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Floor Debate
January 17, 2012

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PRESIDENT SHEEHY PRESIDING

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

SENATOR WALLMAN: (Prayer offered.)

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

CLERK: I have a quorum, Mr. President.

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Members of the Legislature, this morning it is my honor to introduce our newest senator, representing the 33rd District of Adams and Hall County, Senator Les Seiler, and his wife Jo, who is located under the north balcony. Would you

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please help me welcome them. Mr. Clerk, we will continue with messages, reports, or announcements?

CLERK: Mr. President, I have the appointment letter from Governor Heineman appointing Mr. Lester R. Seiler for the 33rd Legislative District seat. Accompanying that is the oath of office, as attested to by Secretary of State John Gale. Appointment letters from HHS to the Stem Cell Research Advisory Committee, those will be referred to Reference. Hearing notice from Banking, Commerce and Insurance Committee, signed by Senator Pahls. Reference report referring LB939 through LB995, as well as certain gubernatorial...

PRESIDENT SHEEHY: (Gavel)

CLERK: ...appointees. That's all that I have at this time, Mr. President. (Legislative Journal pages 233-236.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to introduction of new bills.

CLERK: New bills. (Read LB996-999 by title for the first time.) That's all that I have at this time, Mr. President. (Legislative Journal pages 236-237.) [LB996 LB997 LB998 LB999]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Doctor of the day introduced.) Senators, the rolls that are being passed out this morning are being provided by Senator Schilz in recognition of his birthday. Happy birthday, Senator Schilz. Mr. Clerk, we will proceed to first item under General File, LB370. Correction, LB66A. [LB66A]

CLERK: Mr. President, LB66A, a bill by Senator Cornett. (Read title.) The bill was introduced on January 12, referred directly to General File. [LB66A]

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PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on LB66A. [LB66A]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. To refresh everyone's memory, LB66 is... [LB66A LB66]

PRESIDENT SHEEHY: (Gavel) [LB66A]

SENATOR CORNETT: ...thank you...is the bill that allows probation officers, requires probation officers to collect DNA samples from people that are never actually physically incarcerated or have already been released and are on probation. We had a very, very good discussion last week on the fiscal note and...because there were some issues whether it was a correct fiscal note or not. After having worked very hard with Senator Heidemann, we have lowered the fiscal note down by \$30,000. It's a \$31,200 reduction from the A bill which was prepared last year. The underlying point, though, is this is a state purpose. We passed a law to put people that are convicted of felonies, certain felonies, in our DNA database and there is a cost associated with that. The question that I had for someone the other day was I said does it matter if there's a fiscal note if this is a state purpose, this is something that we need to do. I ask the body to support LB66A and the underlying bill when we get back to it. Thank you very much. [LB66A]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening to LB66A. Are there members wishing to speak? Seeing none, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question before the body is on the adoption of LB66A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB66A]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB66A. [LB66A]

PRESIDENT SHEEHY: LB66A advances. We'll now proceed to the first item under

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General File. [LB66A]

CLERK: LB370, offered by Senator Wightman. (Read title.) Introduced on January 13 of last year, referred to the Revenue Committee. The bill was discussed on Friday, Mr. President. At this time, I have no amendments pending to the bill. [LB370]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Wightman, would you like to brief us on LB370? [LB370]

SENATOR WIGHTMAN: Thank you, Mr. President. Good morning, members. As you may remember, most of you were here, maybe a few were absent when we discontinued or when we adjourned on Friday. LB370 would eliminate section, chapter...or Chapter 77-1831 through 1846 exclusively and other sections referring to a treasurer's tax deed. We discussed...I discussed the fact that this could require or would result in someone losing their property without a public sale after receiving only one notice. We also discussed in debate the fact that an investor can purchase a tax sale certificate. He gets the 14 percent that the county would have otherwise received on that tax sale certificate, and then sometime within three years within the date of his issue, under current law the investor can take action to have the property sold or obtain ownership of the property and then he would receive the treasurer's tax deed. There was spirited debate on...and good debate, I might add, on Friday. I want to thank Senator Langemeier, Senator Council, Senator Schumacher, Senator Nelson, and others who raised issues with regard to that. The discussion was then whether or not we could, instead of eliminating the treasurer's tax deed, perhaps look at it from the standpoint that we would expand the notice requirement and perhaps do something with regard to a right of redemption following the treasurer's tax deed. I would also add that my staff did work over the weekend, most of yesterday afternoon with all sides that are involved in this, including the county, the bankers, and others that were interested in the particular legislation. I think we've pretty much arrived to an agreement. But because the Bill Drafters Office was not open, so far as I know, I didn't come down and check,

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that we were unable to get any kind of an amendment drafted. I will only say that we agree to work and I think we have already most of the problems, that were seen by members of this body, worked out. I still want to explore the possibility of some sort of a redemption period, maybe very short and at a penalty, after the treasurer is ready to issue the tax deed. So that we have not explored in depth yet because of the long weekend, but I guess I will say that we will work with, we will propose amendments. We're still working on the language of those amendments. And with that, I hope that we can move the bill to Select File and when it comes back on Select File we will have amendments to that bill. Thank you, Mr. President. [LB370]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Are there members requesting to speak on LB370? Seeing none, Senator Wightman, you're recognized to close. Senator Wightman waives closing. The question before the body is on the advancement of LB370. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB370]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB370. [LB370]

PRESIDENT SHEEHY: LB370 advances. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR364, LR366, LR367, LR368, LR369, and LR370. Next item, Mr. Clerk. [LB370 LR364 LR366 LR367 LR368 LR369 LR370]

CLERK: Mr. President, next bill, LB415, a bill by Senator Wallman. (Read title.) Bill was introduced on January 13 of last year, referred to the Judiciary Committee, advanced to General File. There are Judiciary Committee amendments, Mr. President. (AM525, Legislative Journal page 773, First Session, 2011.) [LB415]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Wallman, you're recognized to open on LB415. [LB415]

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SENATOR WALLMAN: Thank you, Mr. President. Members of the body, LB415 makes it a Class I misdemeanor to unlawfully possess by a prisoner... [LB415]

PRESIDENT SHEEHY: (Gavel) [LB415]

SENATOR WALLMAN: ...in a jail or provide to a prisoner in a jail any article that is prohibited by law, regulation, or order of the detaining authority. In other words, this bill would make it a crime for a prisoner in county jail for possessing contraband, like cigarettes or a cell phone, and for anyone else to provide such contraband to a prisoner. There is a similar provision in Nebraska law but, however, it only applies to state facilities under the administration of the Department of Correctional Services. The criminal provision that applies to jails, Section 28-913, only prohibits the introduction of a weapon, tool, or other thing which may be useful for escape. I introduced LB415 at the request of the Gage County Sheriff and Nebraska Sheriffs' Association because of the increased amount of problems the jails are having with prisoners and their visitors sneaking in items like tobacco products, money, lighters, matches, urine, and cell phone, just to name a few. While these are legal items to possess when an individual is not in jail, possession within the prison can make it difficult to safely administer the jail. Unfortunately, jails may only use in-house discipline to deal with this type of contraband, which in some cases just isn't sufficient, especially if you consider the potential harm a contraband cell phone could have. As for an outsider that gives the prisoner the contraband, there is no significant consequence for doing so. Contraband, whether it is a weapon or a tool that may be useful in an escape, or less harmful/harmless articles like cigarettes or cell phones is power for prisoners that can be used by a prison to destabilize the security of the jail, compromise the staff, and risk the safety of the inmates. [LB415]

PRESIDENT SHEEHY: Thank you, Senator Wallman. You've heard the opening to LB415. As was noted, there is a Judiciary Committee amendment. Senator Ashford, you're recognized to open on AM525. [LB415]

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SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. And I appreciate Senator Wallman bringing this bill for institutions that are not state institutions. And the committee did have some concerns. Senator Wallman alluded to the nature of the contraband. I know Senator Lathrop spent some time working on carving an amendment that would provide...and there's a significant penalty for bringing this contraband in and if...the committee wanted to make sure that the public was well-notified of the types of contraband that would be prohibited under this act. And there were some incidents involving...there was I think a Bible that had been written in Spanish that was brought into the facility and there's some concern that items like that would be...would cause a prosecution to occur. So the amendment simply provides that the facility prepare a list of those items that are contraband and not allowed to be brought into the facility so that the public is adequately notified. And again, Senator Lathrop and Senator Wallman worked out this compromise and I believe it's satisfactory to Senator Wallman. With that, I would move the amendment. Thank you. [LB415]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening of the Judiciary Committee amendment AM525. Are there members requesting to speak? Seeing none, Senator Ashford, you're recognized to close. Senator Ashford waives closing. The question before the body is on the adoption of AM525 to LB415. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB415]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of committee amendment. [LB415]

PRESIDENT SHEEHY: AM525 is adopted. [LB415]

CLERK: I have nothing further on the bill, Mr. President. [LB415]

PRESIDENT SHEEHY: Seeing no additional requests to speak, Senator Wallman, you're recognized to close. Senator Wallman waives closing. The question before the

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body is on the advancement of LB415. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB415]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB415. [LB415]

PRESIDENT SHEEHY: LB415 advances. Next item, Mr. Clerk. [LB415]

CLERK: Mr. President, LB503 was a bill introduced by Senator Pirsch. (Read title.) Introduced on January 18 of last year, referred to the Government, Military and Veterans Affairs Committee, the bill was advanced to General File. At this time, I have no amendments to the bill, Mr. President. [LB503]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pirsch, you're recognized to open on LB503. [LB503]

SENATOR PIRSCH: Thank you, Mr. President. Members of the body, LB503, I hope you find, is a simple bill, not a controversial bill, in my estimation, brought on behalf of the Secretary of State's Office to address a problem that occasionally occurs. The bill deals with partisan elections that occur on the local, state, and federal level, but the bill does not work to the advantage or disadvantage of any one party or candidate in particular. Instead, this bill improves the election process for everyone in every party. The bill deals with situations where a candidate for a partisan office has already cleared the hurdle of the primary election and now is facing the general election. And sometimes a candidate decides, for whatever reason, that they just don't want to continue running for that election and so they want to get out of the race. And that's the kind of situation this bill addresses, is currently Nebraska's election law oddly asks, did the candidate exit this general election race by (1) declining the nomination or (2) vacating or otherwise existing the race? The lines separating what constitutes a declination as opposed to withdrawing or vacating in some other manner can often be hazy and confusing, and that's problematic because the current law treats the two

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exiting methods very differently in terms of how easy it will be for the candidate's respective party to put a replacement name on the general election ballot. On one hand, there is currently a reasonable method in Nebraska statutes for parties to replace candidates who have vacated the race. The process is the vacating candidate's party is notified and the party officers or the party convention fills the slot by September 1. On the other hand, there is a needlessly difficult process for parties to replace candidates who have been deemed to have declined to run. If a candidate declines, a party only has three days to fill the slot. Three days is a very short time to replace a candidate and needlessly so. This bill would work to treat both situations the same, get rid of this artificial distinction between declining and vacating, and implement the reasonable process that's already being used in law to fill the slots in both cases. Thank you.

[LB503]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You have heard the opening to LB503. Are there members requesting to speak? Seeing none, Senator Pirsch, you're recognized to close. Senator Pirsch waives closing. The question before the body is on the advancement of LB503. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB503]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB503. [LB503]

PRESIDENT SHEEHY: LB503 advances. Next item, Mr. Clerk. [LB503]

CLERK: Mr. President, LB352 is a bill introduced by Senator Lautenbaugh. (Read title.) Introduced on January 13 of last year, referred to the Government, Military and Veterans Affairs Committee for public hearing, bill was advanced to General File. There are Government Committee amendments pending, Mr. President. (AM631, Legislative Journal page 799, First Session, 2011.) [LB352]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Lautenbaugh, you're recognized

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to open on LB352. [LB352]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Members of the body, LB352 is designed to provide significant safety for Nebraska's aviation industry and the citizens in or around the public-use airports. There are several airports that would be affected by this, spread throughout the state, and I'm sure many of you have been hearing from your local airport boards and whatnot about this topic. This bill will protect hundreds of millions of dollars already invested in Nebraska's airports, as well as the over \$500 million in future investments estimated in the 2002 Nebraska Aviation System Plan. It helps guarantee that people will be able to continue to provide Nebraska's rural communities, big and small, with the ability to provide emergency air medical services and routine medical care in a variety of weather conditions. It helps make all communities remain viable as locations for future economic development. In a nutshell, what this bill does is extend the...from the approach zone, extends the approach zone, excuse me, 10 miles from the end of the operation zone, instead of 3, at a 50-to-1 gradation so that it slopes up, allowing higher and higher structures as you proceed away from the end of the operation zone. I've had some discussions with some of you saying you think 10 miles is excessive. I believe this is consistent with what the FAA is looking at. I believe this bill would have virtually no impact on farming and ranching, and minimal impact at most on power districts. We've met with NPPD and I believe OPPD as well and they have no objection to this as...especially with the committee amendment, it is my understanding. This is not meant to provide a 10-mile limit around each and every one of these airports, large or small. The 10 miles extends out from the runways so it is sort of a cone-shaped extension, not a 10-mile circle around the airports. Why is LB352 needed? It brings Nebraska in compliance with recommended FFA zoning regulations and regulations for developing instrument approaches. It provides safety from encroachments that didn't previously exist. The potential for towers or tall structures to be built currently is greater than it ever has been in the past, especially with our renewed emphasis or our current emphasis on wind power. This, again, would not prohibit the installation of cell phone towers and wind towers. All it

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does is extend the--wind mill towers, excuse me, wind energy towers--extend the limit beyond the approach zone or extend the approach zone to 10 miles instead of 3 miles in a cone leading out from the runway. Due to advancement in technology, it's now practical for all airports and most aircraft, large and small, to be able to afford avionics equipment to provide instrument, both nonprecision and precision, approaches. This only increases the normal safety of operations but expands the ability to get in and out of airports in poor weather conditions. The increased use of avionics at airports increases the viability of the airports and promotes economic development by allowing companies to do business in all communities, big or small, without long delays in travel. This improves the reliability of airports, particularly rural airports, and promotes improved rural health services for both routine clinics and emergency services. The Nebraska Aviation System Plan prepared in 2002 identified over \$538 million in system capital needs. LB352 will protect those future investments as well as the hundreds of millions already invested. One thing to keep in mind in particular that is important for this bill, while it does extend the 10-mile approach height limits beyond the runways, from 3 to 10, I should say, existing structures are grandfathered. This would not affect anything that is currently there. This would be dealing with future developments in the 10-mile zone extending out from the runways at these smaller airports. I'd be happy to take any questions you might have and I would urge your approval of this bill. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. You've heard the opening of LB352. As was noted, we do have a Government, Military and Veterans Affairs Committee amendment. Senator Avery, you're recognized to open on AM631. [LB352]

SENATOR AVERY: Thank you, Mr. President. The committee amendment provides that any existing structure or tree, in compliance on the effective date of this act, will be deemed to be in compliance after the effective date of the act if the structure or tree does not increase in height. There were concerns raised at the committee hearing that existing structures may need to be removed if the new regulations on height were adopted. The committee amendment grandfathers existing structures provided they stay

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at the same height as they are now. The committee amendment also makes very technical changes to the bill. It changes the definition of approach zones for visual runways to include a height limit that begins at the elevation of the runway, and for which it is the approach, and rises 1 foot vertically for every 40 feet horizontally, except the height limit will not exceed 150 feet above the runway end elevation within 3 miles of the end of the operation zone. The committee amendment makes other technical changes to the definition of transition zone and turning zone's outer limits. These technical changes were brought to us by the Department of Aeronautics. They were heavily involved in the drafting of this amendment. LB352 was advanced by committee on a 6 to 1 vote with 1 member absent. I urge your adoption of this committee amendment and I would ask Senator Krist, a trained pilot, to be available to take some questions if they get too technical in nature. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening of the amendment, AM631, to LB352. Members requesting to speak, Senator Schilz, followed by Senator Carlson, and Senator Louden. Senator Schilz. [LB352]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I was wondering if Senator Lautenbaugh would yield to a question. [LB352]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Schilz? [LB352]

SENATOR LAUTENBAUGH: Yes, I will. [LB352]

SENATOR SCHILZ: Senator Lautenbaugh, thank you. As I was reading this bill, there seems to be a few concerns that I have but the biggest one, and as we talk about here, you talk about the 10 miles, you talk about how it's only from the end of the runway, topographical. Does it matter, the topography as you go out, does that make a difference or is that part of the measurement as well? [LB352]

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SENATOR LAUTENBAUGH: I think the answer is yes and yes. It is part of the measurement and it would matter. You're talking the height limit would be projected out from the end of the runway, so what that height limit is, is where you start measuring from. So a hill would count, as it left the runway, if you will, would count in the calculation of the height limit. [LB352]

SENATOR SCHILZ: Right. Okay. Thank you very much. And then one other question for you. I read in there the term "proposed runway." Can you explain that a little further because "proposed" is a pretty broad term? [LB352]

SENATOR LAUTENBAUGH: Sure. And we have actually been working with the Department of Aeronautics on this as well to pin down exactly what is "proposed" and to define that more clearly, as that was an issue that was raised by one entity as to how do we know what's actually proposed. We are working, I guess I should say to be clear, with a possible amendment or on a possible amendment that would clarify exactly what we mean by "proposed" so there can be no ambiguity about what we're referring to there. [LB352]

SENATOR SCHILZ: Great. I'd very much appreciate seeing that. I guess at this point I do have some concerns with the bill, but I haven't closed the door completely yet. I'm going to sit, I want to listen to what everybody else has to say, and then I'd sure like to see the definition of "proposed." Thank you very much. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Schilz. Senator Carlson. [LB352]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. If Senator Lautenbaugh would yield to a question, I'd like to address him. [LB352]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Carlson?

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[LB352]

SENATOR LAUTENBAUGH: Yes. [LB352]

SENATOR CARLSON: Senator Lautenbaugh, in the hearing you had support from large and small airports. Opposition was Nebraska REA. Can you tell me what was that opposition based on? [LB352]

SENATOR LAUTENBAUGH: Well, simply put, this would prohibit new...well, this could potentially prohibit the instruction...the construction, excuse me, of new wind towers in the 10-mile cone leading out from the runway. They would have to be off to either side. And as I recall what was said, what the objection was in committee was that there was a concern about that limitation. I think the response was that, you know, there has to be some sort of regulation at either end of the runway but all the rest of the area around the airports would be left open, beyond the original 3 miles, for such development. [LB352]

SENATOR CARLSON: Okay. Thank you. I agree with that response. Also,...lost my thought here for a moment so stay with me. I've had some contact from airports within my district in support of this bill. And my other question to you would be are you in support of the amendment? [LB352]

SENATOR LAUTENBAUGH: Yes, I am, absolutely. [LB352]

SENATOR CARLSON: Okay. Thank you, Senator Lautenbaugh. I think the concern about existing structures having to be moved is taken away and so, that not being a concern, I think the interest in future construction of windmills that could be possibly in that path, that's a legitimate concern and should be taken care of. With that, I'm in support of LB352 and would ask for your support as well. Thank you. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Members requesting to speak on

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AM631 to LB352, we have Senator Louden, followed by Senator Schumacher, Senator Brasch, Senator Krist, and Senator Sullivan. Senator Louden. [LB352]

SENATOR LOUDEN: Yes, thank you, Mr. President and members of the body. As I look at this and look back, as the person that's been around here the longest, we went through something like this several years ago when Senator Baker was Chairman of the Transportation Committee. And at that time the aeronautics people were wanting to close some of these small rural airports for various reasons that had trees or whether there were signs or whatever, and one of them was Hyannis. And part of the reason they had with Hyannis was the fact that Highway 61 ran along side the airfield and that was within that zone, and we told them, well, there's no way that you're going to move Highway 61 and a paved airport out in the Sandhills there, there's no way you're going to move that, so you're probably going to have to live with it. And that's what they finally did. They grandfathered it in. What I'm noticing in this bill, and would Senator Lautenbaugh yield for questions? [LB352]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Louden? [LB352]

SENATOR LAUTENBAUGH: Yes, I will. [LB352]

SENATOR LOUDEN: You're changing the flight zone from 3 miles to 10 miles. Is that correct? [LB352]

SENATOR LAUTENBAUGH: Yes. [LB352]

SENATOR LOUDEN: Now is there different classes of runways? I mean Lincoln Airport here and those have a different glide zone than perhaps Hyannis or Thedford or someplace like that. There's different classifications for airports. Is that correct? [LB352]

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SENATOR LAUTENBAUGH: That is correct. [LB352]

SENATOR LOUDEN: Now but this bill that you have doesn't say anything about different classifications or what this glide zone would be. It would be all airports. They'd be...all have to be 10 miles away is where the zone starts? [LB352]

SENATOR LAUTENBAUGH: Well, in looking at a handout here that I'll probably send around, there are certain airports that it wouldn't apply to, and I think the difference is whether we're talking about instrumented landings or otherwise. But I can look and see one in Chappell, Trenton, Wallace, Hyannis, Bloomfield, those are not depicted as being affected by this and I'll get you a clear... [LB352]

SENATOR LOUDEN: Well now, okay, in the bill here then it...oh, it says for existing and paved runways. I've tried to read through here. There's a...proposed instrument runways are treated different than those that don't have instrument landing. Why then isn't that classification stated in this bill to exempt those airports in these rural areas? Ten miles away with a zone like you have like Hyannis, there's a hill there that's probably nearly 300 feet high just within a half a mile of the end of the airport. So when you come into Hyannis, you got to come in like an eagle pouncing on prey, really. You got to come straight down for a while. So I'm wondering, if this was passed, would that affect those people. And also if there was a windfarm built, well, 10 miles west of, say, Broken Bow on some hills, would that be within that glide zone? And then could they...would they not be able to build those windfarms on some of that higher ground out there? When you go 10 miles in some of these rural areas, sometimes you're covering quite a little bit of country. Is there any way that we can work around that? [LB352]

SENATOR LAUTENBAUGH: Well, and you're asking me a hypothetical and I can't say for certain what the approach would be in the given airport that you're referring to. I mean there will be some areas where towers won't be built but...if this passes, but the

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problem is we're having to choose. We don't have what I would call a shortage of land in Nebraska but we do have a shortage of small airports that service rural areas, and if not a shortage, we have a situation where many of them struggle. And this is designed to protect those small airports. Absolutely, there will be some areas that are... [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR LAUTENBAUGH: ...taken off limit for tower installation, if you will, by this bill. [LB352]

SENATOR LOUDEN: Well, what about Blair now? I suppose you're familiar with that. Do they have a 10-mile flight zone limit now or are they just 3 miles out? [LB352]

SENATOR LAUTENBAUGH: This would include them as well and change it to 10 miles. [LB352]

SENATOR LOUDEN: It would increase them to 10 miles. [LB352]

SENATOR LAUTENBAUGH: That's correct. [LB352]

SENATOR LOUDEN: Yeah, and is that necessary in that flat country to have that glide zone? How high would they have to be off...how high is that flight zone 10 miles away if it's 40 or 50 feet for every...whatever that formula is? [LB352]

SENATOR LAUTENBAUGH: It is 889.2 feet. But I would point out that it is not flat area around Blair, quite the opposite where the airport is. And so it varies with the topography...or includes the topography, if you will. Excuse me. [LB352]

SENATOR LOUDEN: Well, if a plane is only 889 feet off the ground 10 miles out, he's probably got more problems than the fact that his glide zone is like that. [LB352]

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PRESIDENT SHEEHY: Time, Senator. [LB352]

SENATOR LOUDEN: Is that...would that be correct? [LB352]

PRESIDENT SHEEHY: Time, Senator. [LB352]

SENATOR LOUDEN: Thank you. [LB352]

PRESIDENT SHEEHY: Senator Schumacher. [LB352]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This particular bill...and, incidentally, I support AM631 because it's less evil than the larger bill, but this particular bill gave me pause in committee for a number of reasons. First of all, it allows the airport authorities, usually in a small town or city, to govern way out into the county and the county people don't have any say-so about the particular extension of this authority and the particular limits of this zoning law. So it's a power shift from the county and the people who can vote on it to a very narrow group of people who can vote on whether or not they want to put this on. I think if you're going to be affected in whether or not there can be a windfarm or cell tower or a tall grain elevator on your property, you should have a voting interest in the zoning authority that might affect that. But on the aviation side of things, the state is blessed with many small airports, most of which you would not want to trust your airplane in, in a fog because you'll likely hit a deer or a group of pheasants or ducks or whatever sitting on the runway. What this addresses is a situation where, with the application of modern technology, you could conceivably use your GPS thing to land in the fog. You wouldn't be smart to do that. So it seems to me that extending this carte blanche to every airport in the state is not a wise settlement of the balance between airport interests, particularly when you can land in those airports under visual circumstances, if they're safe to land in, almost anytime now and if you can't you better go to a bigger airport anyway. But it balances those

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interests of the air people against the interest of cell towers, which are going to be increasingly important as we move to a 4G environment and our communication systems move away from wires out in the country to basically a very efficient wireless system. Those towers and the people in New York, or wherever the big decisions are made as to where to put those towers, can be encouraged to come to an area where they have to fool with less restrictions, so that's an interest that needs to be put into the mix. As you climb out, particularly along the Platte Valley, you have to climb a bluff that goes up 100 feet or so, so there you're talking in some areas of subtracting 100 feet off of what you can have, and a 60-foot tree or a 60-foot grain bin is not an unusual thing to see. Our power companies have got to be brought into the mix because they may have power and distribution lines, particularly with the increase in windfarms that need to transport those things, that may cross into this area. I think it would be a much better thing if we restrict these particular rights of zoning to a situation where there is need and common sense. Larger towns, perhaps 10,000-20,000, have enough traffic...that are far away from a big airport have enough traffic to justify this encroachment on the other rights and other opportunities of the people, towns near a metropolitan area where you have a lot of traffic anyway, perhaps like Blair, close to Omaha. But this carte blanche of all coverage that probably will be used, because if I was on an airport board and said, hey, I have an opportunity for an air grab, I'd grab it. Why not? But the other people, cell people, grain elevator people, electrical people should be brought into that decision and I should have, if I have affected land, a voting member on that zoning board or whoever is controlling putting the zoning in. This bill is still problematic. It's meritorious if it's particularly honed to the situations where it would do good, but it does not properly balance the interest that may very well serve Nebraska better than being able to land in a fog... [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR SCHUMACHER: ...at a small airport. [LB352]

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PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Brasch. [LB352]

SENATOR BRASCH: Thank you, Mr. President, and good morning, fellow colleagues. I rise in support of LB352 and AM631. When I voted in favor of this during committee, at that point the city of Blair was not a part of District 16, and since redistricting it is now a part of our district. I have had individual meetings about this bill with the city of Blair airport administrator and there is a great need. I will reiterate that it will provide significant safety factors for Nebraska's entire aviation industry. It will also enhance their ability to provide emergency medical services and routine medical care. It also helps our communities of all sizes across the state, especially our smaller rural communities, to remain viable locations for future economic development. It virtually, again, has no impact on any farming or ranching. The impact would be minimal. I do rise in support of this. I will give my remaining time to Senator Lautenbaugh. Thank you. [LB352]

PRESIDENT SHEEHY: Senator Lautenbaugh waives. Senator Krist. [LB352]

SENATOR KRIST: Finally, something I'm qualified to talk about. This bill, if you read it correctly, comes to point, page 1, line 17. It has to do, in this particular case, with a differentiation between an IFR runway--instrument flight rules, and a VFR runway--visual flight rules. If you have a visual runway, the clear zone remains 3 nautical miles around the field. If you're going to have an instrument approach, that is when the weather is bad and the minimums, the ceiling is down, you need to have an instrument approach procedure approved by the FAA. There are criteria whereby the FAA grants the certification of the approach. It's called TERPS, T-E-R-P-S. You can Google it. It comes up to mean terminal procedures. A TERPS criteria means that there can't be obstacles, there can't be conflicts with clear zones, cone zones as they are called. I think many of you have seen some of the diagrams where there is a cone shape that comes out from the end of a runway that has clear zone provided for as you come down the glide path. Now let me reiterate, visual flight conditions means that you're looking at what you're shooting the approach to and when you take off there are

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visual conditions. It's what's called see and avoid. You can see the obstacle; you can avoid the obstacle. When you're operating under instrument flight conditions, instrument flight rules, you can't see them, you can't see them to avoid them and, therefore, the only protection you have is to stay on the course and on the glide path. Now it's very important for you to know that the further out from the end of the runway you get on a 40-to-1 glide ratio, the obstacles can be higher and higher. In other words, at 6 miles on final, I can build a wind tower. On 3 miles on final, that wind tower would interrupt or penetrate the clear zone area below the approach. And I don't know about you but the last thing I want to do is hit a tower on final approach going into a runway. So this is not optional. These zones are not optional. If you're going to have...if the county, the airport authority, the local municipality wants to have an instrument approach going into their runway for the protection of the people in terms of Life Flight, for growth in economy, for building new opportunities in the area. You have to have the zones. Let me say that again. You have to have the zones. If you all remember, a couple years ago when we were talking about wind energy I spent a lot of time on the mike with Senator Langemeier talking about making sure that NOTAMs, those are notices to airmen, are established for where those test wind towers are put up there and where those wind towers will eventually be put up, because we have a lot of ag and there are sprayers and they're low altitude. But more importantly, inside of a control zone around an airport, we want to know where those obstacles are. You don't just pop one up and then tell the airport authority, oh, by the way, there's a new tower out there. So let me say this as clearly as I can. If you're interested in economic development, if you're interested in the fact that you need a Life Flight capability in and out of a local airport environment, you have to have an instrument approach. If you have to have an instrument approach, I have four conditions. You have to comply with TERPS criteria that the FAA lays down. That essentially is exactly what this bill provides for. It's going to be very useful for communities in the future to see. They don't have to be experts in TERPS. [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

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SENATOR KRIST: Thank you. They don't have to be expert in TERPS. They don't need a pilot on their staff. They can simply say the law says that I need these kind of clear zones around. And let me also be very clear, I have flown into many, many, many small airports, many small towns around this country where they only have one instrument approach. That means they only have one clear zone, cone zone coming in. Everything else is just a 3-mile arch. That is the decision on the local level of the county airport authority or the local municipality. I'd be happy to answer any direct questions that you have. The amendment is good. The bill is good. We need to pass it. Thank you. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Krist. Continuing discussion on AM631 to LB352, members requesting to speak, Senator Sullivan, followed by Senator Carlson, Senator Avery, and Senator Louden. Senator Sullivan. [LB352]

SENATOR SULLIVAN: Thank you, Mr. President. Good morning, colleagues. In District 41, I have five small airports and it's safe to say that they are all in support of this legislation. And one of the things that they hold out as being very important is that this will be an important safety feature, especially in adverse weather conditions. So while I've been supportive of it and also I think the bill is improved with the committee amendment, I've also heard from public power districts in my district and one of the concerns...and I wanted to clarify this with Senator Lautenbaugh, if he would yield. [LB352]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Sullivan? [LB352]

SENATOR LAUTENBAUGH: Yes, I will. [LB352]

SENATOR SULLIVAN: Thank you, Senator. It concerns specifically the amendment that grandfathers in existing facilities, but as I understand it, that that's a little bit problematic in that if one of those facilities goes down and has to be rebuilt, it couldn't be under this

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circumstance. So first of all, I want to know if that...if I'm correct in that assumption and, secondly, are you willing to work through some of these if we pass this bill on to Select File? [LB352]

SENATOR LAUTENBAUGH: I will be honest with you in that it is not clear to me if the grandfather would prohibit reconstruction and, yes, I would be willing to work between General and Select to make sure that's clarified to everyone's satisfaction. [LB352]

SENATOR SULLIVAN: Okay. I'd be satisfied with that, because I think that is something that needs to be considered, while of course, as I said initially, I think that this is an important feature, particularly for our smaller airports, to make them safer and safer flying conditions for the pilots. So I hope that we can continue to improve this legislation. Thank you. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Carlson. [LB352]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Since I spoke the first time and listening to this debate, another question comes to mind. And Senator Krist answered part of it because he indicated that it would be beyond 6 miles that a wind tower could be built and still not be in the instrument flight path. On what was just handed out to us from Senator Lautenbaugh, the sheet, on the bottom there it indicates that up to 3 miles, and we've got the 50-to-1 ratio on the height of a structure, that it could be up to 150 feet. Now a question is between now and Select File, Senator Lautenbaugh, if you could get some additional information on this or maybe Senator Krist can. As we talk about the wind towers beyond 6 miles is not a problem, I don't know what the typical heights would be for some kind of a communication tower, cell phone, whatever it might be, and how that would fit into that restriction. So that would be an interesting item for Select file. But with that, I'm still in support of LB352. Thank you. [LB352]

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PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Avery. [LB352]

SENATOR AVERY: Thank you, Mr. President. I want to point out that this is a safety issue. There is a need for air space protection against obstacles, especially with faster jet aircraft now using many of these airports. And most of these aircraft, of course, would require instrument approaches. This would affect medical outreach and Flight for Life aircraft. Also, it's important to point out that this bill would provide some protection of federal, state, and local investments in local airports by guaranteeing unrestricted approach access to the airports. Obviously, tall obstacles such as cell phone towers, wind turbines, and other structures that are built too close to airports create a serious safety hazard for pilots and for people on the ground, so it is important that land use regulations for airports help minimize this risk. The Department of Aeronautics sent a letter in support of this and they did provide testimony at the hearing and they pointed out that the most critical change in the current definition that we're discussing here would result in extending zoning protection for instrument runways in the approach zones from 3 miles to 10. At 3 miles the height limit would remain at 150 feet, and at 10 miles the height limit would be approximately 890 feet. With cell towers at about 200 feet tall and wind turbines at about 400 feet tall, the extended area should not significantly impact many structures. This change, in the opinion of the director of the Department of Aeronautics, is vital due to recent advances in avionics equipment and nonprecision instrument approaches that have been allowed greater access to general aviation airports. The advancements that have occurred over the last several decades have allowed pilots to fly into airports under weather conditions that previously would not have been allowed, so these safety restrictions are, in fact, important. We believe that the committee amendment sufficiently addresses the objections and the concerns people raised in the hearing. We did this with the active involvement of the Department of Aeronautics and I believe this amendment is necessary and an improvement on the bill and I urge your support. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Loudon. [LB352]

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SENATOR LOUDEN: Thank you, Mr. President. Would Senator Krist yield for questions? [LB352]

PRESIDENT SHEEHY: Senator Krist, would you yield to Senator Louden? [LB352]

SENATOR KRIST: Absolutely. [LB352]

SENATOR LOUDEN: Senator Krist, and I know you're a professional pilot, my question is by extending this from 3 miles to 10 miles, is your glide path going to be any different on this than it would have been for the 3-mile zone? [LB352]

SENATOR KRIST: Senator Louden, the question, is the glide path any different, is a function of whether it's visual flight rules or instrument flight rules. Under visual... [LB352]

SENATOR LOUDEN: Okay. Now, being as you mentioned that, where do we have classifications of airports? Some are classified as instrument and some are all visual and some of them were built for Super Cubs. There's different classifications for airports. Is that right? [LB352]

SENATOR KRIST: Absolutely. [LB352]

SENATOR LOUDEN: Then why not in here, why don't we designate which classification of airport would be entitled to what kind of zoning rules in this bill? The way it is, it's all of them. Doesn't matter whether it's an airport that all you can get in there with is Super Cubs or whether you have something, you come in with your Learjet or whatever. They're all under the same thing, aren't they, the way I understand the bill? There should be something in there to designate a classification to make it a little bit more clear. [LB352]

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SENATOR KRIST: Yes, sir, it does. On...in the first section, airport hazard area, starting with (3) on page 1, airport hazard area means any area of land, water, "dah-dah-dah-dah-dah," and if you go on, that portion that deals with instrument or IFR condition actually stops at number 14 on page 2. [LB352]

SENATOR LOUDEN: Right. [LB352]

SENATOR KRIST: Beginning... [LB352]

SENATOR LOUDEN: And then...and I've noticed that so I thought, well, why didn't we just quit the bill right there. [LB352]

SENATOR KRIST: Right. Well, beginning with...because we want to make sure that people understand that there's basically two different categories of airports. One is instrument flight rules and one is visual flight rules. And it doesn't mean that an airport that has an instrument approach going into runway 36, landing to the north, that may be the only clear zone, cone zone that goes back to 10. All the rest of the runways, let's say you're making an approach into 18 or 09 or 27, that could be a 3-mile. If you begin reading the bill then at 16, you will see that the rest of that is for visual rules, visual runway. [LB352]

SENATOR LOUDEN: Yeah, of 3 miles from the operation zone. But that part in the bill, by just telling...designating 10 miles or 3 miles, that's the only difference in any classifications. There's nothing that describes the classifications of the airports or anything in this bill. [LB352]

SENATOR KRIST: These are not...in the interest of timeliness and not taking up your time, this is not our decision. This is the TERPS criteria. So if a municipality, an airport authority, or a county decides they want an instrument approach, then they need 10

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miles. The FAA clear zone for TERPS criteria is 10 miles. If you want a visual runway, you only need 3. And that's essentially what the bill has said. [LB352]

SENATOR LOUDEN: Then they go before the airport authority to get this designation for the 10-mile zone? [LB352]

SENATOR KRIST: The airport authority would then say, we have the clear zone, we will apply for application and certification of an instrument approach procedure. That would go to the FAA through the Department of Aeronautics and it would be approved or disapproved, given the clear zone area under the TERPS criteria. [LB352]

SENATOR LOUDEN: Then you're telling me that it doesn't necessarily mean if we pass this legislation all airports are either going to have the 10-mile, if they're instrument rated they're going to be 10 miles out, if they're a visual they're going to be 3 miles out. They already are 3 miles out, right? [LB352]

SENATOR KRIST: Absolutely. [LB352]

SENATOR LOUDEN: Yeah. [LB352]

SENATOR KRIST: It's the federal aviation regulation that's going to require them to be there. And as I said, it doesn't even mean that 10 miles goes in all directions of a runway. [LB352]

PRESIDENT SHEEHY: One minute. [LB352]

SENATOR KRIST: It's only 10 miles on those runways where there is an instrument approach procedure. [LB352]

SENATOR LOUDEN: Okay. Then should there be something in here to designate there

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would be a hearing before the airport authority or something to designate that? I haven't noticed it in the bill. [LB352]

SENATOR KRIST: I think the reference to the statute could be...Senator Lautenbaugh might be able to do that between now and Select that would take us back to the reference in the airport authority or in the Department of Aeronautics that shows what the process is to be approved. [LB352]

SENATOR LOUDEN: Yeah, I have no problem with increasing it to 10 miles for airports that need it, but I do have a problem increasing it for airports that mostly land Super Cubs or something like that. [LB352]

SENATOR KRIST: You hit it right on the head. If you don't need it, you don't want it. That's right. [LB352]

SENATOR LOUDEN: Yeah. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Louden. Members requesting to speak on AM631 to LB352, we have Senator Bloomfield, followed by Senator Gloor. Senator Bloomfield. [LB352]

SENATOR BLOOMFIELD: Thank you, Mr. President. Would Senator Lautenbaugh yield to a question, please? [LB352]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to Senator Bloomfield? [LB352]

SENATOR LAUTENBAUGH: Yes, I will. [LB352]

SENATOR BLOOMFIELD: Senator Lautenbaugh, if an airport sits 4 miles, say, from a

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range of bluffs and on these bluffs are growing trees, like in a farmer's pasture, that at the time this is put in are of legal height, and those trees, as they're prone to do, continue to grow, who gets the bill for trimming those trees? [LB352]

SENATOR LAUTENBAUGH: Well, thank you for the question, Senator Bloomfield. And I know this is beyond a hypothetical because you're having this current issue now, I believe, in your neck of the woods and the landowner did receive the bill from whichever entity cut down the trees. It is not my intention to put that burden on the landowners to keep in compliance. I mean if we were talking about building a structure or not allowing a structure, I know what you mean and I can see that working out in an entirely different way. As far as the actual placing the burden on the homeowner of maintaining the trees, or landowner I should say, I guess we do that to a certain extent now in various areas, and you're telling me it's happening now within the 3-mile limit. So I'm assuming that would be the result, although it's not what I would call desirable. I just don't know how to work around it. [LB352]

SENATOR BLOOMFIELD: Thank you. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Bloomfield. Senator Gloor. [LB352]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. For those of you who were able to, we had a briefing this morning on our legislative planning document and I'd like to reference that in a couple of ways. One is the fact that one section of that document relates to transportation and talks about the importance of, surprise, surprise, transportation when it comes to economic development. It seems to me that what's being proposed here is taking a look to the future with our communities and the importance of airports in that overall transportation arrangement. They can help communities continue to grow and attract additional businesses. Second point that I would make also related to that planning document is one section talked about the amount of local government that we have. Not a surprise to most of us but Nebraska

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ranks well above the norm of states with the number of governmental entities that we have out there, everything from the more formal county boards, city councils, to townships, weed control districts, and on and on, school districts and on and on and on. We have a lot because we like local control. And one of the bodies that's out there, of course, are airport authorities. As relates to my airport authority, which I know about, it's made up of men and women in my community who are business leaders who take an interest in the development of those communities but also are intimately involved in knowing what the issues are around the airport. They know the landowners. In many cases, they're people they grew up with, went to school with. I think this is a case where we have to trust local control again and the recommendation that comes, as relates to LB352, with our local boards. I understand Senator Schumacher's concern about casting the net a little wider for feedback, but that's the reason we have local airport authorities is to in fact do that. And this is their recommendation and I plan to vote in favor of both AM631 as well as the underlying legislation, LB352, and I would urge my counterparts to support those local airport authority boards who see this as a good way to advance aviation as part of economic development in this state. Thank you. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Gloor. We have Senator Schumacher, followed by Senator Krist. Senator Schumacher. [LB352]

SENATOR SCHUMACHER: Thank you, Mr. President. Senator Gloor points out a good thing when he points out the importance of planning and the work that's been done with the Planning Committee. Transportation is very important. Transportation is one of many things that are very important. That planning document also includes agricultural interests, it includes power interests, it includes communication interests, and it includes hopefully in the future a lot of common sense. This particular bill paints with too broad a brush. There are airports in which the economic and economic development interest may well dictate the imposition of this type of safety zone. There are airports which simply do not need it because they are not so otherwise equipped and you'd never land in the fog in them anyway, and they are functioning perfectly well today. However, given

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a choice and putting that authority in a body that is naturally pro airport, you eliminate the importance in that discussion of the other competing interest for that air space. This is a problem that needs integrated planning, not just a particular narrow vision for one interest. We need to make sure that that air space is available for cellular communications, for power, for agricultural structures in a common-sense way. This invites an air grab simply because if you can do it, why not? If we were tell the semitruck driver industry, for safety's sake you can make everybody else drive on the shoulder, I would guess they probably would say that's a good thing for safety's sake. We have to balance these interests and this particular bill does not balance the interest, and we need to do some carving, whether it's on Select File or just by starting over again, in order to maintain we have a balance between very important economic interest, as indicated by that planning document. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Krist. [LB352]

SENATOR KRIST: I wonder if Senator Schumacher would yield for a question. [LB352]

PRESIDENT SHEEHY: Senator Schumacher, would you yield to Senator Krist? [LB352]

SENATOR SCHUMACHER: Yes, I would. [LB352]

SENATOR KRIST: Theoretically, hypothetically, you are now the member on a local municipality airport authority or part of the representation from the Douglas...from the county board or the city board that controls an airport in an area, an existing airport. You've just been appointed to that board. Congratulations. [LB352]

SENATOR SCHUMACHER: Thank you. [LB352]

SENATOR KRIST: Now your question is, as the business people come to talk to you, I want to put an instrument approach into your runway, and what should be your

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immediate reaction? [LB352]

SENATOR SCHUMACHER: Depends what city, how big a city and how big a town I am on this board for. [LB352]

SENATOR KRIST: No, no, no. Question is, I want to put an instrument approach into your runway. And this is an unfair question because this isn't your area of expertise. But what I'm leading to here is if they come to you and tell you, we want to put an instrument approach in because we want to make the municipality, the town of Plattsburgh, more attractive to have people in and we want Life Flight to come in so we need an instrument approach, what would your immediate response be? [LB352]

SENATOR SCHUMACHER: I assume if I was on the airport authority, I would be kind of interested in airports. I probably wouldn't know that much about agriculture, probably wouldn't know that much about communications, probably wouldn't know that much about any of the other competitors for that air space and would probably say, gee, sounds like a great idea. [LB352]

SENATOR KRIST: Okay. So you would probably seek professional guidance, would you not? [LB352]

SENATOR SCHUMACHER: In a lot of these little communities, they can't afford professional guidance. And if you look at the vast array of airports, a lot of them are in very small communities and those airports work perfectly okay under most all circumstances. Plattsburgh may be a different story. [LB352]

SENATOR KRIST: Okay. [LB352]

SENATOR SCHUMACHER: That's in a highly growing area. [LB352]

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SENATOR KRIST: I'm going to interrupt you for just a second because I want...the point I'm trying to make here is you unilaterally, as a board, would probably seek the guidance of the Department of aviation...Aeronautics here in the state. They would tell you, if you wanted to put an instrument approach into that runway, you would need a clear zone area of 10 miles off the runway that you're going to put an instrument approach into. You would then go to the FAA and the FAA would say you need to comply with the TERPS criteria and we'll send somebody to you. Has no...there's no interest in money here. This is just their job as the FAA. If you want an instrument approach, you have to go to them for TERPS criteria. They will tell you where your obstacles can be and where they can't be. Now for an existing runway, where there's been construction all the way along, along the way, you may decide that runway is not in the best interest to have an instrument approach because there's a wind tower and there's two legs for agricultural and there's a silo and there's whatever else it might be. That's the process you would go through to put an instrument approach in. Now wouldn't it be nice if we would allow people, as city planners, to know generically what the criteria is? This bill does not say...thank you, Senator Schumacher. I'll make my point. This bill does not say that immediately everyone needs to have a 10-mile clear zone going into a runway. This bill simply says if you're going to plan on putting an instrument approach in a runway or if you have intentions of, you have to have that kind of a clear zone. Those criteria were not something that were dreamed up by the Bill Drafters. It comes straight out of the TERPS criteria. So I do believe there is a good blend here of common sense of allowing the local municipalities, the local subdivisions to do some planning. And if you want an instrument approach to go in there, for all the reasons we described, this is what's required. If you want to keep it a VFR runway, as Senator Loudon said before, if that meets your criteria, then you're only required to have that 3-mile. That's the way the TERPS, the FAA regulations are written. We don't have a choice in the matter. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Krist. Seeing no additional requests to speak, Senator Avery, you're recognized to close on AM631. [LB352]

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SENATOR AVERY: Thank you, Mr. President. I would just remind my colleagues that what we're dealing with here is a fairly technical set of amendments, but the most important thing, I believe, to remember is that this bill and the amendment seek to address safety hazards around airports and it is worthy of serious consideration and I think worthy of your support, and I would ask you to vote green. Thank you, Mr. President. [LB352]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the closing of the Government, Military and Veterans Affairs Committee amendment, AM631. The question before the body is on the adoption to LB352. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB352]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB352]

PRESIDENT SHEEHY: AM631 is adopted. [LB352]

CLERK: I have nothing further on the bill, Mr. President. [LB352]

PRESIDENT SHEEHY: We'll return to discussion on LB352. Seeing no requests to speak, Senator Lautenbaugh, you're recognized to close. [LB352]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And thank you, all, for the discussion today. There were some concerns raised, legitimately, and as we all always say...I don't know if I always say this and usually I don't mean it if I do, but I'll be happy to work with you between General and Select and address the concerns, because this is a technical issue and I do want to get it right. And I do thank Senator Krist and Senator Schumacher and Senator Avery for their assistance on this and I would urge you to pass it along and give it a green. Thank you very much. [LB352]

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PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. You have heard the closing. The question before the body is on the advancement of LB352. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB352]

CLERK: 32 ayes, 1 nay, Mr. President, on the advancement of LB352. [LB352]

PRESIDENT SHEEHY: LB352 advances. Mr. Clerk, items for the record? [LB352]

CLERK: Thank you, Mr. President. A series of hearing notices from the Health and Human Services Committee, the Appropriations Committee, Transportation and Telecommunications, the Education Committee, and the Urban Affairs Committee, all signed by their respective Chairs. Enrollment and Review reports LB705, LB706, LB707, LB708, LB709, LB710, and LB66 to Select File, some having Enrollment and Review amendments. And finally, Mr. President, a conflict of interest statement to be inserted in the Journal from Senator Conrad. That's all that I have. (Legislative Journal pages 238-240.) [LB705 LB706 LB707 LB708 LB709 LB710 LB66]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to next item under General File, LB418. [LB418]

CLERK: LB418, by Senator Nelson. (Read title.) Bill was introduced on January 13 of last year, at that time referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM643, Legislative Journal page 801, First Session, 2011.) [LB418]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, you're recognized to open on LB418. [LB418]

SENATOR NELSON: Thank you, Mr. President. Members of the body, LB418 will

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simplify the process in which the state regulates robocalls which are political in nature. LB418 advanced through the Transportation Committee with amendment by a vote of 8 to 0. Currently, two separate agencies--the Nebraska Accountability and Disclosure Commission, and the Public Service Commission--regulate these calls. Two agencies regulating the same narrow activity only serves to create confusion, is not necessary, and is not good public policy. The two agencies currently define the term "telephone message" in different ways. As a result of this inconsistency, candidates have inadvertently violated the law despite their best efforts to comply with the requirements of each statute. The current process is inefficient, creates confusion, and does not protect the public from campaigns which may wish to use these calls to annoy and harass our citizenry. LB418 provides a simple solution. The bill places the Nebraska Accountability and Disclosure Commission, the agency that regulates political activity, solely in charge of political robocalls. The NADC possesses the experience and skills to efficiently regulate these calls. The NADC is best able to define terms and provide direction to political candidates and communities with regard to political robocalls. Mr. Frank Daley, executive director of the Nebraska Accountability and Disclosure Commission, testified in favor of LB418. There is no fiscal impact. I urge you to advance LB418 as amended, and I will gladly answer any questions related to the bill. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You've heard the opening to LB418. As was noted, there is a Transportation and Telecommunications Committee amendment. Senator Fischer, you're recognized to open on AM643. [LB418]

SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment is meant to clarify the introducer's intent of the bill, that is to remove all political activity subject to the Accountability and Disclosure Act from the requirement to register a prerecorded message, or robocall, with the Public Service Commission. Accountability and Disclosure already handles political activity. Thank you, Mr. President. [LB418]

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PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening to the committee amendment, AM643. Member requesting to speak, Senator Mello. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. We're discussing LB418 today in part because the Legislature in 2008 passed a bill, post the 2008 election cycle, where the state of Nebraska saw a massive influx of automated calls being sent around the state, sometimes in the middle of the night, to try to suppress individuals from voting and/or voting for individual candidates. And in response this Legislature I feel took a very appropriate step forward, both in 2007 and in 2008, which ultimately resulted in the legislation that we're trying to repeal today. In 2008, Senator Schimek passed a bill in conjunction...in cooperation and compromise with the Governor that would set up a regulatory permitting process for all individuals or companies who choose to do automated dialing calls in the state of Nebraska. This process that's outlined in statute that we're repealing under LB418 created a mechanism, an accountability that would be put on not just the individual who wants to sell or wants to purchase that automated dialing service but more importantly it put the accountability on the company or the provider of that service so that the public at large would know what companies are actually doing this work in Nebraska, not just the customer, whether it be a business or a political campaign. Unfortunately, I'm going to have to stand at this point. I have a lot of questions for Senator Nelson, which may take some time. LB418 as drafted repeals the underlying premise of the accountability measure we put in place to regulate automated dialing calls. It removes the Public Service Commission in the namesake of efficiency. But really if you dig into the legislation you'll notice the Nebraska Accountability and Disclosure Commission doesn't have the same authority to do any regulatory aspects of automated calls that the Public Service Commission has. You can look right now, the power that is created under the Public Service Commission, they create a permitting process for companies to be able to do this work in Nebraska. Under Senator Nelson's bill there is no permitting process. There is no aspect at all involved with the company. I, myself, can create a company

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and you as a consumer could come to me and all that is done is that you as a consumer have to report some information to the Nebraska Accountability and Disclosure Commission, which in my view simply guts our existing statute in the name of trying to make it simpler and easier for those who utilize these services. And the underlying concern I have is this completely disregards the outcries and the outrage we heard from Nebraskans when this issue came up. Nebraskans don't like to receive these calls, that's not for debate. But what we're debating today is whether or not we want to make it easier for unnamed individuals, which would happen under LB418, to be able to utilize these calls under the name of making it easier for them. Unfortunately, I think the consumer is left out of the mix in this conversation. By reading through LB418 you'll notice there are no criminal penalties laid out either in the Accountability and Disclosure Commission. So if Senator Hadley chooses to hire a company to do these automated calls it's left on Senator Hadley and his political campaign or his business to report to the Accountability and Disclosure Commission, here's what I'm doing. And unless someone files a violation or someone files a complaint, there is no enforcement mechanism on what Senator Hadley, his campaign or his business is doing. So I appreciate what Senator Nelson wants to try to accomplish. He wants to try to make it easier... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...processwise for someone who wants to buy or utilize these services to be able to utilize them. But the public policy change that we are ultimately debating today is whether or not we want to completely scrap a system right now that may need slight tweaking and instead throw the whole system out in the name of making it easier for the purchaser and not so much looking out and being the watchdog on behalf of the consumers, which that will occur, colleagues. This will reopen the debate of unlimited robocalls, unlimited automated dialing across the state because there's no one to police it. I look forward to the debate from other colleagues who were here in the body when that landmark legislation was passed, also that was

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helped...designed by Governor Heineman to make sure that it accomplished a bigger, broader public policy goal. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I'm standing in opposition both to the amendment and this bill. And it looks, as you look at it you may say, well gosh, it's regulated in two different places. Why don't we just take it out of one and it will be sufficient if we have some regulation by Accountability and Disclosure. There's a huge difference in what we're doing. And what we're doing is not what the people want with this bill in my opinion. And I might also add that Mr. Daley didn't testify in support of this, he testified neutral. And I'm not sure what his position is if he were pressed. But let me explain the difference. Right now robocalls are regulated in two different environments--one is the Public Service Commission, and the other is Accountability and Disclosure. Right now both require that before you do a robocall you say this is, you know, American's for Freedom and you need to know that John Harms is an awful guy and shouldn't be reelected and whatever they want to say, whatever they want to say. Right? And people do not like these calls. Less regulation is not good. The Public Service Commission requires, and we will lose this requirement in the event we pass this bill, you have to register the machine and the script. That will go away. Now all you have to do is, and by the way, the Public Service Commission has authority, they have more enforcement process, they have a more strict enforcement process which means they have some teeth. And they can do something about the unscrupulous candidate or the unscrupulous committee that puts these robocalls into the homes of Nebraskans. And Accountability and Disclosure does not have the same ability to crack down on these things that the Public Service Commission does. So what we're doing with this bill and the amendment is to get rid of the requirement that they comply with the Public Service Commission, means they don't have to register their machine. Now why would you want to do that? What's the problem with that? They don't have to register their machine, nor do they have to register or submit their script. That's

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what we're getting rid of. And you should ask yourself, why is that? What is the harm? Where is the confusion? There really isn't any confusion trying to comply with both of these, except the Public Service Commission asks you to do more. And that's consumer protection. People do not like these calls. They should be subject to Public Service Commission regulation. And if we pass LB418 with this amendment the only thing people will have to do, assuming that they're even subject to the Political Accountability Act, this is paid for by some vague name. They don't have to register their machine, don't even know if you can track them down after it's done. This is not the direction the people want us to go in. And I think that's been evident by some of the backlash when you've heard up in Omaha with Congressman Terry trying to relax the requirements of these robocalls and the outcry people have. It's up to us to regulate the campaigns, right, to regulate what happens in these campaigns and to make sure that people aren't being bombarded with untrue statements. And as we relax the requirements that's necessarily going to follow. I urge you to oppose LB418 and this amendment. Thank you. [LB418]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Mello, you are recognized. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I'll continue some of the questions I have. Would Senator Nelson yield to a question? [LB418]

SENATOR GLOOR: Senator Nelson, would you yield? [LB418]

SENATOR NELSON: Yes, I would. [LB418]

SENATOR MELLO: Senator Nelson, if we adopt AM643 and LB418, walk us through the process that then would exist as...for me as a campaign committee or me as an

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independent committee, if I want to utilize any kind of automated dialing services in our state. [LB418]

SENATOR NELSON: As it exists right now you have to go to two agencies. You have to go to the Public Service Commission and, as Senator Lathrop said, you have to register your device. And in addition, you have to give a detailed explanation of the use planned and the message to be used. And then there are also other requirements that are set out here on page 2 here of LB418. [LB418]

SENATOR MELLO: What would happen...in that issue then what does the person currently have to go through to do with the Accountability and Disclosure Commission then? [LB418]

SENATOR NELSON: The Accountability Commission requires, under 49-1474.02, that a prerecorded message or a recorded message relating to a candidate or ballot question shall include, immediately preceding the message, the name of the person making the expenditure. And then it goes on to say that it can only be done between the hours of 8:00 a.m. and 9:00 p.m. [LB418]

SENATOR MELLO: So one could recognize then if the current process really is heavily driven towards the Public Service Commission--more regulatory in nature--you have to register your dialing machine, you have to provide a reason of why you're doing this to the Public Service Commission including the script. On the Accountability and Disclosure end all you have to do or all they're asking you to do is that you have to say who it's paid for by, correct? [LB418]

SENATOR NELSON: That's correct. [LB418]

SENATOR MELLO: And you can't do it between the hours of...or after the hours of 8:00 p.m. or 9:00 p.m., I believe. [LB418]

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SENATOR NELSON: Nine p.m., yes. [LB418]

SENATOR MELLO: Maybe it's me. I don't see how that's burdensome in the sense of you're not following two separate rules or two separate regulations of trying to operate all under one procedure. Essentially, the Accountability and Disclosure Commission is saying you have to say who it's paid for by, and we're not going to let you do it after 9:00 p.m. or you're able to be fined. That seems fairly reasonable in the sense of most people don't take phone calls after 9:00 p.m. And as we've had this conversation in the three years I've been in the Legislature people want to know who's paying for campaign services, whether it's direct mail, telephones or whatever it may be. So the real underlying issue would be you don't think under LB418 that the Public Service Commission should really be involved at all in this issue? [LB418]

SENATOR NELSON: That's correct. I think the...from my standpoint, Senator Mello, is that I don't see what business the Public Service Commission has looking at what you propose to say over the phone and the content of your message. I think that's a violation of our free speech. [LB418]

SENATOR MELLO: Well, that's, Senator Nelson, I appreciate if that is your underlying rationale is that this is a freedom of speech issue, understanding that you have the complete freedom of speech to say what you want to say. It's more a matter of looking out for the public good of whether or not we want you to be able to say it at 3:00 a.m. when people are sleeping. That's a debate I encourage colleagues to jump on the floor and let's have that debate. But the concern I have is at least, and you can explain the interpretation maybe, under LB418 what powers does the Accountability and Disclosure Commission actually have to enforce anything? Is there any additional criminal penalties? Is there any new investigatory powers? Can they go after a company or a business... [LB418]

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...that is providing these services to a candidate or a committee?
[LB418]

SENATOR NELSON: Senator Mello, I don't have the answer to that question right now. I know that the NADC has a lot of regulatory authority through their board and they can impose fines and any number of things. I would suppose if there's a violation of what already exists here in their statute, in the 49 series, that they could impose fines and regulate that if their requirements are not met. [LB418]

SENATOR MELLO: Thank you, Senator Nelson. I know my times is going to be coming up. And I have my light on again. We'll continue this dialogue. Colleagues, I encourage you to read through LB418 and look at what this actually does. This is the biggest anticonsumer piece of legislation we will debate this session. People despise these calls, yet we're going to make it easier for nameless, faceless entities to be able to do them with the hopes... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: What's that? [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Members requesting to speak on AM643 to LB418: Senator Lautenbaugh, followed by Senator Avery, Senator Dubas,

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Senator Mello, and Senator Nelson. Senator Lautenbaugh. [LB418]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I think we need to be mindful of what we are talking about underlying this bill and this bill that we passed back in I guess 2008. And I do think this is a First Amendment issue, plain and simple. And when people say we have to protect the public from these false messages and this bill is anticonsumer, we aren't talking about consumers here. We're talking about voters. We're talking about political speech, the most protected speech there is. You can look it up. We protect political speech above all else, above all other kinds. And I don't enjoy getting the robocalls. I don't enjoy getting hateful pieces of mail, especially when they're about me. Maybe we should protect people from that. I had someone, when I knocked on their door one time, saying, why are you bothering me with this? I'm going to vote for you. Go away. I don't like these interruptions. Well, by gosh, maybe we need to protect those consumers from that. Mailings, you've heard me rail every session I've been here, with the exception of this one, and I'm probably going to ruin that now, about the political mailings that go out by these nameless, faceless groups. Apparently the same ones that are going to run these robocall machines if we get our way here we're told. Maybe we should regulate that somehow. Maybe we should have to submit our mailings ahead of time just to make sure there's a record of them. And I hope this is starting to sound a little chilling or Orwellian or contrary to the rights that we take for granted, and I chose that phrase carefully, rights that we take for granted, when we can stand up and say, well, the consumers don't like this. Well, a lot of times the consumers don't like us and they're not consumers, they're voters. And they don't want to be bothered with this. And as George well pointed out, well, we spend more money every year advertising potato chips than we do electing a president, but we're supposed to be worried about the money spent on politics. Well, I'm sorry, these are important things we do here I like to think, some more than others. We can talk about roadside traffic if you want. But we do do important things here. And people need to know who we are. And when we start talking about we have to worry about false messages getting out of there, well, false in whose determination? There is an entity

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that's called Politifact that hands out alleged ratings as far as the truth of a matter in a very nonpartisan way. Of course, they seem to evaluate the truthfulness of people from one party overwhelmingly more often than they do the other party, but it's nonpartisan. And sometimes the facts they determine and give out the lowest rating, which is the pants on fire rating, sometimes they're just wrong, sometimes they are just wrong. So do we want them determining what is false and what is true? I think at some point, and I know I read this somewhere, we're supposed to rely on the voters to make decisions to run this country. And when we start protecting them from information because it might be false and saying that these consumers don't like to be bothered with us and our ridiculous issues and campaigns, well, at some point they do want to be bothered with us. And at some point they are bothered with us. As we come knocking on their door or prepare to regulate this or that or flood this or that, at some point by gosh they pay attention to us. And they want to know who we are. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LAUTENBAUGH: And they want to be involved in the next campaign either anti or pro or at least vote in the next election. And it's messy. Democracy is messy and it's unpleasant. And we aren't going to get money out of it as I argue to death another topic that has been resolved I think. And we aren't going to get falsehoods out of it either because I don't know who can determine with absolute certainty which falsehoods we should protect the voters from and which they're entitled to hear. So I think we have to let it all go. And this is a First Amendment issue. Senator Mello said if that's what is underlying, you should say so. Well, I'm standing up and from where I'm sitting I'm saying so, this is a First Amendment issue. And I support the committee amendment and I support the bill for that reason. I think we made a wrong turn in 2008 and this is a course correction. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Avery. [LB418]

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SENATOR AVERY: Thank you, Mr. President. I've been sitting here looking this bill over and trying to figure out what the compelling public purpose might be. And I know that all that we do in here should be guided by some concept of public purpose, some are more compelling than others. So I would ask Senator Nelson if he'd be willing to yield to that question. [LB418]

PRESIDENT SHEEHY: Senator Nelson, will you yield to Senator Avery? [LB418]

SENATOR NELSON: Yes, I will. [LB418]

SENATOR AVERY: Senator, would you be willing to discuss briefly what the public purpose of this bill is? What public purpose does it serve? [LB418]

SENATOR NELSON: The public purpose, Senator Avery, is to, as I said in my opening statement, is to avoid confusion and help people refrain from inadvertently violating the law. If you're going to have to deal with two separate agencies and comply with the Public Service Commission and also with the NADC, it seems better in my mind to just place it in one place that make sense. And the NADC makes sense because this deals with political robocalls. The word "robocall" sends shivers down everybody's spine. They're automatically against anything, any robocalls whatsoever. But I subscribe to what Senator Lautenbaugh said. This is a First Amendment right and we as candidates should have the ability to get our message out as long as it conforms with reasonable standards which can be set by the NADC very effectively. [LB418]

SENATOR AVERY: Thank you, Senator Nelson. I don't disagree with you that this certainly does have an impact on the free speech issue. It's an appropriate discussion to have in this context. I do think though that this type of political communication falls into that area where some reasonable regulation is justified. My concern with the bill is that currently the PSC has authority to regulate these robocalls. They have the experience in regulating the telecommunication industry. They have the bureaucratic infrastructure;

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they have statutory authority to enforce the current statute, Section 86-256. I'm concerned that the ultimate result, hopefully unintended, would be to neuter this law, make it more difficult to actually enforce what the intent of the law was when we passed 86-256 back in 2008. I remember that discussion well. And the concern we had at that time was that we wanted to not end these calls because it does infringe on free speech. But what we wanted to do was to provide some regulation so that they could be used responsibly, because we had had in the election of '08, as I recall or perhaps it was the election of '06, we'd had a number of abuses of robocalls. And as someone who used robocalls in my campaign and was the victim of some of the abuses, I had a very particular interest in that legislation. I thought what we did in '08 was reasonable. I still think it was reasonable. And I am a little bit concerned about moving the enforcement authority from where it is now placed with an agency that has the experience and the infrastructure to do this effectively and to an... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR AVERY: ...agency that does not. My fear is that this would in effect have perhaps the unintended consequence of neutering the bill or the law that currently exists. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Avery. Mr. Clerk, do you have new bills for introduction and items for the record? [LB418]

CLERK: Thank you, Mr. President. (Read LB1000-1039 by title for the first time.) In addition, Mr. President, new resolutions. (Read LR375CA and LR376CA by title for the first time.) A series of name adds: Senator Krist to LB993; Senator Bloomfield to LB986; Senator Conrad, LB952, LB923, LB891, LB835, LB825; Senator Howard to LB469; Senator Lambert, LB902; Senator Council, LB993. (Legislative Journal pages 240-250.) [LB1000 LB1001 LB1002 LB1003 LB1004 LB1005 LB1006 LB1007 LB1008 LB1009 LB1010 LB1011 LB1012 LB1013 LB1014 LB1015 LB1016 LB1017 LB1018 LB1019]

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LB1030 LB1031 LB1032 LB1033 LB1034 LB1035 LB1036 LB1037 LB1038 LB1039
LR375CA LR376CA LB993 LB986 LB952 LB923 LB891 LB835 LB825 LB469 LB902]

Mr. President, a priority motion: Senator Burke Harr would move to adjourn the body until Wednesday morning, January 18, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Wednesday, January 18, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.