

JUNE 1, 2005

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June 1, 2005

LB 116, 373, 594, 645

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George Norris Legislative Chambers. Our acting chaplain this morning is Senator Langemeier from the 23rd District. Senator, please.

SENATOR LANGEMEIER: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Langemeier, for doing that for us. We appreciate it. Would call the eighty-eighth day of the Ninety-Ninth Legislature, First Session, to order. Senstors, please record your presence. Record please, Mr. Clerk.

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

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

CLERK: No corrections, Mr. President.

SENATOR CUDABACK: Any messages, reports or announcements?

CLERK: Your Committee on Enrollment and Review reports LB 373, LB 116, and LB 594 to Select File, some of those having Enrollment and Review amendments. And that's all that I have, Mr. President. (Legislative Journal pages 1851-1853.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to first agenda item, Select File, 2005 committee first priority bills. LB 645, Mr. Clerk.

CLERK: Mr. President, LB 645, Select File. Senator Flood, I have Enrollment and Review amendments. (AM7118, Legislative Journal pages 1830.)

SENATOR CUDABACK: Senator Flood, for... Senator Erdman, for a motion, please.

CLERK: E & R amendments, Senator, if you would, please.

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SENATOR ERDMAN: Mr. President, I move the adoption of the E & R amendments to LB 645.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 645. All in favor say aye. All opposed, nay. The E & R amendments are adopted.

CLERK: Mr. President, the next amendment I have to the bill, Senator Beutler, FA215.

SENATOR CUDABACK: Senator Beutler, to open on your amendment.

SENATOR BEUTLER: Mr. Clerk, I'd ask you to withdraw that amendment and put it on the bottom of the amendment list.

SENATOR CUDABACK: So ordered. Mr. Clerk, next amendment, please, when you have time.

CLERK: Senator Connealy, AM1744.

SENATOR CUDABACK: Senator Connealy.

SENATOR CONNEALY: I request to withdraw that amendment.

SENATOR CUDABACK: It is withdrawn.

CLERK: Senator Beutler, FA307.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Again, Senator Cudaback, if you would withdraw it and put it at the bottom of the list.

SENATOR CUDABACK: So ordered.

CLERK: Senator Brashear, AM1769. (Legislative Journal page 1841.)

SENATOR CUDABACK: Senator Brashear, to open on AM1769.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the

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body. AM1769 is our attempt to do all that we discussed with multiple parties on General File. It's a comprehensive...in our view, a comprehensive cleanup amendment that also facilitates and is intended to put LB 645 in shape for advancement. As committed to you, we have made an effort to clarify and simplify Sections 2 through 6 of the bill. Section 2 is the permanent ban on retail and wholesale service by public entities other than power suppliers. Section 3 is the permanent ban on e-mail services by power suppliers. Section 4 is the temporary moratorium on wholesale services by power suppliers through December 31, 2007. Section 5 is clarifying language stating that it will not constitute retail or wholesale services when public entities provide telecommunication services to themselves for their own internal and management purposes. Section 5 further clarifies that nothing in the bill is intended to limit that internal use for management purposes. Section 6 provides further clarifying language stating that upon the expiration of the moratorium, all public power suppliers will revert to their current set of powers and authorities, with the sole exception of the permanent ban on retail services, which was acceptable to the parties. We hope that these amendments present the matter in a more straightforward fashion and provide the clarity that was requested during earlier debate. In addition, amendments are added that accommodate various interests and will assist the procedures for the task force. First were grandfather...first, grandfathering is added to Section 2 and 3 to allow the continuation of services that are currently authorized under law and were offered prior to January 1, 2005. This will ensure that the prohibition on retail services does not prohibit services that are already underway in selected locations. Second, additional language is added to the responsibilities of the task force to require them to study the geographical reach of each of the covered services and the degree of competition and regulation of such services as it relates to geographic areas of the state. Third, three additional members are appointed by the Governor to the task force. These three members must be appointed from the three congressional districts, with the other three appointees of the Governor being appointed on an at-large basis. Fourth, permissive language regarding the hiring of a facilitator for the task force is changed to a mandatory "shall." Fifth, the language is

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added...language is added requiring the task force to meet for the first time within 45 days of their appointment. Sixth, language is added giving the Executive Board control over the funds designated for the study, and the language indicating that the funding would be provided by the Nebraska Information and Technology Commission is stricken. Finally, a General Fund appropriation of \$200,000 is provided for the study and expenses of the task force. This will ensure that a facilitator can be hired and expenses are provided for. Prior intent to have the Nebraska Information Technology Commission provide the funding for the study proved to be unrealistic. It has been agreed that the cleanest means to provide funding is to provide a General Fund appropriation and have the Executive Board of the Legislature in control of the funds, in consultation with the task force. The giving of the funds directly to the task force would create administrative and legal issues that can be avoided by utilizing the management of the Executive Board. Those...that is the amendment. It is an attempt to be comprehensive in accommodating the points that have been made by Senator Beutler, by his various amendments, and Senator Schrock, by his considerations. I'd urge your adoption of the amendment and your advancement of the bill, and I thank you for the time and attention you've given to this matter.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the opening on AM1769. Mr. Clerk, motion on the desk, please.

CLERK: Mr. President, Senator Schrock would move to amend with AM1773. (Legislative Journal page 1853.)

SENATOR CUDABACK: Senator Schrock, to open on your amendment to the amendment.

SENATOR SCHROCK: Mr. President and members of the Legislature, first of all, I want to thank Senator Brashear for incorporating some of my concerns in this amendment, AM1769. And this is also one of my concerns that I am bringing to you this morning, and it's not an attempt to harass the bill. It's an attempt to make it better. It shall simply say, on page 3, after line 22, after "district" insert "and shall represent consumers" so that the three people that are appointed from each congressional district

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shall represent consumers. I think when we're talking about broadband over power lines, we should be concerned about our healthcare issues. We should be concerned about our education issues. We should be concerned about economic development. And it would be my hope that these people would represent those kind of interests. And so the consumer is the one that I don't want left out of this argument. That's why this is important to me. I hope that we can act upon this in a very quick manner, and I would appreciate your consideration.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening on AM1773 to AM1769. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Don Pederson a question.

SENATOR CUDABACK: Senator Pederson, would you respond to Senator Chambers?

SENATOR D. PEDERSON: Yes, I will.

SENATOR CHAMBERS: Senator Pederson, how was it that in this situation a piece of legislation can make an appropriation?

SENATOR D. PEDERSON: I don't believe it does. It has a fiscal note.

SENATOR CHAMBERS: So why...

SENATOR D. PEDERSON: It should have a fiscal note, but I understand that this one doesn't have a fiscal note. Is that right?

SENATOR CHAMBERS: I'm...then may...let me ask Senator Brashear, and would you listen to our exchange and then I'll come back to you.

SENATOR D. PEDERSON: Thank you.

SENATOR CUDABACK: Senator Brashear.

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SENATOR CHAMBERS: Senator Brashear,

SPEAKER BRASHEAR: Yes, Mr. President, I'll yield.

SENATOR CHAMBERS: Senator Brashear, on page 8 of your amendment, in Section 10, it says, there is hereby appropriated this money.

SPEAKER BRASHEAR: That is correct.

SENATOR CHAMBERS: Positive...I meant, we don't appropriate money in legislation like this. We do it by way of an A bill. Isn't that correct?

SPEAKER BRASHEAR: Well, I think the A bill will...would be created as a result of the body taking that...this action on this. This is a late-breaking development.

SENATOR CHAMBERS: Thank you. I'd like to ask Senator Don Pederson a question now, in view of that.

SENATOR CUDABACK: Senator Pederson.

SENATOR CHAMBERS: Senator Pederson, this language has no effect as an appropriation, does it?

SENATOR D. PEDERSON: That's absolutely right.

SENATOR CHAMBERS: Thank you. Now, I'd like to ask Senator Brashear a question.

SENATOR CUDABACK: Senator Brashear.

SENATOR CHAMBERS: Senator Brashear, how vigorously would you fight my striking Section 10 from this bill?

SPEAKER BRASHEAR: Quite vigorously, Senator Chambers, because the fact of the matter is that we can't put an A bill together at this point in time, procedurally, to accommodate the appropriation necessary. So this is the way that the powers

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that be and those who are informed have indicated that it can be done, and has in the past been done.

SENATOR CHAMBERS: So the people in our...with the legislative staff told you that we can appropriate money, not with an A bill, but in legislation of this kind?

SPEAKER BRASHEAR: That is what I am reliably informed. Yes, sir.

SENATOR CHAMBERS: I'm going to move to strike it, and Senator Brashear can fight it hard. But I don't believe that this is true. I have read cases, Senator Brashear, and maybe I misread them, but this kind of...we don't appropriate money in this fashion. I'd like to ask Senator Wehrbein a question.

SENATOR CUDABACK: Senator Wehrbein, would you respond?

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Senator Wehrbein, before I go too far out on that limb, how long had you been Chairperson of the Appropriations Committee?

SENATOR WEHRBEIN: Ten years.

SENATOR CHAMBERS: Is it your view that we can appropriate money in legislation in this fashion without an A bill?

SENATOR WEHRBEIN: Well, no, it's not my view that you can do that. I think it would be cleaner to find an A bill somewhere else and use it.

SENATOR CHAMBERS: Thank you. Senator Brashear, if it turns out that this cannot be done, then there's no money available. Isn't that true? If this is ruled to be unenforceable, then there's no money available anyway, is there?

SPEAKER BRASHEAR: That is correct. If it's incorrect, I would...I am also reliably informed that the case law says that you cannot put substantive law in an A bill, but you can...and I

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don't want to take too much of your time so signal if I am.

SENATOR CHAMBERS: That's okay. Take it.

SPEAKER BRASHEAR: But you can put an appropriation in the case law. Let's understand how this...this is the sausage-making process of legislating. Because I was trying to accommodate Senator Schrock's concern that we mandate a facilitator, then that requires the money. So then the money...then, when we found out the Nebraska Information and Technology Commission doesn't have the money...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...to successfully fulfill a mandated and required facilitator, that has created this circumstance. If the money goes away, then I would...the only thing I'd ask is that the mandatory facilitation go away and let the problem be solved another way.

SENATOR CHAMBERS: I will wait until I'm recognized before I proceed further. Thank you, Mr. President. Thank you, Senator Brashear and Senators Pederson and Wehrbein.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion. Senator Chambers. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Mr. President, if Senator Brashear and those he has talked to have convinced him that this is all right, let him have what he wants. But I think what we're going to have to do, as a Legislature, is make some determinations. Earlier in the session, people agreed to strike language that related to obligating the Legislature to do certain things as far as finances out of a bill. Now this goes beyond an obligation which is to be carried out by way of an A bill. There have been discussions of language which would say that a certain amount of money was going to be made available for certain programs such as reimbursing counties. And it was not believed by anybody that that language in positive legislation automatically appropriated the money for that purpose. Now we all know that

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money has to be appropriated from a specific fund, and the money has to be done through language of appropriation. If we are taking the position that we can appropriate money in this fashion, we ought to do away with A bills because that is a waste of time. It is a waste of money and, from now on, any bill that calls for the expenditure of money should carry the appropriation language in the bill. And such being the case, I pledge to fight every appropriation bill that comes through from now on. It's a wasted, unnecessary step. When you have the appropriation in the bill itself, everybody knows precisely what it is that we're dealing with. I'd like to ask Senator Don Pederson a question.

SENATOR CUDABACK: Senator Pederson, would you respond?

SENATOR D. PEDERSON: Yes, I will.

SENATOR CHAMBERS: Senator Pederson, if all of this research that we're being told has been done which says that in positive legislation, such as this, appropriations can be made, isn't the drafting and handling of A bills for specific bills an unnecessary and wasted second step?

SENATOR D. PEDERSON: It would seem to be so. May I make a comment, Senator Chambers?

SENATOR CHAMBERS: Sure.

SENATOR D. PEDERSON: I have just spoken with the Fiscal Office representatives here, Mr. Bergquist, and he has informed me that this has been done on numerous occasions before when, in the last five days of the legislative session, there is not time to formulate and approve an A bill, and that this has not previously been challenged.

SENATOR CHAMBERS: But we don't...challenged by whom?

SENATOR D. PEDERSON: Challenged by...

SENATOR CHAMBERS: In court or...

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SENATOR D. PEDERSON: ...anyone apparently, anyone on the floor. It's not been litigated in any manner.

SENATOR CHAMBERS: So then...okay, thank you. I would like to ask...

SENATOR D. PEDERSON: Thank you.

SENATOR CHAMBERS: ...Senator Brashear a question.

SENATOR CUDABACK: Senator Brashear, would you respond to a question of Senator Chambers?

SPEAKER BRASHEAR: Yes, Mr. President.

SENATOR CHAMBERS: Senator Brashear, my understanding was that you would be citing some case where it said that this can be done. So Senator Don Pederson must be in error when he said this issue has not been litigated. You're saying that it has been litigated, and you were reading from a case where it has been?

SPEAKER BRASHEAR: There is...Senator Chambers, the case law is in the opposite statement, that you cannot substantively legislate in an A bill. So therefore, you draw the conclusion. But I would also point out part of what is requiring this circumstance here now at this stage of the session are our rules. Our rules require A bills. So what you're identifying is a legitimate focus of course...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...and it's something maybe the Legislature would like to study.

SENATOR CHAMBERS: Then what you said...

SPEAKER BRASHEAR: The reconciliation of the rules with the law with the process and procedure.

SENATOR CHAMBERS: Then what you said about therefore A bill...I meant appropriations can be put in positive law was a conclusion

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you drew and not something you read from a court opinion?

SPEAKER BRASHEAR: Yes. I'm arguing the case law in the light most favorable to my circumstance.

SENATOR CHAMBERS: Then would you object to doing away with A bills?

SPEAKER BRASHEAR: I wouldn't, but our rules would unless we revise our rules.

SENATOR CHAMBERS: Well, we can change the rules.

SPEAKER BRASHEAR: Certainly, we can.

SENATOR CHAMBERS: And we would, thereby, save a lot of time and a lot of money and a lot of paper by having a second procedure related to A bills when they're not even necessary.

SPEAKER BRASHEAR: I agree with the point you're making.

SENATOR CHAMBERS: Well, with that...with people accepting that then I don't care where they got this information...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: (Visitors and doctor of the day introduced.) On with discussion. Senator Don Pederson, followed by Senator Chambers. Senator Pederson.

SENATOR D. PEDERSON: Thank you, Mr. President, members of the Legislature. Senator Chambers has some very good thoughts in this connection. I think we have a longstanding tradition of having A bills to carry out the intent of a particular bill and to fund it. It so happens that in this particular case they've come up with an amendment that will require funding. Now the problem is, how do you find an appropriate A bill to carry out the funding of this? There's been the suggestion that we could use another bill like LB 71A and attach it into that. But the

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problem is then you have a situation where you have money appropriating for a particular purpose that's not connected to the bill for which the appropriation is being made. So I think it creates an awkward situation. If we're going to have a commission, if we're going through with this particular process, it's not a desirable way. I agree with Senator Chambers in that regard. And certainly, we don't want to overcome the longstanding tradition of having appropriations bills that will follow the particular bill at issue. And I don't want to change that at all. I understand that, as I said earlier, this is one of those strange situations that comes up at a time when there is not appropriate time to have an A bill follow this particular item. So in order to carry out the intent and to have funding for the particular purpose for which this amendment is being proposed, it would appear that, following some things that I wasn't familiar with before, frankly, but the...we have a Fiscal Office that's been here for a long, long time. They have followed the process in these particular matters, and they said, this is not unusual; it's a seldom used but it's not unusual that it would be used in a situation like this where we have the time constraint involved. We certainly don't want to pass a law providing for a commission and then not providing sufficient funds for the commission to carry out its work. And in that regard, it would appear that they chose the only method that would be available, and that was to embody the appropriation within this particular bill. So for that, I would submit that is the...is what has been chosen to be done, and I think it's done with the idea of carrying out the intent and having the money follow the particular purpose for which the money is to be used. And of course, that's why we ordinarily do A bills anyway. We set up a particular object to be done, we then have an appropriation process to carry out that particular proposal. In this case, there is not time nor an adequate vehicle to use to fill in the appropriation, and for that reason Senator Brashear, I assume, is proposing this particular methodology to do that, and it's certainly something that has been done and I presume then, by having been done before, it can be done. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson. Senator Chambers.

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SENATOR CHAMBERS: Mr. President, there are A bills on Select File. I'd like to ask Senator Brashear a question or two.

SENATOR CUDABACK: Senator Brashear, would you respond?

SPEAKER BRASHEAR: Yes, I will, Mr. President.

SENATOR CHAMBERS: Senator Brashear, are you saying that...well, what is the reason that these other A bills could not be amended with your language?

SPEAKER BRASHEAR: Senator Chambers,...

SENATOR CHAMBERS: Somebody was saying you can't find an A bill.

SPEAKER BRASHEAR: Senator Chambers, I am not saying they cannot. I here am implementing that which...of which I was only recently advised, and it has had multiple inputs by those upon whom we rely. So I'm not going to tell you that I am prepared to argue the pro and con of your way versus this way. This is simply a decision that was made and I'm now dealing with it.

SENATOR CHAMBERS: Senator Brashear, on Select File is LB 589A. Your bill is on Select File. You're amending it. Why couldn't LB 589A be amended to do this? I'm asking is there...

SPEAKER BRASHEAR: I think it possibly could. I mean, I'm not prepared to tell you it can't be.

SENATOR CHAMBERS: And any of these bills on Final Reading that have A bills could be returned and amended today in the same way that yours is being amended today. Isn't that true?

SPEAKER BRASHEAR: I think procedurally that will work.

SENATOR CHAMBERS: So it's not accurate to say that no A bills are available which could be used for this purpose. Would you agree with that?

SPEAKER BRASHEAR: In theory, at least, I agree with you. Yes.

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SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I'm willing to concede, since everybody is saying that this has been done before, that we don't...and I think they're agreeing with me, too, that we don't even need A bills. But now to get down to where we are that causes Senator Brashear said that there's a necessity to proceed in the way that he is doing, I don't agree with that because there are other A bills and they...one, for sure, is on Select File that probably will pass, LB 589A. I don't know about LB 70A, but that even may have a chance. And there are some bills with A bills on Final Reading. And if Senator Brashear's bill can be amended today on Select File and still have time to be processed, a bill can be returned from Final Reading to Select File, amended with this appropriation language, and processed today also. But if the body would rather proceed in this, what I would call, extraordinary manner, the body is free to do that. But I'm going to raise these issues. I am not beholden to the telecommunications industry or any entity thereof. I'm not beholden to public power or any municipality or other entity that could be called a public entity that would be involved with the possible providing of these services. But I am a member of the Legislature and I'm concerned about the process that we use. I'm not fighting Senator Brashear's amendment. Public power and the other public entities, other than the municipalities, I imagine, from something I read in the paper, have sold out. That's why it's difficult to do anything other than compile a record as I and Senator Beutler and maybe one or two others who have spoken have attempted to do. If you're going to...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...if you're going to do what Senator Brashear wants you to do, because you have a big bill that has had millions of dollars spent lobbying it, you can do it. But the Legislature is not receiving money from anybody. Now one of our members is, but that's as a lawyer representing one of those entities. We ought to stick as closely as we can to the procedures and processes that we have in place. If this process that Senator Brashear is attempting has never been litigated, we're not in a position to say what a court would rule or how a

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court would rule. I'm not going that far with it. I'm saying that with the time we have remaining, it is not necessary to do it in this fashion. But if this is what the body wants to do,...

SENATOR CUDABACK: Time. Time, Senator. And that was your third time, Senator, as you know. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I have been listening to the discussion very faithfully and I have a real interest in what Senator Chambers is bringing up as far as the dollar amount in this bill. But one of my main concerns here is that we are...we're trying to develop a task force to study the issue, but in the other part of the amendment we are putting something into law. I think we should either have one or the other, and realistically I think we should have the task force first. But I'm really concerned about, you know, putting that \$200,000 in there for that. Yes, it's probably needed and maybe it's not very many dollars. But only a few days, my attempts were in vain to try to convince the legislative body to meet the obligations that were set forth several years ago. All I was asking was for \$400,000. My efforts were in vain, like I had said. Maybe the public power has sold out, but I haven't; realistically, I haven't. And I'm really concerned, you know, what we're trying to do. We're trying to create the study, which I am in favor of, but yet we're also trying to put something into law. Why don't we do the study first? Forget about the rest. That's my feeling. And I'll give the balance of my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Mr. President, the only reason I'm going to take some of the time is so that I will have time to draft an amendment. I think I've made it clear, and if I didn't I'll make it clear now. My intent is not to fight Senator Brashear's amendment, the one that we're being presented with this morning. The battle was lost when public power sold out. That's when the battle was lost. You have weak-kneed, spineless people, and they pick the individuals they will talk to because they like to skate around me. Had they talked to me before they made their

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sell-out deal, we would be in a different posture from that we're facing today; from the posture which the state will be in when LB 645 becomes law, as it certainly shall. The Governor you know is going to sign it. He's got to get support from everywhere that he can. He's not worried about public power people supporting him for Governor, but he's worried about telecommunications people. How much money have they spent lobbying this bill? Which shows that they've got plenty of money, and they can get their money back by raising their rates. And I'm not that confident in the Public Service Commission looking out to the extent they should for the public's interest. The PSC was mentioned by Senator Janssen when I talked about these phone companies and others gouging the public, and he feels that the PSC moderates that. You know why I switched to Qwest for my long distance service, Senator Landis? You might be the only one listening. I had had AT&T for decades. They put in that charge for long distance service even if you don't use it.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I talked to Qwest and they didn't have that cost, and they argued that way, and I talked to their lobbyist. So I switched to Qwest. A couple of months later, Qwest imposes the same kind of fee. So they're all in it together. One says I'm for you, the other one says I'm against you. They cancel each other out because neither one of them is for the consumer and both are against the consumer. And it will balance out for them. I'm not fighting Senator Brashear's amendment because that's a lost cause. Those of us who have offered amendments, things that were taken to a vote, did not get enough support to give even an inkling to any of us that it's worth expending the time and the effort to try to do anything further with this bill.

SENATOR CUDABACK: Time, Senator Chambers. Thank you, Senator Stuthman as well. Senator Beutler, on AM1773. Is Senator Beutler on the floor? I do not see Senator Beutler. There are no further lights on. We're still on the Schrock amendment to the Brashear amendment. Further speakers? There are no lights on. Senator Schrock, you're recognized to close.

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SENATOR SCHROCK: Mr. President and members of the Legislature, I would remind the body that the three members appointed from each congressional district, it says that these members shall represent consumers. I think it's a constructive amendment. I think the consumers are one segment we don't want to leave out of this task force. Senator Chambers, if you are listening, I would make a comment in response to some of the things you said. I don't believe NPPD and OPPD sold out, and the reason I believe that is because they told me in January, and I believe people when they tell me things, that they were not interested in offering this on a retail basis. I think they provide electricity very well to the citizens of the state of Nebraska. That's what they do well, that's what they want to do. But there's a recognition that public power is the only one that has power lines in our state, and there...if there's going to be this technology deployed, they're the ones that are going to have to be involved. And so I think the task force will sort that out. With that, I would ask you to adopt this amendment, and we can move forward.

SENATOR CUDABACK: You've heard the closing on AM1773. The question before the body is, shall that amendment be adopted? All in favor vote aye; all those opposed, nay. We've voting on adoption of AM1773 to AM1769. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Schrock's amendment.

SENATOR CUDABACK: The amendment has been adopted.

CLERK: Mr. President, Senator Chambers would move to amend Senator Brashear's amendment with FA320. (Legislative Journal page 1853.)

SENATOR CUDABACK: Senator Chambers, to open on FA320 to AM1769.

SENATOR CHAMBERS: Mr. President and members of the Legislature, this is to strike Section 10 from Senator Brashear's amendment, and he has agreed. But I want to engage Senator Schrock in a

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discussion,...

SENATOR CUDABACK: Senator Schrock.

SENATOR CHAMBERS: ...a brief one. Senator Schrock, are the public power districts the only ones prohibited by this bill from retailing these services?

SENATOR SCHROCK: Senator Chambers, the answer is no. Municipalities are also prohibited from doing...from partaking in that type of activity.

SENATOR CHAMBERS: And the municipalities are opposed to this bill, aren't they?

SENATOR SCHROCK: Some of them are.

SENATOR CHAMBERS: Now, when it comes to the moratorium, that relates to wholesale. Is that correct?

SENATOR SCHROCK: I think the permanent moratorium relates...now the permanent one relates to retail. The temporary one relates to wholesale.

SENATOR CHAMBERS: Well, why don't we just make that...why don't we just make that moratorium permanent?

SENATOR SCHROCK: Senator Chambers, if this technology is going to work in other states, we will soon find out, and consumers will demand that we do it in this state. And so I think, to some extent, what we do here is irrelevant because the technology, if it's going to be deployed elsewhere, the...it will dictate that we do the same thing in this state eventually. And so, to some degree, I think we don't know what the future is. But whatever happens in other states I think is going to dictate what our future is in this state when it comes to this type of technology.

SENATOR CHAMBERS: When you say this type of technology, you mean that public power districts might use...make use of?

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SENATOR SCHROCK: No, I'm just saying if broadband over Internet becomes widely deployed in other states and is very successful, I think the citizens of this state will demand it, regardless of what the telecoms or public power or this Legislature wants to do. They'll be a wave move over us that will dictate we have to do this if we're going to compete.

SENATOR CHAMBERS: Well, if the public power districts are prohibited, then it doesn't make any difference what people demand. Public power districts will not be able to engage in delivering these broadband services. Isn't that true?

SENATOR SCHROCK: That is correct. And it's my understanding, at least the two big ones in this state, NPPD and OPPD, they don't want to retail it anyway.

SENATOR CHAMBERS: I'm talking about wholesaling.

SENATOR SCHROCK: But...

SENATOR CHAMBERS: Why did the public power districts agree to a moratorium? That's what I'm talking about.

SENATOR SCHROCK: Because there's a task force there and it's a temporary moratorium.

SENATOR CHAMBERS: That's not an answer. I meant, that's an answer but it's not a reason.

SENATOR SCHROCK: Well, I think that's the reason they did. And they're very hopeful that the task force will sort this out. In the meantime, a lot more information is going to be gathered.

SENATOR CHAMBERS: And if the task force says the public power districts ought to stay out of it, are the public power districts going to accept that position and agree to stay out of it?

SENATOR SCHROCK: I think they would, but that's the reason I wanted some consumers on the task force rather than...and I think the consumers are the ones that we have...we are

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forgetting. And so I think that's important that we do that.

SENATOR CHAMBERS: If the task force says public power should be in it, is public power then going to do it?

SENATOR SCHROCK: I think anything reasonable, public power will try and be accommodating.

SENATOR CHAMBERS: Why do we need the moratorium to extend beyond the lifetime of the task force,...

SENATOR SCHROCK: Senator Chambers,...

SENATOR CHAMBERS: ...if public power is going to do whatever the task force decides? Let me back up. Have the representatives of public power with whom you talked assured you that they are going to accept the recommendations of the task force and chart their course based on that? Have they told you that?

SENATOR SCHROCK: No, not in so many words, they've haven't. No.

SENATOR CHAMBERS: So they might disregard what the task force says if the task force says they should stay out of broadband delivery. Is that true?

SENATOR SCHROCK: Senator Chambers. Senator Chambers, right now we have Dillon's law as it pertains to public power, and it says they cannot engage in activities that we, as a legislative body, do not explicitly allow them to do. And so they can't do it today. And until we pass legislative...legislation permitting them to do it, they can't offer this type of service.

SENATOR CHAMBERS: Have they said they would agree not to seek the authorization to do it?

SENATOR SCHROCK: I think they would wait for the outcome of the task force.

SENATOR CHAMBERS: If the task force said public power should

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stay out of it,...

SENATOR SCHROCK: I would...

SENATOR CHAMBERS: ...then public power would acquiesce and not seek legislation to be allowed to enter it? Is that what they told you?

SENATOR SCHROCK: They didn't tell me that in so many words, but I assume that if the task force says they should stay out of it, they'll be content to do what they do best and that's deliver cheap...or not cheap, but reasonable and affordable electricity to citizens of this state.

SENATOR CHAMBERS: Who is going to make the majority of appointments to this task force?

SENATOR SCHROCK: Well, I think the Governor now is going to do at least six members.

SENATOR CHAMBERS: And who do you think will influence the Governor's decision the most, public power or telecommunication people?

SENATOR SCHROCK: Well, I have a lot of faith in our current Governor. I think he'll do a very balanced job of doing that.

SENATOR CHAMBERS: How long is he going to be Governor, for sure?

SENATOR SCHROCK: Well, another 19 months, I think, is pretty sure, if...good Lord willing and the creek doesn't rise.

SENATOR CHAMBERS: Well, if he makes the proper appointments, might not some of those people be willing to contribute to his campaign to ensure that he continues to be Governor? In other words, might there be a political reason to make certain appointments?

SENATOR SCHROCK: Senator Chambers, you're very correct here. I've never seen a legislation lobbied more heavily by...the Exec

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Board has lobbied more heavily on this issue than I've ever seen in my legislative career, and your career is a lot longer than mine, and I would guess you would say the same.

SENATOR CHAMBERS: True.

SENATOR SCHROCK: So I think there's that danger, but I hope that our Governor is above that.

SENATOR CHAMBERS: Why should he, or any other politician, be above kowtowing to those who make sizeable campaign contributions when that is the rule of politics in this country and this state and at the local level? Why should we consider him to be different or require him to be different?

SENATOR SCHROCK: Well, we just have to...sometimes we just have to put our faith in the right people. And I think if the task force that he appoints is skewed one way or the other, I think the public would call him on it. Certainly, I would be...I would make my feelings known.

SENATOR CHAMBERS: Do you think the public is even going to be aware that a task force like this is appointed, that it exists, and after its existence will be making this study? Do you think the public will know that?

SENATOR SCHROCK: Oh, 98 percent of them won't care.

SENATOR CHAMBERS: Do you think the senators are going to follow what it is the task force is going to do?

SENATOR SCHROCK: Well, those of us that have one year left may not follow too closely, but I'll look at it.

SENATOR CHAMBERS: With the discussions that we've had, if I was to give a little pop quiz, do you think the majority of the senators could explain what the task force is to be studying, not just public power delivering perhaps high-speed Internet, but I meant talk about the specific areas that are to be covered by this task force in its study? Do you think most of the senators could tell me that?

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SENATOR SCHROCK: Oh, I think they could give you some general comments about what the task force is going to do. They're going to study broadband over Internet.

SENATOR CHAMBERS: I want specifics. Do you think they could give specifics, because they're laid out in the bill? I've read them.

SENATOR SCHROCK: Well, some of them could and some of them may not be able to.

SENATOR CHAMBERS: Can you give me three of them?

SENATOR SCHROCK: Well, let's see.

SENATOR CHAMBERS: Don't...you don't have to. I'm just...I'm taking your word for it. Can you give me three of them?

SENATOR SCHROCK: Well, you've got me on the stump now, don't you?

SENATOR CHAMBERS: And you've worked on this bill, haven't you?

SENATOR SCHROCK: I have.

SENATOR CHAMBERS: And you're the one who brought us to the position where I have to fall out with Senator Brashear and criticize the process that was attempted to be used. You caused that, didn't you?

SENATOR SCHROCK: Well, I worked on it.

SENATOR CHAMBERS: Right. And you're not sure of everything in this bill, are you?

SENATOR SCHROCK: It's not my bill, Senator Chambers.

SENATOR CHAMBERS: So why should the public have more interest than the senators who are going to be asked to vote for this bill which is establishing a very serious policy in this state?

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Why should they have more interest than we have?

SENATOR SCHROCK: I think there will be people out there that will be interested in it. I think the public power sector will be interested in the results of this. The members...

SENATOR CHAMBERS: We can see them out there, the lobbyists. I don't mean the lobbyists because they were paid handsomely to be here, and that's the only reason they're here, but that's all I'll ask Senator Schrock. Thank you, Senator Schrock. Members of the Legislature, I will ask the President how much time I have left.

SENATOR CUDABACK: About 1, 20.

SENATOR CHAMBERS: I'm not going to extend this discussion. I have a chance to close so I'm not going to turn my light on. And in my closing, I will tell you what the amendment does. It's very simple and it ought to be done, and we should not have had to do this that we're doing this morning. But keep in mind, if I were not in this Legislature, look how many things would just go by,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...people wouldn't ask questions. They don't even care because they don't know. And if you don't know much, you can't do much; and if you care even less, you're not going to take the time to inform yourself. I don't care that some things have been done in the past. When it comes to my attention that they're to be done now, then I pay attention. And as for that moderator or facilitator, that's one of the items in the bill I don't like and I'm going to watch very carefully to see who this facilitator is. And there will certainly be no political involvement in the selection of that individual. I might even want the job, which I don't. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA320 to AM1769 to LB 645. On with discussion. Senator Schrock.

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SENATOR SCHROCK: Mr. President and members of the Legislature, I want to again thank Senator Brashear for accepting my concerns and incorporating them in this amendment. I was a "not voting" on General File. If this amendment is adopted, I will be voting for the bill. I want to talk about a couple of issues here though that may affect what we're doing in this state. Senator John McCain is cosponsoring legislation that would allow municipalities to provide broadband over power lines, and I think that legislation could be considered this year. I don't know how that would affect this state law, if federal regulations would take precedent over a bill that we would pass. I don't know if any accommodations for LB 645 would be accepted in that. But he is sponsoring that legislation. I think it's very positive or possible that the federal legislation could end...could speak on this issue this year. Senator Janssen, I'm going to address this to you, on when it comes to Nebraska's state and local taxes, Qwest paid \$13 million in taxes last year. OPPD paid over \$18 million. NPPD and Lincoln Electric each paid over \$6 million. In income taxes, Qwest had a negative income tax liability of \$371,000, and the effective tax rate for Qwest was lower than the effective tax rate for NPPD. The argument that we don't want public competing with privates because publics don't pay taxes is very bogus. That is not the case in this state. And when OPPD and NPPD are going to build new generation facilities, they don't seek LB 775 credits because it doesn't work. So I think that's something we need to point out. I thank you for your time on this. I thank Senator Brashear again for he...for having accommodated my concerns, and I will be voting for the amendment, and I will be voting for the bill on Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Schrock. On with discussion of FA320. Senator Chambers, there are no lights on. You're recognized to close.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, this amendment that I'm offering would strike Section 10 which contains that appropriation language. I would like to ask Senator Brashear a question.

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SENATOR CUDABACK: Senator Brashear, would you respond to a question of Senator Chambers?

SPEAKER BRASHEAR: Yes, Mr. President.

SENATOR CHAMBERS: Senator Brashear, do you support this amendment?

SPEAKER BRASHEAR: Yes, Senator Chambers, I will support the amendment.

SENATOR CHAMBERS: Thank you.

SPEAKER BRASHEAR: And I thank you for the opportunity to get this copacetic in everybody's mind.

SENATOR CHAMBERS: Thank you, Senator Brashear. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. The question before the body is adoption of the Chambers amendment, FA320, to AM1769. All in favor of the amendment vote aye; those opposed vote nay. We're voting on adoption of the Chambers amendment, FA320, to the Brashear amendment, AM1769. Have you all voted on the question who wish to? Madam Clerk, please record. Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment to Senator Brashear's amendment.

SENATOR CUDABACK: FA320 has been adopted.

CLERK: I have nothing further pending to Senator Brashear's amendment at this time, Mr. President.

SENATOR CUDABACK: Back to discussion of adoption of AM1769. Seeing no lights on, Senator Brashear, you're recognized to close.

SPEAKER BRASHEAR: Mr. President, members of the body, thank you very much. You've been exceedingly patient and I appreciate it.

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I am not going to review the summary again. It was lengthy. I will summarize and say that, to the best of our ability, this has been...this amendment has been the cleanup, the edit, the accommodation of Senator Schrock's concerns and Senator Beutler's concerns. Although I don't want to misrepresent, there was one other thing that Senator Beutler asked me to do and it something equivalent to like gutting the bill, so...and I didn't agree to that. But otherwise, I tried to put all his amendments in. I thank Senator Connealy for his participation early on, and retreat or withdrawal, however he would characterize it, thank you. I would urge the adoption of the amendment.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the closing on AM1769 to LB 645. The question before the body is, shall that amendment be adopted? All in favor vote aye; opposed, nay. The issue before the body is the Brashear amendment, AM1769. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 32 aye, 1 nay, Mr. President, on the adoption of Senator Brashear's amendment.

SENATOR CUDABACK: AM1769 has been adopted.

CLERK: Mr. President, the next amendment I have to the bill, Senator Raikes, AM1356. Senator, I have a note that you would like to withdraw and substitute, withdraw AM1356 and substitute therefor AM1779.

SENATOR RAIKES: I would, Mr. Clerk, please.

SENATOR CUDABACK: Any objection? Seeing no objection, so ordered.

CLERK: Mr. President, Senator Raikes would offer AM1779. (Legislative Journal page 1854.)

SENATOR CUDABACK: Senator Raikes, to open, AM1779.

SENATOR RAIKES: Thank you, Mr. President and members of the

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Legislature. This is a small technical matter, and one that I didn't get brought to Senator Brashear's attention as soon as I should have. It deals with the retail ban, if you will; Section 2, it adds one phrase. It says in Section 2, if you read, except as provided in, and then you insert "the Educational Services Unit Act and" Section 79-1319, and so on. Currently, the practice in the state, as ESUs deal with telecom providers to acquire Internet services, it's in the interest of all parties concerned that there be one ESU that does the buy for the entire state and then that ESU distributes that service on a nonprofit, but it is similar to a retail arrangement, to the other ESUs and to school districts throughout the state. This change in wording here would simply make it clear that that current practice is still allowed. So that's all this amendment is about. I've talked to Senator Brashear. In fact, yeah, Senator Brashear, I believe is okay with this. If he's not, I assume he'll speak up. So I urge your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on AM1779. Open for discussion. Senator Raikes, there are no... Senator Raikes waives closing. The question before the body is, shall AM1779 be adopted to LB 645? All in favor vote aye; opposed, nay. The question before the body is the Raikes amendment, which amends LB 645. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Raikes' amendment.

SENATOR CUDABACK: The Raikes amendment, AM1779, has been adopted. Mr. Clerk.

CLERK: Mr. President, Senator Beutler, FA215.

SENATOR CUDABACK: Senator Beutler, on FA215.

SENATOR BEUTLER: Mr. Clerk, I'd withdraw that amendment and the subsequent amendment.

SENATOR CUDABACK: Both amendments are withdrawn.

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CLERK: Mr. President, I have nothing further on the bill at this time.

SENATOR CUDABACK: Senator Flood, for a motion, please. Senator Erdman, would you please make a motion.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 645 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 645 to E & R for engrossing. Open for discussion. All in favor say aye. There's been a request for a machine vote. All in favor of advancement of LB 645 to E & R for engrossing vote aye; those opposed vote nay. We're voting on advancement of LB 645. A record vote has been requested. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal page 1854.) 35 ayes, 7 nays, Mr. President, on the advancement.

SENATOR CUDABACK: LB 645 advances. We now go to Select File, 2005 committee second priority bills. Mr. Clerk, LB 589, please.

CLERK: LB 589, Mr. President. Senator Flood, I have Enrollment and Review amendments, first of all. (AM7119, Legislative Journal page 1831.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 589.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Senator Chambers would move to amend with FA308.

SENATOR CUDABACK: Senator Chambers, to open on FA308 to LB 589.

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CLERK: It strikes Section 6 from the bill, Senator.

SENATOR CHAMBERS: Yes, I want to withdraw that amendment.

SENATOR CUDABACK: FA308 is withdrawn.

CLERK: Senator Beutler would move to amend with FA319, Mr. President. (Legislative Journal page 1855.)

SENATOR CUDABACK: Senator Beutler, to open on FA319.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this amendment is an accommodation to Senator Chambers, and I appreciate his willingness to compromise on it. Senator Chambers can state his own case best, but I think generally speaking he was concerned about any additional language in the bill that would encourage in any way the charging of Medicaid recipients for mistakes that may have been made either by the department or by the insurers, and there was some language in there that suggested additional authorization to do such a thing. So what the amendment does, for anybody who's interested in filing it, is that it strikes lines 25, 26, and 27 on page 4, and lines 1 and 2 on page 5, to get rid of that language that was objectionable to Senator Chambers. In doing that, I want to indicate, as a matter of intent, that it's not the intent of this legislation to encourage DHH to go back against self-insurers or licensed insurers who may have already paid the recipient. The deletion of that language in no way indicates that we intend DHH to do that. In fact, we intend DHH not to do that. We want to encourage the insurance companies to make prompt payment in all cases. Secondly, I don't want to indicate in any way that it's the expectation of the Legislature that, in cases where mistakes are made and a Medicaid recipient might have received a little extra money unknowingly, that it's not the intent of the legislation that DHH go back against those individuals where an undue hardship might be created and the matter is not the fault of the recipient at all. So with those two caveats, I would ask you to approve this accommodation to Senator Chambers' point of view on this matter. Thank you.

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LB 373, 589, 589A

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on FA319. Open for discussion. Senator Beutler, there are no senators wishing to speak. Senator Beutler waives closing. The question before the body is adoption of FA319, offered by Senator Beutler to LB 589. All in favor vote aye; opposed, nay. Voting on adoption of the Beutler amendment, FA319. Have you all voted on the question who wish to? Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment.

SENATOR CUDABACK: The Beutler amendment has been adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 589 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 589 to E & R for engrossing. All in favor say aye. All opposed, nay. LB 589 is advanced. Mr. Clerk, LB 589A.

CLERK: LB 589A, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 589A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 589A. All in favor of the motion say aye. All opposed to the motion say nay. LB 589A is advanced. Next agenda item, we're on Select File, 2005 senator priority bills, Kruse division. Mr. Clerk, LB 373.

CLERK: LB 373, Mr. President, E & R amendments first of all. (AM7120, Legislative Journal page 1851.)

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SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 373.

SENATOR CUDABACK: You've heard the motion to adopt E & R amendments. All in favor of that motion say aye. Opposed, nay. E & R amendments are adopted.

CLERK: Senator Preister would move to amend, AM1777. (Legislative Journal page 1855.)

SENATOR CUDABACK: Senator Preister, to open on AM1777 to LB 373.

SENATOR PREISTER: Thank you, Honorable President, friends all. This is an amendment that I see as a friendly amendment. I had talked with Senator Fischer and Senator Bourne about the amendment. We are looking at getting a quantification or an estimate of the impact on various state agencies, but the heart and the soul, I think, of what we're trying to do is to know how it's impacting our constituents, how it affects the public. So this amendment would require an estimate of the impact of the proposed regulation on essentially the other half of the equation or the main portion which is not addressed in the current bill, and that's members of the public, in particular, and the environment. So it does that in three different places within the bill, just adds those two areas. And it helps, I think, to clarify the fact that we are really looking at what the impact that estimate would have on the constituents that we represent. I would leave it at that. I believe Senator Fischer and Senator Bourne were okay with it when I last spoke with them, and if they're not, they will certainly let you know that. Thank you.

SENATOR CUDABACK: Thank you, Senator Preister. You've heard the opening on the Preister amendment, AM1777, to LB 373. Open for discussion. Senator Wehrbein. Senator Wehrbein.

SENATOR WEHRBEIN: Yes, Mr. President and members. I don't know

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that I have a problem with this, Senator Preister, but I'm a little concerned about the...adding the word "environment" there. Is that going to be too all-encompassing? You don't really want an environmental impact. I mean, can that be interpreted to have a...to be environmental impact? You...we've had...we're using agencies, political subdivisions, regulated persons, the public, and then adding "environment." That's pretty big. What's your intention?

SENATOR CUDABACK: Senator Preister.

SENATOR PREISTER: Yes, I would. It is, Senator Wehrbein, but we have in the amendment that was drafted including an estimated quantification. So it isn't an all-encompassing. It isn't something where they're having to do what you referred to, I don't believe. And if it's an agency where it doesn't apply, they can simply say it does not apply. So it's going to apply to many agencies but not necessarily all of them. Banking, for instance, they would simply say it does not apply, and that would certainly cover it.

SENATOR WEHRBEIN: But what if it...say it was DEQ were doing some regulations. Now I know they would do some environmental issues, but obviously the environment is going to be there anyway. But I am concerned, I guess I'd like to have you state that in some way this is intended to be an environmental impact study, which are very, very expensive, and perhaps...

SENATOR PREISTER: No, you're right. I'm not intending to have this as an environmental impact study and that kind of comprehensive, involved, kind of technical estimate. No, that's definitely not the case.

SENATOR WEHRBEIN: Okay. Well, I think I'm all right with that but I'm...I appreciate your saying that. Thank you.

SENATOR PREISTER: And I appreciate your not wanting to go to that expense or that detail, and that's my understanding, and that's what I'm intending as well.

SENATOR WEHRBEIN: Thank you.

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LB 373

SENATOR CUDABACK: Thank you, Senator Wehrbein. Further discussion on the Preister amendment? Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President and members. Senator Preister, would you yield to a question or two?

SENATOR CUDABACK: Senator Preister, would you yield to a question of Senator Bourne?

SENATOR PREISTER: Yes, I will.

SENATOR BOURNE: And to clarify, you did discuss this with me some time ago, but I thought that we were talking about something else and I just wanted a little clarification. So what you would add here, on page 1 and subsection (f), a description including an estimated quantification of the fiscal impact on state agencies, political subdivisions, regulated persons, the public and the environment. That's what you had...that's how it would read after your amendment was added.

SENATOR PREISTER: That's how it would read. That's correct.

SENATOR BOURNE: Okay. What if it is a Department of Revenue regulation? Would the department still have to quantify the impact on the environment? Obviously, the Department of Revenue has really nothing to do with the environment.

SENATOR PREISTER: That's correct, Senator Bourne. And for an agency like that, they would simply put in there, has no impact, and that would be sufficient.

SENATOR BOURNE: Okay. Why then, if I could ask, it says the public, but the bill already talks about regulated persons. So why would...say, if a person...you know, there's two types of individuals that would be contemplated under the bill. One would be regulated people, and the other would be all of the public. So why would we want to quantify what impact it is on the public who might or might...who might not be impacted by the regulation? What I'm suggesting is, what you're asking for is already contemplated in the bill.

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SENATOR PREISTER: It's dealing with one specific group, one specific "regulatee" or a person that would be directly impacted by the law, but there are not...that's not the only member of the public that might be impacted. So this allows for the public at large who may, in different instances, be impacted that wouldn't be covered by just the language that you read.

SENATOR BOURNE: Okay. I'm still not tracking exactly what the amendment does, and I don't want to be particular, but this is a bill that's been introduced four times. We've had countless public hearings. We have had interim studies. We've had meeting after meeting after meeting over the years. We've had...we've researched extensively what other states are doing. And I'm really unclear as to what the bottom line is as it relates to your amendment. What impact is your amendment going to have on the process that we've developed over the last four years?

SENATOR PREISTER: Senator Bourne, my intention is not to derail all of that work that you've done. My intention is to, as I said, have a friendly amendment to it. There's nothing hidden in this. It includes the public, as it states. It's, I think, clear in the language, and I don't see how it could be anything other than that. It makes it clear that the statement or the estimate of the quantification applies to the public, how it might impact the people that we're here representing.

SENATOR BOURNE: Okay. But if the person...if a person is not impacted by the regulation, why would we or an agency consider what...why would they even consider them in the quantification? The bill already talks about regulated persons, so that would mean people that are impacted by the regulation. What if...if we're talking about a Department of Revenue regulation that deals with taxation of a corporation and we have somebody that doesn't own a corporation, why would we care the impact on that individual? I guess what I'm trying to do is, here we are in the eleventh and a half hour after years...

SENATOR CUDABACK: One minute.

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SENATOR BOURNE: ...of work on this, I'm trying to figure out exactly, precisely what your amendment does before I say, yeah, let's go ahead and do it. I don't want to weaken this bill any further than what already...than we have, because we've made extensive compromises over the years. So I guess I don't have in my mind a clear answer as to what specifically you're trying to do.

SENATOR PREISTER: I guess I can't think off the top of my head of a specific example that might help you which would make it easier for you to understand. But regulations that are established by various departments have varying degrees of impact on the public. A specific one that may apply to someone directly may also impact somebody else indirectly. And by adding the public, I'm just...it's a slight expansion, I guess, but I'm making sure that we don't leave somebody out as these agencies are creating these rules and regulations. As I look at the intent...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR PREISTER: ...of what's trying to be done here, it's to address the public and to make sure we're doing what's right for them.

SENATOR CUDABACK: Time, Senator. Thank you, Senator Bourne. On with discussion of the Preister amendment. Senator Brown.

SENATOR BROWN: Mr. President and members, the Government Committee spent a lot of time on this bill, trying to make sure that we had a process that guaranteed that we had some input, as the policymakers, in how the...how our policy is defined by the agencies, but we wanted to be very, very careful that that process not just be one more hoop that we jump through and one more layer of bureaucracy that becomes an end unto itself, and that's why the committee was so careful to define who could participate. And it was in no way to be exclusionary; in fact, exactly the opposite. We exist, as the policymaking body, as representatives of the public. And our whole process is to arrive at good decisions with the input of the public coming through us. I think that even though this may seem to be a

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small addition, it could be very problematic in terms of controlling the process, and it was something that the Government Committee wanted to avoid having a process that was going to be burdensome, because then you'll just have the agencies probably trying to find ways to either avoid it or undo it. And so I would urge caution in well-meaning expansion of this because I think that we have arrived at a balance that is defensible. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. On with discussion of the Preister amendment. Senator Bourne. Senator Bourne waives his opportunity. Further discussion? Seeing no lights on, Senator Preister, you're recognized to close on AM1777.

SENATOR PREISTER: Thank you, Honorable President. My intention here is to make sure that the public is included. The intention is to make sure that, as the agencies are doing their work, that the environment is also included. But as I get the word from outside the glass that this is not acceptable to some people, even though I think the public is who we're here to serve and that we should make sure that we are including them, it looks like the public isn't going to be included today. I would withdraw that amendment.

SENATOR CUDABACK: AM1777 is withdrawn. Thank you, Senator Preister. Mr. Clerk, anything further?

ASSISTANT CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 373 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 373 to E & R for engrossing. All in favor say aye. Discussion? All opposed, nay. LB 373 is advanced. Mr. Clerk, we now go to LB 116.

CLERK: Mr. President, with respect to LB 116, Senator Flood, I have Enrollment and Review amendments, first of all. (AM7121,

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Legislative Journal page 1851.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 116.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments. All in favor say aye. Opposed, nay. E & R amendments are adopted to LB 116.

CLERK: Mr. President, Senator Stuthman offers AM1657. Senator, I have a note that you would like to withdraw AM1657 and offer, as a substitute, AM1778.

SENATOR STUTHMAN: Correct.

SENATOR CUDABACK: Without objection, so ordered.

CLERK: Senator Stuthman, AM1778, Senator. (Legislative Journal page 1855.)

SENATOR CUDABACK: Senator Stuthman, to open, please.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. AM1778 originally was LB 218, and this was advanced out of the Judiciary Committee with 6 positive votes with 1 member absent. LB 218 is also a Speaker priority bill, but since we're running out of time, I've offered it as this amendment. The intent of LB 218 is to provide clarification of definitions in the department...department's investigation of child abuse and neglect. These changes are important because they will help the general public understand the findings made by HHS, assess its report and (sic) abuse and neglect. LB 218 provides the following changes: The term "subject" in the subject of the report of a child abuse and neglect is defined as a person or persons identified as responsible for the child abuse and neglect. References to the term "special state abused and neglected child registry" are updated with the term "tracking system." Currently, the statute uses registry to refer to the tracking of cases investigated, but also uses a term "register"

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to refer to the system containing the names of the individuals who have been found to have abused and neglected children. Use of these two similar terms has caused confusion. The bill eliminates this confusion. What this bill does that is different from LB 218, it leaves the category of "inconclusive" as it is currently in statute. What we had in the original LB 218 was it changed it from "inconclusive" to "agency substantiated." But in the discussion with several of the members, I have decided to take the "agency substantiated" portion out of it and leave the "inconclusive" as it has been in the statute, so that remains the same. Finally, this bill provides the subject of a report may authorize individuals, organizations, to receive information from the central registry entries pertaining to that person. This bill does not change the definitions of any terms used by HHS. It only clarifies what we already have, and this is an important amendment because it will free staff time and resources. Staff spends many hours tracking and clarifications to lawyers, parents and future employees. This bill just identifies and makes it clear. With that, I would hope to answer any questions, if there are any. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Stuthman. You've heard the opening on AM1778 to LB 116. Open for discussion on that motion. Anybody wishing to discuss adoption of AM1778? Senator Louden.

SENATOR LOUDEN: Yes, thank you, Mr. President. I was wondering if Senator Stuthman would yield to a question.

SENATOR CUDABACK: Senator Stuthman, would you yield to a question, please?

SENATOR STUTHMAN: Yes.

SENATOR LOUDEN: I noticed on the amendment, the way I read it on my machine, there's a part in there for where if you leave a child in a dangerous physical position or place or something like that. Now, does that include like putting them on saddle horses or horses or some of these junior rodeos or these "mutton busters" and that sort of thing? Will something like that come

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about so that these children wouldn't be allowed to take part in those kind of activities?

SENATOR STUTHMAN: No, I'm sure that they can still be involved in that activity, as much as I am aware of. The thing about this is this does not change anything in the statute except the clarification of several of the terms. What it does is this is when there has been a report of child abuse and neglect, and then the terminology after that. That is the way that I understand it. As far as if there...no one reports anything like that, things will stay the same.

SENATOR LOUDEN: Okay. That's where I have the concern because it says, placed in a situation that endangers his or her life or physical or mental health. And there are situations like that where they can be, or kids out in...around livestock or something like that, and I'm wondering if this would...needs to be clarified. Or are you satisfied with it the way it is, that this isn't going to infringe on any of those activities?

SENATOR STUTHMAN: Senator Louden, this is the way that it has been in the past. There's no change there. The only difference is we've changed the words to make the definitions clearer. This has been in the past already. It's in the statute, as far as what you're concerned about; has been there and it's still there.

SENATOR LOUDEN: Okay. Thank you, Senator. Thank you, Mr. President. I'll return my time back.

SENATOR CUDABACK: Thank you, Senator Louden. On with discussion of the Stuthman amendment. Senator Bourne. Senator Bourne waives his opportunity. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. We did hear this, as Senator Stuthman mentioned, in committee. I...all I could really add is that I voted yes. I thought it was a decent idea when I heard it at the time. The enhancements that Senator Stuthman discussed I think make it more palatable, make it better at this point in time. I would ask for the adoption and then the movement of the bill. Thank

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you.

SENATOR CUDABACK: Thank you, Senator Friend. Senator Stuthman, there are no further lights. You're recognized to close on your amendment.

SENATOR STUTHMAN: Thank you, Mr. President. I'll be real short in my closing. The only difference in this amendment, and it was a bill originally, is that it just changes some definitions. It doesn't really change anything but just some terminology and definitions. So with that, I'd ask for your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. You've heard the closing on AM1778. The question before the body is, shall that amendment be adopted? All in favor vote aye; those opposed, nay. We're voting on the adoption of the Stuthman amendment, AM1778, which is an amendment to LB 116. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Stuthman's amendment.

SENATOR CUDABACK: The Stuthman amendment has been adopted.

CLERK: Mr. President, next amendment, Senator Friend, AM1225. Senator, I have a note you want to withdraw that.

SENATOR CUDABACK: Senator Friend, is that true?

SENATOR FRIEND: That's correct. I wanted to substitute, if I could, Mr. Clerk, AM1775 for AM1225.

SENATOR CUDABACK: It is the next amendment, Mr. Clerk.

CLERK: Mr. President, Senator Friend would move to amend with AM1775. (Legislative Journal pages 1855-1856.)

SENATOR CUDABACK: Senator Friend, to open.

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SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, last night, in all the mayhem, we moved this bill to the digit...yeah, the digit removal. We moved this bill to Select File. AM1775 is a minor cleanup amendment which addresses a couple of issues. The first portion of AM1775 strikes the emergency clause provision in the bill, since a particular portion of the bill which was...which it was needed for, which was FA311, and it happened to be Senator Schimek's LB 322, was removed last night at the request of our Judiciary Committee Chairman, Senator Bourne. And simply put, Sections 3 and 5 are just unnecessary right now. The other portion of AM1775 strikes the reference to the clerk of the district court and conforms the reference to State Disbursement Unit. That is just to be as consistent as we can in statute. So with that, I would just ask for the adoption of AM1775. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Friend. You've heard the opening on AM1775, offered by Senator Friend. Open for discussion. Senator Friend, there are no lights on. Senator Friend waives closing. The question before the body is, shall AM1775 be adopted to LB 116? All in favor vote aye; opposed, vote nay. The question before the body is the Friend amendment. I wanted to say friendly amendment, it's a Friend amendment. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Friend's amendment.

SENATOR CUDABACK: The Friend amendment has been adopted.

CLERK: Next amendment, Mr. President, Senator Friend, AM1776. (Legislative Journal page 1856.)

SENATOR CUDABACK: Senator Friend, to open on AM1776.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I'm trying to block out the white noise. It's very difficult to do today. This has nothing to do with the mayhem last night. This is a little different, a little different angle and I wanted to toss it out here to see if it

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was something that we would deem appropriate, I guess, as a body. I'm offering AM1776 in cooperation with the State Treasurer's Office. Last night we brought a committee amendment version of LB 444, Senator Jensen's bill, into LB 116. That language deals with an issue that has become pretty important to the State Treasurer who is responsible for collecting and disbursing the child support, what is called the State Disbursement Unit. At the present time, an individual paying his or her child support is allowed to provide two bad checks within one year...within a one-year period to the State Disbursement Unit before the Treasurer's Office requires that person to pay their child support by a money order, cashier's check or certified check, is also called...which is also called good money. AM1776 simply extends this time period for giving those two bad checks for child support payments from one year to two years. Now there was some discussion in committee about this type of issue, and it seemed to be...it seemed to be something that made sense to me; hence this amendment. Those who aren't comfortable with going, I guess, to a one-strike rule, still get what they want in this amendment. And the State Treasurer gets a tool here by expanding the window from one year to two years. And all we're doing is forcing that good money effort, I guess, which would be a certified check or, like we said, a cashier's check, money order. It helps them limit and manage the number of bad checks that are submitted...or, the bad debt. The State Treasurer is being a realist here. I think we are...I think I am, too, and I think the committee was. The Treasurer's Office understands, I think, that we aren't going to a one-strike rule this year, being proactive, in a way, and doing what I think the Treasurer's Office feels is necessary to limit the amount of bad debt that our state incurs. So with that, I would be happy to answer any questions that I can. I would ask for your consideration on this matter in the adoption of AM1776. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Friend. You've heard the opening on AM1776, offered by Senator Friend. Open for discussion. Senator Bourne...I'm sorry, your light went off. Further discussion? Seeing no lights on, Senator Friend, you're recognized to close. Senator Friend waives closing. The question before the body is, shall AM1776, offered by Senator

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Friend, be adopted? All in favor vote aye; opposed, nay. We're voting on adoption of the Friend amendment, AM1776, to LB 116. Have you all voted on the Friend amendment who care to? Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of Senator Friend's amendment.

SENATOR CUDABACK: The Friend amendment has been adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 116 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 116 to E & R for engrossing. All in favor of the motion say aye. Opposed, nay. It is advanced. Mr. Clerk, LB 594.

CLERK: LB 594, Senator. I have Enrollment and Review amendments. (AM7122, Legislative Journal page 1853.)

SENATOR CUDABACK: Nothing further on the bill? Senator Friend, for a motion, please. Senator Flood, rather.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendment to LB 594.

SENATOR CUDABACK: Heard the motion by Senator Flood to adopt the E & R amendments. All in favor say aye. Opposed, nay. They are adopted.

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

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 594 to E & R for engrossing.

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SENATOR CUDABACK: You've heard the motion to advance LB 594, E & R for engrossing. All in favor of the motion say aye. Opposed, nay. LB 594 is advanced. We now move to the next agenda item, Select File, 2005 senator priority bills, the Jensen division. Mr. Clerk, LB 70, please.

CLERK: Mr. President, LB 70 has been discussed on the floor on Select File. When the Legislature left the issue yesterday, pending was Senator Jensen's AM1153. I have amendments now to that, I think, Mr. President. I believe the first, Senator Chambers. Senator, I have your FA316.

SENATOR CHAMBERS: Mr. Clerk, I want to withdraw that amendment. And do I have any others pending on the bill? If I should, I want to withdraw anything that I have pending.

CLERK: Very good. Thank you, Senator.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, then the next amendment I have pending to AM1153, Senator Smith, AM1770. (Legislative Journal page 1856.)

SENATOR CUDABACK: Senator Smith.

SENATOR SMITH: Thank you. Thank you, Mr. President and members. AM1770 is basically the green copy. I know that there has been a great deal of confusion. I have spent many hours trying to negotiate. And I thought we arrived at a compromise, and Senator Jensen chose not to support the ultimate compromise, I guess. So here we are. I've had several colleagues request that we go back to the green copy. It was the most simple, straightforward approach. I can't disagree. And I urge its adoption. I seek not to take a great deal of time. And I hope that we can move along quickly. I urge the adoption of AM1770. Again, it's the green copy. And I hope we can move on. Thank you, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Smith. You've heard the opening on AM1770. Open for discussion. Senator Beutler, followed by Senator Chambers.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I have the sense that we're about to embark on an extremely long debate. What has happened here is that there was an agreement reached. Senator Jensen, myself, Senator Smith worked long, long time, several meetings, several drafts of things, and we came up with a compromise. Senator Chambers chose to characterize that as an abomination. It was complicated. The only greater abomination is going back to the green copy. The green copy was what the compromise was all about, trying to reach agreement on something that was more acceptable to all sides. With respect to those who had the philosophic inclination, or who believed, on the facts, that the studies were conclusive with regard to the validity of helmets, going back to the green copy is an absolute mistake. Furthermore, in terms of the beating we took in the press, essentially because it puts into law disrespect for the law, in the sense that police officers don't know who has the right to be wearing a helmet and who doesn't, and it's a secondary offense, and so the law is totally unenforceable. We know that. And yet, we're going to back to that version of things that we were most heavily criticized on. If this...if Senator Smith is not going to stick by this agreement, then he might as well call for cloture right now. If he attaches the green copy to Senator Jensen's amendment, Senator Jensen will simply withdraw his amendment. In any event, there are a series of additional amendments on the bill. We might as well have the cloture vote now. This, in my opinion, is bad faith, to break from an agreement and to go back to what was the original starting point before everything started to happen on this. I just don't think that's right. And I think what is right and what was agreed upon is to proceed with the bill in its compromised form, which a vast majority of you supported just yesterday. And if Senator Smith needs to have a cloture vote on that, I'm going to vote for cloture. I don't know what others intend to do. But that was the path that was decided upon. To reinstitute this whole discussion from the very beginning is a big mistake. I consider it an abrogation of an agreement. And for myself, at least, I

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intend to fight this bill as hard as I can for as long as we want to go. And that's the only bill I've said that about this session. And I say that because there was an agreement on this. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I was going to fight the bill with that amendment. Even the ones who worked that amendment had to acknowledge that it was, in effect, unworkable. When I asked Senator Beutler about the enforcement of it by law enforcement, he acknowledged that, in his term, it's problematic, which is a diplomatic way of saying it's unenforceable. I had been the one who told Senator Smith that I was going to punish him because he voted for cloture. He was the 33rd vote on something. Well, I feel that Senator Smith has suffered enough. I'm past that now. We're looking at a bill which there has been a lot of discussion on. In its original form, I supported it--that's before Senator Smith voted for cloture--because I have never supported a motorcycle helmet law. Now Senator Smith will put the bill in the condition it was in as the green copy. I will support that. I'm not going to tell Senator Smith, after I've bludgeoned him, that you ought to either repeal the law or leave it alone, and do everything I can to try to help persuade him that what we should deal with, if we're going to take a vote on the motorcycle helmet issue, is to have it in a form which does indeed say something unequivocal. And the unequivocal thing which ought to be said is that the motorcycle helmet law is repealed. People can oppose that repeal, and their mind is not going to be changed by anything I say. In opposing a motorcycle helmet bill, I've not talked about statistics, I've not compared Nebraska to other states. It's just that my point of view is that the state should not require people to wear these helmets or be charged with a crime. Now, if they wanted to ban motorcycles, I've pointed out that I will support that. Ban them from the public streets, roads, and highways. I would support it. But that's not going to happen. What is a legislative agreement or deal? What is it? You all have been parts of them and have seen people deviate from them. I've written rhymes mocking so-called

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deals. But if a person makes an agreement, and circumstances change, that person is free to change his or her mind, as a member of this Legislature. And others have changed their minds on issues. I have changed mine. And I will let people know when I intend to change my mind. Senator Smith could not really get a vote on the issue of motorcycle helmets with that hodgepodge amendment that had been offered the other day. And some who supported the amendment are not going to support the bill. And that's why I had said, it's an attempt to do, by indirection, what will not be done directly. If by chance the bill had passed in the form that the other amendment had put it in, I don't think the Governor would have signed it. And even if he had of, it would have been unenforceable. So there would be, in some people's minds, a motorcycle helmet bill, law, on the books; but the reality would be that, it's so unenforceable, there is none. Senator Smith's amendment that he's offering will...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...give us the opportunity to vote on that issue. And that's what I think we ought to vote on when we have a matter such as this. I'm going to support Senator Smith's amendment. And if the amendment is adopted, I'm going to support the bill. Senator Smith, from my side, has suffered enough, at my hands. There's no need in me continuing, continuing to rub it in and rub it in. But if he had kept that atrocious amendment, my opposition to the amendment would have kept me prodding him. But now we're going to take a mature position, and put before the body the issue as it ought to be framed. And if people are opposed to it, they'll vote against it. But that hodgepodge amendment did not frame the issue, and we would not have been voting on motorcycle helmet law...motorcycle helmets. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on AM1770? Senator Jensen, followed by Senator Johnson.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I really wish that each one of you would take the

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amendment that was passed yesterday and lay that alongside the green copy, and you're going to see that those two are very much alike. And I heard comments yesterday that we should go back to the green copy. Very much alike, both those, the amendment that was passed yesterday, and the green copy. The big difference is that the amendment passed yesterday said that there would be a secondary offense for two years, and then we'd go back to helmets. The green copy says there's a secondary offense forever. If you're driving a motorcycle with a five-year-old on the back, without a helmet, both of them, secondary offense. Read the bill. Read the bill. Read the green copy. Read the amendment that was passed yesterday. I've been on Health and Human Services Committee, and you have elected me Chairman for the last eight years, seven years. And I've really taken that job seriously. And I felt that it was my job to protect the health and welfare of the citizens of this state as Chairman of the Health and Human Services Committee. There is no question, I don't believe, in anybody's mind here, that if you remove the helmets, you're not going to have additional deaths; you're going to have additional head trauma. It is a fact. Now, you can say...you can say that, well, if we only had education. And by the way, the green copy does not guarantee education either. For a very small few, it would, but not for the general ridership. So that's a misnomer also out there. But there isn't anybody, I don't think, in this body, that really believes, if you take off the helmets permanently, that we're not going to have an increase in deaths, we're going to have an increase in head trauma. And by the way, you are going to have an increase in state costs, because we pick up that in hospitals, we pick up that cost in Medicaid. And it will be there. Now, we don't track that Medicaid--Senator Smith says that--as closely as we can, but it is there. There isn't a single medical entity in this state that supports repeal of this law. But more than that,...you know, a few years ago, three or four years ago, a senator, who's not here, came around to me and asked if I would sign on to a bill. And he said, you should support this because of your position that you've held. I signed on. Many others did, too. As the bill came forward, we said, wait a minute, that was not what I thought it was. And so I asked to remove my name. And if you've made a commitment in the past, if you've signed on to a bill that is incorrect or

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isn't coming forth...forward with what you thought it was, there's certainly nothing wrong with changing your mind. I told Senator Chambers yesterday that there's two issues that I have been vehemently opposed the last 11 years, but I...this next year, I would change my mind and vote a different way. I think that's also responsible. But to take and say that the green copy is better than what we had before, I don't see that at all. I think it's a step backwards. I was willing to go with two years of some indecision out there of our police officers. But that's certainly better than going with the green copy, which says that we have a secondary offense forever. Forever. I think that's absolutely wrong. With that,...I would rather have a direct repeal, no helmets at all, than to have what we have in the green copy then, and yes, what we have for two years through this amendment that was passed. I told Senator Smith, worked with him, just as Senator Beutler and I did, to come up with that amendment. I didn't like it. And I told him, I'll...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...vote for the amendment; I won't vote for the bill. And the reason being is that I was willing to live with something bad for two years, but not for a lifetime. I ask that you look at those issues. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Mr. Clerk, please.

CLERK: Mr. President, I have a priority motion. Senator Beutler would move to recommit LB 70 to committee.

SENATOR CUDABACK: Senator Beutler, you're recognized to open on your motion to recommit to committee.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this is probably the most honest motion of all. Because, as we go through these two different versions of things, I would think you would have to admit that both of them have serious problems with regard to the credibility of their provisions, and that in one sense it's true, you probably should just repeal it or keep it in place, one of the two. But the green copy of the bill

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does not simply repeal the helmet law. It is very, very complicated. Senator Chambers, I'd like to ask you a couple of questions, if I might.

SENATOR CUDABACK: Senator Chambers, would you respond?

SENATOR CHAMBERS: To the extent that I can.

SENATOR BEUTLER: Senator Chambers, in the green copy, in subsection (3), it exempts an individual from wearing a helmet if the individual is at least 19 years of age, had a Class M license prior to January 1, 2005, and is equipped with eye protection. Now, Senator, is this provision enforceable, in your mind?

SENATOR CHAMBERS: Senator Beutler, that is, to use your word, problematic. But what I asked Senator Smith--because he gave me a copy of the amendment that he's offering just this morning; I have not had a chance to read it--I asked Senator Smith, does this amendment constitute a repealer of the motorcycle helmet law? And he said, yes.

SENATOR BEUTLER: Senator, I think you should look...

SENATOR CHAMBERS: On the basis of that representation, I'm supporting his amendment.

SENATOR BEUTLER: Senator, I think you should look closely at the amendment. Let me ask Senator Smith, if he would yield.

SENATOR CUDABACK: Senator Smith, would you yield to a question?

SENATOR BEUTLER: Senator Smith, in your amendment, do you have subsection (3), which exempts an individual from wearing a helmet if the individual is at least 19 years of age, had a Class M license prior to January 1, 2005, and is equipped with eye protection?

SENATOR SMITH: What page do you speak of, Senator?

SENATOR BEUTLER: Senator, I'm not speaking of a page. I'm

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asking you if that provision is in your bill. That was in the green copy of the bill.

SENATOR SMITH: There...

SENATOR BEUTLER: You indicated we were returning...

SENATOR SMITH: Yes.

SENATOR BEUTLER: ...to the green copy.

SENATOR SMITH: Yes.

SENATOR BEUTLER: I assume this is in the bill.

SENATOR SMITH: Yes.

SENATOR BEUTLER: Pardon me?

SENATOR SMITH: If your question was, is that in there, yes.

SENATOR BEUTLER: Yes.

SENATOR SMITH: And it equates to a 21 year age condition.

SENATOR BEUTLER: Well, there are three different conditions. And if you don't meet these three different conditions, it's a secondary offense, is it not, if you're not wearing a helmet?

SENATOR SMITH: That is correct.

SENATOR BEUTLER: Okay. How does the police officer know, if he has to know whether you have a Class M license issued prior to January 1, 2005? And furthermore, how does he know if you're close to the age of 19, in some cases? But especially with regard to the existence of the appropriate license, issued prior to January 1, 2005, how does a police officer, looking at somebody without a helmet, know that?

SENATOR SMITH: Exactly the same way they would look at a car driver and as it relates to age.

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SENATOR BEUTLER: As it relates to age. How about with regard to the license? How would they know?

SENATOR SMITH: The same way as the car driver.

SENATOR BEUTLER: Okay. Now, these same criteria are in the compromise amendment. But they only apply for two years. Isn't that correct, Senator Smith?

SENATOR SMITH: I believe that would be accurate, yes.

SENATOR BEUTLER: Okay. So to the extent that we're calling something an abomination, the abomination that exists in the committee...in the agreed upon amendment lasts for two years; your abomination lasts forever. Is that not correct?

SENATOR SMITH: Senator Beutler, I'm not going to call it an abomination. (Inaudible)...

SENATOR BEUTLER: Well, Senator Chambers...this is what Senator Chambers is calling an abomination in the committee...in the agreed upon amendment.

SENATOR SMITH: Senator Beutler,...

SENATOR BEUTLER: But it's the same thing that's in the green copy, but the green copy lasts forever. Isn't that accurate?

SENATOR SMITH: Subject to the will of the Legislature.

SENATOR BEUTLER: Thank you, Senator. Senator Chambers, could I ask you about another provision in the green copy?

SENATOR CUDABACK: Senator Chambers. He's on his way, Senator Beutler.

SENATOR BEUTLER: Okay.

SENATOR CHAMBERS: Yes.

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SENATOR BEUTLER: Senator Chambers, there's another provision that complicates this even further. Because one allows them to be without a helmet in one instance, and another allows them to be without a helmet in another instance. And I just described the one instance. Here's the other instance. Allows an individual to operate a motorcycle without a helmet if the individual is at least 21 years of age, as opposed to 19, is equipped with eye protection, and carries proof of successful completion of a motorcycle safety course. Proof of completion of a motorcycle safety course provided by a national recognized motorcycle safety foundation shall meet the requirements. This also is in the committee amendment, or is in the agreed upon amendment. Senator, is this one of the abominations you were talking about--I believe it was--in the compromise amendment?

SENATOR CHAMBERS: Senator Beutler, let me clarify my position on that amendment. That amendment was to be in place for two years. I had said that people who claim to be against doing away with helmets were willing to back off for two years. I said I would not, that either we ought to do it or not do it, that the amendment is neither fish nor fowl, is what you all called a compromise. And that's what I was attacking, the two-year period. Either do it or don't do it. There are provisions in the green copy that can be attacked. But if it constitutes a repealer of the motorcycle helmet law, whatever else it does, I'm in favor of that.

SENATOR BEUTLER: But, Senator,...

SENATOR CHAMBERS: And that's what Senator Smith represented to me...

SENATOR BEUTLER: ...it doesn't repeal the motorcycle helmet law. It just says you have to meet different requirements.

SENATOR CHAMBERS: Well, I will ask Senator Smith, on my time, if in fact what he told me is true about his amendment. But when I was discussing what you all cobbled together, I made it clear that I saw that as neither fish nor fowl, because you're allowing something to happen for two years which you think shouldn't happen at all. And nobody who was with that amendment

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contradicted what I said.

SENATOR BEUTLER: Okay, Senator.

SENATOR CHAMBERS: And some who supported the amendment said they're not going to support the bill after the amendment was attached.

SENATOR BEUTLER: Thank you, Senator. Members of the Legislature, I just wanted to have this kind of hard-core conversation, because the very things that are being criticized in the agreed upon compromise amendment are things that are there for two years. And in response to the criticism, it's being proposed that those very same things be in the...be in your amendment here and be adopted to the bill forever, i.e., the green copy. So if what is bad is bad, it's worse if you're doing the green copy. And I think you can understand from those two provisions, which are two of the basic provisions, they're really the only abomination things you can talk about. Because in that compromise amendment, the law becomes very clear in two years. You wear helmets, one. You have the safety course, that I've become convinced, from Senator Smith's discussion, is important, and everybody takes the safety course, all new licensees. And you have eye protection, and everybody wears it. Very clear. But I admit,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...in the short two-year period, we incorporated some of Senator Smith's provisions, to accommodate him, which make it problematic to enforce the law for a period of two years. But the solution to that is not to make it problematic to enforce the law forever. So at least I hope that much is understood, as you make your decision on this. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on the motion to recommit to committee LB 70. Open for discussion. Senator Johnson, followed by Senator Smith and others.

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SENATOR JOHNSON: Senator Cudaback, members of the Legislature, I'm for freedom. It's in the constitution. Don't bother me with the facts. It's my head and my brain, and I can do whatever I want with it. That's what we were basically told the first day. We found out that wasn't the case. It is expensive. It's the most expensive injury that you can sustain, and it lasts year after year. Let's talk just a little bit more about that freedom. With Memorial Day just having gotten over, I thought about this a little bit in regard to this bill. What are the freedoms? Freedom of speech probably is the single most important freedom that we have. Yet, here we also have constraints. We can't yell, fire, in a crowded restaurant so that we get a place to sit down. We have just seen where Newsweek magazine caused all kinds of worldwide trouble by printing unsubstantiated material. Television certainly has been guilty of this. And yet, television has the potential of spreading the truth of freedom in the not-so-free world. Second freedom, freedom to vote, unquestionably one of the things that is...has taken us two centuries to come to where we are now. Third, freedom to trial by jury of our peers, under rules established by us. But here's what I want to talk to you about this morning. Freedom to act, laws and restrictions, guarantees we place ourselves through the process...upon ourselves, through the process of freedom of speech and the freedom to vote, and monitored by our trial by jury system. Generally, these freedoms work to create an orderly society. The goal is to promote the general health and welfare, and allowing us as much personal freedom as we can reasonably attain with that kind of goal. Many people over the years, those that fought in Europe to free us from Hitler, and many others along the line, they did this so that we representatives may establish an orderly society for the common good. Let's not cheapen these deeds by the builders of our country by associating them with traffic safety regulations. With this great gift of freedom comes our responsibility to make informed decisions, weighing all factors, based on unbiased material. Poor legislation wrapped in the flag is still poor legislation. LB 70 is poor legislation. Let this legislation...

SENATOR CUDABACK: One minute.

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SENATOR JOHNSON: ...legislative session adjourn with our heads held high, and justly proud of the many good things that have been accomplished in this session, and not close with another round of well-founded derision from our newspaper editorials and cartoons. For what good reason do you support this bill? Our job is to provide for the health and welfare of our citizens, not to help kill and maim our citizens and pay dearly for doing so. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. On with discussion of the Beutler motion to recommit. Senator Smith.

SENATOR SMITH: Thank you, Mr. President. I'll try to stay calm, after comments like Senator Johnson's. And it's obviously just Senator Johnson's prerogative to delay. And to give the body an indicator of what is going to take place, I'm plan to file cloture here in an appropriate time frame. I do not want to stifle discussion, real discussion. But we've worked on this and we've talked about this. And we can do that again, and again, and again. And Senator Jensen can pretend like there's a compromise, and then pull out. And I appreciate Senator Beutler's willingness to try to compromise and negotiate a compromise. That's fine. But when I try and try and try and try to work with Senator Jensen, and he pulls out on me, I get tired of that. Perhaps that was his intent from dsy one. I don't know. But Senator Chambers yesterday appropriately pointed out some of the problems with the language that Senator Jensen suggested with his task force and some other things. But when two sides try to come together, one side that seeks not to regulate and the other side that seeks to control, there's going to be problems. And that's why we're going to have to take the cloture vote here pretty soon, unless things would change here in the next few minutes. And that's fine. If that's the way Senator Johnson and Senator Jensen and others want to operate, that's fine. We can move on that way. I don't think that's always best for the process, but that's certainly a prerogative that they may wish to exercise. That's where I stand. You know of what my plans are. And hopefully we can move on. But I seek not to delay this much further. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Beutler.

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SENATOR BEUTLER: I would yield, at the moment...or, yield my time back to the Chair, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Beutler's questions to me were right on point. With the strong position that he holds on the issue, he's justified in asking me and anybody else who has taken a position on this bill probing questions. If there are inconsistencies between what I said yesterday and what I'm saying now, those inconsistencies, as he perceives them, should be brought to the fore by way of the question and answer method, because he's not paraphrasing what I said, unless maybe to ask the question, but he's giving me the opportunity to clarify or show that there is no inconsistency. I told Senator Beutler that the reason I would support the green copy is because I had been told that Senator Smith's amendment that we're considering constitutes a repeal of the motorcycle helmet law. That's what Senator Smith told me. I would like to ask Senator Smith the question that I told Senator Beutler I would pose to Senator Smith.

SENATOR CUDABACK: Senator Smith, would you yield?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, does the amendment that we're considering now outright repeal the motorcycle helmet law?

SENATOR SMITH: I would say that it does, in that it would allow for folks to go without a helmet who cannot currently go without a helmet.

SENATOR CHAMBERS: But the language of the bill itself does not mention the sections that constitute the motorcycle helmet law and says simply, these sections shall be repealed outright.

SENATOR SMITH: I don't...

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SENATOR CHAMBERS: Does your amendment do that?

SENATOR SMITH: I wish that we could have done it that simply and that concisely. But it was...did not seem possible to do that. I...there are conditions, as I stated earlier, on the mike and to you privately, that still exist. But it...(laugh) you know, it's interesting how opponents to this have called it a repeal all along. It can be spun in different ways, I'll tell you up front.

SENATOR CHAMBERS: But could I finish my time?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Because there might be a lot of people to talk, and I'm interested in my position. I accepted what Senator Smith told me, in terms of the characterization of the amendment that he has. What I can support is an outright repeal. That's what I kept arguing for yesterday. That's what I was saying I'll support today. Senator Beutler points out similarities, and Senator Jensen referred to what he said are similarities, between what I've called the green copy and the amendment they put together that I so harshly criticized. Among other things was the establishment of that commission, or committee, how they would go about studying, the pointlessness of any such study, because we know what the conclusions will be, the fact that certain individuals were put on that committee, or commission, simply to put somebody on it. These are things that I did criticize. But what I'm interested in seeing is a vote on whether we will repeal the motorcycle helmet law. Senator Smith's amendment does not do that. But I told him, in any case, if he got rid of that amendment that had been cobbled together, I would not fight his amendment. If it was a repealer, I would support it. I'm in a position where I will not fight his amendment, but I do not see it as a repealer. So the...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...vote that I wanted us to take is still not going to be before us. I try to make as clear as I can what my

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view is, what my position is, and what I think we ought to be voting on. I'm not in a position to structure an amendment and have it considered which would do what I'm talking about. Although, on General File, I did offer to Senator Smith an amendment that would have outright repealed the motorcycle helmet law. But he was not in favor of that. And he told me that he didn't have the opportunity when I presented it to really understand what it did. But I made an attempt to bring before us an outright repealer, and I was unsuccessful. Maybe that has not clarified anything in anybody's mind. But it's as clear as I can make my position. And I will answer any questions that are put to me for further clarification. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the motion to recommit to committee? Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. If any of you have the green copy in front of you, if you have the amendment that was filed, AM1770, just look at page 17, paragraph (4): Except for eye protection requirements of this section, enforcement of this section by state and local law enforcement agencies shall be accomplished only as a secondary action when an operator or a passenger has been cited or charged with a violation of some other offense. Now, when I read that, I still say, if you had a five-year-old child on the back of your motorcycle without a helmet, they cannot pull you over. Think about the endangerment of a five-year-old child on the back of a motorcycle without a helmet. That's okay if we pass AM1770. Think about what you're doing. That's why I felt that we could not ever pass the green copy of the bill. That's also why...and, Senator Chambers, I also had an amendment that would have outright repealed the motorcycle helmet law for one year. I didn't like that, but that was an amendment that I filed, for one year, while we do a study. And at the end of that one year, the study would say, should we go back to where we were with the helmet law. Outright repeal. That was not accepted. But I think that we're on dangerous, dangerous ground when we say that it's a secondary offense if you're riding without a helmet and the child behind you is also without a helmet, and we allow that to go on on our

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highways and on our streets. And if I had agreed earlier to support, I would actually pull my...that agreement because of that revelation. I did work with good faith, Senator Smith, with you and Senator Beutler, on an amendment. And certainly, Senator Chambers, many others in here, have also worked on amendments, still not wanting to vote for the bill, or not voting for the bill, but at least, if the bill passed, it was better than what you...than what the bill said. You're always trying to improve at least the outcome of a bill. I did that. Was I going to vote for the bill? No. And I will not vote for any bill that is going to endanger people's lives, that is going to increase the cost to the citizens of this state, the taxpayers, and that's going to cause trauma and head injuries for families because of individuals riding carelessly on motorcycles and not without protection. To me, it's pretty black and white. It's pretty clear that either we repeal what we've got,...but this is even worse than a repeal. Any time you tell a law officer, yeah, they're breaking the law, but you can't stop them, what are you doing? What are you doing to the law enforcement people? What are you doing to the law of this state? I don't care what it might be, even paying taxes. Well, you can't pay...you have to pay taxes, but if you don't, we're not going to come after you. What kind of a deal is that? We cannot, we cannot go back to the green copy. You know, I didn't like...yes, we agreed to an amendment yesterday, and we voted on that amendment. At the end of two years, at least we'd go back to, I think, a helmet law, perhaps. It all depends on what that study would show. But every time I've tried to come up with any improvements to the bill, then I didn't negotiate in good faith.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: One minute.

SENATOR JENSEN: I just don't buy that. And I even find offense to that. But you make the decision. You read that section. You tell me what it says. Just page 17 of the green copy. Yes, you can be pulled over if you don't have eye protection. But they cannot pull you over on a primary offense if you don't have a helmet, and the five-year-old child behind you. I don't want to be responsible for that. I don't want to look back a year

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later and say, gee whiz, if I would have just been a little more forceful, we would have saved five, six, seven lives. Every life is precious in this state. I want to make sure that they are safe. Thank you, Mr. President.

SENATOR JANSSEN: Thank you, Senator Jensen. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, Senator Smith, I think at this point in time I would like to give you a chance to respond to Senator Jensen's assertion with regard to the five-year-old child, and explore that further with you. Because I think it is important that we understand that one way or the other. I would yield time to Senator Smith to give a brief response.

SENATOR SMITH: Thank you, Senator Beutler.

SENATOR JANSSEN: Senator Smith.

SENATOR SMITH: And Senator Jensen has spun the issue, and I'm starting to take it personally. When I hear the misinformation that comes out, in suggesting that a five-year-old does not have to wear a helmet on a motorcycle, it's absolutely ridiculous. A five-year-old on a motorcycle, if they're a passenger, they would still have to wear a helmet. But if we're going to embellish and just say anything...

SENATOR BEUTLER: Senator,...

SENATOR SMITH: ...to protect our cause,...thank you.

SENATOR BEUTLER: I just wanted, basically, to hear your response. But let me explore it further with you, so we understand...hopefully, try to get a picture of where the truth is in all of this. The section that we're talking about is Section 7. Section 7 says, a person shall not operate or be a passenger without a protective helmet, unless you're exempted. A child is not exempted.

SENATOR SMITH: That is correct.

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SENATOR BEUTLER: A child has to have a helmet. However, in the section that Senator Jensen quoted, it said, enforcement of this section--okay, that's enforcement of the passenger provision, as well as enforcement of the driver provision--enforcement of this section by state or local law shall be accomplished only by a secondary action, secondary offense. Now, let me ask you this. If a police officer sees a five-year-old child on a motorcycle without a helmet, can that officer, without a...without seeing some other offense, stop that motorcycle driver and say, take that five-year-old off the cycle?

SENATOR SMITH: I don't think they could demand that they take the five-year-old off the cycle.

SENATOR BEUTLER: Could they stop it?

SENATOR SMITH: For that infraction alone?

SENATOR BEUTLER: For the child not having a helmet.

SENATOR SMITH: Probably not. Let me...

SENATOR BEUTLER: Thank you, Senator. I mean, that...you know, we can spin things certain ways. But telling you how the law will operate is not a spin. That's telling you what's going to happen. And the fact of the matter is, unless you can find something to stick on the driver, it appears that what Senator Jensen says is true. You could not get a five-year-old without a helmet or a six-year-old without a helmet or a eight- or a nine- or a ten-year-old without a helmet off that motorcycle unless you can find some offense to stick on the driver of the motorcycle, because the law includes the passenger provision under the secondary offense provision. That's the way I read it. That's the way Senator Smith has conceded it to be. That's the way Senator Jensen has asserted it. That appears to be the truth of the matter. And that is a serious, serious flaw in the green copy of the bill, which is incorporated in AM1770.

SENATOR JANSSEN: Thank you, Senator Beutler. Senator Byars.

SENATOR BYARS: Thank you, Mr. President. I read the language

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exactly the same way as Senator Jensen and Senator Beutler does. Senator Smith, you owe Senator Jensen an apology. You were totally and completely out of line. Senator Jensen, nobody cares about people in this body more than Senator Jensen does. Nobody has been a stronger advocate for people who need an advocate than Senator Jensen does. The language you have in the bill is wrong, Senator Smith, and you need to admit it. You can put a five-year-old, a four-year-old, a three-year-old, a ten-year-old on the back of that motorcycle, and no law enforcement officer can stop it, unless the driver does something in violation of the law. Now, I've tried to keep my peace on this. I've tried to talk to you on this. You know how adamantly I'm opposed to doing anything to deflate the helmet laws as they are. But you have gotten personal, you have gotten out of control, and you owe Senator Jensen an apology. I yield my time back to the Chair.

SENATOR JANSSEN: Thank you, Senator Byars. Senator Smith, your light is on next.

SENATOR SMITH: Thank you, Mr. President. I apologize that I got a little out of hand, Senator Byars. I want the facts to be what they are. We have secondary enforcement of a vehicle operator's license. Vehicle, all cars. You must be pulled over for something else before we even know for sure you have a driver's license, Senator Byars. And what I have a problem with is when Senator Jensen says that all five-year-olds can go on a motorcycle without a helmet under LB 70. That is not true. We have an 80 percent compliance rate with seat belts with the secondary enforcement; 80 percent. That's very relevant. What I didn't want to see happen, without some of this language, was that there was the random pulling over of someone, just because. I have a problem with that. I think there are law enforcement resources better spent otherwise, in other directions. And that's why I get a little fired up when I hear mischaracterizations of the bill. We all have a bias here. I fully understand that. I have a bias that leans toward less restriction, and there are other biases in this body that lean another direction. And that's fine. That's good for public debate. But if we're only going to stand in the way so that we can control, control, control, I don't think that's what this

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process is about. Thank you, Mr. President.

SENATOR JANSSEN: Thank you, Senator Smith. The next speaker on...to recommit to committee is Senator Beutler.

SENATOR BEUTLER: Senator Janssen, members of the Legislature, I suppose we all need to calm down a little bit. And I want to indicate that if I raised my voice to Senator Smith a little bit, it's all of the moment. Senator Smith worked very hard to compromise on this matter. And it was something that I think he did in good faith. Those of us who are opposed to this bill, we need to compromise. Thirty-five of you on General File debate gave us the message that you wanted to see a review of the literature, that you wanted something to happen here other than the same old same old. We reached this compromise amendment. It was a good amendment, notwithstanding Senator Chambers' trashing of it. If it was trashy, I assure you it was less trashy than the green copy of the bill. It was trashy for two years at most. After that, it's an excellent bill, and I would think excellent even from Senator Smith's perspective, because it incorporated the additional safety requirements that he thought were important. So, Senator Smith, you've moved from the course that I think we should have stayed upon and everybody agreed to. They passed your amendment by a healthy vote. The compromise amendment was passed by a healthy vote. We should simply move forward from there. Senator Chambers has taken you off track. With all due respect for Senator Chambers, I think on this particular issue he's taken us off track. Those of you who said, let's compromise, you got the compromise, you endorsed the compromise, and I heartily recommend to you that we move back to the compromise. If we can't move back to the compromise, then I can only assume that the whole thing must be so muddled in your mind at this point that what does make sense indeed is to recommit it to committee and let the committee work on the matter and come out with something that can work for us. Thank you.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Beutler. On with discussion to recommit. Senator Friend, followed by Senator

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Smith.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Really quickly, people have been talking about things being muddled up in everybody's minds. I wanted to make sure that one thing that seems to be continually, I guess, encroaching on mine is halfway cleared up. Would Senator Smith...I should have come up and asked you beforehand about this. Would Senator Smith yield to a question?

SENATOR CUDABACK: Senator Smith, would you yield?

SENATOR SMITH: Yes.

SENATOR FRIEND: Senator, if I'm an irresponsible adult and I have a five-year-old on the back of my motorcycle and I'm driving down the road, I'm driving without a helmet on, and my five-year-old doesn't have a helmet on either...and don't tell me that doesn't happen. I've seen it happen. I saw it happen three days ago. I don't want to hear that come up. An adult without a helmet on and a kid on the back without a helmet. Senator Smith, current law--and if anybody else wants to try to field this--what happens to those two people? What happens to the guy driving that motorcycle? What kind of fine is he issued at that point when he's pulled over?

SENATOR SMITH: Fifty dollars.

SENATOR FRIEND: Fifty dollar fine. The \$50 fine is issued, right now, current law. What happens after that fine is issued?

SENATOR SMITH: Nothing, to my knowledge.

SENATOR FRIEND: So let me get this straight. The law enforcement officer pulls this guy over, issues him the ticket, and lets him drive away with the five-year-old on the back? Or does he put the five-year-old in the back of a cruiser and drive that five-year-old home? What happens in that situation?

SENATOR SMITH: Current law I don't believe stipulates what happens from that point. So they could drive off and hope they

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don't get pulled over again.

SENATOR FRIEND: Thank you, Senator Smith. I'd like somebody to answer that question for me. I saw it three days ago. I saw that happen. Now, if people are fired up out here, there's probably a reason for that. Because there's confusion. I saw a guy driving down the road on a motorcycle with a kid on the back. Neither of them had helmets on. Can somebody answer that for me? Why did that...if he got pulled over at all, if he got pulled over, he got fined, and then that cop said, drive home and drive home safely? Or did he throw the kid in the back of the cruiser and did they go home? I'd like an answer. I don't know. I'm going to look it up. I'd like somebody to address that. Because right now, the convoluted nature of the issue that we're dealing with is not how we're going to change the law, it's that this is a dangerous act, and people don't care, they do it anyway. Three days ago, folks, I saw it happen. I should have pulled the guy over myself, pulled him off to the side of the road, taken the kid, and kidnapped him. But guess what, I wouldn't be here now, and you'd all be saved. Thank you, Mr. President.

SENATOR CUDABACK: Senator,...are you finished, Senator Friend?

SENATOR FRIEND: Thank you, yes.

SENATOR CUDABACK: Thank you. Senator Smith.

SENATOR SMITH: Thank...

SENATOR CUDABACK: And this will be your third time, Senator.

SENATOR SMITH: Thank you, Mr. President and members. I want to reiterate the fact that the enforcement mechanisms in this bill are very similar to the enforcement mechanisms of driving a vehicle. Now, we do not afford law enforcement the opportunity to just pull over someone--we shouldn't be, anyway--based on how they look. And if they look a certain age, they're going to have to do something else to get pulled over, in a regular vehicle. Would Senator Jensen yield to a question?

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SENATOR CUDABACK: Senator Jensen, would you yield?

SENATOR JENSEN: Yes.

SENATOR SMITH: Senator Jensen, if someone driving a regular vehicle must violate the law--speeding, left turn, right turn, stoplight, whatever--before we know their age, are we assuming that they're underage?

SENATOR JENSEN: No. However, under your bill, under LB 1770 (sic), eye protection is a primary offense, and so you can pull somebody over there. I don't...it works both ways here.

SENATOR SMITH: Okay. And I've stated several times why that is in there and why that is agreeable to parties involved in violation of someone's rights and others' freedoms, and so forth. So I don't want to keep repeating myself on that. But...and I thank you for your response to my question. We do not assume that everyone is underage, just because we don't allow law enforcement to pull someone over just to randomly check a driver's license age. So I want that to be clear with the body, that Senator Jensen has tried to confuse the issue with that. This is a very straightforward approach. And so here's what I hope that we can do in a timely fashion. Vote no on recommit to committee. First, vote yes on the cloture. Vote no to recommit on committee...recommit to committee. Vote yes on AM1770. Vote yes on AM1153. And vote yes on the advancement of LB 70. We can do some action here. We can come up with good public safety issues here. We can beef up the training course that needs to be beefed up. There's a waiting line right now, a waiting list of those wanting to take the training course. And the mechanisms in LB 70, paid for by motorcyclists, will enhance the availability of the training, and we can do something real to prevent accidents. No helmet will prevent an accident. No helmet has ever prevented an accident from occurring. It might mitigate some injuries. It might mitigate on some injuries, but no helmet has ever prevented the accident from occurring. I've been very adamant that the training piece be a part of this, and I stand by that. And that is why I believe that we can pass this, we can make a segment of our population really happy, a

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very responsible segment of our population very happy, by advancing this and ultimately adopting it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. On with discussion. Senator Johnson, followed by Senator Chambers.

SENATOR JOHNSON: Senator Cudaback, members of the body, one of the things that we mentioned just briefly yesterday, and I think it's worthwhile bringing up again here today, since there is the question about the secondary use of the helmet, and much discussion about the five-year-old and so on, and that's this, is that in states that have done away with the mandatory helmet use, the amount of use by youth, they both decrease by 50 percent. There are people who are over 21 who will continue to wear a helmet at about the 50 percent rate. The disturbing thing is, is that those under 21 also use a helmet at about 50 percent. That's something that we cannot ignore. Those under 21 will not wear their helmets at about the 50 percent rate. One thing that I wanted to mention in getting back to the freedom is something that the U.S. Supreme Court said in response to the statement, it's my head and my brain and I can do with...whatever I want with my head and my brain. U.S. Supreme Court: From the moment of injury, society picks the person up off the highway, delivers him to a municipal hospital and municipal doctors, provides him with unemployment compensation if, after recovery, he cannot replace his lost job, and, if the injury causes permanent disability, may assume the responsibility for him and his family's subsistence. We do not understand a state of mind that permits a plaintiff to think that only he himself is concerned. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, guess what. Senator Friend was just back there gesticulating, and he was very passionately asking for somebody to answer his question about what should be done in a situation where a very young child is on the back of a motorcycle and the young child has no helmet. And I'm standing in what I consider to be the

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line of vision of Senator Friend, gesturing to myself, saying, ask me, ask me. Then he'd say, I want somebody to answer that question. And I'm looking at him, saying, ask me, ask me. So then he turned to one side, turned to the other, then decided he was through talking. And I said, ask me. So then he said, well, you've got your light on. So I turned my light on, as he said. And I'm going to read something from the existing law. And instead of condemning the motorcycle helmet law, maybe Senator Friend should be looking at the police officer. Section 28-710 says, abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be placed in a situation that endangers his or her life of physical or mental health. If the officer felt that that child's physical health was endangered, he was observing child abuse. And when an officer observes a violation of the law, the officer can take appropriate action and the officer can remove the child from the endangering circumstances. The officer did not have to let that motorcyclist drive away with that child on the motorcycle. That is an issue that has nothing to do with the motorcycle helmet bill. I'm not making my comments to condemn or criticize what Senator...what's his name? Guess what,...Friend, brought to us. He is right, and I'm pleased to see his indignation. But there is a provision in the law right now under which the officer could have taken action. The officer...I'd like to ask Senator Friend a question before I proceed, because maybe I understood what he said.

SENATOR CUDABACK: Senator Friend, would you yield?

SENATOR FRIEND: Yes.

SENATOR CHAMBERS: Senator Friend, did you say that the officer did stop the person, or what would happen if an officer stopped...?

SENATOR FRIEND: What would happen if. Because it was a hypothetical.

SENATOR CHAMBERS: Okay.

SENATOR FRIEND: I saw the people on the motorcycle without the

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helmets.

SENATOR CHAMBERS: I understand.

SENATOR FRIEND: There was no law enforcement officer around.

SENATOR CHAMBERS: Okay, thank you.

SENATOR FRIEND: Except me.

SENATOR CHAMBERS: Senator,...

SENATOR FRIEND: I'm not a law enforcement officer.

SENATOR CHAMBERS: (Laugh) You should have prefaced that with, "guess what." And then he wouldn't have answered at all. But I'm going to tell you why I'm responding. Senator Friend is not bringing up something that does not happen. What he said happened does happen. But that is not at the fault of the motorcycle helmet law. That goes to enforcement. If people who ride motorcycles have experienced a lack of enforcement when they have a young child riding with them without a helmet, they're going to be encouraged and emboldened to continue endangering that child. I do not want to see children endangered. So if...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...there are officers who believe that they cannot do anything because of anything that might be found in the motorcycle helmet law, they should know that there is independent statutory authority for the officer to act, and that is found in our child abuse statutes. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Beutler, you have spoken three times. I'm sorry, you can't speak again, outside of your closing. Senator Jensen. Senator...is Senator Jensen...?

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. And I was certainly listening to Senator Friend

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also, and the comments that he was making. It is interesting, though, that even that one individual, which is absolutely wrong, but yet, 99.5 percent--this is in 2003--of the riders were wearing helmets in the state of Nebraska. That's extremely high. I'm reading this, actually, from a statement from MADD. But that...in 2003, 13 people died and 369 were injured in motorcycle crashes on Nebraska roadways. That's tragic. But the upside is that helmet usage in 2003 for motorcycle riders was 99.5 percent, certainly almost unanimous compliance throughout the state. Now, yes, I would absolutely agree that some of those helmets are not the protection that I would like to see. But I stated on the floor here once before, even a towel around the head is better than nothing. And even that plastic pot on the head, if it's plastic, is still better than nothing. And if you're skidding down the roadway at 50 miles an hour, I'd rather have a plastic pot on my head than nothing. So even that helps. And if I was in the Legislature long enough, I would introduce legislation that would require that these helmets--even though it's still in the law right now--that that would be enforced. But even the \$50 fine, is all, as Senator Friend mentioned, is not high enough. We had suggested in one of the negotiations that we tried work with Senator Smith was to increase that to a \$500 fine. I think you'd get compliance then. And I think if we had a \$500 fine also on improper helmets, you would see proper helmets being worn. Those...that's the way I would like to go. Like I said, I'm always looking for safety. And it's just so interesting how we got on this issue in the first place. There's a few people who want to ride a motorcycle without helmets. And so here we are, trying to repeal a helmet law, or trying to come up with a secondary offense or whatever, so that some people can ride without a helmet. That...and yet, 80 percent...now, if I was running for office, any time I can be on the side of an issue where 80 percent of the people are, that's the side I believe I would go to. But when, by polls, two polls that were run within the last two years, 80 percent of the people support the helmet law, 80 percent, that is significant. And if...like I said, if I was running for office, or not even running for office, I always look at where my constituents are. And that...by the way, that was across the 1st, 2nd, and 3rd Districts, all across the state. And so if I had some political thought of being in

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office or running for office, I would probably take the 80 percent side. That just seems to make sense to me. I do support Senator Beutler's motion. All this would do would say that we would recommit this to committee and we'd take it up again next year. Not that I'm looking forward to taking it up next year. But I think maybe the Transportation Committee should take a look at this issue. The Transportation Committee should...

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: One minute.

SENATOR JENSEN: ...look at secondary offense. They should look at, perhaps, the consequences of this bill. At least they'd have the opportunity to do that before we go forward and what I think is going to be injurious to many individuals, and also injurious to the state, in the form of costs to taxpayers. I return the rest of my time back to the Chair.

SPEAKER BRASHEAR: Thank you, Senator Jensen. Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, seems to me that Senator Chambers was quite right. I was thinking that it was reckless endangerment, but in fact I think his analysis is right. If Senator Smith has the chance, if I were you, Senator Smith, I'd make an...I would accept an amendment that said the kids who are under, you know, the driving age, should have a helmet. And the reason is, our rationale for doing this bill is that people of an adult age should be able to decide for themselves. That's different than a five-year-old or a six-year-old. The theory is different, and different treatment is appropriate. However, it seems to me you've got to get to Senator Smith's bill before we can do that. I'm going to vote against recommit. I'm going to give Senator Smith a chance to solve this problem with an appropriately drawn amendment, because that would easily solve this matter.

SPEAKER BRASHEAR: Thank you, Senator Landis. Senator Janssen.

SENATOR JANSSEN: Thank you, Mr. Speaker, members of the

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Legislature. Interesting debate. In my opinion, reasonable people would wear some type of protection to their cranium. Now, that just makes sense. I don't care if you're going 5 mile an hour or you're going 70 mile an hour, reasonable people would protect themselves from brain injury or death. I mean, this is something that, seems to me, that they would certainly want to do. Maybe we should put this before the people, let the people of the state of Nebraska decide whether they want a helmet law. That would solve the situation. We'd live with what we had. But I still...I remember visiting here a few weeks ago with a large group of riders that came into the town I have my business in, and visiting with them about the helmet law. And one of the...the fellow was probably in his mid-forties, had a very nice machine, had a passenger along, and they both put on their helmets when they left. Well, it's the law. And I asked him, I said, if this was repealed, if the helmet law was repealed, would you still wear that helmet? He said, I live in Omaha, and I would certainly wear it there. But when we get out on the highway, he said, I would take it off. Because there are too many crazy people in the cities that will get in your way. (Laugh) Well, yeah, I suppose there are. But there are crazy people in the country, too. And you're not...(laugh) you know, you can't avoid them all. But you're less likely to have an accident on the open road than you are in the city. And it's not always the rider's fault. A few comments I wanted to make today, and I'd give the rest of my time to Senator Beutler.

SPEAKER BRASHEAR: Thank you, Senator Jansaen. Senator Beutler, you have 2 minutes and 38 seconds.

SENATOR BEUTLER: You know, that time is not enough to say what I wanted to say next. But Senator Janssen's remarks remind me of the fact that just two days ago I almost hit a motorcyclist. He was behind me. He was in the blind spot. I had looked in my rear view mirror, and I saw nothing at all. I looked carefully, and I started to change lanes. And he had to swerve a little bit, and honked his horn. And you know, we corrected the situation right away. But it was my fault, I guess. I mean, they are very hard to see. And I mention that only to say he was wearing a helmet, and I was glad he was wearing a helmet. We weren't going very fast. But if I had tipped that bike and

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he had...his head had come crashing off to the side of the pavement, God knows how bad I would have felt, whatever. But it would be small...some small comfort to me to know that those people who I might hit are wearing a helmet and may be less injured than otherwise. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Beutler. Senator Smith.

SENATOR SMITH: Thank you, Mr. President, members. Very briefly, I want to point out to the body, state of Pennsylvania has been doing this for over a year. Deaths have decreased. Do we need more than a year to determine the actual impact? Yes. But Pennsylvania is doing it, and it's working well so far. And I commend them for having the courage to do this similar concept with training and otherwise. But please keep an open mind, colleagues. Please keep an open mind. This is a workable scenario that has five years of forethought. There were differing ways that we tried to approach this. And it is a way to accommodate some freedoms and some public safety issues. And keep in mind that Health and Human Services does not even track the expenses to the state as a result of motorcycle accidents. Now, they did extrapolate some information for me. And I expected...and I've given it in handouts. I expected the costs to the state to be even higher than what HHS told me they were. Please keep that in mind. Please keep that in mind that insurance companies have the opportunity to rate up motorcyclists based on their habits. And they generally don't. I think some health insurance companies might. But that's generally not a practice, where they choose to rate up smokers, other risk-oriented activities relating to public health. We can accommodate some personal freedom here, we can accommodate the enhanced training mechanism in LB 70, and we can get this done. I have filed the cloture motion. I hope you'll vote "no" to recommit to committee, and vote "yes" from that point forward. We have the opportunity to help build our economy. We need to welcome tourists into our state, and this is one way of doing exactly that. I hope you'll join me in advocating for this concept, and we can make a large number of Nebraskans happy and invite a large number of non-Nebraskans to spend millions of dollars in Nebraska. Thank you, Mr. President.

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SPEAKER BRASHEAR: Thank you, Senator Smith. Mr. Clerk, you have a motion?

CLERK: I do, Mr. President, a priority motion. Senator Smith would move to invoke cloture, pursuant to Rule 7, Section 10.

SPEAKER BRASHEAR: Senator Smith, for what purpose do you rise?

SENATOR SMITH: I ask for a call of the house and a roll call vote in reverse order.

SPEAKER BRASHEAR: Thank you. Members, there has been a request for a call of the house and a roll call vote in reverse order. All those in favor of placing the house under call vote aye; those opposed, nay. Mr. Clerk, please record.

CLERK: 36 ayes, 0 nays, Mr. President, to place the house under call.

SPEAKER BRASHEAR: Thank you. Members, the house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Brown and Cunningham, the house is under call. Senator Smith, Senator Brown, we are reliably informed that she has left the building. It's your decision, Senator Smith. Senator Smith indicates that we should proceed. Mr. Clerk, we are voting on invoking cloture, and there has been a request for a reverse-order roll call. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal page 1857.) 31 ayes, 13 nays on the motion to invoke cloture, Mr. President.

SPEAKER BRASHEAR: Cloture is not invoked. Mr. Clerk. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 235 and LR 236. Mr. Clerk.

CLERK: Mr. President, one item, and that is a Reference report regarding two study resolutions. (Legislative Journal

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page 1858.)

Mr. President, a priority motion: Senator Cudaback would move to recess until 1:30 p.m.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. You've heard the motion. The motion is to recess until 1:30 p.m. All those in favor signify by saying aye. Those opposed, nay. We are in recess. Thank you.

RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: (Recorder malfunction)...George W. Norris Legislative Chamber. Senators, the afternoon session is about to reconvene. Please record your presence. Record please, Mr. Clerk.

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

SENATOR CUDABACK: We now go to Select File. We left...Mr. Clerk, please advise the body where we were when we recessed for lunch.

CLERK: Mr. President, LB 548. First of all, Senator Flood, I have Enrollment and Review amendments. (AM7085, Legislative Journal page 1170.)

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 548.

SENATOR CUDABACK: The motion is to adopt E & R amendments to LB 548. All in favor. Senator Smith, your light is on. Did you wish to address...Senator Smith waives. All in favor say

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aye. Opposed, nay. They are adopted.

CLERK: Mr. President, Senator Chambers, with AM1205.

SENATOR CUDABACK: Senator Chambers, to open on AM1205 to LB 548.

SENATOR CHAMBERS: Mr. President, I withdraw this amendment.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, the next amendment I have is AM1696. Pursuant to that offering, Senator Schrock would move to suspend Rule 7, Section (3)(d) to permit consideration of AM1696.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Schrock, to open on your motion to suspend the rules.

SENATOR SCHROCK: Mr. President, members of the Legislature, I'm asking for the body's approval to suspend the rules so that we can amend LB...essentially LB 336 into this bill. I will explain that afterwards. I have the full consent of Senator Jensen. It is...LB 336 is a public power bill that was advanced out of the Natural Resources Committee unanimously. It is a bill that would allow preferred financing for mandated projects. I would prefer to answer those questions after we suspend the rules. But if there's any questions on that, I would be very glad to answer them. So with this, I'm asking for the body to suspend the germaneness issue, so that we can put this into Senator Jensen's bill. And like I said, we have the full consent of Senator Jensen. We're not trying to pull any fast ones here. We'll certainly explain the issue. We don't think it's controversial, but we think it's something that could be favorable for the citizens of the state, and certainly could save money on people's electric bill. With that, that will conclude my opening. I will answer any questions you might have. Or we can discuss them if this suspension rule is successful.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening on the motion to suspend the germaneness rule. For

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discussion? Senator Schrock, there are no lights on. Senator Schrock waives closing. For the body, this will require 30 votes, as you all know. The motion before the body is to suspend the germaneness rule. All in favor vote aye; all opposed vote nay. It does require 30 votes. Have you all voted on the question? Please record, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the suspension of the germaneness rule.

SENATOR CUDABACK: The motion was successful to suspend the germaneness rule. Mr. Clerk.

CLERK: Mr. President, Senator Schrock would move to amend with AM1696. (Legislative Journal page 1718.)

SENATOR CUDABACK: Senator Schrock, to open on AM1696.

SENATOR SCHROCK: Mr. President, members of the Legislature, as I said to you before, this is...this amendment is LB 336, which was advanced out of the Natural Resources Committee unanimously. It creates the Public Entities Mandated Project Charges Act. It allows public power entities an additional financing option for power facilities projects that are mandated by federal or state law. Under this bill, the governing board of a public power entity would have the option to finance and pay for mandated projects by authorizing a separate customer charge on each customer's electric service bill, representing the customer's portion of the mandated projects charge. In other words, the amount of the project that is mandated could be a specialized billing on a person's bill. The public power entity would also have the authority to issue bonds for such mandated projects, with the payment of the bonds secured by a first lien on the revenue from the separate customer charges. In other words, if they secure bonds for this, that bond would have a very high rating. And it would be the first bond that would be paid off if...a condition of default on the...by the public power district. The revenue stream from such a mandated project would be dedicated solely to paying mandated project charges and financing costs, and would remain in place until such costs are paid. Mandated projects must be capital mandated projects by

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federal or state law or a regulatory agency. In other words, if your public power district is mandated to put on scrubbers on their smokestacks to clean up the air, that would be a mandated project. They could bill you separately for that. Although it would be...you would pay for it with one bill, but it would be separately itemized on your bill. And the...that item on your bill could be dedicated to paying off that bond. The act is structured so as to enable public power entities to obtain favorable financing to pay for mandated projects. The dedicated revenue stream from the separate customer charges provides a secure source of payment for mandated projects and bonds, and would allow public power entities to secure favorable terms from the bond market. Since 1994, this type of financing is currently being used by other states. A Mandated Project Charges Act can reduce, by 70 cents per \$1, the annual revenue needed to meet debt payments. For example, the savings on a \$400 million debt would be approximately \$15 million. This reduction is possible because of the AAA rating that may be obtained because of the dedicated charges and bond structure. In other words, if we pass this bill and NPPD and OPPD, LES are mandated by federal government to do something that has environmental implications, but it doesn't have to be environmental, then they could secure bonds at a favorable rate. That item would be separate on your bill, but it could be paid, of course, with one check or one payment. And they could receive a more favorable interest rating on that bond, because it would be first in line should there be a default. I don't anticipate that happening in Nebraska, however. But if we pass this, we could save consumers money. And that's why I'm asking you to consider AM1696. And I don't think there's anything hidden there. We're all out front on everything. Nobody's trying to pull a fast one here. This is not the preferred way of doing business. But this was an option that was open to us. We thank Senator Jensen for affording us that option. And we've worked with the public power districts on this issue. If you have questions, I would be glad to answer them. I would give any of my time to Senator Jensen. But I see he has his light on, so that's probably not necessary.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening on AM1696. Mr. Clerk, motion on the desk, please.

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CLERK: Senator Beutler would move to amend Senator Schrock's amendment, AM1754.

SENATOR CUDABACK: Senator Beutler, to open on AM1754.

SENATOR BEUTLER: I'd withdraw that amendment.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

CLERK: Back to AM1696, Mr. President. Oh, I'm sorry. Senator Beutler, I have FA310. (Legislative Journal page 1840.)

SENATOR CUDABACK: Senator Beutler, on FA310, please.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think what is being attempted here is, overall, a very good thing. I don't know if there's ever been a power district in this state that's ever got a AAA rating on revenue bonds. But if there's a reasonable opportunity to try to get that rating, it certainly would be financially helpful. But I think, in attempting to comply with the rating companies' requirements, one of the things that they've been asked to do, and bond counsel has done for them, is to screw down the processes and procedures considerably. And I want to go over some of those and point them out to you. And then I want to suggest to you one change that I think you'll want to think about, or at the very least, know about, should they ever take this path towards a mandated project. The bill is filled with a separate set of procedures that apply to these bonds that will be issued, and the revenues that will be "securitized" and siphoned off to pay only for those bonds, a separate set of procedures for those. And those procedures are necessary in order to, apparently, accommodate the rating society, the rating bureaus. One of the things that it does, for example, with regard to whether a project is mandated or not...that is, whether it will be subject to this separate treatment; it has a very broad definition of what "mandated" means. And then it says, with regard to that definition, the project...the mandated project...the determination of the governing body that a project is mandated shall be final and conclusive. That is, nobody, no ratepayer,

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nobody is going to have anything to say about that particular item. In another part, it says, in no event shall any customer of a public entity be entitled or authorized to withhold payment, in whole or in part, of any mandated project charges, for any reason, for any reason. It points out that these are a special pledge of revenues, and that the public entity is obligated to impose and collect these mandated project charges in an amount sufficient to pay the revenue service. And here's the one...the tightening of procedure that I want to bring to your attention and see how you feel about it. When you're going to do this mandated project, you have to pass an authorizing resolution. And that includes a number of things that are listed in the bill. And then it says, a description of the financial calculation, formula, or other method that the public entity utilizes to determine the mandated project charges that customers will be required to pay. And it goes on and says that the financial calculation, the formula, all of this, the allocation of the mandated project charges to and among its customers, shall be decided solely by the governing body of the public entity, and shall be final and conclusive. So those of us who have been around a while...and most of you, I think, are aware that whenever a public utility sells...sets rates, there's always a discussion as to residential rates and what's appropriate to residential and commercial, and what's appropriate to commercial, and what's appropriate to commercial users of different sizes, what's appropriate for agriculture in their somewhat unique situation. And so there's always a good discussion, and there should be in a democratic process, a good discussion of rates and how they're allocated and how a formula works. And it will work the same, under this bill, in the sense that there will be a public hearing and people will get to come in and talk about the rates and what they think is fair and what they don't think is fair. But the difference is that once those rates are set, under this bill, they're final and conclusive. That is, nobody can appeal it. And at least it was my understanding, and is my understanding, that you can appeal rates and rate structures currently under the law. So the question to you here is, in the effort to try to get this special bond rating, do you want to go so far as to say that the rate structure is final and conclusive, and that somebody who is disgruntled by it, or thinks they've been treated unfairly,

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should have an opportunity to appeal? Now, what the amendment says, it puts in a ten-day...it does two things. It reiterates, so that there's no doubt about the applicability of the general law, which says that rates are...should be fair and reasonable and nondiscriminatory. I wanted to be sure that that part of the law which applies to general rates of revenue would apply to these special revenues. And then it goes on to say there's a ten-day appeal period. Now, the practical effect of what that means is, it would almost never interfere with what they're attempting to do here, because rarely is there ever an appeal. Nonetheless, from time to time, there are appeals. It is a citizen outlet. It is a mechanism by which people can get a fair resolution, if they feel like they've been treated unfairly. And if there was an appeal, it would probably negate the possibility of this kind of a mandated project at that point in time. But since the appeals are so rare, and since it's a special...I think, one of the essential qualities of a good democratic process, I'm suggesting that you put back in a short appeal period, so that there is that characteristic outlet for citizens to contest the action of a board. There...it may be because they feel that the rates on their type of property is too high. This type of bonding may require large reserve funds. The rates may be larger overall because of a need to finance a reserve fund. That may be reasonable; that may not be reasonable. There should be an opportunity to talk about all that, and an opportunity to appeal it. So that's what the amendment is all about. And I'm interested to see what you think. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on FA310. Are several lights on before, and if you wish to speak to it. Senator Jensen, followed by Senator Janssen.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. First, I would like to tell you that LB 548 was my priority bill. It concerned...one of the issues that it concerned itself with was the increase to...or allowing an increase in the cap that we were taking out of our Health Care Cash Fund to increase by \$2 million for biomedical research. That was then picked up by the appropriations process. And so my bill really wasn't needed at that point. There were a couple

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of other things in it, but...for this year. And with some other confusion, I just decided not to take the bill any further. Then last week, actually I was approached to see if I would allow this bill to be used for this endeavor, a public power bond issue, and I said, certainly. You know, we have a very unique situation here in Nebraska, in that, yes, all of our power is public power. And so we the taxpayers really own those utilities districts, and the ratepayers are the power district. And so it's all part of the same pocket that all this comes out of. And so I certainly do support this endeavor. Now, in order to get this kind of a bond rating, of course, there are some very specifics that the bond house insists on. And one of those things is, I believe, some very strong criteria of what will be accepted and what will not be accepted. And how...I do thank Senator Beutler for his comments. But I'm just concerned as to whether that might also change this, allowing bond companies this very specific language on mandates. So I'm a little concerned about Senator Beutler's amendment. I'll certainly listen to Senator Schrock to see what he might have on that. But I know that any changes that we make to this amendment as drawn up might really change the entire bill. With that, however, in looking at the language, I would like to ask Senator Schrock one question, if he would yield, please.

SENATOR CUDABACK: Senator Schrock, would you yield?

SENATOR SCHROCK: Yes, I will.

SENATOR JENSEN: There is some language. And when it talks about mandated language, Section 5 defines mandated projects. And I just want to make certain that that means...or as to what it means. It's my understanding that we're talking about mandates on a specific type of public utility, not all utilities, not all entities out there, but a public entity. And that would only be those public entities with mandated projects used in connection with either a new or existing facility related to public power generation, transmission, and distribution. Would you say that would be correct?

SENATOR SCHROCK: You are right, Senator Jensen. This deals only with public power and with power generation, transmission,

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and/or the distribution of that.

SENATOR JENSEN: Thank you. I just wanted to make sure that these mandated requests and projects would not be used for anything else other than strictly this public power and its generation. With that, I'll return the rest of my time...well, Senator Schrock, would you like the rest of my time that I have?

SENATOR SCHROCK: I can wait till...

SENATOR CUDABACK: Senator Schrock,...

SENATOR JENSEN: He said he'd wait. I'll return the rest of my time back to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Senator Schrock, could I ask you a few questions?

SENATOR CUDABACK: Senator Schrock.

SENATOR SCHROCK: (Microphone malfunction) Yes.

SENATOR JANSSEN: Senator Schrock, of course, this did have a public hearing. And were...was there any opposition to the...to this particular bill?

SENATOR SCHROCK: No opponents. There was some neutral testimony, representing the Nebraska Realtors Association, the Home Builders, Health Care Association, Television Association. It was supported by Omaha Public Power District, and Omaha...yeah.

SENATOR JANSSEN: Okay. Thank you. You know, I wonder how the power companies...of course, you know, we're the only state having a public power. And this would affect not only CP&D, but it would affect all the other power companies within, that are city owned, and so on, so forth. If I'm wrong, you can correct me on that.

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SENATOR SCHROCK: You are correct.

SENATOR JANSSEN: All right. But...and how have they treated other projects, other than mandated? Say OPPD wanted to build another power station somewhere. Would they be able to do that project this way, if we allow this? Or it would...of course, it would be just for mandated projects. From listening to you open on that, it would only be them. So...of course, we're the only public power. And other states have...there are for-profit companies that generate the electricity there. Now, I think this is a good idea. But I have concerns that it may lead to other projects within...you know, if they can do it this way, by charging the customer, it would probably just be a percentage of that electrical bill. If you have a \$300 power bill, I would imagine you're going to be paying a little more. So it would be on kilowatt-hours used, I would imagine. Is that correct?

SENATOR SCHROCK: I cannot answer definitely on that. I know that from my experience on irrigation power, you pay a hookup charge. So I suppose it could be on a prorated, or it could be based on a hookup charge also. So those of us who use electricity for irrigation, we pay a hookup charge. And I suppose that could be prorated, too.

SENATOR JANSSEN: Of course, we're all using any...we're all using that power. Now, whether...I would imagine the fairest way would be per kilowatt-hour, whether you have it on an irrigation well, or if I have it on one of my compressors, or on your household. I mean, it should be across the board. Is this the intention of the bill, that every consumer on that--say it's OPPD--would be treated the same way? It would be per kilowatt-hour?

SENATOR SCHROCK: Senator Janssen, I better not say for sure. That would seem to be the fairest way. I don't know if this dictates how they charge it out. But I'm told it is based on kilowatt-hours used. So the billing (inaudible)...

SENATOR JANSSEN: So then it would be just as fair for the lower user as it would the high.

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SENATOR SCHROCK: Well, keep in mind, there's residential users and there's...

SENATOR JANSSEN: Different rates. Yes.

SENATOR SCHROCK: But different rates.

SENATOR JANSSEN: But as long as it's based on kilowatt-hours, that's fine. That's fine. I don't have any other question. I think this will work out just fine. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Beutler, followed by Senator Schrock. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, I'd waive for the moment.

SENATOR CUDABACK: Senator Beutler waives his opportunity. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, certainly Senator Beutler has a good idea. I would like to accommodate it. And I will tell you that I am told that if this amendment is adopted, it would jeopardize the rate that could be received. I can tell you that any time a bond like this would be issued, beforehand they would have to comply with public meeting laws. The public would have a chance for input, the ratepayers would. But once they set their rate for the bonds, if this becomes appealable, or if they have to have a hearing afterwards, whether it be 5 days, 10 days, or 24 hours, or whatever, it's my understanding that it jeopardizes the deal with the bond company. Now, doesn't seem quite right, does it, Senator Beutler? That's what I'm told. I have to believe people. We could take a chance, adopt your amendment. It might jeopardize the rates. It might make the rates higher. I don't know the answer to that. I would prefer passing this without your amendment. I think it's good discussion. I commend you for bringing it up, for raising the issue. Nobody likes to shut the public out. But the public will have a chance to comment. And I think you said it yourself--very rarely, after something like this happens, would somebody from the public want to interfere in a case like this, or want to have another say

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within the ten days. I doubt whether that portion would be used if we did adopt it. And if it does jeopardize the rate, I'd rather not do that. Is that fair? And I'd give you the rest of my time, but your light is next, so you can respond if you want.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Chambers, followed by Senator Mines and Beutler. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, when this was presented to me, it was presented very simply. I was told this will help the public power districts get a favorable bond rating, it will save money for the customers. Naturally, I like that. But if all of these costs that we're talking about relate to the setting of bond rates, rather than the rates that customers are going to pay, I'm not so sure I feel the same way about it. I like Senator Beutler's amendment. And if requiring fairness, reasonableness, and nondiscriminatory setting of rates is going to jeopardize this bill, this bill doesn't deserve to be passed. I don't care about getting these bond rates. Let me ask Senator Schrock a question or two.

SENATOR CUDABACK: Senator Schrock.

SENATOR CHAMBERS: Senator Schrock, would the amount saved by getting this supposed favorable bond rate--and we don't know what that is right now--be sufficient to offset any additional cost that the consumer has to pay as a result of this bill?

SENATOR SCHROCK: Senator Chambers, I think it would. And you mentioned three things there about...but most of those could be addressed before the board. What you...your concerns, most of that is already in the law, Senator Chambers.

SENATOR CHAMBERS: But here's what I'm getting at. The public can talk and talk and talk some more. These people, who are supposed to be listening, can sit there like sometimes members of the committees in the Legislature will do--drowsing, nodding, trying to keep their eyes open, figuring what they're going to do as soon as they get away from these bothersome, pestiferous people, then run out and set any rate that they choose. They

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can disregard everything that public says. And having disregarded it, they can set these rates, and nobody can do anything about that, because once that act is done it's conclusive, period. I think, instead of us talking to Senator Schrock, we ought to be talking to somebody who really knows for sure. And I'm not going to accept from these lobbyists that notion that, well, this may jeopardize the bill. I'd like to ask Senator Schrock a question.

SENATOR CUDABACK: Senator Schrock.

SENATOR CHAMBERS: Senator Schrock, could this same thing be done next session?

SENATOR SCHROCK: I have no reason to believe it couldn't be done next...this session.

SENATOR CHAMBERS: Well, in view of the questions that have been raised, I'm going to support Senator Beutler's amendment.

SENATOR SCHROCK: Well, then,...

SENATOR CHAMBERS: And if it creates a problem, we come back and do something about it next session. But I'm not going to go by these lobbyists.

SENATOR SCHROCK: Well, the problem that you addressed, of adding fair, reasonable, and nondiscriminatory, that is already in the bill. The...

SENATOR CHAMBERS: What about the appeal?

SENATOR SCHROCK: The appeal is the one that jeopardizes the rates.

SENATOR CHAMBERS: Well, suppose somebody says, now that I see what you've done, what you're doing is unfair, it's unreasonable, and it's discriminatory, and I want to appeal it. They say, tough luck, we don't have to listen to you. That's what I'm talking about. Not what they may do in advance of setting this rate. But after the rate is set, you look at the

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amount, you look at how it's going to impact, and that's when you want to raise the issues that are contained in Senator Beutler's amendment. But you cannot, because you're precluded. That's what I'm concerned about.

SENATOR SCHROCK: Senator Chambers, considering it's a public power district, it's a public power of elected board members, I think your concerns...although I understand your concerns, I don't think your concerns are well-founded, because I don't think that's going to be a problem or an issue. And if it's going to jeopardize the bond rating, then I have a problem with the amendment. And I haven't...

SENATOR CHAMBERS: Well, let us...

SENATOR SCHROCK: ...and I'm not the one that says it would jeopardize the bond rating, but...

SENATOR CHAMBERS: Let's look at this. The lobbyists are jeopardizing the bill. Ask them whether they would rather...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...have the bill...no bill, without Senator Beutler's amendment, or the bill with an amendment that might jeopardize their bond rate, but we can come back and do it next session? Put that to them, and let them put it in their pipe and smoke it a while, then let me know how they feel. Because I'm in the mood now. We're at the last of this session. I've seen some things and heard some things that have made me testy, made me cranky. And a lot of it has to do with these lobbyists. Not these particular ones, but things these lobbyists have been trying to pull. And they've increased my workload. Trickery. What they were trying to do on LB 71, to be specific, to take away an amendment that Senator Redfield won twice, had to go through the hoops twice, to say that if these companies, after they get the credits, cut jobs, they lose the credits. Senator Landis had drafted an amendment that was being sponsored by the chamber of commerce to cut that out of LB 312 after it had been signed by the Governor. That's how they play dirty.

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SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Waited till their bill was signed...I'm going to put my light on again. And, Senator Schrock, you can ask them that question.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Mines, followed by Senator Beutler.

SENATOR MINES: Thank you, Mr. President, colleagues. I don't mean to appear like I'm piling on. But this was brought to us at the 11th hour, and I'm trying to catch up quickly. Maybe a correction. I think Senator Chambers asked Senator Schrock if the monies that are collected specifically for a mandated project are dedicated to that project, and Senator Schrock responded that he thinks they are. Two places in the bill indicate that they are not. Section 12 says a public entity may elect, "may" elect to pay or reimburse mandated project costs and finance costs through the use of mandated project charges. And Section 15 explicitly says, a public entity undertaking a mandated project is not required to pay or reimburse the cost of the mandated project with mandated project charges. And such public entity is not required to issue mandated project bonds as well. I would hope that our public power could use a bill like this in order to secure better rates on bonding. I think no one in this body would disagree with that. The difficulty I've got with this particular bill...and again, it's 11th hour. I apologize. But it...there are holes. Primarily, the mandated projects are...I don't...I think it's still too broad. I'm not sure we've discussed what's not included. We've discussed...or, it's listed what is included, but I think there are some issues about what's not included in the bill. Senator Beutler hit...I think that the big point in this is, we've taken the public out of the rate-making process if we allow mandated fees to be added by an elected body and then remain on customer bills without further changes or discussion. The public is removed from the rate-making process, as they are with regular rates. So I struggle with that. And then one final point, and I haven't found the answer yet. My guess is that the revenue that's derived from a mandated project is off budget. In other words, it's not part of your regulatory rate-making budget. And I

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would hope that the expenses are off budget as well. Because you would skew your entire revenue stream if both were not. I can't tell you they are or they aren't, but I just don't see it yet. So I've got some concerns. If I could just maybe summarize, I think this...the bill could use some attention. Senator Beutler's amendment certainly goes a long way to protecting the public. And I would entertain further discussion, and I appreciate the time. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Minea. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, it is, I think, a very complicated bill. And again, I would be the last to say we don't want to think very seriously about this. Because if we can raise the bond ratings, that's good. But there are some other kinds of issues in there, like what percentage of the overall revenues of the district would you allow to be taken up in these mandated projects of one type or another? And remember, the definition is broad, so there could be a number of them. And let's say you...let's say they did too many of them. Well, they might get a good bond rating on the mandated projects. But what happens to their bond rating on the other projects if their total revenues are committed over here to the mandated projects? So should we be thinking about offsetting bond rates? I mean, I don't think that would be the problem for one project. But if it's a problem...if there's more than one project, do you need...should we be thinking about some kind of cap, or how far they should be able to go with this? Or do you leave it to management judgment? Those kinds of problems. But I also wanted to point out that with respect to the specific amendment that we're talking about, that once this financial calculation or formula or allocation as between residential and ag and commercial and all that, once that's all done, not only is it final and conclusive, but it says, once the financial calculation formula or other method of determining the mandated project charges and the periodic adjustment method had been established in the authorizing resolution, they shall not be changed. They shall not be changed. And so I'm wondering whether we've thought through all of our different ideas of economic development as it might relate to these kinds of

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things. What if you set a rate with regard to certain kinds of commercial facilities, and it turns out somebody wants to come in and you can't apply that rate? Questions like that. I think I have not much time remaining. So, Senator Cudaback, I'll return my time to you at the moment.

SENATOR CUDABACK: You have about 2 minutes and 30 seconds. Thank you, Senator Beutler. Senator Brown, followed by Senator Schrock.

SENATOR BROWN: Mr. President, my issue...and I'm listening to this discussion closely about the broader bill and the implications. But my discussion is about the pending amendment, and whether it is correctly worded. Because Senator Chambers, when he talks about it, keeps talking about "nondiscriminatory." But what the amendment, at least on the screen, says is "nondiscriminating." So what we are saying with this amendment, FA310, is that the financial calculation formula or other method and allocation shall be nondiscriminating. And I'm not sure that a financial calculation can discriminate. So I think that we probably need some work on the amendment that's pending, even if you agree with the underlying rationale. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, I can tell you that counsel for the Natural Resources Committee worked with the public power districts, the bond rating companies. We tried to dot the i's and cross the t's. Senator Chambers and Senator Beutler and Senator Minea, I think you're making a fairly simple bill rather complicated here. We're trying to save the public some money by giving them favorable bond ratings on projects that would not be done if it were not mandated by federal or state or some regulatory agency of the federal or state. And we're trying to save the public some money. Senator Beutler, I think it's fair to say that your amendment jeopardizes that, although I'm not 100 percent sure why, but I'm told that. And I'm going to stick with the amendment that I've brought. I'm going to ask the body not to accept your amendment. I think it jeopardizes the bill, jeopardizes what we're trying to do. And if saving the money

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is...saving money for the public is the wrong thing to do, why, then vote against the bill.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Chambers.

SENATOR CHAMBERS: Mr. President, Senator Schrock can say it's a simple bill. So I'm going to see just how simple it is, by asking him some questions. Senator Schrock, what are the capital costs incurred, or to be incurred, by a public entity with respect to a mandated project? What are the capital costs?

SENATOR CUDABACK: Senator Schrock.

SENATOR SCHROCK: Senator Chambers, the thing that comes to my mind is when the Gerald Gentleman plant out at Sutherland put in their bag houses to clean up their emissions. And by the way, it's my understanding they're one of the cleanest coal-fired plants in the nation. They're also the most efficient coal-fired generating plant in the nation. Senator Preister disagrees. But they're close to the top, then. Would you agree with that, Senator Preister?

SENATOR CHAMBERS: But could you ask...answer my question, please? Do you know what the capital cost is? That's what I should ask you.

SENATOR SCHROCK: No, I don't know what the amount is, if that's what you're asking.

SENATOR CHAMBERS: No. What does capital cost mean?

SENATOR SCHROCK: The...

SENATOR CHAMBERS: What does that mean?

SENATOR SCHROCK: The bricks and mortar, what it costs to construct, what it costs to...

SENATOR CHAMBERS: Would it include payment of debt service?

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SENATOR SCHROCK: Yes, on that portion of the project.

SENATOR CHAMBERS: Now, that's all I will ask you. Thank you. I'm looking on page 3 at the bottom, going to the top of page 4. There's a definition of special revenues. And this is what the language says, beginning in line 26 on page 3: "Special revenues has the definition found in 11 U.S.C. 902(2) as such section existed on January 1, 2005," then this language, "and any successor provision thereof." That language constitutes an unconstitutional delegation of legislative authority. When you say "successor provisions," that means, as Congress amends a law, it amends Nebraska law, and that is unconstitutional. And I don't care what they in the lobby tell you. I don't care what their bond counsel tells you. I can find statutes to prove that. That's how I beat a ticket that I got when the 55-mile-an-hour speed limit first came out. Nebraska had tied its law into change...into the federal law. And as they changed, Nebraska's law would change, too. And I presented that to the court. They agreed. Nebraska's law was found in that respect to be unconstitutional. It was not appealed. Then Nebraska changed its law, and the federal government changed its laws, too. There is more in this bill than can be readily digested. I have not read and digested what is in this bill, but I see problems with it. So we're going to do more than just vote against it. I'm going to stop the bill. We don't need to do it this year. And I've talked to some other people on this floor who do understand these things, and they have not digested it all. They can come back next year, with or without Senator Beutler's amendment. I'm not supporting this. And now let us see if, on the eighty-seventh day, or whatever this is, I can stop a bill like this. I believe I can, and that's what I intend to do. Does that make me a bad fellow? I relish being a bad fellow. I've been a good fellow all session. My reputation is going out the window. I'm like Darth Vader. They've transformed him from a brooding force into a comic strip character who appears on commercials for Burger King and all these other things. And I'm not going to let my reputation be demeaned in that fashion. Senator Schrock and his lobbyists, and public power, whom I tried to help this morning but they had sold out, let me see you guys gang up and stop one irate senator. Let me see you adopt this amendment and pass this bill

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over my objection. L'etat, c'est moi. I am the state. Whether anybody likes it or not, whether anybody is angry about it or not, means not the pop of a finger to me. I pledge to stop this bill.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I don't care now what you do with it. And I'm not going to talk to John Lindsay. Mr. Richarda is as upstanding and upright a fellow as you can find. I put him on a par with George Wash...well, no, that's...I don't think too much of George Washington. On his own merits, he's a good and honorable man. But in a political setting such as this, politics comes into play. So we're going to have a test of wills on this bill. And I will this bill's death. It's not just on Senator Beutler's amendment now. I've had a chance to look at some other parts of the bill, and it's not what it purports to be. And I doubt that Senator Schrock understands everything in this bill. I doubt that he knows everything in this bill. He might have people telling him what's in the bill, as some people told me...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...what the bill did. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of FA310, offered by Senator Beutler to the Schrock amendment. Senstor Preister, followed by Senator Schrock.

SENATOR PREISTER: Thank you, Honorable President, friends all. The first thing that I'd like to do is just correct some information that Senstor Schrock said. He talked about the Gersld A. Gentleman coal-fired power plant, and I heard him say that it was the cheapest and that it was the cleanest. Now, he's 50 percent right and 50 percent wrong. It is one of the cheapest operating coal-fired power plants, generating facilities in the country. It's cheap because it's an old plant and it's paid for. And it is low cost. But because it's old, it is operating in such a way that there are lots of emissions.

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In one category, it was just recently rated as one of the 50...the top 50 highest emitters in the nation. So, yes, it's cheap. But, no, it's not even close to being one of the cleanest. So the two don't necessarily go together. That could be one of the reasons that this bill is here, is that they're looking at mandates to clean up some of the emissions. I support cleaning up the emissions. We've got a serious mercury problem in this country and in this state. We've got water bodies that we can't eat the fish out of, because there's too much mercury that has gone into the air and fallen into the water body, been consumed by the organisms into the fish, and the fish contain so much mercury that it's a threat, particularly to pregnant and nursing mothers. That's a concern to me. So keeping more of that mercury out of the air...and coal is one of the leading contributors of putting mercury into the air in our state, so we have that direct link to our coal-fired power plants. And Senator Janasen was absolutely right yesterday when he said, we do need to do more with renewable energy. We have tremendous potential for wind here. We don't have to worry about mercury emissions from wind turbines. We don't have to worry about environmental regulations and cost when we talk about generating from wind turbines or other renewable forms. So I continue to support doing things for efficiency, doing things for renewable energy, but particularly efficiency. If we reduce the need for generating electricity, we don't have all of these additional costs that require mandates that then we have to float bonds on, and the ratepayers have to pay the cost of those bonds. If we sell bonds, somebody has got to pay for that. And what concerns me about doing this is the fair, equitable nature of paying that back. I haven't heard it stated empirically that it's going to be rate-based, that it's going to be based upon the kilowatt-hours that somebody uses so everybody pays a proportionate share. I'm not certain that that's how this is going to be done. I expect it will be a charge on each utility bill, and the senior citizens that I represent and the customers paying low bills and on fixed incomes are going to pay a disproportionate share of that cost, and that concerns me. I'm not sure how this is actually going to play out. That's an issue that I'm concerned about. And the fairness of doing that, I think, is what Senator Beutler is attempting to address. For

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that reason, I like the sound of his amendment and what he's attempting to do. And I will be supporting it. But I am concerned that at this late hour, we have a bill that we have ramifications of which we don't fully understand and aren't adequately explained...

SENATOR CUDABACK: One minute.

SENATOR PREISTER: ...to all of us. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Preister. Senator Schrock.

SENATOR SCHROCK: Senator Chambers, could we have a little discussion here?

SENATOR CUDABACK: (Microphone malfunction)...Chambers?

SENATOR CHAMBERS: Yes.

SENATOR SCHROCK: I want you to know that I am a gullible country boy that came to Lincoln, and I have a tendency to believe what people tell me, even the people behind the glass. And that includes Tom Richards and whoever else is working on this bill. We had a public hearing. And Senator Jensen has a motion to bracket the bill till June 3. Is that agreeable with you? And then, may I ask...

SENATOR CHAMBERS: Yes.

SENATOR SCHROCK: ...that you and Senator Beutler, would you work on this during the interim with me, and we can resolve the differences? Nobody tried to pull a fast one here. Like I said, I'm a gullible...I thought I was legitimately trying to save the ratepayers of this state some money. I don't know if there's any urgency to this. But as you know, the lobby tries to get bills through at the last minute. And if there's something here that...if there's a smoking gun here that I don't know about that might be there, we need to address it. I would agree that...to that with you. So, Senator Chambers, you understand where I'm coming from? And I'm not the sharpest tack

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in the box. There may be some things in this bill I don't understand. I would acknowledge that. And I don't have to tell you that. You know that. But we can pull the bill, or we can bracket it till June 3, if that's agreeable. If you...you can use some of my time if you want to respond.

SENATOR CUDABACK: Senator...

SENATOR CHAMBERS: Thank you,...

SENATOR CUDABACK: ...Chambers.

SENATOR CHAMBERS: ...Senator Schrock. You are yielding some space, so I will, too. I won't just try to eliminate the bill altogether. What I'm saying is that this bill was portrayed to me as a very simple, straightforward item. As I begin to read it, it doesn't come across to me like that. Those who were at the hearing, who understand all these things, may accept all the representations made in the lobby. I cannot agree to a bill like this, where there's so much in it which, as I read it, I do not understand, and where I see incorrect drafting. If I see incorrect drafting on very simple areas of the bill, I have to be distrustful toward those other, more complex areas. But to answer your question specifically, I'm willing to talk to you and anybody else on this bill, and I'm willing to allow it to be bracketed so that we don't deal with it further this session. But next year, if I'm not satisfied that it's what it purports to be, I would fight it then. I want to make it clear that I was not attacking Mr. Richards. I was trying to emphasize that I think he's a very "upstraight"...upright, honorable person. I didn't want him to get caught up in what I'm saying and make it appear that I'm disparaging him in any way. That's not my intent. But I'm going to listen, and require from now on, when people come to me, people that I ordinarily work with and whom I usually rely on, and tell me something is simple and it relates to something like this, I'm going to say, give me a copy. I trust, but I verify. And I give back Senator Schrock whatever time he has, Mr. President.

SENATOR CUDABACK: Senator Schrock, about 2 minutes.

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SENATOR SCHROCK: Then your preference would be to bracket the bill, and we could deal on it next year? Now, we could do the other process, just...and if we don't...I'm trying to think. Where are we at on this? If we bracket the bill, the amendment stays on the bill, and LB 548 would become the vehicle next year. Is that correct, Senator Chambers?

SENATOR CHAMBERS: What we have now, LB 548, is the bill that would be bracketed. We've suspended the rules, and your amendment is pending. And I believe that's where we would be.

SENATOR SCHROCK: And I don't have a good answer on Senator Beutler's amendment. All I'm told is that it can jeopardize the bond rating. And so that could be sorted out between now and next year, too. I...you know, obviously, the power entities in the state would like to have had the bill now, but they'll just have to wait till next year. And maybe there won't be any need for it between now and then. So we're in agreement on that?

SENATOR CUDABACK: One minute.

SENATOR SCHROCK: Then I would ask Senator Jensen to implement his motion, if he is present. I thank the body for their time. It was not my intention to take a lot of your time on the...

SENATOR CUDABACK: Senator Schrock, are you finished, Senator Schrock?

SENATOR SCHROCK: ...eighty-eighth day. Yes, I am.

SENATOR CUDABACK: Okay. Mr. Clerk, please.

CLERK: Mr. President, a priority motion: Senator Jensen would ask unanimous consent to bracket LB 548 until June 3, 2005.

SENATOR CUDABACK: Without objection, so ordered. Next agenda item, Final Reading, motions to return to Select File for a specific amendment. Mr. Clerk, LB 709.

CLERK: Mr. President, Senator Synowiecki has the first motion with respect to LB 709. Senator Synowiecki, before I proceed

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with that, I understand you want to withdraw AM1323, Senator, and offer AM1361. Is that right?

SENATOR SYNOWIECKI: Yes.

SENATOR CUDABACK: Any objection? Seeing no objection, so ordered.

CLERK: Mr. President, Senator Synowiecki would move to return LB 709 to Select File for specific amendment, AM1361. (Legislative Journal pages 1859-1860.)

SENATOR CUDABACK: Senator Synowiecki, you're recognized to open to return for a specific amendment.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. Members of the Legislature, both on General File, on Select File we have had amendments introduced, had quite a bit of discussion relative to the underlying concepts embodied in LB 709 and the need to have some element of the private sector insurance and private employers relative to public expenditures under Medicaid. There are several states throughout the Union that have done some bold and innovative undertakings relative to some of the larger employers within their states, kind of outsourcing the medical insurance aspect of the employment, and there's many of us on the floor that thought that this would have...should have been, and I think the bill's sponsor agrees that this is an important aspect that needs to be carefully studied. However, however, the huge obstacle that we have confronted in generating this critical data to identify those larger employers within the state and so that we can develop some sound public policy relative to this issue is the cost associated with amending the Health and Human Services N-FOCUS computer system. As it related to the original amendment that was filed, AM1323, let me read you some of the notes. The fiscal note was in excess of \$100,000 over the two-year period, and I'll just read you from the narrative. The cost of developing the initial computer file to send to Revenue, that is the Department of Revenue, is estimated to be \$56,000. Because of the changeable nature of employment of the Medicaid population, the fluctuation of incomes caused by hourly and seasonal work, a monthly process

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will be created. The computer-related cost of creating and transmitting the "feeder file" to the Department of Revenue is estimated to be \$24,000, or \$2,000 per month. Revenue will add the required data to the feeder file and send it back to HHS. HHS will load the data back into the system and determine the count of spouses and dependents. This is estimated to cost an additional \$24,000. So an overwhelming cost relative to the fiscal note associated with this undertaking was related to the interfacing of Department of Health and Human Services to Department of Revenue. Now then came this substitute amendment embodied within AM1361, which essentially took away, or subtracted, all the interfacing between Health and Human Services and the Department of Revenue. So conceivably then there would be little to no cost so that this data, in terms of identifying the employers that perhaps are abusing the public healthcare system, can be identified and that so we can develop sound public policy. But now the department is indicating that even with this amended version of this undertaking that the costs would still be substantial as far as the in-house capabilities of Health and Human Services to simply identify those that are eligible for Medicaid, that have applied for Medicaid and already have to self-report their employer if there is such an employer, or their spouse's employer. It's already a requirement that they submit this information. To simply gather this information from already existing data banks would be a cost in excess of, I believe, \$150,000. So as a result of these income (inaudible) and as result of this bureaucratic barriers that we're confronted with, leaves me with no choice but to withdraw the amendment and hopefully we can continue to work on this, but hopefully can be within the existing language within LB 709. This can be a centerpiece of the study in...or one of the centerpieces of the study, and that is to, as other states have done, to analyze the "off-shifting" of some of our larger employers to the public health system for the health insurance benefits to the workers and their families. So with that, Senator Cudaback, I would ask to withdraw the amendment. Thank you.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, next motion, please.

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CLERK: Mr. President, Senator Chambers would to return for specific amendment, AM1345. (Legislative Journal page 1327.)

SENATOR CUDABACK: Senator Chambers, to open on your amendment to return.

SENATOR CHAMBERS: Thank you, Mr. President. And I'm not going to withdraw this amendment. I had offered a similar one to what I'm offering today on Select File. There were some problems with it and Senator Erdman requested that I agree to let the bill go forward, get the amendment in proper form, then bring the bill back. And I wanted to get from him the assurance that that was not a stratagem to avoid dealing with my amendment, so I let that bill go. I did some work on the amendment and what you see on your gadget is what I'm offering. I don't remember the details of that first amendment that I had offered, but part of it may have run into some problems with reference to employee privacy and some other matters, some federal laws, so let me read you what my amendment is talking about. First of all, it is to get some information from these companies that receive tax incentives under various laws that have been enacted by the Legislature. Since they're getting these benefits, they are the ones that this kind of information could easily be requested from. The director of Health and Human Services and the Tax Commissioner shall annually prepare an employee health report, and this is the information that would be sought from these companies: one, the name and address of the business; two, the number of full-time and part-time employees of the business; three, whether the business offers health benefits to its employees and, if so, the nature and scope of the health benefits. And on some of this language I worked with Senator Jensen's staff. When we put "scope," we didn't want to itemize every type of possible insurance coverage that might be possible, so that term was used. Number four, the number of full-time and part-time employees and the number of spouses or dependents of such employees who are covered under health benefits offered by the business and the nature and scope of such coverage. The report shall be submitted annually on February 1 to the Health and Human Services Committee of the Legislature and the Revenue Committee of the Legislature. Now, there are people in this Legislature who have employees and they

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provide insurance coverage. I talked to one as recently as a couple of hours ago and was told that hitting one key, or whatever you call it, on the computer, you can bring up all this information. You keep a record of what deductions are made and for what kind of coverage, spouses and so forth. This bill has no fiscal impact. It will cost no money. This information is of value and we should receive it. If you look at the Final Reading copy of LB 709, this is for the record, not that you would pull it out, on page 4, starting in line 8, subsection (d), one of the things to be studied, "the availability and affordability of private health care insurance and long-term care insurance," some of that would be dependent on what kind of coverage a working person may have from his or her employer. The amendment is on your gadget. It is straightforward and not difficult to understand in terms of what it is seeking to do. There are four items which are listed. You can forget the name and address of the business, that's so simple, and from there on the other information is easily provided by the company, easily obtainable, and I'm asking that you adopt this amendment. If you have any questions I will answer them, but on Final Reading, before an amendment can be adopted, the bill has to be returned to Select File. I wanted you to know what the amendment is that I'm proposing to be adopted so that when I ask you to return the bill you will know what it is that I'm returning it for. So this motion that I'm making is to return the bill to Select File for the amendment that I've just explained. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You heard the opening on the motion to return LB 709 for a specific amendment. Open for discussion. There were several lights on before this motion. Senator Chambers, did you...your light was on. He waives his opportunity. Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I'm not a fan of the underlying bill, LB 709. It is reminiscent of the bill that we heard on General File on the tax file where we were going to create an advisory committee about taxes and, as you recall, the discussion was the lack of necessity of doing that. It's not that there aren't ideas about Medicaid, but I'm not sure that an advisory committee is going to develop those as

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compared to searching, as I think Senator Synowiecki pointed out, to other states who have made innovations. My guess is it's actually a search for options and a search for alternatives. Seems to me that we have the research capacity in this Legislature to do that. We have fine staff and we have an excellent Health and Human Services Committee, so actually my confidence is with them rather than the advisory committee. And if that's the case, since I am in fact a "no" vote on LB 709, I don't see any reason to make it more complex and to extend its ambit even further. I happen to be a "no" vote on LB 709. I'm a "no" vote on this amendment as well. It furthers a cause that I'm not interested in furthering generally, and for that reason I'm going to oppose the amendment.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Schimek, motion to return. Senator Schimek waives her opportunity currently. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I appreciate Senator Landis' comments and I think the reality of the situation is that it is quite different than other bills that have been introduced. We know we have a specific problem. The...I also appreciate Senator Synowiecki's work, and we have discussed his concerns, and I believe that some of the information, if not all of it, that he is asking for is going to be available through this process. The interesting part about what Senator Chambers is asking doesn't really have the same problems that Senator Synowiecki has, and that it is doesn't have the A bill. It is information that could be voluntarily submitted or, if appropriately done, and as Senator Chambers has pointed out, doesn't have an A bill, and I think that's important for this process. Because at this stage of the debate it would be impossible to get an A bill through our process because it would be a new bill introduced and we can't obviously do that under our rules. So here's where we stand. If you want to adopt the Chambers amendment, great. I personally don't have a problem with it. If this information is valuable and is important to this process, I'm okay with it. I think Senator Chambers brings up some valuable points. I think we need to know what is out there. I do believe that some of this information is currently available. We have an entity that

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is currently going around, or a group, that is studying the availability and affordability of insurance in the state of Nebraska. That report was tentatively final on May 1. They're having public town hall meetings throughout the state over the next couple months. I have full intention of seeing that information included in this process as we continue forward. So the body can choose to do what they will with the Chambers amendment. I personally believe that it's all right. I think it's all right to adopt the idea of returning this bill to Select File to adopt the Chambers amendment to allow this information to be collected in the way that Senator Chambers is asking, plain and simple. There are other...there are many other issues that I think we have covered. I think there are things that individuals are going to vote one way or another, based on their perceptions, and I think the realities of the debate will weigh out in the long term as far as what the intent is. This is a process that must begin now and this is a process that must include individuals who are involved, must include individuals who are affected, and it must include us as policymakers. So, to the extent that we can further that process and accomplish the goal that is in the underlying bill and then to gather the information that Senator Chambers has pointed out in the actual Final Reading copy of the bill, on page 3, I think it's appropriate. And I will allow you to choose how you will proceed, but as far as I'm concerned I think it is an appropriate amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Schimek, did you wish to...thank you. There's no further lights on. Senator Chambers, you're recognized to close. Senator Chambers waives closing. The question before the body is, shall LB 709 be returned for a specific amendment? All in favor vote aye; all those opposed, nay. Have you all voted on the motion to return who care to? Voting on the motion to return LB 709 for a specific amendment. Have you all voted who care to? Senator Chambers, for what purpose do you...

SENATOR CHAMBERS: I will ask for a call of the house.

SENATOR CUDABACK: Technically, Senator Chambers, we are on Final Reading, as you know, so...

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LB 71A, 645, 709

SENATOR CHAMBERS: Check in, please.

SENATOR CUDABACK: Members, when the Clerk clears the board, we will ask them to check in. Would you members all check in, please? We're all on Final Reading. Members, check in, please. All members please check in. Senator Chambers. And Senator Raikes. Senator Raikes, the house is on Final Reading. All members are present. We will take a roll call vote on the question to return for specific amendment LB 709. Mr. Clerk, please call the roll. Reverse order is requested. Mr. Clerk, please.

CLERK: (Roll call vote taken, Legislative Journal pages 1860-1861.) 20 ayes, 5 nays, Mr. President, 7 nays, excuse me. 20 ayes, 7 nays on the motion to return the bill.

SENATOR CUDABACK: The motion to return was not successful. As stated on the agenda, other motions, as ordered by the Speaker. The Speaker has added LB 71A.

CLERK: Mr. President, with respect to LB 71A, I have a motion to return the bill for specific amendment. Pursuant to that offering, Mr. President, Senator Brashear would move to suspend Rule 5, Section 7(f) and (g), Rule 7, Section 3(d) to permit consideration of AM1780 as an amendment to LB 71A. That motion is offered by Senator Brashear.

SENATOR CUDABACK: Senator Brashear, when you get back to your chair, you are recognized to open on your motion to suspend the rules.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. This motion and the amendment is the follow-up to the discussion on the floor this morning regarding the funding of the task force created by LB 645. As you recall, it's too late in the session to introduce and pass an A bill for LB 645. The decision we made during the course of the discussion on General File this morning was to fund the study with an appropriation from the General Fund to the Executive Board of the Legislature. The decision this morning was to provide for this appropriation

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via an A bill, rather than as an amendment to LB 645. This motion and the amendment to which it refers will allow LB 71A to become the vehicle for the appropriation to carry out the purposes of LB 645. The amendment will strike the current provisions of LB 71A and insert the language that appropriates \$200,000 for the task force created in LB 645. This will complete the process that was begun this morning when the Chambers amendment to LB 645 was adopted. I would like to also thank Senator Stuhr for her assistance and facilitation with regard to the conversion of LB 71A, and I would ask your support of the suspension of the rules and the advancement of the bill. Thank you.

SENATOR CUDABACK: You've heard the motion to suspend the rules. Open for discussion. Senator Brashear, there are no lights on. Senator Brashear waives closing. The question before the body is suspension of the rules. All in favor vote aye; opposed, nay. Does require 30 votes, as you all know. Have you all voted who care to? Please record, Mr. Clerk.

CLERK: 37 ayes, 0 nays, Mr. President, on the motion to suspend the rules.

SENATOR CUDABACK: The motion was successful. The rules have been suspended.

CLERK: Mr. President...

SENATOR CUDABACK: Mr. Clerk.

CLERK: Excuse me, Mr. President. Senator Brashear would move to return LB 71A to Select File for specific amendment, specifically AM1780. (Legislative Journal page 1861.)

SENATOR CUDABACK: Senator Brashear, to open on your motion to return for specific amendment.

SPEAKER BRASHEAR: Mr. President, members of the body, I thank you. I did explain on the motion to suspend what we were doing and it's just that simple. I would ask your continued indulgence in the return. Thank you.

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LB 71A

SENATOR CUDABACK: Open for discussion on the motion to return. There are no lights on, Senator Brashear. Senator Brashear waives closing. The question before the body is, shall LB 71A be returned for specific amendment? All in favor vote aye; opposed, nay. Voting on the motion to return for a specific amendment in reference to LB 71A. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 38 ayes, 0 nays, Mr. President, on the motion to return the bill.

SENATOR CUDABACK: The motion was successful. Bill has been returned. Mr. Clerk.

CLERK: AM1780, Mr. President.

SENATOR CUDABACK: Senator Brashear, to open on AM1780 to LB 71A.

SPEAKER BRASHEAR: Mr. President, members of the body, thank you. The facts are the same. Thank you.

SENATOR CUDABACK: Open for discussion. Seeing no lights on, Senator Brashear, you're recognized to close. He waives closing. The question before the body, adoption of AM1780, offered by Senator Brashear to LB 71A. All in favor vote aye; opposed vote nay. Voting on adoption of the Brashear amendment, AM1780. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 39 ayes, 0 nays, Mr. President, on the motion to adopt the Select File amendment.

SENATOR CUDABACK: Motion was successful. The amendment has been adopted. Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 71A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 71A to

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E & R for engrossing. All in favor of the motion say aye. For discussion? No discussion. Those opposed, nay. It is readvanced. Mr. Clerk, announcements, please, or items?

CLERK: Mr. President, an amendment to be printed to LB 99 by Senator Brown. Mr. President, name adds and withdrawals: Senator Brashear would like to add his name to LB 71A as cointroducer, and Senator Stuhr to withdraw her name as cointroducer to LB 71A. (Legislative Journal pages 1861-1862.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Members, we are on Final Reading. As you know, rule requires everybody to take their seat. All members are in their seats. We are on Final Reading. Mr. Clerk, LR 12CA.

CLERK: Mr. President, Senator Schimek would move to return LR 12CA to Select File for specific amendment, that amendment being to strike the enacting clause. (FA321, Legislative Journal page 1862.)

SENATOR CUDABACK: Senator Schimek, you are recognized to open on your amendment.

SENATOR SCHIMEK: Thank you, Mr. President and members. I originally filed this motion so that we could talk about the vote itself on this bill, but we also are going to leave it open just a little bit so that we can have everybody back here on the floor when we do vote. As you know, we adopted an amendment on Select File which would put this on the primary ballot at the next election in November. We need 40 votes to do that, and so if we fail to get the 40 votes then there will be a second vote taken to get the 30 votes necessary to put it on the general election ballot. I feel that there are 40 votes here, but one is never certain, so I would just like to say to you, if you have any hesitation at all on that first vote just remember that we are going to put it on the ballot. It is just a question of when. So that is really all I originally wanted to do by returning...asking you to return this bill. I don't intend to take a vote on that. But I think I would like at this time maybe, Mr. President, to turn a little time over to Senator Chambers and see if he would like to offer any comments at this

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time.

SENATOR CUDABACK: Senator Chambers, about 8 minutes.

SENATOR CHAMBERS: Mr. President, as usual, when Senator Schimek has spoken on a bill such as this, I agree with what she said. When this bill was being considered on Select File, I didn't say anything on it because there was nothing really that I felt needed to be said. The job is one that should command a higher salary than currently is paid. There has been a hashing out and a thrashing out of various dollar amounts, various combinations of dollar amounts and hooking a salary increase in the future to the salaries of other elected officials, cost-of-living increases and other things, none of which I think would be successful. The public wants the Legislature to come to them to ask for a salary increase, and since that is the rule according to which these increases occur, they have to be followed. I believe all of us can easily come up with a better, more equitable way to set the salary for members of the Legislature, but being pragmatists is what we must be on occasion. We know that none of those alternatives will fly or set well with the public, so what is before us now is this amendment. If we get 40 votes, it can go onto the primary ballot. If we get 30 then it goes on the general. This does not go to the Governor. When we have a constitutional amendment proposed, we vote on it three times and the third vote concludes the proceedings. It is not something submitted to the Governor, so we are the ones making this decision. For most of us, it will have no impact, but that should not make any difference. We have voted salary increases for constitutional officers, some of whom we've had disputes with, but we were able to look at the nature of the work that those people do, the dignity that ought to attach to the office, and this time we attempted to raise the salaries to a level that is at least commensurate with what the average salary for these offices are in the region of which Nebraska is a part. We could never, as legislators, obtain an amount equal to the average salary for legislators, so we don't take that approach. We have to move incrementally, cautiously, and with great trepidation. When I first came down here and for a good number of the years that I was here, the salary was \$4,800 a year, less than \$100 a week, \$400 a month before taxes. So I think it was in 1988 they

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decided that a raise was in order, and the amount was raised from \$400 a month to \$1,000 a month. The difficulty and the danger of speaking in percentages would be to look at that salary increase and say what percentage of 400 or what is the increase, percentagewise, from \$400 to \$1,000. The percentage would make it look like a monumental amount, but if you looked at the actual dollars involved it was still piddling and peanuts. The \$12,000 a year everybody agrees is inadequate. That has been resolved by the amount in the bill. What we're looking at now is the number of votes that we can obtain. The more votes the better. I would hope that we can get 40. I don't know if there are 40 people available to vote, but I hope that's the number that we can get. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. As part of the opening, Senator Schimek, you're in line to speak, followed by Senator Engel. Senator Schimek waives. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I think this is very, very important that we get this out to the voters. I think a lot of them have reconsidered what...what's happened over the last few years. I think they're more informed now as far as what people are paid down here and how it limits who can serve. I know, like I said the other day, when I was approached to come down here, I was appointed, it...I had to even search my soul whether I wanted to do it, but it was a point in time in my life where I could afford to. All the children were out of college and the business was going good and I could work it on the weekends and summers and so forth and I could make it work. Because we felt, my wife and I felt, this is a service and we should, and we were encouraged to do it. We thought, well, this is something we should do, and we did it. And, of course, at that point in time, the only agreement I made with Governor Nelson at the time, that I would finish the term of the person who only lasted about three months down here, and I did. So I figured I'd be down here three years and three months. Well, that's been several years ago and I'm still here, so there must be something that draws you down here. But again, I wouldn't be here, I wouldn't be here if I couldn't afford to be here. And this \$12,000, what they pay us, et cetera, all you could do if...you're just lucky to break even. So I think this limits

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who can actually come down here to serve. I think there are many, many people out there, very, very qualified people, perhaps more qualified than many of us, and of course in some people's opinion that would be everybody, but the thing is they're out there and I know they would come down and they would enjoy serving but they cannot afford to. Families come first. You have to support your family before you can serve down here, so you have your other priorities. So I do believe that this is very, very important that we vote for this, that we get it on the primary ballot, and I would hope that you'd all support this bill. And we need 40 votes and I certainly hope we get them today. And, Senator Schimek, would you care for any of my time? If you...you're welcome. Thank you, Mr. President.

SENATOR CUDABACK: Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President. I would just like to withdraw that motion.

SENATOR CUDABACK: It is withdrawn. Members, would you please take your seat and we will continue with Final Reading. Senator Schimek.

SENATOR SCHIMEK: May we have everybody check in? Is everyone here?

SENATOR CUDABACK: Can't tell by looking, but if you wish them to check in, we...

SENATOR SCHIMEK: I think so.

SENATOR CUDABACK: Members, please check in. If you're present, please push the green button. All members are present. Mr. Clerk, LR 12CA.

CLERK: (Read LR 12CA on Final Reading.)

SENATOR CUDABACK: All provisions of law having been complied with, the question is, shall LR 12CA pass, providing for the submission of such provision at the next primary election? All in favor vote aye; all those opposed vote nay. Have you all

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voted on the question who care to? Please record, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal page 1864.)
44 ayes, 0 nays, 5 present and not voting, Mr. President.

SENATOR CUDABACK: LR 12CA passes. Mr. Clerk, LB 126. The first vote will be to suspend the at-large reading. I'm sorry, there is a motion on this. Mr. Clerk, please.

CLERK: Mr. President, Senator Smith would move to return LB 126 to Select File for specific amendment, that being to strike the enacting clause. (FA322, Legislative Journal page 1864.)

SENATOR CUDABACK: Senator Smith, to open.

SENATOR SMITH: Thank you, Mr. President and members. I wanted to take this opportunity, as limited as it might be, Senator Raikes, to I guess encourage the body to vote no on LB 126. I believe that there are issues out there. I look at LB 126 and how it would apply within my district, and I have to say that it does far more negative than harm, even if you...far more negative than positive even if I took the position that changes needed to occur to the extent that LB 126 encourages. I truly believe that LB 126 is nothing more than centralized power. Perhaps I can be convinced otherwise, but the facts point to that. And if it isn't about closing buildings, then it's only about power and it's only about taking the power from the smaller entities and shifting it to the larger districts. Now it would stand to reason probably that Lincoln Public Schools would love to consume Cheney School, because Cheney School is so small, they're a thorn in the side of big old LPS, so therefore they think that Cheney should be eliminated. Now what concerns me, though, is the trend that LB 126 is encouraging, in addition to the centralizing of the power, to a larger and a larger and larger school district. But what's next? Is it a certain size of K-12 district that someone, not even a study, not even any empirical research or data or otherwise, whatever the fancy words are, but will we soon have an arbitrary district size that becomes the optimal size, which has nothing to do with cost? Because if this were truly about cost, the operation of some of the larger school districts would be in discussion here, would

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be at the center of this debate. But there isn't quite the political will to do that, so the larger districts skate on down the road and they can threaten the takeover of smaller districts, smaller neighboring districts, if not threaten, certainly wish for. We know that that's taking place as we speak, that they're the desires of larger districts, because they're...it's just a bother to have those smaller districts around. And, besides, they oftentimes make the larger districts look bad. These smaller districts that are attracting students through our option enrollment policy are embarrassing the larger districts. Of course the larger districts would advocate for LB 126. I'm not aware of any other support for LB 126 than the larger school districts. I am quite puzzled, quite puzzled as to why this matters so much to a few folks in the larger districts who are just hell-bent on LB 126 passing. Is this a trend that we want? Is this a trend of taking power away from the little guys? I don't think it is, so I hope you will join me in voting no. If this passes, I sure hope the Governor vetoes it, and I hope that we can sustain a veto. This is bad for rural Nebraska and it's bad for those little guys who happen to be surrounded by some bigger guys in the more urban areas. Because there are pockets of Nebraska all across these pockets that are different scenarios, but LB 126 seeks to eliminate all of them with a bit of a delayed effective date in terms of the operation of the school, not the building itself. But, to me, education is more than the four walls of a school building. Education is about community support. LB 126 destroys it, maybe not intentionally, but effectively it destroys community support. The innovation that takes place, that's what we need more of in education is the innovation of community participants, of parents participating in the school programs. LB 126 discourages it. Now, research will show that the kindergarten through eighth grade concept is an optimal scenario and that there are very progressive areas of the country looking to reinstate the kindergarten through eighth grade concept. LB 126 destroys it intentionally, not unintentionally. LB 126 intentionally removes a kindergarten through eighth grade concept and operation. I hope you'll join me in voting red on LB 126. Thank you, Mr. President.

SENATOR CUDABACK: Heard the opening on the motion to strike the

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enacting clause. Open for discussion. Senator Smith, there are no lights on.

SENATOR SMITH: Thank you, Mr. President. I would withdraw my motion to return to Select File to strike the enacting clause. Thank you.

SENATOR CUDABACK: The motion is withdrawn. The first vote will be to dispense with the at-large reading. All those in favor of dispensing with the at-large reading vote aye; those opposed, nay. Record please, Mr. Clerk.

CLERK: 37 ayes, 5 nays to dispense with the at-large reading.

SENATOR CUDABACK: The motion was successful. The at-large reading is suspended. Mr. Clerk, please read the title to LB 126.

CLERK: (Read title of LB 126.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 126 pass? All in favor vote aye; all opposed vote nay. Mr. Clerk, please record.

CLERK: (Record vote read, Legislative Journal pages 1865-1866.) 35 ayes, 12 nays, 2 present and not voting, Mr. President.

SENATOR CUDABACK: LB 126 passes. Mr. Clerk, LB 126A.

ASSISTANT CLERK: (Read LB 126A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 126A pass? All in favor vote aye; all those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1866.) Vote is 39 ayes, 10 nays, 0 excused and not voting, Mr. President.

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LB 114, 126A, 348, 348A

SENATOR CUDABACK: LB 126A passes. Mr. Clerk, LB 348E. The first vote will be to dispense with the at-large reading. All in favor of the motion vote aye; those opposed, nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 40 ayes, 3 nays on the motion to dispense with the at-large reading, Mr. President.

SENATOR CUDABACK: The motion was successful. The at-large reading has been dispensed with. Mr. Clerk, please read the title, LB 348E.

ASSISTANT CLERK: (Read title of LB 348.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 348E pass with the emergency clause attached? All in favor of the motion vote aye; all those opposed to the motion vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1867.) Vote is 44 ayes, 3 nays, 2 present and not voting, Mr. President.

SENATOR CUDABACK: LB 348E passes with the emergency clause attached. Mr. Clerk, LB 348AE.

ASSISTANT CLERK: (Read LB 348A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 348AE pass with the emergency clause attached? All in favor vote aye; all those opposed vote nay. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1867-1868.) Vote is 45 ayes, 0 nays, 4 present and not voting, Mr. President.

SENATOR CUDABACK: LB 348AE passes with the emergency clause attached. Mr. Clerk, LB 114.

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LB 40A, 40, 114

ASSISTANT CLERK: (Read LB 114 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 114 pass? All in favor vote aye; all those opposed vote nay. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1868-1869.) Vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 114 passes. Mr. Clerk, LB 40E.

ASSISTANT CLERK: (Read LB 40 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 40E pass with the emergency clause attached? All in favor of the motion vote aye; those opposed, nay. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1869.) Vote is 40 ayes, 7 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 40E passes with the emergency clause attached. Mr. Clerk, LB 40AE.

ASSISTANT CLERK: (Read LB 40A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 40AE pass with the emergency clause attached? All in favor vote aye; all those opposed vote nay. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1870.) Vote is 44 ayes, 0 nays, 4 present and not voting, 1 excused and not voting, Mr. President.

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LB 40A, 146, 146A, 332

SENATOR CUDABACK: LB 40AE passes with the emergency clause attached. We now go to LB 146. Madam Clerk.

ASSISTANT CLERK: (Read LB 146 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 146 pass? All in favor of the motion vote aye; all those opposed, nay. Have you all voted on the question who care to? Record please, Madam Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1870-1871.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 146 passes. Madam Clerk, LB 146A.

ASSISTANT CLERK: (Read LB 146A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 146A pass? All in favor vote aye; those opposed vote nay. Have you all voted on the question who care to? Record please, Madam Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1871-1872.) Vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 146A passes. Madam Clerk, we go to LB 332E.

ASSISTANT CLERK: (Read LB 332 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 332E pass with the emergency clause attached? All in favor of the motion vote aye; those opposed vote nay. Have you all voted who care to? Record please, Madam Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal

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LB 211, 332, 332A, 713

page 1872.) The vote is 44 ayes, 0 nays, 4 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 332E passes with the emergency clause attached. Madam Clerk, we now go to LB 332AE.

ASSISTANT CLERK: (Read LB 332A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 332AE pass with the emergency clause attached? All in favor of the motion vote aye; those opposed to the motion vote nay. Have you all voted who care to? Record please, Madam Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1873.) The vote is 44 ayes, 0 nays, 4 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 332AE passes with the emergency clause attached. Madam Clerk, LB 713. First vote would be to dispense with the at-large reading. All in favor of the motion vote aye; those opposed, nay. Record please, Madam Clerk.

ASSISTANT CLERK: 41 ayes, 2 nays to dispense with the at-large reading, Mr. President.

SENATOR CUDABACK: The at-large reading is dispensed with. Madam Clerk, please read the title.

ASSISTANT CLERK: (Read title of LB 713.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 713 pass? All in favor of the motion vote aye; those opposed to the motion vote nay. Time. Record, Madam Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1873-1874.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 713 passes. Madam Clerk, LB 211.

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LB 28A, 28, 211, 211A

ASSISTANT CLERK: (Read LB 211 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 211 pass? All in favor of the motion vote aye; those opposed vote nay. Have you all voted who care to? Please record, Madam Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1874-1875.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 211 passes. Madam Clerk, LB 211A.

ASSISTANT CLERK: (Read LB 211A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 211A pass? All in favor of the motion vote aye; those opposed, nay. Have you all voted who care to? Please record, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal page 1875.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 211A passes. Mr. Clerk, LB 28.

CLERK: (Read LB 28 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 28 pass? All in favor vote aye; those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal pages 1875-1876.) 39 ayes, 4 nays, 5 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 28 passes. The final bill, Mr. Clerk, LB 28A.

CLERK: (Read LB 28A on Final Reading.)

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SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 28A pass? Have you all voted who care to? Record please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal pages 1876-1877.) 43 ayes, 0 nays, 5 present and not voting, 1 excused and not voting, Mr. President.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: LB 28A is adopted. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do sign the following legislative resolution, LR 12CA, and the following legislative bills: LB 126, LB 126A, LB 348E, LB 348AE, LB 114, LB 40E, LB 40AE, LB 146, LB 146A, LB 332E, LB 332AE, LB 713, LB 211, LB 211A, LB 28, and LB 28A. Mr. Clerk.

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and engrossed LB 71A, LB 116, LB 373, LB 577, LB 589, LB 589A, LB 594, LB 645; all correctly engrossed.

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 703, 716, 734, 738, 755, 756, 758

I have a motion with respect to disposition of certain bills, Mr. President, filed by the Speaker. That will be printed. (Re: LB 8, LB 12, LB 12A, LB 22, LB 25, LB 29, LB 92, LB 110, LB 123, LB 130, LB 151, LB 167, LB 170, LB 171, LB 174, LB 177, LB 187, LB 212, LB 218, LB 237, LB 240, LB 251, LB 272, LB 273, LB 273A, LB 300, LB 302, LB 330, LB 365, LB 367, LB 368, LB 395, LB 410, LB 411, LB 412, LB 444, LB 446, LB 466, LB 474, LB 494, LB 519, LB 532, LB 558, LB 597, LB 603, LB 619, LB 691, LB 703, LB 716, LB 734, LB 738, LB 755, LB 756, LB 758.) That's all that I have at this time, Mr. President. (Legislative Journal pages 1877-1878.)

SPEAKER BRASHEAR: Members, in a brief return to our kinder and gentler days, we will begin tomorrow morning at 10:00 a.m. I would have done the same for Friday morning, but I'm advised that we need to make certain that we can handle it all as we would want to before noon. But tomorrow morning, 10:00 a.m. Mr. Clerk.

CLERK: Mr. President, priority motion: Senator Beutler would...Senator Chambers would move to recess until 5:30 p.m., Mr. President. (Laughter)

SENATOR CHAMBERS: (Microphone malfunction) Board vote. (Laughter)

SPEAKER BRASHEAR: You've heard the motion. All those in favor...no, you said you wanted a board vote? Fine. All those in favor of recessing until 5:30 this evening signify by voting aye; those opposed, nay. Have you all voted who care to vote? Mr. Clerk, please record.

CLERK: 7 ayes, 34 nays to recess, Mr. President.

SPEAKER BRASHEAR: The motion to recess is not adopted. Mr. Clerk.

CLERK: Mr. President, Senator Beutler would move to adjourn until Thursday morning, June 2, at 10:00 a.m.

SPEAKER BRASHEAR: You've heard the motion to adjourn. All

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those in favor signify by saying aye. Those opposed, nay. We are adjourned until 10:00 tomorrow morning. Thank you.

Proofed by: J. Hurlbut