

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 23, 2024

KELLY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fourteenth day of the One Hundred Eighth Legislature, Second Session. Our chaplain today, a friend of Senator Erdman and from Senator Hardin's district, is Doug Keener, Gering Zion Church in Gering. Please rise.

DOUG KEENER: Let us pray. Father, we thank you again for this beautiful day you created for us. And, Father, we come before you seeking your wisdom, your strength. Father, we just want to serve you the best way we can. And, and through your son, Jesus Christ, we, we can do that. So, Father, we, we ask for a blessing upon this house, all the people that's involved. Father, you, you know every heart. And so, Father, I come before you today just asking that you would let the Holy Spirit lead and guide, give us wisdom as we lead our families, lead our, our communities, as we lead our state. Thank you, again, for all the people that's involved, and we just want to give you the honor and glory. In Christ's holy, holy name I pray. Amen.

KELLY: I recognize Senator Moser for the Pledge of Allegiance.

MOSER: 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.

KELLY: Thank you. I call to order the fourteenth day of the One Hundred Eighth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: There's a quorum present, Mr. President.

KELLY: Thank you. Are there any corrections for the Journal?

CLERK: I have no corrections this morning.

KELLY: Are there any messages, reports, or announcements?

CLERK: There are, Mr. President. Reference report from the Referencing Committee concerning the rereference of LB1137. Additionally, communication from the Governor. Dear Mr. President, Speaker Arch, members of the Legislature: Contingent upon your approval, as per 72-1240, Nebraska Investment Art [SIC] Council has appointed the following individual as State Investment Officer for Nebraska Investment Council: Ellen Hung. Sincerely, Jim Pillen, Governor. That's all I have this-- at this time, Mr. President.

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KELLY: Thank you, Mr. Clerk. Senator Albrecht announces a guest under the north balcony, Blake Holamp from Randolph, Nebraska. Please stand and be recognized by your Nebraska Legislature. Mr. Clerk, please proceed to the first item on the agenda.

CLERK: Mr. President, first item on the agenda. Senator Blood would move to withdraw LR275CA.

KELLY: Senator Blood, you are recognized to open on the motion.

BLOOD: Sorry, Mr. President, I had to move the masses. Fellow senators, friends all, I ask that you support my motion to withdraw this bill. It was recently brought to our, our attention that there are some technical issues that we will not be able to fix before the hearing. And since it is a short session, we thought it was more prudent to withdraw the bill as to make you suffer through the hearing. So I ask for a green vote on this motion to withdraw. Thank you.

KELLY: Thank you, Senator Blood. Seeing no one else in the queue, Senator Blood, you're recognized to close on the motion. Senator Blood waives. Members, the question is the motion to withdraw LB275CA [SIC--LR275CA]. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 33 ayes, 0 nays on the motion to withdraw.

KELLY: The motion is-- motion carries. Mr. Clerk, for the next item.

CLERK: Mr. President, next item on the agenda, LB52A, introduced by Senator Lippincott. It's a bill for an act relating to appropriations; appropriates funds to aid in the carrying out of the provisions of LB52; and declares an emergency. The bill was read for the first time on January [SIC] 14 of last year. Placed directly on General File. There is an amendment pending, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Lippincott, you're recognized to open on the motion-- on the bill.

LIPPINCOTT: Thank you, sir. Just a, a recap on this bill, LB52. It provided \$900,000 to \$1 million each fiscal year and is currently at \$852,793, which is currently \$47,000 below the current \$900,000 spending cap. The amendment, AM337, eliminates the cap for the Nebraska National Guard state tuition assistance. The elimination of the spending cap would create a need for additional appropriations to meet the tuition assistance request. In 20-- as, as a background, in

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2021, in LB450, it increased tuition assistance level to 100% of eligible credits for undergraduate degrees and included reimbursements of 50% for graduate degrees. However, as tuition costs have risen and the expansion of the program, the Military Department has expended-- expanded an increasing amount of their available funding. In fiscal year 2023, the department expended 99.8% of their available funds, in addition to a one-time ARPA funding in the amount of just a little over \$67,000. The one-time ARPA funds allowed the department to meet a \$69,000 need for tuition reimbursement request, as was included in the fiscal note from last session. With full utilization of funding, including the one-time ARPA funds, not all eligible service members were provided tuition reimbursements due to the lack of available funds. In some instances, service members who were approved were not reimbursed in a timely manner due to the lack of available funding for the fiscal year and were placed into pending repayment until the following biennium's appropriation. As tuition costs are rising, the tuition reimbursement programs expansion and the elimination of the one-time ARPA funds, the Military Department will not be able to meet all service members' tuition reimbursement requests at the current spending cap. If the cap was eliminated as proposed by the bill as amended, the Military Department anticipates a need for additional funds up to \$200,000 on an annual basis to provide assistance to all eligible service members. There is no basis to disagree with the Military Department's estimation to need to fully fund the Nebraska National Guard tuition assistance request. So, again, the individuals that are in the Nebraska Army National Guard, Air Force National Guard in undergraduate degrees, they are given 100% tuition assistance, in-state tuition assistance. And if they're in postgraduate graduate degrees, their tuition assistance is met by 50%. That's what LB52 does. And I would certainly appreciate a green vote on this.

KELLY: Thank you, Senator Lippincott. Mr. Clerk, for an item.

CLERK: Mr. President, Senator Lippincott would offer AM2137 to LB52A.

KELLY: Senator Lippincott, you're recognized to open on AM2137.

LIPPINCOTT: Again, this amendment does provide funds for LB52 and will ensure that our National Guard-- State National Guard troops will not run out of tuition assistance. Thank you, sir.

KELLY: Thank you, Senator Lippincott. Seeing no one else in the queue, you are recognized to close on AM2137. And waive. Members, the question is the adoption of AM2137. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

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CLERK: 37 ayes, 0 nays, Mr. President, on adoption of the amendment.

KELLY: AM2137 is adopted. Senator Clements, you are recognized to speak.

CLEMENTS: Thank you, Mr. President. I rise to support LB52A. The state previously has set up a program where we do offer tuition assistance for our National Guard members. The amount of funding, I'm pleased that so many have taken advantage of it, getting a, a degree here in the state. So we're just running out of funds. This additional \$200,000 will help cover those tuition reimbursements that we're running short of. And so I ask for your green vote on LB52A. Thank you, Mr. President.

KELLY: Thank you, Senator Clements. Seeing no one else in the queue, Senator Lippincott, you are recognized to close. And waive closing. Members, the question is the advancement of LB52A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 37 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB52A is advanced to E&R Initial. Mr. Clerk, next item.

CLERK: Mr. President, next item on the agenda, LB140A, introduced by Senator Brandt. It's a bill for an act relating to appropriations; appropriates funds to aid in the carrying out of provisions of LB140. The bill was read for the first time on March 14 of last year, placed directly on General File.

KELLY: Senator Brandt, you are recognized to open.

BRANDT: Thank you, Mr. President. This is the trailing A bill for the Czech heritage license plate bills. And it will allocate \$4,100 from the License Plate Cash Fund the first year and \$8,200 the second year. And then it should generate, according to the fiscal note, \$6,200-- looking, \$6,875 the first year and \$13,750 the second year.

KELLY: Thank you, Senator Brandt. Mr. Clerk.

CLERK: Mr. President, Senator Brandt would offer AM2087 to LB140A.

KELLY: Senator Brandt, you are recognized to open on the amendment.

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BRANDT: Thank you, Mr. President. What this amendment does because the A bill was not introduced last year, it simply changes the fiscal years in the note to the current fiscal years. Thank you.

KELLY: Thank you, Senator Brandt. Senator Erdman, you're recognized to speak.

ERDMAN: Thank you, Mr. President. Good morning. So we're talking about license plates, I want to bring you a little up to date. Yesterday, we had a discussion in Appropriations about contributing or making appropriations for temporary license plates. Because when someone chooses to get a personalized plate, they have to issue another temporary plate until the issue of their special plate comes in. So I had suggested this yesterday, one of the things I think would solve that issue is give these people an in transit tag that lasts for 60 days until their specialty plate comes in. It would save the state some money from making a temporary plate. Secondly, someone going forward, and I'm talking to those people who are coming back next year, someone needs to introduce a bill to design a permanent-- a permanent Nebraska license plate because it appears that every time we make a new plate they get uglier than the one before. And the reason that we have so many requests for specialty plates is because this plate that we have now is the ugliest plate I've ever seen. And so that's the reason. And so one of the Appropriations Committee members asked for a show of hands how many in the room had a specialty plate, and there was about 15 of us in the room and I think 11 of them raised their hand. So it's quite obvious what we need to do. So I would suggest going forward, somebody do an interim study this summer on a decent plate that actually recognizes Nebraska. And then we make that a permanent plate. For example, if you ever see the New York license plate you know they're from New York. It's the same every year. Colorado plates may be a different color, but they have the same mountain design. And so I think it's time for us to move ahead of the class here and have a plate that actually represents Nebraska and not some Greek goddess, OK? And so every 6 years, somebody makes a choice to have a plate that nobody wants on their vehicle. So let's fix this once and for all. So, Senator Brandt, there you go. Thank you.

KELLY: Thank you, Senator Erdman. Senator Bostelman, you're recognized to speak.

BOSTELMAN: Thank you, Mr. President. I do stand in support of the, the AM and the underlying LB. Being on the Transportation and Telecommunications Committee now for 7 years, going on 8 years, we do get a lot of license plates bills. So it's one of those things we do

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have that we need to sort through, and we continue to do that. What I want to speak on, though, this morning briefly is an issue that we've had before the body and Senator Walz has brought a bill on this actually before to the body and it happened again last night. So Union Pacific had one of their trains parked across all the roads in Mead, Nebraska last night, across the highway and across any, any road-- the roads within Mead had the-- parked it there for, I believe, 25.5 hours. County supervisors, law enforcement, sheriff's department, myself called UP, called representatives: move the train. The fire department is on the south side of the tracks. If there's an accident on Highway 92, if there's a fire on the north side of the village, they can't get to it. So operations, this is something that Senator Walz has also talked about before in Fremont and in Grand Island we had the same issue, on any of our trains, if you're in a town, you need to make sure your operations move those trains off the road-- well, off the crossings so we can get emergency vehicles to where they need to be. The liability lays on you. So I've already talked to Public Service Commission this morning. We'll have others talk to the Public Service Commission. That's not what we should be doing. I don't think it's in the best public relations for Union Pacific or any other railroad, but you don't set your train and leave it and say, oh, well, if something happens we'll, we'll come and move the train. That's too late. So hopefully we can get with operations so we can get this resolved so this doesn't happen again in any town, village, city in the state of Nebraska. You cannot cut off-- you cannot put your trains across all the crossings in town and eliminate the ability for our first responders to respond if an accident, a fire, an incident happens. You can't do that. We need to make sure that we stay on this and that we continue to work with the railroads on those to make sure that happens and their operations understand you can't block a highway. It's happened in Superior. They blocked a highway for over a day on the only highway going south out of town. So I will support the AM. I do support the underlying LB. And thank you, Mr. President.

KELLY: Thank you, Senator Bostelman. Senator Brandt, you're recognized to close on the amendment, AM2087.

BRANDT: I was going to waive but, Senator Bostelman, I just got informed that Carleton, which is in my district, has been suffering the same problem many times with these blocked crossings. And we have tried to work with the Union Pacific on this, and we're going to get together with you and maybe together we can get something done. With that, I would encourage everybody to support the AM and the LB. Thank you.

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KELLY: Thank you, Senator Brandt. Members, the question is the adoption of AM2087. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

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

KELLY: AM2087 is adopted. Seeing no one else in the queue, Senator Brandt you're recognized to close. And waive closing. The question is the adoption and advancement to E&R Initial of LB140A. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on advancement of the bill.

KELLY: LB140A is advanced to E&R Initial. Mr. Clerk.

CLERK: Mr. President, item quickly. Notice of hearing from the Transportation and Telecommunications Committee. Next item on the agenda, Mr. President, LB308, introduced by Senator Bostar. It's a bill for an act relating to public health and welfare; adopts the Genetic Information Privacy Act. The bill was read for the first time on January 11 of last year, and reported to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File with committee amendments, Mr. President.

KELLY: Senator Bostar, you're recognized to open.

BOSTAR: Thank you, Mr. President, and good morning, colleagues. LB308 adopts the Genetic Information Privacy Act. The act safeguards the privacy, confidentiality, security, and integrity of consumer genetic data. The act also ensures that consumers are in control of their genetic data at all times. Direct consumer genetic testing is widely popular. A Consumer Reports survey found that about 1 in 5 Americans has taken a direct consumer genetic test. Genetic information consists of our most sensitive and personal information. It uniquely identifies an individual, reveals their propensity to develop certain diseases, and gives insight on family, ethnic, and cultural background. Given the sensitive nature of genetic information, there are growing privacy concerns regarding direct consumer genetic testing company data practices. Traditional genetic testing administered by healthcare providers is extensively regulated, but direct to consumer companies market directly to consumers, and currently there are few restrictions on how companies collect, analyze, store, share, or sell our personal genetic information. In response to growing concern, leading consumer privacy advocates, key policymakers, Ancestry, 23andMe, and other genetic testing companies jointly created the best practices for

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direct to consumer genetic testing services in 2018. Shortly after, the best practices were translated into model state legislation. 11 states have passed this legislation so far. They include Arizona, California, Kentucky, Maryland, Minnesota, Montana, Tennessee, Texas, Utah, Virginia, and Wyoming. Companies like Ancestry and 23andMe have good reasons to support increased consumer privacy protections. Their business models depend on consumer trust. LB308 ensures that the consumer is in control of their genetic data at all times, and would require separate express consent for the following: before DNA is extracted from a biological sample and analyzed, before a biological sample is stored, for genetic data to be used for research purposes, for genetic data to be shared with a third party, and for genetic data to be used for marketing purposes. Also, genetic testing companies would be required to provide consumers with a means to delete their genetic data from their databases and close their accounts without unnecessary steps, and destroy a consumer's biological sample within 30 days of a request, and provide clear and complete information about their privacy practices and protocols. Additionally, genetic testing companies would be prohibited from sharing genetic data with employers or providers of insurance for any reason. Finally, LB308 provides that the Nebraska Attorney General may bring an action to enforce the provisions of the Genetic Information Privacy Act. It was recently reported that a major direct consumer genetic testing company had a significant security breach putting DNA ancestry information of about 14,000 individuals in the hands of hackers who broke into the site in early October. As direct consumer genetic testing grows in popularity, it is becoming increasingly important to enact regulatory guardrails to protect the privacy of Nebraska consumers. LB308 advanced out of the Banking, Commerce and Insurance Committee unanimously, with no opposition testimony. And I want to thank the Speaker for prioritizing this legislation, both last year and this year. And so I urge your green vote to advance LB308 to Select File. Thank you, colleagues.

KELLY: Thank you, Senator Bostar. As the Clerk stated, there is a committee amendment. Senator Slama, you're recognized to open.

SLAMA: Thank you, Mr. President, and good morning colleagues. AM270 is a committee amendment to LB308. It makes one small technical change related to legal actions brought under the Genetic Information Privacy Act. LB308, as originally drafted, allows the Attorney General to bring an action on behalf of a consumer to enforce the provisions of the Genetic Information Privacy Act. AM270 would amend LB308 by removing the language on behalf of a consumer. As a result of the removal of that language, the amendment will change the bill so that any action brought by the Attorney General under the act would be an

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action brought by the state of Nebraska on its own behalf. The consumer would not be a party to the action. I appreciate your support for this committee amendment to LB308. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Mr. Clerk, for an item.

CLERK: Mr. President, Senator Machaela Cavanaugh has MO487 through 493, all with notes that she wishes to withdraw. In that case, there's nothing further pending, Mr. President.

KELLY: Thank you, Mr. Clerk. Without objection, so ordered. Returning to the queue. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues. I rise in support of Senator Bostar's bill, LB308, and the Banking Committee amendment, so ably introduced by Chair Slama. And want to thank both of my friends who are engaged in this debate thus far this morning for their leadership on this important issue. It definitely touches upon an area of increased and growing concern, I think, across the political spectrum. And I wanted to just kind of elevate and lift a few of the larger points that I see related to this important bill. I think you'll see a growing concern and a growing skepticism from those of us who hold a political ideology more on the left and those friends of ours who hold a political ideology a bit farther right on the political spectrum. And that, again, is always a kind of cool and, and powerful place to be. And we saw some of that on display yesterday in regards to occupational licensure. And I think privacy writ large and digital privacy, in particular, is another one of those areas that is ripe for significant consensus. I think Senator Bostar is really on to something here. And I think Senator Kauth and, and others in the body have some very interesting measures that have been brought forward in regards to personal privacy and digital privacy and these are issues that we have been looking at and working on at the Education Committee as well. And I'm committed to bring an interim study to go deeper on some of these tools of mass surveillance that have permeated our schools. But it's appropriate and right for people to be skeptical of Big Tech and big government, and to be particularly skeptical when Big Tech and big government combine. We have a long-held, deep and abiding value in personal privacy, in individual liberty, and that is being eviscerated by tools of mass surveillance, whether that's in the law enforcement context, whether that's in the health-related issues context, or whether that's in regards to the private corporations and genetic information present in Senator Bostar's measure. So this body has followed, I think, a really smart path in recent years that our sister states have also embarked on, again, bringing together that

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right of-- right and left coalition to look at how some of these new tools and technologies impact our sense of individual liberty and privacy, whether that is former Senator Ebke's work in regards to addressing stingrays or former Senator Hansen's work in regards to addressing ALPRs, automatic license plate readers. Former Senator Morfeld and former Senator Tyson Larson worked on digital privacy issues successfully during their tenure in the Legislature as well. I definitely have continued to ask a lot of hard questions of my school district about how the implementation of things like digital hall passes track students and gather personal data, and we're still involved in a, a very important conversation about how these tools work in, in schools and impact family and student privacy as well.

KELLY: One minute.

CONRAD: So we don't get to see a lot of privacy bills every year. So I wanted to jump up and, and make sure to connect those dots and lift those issues on this. Thank you, Mr. President. I would also draw the body's attention to a measure I have pending before the Judiciary Committee, LR20CA, which would recognize, if afforded a vote of the people and if successful, a constitutional right to privacy in our state constitution. That's important for a host of different issues and areas impacting civil rights and civil liberties and pushing back against Big Tech and big government. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Senator John Cavanaugh, you are recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Oh, louder today. I also rise in support of the AM270 and LB308 and just, I guess, I had a couple conversations with Senator Bostar about this bill and just have a-- some technical suggestions. And I don't need to ask him a question on this, but I just told him I'd stand up and say I support the bill and that, that he and I have been working on a technical proposal that I will offer between now and Select File that I hope he takes as a friendly amendment. And I think he-- we've talked about it, and I think he's agreed to it in principle. And so when that amendment comes, I'd ask you all to be on the lookout for it, but in no way intends to change the intention of the bill, just kind of clean up some of the language. And so I don't think we need to belabor that point, but I just want to make sure we got out there so you aren't all blindsided when that amendment gets proposed. But it's just a small technical amendment, cleans up some of the language in this bill. And Senator Bostar and I already talked about it. Thank you, Mr. President.

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KELLY: Thank you, Senator Cavanaugh. Speaker Arch, you're recognized to speak.

ARCH: Thank you, Mr. President. I have a question for Senator Bostar if he would yield.

KELLY: Senator Bostar would yield to a question?

BOSTAR: Of course.

ARCH: Senator Bostar, you and I were talking on the floor this morning about, about what role the federal government-- this seems like something that the federal government ought to be doing so that it applies to all states. Could you-- could you relay what that-- what your response was to that question?

BOSTAR: Yeah, absolutely. And, and thank you for the question, Speaker Arch. I, I would wholeheartedly second the sentiment that the federal government should be taking the lead on enacting privacy protections nationwide. However, that, that hasn't been the case. And interested parties, including the large genetic testing companies have previously been lobbying, and probably still are, but lobbying the federal government for years and years to get something done. And, you know, I'm not sure it'll come to a surprise-- as a-- as a surprise to most people here, but the federal government hasn't been able to get around to, to getting that accomplished. And so what now has been the, the strategy in order to protect Americans across the country is the development of, of state legislation and, and advocating for its introduction in states across the country. As you heard in my opening there's, I think, 11 so far have already passed it. There's many, many more who are considering it this legislative session now. And so that-- that's, that's why we're here. That's why we're talking about it. I will say that on the healthcare genetic testing side or, or, you know, healthcare genetics, that has some federal protections on it, obviously. But when it comes to things like this that everyday Nebraskans are engaging with or, you know, on the-- on the consumer side really, really no protections exist. And so that's why this is so critically necessary.

ARCH: Thank you, Senator Bostar. I certainly support what you're doing here. Thank you for bringing this.

BOSTAR: Thank you.

ARCH: Thank you, Mr. President.

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KELLY: Thank you, Speaker Arch and Senator Bostar. Seeing no one else in the queue, the question is the adoption of AM-- Senator Slama waives closing. And the question is the adoption of AM270. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays on adoption of the committee amendment, Mr. President.

KELLY: The amendment is adopted. Seeing no one else in the queue, Senator Bostar, you're recognized to close on LB308.

BOSTAR: Thank you, Mr. President. I'll be brief. As I mentioned earlier, there was a breach of a, a major generic consumer testing company and their data. I don't know how much of that data that was accessed and retrieved unauthorized belonged to Nebraskans. But my hope is that if we pass this, then Nebraskans can at least have some peace of mind that any future malicious activity targeting genetic data will, will have some more protections for, for the folks that we represent. So with that, I would encourage everyone to please vote green for LB308. Thank you.

KELLY: Senator-- thank you, Senator Bostar. The question is the advancement of LB308 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB308 is advanced to E&R Initial. Mr. Clerk, next item on the agenda.

CLERK: Mr. President, single item quickly. Senator Cavanaugh, amendments to be printed to LB308. Next item on the agenda, LB664, introduced by Senator Riepe. It's a bill for an act relating to public assistance; provides powers and duties to the-- for the State Medicaid Fraud Control Unit and the Attorney General under the False Medicaid Claims Act; harmonize provisions; repeals the original section. The bill was read for the first time on January 18 of 2023, and referred to the Health and Human Services Committee. That committee placed the bill on General File.

KELLY: Senator Riepe, you're recognized to open.

RIEPE: Thank you, Mr. President, and good morning, Senators. I introduced LB664 on behalf of the Attorney General's Office to make 2 modifications related to the Nebraska False Medicaid Claims Act. LB664 was voted out of the Health and Human Services Committee on a 7-0

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vote, and was marked as both a 2023 and 2024 Speaker priority by Speaker Arch. LB664 has no fiscal impact. Thank you, Chairman Hansen and Speaker Arch, for your assistance in advancing this legislation. And thank you to Mark Collins, Assistant Attorney General and director of the Medicaid Fraud and Patient Abuse Unit, for your support with this legislation. The first modification would parallel recently enacted federal legislation authorizing the Nebraska Medicaid Fraud and Patient Abuse Unit to investigate and prosecute cases of abuse, neglect, or exploitation of Medicaid recipients who receive medical services inside and outside of institutional settings. The second modification would authorize the Attorney General access to applicable records to any resident living in a Medicaid-funded facility when investigating and prosecuting cases of abuse, neglect, or exploitation, regardless of whether or not that resident is a Medicaid recipient. This includes an expansion of preexisting subpoena powers to include the records of those previously excluded. Medicaid fraud control units were authorized by Congress in the mid-1970s to investigate and prosecute the abuse, neglect, and exploitation of residents in Medicaid-funded facilities. The congressional mandate extended to all residents, regardless of whether or not they were on Medicaid. However, contrary to federal authority, Nebraska Revised Statute 68-945 now prohibits the Nebraska Medicaid Fraud and Patient Abuse Unit from reviewing or obtaining information concerning a non-Medicaid resident of a healthcare facility without the patient's consent or a court order. Reviews of legislative history of this passage does not uncover the reason for this prohibition. LB664 fixes this making Nebraska's laws consistent with Congress's intent and aligns this statute with similar provisions, provisions found in 49 other states. With that, I yield to any questions and ask for your support in advancing LB664 to Select File. Thank you, Mr. President.

KELLY: Thank you, Senator Riepe. Mr. Clerk, for an item.

CLERK: Mr. President, Senator Conrad would withdraw MO764 through MO770.

KELLY: Without objection, so ordered. Senator Erdman-- Senator Erdman, you're recognized to speak.

ERDMAN: Thank you, Mr. President. Good morning again. I was wondering if Senator Riepe would yield to a question or two?

KELLY: Senator Riepe, would you yield to a question?

RIEPE: Yes, I will.

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ERDMAN: Senator Riepe, I read through this bill yesterday. I looked at the repealer that you're repealing those statutes of the Fraud Control Unit and you're replacing them with the language that matches the federal standards. Is that correct?

RIEPE: That's correct.

ERDMAN: OK. How long has that been that we've been different than the feds? How long is that? When did they pass that in the federal government?

RIEPE: That-- I am not exactly sure when the-- how long we've been out of what they would call compliance, but it's been for some period of time and, and long overdue.

ERDMAN: All right. So the Attorney General brought that to you because he finds that some of this information that he needs is not avail-- is not available to him under our current statute. Would that be a fair assessment?

RIEPE: That's a fair statement that he did not have access to it. And it's such a, a big number in terms of state expenditures that we need to be addressing to make sure that we have those that are qualified for care, need care, and receive care, and those that don't, don't.

ERDMAN: So this fixes a situation where people are falling through the cracks and not getting the service that they, they should have?

RIEPE: Yes.

ERDMAN: OK. All right. Thank you very much.

RIEPE: Thank you.

KELLY: Thank you, Senators Erdman and Riepe. Seeing no one else in the queue, Senator Riepe, you are recognized to close.

RIEPE: Thank you, Mr. President. In closing, I want to express gratitude for the productive debate. Again, thank you for the Speaker Arch for making LB664 as a priority. And thanks to Chairman Hansen and Mark Collins, of the AG's Office, for their assistance. LB664 aligns Nebraska law with recent federal legislation empowering the Medicaid Fraud and Patient Abuse Unit to investigate and prosecute cases involving abuse, neglect, and exploitation of Medicaid recipients. It also grants the Attorney General access to records of residents in Medicaid-funded facilities. These are all of the facilities, not

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necessarily the individual, irrespective of Medicaid status. The legislation reflects inconsistency in our state law, bringing us in line with congressional original intent, and aligns us with the other 49 states. I urge your support in advancing LB664 to Select File. Thank you.

KELLY: Thank you, Senator Riepe. Members, the question is the advancement of LB664 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 41 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB664 is advanced to E&R Initial. Mr. Clerk, next item on the agenda.

CLERK: Mr. President, next item is LB43, introduced by Senator Sanders. It's a bill for an act relating to the Administrative Procedure Act; requires hearing officers to interpret state agency rules and regulations de novo on the record; requires courts and hearing officers to interpret statutes and regulations to limit agency power and maximize individual liberty; and repeals the original section. The bill was read for the first time on January 5 of 2023 for the Government, Military and Veterans Affairs Committee. That committee placed the bill on General File with committee amendments. There are additional amendments, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Sanders, you are recognized open on LB43.

SANDERS: Good morning, Mr. President, and members of the Legislature. I stand here today to bring LB43 before you. Earlier on in our education, we were taught about the separation of powers among three branches of government and the importance of each separation. The separation of the branches are critical in ensuring the individual liberty is protected. State agencies, which are often under the umbrella of the executive branch derive their powers from authority granted by the legislative branch. LB43 aims to guide hearing officers and judges concerning how the legislator believes they should treat agencies in interpretation of either statutory or regulatory language when a challenge is brought through the court system. Judicial deference is a concept in administrative law by which courts are expected to defer the administrative agency's interpretation of a statute or regulation if the legislative language is unclear. Some have argued that judicial deference has contributed to the growth of administrative agency powers, a more powerful bureaucracy. The goal is

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to make the legislative language clearer. The question raised by the legislators-- the legislation is this: if there's a dispute in the courts or in some judicial administration hearing about regulations or statutory meaning, who then should the court hearing officer listen to? Deference to the administrative agency grants power to an unelected branch of government to define its own power. LB43 gives the Legislature the ability to guide the hearing officers and judges about the use of differences-- deference in case interpreting statutory or regulatory language. This bill says that rather than on-- than going to an agency for definition, the court should use customary tools of interpretation like the statutes wording, its legislative history, legislative hearing records, and so on. However, if those do not provide clarity for deciding a dispute, the court should resolve the remaining doubt in favor of an interpretation that limits agency power and maximizes individual liberties. In our system of government, it's important for the Legislature, the people-- people's branch of the government to say what it means when granting authority to executive branch agencies, and we must protect the legislative branches' authority to legislate. When we are unclear, the judicial branch should decide cases to protect the liberty interests of citizens rather than protecting the power of the executive agencies. I want to thank Chairman Brewer and my colleagues on the Government, Veterans and Military Affairs Committee [SIC] for prioritizing LB43, and I am pleased that it could be the vehicle for other bills as well. Thank you, Mr. President.

KELLY: Thank you, Senator Sanders. As stated, there is a committee amendment. Senator Brewer, you are recognized to open.

BREWER: Thank you, Mr. President, and good morning, colleagues. I would like to start by thanking Senator Sanders for providing our LB43 to carry our, our committee priority. So Senator Sanders' LB43 was heard in the Government Committee last year on February 9, and we heard from several different organizations that testified in support of the bill to include the Platte Institute, Pacific Legal Foundation, and the Nebraska Association of Public Employees. The Bar Association came in opposition of the bill. The Attorney General's Office was neutral with some technical concerns. Seven members of the committee voted to advance LB43 out of the committee with AM2076. We had one member that was absent. The bill was designated as 1 of the committee priority bills with our committee amendment. We added provisions from 5 other bills onto LB43. Those bills include Senator Hansen's LB41, my LB277, Senator Sanders' LB297, Senator Conrad's LB366, and Senator McDonnell's LB650. We had to tweak a few of the bills to get them in shape to be considered on the floor. Our committee statement includes

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additional details on those changes. These packages focus on 2 primary areas: the-- we call APA, the Administrative Procedure Act, and the public records law. This bill, as amended, would protect Nebraskans and their Nebraska charities from bureaucratic overreach. It would protect religious freedom and the wearing of tribal regalia by Native students. It would improve government transparency and protect our cyberspace efforts by modifying the public record laws. We have reached out to the other senators that I've listed on that list of bills, and have asked them to go ahead and to get in the queue and address their specific bill one by one. I'll do the same thing for LB277 here in a minute. I would ask that we get your green vote on AM2073 [SIC] and on the base bill, LB43. Thank you, Mr. President.

KELLY: Thank you, Senator Brewer. Mr. Clerk, for an item.

CLERK: Mr. President, Senator John Cavanaugh would move to amend the committee amendments with AM2081.

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

J. CAVANAUGH: Thank you, Mr. President. Thank you, colleagues. Thank you, Senator Brewer and Senator Sanders, for bringing this bill and the other folks who brought other parts of this bill. I think LB43 with AM2076 has some really good parts. And so my proposed amendment, I think, is more of a technical suggestion as to 1 specific section, which happens to be Senator Brewer's. So LB43, the underlying bill sets a standard of review for courts and agency hearing officers to favor the individual litigant or the, the private person when dealing with government regulations or controversies involving the government. It's meant to be a restraint on government authority and on the private citizen. My amendment AM2081 to the committee amendment which is-- addresses LB277, the First Freedom Act. LB277 would allow for citizens to bring a cause of action against a state agency or political subdivision for violations of the First Freedom Act, specifically for substantially burdening a person's right to exercise their religion. My amendment would clarify that this cause of action could not be used to challenge any provision of law or the implementation of law that provides for or requires protections against discrimination or the promotion of equal opportunity, including Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, and the federal Americans with Disabilities Act. Employers would provide wages or other compensation or any benefit including leave, standard protections-- standards protecting collective activity in the workplace, protections against child labor abuse or exploitation, or

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access to information about referral for or provision of coverage for any healthcare item or service, any item of government contract grant, cooperative agreement, or other award that requires any good-- goods, services, function or activity to be performed for or provided to any beneficiary or participant in a program activity funded by such government contract or grant or any goods, services or benefit or accommodation provided by the government to the extent that the application of the First Freedom Act would result in denying a person the full and equal enjoyment of such goods and services or benefits. It's important that this bill be a-- be a shield to protect religious freedom rights of people, and not a sword to challenge well-settled nondiscrimination law or employment protections. This is particularly true with various federal laws that the state must abide by, regardless of our own state policy or opinion. We cannot pass laws that directly or indirectly, by providing cause of action, contradict federal nondiscrimination law. And, and this amendment clarifies that. Additionally, any bargained agreement or community development project or other matter that are enforced by this contract cannot be undone by the Legislature. So this bill, in its current form, is not clear on whether the cause of actions could be challenged by law or contract and should-- and we should make that clear. So if you look at the committee statement of LB30-- or LB43 and the committee statement LB277, there were opponents of this bill. And I think my amendment addresses a number of their concerns. So I'd appreciate your green vote on my amendment. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Moving to the queue. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President, and good morning, colleagues. I actually wasn't planning to talk much today after the rules debate and LB16 yesterday. But then I was delighted to see that the Speaker had put our Government Committee bill, LB43, on the agenda. And I will tell you, it is a distinct honor and joy to work with my colleagues on the Government, Veterans and Military Affairs Committee [SIC] under the leadership of my friend Senator Tom Brewer. And like most committees in this body, if you look at the membership, of course, not only is there a diversity in terms of where we hail from geographically, but from an ideological perspective, from a political philosophy perspective is an incredibly diverse committee, and it makes for some really excellent dialogue and debate at the committee level and in our internal Executive Sessions as well. And so, first of all, on that note, I'd encourage you, colleagues, to look at the committee statement for LB43 and look at the diversity and strong support from myself and colleagues across the state and the political

spectrum in support of this measure and its component parts. The other thing, before we get into the minutia of important legal and policy issues that I want to kind of help set the table with is, what I see in this Government Committee package is the through line or the connection of the disparate parts, the connection of those dots is an effort by the Government Committee to reset the balance, to "retip" the scales in the right direction towards individual rights, personal freedom, and personal liberty, and away from big government gatekeeping and bureaucracy. So that's kind of the through line that I'm thinking about when I look at what LB43 does in terms of instituting and establishing a clear personal liberty lens in APA practice. When I look at the amendment that covers the components of my public records reform measures that put stronger tools in the hands of citizens to hold their government accountable. When I look at the other measures that Senator, my friend Senator Ben Hansen brought forward to ensure personal privacy and donor privacy for those who are exercising their First Amendment rights to associate, to give to charitable organizations, and to ensure that there's not undue or unnecessary or even punitive reports or other matters put on nonprofits in regards to how they go about pursuing their mission, which may include advocacy, of course. So I think that there really is a lot of moving parts in this committee amendment. I think on the whole, it is very strong and very smart, and it resets the right balance to individual rights and liberties. I expect that we will have a serious and legitimate and important debate when it comes to aspects of the First Freedom Act. And I will note just at the outset, there-- this is one of the most controversial and complex areas of the law that has evolved over our history on the federal level, on the state level, in the state courts, at the federal--in the federal courts. And there's not a lot of easy answers here, but I think--

KELLY: One minute.

CONRAD: --we're going to do our best-- thank you, Mr. President-- to sort it out together. I think one of the important takeaways that people should think about when they're looking at the First Freedom Act is how Religious Freedom Restoration Act historically have been used to protect those who exercised a, quote unquote, minority religion, whether that's Hindu, whether that's Muslim, whether that's Jewish, whether that's Indigenous religions. And that has been really the primary utilization of those acts. Now, of course, due to recent controversies, it does spark concern for some issues related to LGBTQ rights or other aspects of civil rights. But I'm happy to be a productive member of the discussion, answer questions on or off the mic, and look forward to a great debate. Thank you.

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KELLY: Thank you, Senator Conrad. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President, and good morning, colleagues. I do rise in support of Senator John Cavanaugh's amendment. And I'm, I'm still, I guess, open to debate and kind of back and forth on whether or not I support the underlying LB43 and AM2076. I would agree with Senator Conrad and also Senator Sanders in her opening when we talked about sort of one of the-- one of the most important things we learned in civics early on is the importance of freedom of religion. And, obviously, freedom of religion means you have the, the right to exercise your religion without impediment or without the government telling you, you can't-- what you can or can't do. I always believe in that and I think that we need to make sure that that stays enshrined in our laws. I also think, however, we have to ensure that it doesn't go too far in the other direction. Like all things, it's a balancing act. We have to make sure that one person's individual exercise of religion does not go so far as to encroach on somebody else's rights. Certainly, I think that the constitution allows all of us to practice our religion in whatever way we see fit. But I think we have to make sure that we don't push that on other people. And so I think that LB43 seeks to strike that balance. And I appreciate the hard work of the Government Committee. Senator Brewer, I think, in his amendments here speak to a number of those issues. And so I, I do think that that's something that we should consider when we're debating whether or not to implement laws like LB43 is how we strike that balance. Senator John Cavanaugh's amendment, I think, seeks to further clarify some of the concerns that myself and others have had. And so I would encourage my colleagues to, to vote yes on that. I do have some underlying concerns with the bill with regards to just the structure of it and how it works. Regardless of whether or not one supports the underlying concept, I think we have to make sure these things function and, and just have answers to questions. And looking at this from a criminal law perspective, I just have a couple of, of concerns that I was wondering if anybody could answer. I don't know who exactly to ask these questions to. But a good example of this is on page 2, line 23, Section 4. It talks about how a person or religious organization may bring a civil action or assert a violation of this law in an impending-- or an impending violation as a defense in a judicial proceeding. So what that seems to imply is that a person would be able to assert a violation of this law as a defense in any kind of judicial proceeding, which to me would also include criminal matters. So the question that I have there is, in the event that, let's say someone is charged with child abuse, would an assertion that their religious

freedoms are being violated be a defense to that child abuse charge? And, if so, how would that work? Does this create an affirmative defense wherein the defendant would have to put on some evidence and have the burden shift back to them to demonstrate how this act is being violated, which would then create a defense to that law? Is it a defense that would be considered by a jury or by a judge, simply by the allegation that this act has been violated? I just don't know. And at what point do you then, I guess, weigh the validity of the religious violation? Does the court then have to make the determination about whether or not it's a, a closely held or validly held religious belief? Do they have to find that the charge actually does violate the tenets of that religious belief? There's just a lot of questions I have with regards to how that would be implemented. It's not just a hypothetical. There have been cases here in Nebraska where people have actually alleged, as part of the defense or as at least a part of the proceedings, that their church has gotten involved in the process or that they've had their religious beliefs violated. And so I, I think that it's something we absolutely will see come up. And I'm just curious what the interplay would be between Section 4 and a criminal defense perspective. Another question that I have here, specifically about Section 4, just reading it out loud, it says: a person or religious organization whose exercise of religion--

ARCH: One minute.

DUNGAN: --or religious service-- thank you, Mr. President-- has been burdened or restricted or is likely to be burdened or restricted in violation of the First Freedom Act may bring a civil action or assert such a violation. The fact that it also allows for the civil action to be brought simply because their religious service or exercise of religion is likely to be burdened, I think creates a ripeness issue. I don't know when we necessarily determine, I guess is there-- when that violation could potentially happen down the road. Is it some sort of proximate cause argument? There's just a number of issues, I think, with that sentence that I just, from a legal perspective, would appreciate a little more clarity with regard to the exercise of how that would-- that would play out. Happy to have a conversation with this with my colleagues off the mic. I think, again, the sentiment of the bill is one that is good. I just want to make sure that it actually functions. And I think Senator John Cavanaugh's amendment does seek to answer a few of those questions. Thank you, Mr. President.

ARCH: Senator Fredrickson, you're recognized to speak.

FREDRICKSON: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. I, too, have been listening closely to the debate here today, and I'm really excited and interested in discussing this further. I appreciate Senator Sanders dedication to ensuring we have clear legislative intent. I think that she did a really nice job in her opening describing why LB43, in particular, is important. And it's also, I think, important in ensuring that our 3 coequal branches of government remain, in fact, coequal, and that we do not defer or give power away from the legislative body and vice versa from the executive branch or from the judicial branch. So I appreciate Senator Sanders for bringing this bill and to the Government Committee for prioritizing this bill and all the other folks who have introduced individual bills in here. There are a number of really good things in this package. One of the main components of the bill, like some of my colleagues have already been discussing, is LB277, which was originally introduced by Senator Brewer. And this includes really important protections for Native American students in our schools. And let's be absolutely 100% clear about this, these protections absolutely need to be put into law. Native Americans have faced enormous historical discrimination to practice their religious customs from placement in boarding schools, to forced attire, to forced cutting of hair, and many other atrocities. The history of discrimination against Native people is long and very, very, very cruel. One of the things that gives me a bit of pause as I consider the committee amendment AM2076 and specifically LB277's component is what has recently been happening surrounding the LGBTQ community and how religious freedom has been used and weaponized in ways that are far beyond an expression of simple religious faith. Section 3 of this bill is very broadly written, sometimes with good intent. There may still be unintended consequences. And for some people, some of these consequences as it relates to the community-- to my community may sadly be intended. Some people might look at this part as a license to weaponize religious freedom. So we have seen court cases play out in this very subject matter. And I think it's incumbent upon us, and I'm listening to all the discussion to make sure that we are intentional about the effects of this. That's why I support Senator John Cavanaugh's amendment, AM281 [SIC--AM2081], because I think it brings added clarity to this very strong package of bills. Like I said earlier, LB277 has very strong protections, particularly for our Native and Indigenous communities that do need to be supported and do need to be put into law. I think AM2081 helps assuage some of my other concerns regarding the underlying bill. Thank you, Mr. President.

ARCH: Mr. Clerk, for items.

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CLERK: Mr. President, thank you. Your Committee on Transportation, chaired by Senator Moser, reports LB600 to General File with committee amendments via a corrected committee statement-- committee report. Notice of committee hearings from the Government, Military and Veterans Affairs Committee, the Appropriations Committee, and the Health and Human Services Committee. As well as an amendment to be printed from Senator Blood to LB834. That's all I have at this time.

ARCH: Senator Lowe, you're recognized to speak.

LOWE: Thank you, Mr. President. I want to just quickly rise and support LB50-- LB43 and the underlying amendment from the Government Committee, AM2076. At this time, I'm not able to support AM2081 from my friend John Cavanaugh, but I do support the AM2076 and the LB43. Thank you to Senator Brewer and the Government and Military Affairs Committee [SIC] for amending LB297 into this committee package. LB297 was brought by Senator Sanders and was my 2023 personal priority bill. We did not have time to get back to everyone's priority bills last year so I'm thankful that we will be able to discuss this important piece of legislation and hopefully advance all these bills to Select File. Thank you.

KELLY: Thank you, Senator Lowe. Senator Hansen, you're recognized to speak.

HANSEN: Thank you, Mr. President. I'm just briefly going to go over a portion of my bill that was included in AM2076. This would be LB41. This had to do with charitable organizations. In, in, in other states we have seen an increasing call for charitable organizations to disclose an increasing number of details about their operations, governance, and grant-making beyond what the Legislature has required. 13 states have enacted this legislation in the last three years. There are multiple states that have enacted this legislation in the past. And, actually, I think there are 3 or 4 that are currently looking at doing it in the future. I believe our charitable organizations in Nebraska should be highlighted, commended and encouraged, not drawn into over burdensome regulations that haven't been authorized by, by this legislative body. There is no downside to passing this legislation, but without it there could be a chilling effect on the vital contributions of philanthropy in our state. New private foundations and charities may not emerge to solve community problems, and existing foundations could not spend down their assets or move to other states with more favorable philanthropic protections in place. This bill was advanced from the Government, Military, and Veterans Affairs Committee. We made a few word changes since that time to

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address concerns by DHHS. So I ask for your support in this amendment and advance the bill. And with that, I would like to yield the rest of my time to Senator Brewer. Thank you.

KELLY: Senator Brewer, you have 3 minutes, 45 seconds.

BREWER: Thank you, Mr. President. And, thank you, Senator Hansen. All right. What we're going to do now is jump into my bill specifically, since we had the overview before when I was up on the mic and I'm on-- I'm in the queue so I'll, I'll come back because we won't get through it right now. So LB277, the, the First Freedom Act-- many of you guys know that last year my fight was on the Second Amendment in LB77. Ironically, this year, LB277. And it's the First Amendment, not the Second Amendment. And I'm, I'm challenged because Senator John Cavanaugh has been good to sit down, walk through issues, talk through issues. You know, we're not in the same place. But, you know, what he's trying to do is help the bill. But we'll, we'll kind of talk it through when the time comes on, on where we're, we're separate there. And-- but I appreciate the fact that he's, he's trying to help me understand some of the lawyer talk. I think today is going to be a bit of a feeding frenzy of lawyers. So I sometimes wish I had that skill set, but we're going to-- we're going to try and get through it here. Now the, the challenge that we have with the First Freedom Act is, is it is essentially 2 portions. The second being the tribal regalia thing, which I don't think any have issues with. So we're not going to-- we're not going to burn a lot of time and energy on that. It's the first part that we're going to try and get through. And what I want to make sure is that you understand that this came about through a number of years and a number of issues. I mean, it goes clear back to the COVID situation and having a policy where we were more restrictive with businesses. Otherwise, a liquor store was able to be open, and yet there was restrictions on being able to have a church open. They should be on the same playing field, at least at a-- at an even keel. And so that's what got this going. And then as we went along, we looked at some other areas that needed addressed. We looked at where other states were doing things that we weren't doing that we thought it needed to be done. And it-- and it ended up coming together into this bill, which is AM2076. So what I want to do now is to kind of take you into that First Freedom Act and, you know, it-- what it does is provide legal protections for the--

KELLY: One minute.

BREWER: --the, the freedom of, of conscience. And, and this is really going back if, if, if you just look at some of the very basic

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fundamentals in the-- in the First Amendment. This is where we, we kept cycling back to. And probably as we did that, we found areas where we needed to figure out how to, to bring that playing field together. Now we're going to is have back and forth-- back and forth and get into a lot of technical terms, lawyer terms, and I'm going to do my best to, to slow walk through so you understand why we are where we are, what the differences between what Senator John Cavanaugh is trying to do and how that affects the bill itself. And with that, I'll step off and get back on the mic in the cycle.

KELLY: Thank you, Senators Hansen and Brewer. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. Good morning, colleagues. I want to say about the underlying bill that there are so many in the, the package in general. There's so many things that are really good that I really enjoy about this bill that I think are, are going to be really great, including the tribal regalia part, which Senator Brewer just mentioned. I think that's really important. There are a lot of things that we need to do to shore up the issue of finding a way to keep the government out of our religious life, that's important to me, to make sure that the government isn't weighing in on doctrinal differences. Those-- that's very important. So some of my concerns about this bill have nothing to do with the underlying idea. I think that's great. It's-- some of it is in how we actually make this work. So one of the questions I have is about the cause of action. It says that you can get actual damages for, for having your religious freedom violated. And I wonder how you would measure actual damages. See, colleagues, if you bring a tort for actual damages for your arm being broken, then there's a way of figuring out over time sort of what that damage would be. So you get your medical costs, you get all of that sort of thing, there's pain and suffering, but that-- there's like other standards that have developed over time. We have a way of measuring of coming up with damages. I don't know how we would do that when it comes to having your religious freedom violated, because on the one hand it seems like that number would be infinite, right? Having your religious freedom violated in some way would be infinite. So that's a question I have. I want to know if-- I guess I'll ask Senator Conrad this, she signed onto the bill. So, Senator Conrad.

KELLY: Senator Conrad, will you yield to a question?

CONRAD: Yes. Yes, of course.

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DeBOER: Senator Conrad, you have heard some of the concerns I have when we're thinking about the cause of action for tort, for violation of your religious freedom.

CONRAD: Yes.

DeBOER: So it says there's actual damages. How would we measure actual damages of violation of religious freedom?

CONRAD: Yes, absolutely. Thank you, Senator DeBoer, and not to take up too much of your time, but just to hopefully provide some clarity for the discussion. I'm a cosponsor of LB43, Senator Sanders' bill, which is the committee vehicle bill. That is related to administrative practice. There is a committee amendment which includes a Religious Freedom Restoration Act, the First Freedom Act that Senator Brewer has brought forward that is-- has components in it to establish a separate cause of action or, in essence, a legal framework for deciding religious freedom claims. Right? So one thing that we would think about when it comes to deciphering actual damages, and you know this from, perhaps, your practice is that they're not illusory, they're actual damages. So there's a well-established process within civil law wherein the parties, if they are found to be successful in a case like this, would have to be able to document and prove what their actual damages are. So I'm just brainstorming on [INAUDIBLE]--

KELLY: One minute.

CONRAD: --which is always dangerous. But say, for example, in regards to-- thank you, Mr. President-- in regards to a, a church that wasn't able to have their service for whatever government interference, and then they brought a claim under this, they would start to quantify actual loss in terms of pecuniary matters, say, for example, what they lost in the collection plate that month or that week or other actual damages that they can prove. So I think it's going to be restrained in that regard. I don't think it's going to be an unrestrained number. And I think the civil law already recognizes the system to do that.

DeBOER: OK. I will get back on the microphone and ask you about the State Tort Claims Act next because I think we're going to run out of time here. But I would like to talk about state tort claims. Thank you.

KELLY: Thank you, Senators DeBoer and Conrad. Senator Bosn, you're recognized to speak. And waives. Senator von Gillern, you're recognized to speak.

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von GILLERN: Thank you, Mr. President. I rise in support of LB43 and AM2076, but opposed to AM2081. In my reading of Senator Cavanaugh's AM2081, I see what I used to call in my business "over lawyering." There's numerous protections sought in the amendment for items that are not negated by the bill, nor the amendment, AM2076. In Senator Cavanaugh's amendment, it says on line 6: that Age Discrimination Employment Act shall not be violated. Line 7 says: that the Nebraska Fair Employment Practice Act and the Nebraska Fair Housing Act shall not be violated. Line 8 says: that the federal ADA Act shall not be violated. In my reading of AM27-- AM2076, in the underlying bill, I see nothing that says that these important laws that protect the most vulnerable Nebraskans may be ignored or violated. There's nothing in LB43 or AM2076 that says that age discrimination, housing discrimination, employment discrimination, or discrimination against a handicapped individual may occur nor be embraced. Therefore, I encourage you to vote to advance LB43 and AM2076, but stand opposed to AM2081. Thank you.

KELLY: Thank you, Senator von Gillern. Senator Brewer, you're recognized to speak.

BREWER: Thank you, Mr. President. All right. For those of you that aren't attorneys, you can see why I appreciate having Senator Conrad on the committee. Sometimes these issues, if you have someone who can kind of break it down into terms that are common and easy to understand, it isn't so hard that we work through some of the, the, the issues that the point that people are trying to make are easier to understand, I guess is where I want to go with this. It was also brought up to me that I probably owed it to folks to explain a little on the tribal regalia-- regalia and how they came about. Since it happened in my district, I'm probably the best one to explain it. It happened at Cody-Kilgore. They made a decision to cut a Native American youth's hair. The result of that was a lawsuit. The school did lose the lawsuit. That, that isn't the sole reason why it was included in this, but it was a factor. There are school districts I think don't necessarily appreciate some of the impact of their actions, such as what Cody-Kilgore did. Now you can say, well, the court system took care of that, and to a degree they did. But it also leaves wounds that cause issues that are hard to, to fix later, as far as, as those students that are attending and those that had to go through that whole experience. So this helps to clarify that. Understand the tribal regalia part is not the controversial part of this. It is the, the first Freedom Act. Senator von Gillern, I appreciate you coming and explaining that. What I need to do now is, is to kind of help shape the understanding of, of this amendment of

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Senator Cavanaugh's. Again, I think when you have a controversy like this, if you have someone to help work it, even if you don't agree, the fact that you have a chance ahead of time to go back and forth and, and better understand both sides of it and why they brought the concern, I think that's kind of the secret to making this place work like it's meant to. So, Senator Cavanaugh, thank you. But now as we talk through this, I'm going to try and shape the fight on why I don't think it's necessary. There's no need to have a, a special carve out, whether it be for special interests or whatever, because what's in place is this balancing test that we're proposing here has, has worked for 30 years on the federal side, and we have 23 other states that are using it. So if there was a boogeyman out there, I think it would already be evident. And I think what we've done is a better cleaned up version of what some of those other 23 have. So we've been able to, to avoid having a bill that, that had as many issues. Now this balancing test-- again, I wish I was a lawyer, I wish I could verbalize it better, but what you have to do is go off the advice of those who have the legal experience. And what we don't want to do is be picking winners and losers. And I think that's what this does. This bill gives them a day in court and gives them a chance to represent their, their issues and concerns. And, and that's what I think is essential about being able to have a law that, that shapes this so that that's the end state that you, you are able to have that representation. And we don't want the government to be too overbearing.

KELLY: One minute.

BREWER: Thank you, Mr. President. But we also want them to be able to have that day in court and that it would be a fair, balanced day in court. Now, again, 30-year track record on the federal side. And this goes back to, you know, the folks that, that established it were, were folks like, like Schumer and, and, and Kennedy. And they did that because they got it wrong back there and they had to make that correction. So with that, I'll, I'll end and pick up in the cycle again. Thank you, Mr. President.

KELLY: Thank you, Senator Brewer. Senator McDonnell, you're recognized to speak.

MCDONNELL: Do you want to jump in here, Tom?

BREWER: Oh, it's all yours.

MCDONNELL: Thank you, Mr. President. Good morning, colleagues. Thank you, Senator Brewer, for the work he's done as the Chairperson of the

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committee, all committee members, and Senator Sanders for bringing LB43. I rise today in support of LB43 and AM2076. AM2076 contains LB650, a bill that I introduced during the 2023 session, supported by the Nebraska Association of Counties and League of Municipalities. Had no opposition and was advanced out of the Government Committee. The original LB650, which has been amended into AM2076 and now LB43, amends statutes related to public records to allow the state and its political subdivision to restrict public access to certain records relating to cybersecurity. It instructs the Nebraska Information Technology Commission, NITC, to adopt and promulgate the rules and regulations determining precisely what records and information will be protected. Cybersecurity is a growing concern in the public sector. According to the quarterly Global Threat Intelligence Report released by BlackBerry Limited in 2023 saw a 40% increase in cyber attacks against public sector entities. And according to the 2023 IBM cost of the Data Breach Report, the average public sector entity data breach cost \$2.6 million each. We should do all we can to protect the cybersecurity infrastructure and harden our systems against nation state actors such as Russia and China. AM2076 to LB43 helps ensure our cybersecurity. Again, my bill has no fiscal impact and there was no opposition at the hearing. I-- Chair, I will-- I will give the remainder of my time to Senator Brewer. Mr. Speaker--

KELLY: Thank you, Senator. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: I'm sorry, I think he yielded to Senator Brewer.

KELLY: Senator Brewer, you have 4-- Senator Brewer, you have 2 minutes, 30 seconds.

BREWER: Thank you, Mr. President. All right, let's jump back to where we were here. And so some of the states have, have done what we're trying to do with AM2076 through legislation. Others have done it through the court system. The bottom line is, is this: the government should not-- should not single out religious organizations or other members for unfair treatment. That's where we've gone with this. And I just want to make sure that the religious exercise is not being targeted, and that the religious exercise could be-- well, for example, say feeding the homeless in a city park. You can figure out all kinds of scenarios and then try and figure out, you know, would, would this bill negatively affect them? If it's not a safety issue or health issue, then you should be able to practice your religion as you see fit as long as you don't exceed those limitations. There are some people that are concerned about this proposal because they think that

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it's going to hurt a particular group. Trust me that, that was never part of any, any process or any thought. I mean, we worked hard to figure the other way so that it didn't negatively affect any particular group. That it, it was a, a even blanket that covered everything. Nearly half of our sister states have this law and it's been working.

KELLY: One minute.

BREWER: So, again, I, I, I appreciate Senator Cavanaugh's work, but I would ask that you support AM2076 and the base bill, LB43. Thank you, Mr. President.

KELLY: Thank you, Senator Brewer. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. And I appreciate Senator Brewer's comments, and I certainly appreciate his work on this bill and so many other important issues. And I really appreciate him accepting my constructive criticisms in the spirit in which they're intended, which, as I said, is that I agree with a lot of underlying bill, LB43. And I agree with a, a good bit of LB277. But I do think that there-- I, I disagree that it's as sound as it could be. And so I brought some suggestions forward that I thought could help with that. And I was-- I would say I would respectfully disagree with Senator von Gillern, I did appreciate his statement about being over lawyered. And I would say, if anything, I feel like my amendment is under lawyered. And I will say the reason why is, when I look at the bill and it specifically states that, that-- let's see, substantial burden shall not be placed on people. And it says: that notwithstanding any other provisions of law, state action shall not substantially burden folks. And what notwithstanding means that state burdened-- state, state action shall not burden somebody, regardless of other laws that already exist. So I say it's under lawyered because I did list out a number of state actions, and I did list out some federal laws as well. But my read of that is when you say notwithstanding, you could say notwithstanding the Nebraska Fair Employment Practice Act, the state shall not substantially burden a person's right to exercise. And so that's what I'm meaning there is that this LB277 in AM2076 allows for a cause of action against the state on the basis of your religion if you feel like your religion is being overly burdened by the Fair Housing Employment-- or Fair-- the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, or the Age Discrimination Act. I suppose Senator von Gillern is probably correct that the Americans with Disabilities Act is a federal act, and this does not specifically

give us authority to do that, nor could we. But in the interest of being appropriately lawyered, I'm trying to articulate the number of places in which I, I guess we see a potential for conflict between these things. And Senator Brewer, I think, is putting his faith-- no pun intended-- but his faith in this bill into the balancing test, which the balancing test is that a person has to articulate substantial burden, and that then they have to demonstrate that the state action is burdening their, their exercise of religion in a particular instance and that the, the action is not essential to a compelling government interest and is not the least restrictive means of furthering that compelling government interest. So that's the balancing test he's talking about there. And so I guess I'm trying to say in these particular instances that we're setting out that we don't want to invite those challenges. So-- and I don't think it's an intention of Senator Brewer, I think, to create an environment where people are going to be seeking to undermine some of the fundamental protections that have been enshrined in state law. He's trying-- he's trying to further enshrine other fundamental protections as he pointed out the First Amendment. You know, the government shall make no law regarding the establishment of religion, right? So-- but what I'm saying is that there are these certain instances where we, you know, have seen, in other places in the country, attacks on individuals--

KELLY: One minute.

J. CAVANAUGH: --that are rooted in religious assertions. You know, we've, we've seen attacks on people's access to certain types of healthcare. You know, I think it's the Hobby Lobby case is one, right? Where we're saying someone's religion prevents you from providing contraception to an employee. So we're listing out a few places here where we can see religion-- someone-- one person's religion may conflict with another person's rights. And saying that this intention of this bill is not to allow you to impose your religion upon your employee or your neighbor. It is to prevent the state from infringing upon your religion. That's the intention. And that's the part that Senator Brewer and I think we agree on and that we, a lot of us, I assume all of us agree on, the state should not impose itself upon someone's religion, but you should not impose your religion upon your neighbor. And that's the line we're trying to figure out how to parse here. So--

KELLY: That's your time.

J. CAVANAUGH: Thank you, Mr. President.

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KELLY: Thank you, Senator Cavanaugh. Senator Hardin, you're recognized to speak.

HARDIN: Thank you, Mr. President. I want to thank Senator Cavanaugh for teaching me a new phrase today, which I promise to use often, "to be under lawyered." It will bring joy to me every time I use it. I stand in support of LB43 as well as AM2076. I stand opposed to AM2081. And the portion of LB2-- of LB43, that was my priority bill last year, was in fact the First Freedom Act, LB277. And I believe the AM2081 claws at the heart of that particular bill. You know, I think we're right over the target when we're talking about the broad strokes of the brush of what it is to be an American, when we talk about those concepts like freedom, like liberty. And liberty, freedom, those sorts of things are not a zero sum-- they, they are a zero-sum game. They're not infinite. We know for sure that it's really tough when you're dealing with those broad strokes of the brush to quantify them. It's very difficult to say this much was infringed upon or that much was expanded, but we all certainly know when they have been infringed upon ourselves. There's no doubt in our souls when it takes place. And so with that I would just say it's a common practice for everyone here to wake up each day and say you know what, in that interaction with that person I felt a little bit infringed upon. My rights were harmed. While we may not quantify it, we do experience it. And it's something that everyone here experiences daily. And that's really what this bill, LB277, was, I believe, about when Senator Brewer brought it. And so, I stand in support of both AM2076 as well as the underlying bill. Thank you, Mr. President.

KELLY: Thank you, Senator Hardin. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, again, I, I rise in support of AM2081 by Senator John Cavanaugh. I, I think he hit the nail on the head in talking about why it is important to denote in that amendment what this underlying amendment or bill does and does not affect. I also appreciate the notion of being under or over lawyered. I know that lawyers, often, get a bad rap in here and I understand why. Sometimes I think we can overthink things, but I think we have to be very careful when we're passing laws such as this to think about all the ins and outs of how these are going to ultimately go into effect and what they actually are intended to do versus what unintended consequences could come from them. And part of the reason, I think, that Senator John Cavanaugh and others, like Senator Conrad and Senator DeBoer with a legal background, are highlighting these things is when you've actually been in the courtroom and seen how some

of the laws can be articulated or argued in the middle of, say, a trial or a civil action or a criminal action, it can be really confusing. And what originally appears very straightforward to us in the body can sometimes be actually much more complicated when you have two people in an adversarial system arguing that a law means two very different things. So the, the further clarification that we can provide, and the further highlight that we can give on what this law does and does not do, I think is important. And I think what we're all trying to do is suss out what the balance is between ensuring individual rights to religious liberty, which we all believe is important, and then also making sure that those are not then further infringing on the rights of others. I think Senator Hardin is, is very, very correct when he says that what it means to be American is to be able to exercise your, your religion and exercise your right to your own individual liberty. But we have to make sure then, that the rights of others don't infringe upon that. And that's, I think, a balancing test that we see time and time again in the U.S. Supreme Court, when they're debating what it means to protect religious freedom, but ensure that that does, does then not take rights away from somebody else. Right? You want to make sure that a kid feels free to pray if that's what they want to do before a football game. But you want to make sure that the other kids who happen to, maybe, practice a different religion don't feel left out. Right? What it means to be American is that they all come together in that classroom and they can all feel welcome and nobody's made to feel excluded. And I think that Senator Brewer is doing a really fantastic thing by ensuring that those individuals that, maybe, practice religion differently than some other people have their rights protected. The tribal regalia is an incredibly important thing to make sure that we're protecting those kids' or those individuals' rights. I think that we forget sometimes how important it can be to somebody to exercise that, that religious, I guess, expression and how it can feel very freeing. During this interim session, I was very, very fortunate and very lucky, I got to go to the Nebraska State Penitentiary, as they did something called the Freedom Run. And the Freedom Run is a run that they do every year that's essentially an adaptation of the Sacred Hoop Run, where they have a ceremonial staff that they keep running in a circle continuously for days on end. And they keep tally of how far they've run. And it's to essentially raise awareness of the plight of Indigenous people in Nebraska and in America, but also to highlight issues such as mental health problems within the Indigenous communities, substance use disorder, missing Indigenous women. And it was a really incredible experience. I got to go out there and talk with some of the folks about their rights to practice their religion

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as Indigenous people. And they talked to me about how important it is for them to have those rights protected to make sure that they can still practice the way they want to. And so--

KELLY: One minute.

DUNGAN: --thank you, Mr. President-- it was very moving to me, and I think it highlighted the importance of enshrining those protections. But, again, I think we have to be very careful to balance this and ensure that these protections are not at some point in time down the road used to curb the rights of other individuals. And I think what Senator John Cavanaugh's amendment does is clarify, yes, you have the right to religious freedom through all of these different means, but one cannot assert their religious freedom as a reason to encroach upon the freedom of others or the rights of others specifically delineated in the paragraphs as laid out in the amendment. And so I do think it is an important guardrail. I do know we over lawyer from time to time in here, but I think in this circumstance it actually does create a little bit more clarity in a potentially unclear situation. And for that reason, colleagues, I would urge you to support AM2081, along with the other amendments. Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Senator Sanders, you're recognized to speak.

SANDERS: Thank you, Mr. President, and members of the Legislature. I am pleased to bring LB297 to the floor in the Government package. I thank Senator Conrad for cosponsoring this bipartisan bill, and I want to thank the Nebraska Family Alliance and ACLU of Nebraska, as well as other nonprofits across political spectrum for their support of LB297. As shown in this bill, reaches across party lines to fix an issue that affects Nebraskans across the board. LB297 seeks to ensure state and local government are prohibited from requiring or releasing personal information from nonprofit organizations. While there is a nationwide push for laws that mandate disclosure of personal information from supporters and donors of nonprofits, Senator Conrad and I firmly believe in protecting everyone's right to free speech as outlined in the First Amendment. Since 2014, over 275 focused donors-- forced donors, disclosure bills have been introduced in state legislatures around the nation. Many activists would like to target individuals on their personal beliefs through nonprofit donation information. Nonprofit organizations serve as a crucial role in encouraging a free exchange of ideas. Private citizens are entitled to have their donations to nonprofits kept confidential. Thank you, Mr. President. I yield the rest of my time.

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KELLY: Thank you, Senator Sanders. Senator Conrad, you're recognized to speak. Senator DeBoer, you're recognized to speak.

DeBOER: Sorry, colleagues. I was actually asking a question of someone and didn't quite make it here. So one of the things that I was talking with Senator Conrad, don't know if she's available, but one of the questions that I would want to clarify between General and Select File is whether or not the cause of action, which we have illustrated in Section 2, I think, of this bill would be available for someone to bring or is it within the State Tort Claims Act? Is it outside of the State Claims Act? I suspect it should be within the state tort claims, because we would allow folks to sue political entities, subdivisions under this or else I don't know what the purpose of it would be. So, Senator Conrad, would you yield to a question?

KELLY: Senator Conrad, would you yield to a question?

CONRAD: Yes. Yes, of course.

DeBOER: Thank you, Senator Conrad. I'm still kind of catching my breath so I'll let you talk for a second.

CONRAD: Well, you heard I just missed my time on the mic, so I was ready to, to get here in time but I was not fast enough, but. Yeah, I, I think I, I, I know where you're headed.

DeBOER: State tort claims. So, go.

CONRAD: I think I know where you're headed, Senator DeBoer. And I think you and Senator Dungan, Senator Cavanaugh, and others have raised important questions about how this component of the committee bill would interface with other areas of law, like the framework that we have. It's well established in the State Tort Claims Act. So what we've been talking about, and which you're well aware of, and sorry if this is redundant, is that I believe it's my understanding that Senator John Cavanaugh is going to pull his amendment prior to a vote on his amendment. There is a good faith agreement amongst all stakeholders to come together in between General and Select File and talk about the finer points of, of tort law, because I don't think we're probably going to negotiate that on the floor this morning. But that would give us a little bit more space and time to make sure that this measure harmonizes with existing law in the State Tort Claims Act.

DeBOER: OK. One other question for you. One of the concerns that I had when reading this originally was that this act might supersede some

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sort of city ordinance or some other sort of thing, county, I don't know, some small ordinance or, or other that somebody would say, OK, whatever you're requiring here, city violates my religious freedom. Is that something that you think that this act is envisioning?

CONRAD: Right. And I understand where your question is coming from, whether or not this is, in essence, like a state preemption against local nondiscrimination ordinances, like the one that we have in Omaha, for example. So I'll give you a lawyer's answer, which I know you'll appreciate being one yourself, is I think it's complex and I think it depends. So I think this is another area where we probably need to get a little bit of clarity together off the mic in between General and Select File so that we can ensure that everybody has an understanding about how this measure impacts local ordinances or not. And with that caveat, Senator DeBoer, I do want to remind you and the body and for the record, we also have federal law that's an umbrella over this in the recent Bostock decision and otherwise, which says, for example, it's illegal. It's impermissible to discriminate against an employee because of their sexual orientation or gender identity. So this state law and those local ordinances can't erase that.

DeBOER: OK. So one of the things I'll just want to make sure before we come back on Select is that we aren't unduly taking a preemptive act here with the state over fairly adjudicated laws on the city level or, or something like that.

KELLY: One minute.

CONRAD: Yes.

DeBOER: OK. Well, that's something that hopefully then we can work on between General and Select to make that explicit in the, the bill. And then I think we can fix some of those less clear areas as you called, I think, the finer points of tort law. So thank you, Senator Conrad. Did he say time? Oh, am I back? OK. All right, so-- I got cut off for a second.

KELLY: 30 seconds.

DeBOER: OK. Thank you. Colleagues, I'll just say that there are so many good things in this bill that I think it's worth working on. And it's worth working between General and Select. This is good old-fashioned legislating where, you know, you have a number of eyes on it in committee, they did some really good work. And now we have some more eyes on it on the floor and so we're going to make some,

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some fine adjustments to make sure that everybody is actually doing in the bill what they want to be doing in the bill. So thank you, Mr. President.

KELLY: Thank you, Senators DeBoer and Conrad. Senator Bosn, you're recognized to speak.

BOSN: Thank you, Mr. President. I am rising to speak as it relates to Section 14 of the bill that's on page 18. I don't believe anyone has talked about the de novo definition and what that means. And so if they have and I'm being redundant, I apologize. But I've had several individuals come and ask me, what does de novo mean? That's in the section above Section 14. De novo basically means new. You're looking at it fresh from the start, without reference to the legal conclusions that the previous court may have made. A lot of times when you have a case on appeal, the court-- the appeals court may look and say we're going to assume the facts were the same, but we're going to determine the legal issues in the matters of law with a fresh set of eyes. So that's really what Section 13 does. The concern that I have that I've brought to Senator Sanders is Section 14, almost confuses what Section 13 does. So what Section 13 says is we're going to look at this regulation de novo and not defer to the agency's interpretation. And then it goes on to explain that without really any definition and so it ultimately results in some vagueness into what those things mean. For example, it talks about the customary tools of interpretation of a statute. We don't define what those are and what that means. It then talks about, well, you're looking at this new, but then if there's any remaining doubt, we'll defer. Well, if you're looking at it new, we aren't going to talk about remaining doubt because you're looking at it without considering what the previous court said. What does maximizing individual liberty mean? So some of those things I, I have concerns with, I've talked with Senator Sanders, she's not in here. But so I would ask her, but it's my understanding that she's willing to work on those things. And so I just wanted to bring them to the attention of the body between now and Select File. Hopefully, we can come up with a resolution that accommodates those concerns that I have. Thank you, Mr. President.

KELLY: Thank you, Senator Bosn. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues. I continue to rise in support of LB43 and AM2076 as emanating from the Government Committee with diverse, strong support. One thing that I know is going to be part of our practice this session is when package bills come

forward, when committee bills come forward, is that the committee Chair and the Speaker has asked each of us with component parts, therein, to spend a little time building a record on our bills that are contained in those packages or bill. So one measure that is included in the Government Committee amendment, which I am incredibly grateful for, is a long overdue update to our state's public records laws. And, colleagues, you've heard me talk many times about our strong and proud tradition of open government in Nebraska, and that is effectuated through some key tools in our statute books. Our open meetings laws and our public records laws. And sadly, colleagues, I have seen really a, a tightening and evisceration, dare I say, shenanigans, across different levels of government; political leaders, for different reasons, continually tamping down on a citizen's right to know what their government is doing in their name and with their money. And I've conducted a lot of open records, public records work in my time as a civil rights attorney over the past 20 years. And it was once very simple and straightforward to get information about what government was up to. And it has become increasingly difficult. And my point in bringing this measure forward is I don't care what your motives are. If you're a reporter, if you're an everyday taxpayer who's upset with the cost your county is spending on gravel, if you're a Liberty mom and who's concerned about curriculum at your school, you're an election activist who wants to know more about how elections are conducted, or you're a Black Lives Matter activist and wants to hold law enforcement accountable, the law does not mind what you're meant-- what your motive is. However, more and more citizens in Nebraska are having government play games with their right to know under our public records laws. So that's why this important rewrite has been brought forward as part of the Government Committee package. One point that I want to make sure is very, very clear on the record because I've talked about this with some of our colleagues off the mic and we talked about this at the committee level, the original piece of legislation that I brought forward, LB6-- LB366, which was a rewrite and an update and a strengthening of our public records laws, originally had a very, very small component therein, which said body camera footage would be available under the public records laws in instances of in-custody death and after the requisite grand jury review-- a very, very small carve out for transparency when there is a grave instance of in-custody death at the hands of law enforcement. For a variety of different reasons and negotiations over the interim, we've decided to not advance that component of the bill. So what you see before you in the committee amendment leaves untouched the current status of the law in regards to how police body cam footage interplays with our public records law. So I do just--

KELLY: One minute.

CONRAD: --thank you, Mr. President-- want to be clear about that part. And I've communicated the same to law enforcement who had some concerns about how that would play out. From a principled perspective, I hate to give up that component. I, I believe that body cam footage is a public record. I think everybody agrees that. The only question under our, our public records laws is whether or not government chooses to disclose that under the exemptions. In many instances, they do not or they do so selectively. So I'm going to continue to work on that issue. But I do think the component parts that were advanced from LB366 otherwise, as part of this committee amendment, are good and strengthens the public's right to know. It is untenable that we have citizens and journalists frequently running to the Supreme Court to effectuate their right to get basic information from their government about what their government is doing in their name and with their money. A lot of people aren't going to be able to afford--

KELLY: That's your time, Senator.

CONRAD: --that court battle and we need to update our laws. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Seeing no one else in the queue, Senator John Cavanaugh, you're recognized to close on AM2081.

J. CAVANAUGH: Thank you, Mr. President. Oh, colleagues. So I appreciate the conversation we've had this morning, and for those of you-- everybody's-- I've been hearing off the mic a lot of conversations about just generally how constructive our conversations and debates have been this year. And I would point you all to this is a good example. I appreciate the work of Senator Sanders and Senator Brewer and the-- and the Government Committee on this bill. And even though they put in a lot of work, this bill came from last year. The reason for floor debate is for-- to get other sets of eyes on things, to have people point out criticisms, hopefully constructive ones, but sometimes less constructive, I guess. But to point to problems they see in the bill and then to say, let's work on it. Right? Senator Brewer and I have been having conversations off the mic about, you know, my concerns about this section. I know others have had conversations on the mic and off the mic about their concerns with both LB277 and other sections of the bill. And so I think that this has been a very constructive conversation. And I appreciate, you know, the proponents of this bill articulating that it's not their intention to repeal or to undermine our fair housing acts, our fair employment

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statutes, our disabilities acts or discrimination in employment and equal opportunity to not undermine child labor laws, and to not undermine collective bargaining and other things. So I appreciate all those comments. I do think that there's room to work on this bill and I know that there are folks who are looking to work constructively on this. And so I'm going to pull this amendment so that we and others can work to get some of the changes. I'm not saying we're going to get to all the places. Maybe not everybody's going to alleviate everybody's concerns, but there are issues that I think have been drawn out in this conversation, that we could make some constructive changes to this that are not going to undermine the intentions of these valuable proposals from the Government Committee. And I think this is how debate should work. We bring these up. I brought my proposal. People pointed out their concerns with my proposal. So we'll go to the drawing board. We'll come back between now and Select with maybe 1 amendment, maybe a few others. But this is the constructive, iterative process that this is supposed to be, where we all come into it, you know, in that spirit. That Senator Brewer, I'm grateful for his willingness to engage in this conversation in the constructive way that I intended, and Senator Conrad, Senator Sanders, Senator DeBoer, who've all kind of brought out some of these-- Senator Dungan, don't want to ignore my row mate. So I will pull AM2081, and we'll come back with something perhaps a little less ambitious or maybe more ambitious between now and Select. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. It is withdrawn. Seeing no one else in the queue, Senator Brewer, you are recognized to close on AM2076.

BREWER: Thank you, Mr. President. Well, I probably need to start by apologizing to Senator Cavanaugh. When he first brought the amendment, I may have growled at him a little. But I think what came out of this morning was a really refreshing back and forth that this institution was probably designed to have, and we just maybe got out of that rhythm when we didn't have it all the time. I have come to appreciate those who understand the law and will share it, especially in a way that's understandable. So, Senator DeBoer, thank you. I, I consider Senator Conrad a treasure in the committee because she is the one that I go to the most, as far as the committee members, to try and help guide the ship and get us to where we need to be with, with these kind of issues. We will take a look at the, the items that have been identified that may need some tweaking. And we'll work to get there so that on Select we can-- we can have a product and be ready to move it on to Final Reading. So with that, I would just ask for your support on AM2076 and on the base bill of LB43. Thank you, Mr. President.

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KELLY: Thank you, Senator Brewer. Members, the question is the adoption of AM2076. All of those in favor vote aye; all of those opposed vote nay. Record, Mr. Clerk.

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of the committee amendment.

KELLY: The amendment is adopted. No one else in the queue. Senator Sanders, you're recognized to close on LB43. And waives. Members, the question is the advancement of LB43 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 37 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB43 advances to E&R Initial. Mr. Clerk, next item.

CLERK: Mr. President, next item on the agenda, LB600, introduced by Senator Lippincott. It's a bill for an act relating to the Transportation Innovation Act; changes provisions relating to the Transportation Infrastructure Bank Fund; changes provisions relating to the purpose of the Economic Opportunity Program; eliminates an obsolete provision; harmonize provisions; and repeals the original section. The bill was read for the first time on January 17 of 2023, and referred to the Transportation and Telecommunications Committee. That committee placed the bill on General File with committee amendments. There are additional amendments, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Lippincott, you're recognized to open.

LIPPINCOTT: Thank you, sir. LB600 is about filling a gap in state programs for infrastructure development by creating the Municipality Infrastructure Aid program. Nebraska's prime location between coasts, robust transportation network and inland port potential makes it a perfect location for attracting long-awaited economic development projects. However, these projects need infrastructurally sound investment pieces. Nebraska has been a contender for at least 4 large economic development projects since 2019, 2 of which were lost due to a lack of construction-ready sites. The key to having construction-ready sites is having infrastructure that can support the needs of highly lucrative businesses. Compared to neighboring states, Nebraska is lagging in the development of 500 to 1,000-plus acre sites that are needed to attract large employers or regional manufacturing, processing, trade and logistic hubs. Grand Island has over 12,000 acres of contiguous blighted land, located on the outskirts of the

city that was formerly the Cornhusker Army Ammunition Plant and cannot be zoned for residential use. These acres are perfect for private investors to establish these hubs, and would be a huge economic driver for central Nebraska. It features an existing rail network, including links to both the Burlington and Union Pacific rail lines and provides easy access to Interstate 80. However, there is expansive need for infrastructure overhaul to attract these investors, most notably sewer and water, to the area. To put it in perspective, a BMW facility that considered Nebraska as a site in 1992 has generated more than \$16 billion in economic impact annually and 30,000 jobs in South Carolina. Nebraska did not have the sites or infrastructure readily available in 1992, and we, as a state, are still failing potential investors, both within and outside the state, by limiting the assistance available and not helping our communities enough so that they can be competitive in these selection bids. As an example, Hornady Manufacturing Company testified at the hearing about their facility west of Grand Island located in the developing industrial park. The company has invested over \$70 million to extensively develop this particular site in facilities, warehousing, natural gas service, communications, roads, potable water systems, and wastewater infrastructure. That location alone employs over 600 Nebraskans, and the company would like to further expand the site. However, because the site has no water, no sewer infrastructure, Hornady has had to construct six wells, five wastewater lagoons, and these wells and lagoons take up land space and further expansion would require three more lagoons and two more wells. They've reached the point where it doesn't make sense, nor do they have the geographic area to expand without the city's sewer and water infrastructure being run out to the site. LB600 is a tool in the economic development toolbox for communities across the state they can use to leverage and attract private businesses and drive economic growth. The green copy of LB600 sought to broaden the Economic Opportunity Program, created and funded via the Transportation Innovation Act. The Economic Opportunity Program began in 2017 and was funded via the Transportation Innovation Act to spur economic development and attract and support new businesses and business expansion across Nebraska. The program is administered by the Department of Transportation, in consultation with the Department of Economic Development, and has been a great tool for Nebraska communities. We sought to open the program funds to other infrastructure improvements outside of transportation, but Nebraska Department of Transportation Director Vicki Kramer expressed concerns with expanding the program and using gas tax funds for nontransportation-related activities. Hearing this concern and using the Economic Opportunity Program's successful structure as a template,

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we worked with Nebraska Department of Transportation, DED, and NDEE to create a new program. Chairman Mike Moser will speak to AM1390, but I will briefly say that the amendment mirrors the substance in the green copy of LB600, but diverges by creating a separate fund for infrastructure and site development projects administered by the Department of Economic Development, in consultation with the Department-- the Nebraska Department of Transportation, and DEE. This accomplishes LB600's goal by creating a program that is not limited to transportation improvements alone, but expands it to water, sewer, roads, bridges, and other site development activities that first- and second-class cities and villages can take advantage of. I also want to point out that the amendment, as in the green copy, requires a connection to the community redevelopment plan, a mechanism that must be developed with public input and approved by elected officials. The municipality has to go through a process and set forward exactly what is going to be in this redevelopment area, including an estimate of the infrastructure needed. In other words, the city must put in-- put in the time and effort to make sure that this is a viable site development project that is wanted and needed by its citizens. I thought enough of this bill, LB600, to make it my priority bill this session, because I believe in its importance to the communities in my district. We often discuss rural economic development, and this bill is a good step forward to foster that goal along. Thank you, sir.

KELLY: Thank you, Senator Lippincott. Mr. Clerk, for items. There is an amendment from the committee. Senator Moser, you're recognized to speak.

MOSER: Good morning, colleagues. Thank you, Mr. President. The committee amendment replaces the bill. It corrected a few things in the original bill to make it more functional. It changed provisions on the Transportation Infrastructure Bank Fund and the Economic Opportunity Program within the Department of Economic Development. The amendment number was changed from what Senator Lippincott described, but AM2145 is the right amendment. So the purpose of it is to finance water, sewer, road and bridge infrastructure projects administered by the DED. And it applies to cities of the first class, second class and villages. The application must include the project as part of a plan approved by the Community Development Law. It must explain the-- how the project attracts and supports businesses and how the project would provide infrastructure that is sufficient for new or expanded business, the cost-benefit analysis of the redevelopment plan, how the project would create jobs including high-quality jobs, increase investment and revitalize rural and other distressed areas. An application will be denied if the plan does not provide a positive

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cost-benefit analysis, or if the applicant fails to provide the 25% match. Grants are limited to \$5 million. The Municipal-- Municipality Infrastructure Aid Fund is created by this amendment, and it transfers \$10 million from the Cash Reserve Fund to the Municipality Infrastructure Aid Fund. Mr. President, we would move the adoption of the Transportation Telecommunications Committee amendment. Thank you.

KELLY: Thank you, Senator Moser. Mr. Clerk, for items.

CLERK: Mr. President, Senator Moser would move to amend the committee amendments with AM2149.

KELLY: Senator Moser, you're recognized to open on the amendment.

MOSER: Thank you. This is a very simple one. The-- on page 1, line 17, strike the year "2023" and insert the year "2024." Thank you.

KELLY: Thank you, Senator Moser. Returning to the queue, Senator Riepe, you are recognized to speak.

RIEPE: Thank you, Mr. President, and Senators. I speak in support of LB600. The Municipality Infrastructure Aid Program. I speak to its merits in representing the city of Ralston and its revitalization of its downtown calls for the redirection of truck traffic off of Main Street on a new-- via a new street and bridge. This construction effort is supported by a pending \$85 million development and is dependent upon this particular action. Given its limited geograph-- geography, Ralston needs to capture underused land by providing greater access, which would then result in greater employment and job opportunities given new businesses. Ralston's leadership has a refined strategic and tactical plan for the highest and best use of land in its limited geographic area. Ralston leadership has and is currently contributing city resources for a required 25% match, as required in the bill, to retain its need for the future and growth and stability for the metropolitan area of Ralston. I ask for your vote on LB600. And thank you.

KELLY: Thank you, Senator Riepe. Senator Aguilar, you're recognized to speak.

AGUILAR: Thank you, Mr. President, and members. First of all, I want to thank Senator Lippincott for bringing this bill forward and also for prioritizing it. Although this area of land that he's referring to is not in my district, I can assure you that most of the people that will go to work out in this area once it's completed will be from my district, the city of Grand Island. Right now, our economic

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development program in Grand Island is working on three different projects. That three alone will produce about 700 jobs for the area. That, that, my friends, is not-- is exactly what we talk about when we say bang for your buck. Economic development in Grand Island and also pointed out that today, 90% of Nebraska's freight is moved by truck. Studies show that if Grand Island area could better utilize rail and capture just 10% of the products that leave central Nebraska on rail instead of trucks, Nebraska Industries would use 3,225 railcars instead of 14,337 18-wheel trucks. I think we've all noticed what's going on on the interstate today with these 18-wheelers. This would reduce 12.4 million miles on Nebraska's highways and interstate system and save central Nebraska industries \$116 million in transportation expenses. More than 100 Union Pacific and Burlington Northern/Santa Fe trains pass through Grand Island each day. Thank you, Mr. President.

KELLY: Thank you, Senator Aguilar. Senator Meyer, you're recognized to speak.

MEYER: Thank you, Mr. President. I was just made aware that this is actually in my district. And I rise in support of both the amendment and the main bill. This is a unique location in that it is served by both the Union Pacific and the Burlington Northern Railroad-- 50,000 people in Grand Island, about that number in Kearney, about that number of Hastings-- in Hastings. And I, I know, anecdotally, the number of people from my hometown that work in the-- both at Hornady and other facilities near there. This is a large piece of land which is begging to be developed. And this, hopefully, is the first step in that-- in that direction. It was used for years-- for years as the manufacturer of bombs. And some things related to that manufacturing are still there, so it is not fit for residential use, but it is perfect for industrial use. So I would urge a green vote on both the amendments and the main bill. Thank you.

KELLY: Thank you, Senator Meyer. Seeing no one else in the queue, Senator Moser, you're recognized to close on AM2149. And waive. Members, the question is the adoption of AM249 [SIC]. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 40 ayes, 0 nays on adoption of the amendment, Mr. President.

KELLY: AM2149 is adopted. Mis-- Senator Brewer, you are recognized-- excuse me. Senator Moser, you recognized close on AM245-- AM2145.

MOSER: Thank you, Mr. President.

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KELLY: Excuse me.

MOSER: Oh, I'm sorry.

KELLY: Someone jumped in the queue. Senator Clements, you're recognized to speak.

CLEMENTS: Thank you, Mr. President. I would like to ask Senator Lippincott a question if he would yield.

KELLY: Senator Lippincott, will you yield to a question?

LIPPINCOTT: Yes, sir.

CLEMENTS: Thank you, Senator Lippincott. I see that a previous amendment proposed that's no longer on the board, isn't-- didn't come on the board, talked about a \$10 million cash trans-- cash reserve transfer to fund this program. Is that \$10 million request in the bill as amended?

LIPPINCOTT: At present moment, no.

CLEMENTS: All right. Is there an intention to have a request for funding in this bill?

LIPPINCOTT: Yes.

CLEMENTS: And is that coming in another amendment? Well, you might just say, what is the request that you're going to ask for?

LIPPINCOTT: \$10 million.

CLEMENTS: From Cash Reserves?

LIPPINCOTT: Yes, sir.

CLEMENTS: Very good. Is that going to be today or in a later stage of debate?

LIPPINCOTT: Later stage of debate, sir.

CLEMENTS: All right. All right. I had noticed that that wasn't in the current bill that we're discussing and so I'll support it at this time. Thank you.

LIPPINCOTT: Thank you, sir.

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KELLY: Thank you, Senators Clements and Lippincott. Senator Vargas, you're recognized to speak.

VARGAS: Thank you. I was actually going-- well, thank you very much, Chairman. I was going to ask the same exact question regarding this, so I'll look forward to that. The only other addition is, I think this is a creative use of, of an existing program to create a subprogram. And also fitting that the Nebraska Business Hall of Fame is actually honoring both Lance Fritz and the Hornady family. And so just congratulations to them. And thank you, Senator Lippincott, for introducing this legislation.

KELLY: Thank you, Senator Vargas. Seeing no one else in the queue, Senator Moser, you're recognized to close on AM2145.

MOSER: Thank you, Mr. President. The \$10 million request is in the amendment on the last page so that-- that's already included in the amendment. And this amendment basically replaces the bill. You heard several senators talk about how this could help some project in their district. However, this began as kind of a project to help somebody in Lippincott's area, and-- Senator Lippincott. Sorry about that. And then as the discussion went on, we reminded each other that you can't have a bill that specifically suits just one district. It has to apply to the whole state. And so that's why the money goes to the DED. The DED will evaluate projects, and the Hornady project could be one of those, or it could be a project in Ralston. It could be a project in Columbus, if I can get my guys on the ball to apply for it. So those are all worthy projects, but don't get all excited that that means that those projects will be funded, because they still have to apply and meet all the requirements to get money. And we need \$10 million to fund this, and I think that's why Senator Clements is asking questions about funding. So I would ask your support on the amendment. And I appreciate Senator Lippincott bringing the bill. And thank you all, colleagues.

KELLY: Thank you, Senator Moser. Members, the question is the adoption of AM2145. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 42 ayes, 0 nays, Mr. President, on adoption of the committee amendment.

KELLY: AM2145 is adopted. Returning to the queue, Senator Clements.

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CLEMENTS: Thank you, Mr. President. I've been informed that the AM2145 does have a \$10 million transfer from the Cash Reserve Fund to this new fund, and that means it's going to have an A bill. If it gets to Final Reading, it will-- the funding of the \$10 million will depend on funds available at that time. And I don't know if it's an A bill, but at least it'll be subject to funds available. And the \$10 million may or may not be available at that time at the end, so the bill may pass and the funding, though, is still in question. The \$10 million transfer, today I'm not in support of that. We'll see how we are with budgeting toward the end of session-- closer to the end of session. But I will vote yes to advance the bill at this time, and we'll find out about the funding later. Thank you, Mr. President.

KELLY: Thank you, Senator Clements. Seeing no one else in the queue, Senator Lippincott, you're recognized to close and waive. Members, the question is the advancement of LB600 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 41 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB600 advances to E&R Initial. Mr. Clerk, for items.

CLERK: Mr. President, some items. Notice of committee hearings from the Education-- as well as the Education Committee as well as the Executive Board. An amendment to be printed from Senator Brandt to LB140. Name adds: Senator Vargas, Senator Fredrickson to LB16; Senator Vargas to LB600; Senator Conrad, LB864; Senator Moser, LB1035; Senator Hunt and Senator Blood to LB1050. Finally, Mr. President, a priority motion, Senator von Gillern would move to adjourn the body until Wednesday, January 24, 2024, at 9:00 a.m.

KELLY: Speaker Arch, you're recognized to speak to the motion.

ARCH: Thank you, Mr. President. Tomorrow, colleagues, we will begin the day with debate of the Urban Affairs Committee bill, their priority bill, LB164. The committee amendment to this bill replaces the original contents of the bill with changes to our Inland Port Authority statutes. Since the one-liner listed on tomorrow's agenda will reflect the original bill, a bill to adopt updates to building and energy codes, I wanted to let everyone know you'll need to familiarize yourself with the committee amendment to be prepared for the debate of this bill. Thank you, Mr. President.

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KELLY: Thank you, Speaker Arch. Members, you heard the motion to adjourn. All those in favor say aye. All those opposed say nay. We are adjourned.