customers based on their cost of business, like their labor, their inventory, their utilities, and their taxes are just another part of the price of the product. And it's really passed through to consumers when we collect it. Then we take it from those consumers and we distribute it out, either some to the stockholders, though they put it to some stockholders maybe, or to the state and the state takes it and just redistributes it elsewhere. And so I think I'd rather just have a lower price of the product. And regarding not having-- there was a comment that we need more property tax relief and I'm always going to support that. But I have supported that this year. In 2021, the total property tax credits were \$400 million, \$275 million tier 1, \$125 tier 2. In 2022, we're going to \$313 million for the tier 1 credit, \$358 million for the tier 2 credit. So it's going up to \$671 million for-- excuse me, I'm off a year, for 2021, I just, I just quoted you '21, 2020 was \$400 million, 2021 is going to be \$671 million. We have-- anyway, we have a \$291 million increase in property tax credit. That's a 68 percent increase. So I think that is well-funded this year. The decrease in the corporate rate, now it's going to be over a five-year period, was-- is a 12 percent decrease. And so over five years, that's only a couple percent decrease per year. My business was a C corporation, and a number of years ago when we had opportunity, we changed it to an S corporation. And we did take advantage of no longer paying the corporate tax rate, but the individual owners pay the, the

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lower 6.84 individual income tax rate to Nebraska. The larger C corporations, though, cannot do that. There's a limit to the number of shareholders you can have in a S corporation. And so the C corporations, I think it's a good policy to reduce this down to equal the individual rates. And then some comments about tax incentives to corporations, the tax incentives are-- some of them are refunds of income tax paid or exemptions from income tax paid. And when we have lower corporate tax to the corporations, there's less to give back into incentives. So it really is offset by a lower incentive credit for those who are getting business incentives. With that, I yield the rest of my time to Senator Linehan.

**WILLIAMS:** Senator Linehan, you're yielded 1:05.

**LINEHAN:** There's some confusion. I'm-- so we're right now we're still on Senator Cavanaugh's amendment. So I think she said she'd like to get to a vote on that. And then I think there's a couple other amendments and then we can get to the compromise agreement. So if we want to move ourselves along here, I think if that's what I understand. Would Senator Machaela Cavanaugh yield to a question? And I'm sorry for not giving you a heads up.

**WILLIAMS:** Senator Cavanaugh, will you yield?

**M. CAVANAUGH:** Yes.

**LINEHAN:** Did I understand you right, you just want to--

**M. CAVANAUGH:** Yes. Yes.

**LINEHAN:** --machine vote on this and then we can move to next?

**M. CAVANAUGH:** Yep.

**LINEHAN:** OK, thank you.

**WILLIAMS:** Thank you, Senator Linehan, Senator Machaela Cavanaugh, and Senator Clements. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Is there anyone in the queue after me?

**WILLIAMS:** Yes, there is. Following you is Moser, McKinney, and then we go to the queue that is posted with Senator Flood.

**M. CAVANAUGH:** I will yield my time and remain for my closing. Thank you.

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**WILLIAMS:** Thank you, Senator Cavanaugh. Did she yield to Moser?  
Senator Moser, you're recognized.

**MOSER:** Good afternoon, colleagues. Was looking in the handy-dandy little Tax Foundation Facts and Figures book, mine's 2019. So it's not the most recent version, but it compares the various taxes in Nebraska versus the other states. And overall, our tax rank is 24, which is about average, our corporate tax, we're 28th. So we're about four places worse than average. Our individual income tax, we're 26. So that's a couple of places below or less than-- our tax is higher than average. But then when you get to sales tax, we're the number 9 best, I guess, if you're looking at paying the tax. So that looks like we're relying a little heavier on corporate and individual income taxes and a little less on sales tax. And then you skip over to property tax and we're the 40th worst. So a number of us have a focus on property tax. And I think that's because it's the most glaring disparity in how we fund government. And it's certainly something we need to pay attention to. But overall, the corporate income tax is a bit high. So I wasn't included in this negotiation either. It surprised me as much as Senator Machaela Cavanaugh. But then not everybody is going to be included in every negotiation. And I'm sure there was some give and take. And if the result is we get a bill that moves forward, I'm satisfied with that. I think we need to look at getting all our tax rates better than average. And if we can do better than that, I would support that also. But I'm realistic, you know, every little improvement helps. So thank you.

**WILLIAMS:** Thank you, Senator Moser. Senator McKinney, you're recognized.

**McKINNEY:** Thank you, Mr. President. I rise in support of FA45. We got this handout from the Platte Institute, which was really interesting to me. So then I went online, did a Google search of all these states that were mentioned as our neighbors with lower tax rates. One thing that stuck out to me with majority of these states, most of them have some legalization or some medicinal marijuana or cannabis policies currently. And I'm just thinking we always talk about taxes and the need to bring more resources into our state and we want to compare ourselves to our neighbors. We're going to have an interesting conversation tomorrow on Senator Wishart's bill. And maybe we just need to open our minds to new tax bases like medicinal cannabis or legal-- legalization of marijuana. Then I was also before I got on the mike, I thought of another-- another tax credit that we probably should explore in the future, that if you live in an area of high poverty, you get a tax credit from the state. Sounds like an



interesting idea. I'll probably think about it later in-- in my term in the Legislature. But I just wanted to point out that we were comparing ourselves to-- ourselves to our neighbors, but our neighbors have policies that many of us in this body are hesitant to vote yes on. And I'll yield the rest of my time to Senator John Cavanaugh if he would like. Thank you.

**WILLIAMS:** Senator John Cavanaugh, you're yielded 3:30.

**J. CAVANAUGH:** Thank you, Mr. President. Thank you, Senator McKinney. I think we're still on Senator Machaela Cavanaugh's amendment and, per usual, I would join in her amendment and I think there's been a lot of talk about the compromise we've worked out on-- on this overall bill and the changes that we make to the tax code. And I guess I would just be clear with everybody and we can-- we'll talk about it when we get to this amendment in a little bit more detail. In principle, I don't want to decrease corporate tax rates. However, as I've said many times, there are-- I guess I have philosophical opposition to some things and practical oppositions to others. And sometimes you can make a compromise that gets everybody a little bit of what they want. And that's ultimately what we're going to have on the proposed compromise amendment when we get to it, is that some folks are going to be unhappy with how far we go and other folks are going to be unhappy that we don't go far enough. And I think that that is a fair feeling and position for everyone to feel when it comes to tax policy. And one of the important things about this is-- it is a stepped approach that is moderate, that has some forward-looking language in it that we can talk about. But ultimately, it is a compromise that I think gets enough people in a position where they feel comfortable with it, that we will be able to move forward and move on for-- with LB432 today and move forward onto the next issue before us. And I think that a lot of people or a few people will talk about their intentions on this when we come to it. But at this point, I will yield the remainder of my time back to the Chair and we can talk about it when we get to it. Thank you.

**WILLIAMS:** Thank you, Senator John Cavanaugh and Senator McKinney. Senator McCollister, you're recognized.

**McCOLLISTER:** Thank you, Mr.-- Mr. President. And thank you, colleagues, good afternoon. I wasn't going to speak but Senator Murman challenged me. We are comparing the-- Moser, sorry. Senator Moser and I were talking about the Tax Foundation books, and I was going to bring up some of the numbers as well. One of the ways we can compare taxes is looking at the Tax Freedom Day by state. And it starts with

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Alaska, which is March 25. And then the very highest is New York, which is May 3. Nebraska ranks 24th and we sit at April 12. Iowa, our neighbor to the east, April 15, so we are three days better than Iowa. South Dakota, who we all look to because it has no income tax, April 7. So they're-- they're-- they're a good piece better than Nebraska. Missouri, April 9. Now let's look at sources of state and local tax collections and percentage of those. We all talk about Nebraska as being high on property tax and indeed we are at 37.5 percent of our income comes from property tax. However, I would challenge that number and say if we include the property tax relief fund, I would say that our number would be somewhat lower, \$1.4 or \$1.5 billion over two years. So that-- that number should be lower. And the senator was correct, Senator Moser was correct to say our sales tax is somewhat low, only 22.5 percent of our income comes from sales tax. However, get this, this is interesting, South Dakota, that we all look to, their sales tax numbers are 39.3. So they have another way of generating tax as opposed to Nebraska through property tax. South Dakota's property tax is high too. They're at 36.6. Now, listen, about Texas, Texas property tax higher than Nebraska, 44 percent and their general sales tax is 34 percent versus Nebraska's 22.5, which tells me that the Nebraska sales tax is so narrow and we exempt so many things and we need to correct that over time in the years to come. So Nebraska may not be perfect, but we've got some good features going for us. We have a low sales tax. And I think the-- the numbers on our property tax aren't reflected in measures like the Tax Foundation. Thank you, Senator Moser.

**WILLIAMS:** Thank you, Senator McCollister. Seeing no one in the queue wishing to speak, Senator Machaela Cavanaugh, you're recognized to close on your floor amendment.

**M. CAVANAUGH:** Thank you, Mr. President. Well, that was an interesting discussion on a different amendment from my amendment, FA10 [SIC FA45] strikes Section 10, which is the stillborn tax credit. And if you vote for this, I am committed to bring a bill next year that will create a bereavement fund that will designate funds and create the opportunity for citizens to also donate to the fund so that we can reimburse families for those funeral costs up front instead of having them go through the tax credit process. So I hope that you will vote for this. But hopes and dreams don't always become a reality, I realize. So I, I have never really cared for LB432 in all of its iterations, and I have wanted it to not move in all of its iterations. But I'm going to take this opportunity to say, because I'm not going to speak on this anymore today, that I am so impressed with Senator-- Chairwoman Linehan and her work on this bill because she keeps pushing it forward

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and she keeps working with the people that are in opposition. She's doing the work of public policy the way it's supposed to be done. When people oppose your bill, you don't shut them out, you bring them to the table and you bring them along. I'm less than thrilled with the other upcoming Cavanaugh amendment, but I'm probably going to support it and not because it's the Cavanaugh amendment, but because Senator Linehan worked so hard to bring this compromise to fruition. That's why I'm probably going to end up voting for that amendment. And Chairwoman Linehan, thank you for your dedication to doing the hard work. I'd also like to note that still no one has told me why this is good policy, which is why I hope you will vote to strike Section 10 from the bill, because no one has said why it's good policy. I'm now convinced that it's not atrocious in execution, but it still isn't good policy. Thank you.

**WILLIAMS:** Thank you, Senator Machaela Cavanaugh. Members, the question is shall the amendment to LB432 be adopted? All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

**ASSISTANT CLERK:** 8 ayes, 20 nays on the adoption of the amendment.

**WILLIAMS:** The amendment is not adopted. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, next amendment from Senator McDonnell, AM1370.

**WILLIAMS:** Senator Machaela Cavanaugh, you're recognized to open on your amendment. Excuse me, McDonnell. Senator McDonnell, you're recognized to open on your amendment.

**McDONNELL:** Thank you, Mr. President. Good afternoon, colleagues. As I mentioned when we were on General File and we had a-- a discussion about this bill and, and the idea of the firefighters and the-- and the cancer benefits. And again, as being an optional program, but also with the idea of trying to make sure if they did opt into that, we would not be taxing them on those benefits. And during that discussion, Senator Kolterman and Senator Friesen, and a number of other people asked questions and-- and they had some ideas. And I said I'd work with them between General and Select, which--, which I have. The League was represented. The volunteer firefighters, paid firefighters. So we went through these and we have a amendment which I-- I believe is a-- is a good compromise how to make the bill better. The first proposed part of the amendment is 13-1370 [SIC] increases eligibility requirements that a firefighter be required to serve 24

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consecutive months instead of 12 consecutive months at a fire department in Nebraska as well as the eligibility is also based on a requirement that the firefighter must have engaged in a fire suppression activity at an actual fire or a fire training event. Also, we discuss personal protection-- protective equipment requirement, eligibility for benefits contained in Section 6 of this legislation is moved from 60 months, five years after formal cessation of the firefighter status as a firefighter to 36 months, three years. In addition, the amendment also clarifies that, for example, if cancer is diagnosed before 36 months after a firefighter is no longer serving the department, benefits under the act will continue beyond the 36 months after diagnosis cutoff period. I wanted to make sure that if the diagnosis of cancer is made in the 35th month after the firefighter ends his or her career with the department, benefits will continue under the act, provided cancer is diagnosed prior to the end of the 36th month. Also, Section 16, State Fire Marshal shall create a report. The amendment contains a requirement that the chief or his designee must provide an annual report to the governing political subdivision of the total number of fire suppression incidences in which the department was engaged during the previous calendar year. The report from the fire chief is to be submitted in February by February 15 of each year. Finally, an amendment is-- part of the amendment is made in Section 77-3442 with 13-520, which excludes from the-- the tax lid levy limitations, the cost of the political subdivision, participation in the act for the payment of insurance premiums or self-funding in providing cancer benefits. I believe AM1370, we worked on a compromise. Again, compromise is just that. It's not exactly what you want, but it's hearing other people's ideas and concerns and trying to meet in the middle. Again, I want to thank Senator Kolterman and others for their input and also the League and-- and also the volunteer firefighters and paid firefighters in the state of Nebraska for helping make this bill better. Thank you.

**WILLIAMS:** Thank you, Senator McDonnell. Debate is now open. Senator Kolterman, you're recognized.

**KOLTERMAN:** Thank you, Mr. President. Good afternoon, colleagues. I rise in support of AM1370 as it pertains to LB432. A lot of-- we had a lot of questions about this bill or this amendment, it was a bill that was put into this LB432 originally. And I-- I'd like to thank Christy Abraham, Lynn Rex, and Jerry Stilmock, and most importantly Senator McDonnell for working with us to make sure that this was an improvement. The fact of the matter is, in the state of Nebraska, whether you're in a paid fire department or whether you're in a volunteer fire department, you're putting your neck on the line every

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day. And anything we can do to encourage people to become volunteers as well as choose that as a career, we need to make sure that we've got their backs and we're willing to help them. This goes a long way in doing so. And I appreciate the fact that everybody is willing to work together. So I'd encourage you to support AM1370 as well as LB432. Thank you.

**WILLIAMS:** Thank you, Senator Kolterman. Senator Groene, you're recognized.

**GROENE:** Thank you, Mr. President. I just wanted to make-- Senator McDonnell, would you answer a question because--

**WILLIAMS:** Senator McDonnell, would you yield?

**McDONNELL:** Yes.

**GROENE:** The debate was moving too fast. I didn't have a chance to confirm it. But this is voluntary?

**McDONNELL:** A hundred percent optional by the department.

**GROENE:** So you've got a-- I've got some very small rural volunteer districts who survive on \$10,000, \$20,000 a year and hopefully more now that we passed the mutual fund. But they can-- those guys can say now, we don't need this, we're not going to do it. And-- all right.

**McDONNELL:** That is correct.

**GROENE:** And that's like a small town, too, that has this-- is the sponsor of the fire department instead of the rural district. That's true?

**McDONNELL:** That is correct.

**GROENE:** And what is the cost? What-- what was the estimate cost per-- per policy?

**McDONNELL:** Well, when we were having this discussion in the hearing and at that moment in time, we were talking about having it for every firefighter, volunteer and paid firefighter in the state, which we know about 95 percent of our firefighters in the state, approximately 10,000 firefighters versus roughly 1,300 paid firefighters. The cost at one point was \$14.50 per month. But that was based on a large group of people. This is 100 percent optional and voluntary up to the department.

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**GROENE:** So one more question. It was going to be one insurance company got all the business or you could just contract with any-- your existing health insurance company that you have for your employees at the town or--

**McDONNELL:** That's up to each department. It's optional.

**GROENE:** All right. Thank you. Well, good answers. I'll support this amendment.

**WILLIAMS:** Thank you, Senator Groene and Senator McDonnell. Seeing no one in the queue, Senator McDonnell, you're recognized to close. Senator McDonnell waives closing. Members, the question, is shall the amendment AM1370 to LB432 be adopted? All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

**ASSISTANT CLERK:** 45 ayes, 0 nays on the adoption of the amendment.

**WILLIAMS:** The amendment is adopted. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, next amendment from Senator Linehan, AM1374.

**WILLIAMS:** Senator Linehan, you're recognized to open on your amendment.

**LINEHAN:** Thank you, Mr. President. So, again, this-- I would like to thank Chairman Stinner and Senator John Cavanaugh over the noon hour that they met with some people. They came to me and I would like to kind of-- I didn't-- probably should have gone back and talked to everybody in the Revenue Committee. But time being of the essence here, so what we have done, instead of going from the whole 6.81 to-- I moved it-- anyway, instead of doing it all in one bite, we're going to spread it out over two years. So in the first year, '22, it will be-- go down to 7.5, next year, it goes down to 7.25. And then it is the intent of the Legislature to take it down over the next biennium. So we would be at parity at 6.84. The Revenue Committee did work really hard to have the bills that we brought to the floor fit in within the budget. And this original bill did. We threw out guilty. We also got rid of other things that people on the committee wanted. So part of my agreement here, and I'm sure Senator-- I'm-- I'll let Senator-- Chairman Stinner speak to this. I understand being prudent and not being in a hurry so we can slow it down. But I also-- to me, that means this money goes back to the bank. It's not money for spending. And for those of you who are disappointed we didn't do the whole thing, we did, we did have, I think, 29 votes, but I wasn't

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certain we'd get to cloture. So I think it's better to take half, which this is, than to risk not getting to cloture and not getting anything. So and I just want to say one more thing on the property taxes, because people do watch us, it's amazing at home how much people watch us. I'm surprised by it. We need to remember that we do want to fix property taxes. I've worked on it since I've been here. I will continue to work on it. But we the state of Nebraska, we don't collect a penny in property taxes, not one penny. And a couple of weeks ago, we had an opportunity to try and control how much property taxes go up. A very reasonable approach. And we couldn't get to 33 there either. So we're going to have to figure out some way we can get to 33 in this body if we're going to solve our problems and our problems are, Senator McCollister said that we're on his thing about our taxes, where we are on sales taxes. We're not-- we're not high on sales taxes. And there's some exemptions out there that probably, I'm willing, we have looked at in the Revenue Committee. But-- but I'm going to say this again, we have to be very concerned that we are number six in the nation on charts of how bad our taxes are, and it's going to have to-- we're going to have to look at it holistically. And I promised the Revenue Committee we'll be doing that between the end of this session and next session. But we have to-- we have to realize we're, I like to quote Senator Flood on this, we have to get everybody in the same boat if we're going to fix this problem. And this year we have failed to do that. But I am happy we're at least making some progress. So I would ask for your green vote on LB-- excuse me, AM1374 to LB432. Thank you.

**WILLIAMS:** Thank you, Senator Linehan. Senator Flood, you're recognized.

**FLOOD:** Thank you, Mr. President. Members, good afternoon. I don't like to compromise at all but, and I wouldn't have engaged in it, but here's where we are. This takes our tax rate down on the from 7.81 percent to 5.85-- 5.58 percent on the first \$100,000, and then to 7.25 percent on everything after that in excess of \$100,000. And then it says on page 1, line 12, it's the intent of the Legislature to enact legislation after the operative date of this section to lower the tax rate applicable to income in excess of \$100,000 to 7 percent and then drop it to 6.84 percent after January 1, 2024. Which, by the way, is nice language, but it means nothing. It actually means less than the breath that I just expended on it. So if you're looking at this and you're really feeling proud of yourself, you might as well strike lines 12 through 17. Unless Senator John Cavanaugh, you intend, since you are for this compromise, to drop that down to 6.84 percent after January 1, 2024, or before January 1, 2025. At the end of the day, you

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know, like Senator Groene said, I'm going to vote for it and we're going to keep this train moving. But I-- I will tell you, like, if we really want to make changes and we've got this much money and we want to be more competitive, we should pick one thing and do it all, whether it's motor vehicle registrations, Senator Groene, or corporate income tax or property tax, pick something so that the voters and that the people in Nebraska feel it. That's where I'm at on this compromise. I appreciate Senator Linehan and, and her work and all the senators that care one way or the other. This isn't the deal I would have cut, and maybe that's what makes it a good compromise. But I'm going to-- I'll vote for LB432. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Flood. Senator Stinner, you're recognized.

**STINNER:** Thank you, Mr. President. Members of the Legislature, I think Senator Linehan talked about what the compromise was about stepping down the corporate rate not going a full percent, but going down the first year from 7.85 to 7.5, about 35 basis points, then to 7.25 and a stop, but certainly intent language from this Legislature to the next Legislature that the intention is to go to parity. And so that is also included the intent language in this bill. And I do want to thank Senator Linehan for agreeing to compromise. I know this has been a-- a-- a tough decision and it's been a tough session, frankly, but I appreciate that. I appreciate Senator Friesen and Hughes for-- for their input and certainly Senator John Cavanaugh for-- for his ability to listen and-- and to-- to reach a compromise. What this does from a fiscal note standpoint, and I had the-- had the Fiscal Department run some quick numbers, is there's a savings of \$14,204,000. Now that will show up as additional dollars available for bills. I'm going to say this and you better understand it. Nobody's going to rob that cookie jar. Understand? Those dollars need to roll over into our next-- our next year and into that first year of the biennium. So we do have a General File bill, Senator Machaela Cavanaugh's bill, later today that you haven't seen the fiscal note. That will be the last fiscal note that will be entertained. But anyway with the McDonnell compromise and the \$14 million, where I believe we're at today, will leave sufficient amount of money to get the-- all the bills done, plus have additional dollars to be rolled over. When you start to look at comparisons of fiscal notes, I think that people start to add up and say, well, that last bill would have cost us \$103 million. This bill costs about \$57 million in total if you want that kind of comparison. I do not like that comparison. Really, what we're looking at is about a \$2 million fiscal note or savings-- excuse me, \$2 million is what the cost is the first year, the second year of the biennium will be about \$9 million.



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So the savings is approximately \$14 million. That adds up to 13. I know it doesn't add, but then I didn't around for things. So in any event, I guess a good compromise. This at least gets us off into giving corporations the opportunity to be competitive, certainly sending a sign to our corporate citizens that we are interested in tax relief for them. If you remember, we did an extra \$63 million in tax relief for property tax. Of course, LB1107 is now over 350. So we've done our part and our share as it relates to that issue. And then we have the military, obviously, we now have them tax exempt. So now we're competitive on that level. So we've, you know, checked that box, if you will. And of course, Social Security really talks about our retired folks and the-- and the being competitive and making sure that that's not one of the reasons why they leave our state. So covered a lot of waterfront within this, this session. I think you should be congratulated. I think you should send that message back to your constituents that we covered--

**WILLIAMS:** One minute.

**STINNER:** --a lot of ground as it relates to tax relief. I think also that we did a lot of positive things as I look back to Health Care Cash Fund, certainly we stabilized that. We've built the rainy day fund, over \$850 million is projected to be in the rainy day fund. So those are big positives that you can talk about. But again, let's-- let's be prudent about what we do. Let's not go and say, oh, gosh, we got to spend everything in our checkbook. That's not the case. Let's be prudent. Let's be purposeful. Let's be strategic. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Stinner. Senator John Cavanaugh, you're recognized.

**J. CAVANAUGH:** Thank you, Mr. President. I rise in support of AM1374. And I do appreciate Senator Linehan's willingness to work on this and Senator Stinner and everyone else who was part of this conversation. And Senator Flood, I think, hit on some of the reasons why, obviously. I don't-- no one I've talked to is super happy, is over the moon about the compromise, which I think makes it a-- a fair compromise. I do think that there were a number of competing factions of interest in the structure of this bill that ultimately led to this compromise. And that's why I think this is fair. My personal concerns were that I did not think that we should be taking the corporate tax rate that low and that I think that I don't agree that it increases the competitiveness of the environment. So-- and Senator Flood's point about the intent language, if over the course of the next two years I become convinced

that taking it down to 6.84 would actually accomplish the stated objective, I would probably bring that bill. But I don't know what-- what is going to convince me of that. So at this point, I think this is a good compromise that it gets the steps in that direction that folks want. It has the intent of showing that the state of Nebraska is willing to make those moves for the people that that makes a difference for. But it also decreases the overall cost, which, as I've stated before, my interest is not in necessarily spending this money right now on something else, but I think that it is important as a matter of policy that we be restraint, show restraint in terms of these types of cuts. So I think that's why this checks those boxes. It's a smaller step in that direction. It's a reasonable step in the direction that Senator Linehan and others were trying to take us. But it's not as far as they were trying to go, which, of course, was my concern. So I think this is a good compromise. I know that no one is particularly happy about it. Not everyone. Some people probably are. But I'm going to vote for it and then I'm going to vote for LB432, because as Senator Linehan pointed out, she's already compromised on this bill before. She's done a lot of work to get this bill to this point. And I think that all of us-- our charge here is not necessarily to get everything we want, but it is to get laws that are passed in as good a shape as we possibly can when they-- when they go into effect. And I think that this is a step in the direction of this law being in as good a shape as-- as we can all come together to get to. So I would ask for your green vote on AM1374 and ultimately on LB432. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator John Cavanaugh. Senator Friesen, you're recognized.

**FRIESEN:** Thank you, Mr. President. Thank you, Senator Cavanaugh and Senator Stinner. Again, a compromise. And to Senator Flood, who is a little disappointed in not getting something big, maybe we should talk about how we might fund some roads that Nucor Steel needs to transport their product into and out of their plant. And when we're cutting their corporate rate, maybe they can make a donation to the DOT to help fund getting that four lane on Highway 81. And instead, maybe we're going to borrow money or bond instead. And so we'll be cutting corporate tax rates while bonding to build roads in the future. But again, we have to-- this is compromise. I thought it was a good compromise. Not everybody got [RECORDER MALFUNCTION] I still don't believe we should have lowered corporate tax rates. We have other priorities that are higher, including roads, including our expressway system, including broadband expansion, and we're going to try and do all of those and still operate. And so, I'm good with the compromise.

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I'm going to vote for it. I think it's, you know, when we sit here and discuss this, I think we've had an awful good discussion with everybody on-- on what some of our priorities are. And this is a way that we reach an agreement and we don't have to take it four hours or eight hours or whatever it is and this is, I think, one of the good things about the filibuster rules that are in place now as people do spend a little time talking about bills and reaching some sort of agreement where they can move something forward. So, Senator Flood, I do understand your disappointment. Me, too, but, you know, I was-- you weren't probably listening when I was talking about maybe we could-- this tax break for Nucor Steel now, we need to also work on getting those roads ready for-- for Nucor Steel to transport their products in and out of the state. So maybe we could have used some of this then, transferred it to DOT. So with that, I will yield the rest of my time. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Friesen. Senator Groene, you're recognized.

**GROENE:** Thank you, Mr. President. I'm glad Senator Flood brought that up and I asked him off-mike, have you ever seen this before, it's the intent of the legislator to enact legislation in the future? No. He said, probably thought it might have been done, but he hadn't seen it. Senator Stinner, in history, this is going to go down as the Stinner clause because he started it with-- with the Social Security tax that's intended the Legislature into the future. Well, I'm here to tell you I will vote for C and I will vote for D, but put it in the record and I hope other folks say it also that if this vote comes out 43 to 2, that in two years somebody doesn't stand on the floor and say, we've got to do this, we have got to do this because here's what the statute says, is intended to legislate, enact legislation after operative date and 43 Senators said we need to do that and we need to honor the intent of the Legislature that came before us. That's what this is. This is a sales pitch to the future. I do not support that. I did not support it in the-- in the Social Security bill. Because it's-- I don't know what's flimflam. It's-- we're not supposed to believe constitutionally whatever I've been told to tie the hands of a future Legislature on funding. This is a tie the Legislature's hands with papier mâché. But anyway, I hope we never see this again. I hope this was a bad day in bill writing, that we never see this again, it is the intent of the Legislature to enact legislation after the operative date of this session. I hope it's a moment in time that we don't have the Stinner clause ever brought forward again. So I'm going to support the bill because it was, well, my friends, this bipartisan Legislature and my friends on the left couldn't assure enough votes to

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kill this income-- corporate income tax cuts. So I guess I'm going to go along with them and it's just frustrating, though, they are so strong, they stick together so well and Groene joins them and they-- and Friesen joins them and they-- and they dissipate on us. So anyway, I guess it's the intent of the Legislature to cut corporate income taxes. So they really need it. I heard they're really hurting and not according to the stock market, but I guess they're really hurting and we're going to cut their taxes. So I'm going to vote for AM1374, but make it clear I don't support "intent" into the future. Appreciate it. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Groene. Senator Hilkemann, you're recognized.

**HILKEMANN:** Thank you, Mr. President. I rise, I will be supporting the AM1374 and the underlying LB432. I just wanted to take this opportunity. Senator Flood commented of-- several speakers ago that we ought to be addressing our motor vehicle tax and I could not agree more. I brought LB82 this year. It is still in committee. And we have-- one of the things I discovered during my years in practice when I had-- tell people that move into the state of Nebraska, I would always welcome them to the state of Nebraska and asked them how things are going to-- and it was amazing how many times people said, I can't believe how much it costs to license a car in this state and asked-- because that's one of the first things that they have to do because most states do not have to pay that big motor vehicle property tax that we have and-- and our licensing fee on top of that. And I-- so I brought LB82 this year and we had great flak from the county. It did not go-- it's still in there. And we are going to be bringing an LR127, but I think we're the third worst in the United States on motor vehicle taxes. One of the things my biggest complaint about it is, is that we charge to begin with 100 percent of the MSRP of a vehicle. Now, this day and age, most people go into-- you'll see the television advertisements where people will be taking 10, 15, 20 thousand dollars off some of these large trucks and even if you get \$20,000 off MSRP, when you go pay the tax, you're paying the tax on the MSRP and not on what you actually paid for the truck. I thought that that was-- that was, basically should not be, should be paying for what you pay for it, that was what I was trying to get done. And then the second thing is, the second year you own the truck, you have to pay a 10 percent of what the MSRP. Well, I don't know how many people-- how many of you have had the opportunity to buy a motor vehicle that only depreciates 10 percent in the first year that you own that vehicle. So those are some of the things that I wanted to address in my bill. And we're going to hopefully do that with the LR and there's also over a

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million, I think it's a million-- it's a 1,300,000 cars over 14 years of age that pay zero taxes in this state, even though they're on the roads, including collector cars and so forth. So at either rate, I just wanted to throw that advertisement in there for my LR127 and point out, I certainly agree with Senator Flood that our motor vehicle tax system is another one that needs to be worked on. Thank you very much, Mr. President.

**WILLIAMS:** Thank you, Senator Hilkemann. Seeing no one in the queue wanting to speak, Senator Linehan, you're recognized to close on AM1374. Senator Linehan waives closing. Members, the question is the adoption of AM1374 to LB432. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

**ASSISTANT CLERK:** 45 ayes, 0 nays on adoption of the amendment, .

**WILLIAMS:** The amendment is adopted. Anything further on the bill?

**ASSISTANT CLERK:** Nothing further on the bill. Mr. President.

**WILLIAMS:** Thank you. Senator McKinney, for a motion.

**McKINNEY:** Mr. President, I move to advance LB432 to E&R for engrossing.

**WILLIAMS:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB432 is advanced. Mr. Clerk, for items.

**ASSISTANT CLERK:** Thank you, Mr. President. Legislative-- LR134 issued by the Redistricting Committee. Additionally, pursuant to that, the Reference Committee would refer LR134 for the purposes of conducting a public hearing and a Reference Report from the Executive Board referring LR134 to the Redistricting Committee. LR135 introduced by Senator Hunt. Pursuant to that, letter from the Executive Board-- excuse me, from the Speaker requesting the Reference Committee refer LR135 to the appropriate standing committee. LR136 issued by Senator Brewer. That will be referred to the Executive Board. Notice of committee hearing from the Executive Board as well as the Transportation and Telecommunications Committee. That's all I have at this time, Mr. President.

**WILLIAMS:** Returning to the agenda, Select File, Senator priority bills, LB630.

**ASSISTANT CLERK:** Mr. President, there are no E&R amendments. Senator Bostar would move to amend with AM1261.

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**WILLIAMS:** Senator Bostar, you're recognized to open on your amendment.

**BOSTAR:** Thank you, Mr. President. This amendment is the product of several conversations I had with other members of the body after General File. There were some questions asked of the bill and I thought that this amendment would provide some clarity. So just going through the provisions really quickly here, this amendment would clarify that the study would take place over the next two school years. That all the schools would participate voluntarily so that there wouldn't be a school participating in the pilot program that would be forced to. This is something that they would-- they would choose to participate in and that 50 percent of the participating classrooms in the pilot program would not be from the same school district, so to ensure that there was some geographic diversity within the pilot program in the study. That's basically what it is. It's just an amendment that-- that clarifies some things that were needed to be aligned with the intent of the original legislation. And with that, I would ask for your green vote on AM1261. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Bostar. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. President, and I appreciate that. Good afternoon. I wonder if Senator Bostar would yield to a question or two.

**WILLIAMS:** Senator Bostar, would you yield?

**BOSTAR:** Of course.

**ERDMAN:** Senator Bostar, as I noticed in the fiscal note on your bill when it first came out, it's about a half a million dollars. Has that changed?

**BOSTAR:** That has not changed.

**ERDMAN:** So it's like 278 million one year, a 1,000 one year, and 278 or whatever is the next year for two years and then it goes away.

**BOSTAR:** That's correct, sir.

**ERDMAN:** So how many schools do you think will do this?

**BOSTAR:** So 50 participating schools with at least six classrooms in the school.

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**ERDMAN:** OK, I think it said in the fiscal note it was like 150,000 for equipment is that--- does that sound right?

**BOSTAR:** I think that sounds right.

**ERDMAN:** Is that each year or just once?

**BOSTAR:** I think that there's the-- in the-- in the first year, the equipment costs are higher.

**ERDMAN:** OK.

**BOSTAR:** And lower in the second year because you don't have to acquire everything.

**ERDMAN:** OK. And so the goal of this is to discover whether it improves test scores, is that correct? Or in learning or what is-- what is the goal?

**BOSTAR:** Essentially, yes, it's to evaluate whether or not we can see academic improvements from the presence of air filtration systems in classrooms.

**ERDMAN:** OK. If you know the answer, that's fine. If you don't, that's OK too. So tell me how you're going to measure that. You're going to test these young people in these classrooms when this starts and then again at the end? Or how is that going to work? How are you going to determine the advancement?

**BOSTAR:** So there are-- I believe that there are a number of options. I-- I've worked with the Department of Education as well as the university on this.

**ERDMAN:** OK.

**BOSTAR:** And ultimately sort of leaving it to them to manage the proper execution of a-- the scientific study. That being said, we have some consistent testing that we do among our classroom populations already. So being able to just compare those results, as I understand it, would be fairly straightforward.

**ERDMAN:** OK. I appreciate you answering those questions. Just-- just for the-- and I don't know why people say this, but I thought I'd try to say this just for the record. OK. I have very little confidence in the Department of Education accomplishing anything. And so if they're going to be the ones that are going to determine whether there's been

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advancement, I have very little confidence in their numbers that they'll mean anything to anybody. Thank you.

**WILLIAMS:** Thank you, Senator Erdman and Senator Bostar. Senator Groene, you're recognized.

**GROENE:** Thank you. I just wanted to thank Senator Bostar for working with me, I was one of them. He went around the floor and graciously asked people who had-- who had-- had some doubt about his bill that he was willing to work. And I told him I think it needed to be more defined, the study and voluntary instead of-- it was not clear that a school could do it voluntarily or could be just picked by the Department of Ed and forced to do the study. So he cleared that all up and I like some of his ideals where he took just the grade school because high school and some of the other classes change rooms all the time. So, no, it's-- it's a vast improvement. Gives more direction to the-- who is assigned to do the study. So I will support AM1261. It's a good amendment. Thank you.

**WILLIAMS:** Thank you, Senator Groene. Seeing no one wishing to speak, Senator Bostar, you're recognized to close. He waives closing on AM1261. Members, the question is, shall the amendment to LB630 be adopted? All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

**ASSISTANT CLERK:** 36 ayes, 0 nays on adoption of the amendment.

**WILLIAMS:** The amendment is adopted. Mr. Clerk.

**ASSISTANT CLERK:** I have nothing further on the bill, Senator.

**WILLIAMS:** Senator McKinney for a motion.

**McKINNEY:** Mr. President, I move to advance LB630 to E&R for engrossing.

**WILLIAMS:** Members, you've heard the motion. All those in favor say aye. Opposed say nay. The bill is advanced.

**ASSISTANT CLERK:** Next bill, Mr. President, LB3-- excuse me, LB630A. I have no amendments to the bill, Senator.

**WILLIAMS:** Senator McKinney for a motion.

**McKINNEY:** Mr. President, I move to advance LB630A to E&R for engrossing.



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**WILLIAMS:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB630A is advanced.

**ASSISTANT CLERK:** LB306. I have no amendments to the bill, Senator.

**WILLIAMS:** Senator McKinney for a motion.

**McKINNEY:** Mr President, I move to advance LB306 to E&R for engrossing.

**WILLIAMS:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The bill is advanced.

**ASSISTANT CLERK:** LB306A, Senator, I have no amendments.

**WILLIAMS:** Senator McKinney for a motion.

**McKINNEY:** Mr President, I move to advance LB306A to E&R for engrossing.

**WILLIAMS:** Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB306A is advanced. Items, Mr. Clerk.

**ASSISTANT CLERK:** Thank you, Mr. President. Amendments to be printed: Senator Moser to LB579 and Senator Brandt to LB241. That's all I have at this time, Mr. President.

**WILLIAMS:** Thank you, Mr. Clerk. Senator Hilgers-- Speaker Hilgers, for an announcement.

**HILGERS:** Thank you, Mr. President. Good afternoon, colleagues. Just giving you a quick scheduling update. It looks like we'll probably end without-- without a dinner break. We'll just probably go around 6:30 or 7:00 depending on progress, but we'll end a little earlier tonight, maybe a little bit earlier, depending on progress. Tomorrow night, though, as a reminder, we will-- that will be our late night this week that-- that schedule, we will go late tomorrow night, 10:00 or later. So, again, no break, but what we'll get done between 6:30 and 7:00. Thank you, Mr. President.

**WILLIAMS:** Thank you, Speaker Hilgers. Returning to General File, committee priority bills.

**ASSISTANT CLERK:** Mr. President, LB36-- LB376 introduced by Senator Machaela Cavanaugh. It's a bill for an act relating to developmental disabilities. States intent and authorizes the application for an implementation of services and supports for developmentally disabled

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children and their families. Provides for a report. Provides duties for the Advisory Committee on developmental disabilities and repeals the original section. The bill was read for first time on January 13 of this year and referred to Health and Human Services Committee. That committee placed the bill on General File with committee amendments.

**WILLIAMS:** Thank you, Mr. Clerk. Senator Machaela Cavanaugh, you're recognized to open.

**M. CAVANAUGH:** Thank you, Mr. President. Good afternoon, colleagues. Well, it's day 76. It's finally happened. I'm talking about developmental disabilities on a developmental disabilities bill. I'm sure you all are very excited. I know I am. I'd like to thank the HHS Committee for making this the committee priority bill. This is the family support waiver. This bill, as I'm sure most of you can imagine, is very important to me and I am so grateful to my colleagues on the HHS Committee for joining me and supporting me in making this a committee priority. A number of years ago, the Department of Health and Human Services changed the eligibility requirements for the aged and disabled waiver to use the same criteria for adults as for children. As you can imagine, the needs of disabled-- of a disabled adult is different than those of a disabled child. Currently, Nebraska has no Medicaid waiver specifically designed to support children with disabilities and their family caregivers. This gap in coverage has created problems for families with disabled children with high medical needs in paying for prescription drug benefits, co-pays and durable medical equipment, things that may-- many private insurance companies don't pay or don't cover adequately. One example is a family that needs specialty formulas. Some of the formulas can cost up to a thousand dollars a month, and even if they have private insurance, it may not be covered. Because there is no waiver to address that-- this particular need, they apply for the only thing they can, the comprehensive services waiver. That's why the waiting list now is at-- has over 2,964 people on it. Of the persons on the current waiting list, 55 percent are children from infants up to age 21 years of age, 53 percent of the individuals on the waiting list receive no services at this point and rely solely on family and friends to fill in gaps. All of this is why LB376 is so urgent. I introduced this bill following an outcry from families when children with intellectual and developmental disabilities, as our system no longer covered their situation. We received absolutely heartbreaking calls from families who were forced to consider moving from the state or divorce so that they can continue to receive care for their family member. A family support waiver, as proposed in this bill, will supplement the current continuum of developmental disability services. LB376, with the

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committee amendment, offers an annual capped budget of \$10,000 for long-term services and supports like respite care and necessary home or vehicle modifications. It offers a pathway to medical eligibility for disabled children by disregarding parental income. It allows families to self-direct services, including contracting for services and supports approved by the division. To keep the fiscal note down, the amendment limits the number of families that will benefit to 850-- and I'm sorry, as language requested by the department to limit applicants to meet immediate-- intermediate care facility institutional level of care. The current gap has led the Nebraska-- led to Nebraska having the fifth highest cost of services in the nation. Because we end up paying for the most excessive services, this waiver will help us bring down the average cost of services from 63,000 per individual to a \$12,000 cap and may look-- and actually with the amendment, it's a \$10,000 cap. It may look like new money, but really this is just changing where we spend the money from emergency services that cost us over \$130,000 per individual per year to ensure they get the proper early and preventative services in their home instead of in an emergency room. I'm going to pause on describing the amendment because I believe that Chairman Arch will take that over, so I will just yield the remainder of my time to the Chair. Thank you.

**WILLIAMS:** Thank you, Senator Machaela Cavanaugh. As the Clerk stated, there are amendments from the Health and Human Services Committee. Senator Arch, as Chairman of the committee, you're recognized to open on the committee amendments.

**ARCH:** Good afternoon, colleagues. As Senator Machaela Cavanaugh stated, AM1307 is the amendment to LB376. It is one of the Health and Human Services Committee's priority bills. First of all, I'll explain what the amendment does and then I'll explain my thoughts on why this bill is important to the committee. Over the last several months, you have heard multiple references to the developmental disability wait list. This is referencing our priority categories for Medicaid Home and Community-Based Service waivers, funding found in Nebraska Revised Statutes, Section 83-1216. There are six funding priorities and they are funding priorities because we do not fully fund the wait list. So there-- so who receives those funding then are these priorities. When we fulfill all the needs of our first funding priority and then we move on to the next. The priorities are in the following order: (1), individuals in crisis; (2), individuals in an institutional setting; (3), individuals who are DHHS wards are placed under the supervision of the Office of Probation Administration who are transitioning to adulthood at the age of 19; (4), individuals transitioning from the

education system to adulthood at the age of 21; (5), dependents of members of the Armed Services serving in Nebraska and finally, (6), by date of application. Unfortunately, there isn't enough funding to fulfill all of the needs. If we run out of funding by priority 4, priority 5 and 6 get nothing. And that's how we get the waiting list. This bill is intended to address this issue in a strategic way, not by simply increasing funding directly to the wait list. Let me explain. Committee amendment, AM1307, replaces LB376 and becomes the bill. On page 2, Section 2, it requires the Department of Health and Human Services to-- to apply for a three-year 1915(c) Medicaid Home and Community-Based Services program waiver to institute a family support program. This waiver will allow the state to provide support services to families with children that qualify. This is all focused on children. Section 2, (3) of page 3 outlines the basics of the family support program. The program will be limited to 850 participants, Senator Cavanaugh mentioned, who will receive an annual services cap of \$10,000 per year for long-term services and supports, which is down from \$12,000 in the original bill. The children that would receive services under this waiver are children that are already on the wait list to receive services under the developmental disability waivers, meaning that they qualify physically for being on that wait list. Under the waiver in this bill, these children would receive some support services, but not all of the services available under the other waivers. The intention then is to intervene early to provide services so that they may not need all of the services under the other waivers. Section 3 on pages 4 and 5, notes that these participants must be children who reside in the state of Nebraska who have a medically determinable physical or mental impairment that causes severe functional limitations that can be expected to last 12 months or more, and that the children must meet the intermediate care facility institutional level of care criteria, which is the same level of care criteria for the other waivers. Section 5 on page 5 requires DHHS to work with a private nonprofit organization to independently evaluate the effectiveness of the program if private funding is available to do so. A report on this efficacy will be made to the Legislature by December 15, 2023, though this date will likely change depending on when the waiver is approved by CMS and implemented by DHHS. This report is in addition to the annual report that will be provided by DHHS to the Legislature. This bill is obviously important to the HHS Committee as is-- as it is, one of our two priority bills this session. The wait list for developmental disability services continues to grow at an alarming rate and has been a persistent issue in Nebraska for decades. We actually eliminated the wait list once where everyone eligible receive services back in July of 1995-- July.

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However, by August of 1995, there were 400 new individuals on the wait list. In 2008, there was a legislative resolution, LR156, which put together a working group to study the wait list and provide potential solutions. In 2009, the legislator-- Legislature appropriated \$15 million to help cut down the waiting list would had-- which had approximately 2,000 individuals waiting for services. In 2019, there were approximately 2,300 individuals on the wait list and today, in 2021, there are over 3,000 individuals who qualify and are waiting for services on that particular waiver. That's over 700 newly eligible individuals waiting for services in under two years. Approximately 1,100 of those individuals are children. Currently, individuals waiting for services, depending on available funding, could be waiting for anywhere from two to eight years on average. Some individuals have waited for services longer than a decade. Recent estimates say that it would cost an additional four to six and a half million dollars per year to keep the waiting list steady at its current level of 3,000 on the waiting list. That's just to ensure no growth above the individuals we have currently on that list. Funding in the wait list is very important and we need to continue funding to try to reduce the wait list but-- but we must also try to innovate and think outside the box in how to provide services to those in need. The committee's hope is that with this family support program, we can help strategically eliminate some of that wait list by targeting children with high needs and hopefully intervene with services at a young age to help prevent the necessity of higher cost services as they get older. The program will only be in place for three years unless the Legislature decides to fund it into the future and DHHS reapplies for the waiver. There's a three-year limit on the waiver. It is our hope that some federal funds made available to the state through an increased federal match for Home and Community-Based Services through the American Rescue Plan will be used to fund part of this waiver and that language is also reflected in the amendment. We also hope the reports DHHS provides to the Legislature over the next few years can provide us with enough information to help understand how we can best proceed into the future regarding the wait list and its ultimate elimination. Other states and jurisdictions, Tennessee, Virginia, Louisiana, Maryland, Pennsylvania, Washington have specific family support waivers. However, other states also have provisions that address the same populations in their state Medicaid programs as each state is different in how they administer Medicaid. I've had multiple discussions with Director Green regarding this proposed waiver, am confident that he will be able to implement an innovative program that addresses the long-term needs of individuals with developmental disabilities in the most effective and

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cost efficient way. With that, thank you very much. I urge your green vote on AM1307 and the underlying LB376. Thank you.

**WILLIAMS:** Thank you, Senator Arch. Debate is now open. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, and thank you to Chairman Arch for the introduction of the amendment, the committee amendment. And I hope that everyone will vote green on the amendment and the underlying bill. We also have the A bill up after this and we don't have the amendment yet for that, so we'll probably have to just move that and amend it on Select. But I am grateful to Chairman Arch for his support of this bill and for working with me on getting the fiscal note right and for Senator-- Chairman of the Appropriations Committee, Senator Stinner, for also working and agreeing to let me get this out on the floor as it is in this amendment. This is, uh, this is going to be huge for these families and so many of these families as I said in my opening remarks, they-- they came and they reached out to the HHS Committee when some new rules were promulgated over the aged and disabled waiver. And they were moving off of that and onto the developmental disabilities waiver. And there's a lot of influx and this is going to really help stabilize some of those families and help them get the services that they so desperately need and really make Nebraska a welcoming home for all of our children. So thank you so much for your consideration. I hope everyone will vote green on the amendment and the underlying bill. Thank you.

**WILLIAMS:** Thank you, Senator Machaela Cavanaugh. Senator Arch, you're recognized and there's no one else in the queue, would you like to use this as your close? Excuse me, somebody else now punched in. Senator Arch, you're recognized.

**ARCH:** Thank you. I want to address the fiscal note for a second because there are several iterations of the fiscal note. This started-- this started much larger and over time and this is one of the reasons why you have not seen this bill on the floor up to this point. We've been working with the department trying to identify if there are some-- if there's some possibilities of some ARPA funding. I mentioned that in my opening. There is an F map, what's called an F-map bump, that the department is receiving an additional 10 percent in the match that the federal government provides for one year. We anticipate that'll be approximately \$36 million. We think that there might be a possibility of using some of that, but frankly, we ran out of time from the rules that are being sent from Washington on how those funds are to be used. So we put intent language in there

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regarding ARPA that the intent would be that if available, those funds would be used to help do this. But the General Fund right now, from the last estimate that we have and as I mentioned, of course they won't do a fiscal note without the amendment passing, but the-- the-- the estimate that we have right now is that we're looking at approximately 4 million General Fund in the first year, 8 million in the second year. And then-- and then this would be a three--year-- a three-year commitment. So I just wanted to let you know, because I know some of you are looking at that fiscal note, wondering, you know, if-- if those are the numbers, those are-- those are not the numbers. We reduced-- we reduced the amount from 12,000 to 10,000. We also-- we also said that there would be 850 children that would benefit from this program and limit it to that. So that would-- I would yield the rest of my time to the Chair.

**WILLIAMS:** Thank you, Senator Arch. Seeing no one in the queue wishing to speak, Senator Arch, you're recognized to close on the committee amendment.

**ARCH:** Thank you. I would just say-- just one comment in summary. This is-- this is an issue that is not going away. This developmental disability wait list is-- is not going away and-- and it will be back. I would imagine, every year we will hear-- we will certainly hear bills every year within the Health and Human Services Committee, because it's a-- it is a significant need of families that-- that have a significant financial and-- and personal responsibility to the developmentally disabled children and adults in their lives. And so we are trying with this bill to have an impact on that without providing that full developmental disability waiver, the comprehensive DD waiver that we refer to that wait list. We're trying to-- we're trying to intervene early to-- to have a waiver that will provide certain services, not the full complement of services, in an attempt to do early intervention to help these children improve their lives and stabilize in their situation. So with that, I would encourage a vote, a green vote on AM1307. Thank you.

**WILLIAMS:** Thank you, Senator Arch. The question is, shall the committee amendments to LB376 be adopted? All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

**ASSISTANT CLERK:** 35 ayes, 0 nays on adoption of the amendment.

**WILLIAMS:** The amendment is adopted. Returning to debate. Senator Walz, you're recognized.

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**WALZ:** Thank you, Mr. President. I just wanted to speak briefly on this bill. A lot of you know that much of my life I've been involved in working and advocating for people who have disabilities in their families. And I've had many, many conversations with parents who needed support, support that would provide them with needed resources, education, respite care and most importantly, support that would provide them with a plan for the future. In 2019, I undertook LR216, which was an under-- interim study to examine funding priorities for the Medicaid Home and Community-Based Services waiver under the Developmental Disabilities Services Act. I was hoping to get a better grasp of the issues facing those who were served or not served under our developmental disabilities waiver system. And we found-- what we found was a waiting list of six to eight years that no family could plan for a system that had cracks and prevented many with intellectual and developmental disabilities from being able to access any kind of help that needed-- and a system that needed significant updates. While we have passed and we are beginning to implement the Olmstead Plan, which is Nebraska's strategic plan to help support people with intellectual and developmental disabilities who are missing a key piece. Our current plan only has us providing for a 1 percent increase in funding for our waiver, and this fails to keep up with the percentages needed to even keep our waiting list flat. We really probably need a 4 percent growth in funding. What I like about the family support waiver is that it's innovative and it helps us stretch our budget. It does that by providing the right services for the right family at the right time. This helps-- helps us to be good stewards of our tax dollars and good stewards for our Medicaid system. While this service array will not be a fit for everyone, it will offer us another tool in our toolbelt. We have to ensure that families have a plan, a plan to provide resources and opportunities for their kids. With a six to eight year wait list, it's really tough to plan. If we keep doing things the way we have been, we're just going to see that list continue to grow. So it is my hope that this innovative tool will give families the help that they need. I agree with Senator Mach-- Machaela Cavanaugh that this will be huge for families. Thank you, Senator Cavanaugh, for your work. And with that, I encourage a green vote. Thank you.

**WILLIAMS:** Thank you, Senator Walz. Seeing no one in the queue wishing to speak, Senator Machaela Cavanaugh, you're recognized to close on the advancement of LB376.

**M. CAVANAUGH:** Thank you, Mr. President. Thank you all for your support of the committee amendment. This is going to again mean so much to so many families in Nebraska. I would like to take a moment to thank the



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committee staff, T.J. O'Neill, Paul Henderson and Geri Williams for all of their hard and diligent work on this bill and so many important bills for the people of Nebraska and my own staff, Margaret Buck and Rochelle Golliday and all of the people that came to testify in support of this. There were moms that came on behalf of their children to advocate and I appreciate their warrior spirit fighting for their kids every day and today we're going to show them that they can make a difference. I also want to give a special thanks to Edison McDonald with Arc of Nebraska, who has tirelessly carried this issue for years and has worked so hard with not only myself, but also with Senator Arch, the whole committee and Director Green. So I just want him to know that his work has not gone unnoticed. And I hope that you all will vote green on LB376. Thank you.

**WILLIAMS:** Thank you, Senator Cavanaugh. Members, the question is the advancement of LB376 to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk.

**ASSISTANT CLERK:** 32 ayes, 0 nays on advancement of the bill.

**WILLIAMS:** The bill advances. LB376A, Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, LB376A introduced by Senator Cavanaugh. It's a bill for an act relating to appropriations. It appropriates funds to aid in the carrying out of the provisions of LB376.

**WILLIAMS:** Thank you, Mr. Clerk. Senator Cavanaugh, you're recognized to open.

**M. CAVANAUGH:** Thank you, Mr. President. This is the A bill for LB376. It will need to be amended on Select to reflect the committee amendment that we just adopted. So the numbers reflected in this A bill are not currently accurate, but will be amended between General and Select. Thank you.

**WILLIAMS:** Thank you, Senator Cavanaugh. Seeing no one wishing to speak, Senator Cavanaugh, you're recognized to close. Senator Cavanaugh waives closing. Members, the question is the advancement of LB376A to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

**ASSISTANT CLERK:** 26 ayes, 0 nays on advancement of the bill.

**WILLIAMS:** The bill advances. Mr. Clerk, for items.

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**ASSISTANT CLERK:** Just one, Mr. President. Notice of Committee Hearing from the General Affairs Committee. That's all I have at this time.

**HILGERS:** Thank you, Mr. Clerk. Next bill.

**ASSISTANT CLERK:** Next bill, Mr. President, LB139 introduced by Senator Briese. It's a bill for an act relating to liability. Adopts the COVID-19 Liability Protection Act, provides severability and declares an emergency. The bill was read for the first time on January 8 of this year and referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments. There are additional amendments pending, Mr. President.

**HILGERS:** Senator Briese, you're recognized to open on LB139.

**BRIESE:** Thank you, Mr. President, and good afternoon, colleagues. I rise to introduce my LB139, and I first want to thank Senator Slama for prioritizing this bill, and I want to thank Senator Williams for cosponsoring the bill, and I want to thank Chairman Lathrop and members of the Judiciary Committee for working hard on advancing an amended version of this bill. The support of all of these Senators really reflects the recognition that we need to do everything we can to help our state recover from the impact of the pandemic. And that's--- that's what this bill is intended to do. LB139 was originally introduced to provide a measure of protection for our business, education and health care communities and others from COVID-related lawsuits. As they struggle to recover from the impact of the pandemic many of these folks are faced with the threat of needless, unwarranted, COVID-related lawsuits and I believe it's incumbent on us as policymakers to do everything that we can to help facilitate our state's recovery. And that was why I introduced LB139. It can be-- it can provide a level of confidence for our businesses to reopen. It can help our economy to recover. In a nutshell, for claims based on COVID exposure, the green copy would have required a plaintiff to prove by clear and convincing evidence that the defendant's conduct was grossly negligent or willful and that the plaintiff's injuries were significant. It also provided a so-called safe harbor for adherence to public health guidance. We had a robust hearing on the bill before the Judiciary Committee, who had an enormous amount of support for this proposal from the business, education, health care community and others and I could list off all the proponent testimony, but you can look at the fiscal note and see for yourself the support that the bill had. But there was also some opposition, and I would say the opposition was centered on the lowering of the standard of care to gross negligence and the

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escalation of the evidentiary burden to clear and convincing evidence and a perception that these items bordered on tort reform with the caliber that many folks found objectionable. So that's really what led to the compromise reflected in AM1293, which still does contain the safe harbor for adherence to public-- federal public health guidance. And again, I thank Senator Lathrop and the Judiciary Committee for their hard work on this and working together to put this forward. And with that, I will let Chairman Lathrop open on the committee amendment. Thank you, Mr. President.

**HILGERS:** Thanks, Senator Briese. As the Clerk noted, there are committee amendments. Senator Lathrop, you're recognized to open on the Judiciary Committee amendment.

**LATHROP:** Thank you, Mr. President, and colleagues, good afternoon. So the committee amendment, AM1293 does two things. It changes the substance of the COVID immunity. As Senator Briese just said, much of what was in the original LB139, it kind of contained the list of, from my perspective, the list of horrors when it comes to tort reform, changing the evidentiary burden, gross negligence, requiring that somebody be hospitalized or die before they could bring a cause of action. What we have done, as a committee has gone through and-- and worked with Senator Briese and interested parties to create a different standard. And-- and so what the-- what we have in the amendment is we call it the COVID immunity. Basically what it provides is you can't maintain an action against someone for a COVID exposure if at the time of the alleged exposure that person or business was in compliance with the CDC guidelines, OSHA or CMS guidelines, whichever might be applicable to the circumstance. As a practical matter, that may have been this-- that would be the standard of care in any-- in any event. So, in effect, we have provided a safe harbor for businesses and individuals from COVID claims or observing what is or amounts to the standard of care. Also amended into AM1293 is something called the crisis standard of care. I would go into the long division on the crisis standard of care, but in the amendment which follows, that crisis standard of care has undergone a revision which I'll explain when I introduce the next amendment, which is the amendment to the Judiciary Committee amendment, which basically strikes the crisis standard of care language out of AM1293 and replaces it with something we call the health care crisis protocol. And with that, I would encourage your support of both AM1293 and LB139. Thank you.

**HILGERS:** Thanks, Senator Lathrop. Mr. Clerk, for an amendment.

**ASSISTANT CLERK:** Mr. President, Senator Lathrop would move to amend the committee amendments with AM1375.

**HILGERS:** Senator Lathrop, you're recognized to open on AM1375.

**LATHROP:** Thank you, Mr. President, and colleagues, as I mentioned in my opening just a few moments ago, AM1293 contains something called the Crisis Standard of Care. We've made some changes as we've attempted to accommodate medical malpractice insurance carriers, the Governor's Office and health care providers who are interested in having some direction and some protocol for those instances in which we experience a disaster that creates a circumstance where the demand for health care exceeds our capacity to provide it. So think back to December when we watched the COVID infections on the rise. Every day you turn on the nightly news and you see how many ICU beds are empty or how many are occupied by COVID patients. We came pretty darn close to a circumstance where the capacity of our health care providers to provide ICU beds and that kind of care was nearly exceeded. When that happens, colleagues, somebody is going to have to make some tough choices at both ends of the care, what we call triage, which is who are we going to provide the care to when we don't have enough beds, bodies, people to provide the care. And at the back end, where we have filled up all the ICU beds and we still have people coming in with critical care needs, the Health Care Crisis Protocol Act will adopt a document or a-- or a protocol that was established by the Nebraska Medical Emergency Operations Center and a-- and a group of medical individuals and ethicists who set a protocol for how do we decide who gets care and who is removed for care in those really, really extraordinarily rare circumstances where the demand for health care for the critically ill outstrips what we are able to provide in our current health care system. It is a-- it is a thoughtful amendment. It is an amendment that will adopt a protocol that will guide physicians and why is that important? If you are an emergency room physician, you want to make a decision that is based upon and we as policymakers want to make sure that decisions are based upon not value judgments of the patient in front of the physician, but rather the likelihood that they are going to survive and benefit from the medical care. So not considered are things like race, religion, national origin, English speaking, nonEnglish speaking. If you can imagine what makes one person different from the other, none of those things will be considered. It will simply be based upon the likelihood that they will benefit from care going forward, and that's the way it should be. Those protocols will then allow physicians to make those tough decisions if we ever run into a circumstance where this would be applicable. And for that reason, I would encourage your support of

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AM1375, AM1293 and LB139. And I, colleagues, am happy to answer questions you may have either on the bill or either of the two amendments, and with that, thank you, Mr President.

**HILGERS:** Thanks, Senator Lathrop. Debate is now open on AM1375. Senator Slama, you're recognized.

**SLAMA:** Thank you, Mr. President, and good afternoon, colleagues. I rise today in support of AM1375, AM1293 and the underlying bill, LB139. It is my priority bill, and I'm so grateful for the work of Senator Briese, for Chairman Lathrop and everybody who came around the table to find a compromise on this bill to ensure that when Nebraska says that we're open for business in the midst of the COVID-19 pandemic, that our businesses, whether they be large or small, can be open, can have their doors open and be available to our communities without fear of unnecessary lawsuits. So I just wanted to rise to thank Senator Briese and Chairman Lathrop for their work on LB139. Thank you, Mr. President.

**HILGERS:** Thanks, Senator Slama. Senator Briese, you're recognized.

**BRIESE:** Thank you, Mr. President. I just wanted to comment on Sections 1 through 4 of AM1293, and AM1293 in those sections contains many of the definitions found in the green copy of LB139, and it provides protection from lawsuits for those who have been in substantial compliance with federal public health guidance and federal health guidance is that derived from the CDC, the Centers for Medicare and Medicaid and OSHA. So it provides a measure of protection for our business community, schools, health care providers and really any others against needless, unwarranted COVID-related lawsuits. It's reasonable, common sense legislation made necessary by the pandemic. And it appears that about 29 states have enacted something in this arena, 17 states, according to the latest data I have, have done more than what we're considering here. And it appears about 12 states have something similar to what we're doing-- doing here relative to public health guidance. Some provide immunity for adherence. At least one provides that adherence to such guidance is an affirmative defense, some just say simply no liability in the event of substantial compliance, but-- and that's essentially what ours does. It requires a plaintiff to plead and prove there was not substantial compliance with such a directive and it does not protect bad actors. If you complied with that guidance, you should be protected and you deserve to be protected. And going forward, it prioritizes public safety by incentivizing our businesses, health care providers and others to adhere to such guidance. And I will let Senator Lathrop speak to the

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other provisions of AM1375, which he has done. And I would urge your support of AM1375 and AM1293 and LB139. Thank you, Mr. President.

**HILGERS:** Thanks, Senator Briese. Senator Williams, you're recognized.

**WILLIAMS:** Thank you, Mr. President, and good afternoon, colleagues, and I rise in support of all of the amendments and certainly the underlying bill. As business people, many of us are dealing all the time with managing risk. That's what we do. That's how you run your business. That's how you make a lot of decisions. All of a sudden with COVID this past year, we saw a new risk that we had never seen, a risk that we couldn't weigh, a risk that we couldn't even measure. And then, of course, the fear of what was going to happen with potential lawsuits, with potential changes in insurance, in coverage and in rates, both of those kind of things. And so I'm-- I'm really pleased that Senator Briese and then Senator Slama prioritizing this bill have worked as hard as they have and they've been working for months on this actually to get this into the shape that it could come out of committee and be in the shape that we can pass it on the floor today. This is the right thing to do to help our businesses. It's still, as Senator Briese just mentioned, does not protect any bad actors. You need to be in substantial compliance with the directed health measures to have this type of protection. So with that, I would encourage your green votes on all of these amendments and the underlying bill. Thank you, Mr. President.

**HILGERS:** Thanks, Senator Williams. Seeing no one in the queue, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is the adoption of AM1375. All those in favor vote aye; all those opposed vote nay. Wrong button. Have all those voted who wish to? Please record, Mr. Clerk.

**ASSISTANT CLERK:** 36 ayes, 0 nays on adoption of the amendment.

**HILGERS:** AM1375 is adopted. Mr. Clerk, for an amendment.

**ASSISTANT CLERK:** Mr. President, Senator Hunt would move to amend with AM1372.

**HILGERS:** Senator Hunt, you're recognized to open on AM1372.

**HUNT:** Thank you, Mr. Speaker. Good afternoon, colleagues. Good afternoon, Nebraskans. AM1372 is an amendment that would incorporate Senator Tony Vargas's sick and safe leave bill that we discussed last night. The amendment that I drafted includes-- it incorporates both of the amendments that Senator Vargas introduced on his original bill. So

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the way AM1372 differs from his original bill is that it would only guarantee sick and safe leave for companies with over 50 employees, so this would not affect small businesses and it would be unpaid. The original bill talked about paid leave. My amendment would say it's unpaid. I drafted it this way because I thought it would be the most reasonable proposal for employers and the easiest thing for them to accommodate. These changes making it apply to 50-plus employees only and making it unpaid should neutralize the objections of members who shared concerns about the cost for employers. The reason I'm amending it on to LB139 is if we're going to give legal liability protections for employers pertaining to COVID exposure, it's only fair that they should allow sick employees time off because that's good public health practice. This way, we're giving wins to both employers and employees while employers are arguably getting the better deal because they're also getting the legal protection. With this amendment and with this bill, the burden of the proof is on the employee to demonstrate that the employer was negligent on public health guidance. But this doesn't cost employers anything. It does not impact small businesses. If larger companies with 50 or more employees can't give people unpaid time off when they're sick and someone is forced to come in with COVID, isn't that negligence? And they shouldn't get liability for that. So, as Senator Briese said on his original bill, LB139, this won't affect any of the good actors. If companies are already following public health guidance, if they're already doing the things that they were supposed to do during COVID-19, then nothing in AM1372 would affect them. Thank you, Mr. Speaker.

**HILGERS:** Thank you, Senator Hunt. Debate is now open on AM1372. Senator Slama, for what purpose do you rise?

**SLAMA:** Point of order.

**HILGERS:** Please proceed.

**SLAMA:** Germaneness.

**HILGERS:** Senator Slama, Senator Hunt, will you please approach? Colleagues, there has been a challenge to the germaneness of AM1372 to the underlying bill and it's the ruling of the Chair that AM1372 is not germane. Returning to the debate on AM1293. Seeing no one in the queue, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is the adoption of AM1293. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Please record, Mr. Clerk.

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**ASSISTANT CLERK:** 36 ayes, 0 nays on adoption of the committee amendments.

**HILGERS:** Committee amendments are adopted. Returning to debate on LB139. Senator Matt Hansen, you're recognized.

**M. HANSEN:** Thank you, Mr. President, and good eve-- good afternoon, colleagues. I wanted to wait and make sure we had the amendments adopted and that the Judiciary Committee and the related amendments were on board to get this bill in best possible position. It's not something that I believe I can support of this principle. I think the state of Nebraska is doing a serious misstep where kind of our only focused COVID response in terms of a legislative priority is going to be liability protection for businesses, not anything more directly for the people of Nebraska, many of whom will not benefit from this bill in any way and would have benefited from other bills as well. So with that, thank you, Mr. President.

**HILGERS:** Thanks, Senator Hansen. Seeing no one else in the queue, Senator Briese, you're recognized to close. Senator Briese waives closing. The question for the body is the advancement of LB139 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Please record, Mr. Clerk.

**ASSISTANT CLERK:** 39 ayes, 3 nays on advancement of the bill.

**HILGERS:** LB139 is advanced. Next bill.

**ASSISTANT CLERK:** Next bill, Mr. President. LB54 introduced by Senator Lathrop. It's a bill for an act relating to tort claims, changes provisions relating to claims for certain intentional torts, harmonizes provisions, and repeals the original section. The bill was read for the first time on January 7 of this year and referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments.

**HILGERS:** Senator Lathrop, you're recognized to open on LB54.

**LATHROP:** Thank you, Mr. President. Colleagues, I'm going to try to explain, give an overview of sovereign immunity, OK? I think it's important so that you understand what the bill is about. So in the United States, our tradition is, as it was in Europe, that we set government up and that government had sovereign immunity. You couldn't sue the king in Europe and when they got to the United States, they embraced the-- the notion of sovereign immunity. You cannot sue the state unless the state agrees to be sued. So the federal law-- the



federal Congress as well as the state and the political subdivisions all have something called the Tort Claims Act. A tort claims act, they are all very similar to one another and that's going to be important in a minute. They all say you may sue the government just the same as you can sue an individual, so they waive their sovereign immunity, but then they said except in the following circumstances. Then there's a list-- list of circumstances in which you cannot sue the federal government, state government, or the political subdivisions. These tort claims acts, the federal, state, and political subdivision tort claims act, are all nearly identical. There are some changes. Senator Aguilar, Aguilar and I worked on some changes to the state's Tort Claims Act when I was here early-- years ago dealing with skate parks. So some of them have some differences, but what we're going to talk about today is an exception to the waiver of sovereign immunity for intentional torts. So what's an intentional tort? An intentional tort is the-- the-- the harm that's caused by an intentional act. So an intentional tort would include the things that you may suspect it includes, things like an assault, sexual assault, kidnapping, those things where you deliberately cause harm to someone. Those are intentional torts. So we have waived sovereign immunity and said but we're not going to waive sovereign immunity with respect to intentional torts committed by our employees. So state of Nebraska, if one of our guys that run the plows in the wintertime gets out of his car and punches somebody in the nose, the state doesn't have liability for that because it's an intentional tort and it is an exclusion to the waiver of sovereign immunity. OK so far? Sovereign immunity has not been waived with respect to intentional torts. So what happened after that provision was put into our Tort Claims Act? Lawyers started to sue the state for negligently permitting someone to cause an intentional tort. So you saw cases where a school district negligently permitted a teacher to sexually assault a student. Those cases were allowed to happen until the court interpreted that provision differently and said in those circumstances where the actor is a state employee, you can't make a claim for their intentional tort, even if the state, the political subdivision, or the federal government was negligent in permitting that to happen. That left one area still open for litigation until this last September. In September, the Nebraska Supreme Court decided a case called Moser v. the State. Moser was a case involving an inmate who was placed with a homicidal inmate by the Department of Corrections against their own regulations when both of the people said don't put us together, somebody is going to get hurt. And one person who was characterized as loud, obnoxious got in the cell with somebody who was homicidal and he killed him, just like everybody knew was going to happen. They negligently placed a

loudmouth in the cell against their own regulations with someone who was homicidal. That is a nonstate actor. A nonstate actor committed the intentional tort. A lawsuit was brought and we went up to the Supreme Court-- I didn't, I wasn't involved in this-- they went up to the Supreme Court and the Supreme Court took the opportunity to say if there is any intentional tort involved, even if it's not a state actor, there's no liability. That comes within the exclusion to sovereign immunity. And you may ask, what's wrong with that? Why do we care? Because the interpretation by our Supreme Court-- and I want you to understand I'm not criticizing the members of our Supreme Court-- but the interpretation by our Supreme Court differs from the interpretation of the very same provision by the United States Supreme Court when they interpreted a similar circumstance dealing with the intentional tort provision of the Federal Tort Claims Act. In that case, the U.S. Supreme Court said if this-- if the intentional tort, the battery or the assault or the sexual assault, is committed by a state employee, no liability. I don't care if you turn it into a negligence case. It's still a state actor, no liability. But if the actor is not a state employee, there is liability. That was the decision in, in a case called Sheridan coming out of the United States Supreme Court. So the U.S. Supreme Court said you may bring a negligence action for the intentional torts of a nonstate actor. So let me-- let me turn this into a real example so you know what I'm talking about and-- and where they-- where they cut off claims. And claims aren't just about lawyers making money. I hope you don't think that I'm standing here because this is about revenue for lawyers, it's not, because the kind of injuries we're talking about are serious injuries requiring serious care and,-- and in most cases, a great deal of counseling. Here's an example. A child is in foster care. He goes into home number one. There our teenage foster child sexually assaults a 12-year-old daughter of the foster parents. HHS takes him out of home number one, knowing that he has sexually assaulted a 12-year-old, and places him into a second home where there's a 12-year-old daughter. Now they have failed to provide for the care and safety of the family that they made a foster care parent, that child that gets sexually assaulted because they failed to exercise reasonable care to protect that child when they had a responsibility to do so. This bill and the amendment to this bill is very narrow. When I offered the bill originally, you probably heard people say Lathrop's gone further than-- than the Moser Opinion and it probably was. It would have included state actors. The amendment that I'll introduce momentarily is limited to nonstate actors in two circumstances. So if you, as a political subdivision think city, school district, county, if you take charge of somebody, for example, a criminal, if you take charge of

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somebody, you need to make sure that you keep that person from hurting somebody. That's it. If you don't, you should be responsible. But more importantly is the second class of cases and that is when you have somebody in your care, custody, or control, you have a duty to keep them safe from somebody assaulting them. So let me give you a real life example. This is a reported Opinion before the Moser decision where it happened in the Lincoln Public Schools.

**HILGERS:** One minute.

**LATHROP:** You know what? I think I'll wait and, and finish this on my opening on the amendment.

**HILGERS:** Thank you for you opening, Senator Lathrop. As the Clerk mentioned, there are committee amendments. Senator Lathrop, you're welcome to open on AM1268.

**LATHROP:** Thank you. So the example-- the example that I want to give you that is-- what we are particularly talking about is when-- when you send your child to school, you expect the school district to keep that child safe, right? If you have a loved one in a county-run nursing home or if you have a loved one at the Lincoln Regional Center or if you have a loved one in the county jail or at the Department of Corrections, you expect that they will use reasonable care, reasonable care. I just-- you expect that-- that the political subdivision will use reasonable care to keep people safe while they are in your care, custody, or control. Still, there is immunity if the person that hurts your loved one is a state actor, but what about the circumstance where-- where the actor is a third party? This is a real-life case. Lincoln Public Schools had a guy, a stranger, walk into a grade school. Walks into a grade school, people notice this person, they try to talk to him. Nobody makes him leave. He ducks into the restroom and performs a sex act on a five-year-old. OK, that's an example of a nonstate actor negligently permitted to injure someone in the care, custody, and control of a political subdivision. I'm happy to answer questions about this. It may not be your world. It is my world. I understand this stuff. Now I have seen emails that you have been sent, text messages and emails. I just saw one-- one of the Senators, I won't call him out, but that somebody sent that said this is all vague stuff. It's going to create a floodgate. It's opening the floodgates. It will cause big problems. We're going to get sued all over the place. Not true. All this bill will do is take us back to a time before the court decided a case in September of 2020. So we don't need more lawyers. Our insurance rates aren't going up because they sure didn't go down after this decision. It's not going to create a

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floodgate. I actually asked the Claims Board for copies of claims that have been filed against the state. I could find none that would fall into this category. They are rare. They are rare. They are rare cases, but let me tell you why this is important. And I want you to think about the student who is sexually assaulted by another student or by a stranger in the schoolhouse when the school district could have prevented it or the child that goes into a foster home they know is a dangerous place for kids and they put them there anyway. These are primarily going to be sexual assault claims and they're going to be abuse claims and they're going to be people who need care. This isn't about putting money in people's pockets. It's about giving access-- access to the resources people are going to need after a serious abuse or a sexual assault that could have been prevented by someone who took charge, care, custody, and control mostly of vulnerable people. It's not going to happen to me. It's going to happen to a child. It might happen to a mentally ill person. It might happen to a person with developmental disabilities, but when it happens, colleagues, they need resources. They need resources to get better, they need resources to get care, and I am asking you to reverse the decision from our Supreme Court and take us back to a place where schools, counties, cities have accountability for not taking care to protect people from harm. That's all we're talking about. And you should know that when we waive sovereign immunity, you slip on the fall-- on the floor at the courthouse, you can make a claim. You trip on jury duty, you can make a claim. You trip at the fairgrounds, you can make a claim. There are a million kind of claims that you can bring against the state and political subdivisions that you would probably see jettisoned before the kind we're talking about today. This is a small number of cases. If somebody is telling you it's a floodgate, it will raise insurance rates, or it will cause a problem, they're not being honest with you. It won't. But I feel strongly about this only because I've seen these people. I've seen these people after someone has broken a child or broken a vulnerable person or broken a child at a-- at a schoolhouse with intentional acts that could have been prevented. That's all we're talking about. That's all this bill does. It-- it just takes us back to what I would call pre-Moser days. With that, I would strongly encourage your support of both the amendment and the bill. And colleagues, I'm happy to stand here and answer questions for you and I'm also happy to-- to respond to any texts or anything that you're getting by way of communication from anyone that's telling you that this is going to be, you know, that it's going to spawn a bunch of litigation because it-- it certainly won't. And with that, thank you, Mr. President.

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**HILGERS:** Thank you, Senator Lathrop. Debate is now open on AM1268. Senator Flood, you're recognized.

**FLOOD:** Thank you, Mr. President. Good evening, members, or good afternoon, I guess. I am interested in making a record because in my sense here, I did read the Moser case and I want to talk about what I think is the-- the day standard, the d-a-y standard in the Moser case. But I-- I'm-- I'm going to take-- my sense with Senator Lathrop is he is trying to craft this narrowly and I-- I think our job tonight is to figure out how narrow it is and what it would allow in the waiver of sovereign immunity as it relates to the cases that we have. So Senator Lathrop, would you yield to some questions?

**HILGERS:** Senator Lathrop, would you yield?

**LATHROP:** Yes, I'd be happy to.

**FLOOD:** So you had kind of a two-factor test here as to when this would apply. Can you repeat those factors so that I can understand them? The first, I think, was an intentional tort.

**LATHROP:** Well, so this-- this is an exception to the exception to intentional torts. So it's an intentional tort that is a proximate result of the failure of a political subdivision to exercise care in either of two circumstances: one, to control a person whom they've taken charge-- so somebody you might arrest, for example-- and number two, failure to protect a person who's in the political subdivision's care, custody, or control from harm caused by a nonploy-- employee actor.

**FLOOD:** So in the-- in the Moser case, the one that was decided in September 2020, the issue there was that, if I remember correctly, you had a-- an inmate who had a roommate assigned to them, one of the two there, the victim-- and when I say victim, the-- the inmate was murdered by the other inmate who was assigned in the same cell. What about-- and-- and I agree, these are bad facts. Talk about the facts in the Moser case that led to the decision that the Supreme Court made that has caused us to be here today. What happened there in that intentional tort situation that-- that you're really reacting to?

**LATHROP:** Well, it's the-- so it happened in the context of incarceration, so a-- it happened at the Department of Corrections. An individual by the name of Terry Berry, who was described in the Opinion as very talkative, very talkative, and the other individual was described as very-- kind of an angry personality. I'm

paraphrasing, but an angry personality. He said don't put that guy in here and it-- the record reflects that they violated their own regulations, violated the warnings and expressions of fear by Terry Berry and they went ahead and incarcerated them together nonetheless. That person was there for a short time. Just before he was to be paroled, shortly before he was to be paroled, he was strangled to death by his cellmate.

**FLOOD:** And so in that situation, we've got an intentional tort with negligence, per se, under the rules and regulations of the Department of Corrections, where-- where you say, all right, not only did they have notice that they were putting somebody in there with an angry personality-- did the person who-- did the person they placed in the cell have a conviction for murder before? Do you remember what they were sentenced to the Department of Corrections for?

**LATHROP:** Honestly, I don't at this time.

**FLOOD:** OK.

**LATHROP:** I've read the Moser Opinion ten times, but not in the last couple days.

**FLOOD:** So I-- what I-- what I want to get at with the Moser example is what exactly was the conduct there that would qualify, in your opinion, for the-- the type of narrow waiver of-- of sovereign immunity that we're dealing with here? Is it the fact that the-- the guy was angry and the other person was talkative? Is it the fact that there-- that somebody has expressed they were going to kill somebody else? Where does--

**HILGERS:** One minute.

**FLOOD:** --that line get crossed in a correction sense for you as it-- as it relates to the waiver of-- of sovereign immunity?

**LATHROP:** So ultimately, those things become fact questions. As you know, Senator Flood, negligence is a failure to exercise reasonable care. This thing got cut off at the sovereign immunity, right, so that it never had an opportunity, I don't believe, to-- to be litigated on the facts and the merits, if I'm remembering right. But the-- the negligence comes in if you know you have somebody that placing the two of them together violates your own regulations, which is evidence of negligence, and the one person says this is not going to work out and I'm going to hurt the guy if you put him in here, that-- if you're taking reasonable care to protect somebody from harm, it's not just

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the rough-and-tumble that happens out in the yard at the Department of Corrections. That's not-- that's not the same as putting two people together in a confined space for 23 hours a day.

**HILGERS:** Time, Senators. Thank you, Senator Lathrop and Senator Flood. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. Speaker. Good afternoon or evening. Well, this is a little above my pay grade, but as I read this bill and then I began to listen to Senator Lathrop's comments-- and I would like to ask him a question or two.

**HILGERS:** Senator Lathrop, would you yield?

**LATHROP:** Yes, I will.

**ERDMAN:** Senator Lathrop, did you not-- did you or did you not say in your opening you're not here to make discouraging remarks about the Supreme Court?

**LATHROP:** That's true.

**ERDMAN:** OK.

**LATHROP:** I don't feel like I can as a-- as a practicing member of the bar and I wouldn't.

**ERDMAN:** All right. So in your comments, you have also said that-- I believe you've said or indicated that this will fix the Moser ruling. Is that true?

**LATHROP:** It will take us back to an interpretation of the Political Subdivision Tort Claims Act that preceded the Moser decision.

**ERDMAN:** OK, so I'm-- I'm having a little difficult time putting those two together. The reason that you brought this is because the Supreme Court ruled incorrectly in the Moser case, so now we need to revert back to the way it was before. So thank you for answering those questions. So let me-- let me just share where I'm coming from, what I have gathered this far, and as you well know, I'm not a lawyer and I don't pretend to be one. I didn't stay at a Holiday Inn Express or play one on TV either, but I do know this. This looks to me like this is an ambulance chaser bill, all right? That's the way it looks from where I sit. This is basically to make lawyers more money and this is to open up the state to any kind of lawsuit that comes along. Now if they can prove to me that it's not, I'd be glad to listen to that. But

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you heard what he said, that he wants to fix the decision by the Supreme Court to return them back to the way the law was before Moser. So evidently, Senator Lathrop was not happy with the decision that was rendered by the-- the Nebraska Supreme Court on the Moser case. So as we move forward with passing a bill such as this-- and I don't have a clue whether it's narrow enough and that's why I appreciated some of the questions that Senator Flood asked. But I am not at a point where I can-- I can vote for either one of these, AM1268 or LB54, and if Senator Flood would like, I'd yield him the rest of my time.

**HILGERS:** Senator Flood, 2:30.

**FLOOD:** Thank you, Mr. President. I'm just going to have a-- a page make a copy of that Moser case for me, if that would work there. Thank you. Yeah, I-- my sense here-- and I appreciate the time, Senator Erdman-- is we have to understand what we are actually waiving when it comes to the state's sovereign immunity. The Moser case is obviously something we can refer to in the record, but it comes to the words care, custody, and control. Would Senator Erdman yield to a question?

**ERDMAN:** Yes, I would.

**HILGERS:** Senator Erdman, would you yield?

**FLOOD:** So let's start with the word "care." The reason I asked that is let's say you have children at a park owned by a municipality and there's-- there's-- there's playground equipment on there and let's say the playground equipment was last used in 19-- it was last purchased in 1985. It's clearly not the new playground equipment. Kids are in-- would they be in the care of the city or the municipality? Let's say they're in Crete and they're playing on the 1985 playground equipment and let's-- and let's say one of them gets injured and you can-- you can say, well, if they would have kept their playground equipment up, they wouldn't have gotten themselves into a jam. Would that fall into the kind of intentional tort that you're talking about here?

**ERDMAN:** I'm not-- I don't know.

**FLOOD:** Oh, I'm trying to ask Senator Lathrop this question. Did I say Senator Erdman?

**ERDMAN:** Yes.

**FLOOD:** I'm sorry.



**HILGERS:** Senator Lathrop, would you yield?

**FLOOD:** Sorry.

**LATHROP:** Yes, I will. So that's not--

**HILGERS:** One minute.

**LATHROP:** --an intention-- thank you, Senator Flood, for the question. That's not an intentional tort at all. That would just be a straight-up negligent failure to maintain your city property.

**FLOOD:** OK, so let's take it-- you're in the care of a school district and I think the-- the case you referenced before is you have the doors locked to the school district at the elementary school and a sexual predator who you don't have any idea is a sexual predator, but was able to get in a side door at the school and get into the bathroom and sexually assault a seven-year-old student. Is that an intentional tort?

**LATHROP:** It's an intentional tort, but it may-- may not be negligence. So if you don't know that the person's in there-- so negligence involves reasonable care and notice. So you got to know or have an opportunity to do something about it. So somebody sneaks in, sexually assaults a student, and then slips out, you never had an opportunity to prevent it.

**FLOOD:** Right.

**LATHROP:** So there's no negligence in that case, even though there is an intentional tort.

**HILGERS:** That was your time, Senators, but Senator Flood, you're next in the queue. You may continue.

**FLOOD:** Thank you, Mr. President. Let's say that you let somebody into the building at the school and they look a lot like a student's parent, but they're not a student's parent and they're actually a sexual predator and they make their way into a room in the school and they sexually assault a seven-year-old student. That's a case of, you know, a-- a mistake. It's certainly not intentional. Does that qualify under this sovereign immunity?

**LATHROP:** So-- great question. There's two pieces to this. The sexual assault is definitely intentional. It's definitely committed by a-- a third party that's not a government actor. The negligence depends upon

the circumstances. Were they careless or failed to exercise reasonable control to guard the front door? So is that-- is the identity of this person so close to somebody that it wasn't careless to let them by or did they not have proper security measures?

**FLOOD:** OK.

**LATHROP:** So it's a-- that's a negligence issue in that case.

**FLOOD:** So when it comes to school districts, one of the-- one of the concerns that I would express is that we have, I think, greater school security than we've ever had before and that has evolved over the last 20 years. Would this bill impose a duty upon schools to essentially lock down in such a way that, you know, it's a fortress to get in? Do you think that this reasonable standard, you know, as it relates to whether or not you let the right person in or you check IDs or you do whatever you need to do, does this lead us down a path that's going to cause schools to have to spend more money?

**LATHROP:** No, I don't think so. I-- I really don't. I don't think we-- you just have to exercise reasonable care. It's not some extraordinary care. It's not a Herculean effort. It's reasonable care under the circumstances. So, for example, if there's a mass shooting at the mall and your school is a block from the mall and the guy's still on the loose, something needs to happen that's a heightened standard than simply the day-to-day standard of-- standard of care that goes on in a schoolhouse.

**FLOOD:** Let's say you are a police agency or a law enforcement agency and you arrest a drunk driver and you place them in your city jail pending transfer to the-- the larger county jail and they-- they are combative with you, which is-- which is all too often with a-- with an intoxicated individual, where-- you know, let's say that individual headbutts somebody else in the city jail and you only had one cell and you have two people in there and you knew they were drunk. Do you have a duty to have a second cell to keep them in a-- a separate area or can you use the quote unquote drunk tank and put two intoxicated suspects in there?

**LATHROP:** I don't think you have a duty to separate them until you have reason to believe that one's going to harm the other.

**FLOOD:** Well, what if you say OK, this-- this individual was combative at the bar that we picked them up at and they're calm now and we sit them in the drunk tank with somebody else that's maybe in there on a

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domestic violence situation, but is calm as well? I mean, how far back do we have to be careful enough putting that second individual in the same drunk tank?

**LATHROP:** So much of it depends on what the government actor knew or should have known, right? So if they don't know or don't have reason to believe that the person's going to be dangerous, they don't have to take any precautions until they have reason to believe that the person may be a danger to someone else. Then they have to exercise reasonable care for the person in their care, custody, or control.

**FLOOD:** And what if you're a state agency that's in the-- you know, Lincoln Regional Center, for instance? And we have a forensic unit at the Lincoln Regional Center for the most, I'm sorry to say, "irretractable," difficult, violent, violently behaving patients that are-- absolutely cannot be cared for in the community. And we-- let's say we have 100 of those patients in the state of Nebraska--

**HILGERS:** One minute.

**FLOOD:** --and they're all housed at the Lincoln Regional Center. Here's where the real question for sovereign immunity comes up. There's no place else in the state. The state doesn't have unlimited resources. We have 100 of the most difficult, sometimes violent patients in-- in our state and they're all in the same facility. How do we, in that situation, avoid a situation where we have patient-on-patient or patient-on-staff violence and prevent ourselves from getting sued?

**LATHROP:** So the-- the circumstance that you described is exactly what happens at the Department of Corrections. You have a 50-- well, there's 5,700 people in there, probably 4,000 or 3,000 of them are violent people. You have to exercise reasonable care under the circumstances and the circumstances include the fact that you are incarcerating violent people. So no, I don't believe that a-- a fight in the yard between two people is-- would give rise to liability in this circumstance unless you knew--

**HILGERS:** That's time, Senators.

**LATHROP:** --that as soon as--

**HILGERS:** Thank you, Senator Lathrop and Senator Flood. Senator Lathrop, you are next in the queue.

**LATHROP:** I'll continue my remarks or my exchange with Senator Flood. I think this is useful for you to help understand this, but I do want to

comment on Senator Erdman's comment. He called this a police-chasing bill. It will open up the state to any type of a claim. And colleagues, I realize that we are at a time where people can be cynical in politics. Ambulance chasing bill? I-- I come down here-- I'm in my 11th year and I'm sure all of you make a sacrifice being down here. You don't know the sacrifice financially that I make. I could be back at my law practice doing this. I don't get up on the helmet bill and I don't get up on this bill because I'm trying to create resources or causes of action for trial lawyers. It's because I've seen people that get injured firsthand. I've seen kids that are involved in motorcycle accidents that don't have helmets on and I see-- I see their families. I'm with their families days after it happens. The same is true here. You know, years ago when we saw this rash of-- rash of sexual assaults by-- by Catholic priests, this body extended the statute of limitations so that we could sue the Catholic Church for these kinds of claims because we recognize that when somebody is sexually assaulted, they have a lot that they need by way of care and they have suffered something they'll probably carry with them the rest of their lives. I'm not here trying to create causes of action for trial lawyers. I don't need to. I didn't come all the way down here to do this and I don't step back from my law practice in order to do that. I came down here to try to do the right thing and I happen to have some personal experience with people that get hurt in a lot of different ways and nothing is worse than somebody that's been sexually assaulted or somebody that's been abused. And you don't have to look at the circumstance in the context of an inmate, but think of it in terms of a foster child or a foster parent. HHS knows they're putting a kid together with the wrong parent or the parent together with the wrong kid and they don't tell them. That happens; not often, but when it does, that kid's going to need something-- or a school district that turns away when some boy is sexually assaulting a girl and finally a rape happens. Should they not be held accountable for failing to protect your children at school, failing to protect a vulnerable person at BSDC, at the Lincoln Regional Center? So these assaults aren't going to happen to people like you and me because we can defend ourselves. We can find help. We can avoid the situation. It's going to be children. It's going to be children. It's going to be the developmentally disabled. It's going to be people in an old folks' home. It could be someone in a veterans' home. But when it happens, they need help. I've been asked by a couple of people whether there's a cap on damages, just-- I want to answer that question and a claim against a political subdivision is subject to a \$1 million cap. That means if somebody has a brain injury and they're going to require 24-hour care and that's going to cost \$2 million--

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**HILGERS:** One minute.

**LATHROP:** --a year, the most you can get on that claim is \$1 million. There is no cap on state tort claims because why? The state has the resources. And Senator Hansen, who now chairs the Business and Labor Committee, every year before we do the budget, we do the state claims. I looked at them. I couldn't find one. I couldn't find one that fits this circumstance and you're not going to find one. You-- a school district may see one of these every ten years, but when they see one, that's a person that's going to need some help, not a lawyer that's going to make some money. You can't back up the things that happened to kids when adults don't do what they're supposed to and provide for the care and safety of kids in school, in foster care, and in circumstances where the state or a political subdivision had an opportunity to avoid that injury.

**HILGERS:** That's time, Senator.

**LATHROP:** Thank you.

**HILGERS:** Thank you, Senator Lathrop. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. Speaker, and good evening again. Senator Lathrop, just so you know, you're not the only one to give up something to come here. But secondly, let me just tell you this. You know for a fact you signed up to come here. You've been here before for eight years. You knew what you gave up then to come here and you knew what you were giving up to come back. So I think it's inappropriate you stand up and say I chose to come here, I'm giving up a lot to come here, and we should all somehow feel sorry for you or whatever you want us to do. We all gave up something. And if I was to ask someone else in this body, Senator Friesen or anybody else that has a farm-- Senator Brandt, what did you give up to come here? Senator Clements, what did you give up to come here-- at your bank? We all gave up something. We knew that. When we signed up, when we registered to run for this position, we knew what we were giving up. Deal with it. This is the camel getting his nose under the tent. So he's telling you that no one is going to be protected if we don't pass this bill, everybody's going to be injured, and this is somehow going to stop anybody from getting injured. The other issue is this. We put this little incremental step in this year and as things go here, next year, we'll change it and we'll add to it. Once we make an adjustment to a statute, it's a lot easier to make adjustment the next time. This

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is an ambulance chaser bill. I've said it before. I'm going to say it again. And with that, I would yield the rest of time to Senator Flood.

**HILGERS:** Senator Flood, 3:00.

**FLOOD:** Thank you, Senator Erdman. Senator Lathrop and I were discussing really the merits of the-- the idea of this role of an intentional tort. And as I understand, the Supreme Court had ruled in the Doe case. When I say Doe, I'm saying D-o-e. And the Doe case was really what I think, Senator Lathrop, you're referring to when the court in Moser stepped away from its precedent. Is that accurate? I'm sorry. Can I ask Senator Lathrop a question?

**HILGERS:** Senator Lathrop, would you yield?

**LATHROP:** Yes and yes.

**FLOOD:** But then the Supreme Court said but Doe is an outlier in that it is inconsistent with our prior and subsequent case law regarding generally set forth a broad definition of phrase arising out of the-- of an assault or battery. Are we really, with intentional torts, talking about assaults and batteries? When-- when you referenced an intentional tort, you're really limiting it to that, right?

**LATHROP:** As a practical matter, I think that's right. It-- it includes kidnapping. It could include libel, slander. Those are also intentional torts, but the practical matter is for someone to get hurt, it's going to be a-- an assault, whether it's physical or sexual, some kind of abuse.

**FLOOD:** Libel and slander opens up a, a whole new area, I think, obviously for us to talk about. But if we're looking at this being limited, would-- would limiting the language to assault and battery be-- would it be helpful in this context, do you think, as the Legislature considers this or would you prefer the in-- intentional tort language?

**LATHROP:** I think I'd-- just for simplicity, to leave it the way it is. I don't-- honestly, I've never seen a-- one of these type of cases. I haven't read any reported Opinions that don't involve an assault.

**FLOOD:** One of the-- one of the hurdles--

**HILGERS:** One minute.

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**FLOOD:** --I think, for a lot of members of the Legislature on this is that the government has to-- is the-- is the handler of last resort. And by that I mean when-- when somebody breaks into your home, you're not really to take it into your own hands, first and foremost. Of course, that is your right, but you're also to, you know, call the police and let them deal with somebody. If somebody is mentally ill and combative and spitting blood on somebody that's trying to, you know, help them calm down, it's the police that you call. It's the jails that house the people that are "irretractable" or behavior problems or a danger to others. And-- and now we're-- we're placing the standard on that level and I think that's where the attention comes from. Is-- in your opinion, in the way you've crafted it, what were you-- what-- what is your intention to craft it narrowly? Are you-- you're trying to save this for the worst of the worst?

**LATHROP:** It's-- yeah, it's narrow in this sense. If I negligently--

**HILGERS:** That's time, Senators.

**LATHROP:** Did you say time?

**HILGERS:** That's time but, Senator Flood, you're next in the queue. You may continue.

**FLOOD:** Thank you. May I continue with Senator Lathrop?

**HILGERS:** Senator Lathrop, would you continue to yield?

**LATHROP:** Yes. So it's narrow in-- in-- in this sense, Senator Flood, that there are many situations in which a-- for example, a school district. This happened at Fontenelle School about two years ago where they had a teacher that was sexually assaulting kids. They saw it happen. They dawdled, they did not act quickly, and another child was sexually assaulted. No liability there because it's-- because it's a government actor. This is narrow in the sense that most of the cases are going to involve a government actor that takes advantage of their position. That's covered by the-- by the exception to the waiver of sovereign immunity. This is simply not protecting people from a nonstate actor and in that sense, it is quite narrow.

**FLOOD:** My-- my concern is that, you know, it's the difference between what the actor thinks and what a jury thinks. And I think if you're running a prison, you're not dealing with 500 people that can get along and are adjusted super well in society. There are certain people in a prison that can't and that's one of the reasons they're there. And they make a decision to put two inmates together. I-- I can

imagine if you were to run a poll in a prison, nobody would ever want a roommate or, you know, they'd want their own room and there's just not enough resources. To a jury, you hear, OK, you've got somebody who has a prior conviction for this. They have anger issues and you have somebody here that was paroled in five days, whether that should matter or not, and a jury says. OK, you know, that-- this is a question of-- of negligence on the-- you know, after the assault and battery. How do we save it for the most difficult fact patterns? And-- and I'll end with this before I get your answer and-- and that is, you know, you, you go-- you're a police officer and you go to the store and you have two people that are fighting and you get one in handcuffs and you're trying to deal with that one and the other one, you know, begins a fight with someone else. And you weren't able to restrain them both and maybe there were five police officers there. At what point-- you have people here committing intentional torts and assault and battery all around you. At what point do we open up a municipality or a law enforcement agency to this waiver of sovereign immunity when you're called to a situation that's bad by the fact it's there. You've got one person in custody. You're trying to get the other one in custody and all of a sudden, they're assaulting somebody else. At what point do we draw that line? And I think your ability to draw that line is going to-- is going to dictate the support you get for this effort.

**LATHROP:** OK, then-- then in that case, I'm glad for the-- the challenge. First of all, they're not tried to juries. They're tried to judges. Claims against the state or a political subdivision are not tried to juries. They're tried to judges. That's the first thing. Second of all, for the guy you're trying to-- to wrestle and get a hold of and he-- and he gets away from you or you don't grab him because you're wrestling with somebody else, you have not taken charge of that person so there's no liability. In these cases, Senator Flood, what happens is you have expert witnesses come in and testify about the standard of care. So let's take the Nebraska State Penitentiary, which I'm very familiar with. Director Frakes is over there trying to deal with people from rival gangs. How do I-- how do I have two guys from rival gangs? They keep track of them. That would be part of the standard of care, I suspect, to ensure that they don't put people out in the-- in the yard together or more particularly, into a cell together that they know or have reason to believe are going to be in some type of an altercation.

**HILGERS:** One minute.

**LATHROP:** Does that answer your question?



**FLOOD:** Yeah. OK, so let's talk about the example with two people put into a cell. What if you have a cellblock of 30-- 30 prisoners and you have no real good options because nobody wants a roommate and nobody-- nobody there has a-- a record that doesn't have any violence and they all say they're going to kill each other. How do you navigate that?

**LATHROP:** Well, I'll just say as an aside, not everybody doesn't want a roommate.

**FLOOD:** Fair.

**LATHROP:** It stinks being 23 hours in a cell by yourself, so many of these people do want roommates. That is-- that is-- Corrections has its own standard of care. So Director Frakes, for example, has to exercise the standard of care commensurate with what other directors of corrections do under like or similar circumstances, taking care for the safety of people in his charge.

**HILGERS:** That's time, Senators. Thank you, Senator Lathrop and Senator Flood. And Senator Flood, that was your third opportunity. Senator Ben Hansen, you're recognized.

**B. HANSEN:** Thank you, Mr. Speaker. I apologize already for my legal ignorance. I'm going to wade into the waters of lawyers here. But as Senator Lathrop mentioned earlier, yeah, being the Business and Labor Chair, I've learned a lot about some of the legal claims that are made against the state. And so then now we're getting into some other territory about intentional tort claims and I do have maybe a little bit of a concern about, you know, what kind of door we are opening. Right now, he says we don't see too many claims that are like this or we-- we don't expect to, but I don't know. It may be hard to say. I just have maybe a couple of questions for Senator Lathrop if he would yield, please?

**HILGERS:** Senator Lathrop, would you yield?

**LATHROP:** Yes, I will.

**B. HANSEN:** OK, I'm-- I apologize. I'm trying to-- I'm trying to-- I'm listening here and trying to understand some of the stuff. Do you think that maybe there might be some, I hate to say-- use the term "unfunded mandate," but this-- would this-- would this cause political subdivisions to have to now beef up security or change the way they-- their policy and procedures are with inmates or their jail system? Because-- maybe harm caused by a nonemployee actor that they have to worry about now. Would-- would they-- do you-- do you suspect that if

we passed this, that then that would require these political subdivisions, etcetera, to now have to spend more money being concerned about these intentional tort claims?

**LATHROP:** No, because what we're doing is just rolling back the clock to September of last year. They were doing all of this. This was the-- this was existing law until September of last year. So you, as the Chair of Business and Labor, did not see any claims this year that involved an intentional tort, none.

**B. HANSEN:** Would-- would you expect that I would after this?

**LATHROP:** No.

**B. HANSEN:** OK.

**LATHROP:** Rarely--

**B. HANSEN:** Rarely, OK.

**LATHROP:** --rarely would be the answer.

**B. HANSEN:** Yeah, you mentioned before. OK and-- and with that, you mentioned the previous-- the Moser v. State case and I think-- I am assuming then that the Supreme Court used previous court rulings--

**LATHROP:** So--

**B. HANSEN:** --to-- to-- to-- would this negate that now? What-- you know?

**LATHROP:** Yeah, they-- they set a new course and they drew a new bright line. They, they had a case called somebody v. the City of Kimball that was decided about a year previous. And that was a-- the city of Kimball hired-- I think if I'm remembering the facts right, they hired a law enforcement officer. That person assaulted a citizen and she sued and said your employee, you negligently hired this guy, everybody knows he's a bad cop. You hired him, you're responsible. The Supreme Court said, no, wait a minute. That's a state actor and this provision that provides sovereign immunity for intentional torts applies, no case, and they threw it out. This was the next step and it just became a bright line where they said if there's an intentional tort anywhere involved in the injury, then there's no liability and-- and that was not the rule before Moser.

**B. HANSEN:** OK and I know you mentioned a lot of these claims are typically going to be sexual assault cases or-- or intentional harm, but then you also mentioned-- I think Senator Flood also mentioned this as well, the idea that there might be libel and slander as well that's included in this. Like, can you expand on that? Like, I'm a little unsure--

**LATHROP:** Yeah, well--

**B. HANSEN:** --of what that really means.

**LATHROP:** --there's a-- in-- in-- in paragraph 7 of the exceptions to the waiver of sovereign immunity, there's a list. The intentional torts are listed. It includes kidnapping. That-- that-- I've never seen one of those. Really what we're talking about is assaults, sexual assaults, abusing some child or vulnerable person.

**B. HANSEN:** So slander can't be like a police officer then, you know, verbally assaults--

**HILGERS:** One minute.

**B. HANSEN:** --somebody that they can be--

**LATHROP:** If the cop does it, the immunity still applies because he's a state actor.

**B. HANSEN:** OK, OK. All right, well, I appreciate you answering my questions and--

**LATHROP:** I'm happy to.

**B. HANSEN:** All right, thank you. Thank you, Mr. Speaker.

**HILGERS:** Thank you, Senator Hansen and Senator L-- Senator Lathrop. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. Speaker. I rise still listening to the debate, but I'm leaning that I may support both the amendment and the bill. For those of you that are using words like ambulance chasers, though, I really encourage you to watch the documentary and if you have Netflix, you can bring it up when you get home tonight called Hot Coffee and it's all about tort reform. And that's really where I learned the most before I ever came to the Legislature about tort reform because it's really about how families were demoralized and how corporate America put ideas in your head like ambulance chasers to try

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and minimize these people's pain. And there's actually a-- a family from Nebraska that's in that documentary. And for those of you that have obviously biased opinions about attorneys and tort reform, I strongly encourage you to watch that documentary because if you come back to this floor using words like that after watching the documentary, I-- I would start to lose faith in humanity. So with that said, I am going to ask a question that's specifically from my county and then I'm going to yield my time to Senator Lathrop so he can fully address the question. So my county is very interested in what is considered reasonable care. And I know you've talked a little bit about it already, Senator Lathrop, and better-- can you better define control or custody by law enforcement? What do you believe is reasonable? For example, Sarpy County versus Sheridan County, are they both the same when it comes to reasonable care? And with that, I would yield any time I have, so he can answer this question, to Senator Lathrop.

**HILGERS:** Senator Lathrop, 3:10.

**LATHROP:** Thank you, Senator Blood. I'll try to answer those questions for you. So reasonable care is, by its very nature, dependent upon the circumstances. So I used the example of a school where next door there's a mass shooting at the mall. Well, they-- reasonable care requires that they do something more than they do every day because you're-- you're weighing what's the risk of harm and what-- what is appropriate behavior to prevent harm, given the risks. So it is not a-- it is not like we can put into statute if you do this-- this and this, you've exercised reasonable care. You can't. It is a fat question, dependent-- but on the other hand, you should also understand that any time the question is reasonable care, and that's true whether it's a malpractice case, a slip and fall, or a claim against the Department of Corrections-- you have expert witnesses that come in and say in the Department of Corrections world, this is what reasonable care looks like. You don't have to have each inmate go out in the yard by themselves one at a time to exercise reasonable care. You don't. You just have to look for the threat. If the threat is real and somebody is going to get hurt and you know or you should know that that's about to happen, then you have a responsibility to provide for their safety. This is not going to open the floodgates, I assure you.

**HILGERS:** Thank you, Senator Lathrop and Senator Blood. Senator Gragert, you're recognized.

**GRAGERT:** Thank you, Mr. Speaker. I still continue to listen to this, very interesting, and I-- I'd like to yield my time to Senator Flood.

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**HILGERS:** Senator Lathrop, 4:45. Senator Gragert, who did you yield to?

**GRAGERT:** Senator Flood.

**HILGERS:** Senator Flood, 4:45.

**FLOOD:** Thank you, Senator Gragert. One of the things I would say about Senator Lathrop having been down here before is that I know that this-- his life's work has-- professionally has revolved around this and you-- you want-- when you are dealing with the victim of a terrible incident and an injustice, as you see it, you want a remedy. You want an ability to make it better for the future and the reality is that, whether people like to admit it or not, lawyers do make the world safer every day. And I know that they aren't-- we aren't celebrated on every front for every reason, but safety accrues from liability. And so to me, as I look at what Senator Lathrop's trying to do here, he's been invited to do so by the Supreme Court, essentially, in the Moser case, which said it's the providence of the Legislature to decide how this sovereign immunity is handled. I think what we have to do as state Senators is understand what we would be waiving and when we-- we would be waiving it and in what kind of situations would we be waiving it? The situation in a prison where you're dealing knowingly with very-- sometimes violent individuals or a Lincoln Regional Center situation with a forensic ward where you're-- you have people that are sick, that are mentally ill and acting out violently, those are situations where I really can get my hands around it. What happens in a school with literally hundreds of thousands of children is the part that I think really is going to be at the centerpiece of what we do here. And that's the part that I'd like to know more from Senator Lathrop on because for me, it's the part that I'm trying to understand the best. But I-- I guess I would start with a question to Senator Lathrop, Mr. President.

**HILGERS:** Senator Lathrop, would you yield?

**LATHROP:** Yes.

**FLOOD:** OK, so this is a-- this is-- for me, it's complicated to understand where this is going. What kinds of situations in schools do you think would be affected or would-- the example of a-- of a child sexual predator going into a Lincoln public school and having a sexual assault situation with a young person, I think the court actually allowed a claim like that, if I'm correct, under a prior--

**LATHROP:** They did, but they wouldn't after Moser.

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**FLOOD:** OK. Besides that, what kind of things are we looking at? Student-on-student violence is something that happens, hazing in the locker room, you know, 13-year-old boys or 12-year-old boys hazing one another in the locker room. This is what 12-year-old boys do. Where do we come down on things like that?

**LATHROP:** So what--

**FLOOD:** And I'm not condoning that, by the way. I'm just saying.

**LATHROP:** Nobody thought you were.

**FLOOD:** Yeah.

**LATHROP:** Senator Flood, what you're describing are a number of intentional torts committed by nonstate actors. What you still have to have to-- to assert a claim and prevail is negligence on the part of the school district. So if some kid out of the blue walks over and smacks another kid and breaks his jaw, no liability. That's because the school district didn't have reason to know that that was going to happen and have an opportunity to prevent it. So the negligence standard requires that you knew or should have known something was going to happen to someone who is in your care, OK?

**FLOOD:** And what if you're the basketball coach and--

**HILGERS:** One minute.

**FLOOD:** --the locker room is full of all sorts of hazing and you didn't go down there for two days, you just let the kids change and come up and-- and this stuff was happening? I don't-- does it require the kids to be supervised at all times?

**LATHROP:** No, it doesn't. It does not require the kids be supervised at all times, but I can tell you, for example-- to use your example, if you found out that the basketball team was hazing the freshman and by hazing them, they were doing something that amounts to a sexual abuse on a freshman-- you knew it was happening on Monday. You found out it was happening on Monday and you knew they were going to do it on Tuesday and you didn't go down and stop it, there would be liability. You knew or should have known that they were engaged in sexually assaulting one of their classmates and you didn't do anything to prevent it.

**FLOOD:** And would that have been allowed or permitted under the law prior to Moser, so--

**LATHROP:** Yes.

**WILLIAMS:** Time, Senator.

**LATHROP:** Yes.

**WILLIAMS:** Thank you, Senator Flood and Senator Lathrop. Senator Groene, you're recognized.

**GROENE:** I'm leaning to not support LB54. It's a-- seems to me a foot in the door into the deep pockets of the taxpayer. I understand people are harmed, but there's a reason we have the Political Subdivision Tort Claim Act because of that. You-- you're not school-- suing a superintendent. You're not suing a school board. You're suing a lot of taxpayers who are just going about their business. We've seen that. I don't know how it happened in Beatrice Six, but that was federal, I guess. But you're opening a door here and I can see-- you know, I've been doing this school discipline for six years since I've been here and I have heard horrendous stories about-- nothing against them. Don't send me nasty emails, but we have special education students that have violent tendencies, sometimes part of their I-- IEPs. And I can see a teacher overwhelmed dealing with one situation over here, and over here a known vi-- a student who becomes violent once in a while does grave harm to another student. The school knew about this. The teacher knew about this behavior. Senator Lathrop, would you have grounds to sue on that issue? Was the school negligent because the teacher was preoccupied and knowingly knew that this other student had violent tendencies and didn't get-- intervene? Could you sue? That's a question. Asking Senator Lathrop a question, please?

**WILLIAMS:** Senator Lathrop, would you yield?

**LATHROP:** Yes. Let me have that scenario again, Senator Groene. I apologize.

**GROENE:** I've got a special education student. In their IEP, it says that they're violent, can be violent tendencies. The teacher is preoccupied. The teacher knew, the school knew this student was violent, could be violent, preoccupied with another situation in a classroom. This student attacks another student and the teacher doesn't intervene because they're preoccupied. Were they negligent?

**LATHROP:** I don't think--

**GROENE:** Is that school negligent?

**LATHROP:** I don't think so. So--

**GROENE:** You don't think so? What about a jury under this law?

**LATHROP:** It's not a jury, it's a judge, and I don't think so because ultimately it's about reasonable care, Senator Groene. It's not strict liability. It's not, I was at school, another kid punched me, so you pay. The school district or the teacher has to be negligent, failure to exercise reasonable care under the circumstances.

**GROENE:** Thank you. I also see a lot of situations, as Senator Flood said, in a school situation. And I always go back to the deep pockets of the taxpayer. I would assume-- if my child attacked another child, can that parent sue me for--

**LATHROP:** We--

**GROENE:** --in a-- in a civic case, civil law?

**LATHROP:** Yeah, so parents aren't normally responsible for the intentional torts of their kids, but I think we do have one that allows a nominal amount of money, like, a thousand bucks from a parent for an intentional tort.

**GROENE:** Can the student's-- the parents sue the student that harmed their student? There's no recourse right now in civil court to sue for damages?

**LATHROP:** Can they sue-- can one student sue another student? The answer is yes. The practical matter is if it's an--

**WILLIAMS:** One minute.

**LATHROP:** --intentional tort, there-- there's just nothing to get out of that.

**GROENE:** You just answered my question. The taxpayers have deep pockets and that is why we have public subdivision protection on torts. Bad things happen. I just don't know how you can protect everybody from everything that's bad in the world and this just opens the door too wide to me, to the taxpayers' pocketbook, and I just can't be there. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Groene and Senator Lathrop. Senator Lathrop, you're recognized.



**LATHROP:** Thank you, Mr. President. Colleagues, I just want to make a couple of comments sort of in defense of this bill. So this is not the thin end of the wedge. This isn't a circumstance where we're coming back or I'll be back next year to try to expand it. This is-- this is a decision, one decision that drew a strong dissent and an invitation by the Legislature to review the decision and the wisdom and change the policy if that's what we collectively decide to do. You know, I pay particular attention, knowing that this was my bill, knowing it was going to be my priority. And so this year, Senator Williams introduced a bill so that to keep kids safe, we can call a hotline. If you see something, say something. Call this number and we'll have somebody try to get ahead of it. And when that came up, people stood up and said we need to keep our kids safe. We need to keep our kids safe. And in a-- in a stroke of great irony, when Senator Groene has introduced the bill on using force on children, we heard we need to kip-- keep the children safe. We need to keep our children safe in the schools. I paid attention during Senator Williams' bill and when Senator Murman tried to attach Senator Groene's physical contact with the student bill and the people that have skepticism tonight were standing up and-- in "unisent" talking about how we need to keep children safe. That's what this is about because if you-- if you don't have some responsibility, if you don't have a duty to provide for the children's care, then you don't and there's no accountability. There's no accountability. I could have stopped something and I didn't. I got immunity, who cares? I didn't need to. This is not the thin end of the wedge. This isn't the camel's nose under the tent. It isn't going to open the floodgates. It isn't going to increase people's premiums. It's a simple, straightforward measure that requires that political subdivisions exercise care for people in their care, in their charge. Mostly, it's going to be kids in school. Mostly, it's going to be kids that HHS places in foster care. These people get hurt, they need some help, they need some care, and somebody ought to be accountable. Somebody ought to be accountable for letting that happen. That's what this is about. No, I don't think this is going to cost political subdivisions. If you're getting texts from people who are sitting in their office telling you this is the end of the world, let me share something. It wasn't the end of the world last summer and it was the law last summer. It wasn't the end of the world. It's not going to be, but for a couple of people, it's going to make a difference. They'll get the care they need and somebody who let somebody get hurt by another person when they could have done something will benefit from that. Again, I would encourage your--

**WILLIAMS:** One minute.

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**LATHROP:** I would encourage your support of the amendment and the bill and I-- I stand prepared or happy to answer any questions you may have.

**WILLIAMS:** Thank you, Senator Lathrop. Senator Gragert, you're recognized.

**GRAGERT:** Thank you, Mr. President. Again, I continue to listen and I'd like to yield the rest of my time to Senator Flood.

**WILLIAMS:** Senator Flood, you're yielded 4:52.

**FLOOD:** Thank you very much, members. Good evening. I would tell you that when I woke up this morning, I had read this case and I had read it probably about three weeks ago. I do think Senator Lathrop is right. This-- if you had gone to a lawyer in this space, both on the defense or on the plaintiff's side, they would tell you that the standard that the Supreme Court had applied would have allowed cases like this. The Supreme Court, in its Opinion, as you read the Moser case, clearly said that they were departing from their precedent, although they-- they made some arguments, but you don't see the Supreme Court do that very often. They basically said respect for precedent should not prevent us from restoring our adherence to these statutes. We have said that while the doctrine of stare decisis is entitled to great weight, it is grounded in the public policy that the law should be stable, fostering both equality and predictability of treatment. And then they go on to invite the Legislature to-- to rebut this and change it. I think that we have made a very good record on the Legislature's watch tonight about the Legislature not wanting to see a runaway situation with a waiver of sovereign immunity. I think Senator Lathrop has crafted something that is narrow. I can't say with certainty that it is everything I would like because I'm not an expert in this. I am a member of the Legislature like all of you. I will vote to take it to the second round with the understanding that we're going to hear more from people about this and we're going to have the opportunity to visit with Senator Lathrop about any potential amendments or minimizing language that we can use to make sure this is tight and narrow. I think if-- as applied, it has the, it has the result that he believes it will have. I-- I think it's-- it is a restoration of what we had as the state law. I think if we see this grand expansion, it's something that the Legislature can address and will. I was here before when we had a situation that we addressed and we nipped it in the bud before things got out of control. And I would-- I would ask Senator Lathrop's support on something like that if we ended up with some kind of a major expansion, but I would like

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the chance to look at this between General and Select and work with other members of the body that are also lawyers, Senator Hilgers being one of them who I know operates in this space far more than I do-- Mr. Speaker-- but I-- I don't have a reason to hold it up based on what I've heard and the answers to the questions that I've had about the intentionality of the tort, the assault, the battery, the negligence, and the, the efforts and the role of a state officer or actor. This isn't horsing around in a locker room. This isn't a fight on a prison yard. That said, there are some pretty serious things that happen inside our state facilities because we're the only ones that can take care of them, so-- and we have been charged with that by the taxpayers. And I-- I like the fact that a judge decides that because judges know the types of things that happen in the state's care, custody, and control. I am concerned about as-- how this applies to a school district because you have children and you're, you're trying to manage and as a parent, I'd say it's especially troubling. But as a parent, I would also say if-- if a state actor didn't intervene and had knowledge and I had a child that was sexually assaulted, I would want a remedy.

**WILLIAMS:** One minute.

**FLOOD:** And that is what happened in a Lincoln case prior to the Moser case and I think it's appropriate in a situation like that. If you know someone's-- you know you're putting someone in harm and you're letting them in the school, oh, then yes, I want it. And so I will vote to send it to-- to a second round of debate here on Select File, but I will continue to work with Senator Lathrop on my behalf and I would encourage you to do so as well. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Flood. Senator Groene, you're recognized.

**GROENE:** Just to correct the record, what Senator Lathrop said, my efforts have always been to give the school employee, the government employee more tools to protect the youth. Senator Lathrop knows that. He helped me in some of the language to make sure that child is not harmed, that the school employees have the tools to protect the child and to protect the child that is violent before they make a grave mistake. He knows that. The point is we have to protect the-- the-- they're already the-- the public entity tort claims act protects those individuals when they do the right thing to protect a student or to protect the public. That's what it's for-- when a public employee, including the police officer. I just can't support-- if they follow the policy and because they were overwhelmed, how does a judge decide the black and white of it, that this happened, they had a

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responsibility, the employee was in the room? How do you decide that that employee was negligent and not just overwhelmed or they didn't follow policy? That was another one of my efforts so there was a policy and every school would have a policy so that they were protected by the-- that the employee followed the policy and therefore were protected by the tort law. Anything I have tried to do is protect the child from being harmed. Once a child is harmed or an individual is harmed, it might make the parents feel good to collect the check, but that child lives with that harm the rest of their life. Money won't cure that. Money is not a salve. Makes the lawyer feel good, makes the parents feel good, the person suing, but our duty is to make sure the child is never harmed. Money don't cure a wound, doesn't cure a psych-- psychological wound. Any efforts I have tried and still pursue is to make sure that wound is never opened. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Groene. Seeing no one in the queue, Senator Lathrop, you're recognized to close on AM1268.

**LATHROP:** Very briefly-- thank you, Mr. President and colleagues. I appreciate your attention. I appreciate your questions. I-- I would ask you to move this bill and the amendment onto Select File. If you have questions, concerns, if people are communicating with you and telling you that they are concerned about something, you can come to me. I'm happy to talk about it. I thoroughly understand the subject matter and I'd be happy to share my time and what I do know about it with you in answering your concerns. And I'd ask you to support AM1268.

**WILLIAMS:** Thank you, Senator Lathrop. Members, the question is shall the committee amendment to LB54 be adopted? All those in favor vote-- Senator Lathrop.

**LATHROP:** Yeah, I better have a call of the house and a roll call in reverse order, please.

**WILLIAMS:** There has been a request to place the house under call. The question is shall the house go under call? All those in favor vote yes. All those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 28 ayes, 4 nays to place the house under call.

**WILLIAMS:** 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

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please leave the floor. The house is under call. Senator DeBoer, would you please check in? Senator Linehan, would you please check in? Senator Groene, would you please check in? All unexcused members are now present. There's been a request for a roll call vote in reverse order. Mr. Clerk.

**ASSISTANT CLERK:** Senator Wishart voting yes. Senator Williams voting yes. Senator Wayne. Senator Walz voting yes. Senator Vargas voting yes. Senator Stinner voting yes. Senator Slama voting yes. Senator Sanders not voting. Senator Pansing Brooks voting yes. Senator Pahls. Senator Murman not voting. Senator Moser voting yes. Senator Morfeld voting yes. Senator McKinney voting yes. Senator McDonnell voting yes. Senator McCollister voting yes. Senator Lowe not voting. Senator Linehan voting yes. Senator Lindstrom voting yes. Senator Lathrop voting yes. Senator Kolterman voting yes. Senator Hunt voting yes. Senator Hughes. Senator Hilkemann voting yes. Senator Hilgers voting yes. Senator Matt Hansen voting yes. Senator Ben Hansen voting yes. Senator Halloran not voting. Senator Groene not voting. Senator Gragert voting yes. Senator Geist voting yes. Senator Friesen not voting. Senator Flood voting yes. Senator Erdman voting no. Senator Dorn not voting. Senator DeBoer voting yes. Senator Day voting yes. Senator Clements not voting. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Briese voting yes. Senator Brewer not voting. Senator Brandt voting yes. Senator Bostelman not voting. Senator Bostar voting yes. Senator Blood voting yes. Senator Arch. Senator Albrecht not voting. Senator Aguilar not voting. Senator Bostelman voting yes. Vote is 32 aye-- excuse me, 33 ayes, 1 nay on the committee amendments.

**WILLIAMS:** The committee amendment is adopted. I raise the call. Returning to debate. Seeing no one in the queue, Senator Lathrop, you're recognized to close on LB54.

**LATHROP:** Thank you, Mr. President. Colleagues, thank you for that last vote. I would ask you for one more green vote on advancing the bill to Select File. And again, if you have questions or concerns, feel free to let me know and I'd be happy to walk it-- walk you through it. Thank you.

**WILLIAMS:** Thank you, Senator Lathrop. Members, the question is the advancement of LB54 to E&R Initial. All those in favor vote aye-- Senator Lathrop, for what reason do you stand?

**LATHROP:** Call of the house and a roll call in reverse order.

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**WILLIAMS:** Members, there's been a request to place a house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 36 ayes, 5 nays to place the house under call.

**WILLIAMS:** Members, 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. All members are now accounted for. There's been a request for a roll call vote in reverse order. Mr. Clerk.

**ASSISTANT CLERK:** Senator Wishart voting yes. Senator Williams voting yes. Senator Wayne. Senator Walz voting yes. Senator Vargas voting yes. Senator Stinner voting yes. Senator Slama voting no. Senator Sanders not voting. Senator Pansing Brooks voting yes. Senator Pahls. 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. Senator Hilkemann voting yes. Senator Hilgers voting no. Senator Matt Hansen voting yes. Senator Ben Hansen voting no. Senator Halloran voting no. Senator Groene voting no. Senator Gragert voting no. Senator Geist voting no. Senator Friesen not voting. Senator Flood, voting yes. Senator Erdman voting no. Senator Dorn not voting. 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 not voting. Senator Brandt voting yes. Senator Bostelman voting no. Senator Bostar voting yes. Senator Blood voting yes. Senator Ach. Senator Albrecht voting no. Senator Aguilar not voting. Senator Gragert not voting. Vote is 25 ayes, 13 nays. Mr. President.

**WILLIAMS:** The bill advances. Mr. Clerk for items.

**ASSISTANT CLERK:** Thank you, Mr. President. Amendments to be printed: Senator Brewer to LB236, Senator Ben Hansen to LB241, Senator Hunt to LR107, Senator McDonnell to LB406. New resolution: LR137 by Senator Aguilar. That will be referred to the Executive Board. And a notice of hearing from the Redistricting Committee. Finally, Mr. President, a series of name adds: Senator Williams to LB236, Senator Pahls to LR128, and Senator Linehan to LR134. A priority motion: Senator Bostar

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would move to adjourn the body until Wednesday, May 12, 2021, at 9:00 a.m.

**WILLIAMS:** Members, you've heard the motion to adjourn. All those in favor say aye. Opposed. We are adjourned.