

FEBRUARY 7, 2006

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February 7, 2006 LB 454, 776, 1164

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Reverend James David, Saint Paul United Church of Christ, Lincoln, Nebraska; Senator Beutler's district. Reverend, please.

PASTOR DAVID: (Prayer offered.)

SENATOR CUDABACK: Thank you, Reverend David, for being with us this morning. We appreciate you being here, from the 28th District. Call the twenty-second day of the Ninety-Ninth Legislature, Second Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Reports, messages, or announcements?

CLERK: Mr. President, your Committee on Natural Resources, chaired by Senator Schrock, reports LB 1164 to General File with committee amendments attached. Priority bill designation: Senator Engel, LB 776; Senator Combs, LB 454. That's all that I had, Mr. President. (Legislative Journal pages 561-562.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to the next agenda item, legislative confirmation reports. Mr. Clerk, Natural Resources Committee.

CLERK: Mr. President, I have a report from the Natural Resources Committee involving an appointee to the Environmental Quality Council. (Legislative Journal page 534.)

SENATOR CUDABACK: Senator Schrock, as Chairman of the Natural Resources Committee, you're recognized to open on your report.

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SENATOR SCHROCK: Mr. President, members of the Legislature, today the Natural Resources Committee will report on the confirmation of Mark Czaplewski to the Environmental Quality Council. Mark is a new appointee to the council. He fills the biologist position that was created by legislation last year. He appeared before the committee for his confirmation hearing on February 1, 2006. His hometown is Grand Island. Mark received a bachelor's degree in biology from the University of Nebraska at Kearney. He has worked for ten years as a staff biologist for Central Platte NRD. For the 20 years prior, Mark worked for the Nebraska Public Power District as their Federal Energy Regulatory Commission relicensing project manager and environmental manager. He is a former board member and vice chair of the Lower Loup NRD, and a member of the Nebraska Chapter of the Wildlife Society, where he previously served as president. The committee's vote was unanimous to recommend approval of Mark Czaplewski to the Environmental Quality Council, and I will tell you that the committee has been very impressed with the new appointees to the Environmental Quality Council. So we've got some excellent people appointed to that council. Thank you for your time.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening on the report by the Natural Resources Committee. Open for discussion on that report. Senator Schrock, there are no lights on. Senator Schrock waives closing. The question before the body is, shall the confirmation report of Natural Resources Committee be adopted? All in favor vote aye; those opposed vote nay. Voting on the confirmation report offered by the Natural Resources Committee. Have you all voted on the confirmation report who care to? Record please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 562.) 28 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: Report has been adopted. Mr. Clerk, next report.

CLERK: The Agriculture Committee reports on the appointment of Jamie Karl to the Climate Assessment Response Committee.

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(Legislative Journal page 534.)

SENATOR CUDABACK: Senator Kremer, Chairman of Agriculture Committee, you're recognized to open on your first report.

SENATOR KREMER: Thank you, Mr. President and members of the body. The Agriculture Committee wishes to report favorably upon the appointment of Jamie Karl to the Climate Assessment Response Committee, and recommends the body approve his appointment. Jamie Karl is...currently serves as deputy director of Agriculture since July of 2005. He serves as the legislative director for Congressman Lee Terry and legislative assistant to Senator Chuck Hagel. He is a native of Dorchester, Nebraska, and a graduate of UNL in 1997, in journalism. He served for 20 months, enlistment in the U.S. Army. He...his family farms in Dorchester, or near Dorchester. Mr. Karl continues to be involved in the family farming operation. I'll just give you a little bit about the Climate Assessment Response Committee. It's created in enactment of LB 274 in 1992, and to replace the Drought Assessment and Response Team. It assists in updating drought and other climatological emergency response planning. The committee is statutorily charged with providing data collected and disseminated of climate and other data. It assists in the development of disaster declaration requests. It catalogs the state and federal assessment response resources. It advises the Governor and the state agencies in the implementation of drought response activities. The committee is housed administratively within the Department of Agriculture, and meets a minimum of twice yearly. The Governors have traditionally named the department director of Agriculture...or the deputy director of Agriculture as the committee chair, and the appointment will assume that chairmanship. A confirmation hearing was held on January 31. Mr. Karl appeared in person and the committee voted unanimously, with all members present, to recommend approval of Mr. Karl's appointment. I move the adoption of the Agriculture Committee's report on the confirmation of the appointment of Jamie Karl to the Climate Assessment Response Committee. Thank you.

SENATOR CUDABACK: Thank you, Chairman Kremer. You've heard the opening on the report by Agriculture Committee. Open for

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discussion on that report. Senator Kremer, there are no lights on. Senator Kremer waives closing. The question before the body is, shall the confirmation report by the Agriculture Committee be adopted? All in favor vote aye; opposed vote nay. Voting on adoption of the confirmation report by Agriculture Committee. Have you all voted on the question who wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 562-563.) 29 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: Report has been adopted. (Doctor of the day introduced.) Next agenda item, General File, special order. As stated, Mr. Clerk, LB 874.

CLERK: LB 874, a bill by Senator Kremer. (Read title.) Bill was introduced on January 5, referred to the Agriculture Committee, advanced to General File. I have no amendments at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Kremer, to open on LB 874.

SENATOR KREMER: Thank you, Mr. President and members of the body. LB 874 amends the Nebraska Pesticide Act. The act is administered by the Nebraska Department of Agriculture and was most recently amended in LB 436 in 2002. This amendment is needed to update the act so that it remains current with the federal program. The amendment is also needed to clarify enforcement requirements. I will go through some of the sections in the amendment, the ones that have their...have substantial changes. This was brought to us by the Department of Agriculture as sort of a cleanup. Section 2 updates references...or referenced versions to the Federal Insecticide, Fungicide and Rodenticide Act, most commonly known as FIFRA, and the Federal Food, Drug, and Cosmetic Act. The definition of "noncommercial applicator" is modified to include applicators who may not be technically be agents but are acting on behalf of a political subdivision by using pesticides for outdoor vector control. The definition of "restricted-use pesticide" is

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cleaned up by taking out the language that made it sound as if the pesticide received the exemption rather than the state is granted the exemption for the use of the pesticide in the state. The definition of "state limited use pesticide" is modified so that pesticides are listed in a pesticide management plan rather than a state management plan. The change is necessary because state management plan is limited to ground and surface water use only. Section 3 authorizes the department to set out more rigorous pesticide management practices for the use of a pesticide, if the pesticide has demonstrated unreasonable adverse effects on human life or the environment. Currently, the authority is set out on more rigorous pesticide management practices only relating to the detection of pesticides in ground and surface water. So it expands it from just ground and surface water to the adverse effects on humans and the environment. Section 4 deletes obsolete language regarding a July 2001 transfer of funds to the Natural Resources Water Quality Fund. That was a one-time transfer of \$1 million, which has taken place, and so it's obsolete language that is being taken out. Section 5 allows pesticide registration applications to be filed electronically. Section 6 specifies that late registration fees are intended to cover the administrative costs of collecting those fees. The reason for this change is so that statutorily establishes that the late fee is not a penalty pursuant to state constitution, and these late fees go into the cash fund that use...be used for administrating the process and what it costs in processing the late fees, but it's not a penalty. Section 7 also updates referenced federal regulations relating to applicator license categories. It clarifies language regarding the process of obtaining a reciprocal pesticide applicating license, and adds that anyone acting on behalf of a political subdivision by using pesticides for outdoor vector control must have a commercial or noncommercial applicator's license. Currently, the license requirement only relates to the employees of the political subdivision. In other words, the only ones authorized now are the employees, and this says that anyone, if you hire someone to do your outdoor vector control, they also have to be licensed. Section 8 clarifies that only applicators who apply restricted use pesticides in the state of Nebraska must be certified and licensed in Nebraska; specifies that a commercial applicator must have a license.

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Current language states that the commercial applicator must apply for a license. Section 9 is similar. It says...specifies that a noncommercial applicator must have a license. Current language, again, says that they only have to apply for the license. Section 12 specifies that it is a violation of the act to use an emergency-use pesticide contrary to the provisions of the permit. That is the more substantial changes, a couple places where it just deletes some sections and "renumerates" some sections. But that basically is what's been brought to us by the Department of Agriculture to bring up to date the Nebraska Pesticide Act. Thank you. I'd be glad to answer any questions.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the opening on LB 874. Open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I want to have a little dialogue with Senator Kremer, if I could, on one section of the bill. It is a section that's difficult to understand. For those of you who would like to follow the discussion, it's the section on page 16 that starts on line 20, page 16, line 20, which has to do with state management plans and pesticide management plans. And the old law said that management plans and pesticide management plans may impose progressively more rigorous pesticide management practices, as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality. Then some new language has been added which leaves the old standard with respect to water; that is, any increasing fraction of the standards can be taken into account, but seems to set up an additional standard or supplemental standard that's different for things that do not involve the gradation of ground water or surface water. And I wanted to be sure I understood what is happening in this particular instance, so Senator Kremer, if I could have a short dialogue with you. You and I have talked some already and I've indicated to you I had prepared an amendment, and I've indicated to you that I don't feel sure enough about the amendment to offer it, so I won't be offering it. But I would certainly like to make a record and perhaps retain the right to work with you on Select File on something.

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SENATOR CUDABACK: Senator Kremer, would you yield?

SENATOR BEUTLER: But...

SENATOR KREMER: Sure. Yes, I will.

SENATOR BEUTLER: ...here, let me try to get a better understanding of this provision by simply asking you some questions about it. First of all, is it accurate to say that, with respect to ground water and surface water, it's not intended that any of the new language or the new standard would have anything to do with pollution detected in ground water or surface water? Is that correct?

SENATOR KREMER: Yes.

SENATOR BEUTLER: So those are two completely separate categories.

SENATOR KREMER: Yes. Our intention is to leave that exactly the same as it is now, but to expand it so that if it becomes detrimental to the environment or humans, that we could respond to that in a similar way, but maybe not exactly the same as the response time like you were talking about.

SENATOR BEUTLER: Okay. But you don't intend for any of the new language in that section to be taken and applied to ground water or surface water. Is that accurate?

SENATOR KREMER: I...the way I understand it, the new language is just to expand it to include humans and environment, but to leave the ground water response exactly the same as it is now.

SENATOR BEUTLER: Okay. So your answer to that is, no, you don't expect the new standard to be used with respect to ground water or surface water.

SENATOR KREMER: Well, I'm not sure...no, no, we don't want...we don't want to distract from that at all, correct.

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SENATOR BEUTLER: Okay. So you're agreeing with that distinction?

SENATOR KREMER: Well, I guess maybe I don't quite understand your question because I don't think...

SENATOR BEUTLER: Okay.

SENATOR KREMER: ...new language does any damage to it at all. I think it expands it so that you also include...

SENATOR CUDABACK: One minute.

SENATOR KREMER: ...something more.

SENATOR BEUTLER: The new language that's been put into the bill says any...that more rigorous pesticide management can take place if any pesticide continues to demonstrate, continues to demonstrate, unreasonable adverse effects on humans or the environment. As I indicated to you earlier, I like the current standard with regard to ground water and surface water because, for example, if you're talking about nitrates in water, the old standard, I haven't looked recently, but it used to be ten parts per million. But if a particular NRD started creeping up on that at five parts, six parts, seven parts per million, one could argue it was not yet an unreasonable adverse effect on humans or the environment, but nonetheless, especially when you include the problem of ground water migration and how long it might take to reach a...to pollute a particular waterway...

SENATOR CUDABACK: Time, Senator Beutler. Senator Chambers, followed by Senator Beutler, on LB 874.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Beutler raised an issue which I had questions about, but with respect to a different part of the language. I'm going to listen to what Senator Beutler is saying, because it seems to me that if the only thing this new language is designed to do is to talk about adverse effects on humans or environment, it wouldn't be necessary perhaps to put it in this subdivision that touches on ground water and surface water. I'd like to ask Senator

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Kremer a question, if I may.

SENATOR CUDABACK: Senator Kremer, would you yield to a question from Senator Chambers?

SENATOR KREMER: Yes, I will.

SENATOR CHAMBERS: Senator Kremer, could subdivision (e), which we're looking at, be left intact as it exists now, then put in a separate subdivision that would make it clear that if you're talking about these adverse effects on humans or the environment, there would be no possibility of there being a suggestion or even an argument that a change as far as ground and surface water are concerned? Here's the question now. Why could not this new language be made a separate subdivision?

SENATOR KREMER: Well, I think it could, but if you'll look at the beginning of part (e) there, it says the state management plan and pesticide management plan may impose. It's really talking about when we start a state management plan. There are two kinds of plans--the state management plan and a state...what's the other, pesticide management plan. This is just saying when we can start, what we need to have a reason for to start the state management plan, and it's not intended to weaken at all the effects on the ground water, but it's to include it that a plan should be put into place when we see adverse effects on human or environment also. I have no problem making sure that we don't weaken the water part of it, but to me it says...

SENATOR CHAMBERS: Then...

SENATOR KREMER: Go ahead.

SENATOR CHAMBERS: Then suppose, since you want that language, "the state management plan and pesticide management plans," without maybe having to repeat that, you would move this new language to the end of section...of this subdivision, and on page 17...now, I'm flying by the seat of my britches on this one, but to get the idea across, there could be left intact subdivision (e). Then, after "Licensure," you might add that

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language about these effects on humans or the environment, or some approach like that, so it's clear that there is to be no change. And here's why I share Senator Beutler's concern, or he raised a concern in my mind. We're not going to be here, perhaps, if and when an attempt is made to misapply this language in a manner different from what you're discussing on the floor. I have an amendment that I'm thinking of offering to this new language, but I will not put that in at this point in my discussion and confuse this issue. I'm going to listen to further discussion and then put my amendment up there because it would go to the new language, where it's found now,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and it doesn't touch directly, maybe, on what Senator Beutler is discussing. Thank you, Mr. President. Thank you, Senator Kremer.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the advancement of LB 874? Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I want to finish the discussion a little bit about ground water and surface water, because what I value in the language that applies to that, I would also value in other language that's applicable to pollution that's not in ground water or surface water, and that is the ability under the law, in a state management plan or a pesticide management plan, to anticipate in the reasonable future adverse effects on humans or the environment. And as I was trying to indicate to you in the time that I had before, the current law with regard to ground water and surface water allows you to do that because if you increasingly come closer to a standard that identifies an adverse effect, a scientific standard that identifies an adverse level, that is a level at which there is a danger to humans and the environment, as you start to approach that closer and closer, regulation is possible under this language. That's what the NRDs are doing, have been doing in many areas of the state with their ground water management plans, for example. But we're talking about quality here in this instance. The new language says that in order to regulate out here in an area

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other than water, any...you can do it if any pesticide continues to demonstrate, continues to demonstrate--so, first of all, it appears that it has to already be doing some adverse harm--continues to demonstrate unreasonable, and we can talk about that a little bit, but unreasonable adverse effects on humans or the environment. It seems to preclude the possibility of saying, in advance, this is probably going to have an unreasonable adverse effect and we're not going to do it. Senator Kremer, let me give you the opportunity to respond to that. Is that what this language means? Can somebody, if they're denied by the department, Agriculture in this instance,...

SENATOR KREMER: I understand...

SENATOR BEUTLER: ...the ability to use something, could they say, well, this has...there's been no demonstration of an unreasonably adverse effect here in Nebraska so you can't preclude us from using it? That's what I'm afraid of.

SENATOR KREMER: I can understand a little more now what you're saying. If...maybe if we removed the words "continues" out of there, it says the pesticides demonstrates unreasonable effects, so that you could respond to it before it continues, like it goes down the road for some time before you do something. Is that what your concern is? If you take "continues" out, would that...would that help anything? We'd be glad to work with you any way we can, because...

SENATOR BEUTLER: Yeah, that would help.

SENATOR KREMER: ...I understand what you're saying and we're really taking and expanding the situation when we need to have a state management plan, and it goes down there on line 23 and it talks about unreasonable effects on humans or environment, or is detected, and that's the same language left in there. So...

SENATOR BEUTLER: Right.

SENATOR KREMER: ...our intention is not to weaken that at all; to be responsive immediately when it happens, because of the lag

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time when, say, nitrates get down, that we have to be doing things on the surface long before it gets to the water. And I understand what you're saying. So maybe...maybe what I understand you saying is that we have a little trouble then saying continues, like it has to go on and on and on for awhile before we ever do respond to it. So I'm not sure if that would help at all or not, but...

SENATOR BEUTLER: Well, I'm sure we can work out some language, Senator, because I think...

SENATOR KREMER: We'd be glad to (inaudible).

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...I don't think we (inaudible) different...

SENATOR KREMER: We're all from the same page, I think, yeah.

SENATOR BEUTLER: ...that differently about it. But I don't have much time yet, but with respect to the two examples that your staff provided me, which I think are good examples to use in discussing this, I want to get into those a little bit more next time, because these are the things, two of the things, you're actually trying to work with, I guess. The one is mosquitoes and the other is prairie dogs, and we can come back to that next time. Senator Cudaback, thank you.

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

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. I usually don't get involved in these discussions. I don't know that much about them. I do know that the more pesticides we use in this state, if they aren't...or in the country, as far as that goes, if they aren't reasonably safe we could end up with more problems than we ever thought imaginable, you know? And I don't know. The way it looks to me, the new language does not either raise or lower the level where this...where these chemicals could be contaminating our underground water or surface water, as far as that goes. We know that there are more of them used throughout the whole

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agricultural community than there ever has been before. I remember we used to go out and cultivate the corn about three or four times during the summer, and that doesn't happen anymore, and I understand that agriculture cannot do those kind of things and still have a profitable economy. So the...so the chemicals are doing a lot of the work that the farmers used to do with machine. But we certainly don't want to be changing anything that is going to affect our underground water supply or our surface water supply, as that goes. But, Senator Kremer, I don't see anything here that would really change that section, subsection (e), if this was adopted, but I'm going to listen to the conversation. Maybe there's something here that I don't see that could be happening. With that, I'd give the rest of my time to Senator Beutler, if he'd like to have it.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: How much time is left, Senator Cudaback?

SENATOR CUDABACK: About 2.5 minutes.

SENATOR BEUTLER: Okay. Senator Janssen, thank you very much. Senator Kremer, let's talk a little bit about mosquitoes.

SENATOR KREMER: Okay.

SENATOR BEUTLER: As I understand it, from the material you so kindly provided me, there are certain types of pesticides and this whole Pesticide Act has much to do with labeling, right, how they're labeled and what uses can pertain with respect to the labels? And remind me, these labels, can they be very intricate, like saying when, what time of year you can use it, what areas you can use it, and contain restrictions? All that's within this idea of a label, is it not? Kind of, please, really remind me a little bit how that works.

SENATOR CUDABACK: Senator Kremer.

SENATOR KREMER: Well, I guess I haven't looked into it, but it can be very specific that it can be used only in certain places and, of course, it tells who can apply it, too. You have to

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have a license and everything, but it also tells what specific target it is and time of year. There's...I don't think there's any restrictions on what it cannot say, especially if it's something that's very detrimental, and then you have to even have a special use permit in order to use it by, you know, a political subdivision or someone like that, and then the people that apply it have to make sure that they are licensed also.

SENATOR BEUTLER: Okay. Would that be part of a pesticide management plan?

SENATOR KREMER: The pesticide management plan would target one pesticide, and I think...I maybe have to check for sure, but I think that if it's targeted toward that one pesticide that you could maybe even vary from that, if you had reasons for that, from the label.

SENATOR CUDABACK: One minute.

SENATOR KREMER: But the pesticide plan is for just one specific pesticide.

SENATOR BEUTLER: It might build in some flexibility in terms of how a particular user uses...

SENATOR KREMER: They have to show that plan, and this is why we need to use this, this is what we're going to use it, when we're going to use it and everything else. The plan has to be drawn out specific for that pesticide for that one target.

SENATOR BEUTLER: Okay. Thank you. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler and Senator Janssen. Mr. Clerk, motion on the desk, please.

CLERK: Senator Chambers would move to amend with FA399. (Legislative Journal page 563.)

SENATOR CUDABACK: Senator Chambers, to open on FA399 to LB 874.

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SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. If you will look at this amendment, you will see that it affects the area that Senator Beutler has been discussing. On page 16, in line 22, I would strike the words "continues to demonstrate" and insert the word "demonstrates." The reason I'm doing that may be obvious, but I will put something in the record anyway. If a pesticide is harmful to human beings or the environment, once that determination is made, that should be sufficient to trigger this more rigorous management. It should not have to be an ongoing harm because this language, as it stands, does not make any reference to the level of harm, whether it could be lethal, whether it could merely cause a serious ailment or simply diarrhea or coughing. Anything which adversely affects the health would be covered by this language as it exists now. But I don't think it should have to be an ongoing harm, because that could be construed to mean that before any rigorous management...any more rigorous management occurs, some kind of study or statistical analysis covering a period of time, a number of people, collecting medical records and reports of exactly how many individuals suffered this harm, on and on, and it could be a self-defeating proposition. I'd like to ask Senator Kremer a question or two.

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

SENATOR KREMER: Yes.

SENATOR CHAMBERS: Senator Kremer, it is not the intent of this language to create a set of circumstances where once an adverse effect is determined to exist it is allowed to remain in operation until some kind of study, survey, or whatever is undertaken which could require an amount of time. That's not your intent, is it?

SENATOR KREMER: No, no, that was not the intent at all. And I...could I explain (inaudible)?

SENATOR CHAMBERS: Sure. That's...I don't want you to just have to say yes or no.

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SENATOR KREMER: I agree with you on the "continues," and it was just brought to my attention that...I'll try to use an illustration. Hope I can...it will work. Say that we're trying to eliminate something and we find out that it's had a detrimental effect on frogs, so we do something to correct that and then we find out that it continually does, has a detrimental effect on them, so we have to go further than that, and that would come out in the pesticide management plan. And so that "continues" is kind of like, lets us respond as it continues to gets worse or something, but I think it can be represented that it has to be continually going on before we respond, and that's not the intention at all. We need to respond immediately if we can. And then adjust, like Senator Beutler even talked about, in our ground water, if it continues to build up nitrates, then we have to be more responsive, more restrictive and everything as we go along. So it's kind of a...we want to act immediately, but we also want to be able to respond as things might get worse.

SENATOR CHAMBERS: If my amendment were adopted, would that prevent this type of management if the...let me start over again. A harm of some kind is determined and, to use your example, it would be to frogs. Once that more rigorous management is undertaken, if it surfaces that there is another harm, one that was not anticipated, or a more serious harm, my amendment would not prevent immediate reaction because as soon as that is discovered, that would constitute the demc stration of the harm which triggers this more rigorous management. So let's say that the frogs are affected, then you discover that snakes or any other critter or even human beings. Soon as that's discovered, with my amendment there would be an immediate response to that. So here's the question that I will ask you. How do you feel about my amendment?

SENATOR KREMER: I support your amendment. In fact, I suggested that "continues" might come out of there, because we don't have the wording in there when we apply it to ground water, and I don't think it needs to be there applied to humans or environment either. So I support it. I think it's better because I think we can respond and, if it continues to have an adverse effect, we can respond differently. I don't think it

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restricts us from doing that at all, so I would support your amendment.

SENATOR CHAMBERS: Well, thank you, Senator Kremer, and it shows that our minds are running along similar paths, because I had been talking to the Speaker and I may have missed some of the details of the discussion.

SENATOR KREMER: That is scary.

SENATOR CHAMBERS: Thank you, Mr. President. (Laugh) Thank you, Senator Kremer.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the Chambers amendment. Senator Beutler.

SENATOR BEUTLER: Senator Kremer, let me...let me clarify certain things with regard to how this paragraph operates, because I think the paragraph, as it operates as a whole, should be considered in the discussion that we're having. And it says the state management plan and pesticide management plan may, may impose progressively more vigorous pesticide management practices. So with regard to the new language that you're adding, even if a pesticide demonstrated unreasonable adverse effects on humans or the environment, the department may still refuse to impose progressively rigorous pesticide managements in those situations. Isn't that accurate?

SENATOR KREMER: I would say yes.

SENATOR CUDABACK: Senator.

SENATOR KREMER: Yes, I think so.

SENATOR BEUTLER: I can understand the "may impose," if you're talking about the existing language, which was ground water and which allowed the department to act in an anticipatory fashion; that is, to act before the adverse standard was met. Giving them the flexibility of "may" gave them the necessary judgments they could use in different situations that were not yet situations where there was a clear adverse human or

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environmental effect. But then, when you add language that says that the pesticide demonstrates unreasonable adverse effects on humans or the environment, and then you still say they may impose more vigorous standards, that's...to me, that's kind of a contradiction in terms. Because you're saying these people are supposed to protect the health of the public, the health of the public is being unreasonably adversely affected and, yet, we're putting into law that they still don't have to do anything different. I'd invite your response to that.

SENATOR KREMER: I understand what you're saying, because it...later on it says that it has...if it demonstrates these unreasonable effects and if it affects our ground water then we just say they may do it, where it seems like it should be something with a little bit more authority that they shall. I understand what you're saying and I think it's reasonable.

SENATOR BEUTLER: Okay. Well, that's maybe another thing we could talk about a little bit...

SENATOR KREMER: Okay.

SENATOR BEUTLER: ...between now and Select.

SENATOR KREMER: Okay. I'd be glad to,...

SENATOR BEUTLER: Okay.

SENATOR KREMER: ...because I think we all want it to be as workable as possible and also be as reactive as possible to problems that we have, that we can be proactive and not wait till we have our water polluted or damage to some environment or something like that before we respond. So I think we're all on the same page and the wording could be better.

SENATOR BEUTLER: Okay. I have one more question about the balancing that goes on in a paragraph like this, but let me begin that when...the next time I can speak...

SENATOR KREMER: Okay.

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SENATOR BEUTLER: ...so we can have a coherent conversation. Senator Cudaback, thank you. I'd yield the remainder of my time back.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Louden on the Chambers amendment to LB 874.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I'd like to ask Senator Kremer questions, if he would yield, please.

SENATOR KREMER: Yes, I will.

SENATOR LOUDEN: When I'm looking at this, and we've all been talking about pesticides and most everybody, I think, is under the impression that this is what you pour on corn or weeds or something like that, and wheat, how does this affect some of the pesticides used on livestock? Will this affect, like, the systemics or some of that? Because, like, when you have an unreasonable effects on a human, why, you pour a dipper full of Worbex on somebody and I tell you, they'll be sicker than heck. How does this work on that? Is that part of the equation in this, in this sentence here?

SENATOR KREMER: Okay, I'm being told something that I don't completely understand. No, it does not affect that. Okay.

SENATOR LOUDEN: Well, are the pesticides used on cattle then, are they excluded from this? Because they could certainly cause an adverse effect on a human.

SENATOR CUDABACK: Senator Louden.

SENATOR KREMER: Okay, the pesticide in the Food, Drug and Cosmetic Act, it excludes certain pesticides used on animals. But I think if there was ever any evidence that it had an adverse effect on animals or environment or something like that, that they would be included in that. But then it does exclude that, drugs on animals.

SENATOR LOUDEN: Is that...when I look this bill over, why, I

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mostly overlooked this part, I guess. I thought it more had to do with doing away with some of the funding that went to the water quality control that come out of the Pesticide Act. But you assure me then that the pesticides you're talking about here excludes livestock pesticides, because nearly all of those that are used on livestock would have an adverse effect on humans. And I guess whereabouts in there will it tell us that this excludes livestock pesticides?

SENATOR KREMER: Okay, on page 11, line 5, it talks about pesticide, includes specific pesticides...does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act.

SENATOR LOUDEN: Okay. Thank you. Thank you, Senator Kremer.

SENATOR CUDABACK: Thank you, Senator Louden. Further discussion on the Chambers amendment? Senator Beutler.

SENATOR BEUTLER: Senator Kremer, the last part of this section that was of interest to me relates to the new language and ferreting out a little bit your intent with regard to the new language. The new language indicates that these progressive...progressively more vigorous pesticide management practices may not be imposed unless they demonstrate unreasonable adverse effects on humans or the environment. I'm not quibbling with the use of the word "unreasonable" per se, because oftentimes at the statutory level, as you're aware, we revert back to what's reasonable and unreasonable and leave it to the agencies and the courts to draw those lines for us. But your intent is somewhat important, too, and when you talk about unreasonable adverse effects, is the world that you're talking about the continuum of health...adverse health effects, and if they're mild they may be reasonable and as they grow more serious they become more unreasonable? Is that the dimension of the test with regard to unreasonable?

SENATOR KREMER: I'm not sure I understand exactly what you're saying, but then...

SENATOR BEUTLER: Well, let me...let me explain what an

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alternative to that might be...

SENATOR KREMER: Okay.

SENATOR BEUTLER: ...and then you can tell me what you're intending.

SENATOR KREMER: Okay.

SENATOR BEUTLER: I suppose the world to be considered by the regulators and the court could be just this health standard where the effect was not at all adverse, a little bit adverse, greatly adverse. Or you could then bring in a different set of factors and say, what is the economic value of this pesticide in a particular situation, and then "superlay" that continuum--small economic value, medium economic value, really terrific economic value--and overlay that on the health spectrum and come to some different conclusion than if you were just looking at things in terms of human health on the health spectrum. Is this "unreasonable" that you're talking about here include both the economic and the health spectrum, or just the health spectrum?

SENATOR KREMER: Well, I think primarily the health spectrum, but I think that when a state...the department sits down or the...yeah, Department of Agriculture, I guess, and sets up a plan, a management plan or, more specifically, it's the pesticide management plan, that they would look at everything. You know, I don't know how we can restrict it and say it just has to...and micromanage it, because we're trying to put some parameters out there, what they can work by, what they can do and how they can be responsive to the health, environment, as well as the ground water. And I'm not sure even about that "may" in there, and I guess I'd like to have more thought on that before we do anything, because it says that they may do things more rigorously, progressively. You know, that gives them a little leeway, because maybe sometimes it doesn't...it doesn't demand something more progressive and more rigorously. Maybe it should be an outright ban. And I think we need to have a little leeway in there, but I know that sometimes we feel like we need to...

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SENATOR CUDABACK: One minute.

SENATOR KREMER: ...micromanage it and...

SENATOR BEUTLER: Okay.

SENATOR KREMER: ...spell it all out.

SENATOR BEUTLER: But with regard to the question that I...that I asked you,...

SENATOR KREMER: Okay.

SENATOR BEUTLER: ...what I thought I heard you say was that we're looking at things primarily on the continuum of detrimental or adverse effect to humans or the environment, but also you might take into account economic factors if there are great economic benefits. Is that...

SENATOR KREMER: I would think it would be very,...

SENATOR BEUTLER: ...is that what you're saying?

SENATOR KREMER: ...very appropriate to broaden, look at every aspect of it.

SENATOR BEUTLER: Okay. Thank you, Senator. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. Further discussion? Senator Chambers, there are no lights on. He does not wish to close. The question before the body is, shall FA399, offered by Senator Chambers, be adopted to LB 874? All in favor vote aye; opposed, nay. Voting on adoption of the Chambers amendment to LB 874. Have you all voted on the amendment who care to? Please record, Madam Clerk.

ASSISTANT CLERK: 26 ayes, 0 nays on adoption of the amendment, Mr. President.

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SENATOR CUDABACK: Chambers amendment has been adopted. Madam Clerk, next amendment.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend with FA400. (Legislative Journal page 563.)

SENATOR CUDABACK: Thank you, Madam Clerk. Senator Chambers, to open on AM...or FA, rather, 400.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm offering this amendment, but I'm willing to listen to the discussion. On page 16, line 23, my amendment would call for the removal of the word "unreasonable." Senators Kremer and Beutler were discussing whether the impact would be to economic factors or health, and I don't know that there was a complete resolution, but I need to find out from Senator Kremer...

SENATOR CUDABACK: Senator Kremer.

SENATOR CHAMBERS: ...what is intended here. And before I ask him the question, I want to make this comment. When we have the state management plan and it has been found that a set of circumstances exist where more rigorous pesticide management practices are warranted, under the present language, if adopted, that would come into being and play only if a determination was made that the adverse effects were unreasonable. So I would like to ask Senator Kremer a few questions in this regard.

SENATOR CUDABACK: Senator Kremer, would you yield to a question from Senator Chambers?

SENATOR KREMER: Yes, I'll try.

SENATOR CHAMBERS: Senator Kremer, I'm not opposed to the thrust of the bill. I want that to be clear from the beginning.

SENATOR KREMER: I understand.

SENATOR CHAMBERS: Okay. Does "pest" include prairie dogs, by the way?

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SENATOR KREMER: To some people it would; some it wouldn't.

SENATOR CHAMBERS: But I mean in the language of the statute that will relate to pesticides. Or would it be considered a rodent and only affected by the portion of the law that deals with rodenticides?

SENATOR KREMER: I don't think we're looking at specific animals or anything here. I would think...well, if they're in their proper place, then there's no problem, but then to some it would be...they would be a rodent that is undesirable. In some places they would be desirable.

SENATOR CHAMBERS: Okay. So I think you may have answered, but my interest goes beyond that. Back to the amendment. If an adverse effect on human health is found, what level of adverse effect is going to be acceptable before the more rigorous management practice is triggered?

SENATOR KREMER: I can't tell you what level would be. I have a little problem with taking "unreasonable" out, because say a vaccine is something that would save millions of lives but it does have an adverse effect on some, so I think "reasonable" might be appropriate in there, and that would be...I think, it could be particular to each particular incidence of what it might be. It would be a different approach. I don't know if that answers anything or not, but you could have an adverse effect but it's a reasonable adverse effect because of the consequences if you do not do something.

SENATOR CHAMBERS: This doesn't ban. We're not talking here about a ban. The language that exists in this language...I meant the language that exists in this subdivision relates only to more rigorous management, not a ban. If it's a vaccine, the vaccine would not be banned. But to some people, if 2 children out of 1,000 suffer serious consequences which might even be life-threatening, that would be deemed to be an unreasonable level of harm. So the rigorous...the more rigorous management may entail studying, gathering more information, and monitoring to see just what the circumstances were when these vaccinations were given that did have a negative impact on the children.

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Maybe a determination would be made that they shouldn't be given in a doctor's office, maybe that they shouldn't be given by anybody other than a doctor, but it does not ban. So, because we're only talking about more rigorous management practices...but let me ask you something else, since we're looking at your example. Are you willing to answer another question?

SENATOR KREMER: I will try.

SENATOR CHAMBERS: Which vaccine do you know of that contains a pesticide?

SENATOR KREMER: I don't know. I don't know of any. I don't know what the ingredients are.

SENATOR CHAMBERS: So we're discussing an example that probably doesn't even apply here, right?

SENATOR KREMER: Very likely.

SENATOR CHAMBERS: Okay. So let's deal with a pesticide. If the only thing we're talking about is more rigorous management, how would the removal of the word "unreasonable" create a problem, considering what it is you want to achieve by this language?

SENATOR KREMER: You know, I would have to...I guess I would have to spend some time talking with Department of Agriculture, who are the ones who write up the management plans, whether it's the state management plan or the pesticide management plan, and see how they feel about it. Because I'm not the one that has to do this, and this...

SENATOR CHAMBERS: Then...

SENATOR KREMER: ...bill was brought to us by them and so I guess I would like to have a conversation with them as to what the reasoning would be.

SENATOR CHAMBERS: I'm going to listen to see if there's any

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further debate, and then I'll make a decision. Thank you, Mr. President. Thank you, Senator Kremer.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on FA400? Senator Chambers, there are no lights on. You may close, if you care to.

SENATOR CHAMBERS: Mr. President, in view of what Senator Kremer said about wanting the opportunity to discuss this with the Department of Ag, I'm going to withdraw this amendment.

SENATOR CUDABACK: It is withdrawn. Madam Clerk, next motion.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend with FA401. (Legislative Journal page 563.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA401 to LB 874.

SENATOR CHAMBERS: Thank you, Mr. President, and I failed to acknowledge that at the Clerk's desk we now have the "A Team" in action, no disparagement of the regular and the usual. But sometimes we, as this guy Emeril says, we're going to, bam, kick it up a notch. Mr. President, members of the Legislature, what this amendment would do in line 21 on page 16 is strike the word "may" and insert the word "shall." If you look in line 17, you will find the word "shall," and I'm going to read in what connection that word is used, starting in line 16: "The state management plan and pesticide management plans shall be coordinated with the department and other state agency plans and with other state agencies and with natural resources districts." This coordination must be considered to be very consequential, therefore "shall" is used. But the coordination should have a purpose other than just having these agencies and the people in them get together and talk and do whatever they do when they're coordinating. There has to be coordination for the purpose of achieving a legitimate goal. That goal should be to protect the public interest. In this case, the public interest is the health of human beings and the environment. So if we're going to say that they shall coordinate, we should mandate that once they have coordinated and done whatever they do when they

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coordinate, and arrive at a conclusion, we should make the carrying out of the function that is going to result in the achievement of the worthwhile goal mandatory, and that's done by using the word "shall." Dropping to line 20, to put this amendment that I'm offering in context: "The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as any pesticide demonstrates unreasonable adverse effects on humans or the environment, or is detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services Regulation and Licensure." That is a lot of terminology. Within that terminology are issues being addressed which are of great concern to those of us interested in the public welfare and public health. When a determination has been made that a pesticide is demonstrating unreasonable adverse effects on humans or the environment, including ground water or surface water, we should not allow any entity whose job it is to protect the public health to decide, well, I'm not going to do anything. With this language containing the word "may," that means total discretion is given to whichever agency is to enforce this proposition. Once discretion is given, that discretion may be exercised, and in the case of using the word "may," it can be exercised in such a way as to say nothing is going to be done. And there is no way to compel anything to be done, because the Legislature would be utilizing language which shows that the policy is based on the notion that it is not really necessary that these functions be carried out. What we would have with the word "may" is no more than good advice, a suggestion, a recommendation, but if it is rejected out of hand, there's nothing anybody can do. You would have to find some other provision of law to obtain an injunction if unreasonable adverse effects are befalling human beings or the environment. Don't ask me if such other legislation is on the books, because I don't even want to get the headache that I would have. I would like to make this easy, not only on us but on anybody who administers this law, anybody who looks at this law. Therefore, we should strike the word "may" and replace it with the word "shall." I'm trying to be reasonable this morning, so I'm going to listen to the debate. But I think it is unreasonable to have language which establishes the existence of an adverse effect to

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human beings, the environment, ground water and surface water, and yet there is nothing in that provision of law which requires that the condition be corrected or rectified. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You heard the opening on FA401. Open for discussion. Senator Beutler, followed by Senator Kremer.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think Senator Chambers' amendment makes a lot of sense as it pertains to the new language that is in the bill, because that new language talks about unreasonable adverse effects on humans or the environment. Obviously, if under the definitions in the bill you've reached that point, then it shouldn't be a matter of "may." It should be a matter of "shall." Now, that doesn't end the question, as you understand from previous conversation we've had with Senator Kremer, because the word "unreasonable" then becomes exceedingly important, and they may still refuse to act because they would make the judgment that the adverse effect is not unreasonable considering health and, as Senator Kremer indicated, economic factors. But the Chambers amendment should be adopted because it's a flat-out statement about what you should do if, in fact, there's an unreasonable adverse effect. And now, after that, if we want to talk about whether the word "unreasonable" should apply or some other word or how that would be further defined, maybe that's something that could be discussed before Select File. But, as a minimum, I think Senator Chamber's amendment is good advice for that...as it pertains to that new language. One might also want to have some discussion afterwards about further sophistication with regard to that kind of language as it would apply to the unchanged current law with respect to detecting pesticide problems in ground water and surface water before the event of an adverse effect. So, in that context, I would certainly support the Chambers amendment.

SENATOR CUDABACK: Thank you, Senator Beutler. On with discussion. Senator Kremer.

SENATOR KREMER: Thank you, Mr. President, members of the body.

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At this time, I would not support changing "may" to "shall." Let me read to you what a state management plan is. A state management plan means a plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of a pesticide in ground water and surface water in the state and any specific plans developed when the occurrence has been detected. A state pesticide plan means a plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of a pesticide use and the training and licensing of a certified applicator. We're trying to be responsive to put a management plan into practice. Now, where it says "shall" up there, I think it's very important because I think we want them to use all the best tools that we have, the best information we could have so that they shall have to cooperate with the department and other state agencies' plans, and other state agencies, with the natural resources district, but the "may," there are a lot of elements that enter into this. It may be different parts of the state. It may be different targets for that pesticide or herbicide or whatever it might be, and I think we do need to give discretion up to...and we broadened it so that it brought in a lot of other agencies, so it was a wise decision when they made, not just one or two people. But I think it's appropriate to have "may" in there because this kind of would say that that's the only thing that we can do in response to whatever the problem is, and the problem may be more severe in some parts of the state than others, so that we can be a little more responsive. So at this time, I don't feel like I can support the...from changing the "may" to a "shall." Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. (Visitors introduced.) Discussion of FA401, by Senator Chambers to LB 874? Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I've been listening very close to the discussion this morning and what I am really concerned about is, you know, any pesticide that is utilized by an organization/individuals for the control of pests, the labeling on those bottles, jugs or containers, you know, has got, realistically, everything spelled

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out as far as, you know, where it can be put, how it can be used, dosage amounts, and everything like this. A lot of farmers, according to this management plan, have to take pesticide training in order to purchase some types of pesticide, but a lot of the people, you know, do not go through the training or anything like that. They utilize their pesticide applicators that have the training; know what and what amounts to put on and when to apply the pesticides. So I think, you know, that is pretty well taken care of. The thing that really is the issue is these pesticides, before they have ever been released for use to control pests, you know, have gone through a lot of tests, you know, to make sure, you know, that if they're applied right, you know, there is no harm to the humans or to the environment. Any other thing, you know, could be harm to humans if it's not taken in the right dose or over taken by a right...the amount. But I think a lot of this stuff has already been taken care of. Everything is spelled out on the label, you know, for the correct use of the pesticide. The training that is, you know, administered by the state through the cooperative extensions through Pesticide Training Act, those are trainings on how to apply the pesticides, when to apply them, how to apply them, and for what they are applied and on as to what crops or animals. So I think, you know, that is all taken care of in that part of it. It's really all spelled out already, before the people have...the companies have ever sold these pesticides. So I think if the people, you know, realistically do what they're supposed to do, you know, it is spelled out. If something happens or if there's a spill, you know, there is a plan to take care of that, and that comes with a pesticide training and the issuance of those permits. In our operation, you know, all of our family members, the ones that are working with that stuff, you know, we do have the permits. We go for the training. So that is pretty well all taken care of. But there will be a possibility of something happening at some time, that a hose would break or something with your applicator, things can happen. But I think there is a plan in place and who to notify if something takes place. So I just wanted to bring that part of the issue up that these pesticides, you know, are made for a purpose, but they got to be used right and everything, in my opinion, is in place so that they're utilized right. With that, I'll return the balance of my time back to

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the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. (Visitors introduced.) Senator Chambers, on your amendment, FA401.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Kremer and I and his staff were under the balcony discussing this word change. I would like to ask Senator Kremer a question or two, and he may not have the answer just yet because he may want to further explore it. But to the extent that he may have an answer, I would like to ask him one or two questions.

SENATOR CUDABACK: Senator Kremer.

SENATOR KREMER: Yes.

SENATOR CHAMBERS: Senator Kremer, let me explain first what I see, and then I'll give you a chance to respond to that any way you choose without me framing a question that might restrict your answer. The only thing being dealt with in subdivision (a) is the imposition of progressively more rigorous pesticide management practices. That's all. If the word "may" is there, a determination could be made that there ought to be more rigorous pesticide management practices, but they don't have to be imposed. This language could be disregarded and there is no management practice which is more rigorous than the one that had been in place under which this problem developed. Senator Kremer, here is the question, and you can take whatever of my time you need to answer it.

SENATOR KREMER: Okay.

SENATOR CHAMBERS: If a problem is found where there is a harmful, an unreasonably harmful effect on human health or the environment, and whoever is supposed to enforce this provision decides not to do so, what can be done in that situation to see that more rigorous management is undertaken? In other words, to simplify the question, if the problem is found and more rigorous management is required but it is not undertaken, with the word "may" being there how can that problem be addressed?

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SENATOR KREMER: Well, I don't know. As I look at this, maybe we should take out the more rigorously pesticide management practice, or progressively more rigorous. That was the old language in the bill before we even started, and our intention was only to include humans and environment on that. Maybe if you say "shall," you should say shall develop a plan in response to something, rather than to spell out this one kind of a response. Because I think if we say "shall," that limits us to one response, and there maybe the response should be to ban it altogether. There are so many other elements involved in this that I really hate to see "may" be taken out. Maybe we ought to take out the one response to it. I don't know. I'd like to have more time to really talk to the department, how they feel about it and how they...how they apply the statutes that we put before them.

SENATOR CHAMBERS: Senator Kremer, which department would you want to have further discussions with?

SENATOR KREMER: Well, Department of Agriculture is the one that has to administrate this.

SENATOR CHAMBERS: Well, you're having a discussion right now with the Legislature's demolition department. Which one do you think can do most damage to this bill?

SENATOR KREMER: Well, it depends. I don't know.

SENATOR CHAMBERS: The demolition department, right?

SENATOR KREMER: How much time you want to take?

SENATOR CHAMBERS: Here's what I want to ask you, continuing with our discussion. If the more rigorous management practice includes a total ban, that would not be prohibited if we have the word "shall" here instead of "may."

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Would it?

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SENATOR KREMER: I think you're correct.

SENATOR CHAMBERS: But if we leave the word "may," if there should be a total ban it could not be undertaken if whoever enforces this decides not to undertake it. Isn't that true?

SENATOR KREMER: I'm sorry. I was distracted here. Would you repeat that?

SENATOR CHAMBERS: All right. With the word "may," if the more rigorous management plan would lead to a complete ban, but you leave the word "may" there, there need not be done anything. Isn't that true?

SENATOR KREMER: I'm not sure. I think that they...this section really deals that they have to put in a management plan and a pesticide plan, and I can't imagine that there...they found something that was adversely affecting our ground water or our human, that they put a plan together that didn't do anything. I mean, the reason is, is to put a plan that's reasonable...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR KREMER: ...that addresses whatever the problem is, to the degree it is. Maybe we shouldn't be spelling out, like I said before, the progressive, more rigorous. Maybe we should...

SENATOR CUDABACK: Senator Kremer, I'm sorry, but your...Senator Chambers' time is up.

SENATOR KREMER: Oh, okay. I'm sorry. Thank you.

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

SENATOR BEUTLER: Senator Kremer, if your staff could take a look at one more thing, I would appreciate it. Rick, if you look on page 13 of the bill, there's a definition of state management plan and it describes a state management plan as a generic plan developed by the department to implement a

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strategy, "dah-dah-dah-dah," to mitigate any occurrence of pesticides in ground water or surface water in the state. What I wanted to point out is that this definition continues, apparently, to apply to ground water and surface water situations only, whereas with respect to the changes that you've now made on page 16, that definition applies to more than ground water and surface water, and the section references state management plans. So my question is, shouldn't the definition of state management plan also be changed so that they read coherently together? And we don't need to take the time to discuss that on the floor, but I would ask you to take a look at that, please. Thank you.

SENATOR CUDABACK: Are you through, Senator Beutler? Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I don't believe in allowing bill after bill to go to Select File which has problems, from my point of view, so that I'm going to have to try to do all the heavy lifting over there. That becomes self-defeating. This bill was brought to us at the behest of the Department of Agriculture. I'll ask Senator Kremer a question which would cause me to let go of the bill and it could move to Select File. Then we could discuss any and everything that has been raised on the floor this morning. I would like to ask Senator Kremer a question, Mr. President.

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

SENATOR KREMER: Yes, I would.

SENATOR CHAMBERS: Mister...I meant, Senator Kremer, suppose we would take a different approach from the one that we've been following this morning, and we would decide to adopt this amendment that I've crafted. In lines 22 and 23 we would strike the new language and reinstate the original language. Then you can move the bill and we will argue about what then may be brought back into the bill on Select File, instead of my agreeing to let it go on across when I do have serious concerns and then try over there to remove language which, if it's going

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to be addressed, ought to be addressed here. I thought you made a point worthy of my adopting, temporarily, your view when I wanted to strike the word "unreasonable." In order that you could have a clear understanding of why that word was put into the new language, you said you wanted to talk to the department. I think it ought to be stricken, but I agreed to withdraw my amendment to strike it so that word remains in place. Now I'm being asked, I presume, to let the bill go without striking the word "may" and inserting the word "shall." It makes no sense to me, since the new language you're offering has brought to our attention this subdivision (e), to do all of this activity that goes into making a determination that an unreasonable adverse effect is befalling human beings or the environment, and leave it optional as to whether anything is to be done about it. If this plan that you're talking about covers everything, we don't even need this new language, because the plan that you're talking about as covering it already does the job. It's obvious that the Department of Agriculture does not feel that any of those plans you've been referring to adequately cover the waterfront, or they would not have recommended this new language. Having recommended the new language, the original subdivision (e) has been altered and you're putting language into the law which is not there now. You're talking about the demonstration of an unreasonable adverse effect. That has been demonstrated. We're at the point now of not speculating and arguing, but there has been a demonstration...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and establishment through facts that this unreasonable adverse effect is taking place. And yet, you want to leave it optional in the statute as to whether anything will be done about it. So the question I'll ask of you, will you be willing to strike the new language, reinstate the original language, and leave the law as it is? Then we discuss and argue about how much of this new language ought to be brought back into the bill. Would you be willing to take that approach, Senator Kremer?

SENATOR CUDABACK: Senator Kremer.

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SENATOR KREMER: Yes, I would. Either that, or we could even strike those sections, come back with an amendment that's written up different. But I'll be agreeable to do that. That weakens it, but then we need to do some changing and do some...make some changes in there anyway, so it would allow us to do that. I would agree to that.

SENATOR CHAMBERS: Then I'm going to offer an amendment and...

SENATOR CUDABACK: Senator Chambers, your time is up.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: That was your third time on that.

SENATOR CHAMBERS: I didn't turn my light on.

SENATOR CUDABACK: Are you...Senator Janssen.

SENATOR JANSSEN: Senator Cudaback, members of the Legislature, Senator Chambers, would you like some more time? I'll give my time to Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Janssen.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: I think the Chair saw me reach for a button and assumed that it was to turn my light on up there, but it was to summon one of the pages. So I knew that I didn't have another opportunity to speak. I just want to clarify the record on that. I'm going to withdraw the pending amendment, and I've put another one on the desk which would restore subdivision (e) on page 16 to its pristine purity, meaning that nothing in the bill, when it is advanced, will amend that portion of the existing law. I will discuss with Senator Kremer and Senator Beutler and whoever else may develop an interest in this what change or changes can be agreed upon. The thrust of the bill is of no problem to me. I'm glad Senator Brown is here. I had said on one occasion that the devil is in the details. She stood up and pointed out that the expression is that angels are

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in the details. I did further research, and the expression is that God is found in the details. And the idea, when that statement was first made in a literary setting, was that God is everywhere, not just in the divine constellations, but in the smallest detail of creation. So I'm going to go back to my original proposition that the devil is in the details, meaning that when these grand schemes are laid out, they look good, but others are left to work out the details, to bring it to fruition. Senator Kremer has a bill whose purpose, I think, is worthwhile. But as we begin to address the details, to see how it's going to be carried out, difficulties surface. I do not want to weaken what Senator Kremer is trying to do. But by the same token, I do not want to make a travesty and a mockery of legislation designed to protect the public welfare. We could write the greatest principles into the law, including the greatest protections of human and civil rights, but drafted in such a way that there is no requirement that the state honor these provisions of law. We could say, there should be no warrant issued to allow the search of a person's home,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...papers, and so forth, without probable cause. Then we say, well, that's too strong. We will strike "there shall not be" and say "there may not be," because really, it may be necessary, in somebody's opinion, to do these searches without a warrant. When you do away with the "shall," you've done away with the protection. When we talk about the noble, worthy goal of this legislation, but make it optional as to whether or not it should be carried out, we have not only done nothing; we have misled the public into thinking that we've provided a protection which, in effect, we have not. So it would be better to leave the law the way it is, let it be administered the way it is, and if we decide to build in additional protections, leave this subdivision alone and write another separate one. And that's what we will have the opportunity to discuss. And Mr. President, are there any other lights on at this time?

SENATOR CUDABACK: There are none.

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SENATOR CHAMBERS: Then I will withdraw that pending amendment.

SENATOR CUDABACK: FA401 is withdrawn. Mr. Clerk, please.

CLERK: Senator Chambers would move to amend with FA402, Mr. President. (Legislative Journal page 563.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA402 to LB 874.

SENATOR CHAMBERS: Thank you, Mr. President. Again, trying to be reasonable, where Senator Kremer gets something. After all, I'm only eliminating parts of two lines from a bill that has 41 pages. And my colleagues often look at quantity rather than...not you, Senator Langemeier. We were doing some serious work the other day. So the mere number of pages is not what I'm talking about, but in order to quantify this, I'm only taking away portions of two lines, and giving 41 pages to Senator Kremer to slide on across the board. I think I heard him say that he would agree to this amendment, so for the record, I'm going to read it. On page 16, in lines 22 and 23, strike new language and reinstate original language. That would leave subdivision (e) exactly as it appears in the law now. Somebody might say, then a lot of discussion is wasted, a lot of time was wasted. But not really, because we've arrived at a conclusion. There are questions which Senator Kremer is going to have answered by the Department of Agriculture. Many times, success means something different from accomplishing the ultimate goal that you have in mind. Success may mean obtaining as much as you can towards your goal as is achievable under the circumstances. So under the circumstances surrounding this bill, Senator Kremer will obtain about as much as he can, and he will get to move his bill. I'd like to ask him this question. Senator Kremer, if I understood you correctly, are you in agreement with the amendment that I'm offering,...

SENATOR CUDABACK: Senator Kremer?

SENATOR CHAMBERS: ...at this point?

SENATOR KREMER: Yes, I am, in order to work on something to

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come up that would be responsive to the concerns that Senator Beutler and that you have.

SENATOR CHAMBERS: Thank you, Senator Kremer. And I want to assure you that I will work with you, and I'll give you time to talk to the Department of Ag before we get together, so that you can have from them their explanation. And if any of them would like to talk to me directly, I'm willing to do that, too.

SENATOR KREMER: Okay.

SENATOR CHAMBERS: That's all I will say on my opening, Mr. President. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA402. Open for discussion. Anybody wishing to address FA402? Senator Kremer

SENATOR KREMER: I'll just make a few comments here. We're spelling out here one response to a problem with human or environmental issues and ground water. The reason that "may" and everything is left in there, that's the way the bill was. And I know the devil is in the details, and when you try to get down to that and how it can be determined, how and it might be determined, it gets very difficult. It seems to me like it was interpreted okay before, because we're leaving everything in there. We're really trying to broaden it to include human and environmental effects. Other than that, everything is the same, the "may," the response of a progressively more rigorous management plan. It's just saying that we want the department to come up with a state management plan or a pesticide management plan if it includes also the human and environmental effects. So we're going back to weakening it now to do this, but just in order to get it going so that we can work on this a little more. I wouldn't mind taking out altogether the progressively more rigorous pesticide management practice, because that's one response that can be made. There could be a lot of responses. You could say, ban it altogether. You could say they just can't use this certain pesticide, or whatever it could be. So there's a lot of response, depending on where the location is and a lot of things. Maybe we should just say they

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shall come up...or, develop a plan to respond to whatever this problem is, not spell out this one response, but let it go broader than that, whatever the response might be. With that, I'll turn my...rest of my time back to the Chair.

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

SENATOR CHAMBERS: Mr. President, now I must assume the role of the unbending pedagogue, and point something out to my colleagues and those people out in the lobby who may be yakety-yakking and have not read the change that will be wrought by this new language. Let me read, for the record, if nobody pays attention, what the existing law says. "The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water." As they are detected, that's all. Then they "may." The language that is being added talks about having demonstrated an unreasonable adverse effect, not merely detecting the presence of a pesticide. The existing law doesn't even say that the pesticide has to pose a danger, just detected. Then you may impose more rigorous management. The language that they added is not talking about merely detecting the presence, but you have demonstrated an unreasonable adverse effect. Now, if they can't understand the difference between the original language and that language, they ought not be involved in writing legislation and changing the law. Am I tired of this incompetency? You better believe it. My job description as the representative of the 11th Legislative District does not include trying to correct the ignorance of white people. I didn't draft this. The Department of Agriculture did. And I'm not aware of any people of my complexion, because we're the inferior people, being over there. I'm not aware of any woman participating in this. This ties in to what I've been talking about lately, of the way white males get away with murder. They have affirmative action. They don't even have to understand what they have put together. Now, I'm going to say it slowly again. The existing law says, if a pesticide is detected, that's it, then they may impose a more rigorous management practice. But they don't have to, because upon further review it may be shown that the pesticide is there but it has no harmful consequence, so you make it optional. But

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when you change the law to say that you're not talking about merely detecting the presence, but you have demonstrated a harmful effect on human beings or the environment, you ought to be able to see the difference. You ought to be able to see the difference. And if the state has an obligation to protect the public's health, how are you weakening the law if you say, once they determine this threat to the health of the public, they shall do something about it? I say, by my amendment, leave the law alone, because we all, if we read it, will understand that the mere detection of a pesticide in ground water or surface water may not necessarily mean that there's a threat to the health of anything or anybody. So what you say in the present law is, if that detection is made, you may impose more rigorous management practices, but you don't have to, because they may not be called for. But when you change the law, and the law says that there has been a demonstrated harmful, it is an unreasonable adverse effect, you're not in the realm of speculation anymore. You know that the harm is there. It's like saying,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...if a house has fire hazards, the fire department may look at it and they may not, but if the house is afire, the fire department has an obligation to respond and put out the fire. What Senator Kremer and his ilk want to say is, when you find the fire, you may put it out but you don't have to, and if you require that it be put out, you're weakening the law. What kind of sense does that make? Maybe in an insane asylum it makes sense. Maybe I'm the only one sane here. And I'm not going to become insane to go along with these crazy people. I'm the standard. I'm the paradigm. You should try to become what I am. I'm not going to become what you are. And if that makes you angry, I do not care, because I'm just a little cranky this morning, k-r-a-n-k-y. And when you substitute a "k" for the "c" which starts a word, that is for emphasis.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Time for what, Mr. President, me to be quiet?

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SENATOR CUDABACK: Whatever you wish.

SENATOR CHAMBERS: I'll accept it from you.

SENATOR CUDABACK: Senator Chambers, there are no further lights on, so I will recognize you to close on FA402.

SENATOR CHAMBERS: Let me see if I can light us up a little bit then, because I may just withdraw this amendment and we'll stay on this bill. We'll stay on this bill and stay on this bill. I don't have to be collegial. I'm not required to do that. And when people are going to dig their heels in, I will show them I can dig mine in better than they can dig theirs in. So what I'm going to do, Mr. President, and to the Department of Agriculture, I'm not going to take a vote on this amendment. I'm going to stay on this bill. And the only way I'll get off is if Senator Kremer offers this amendment. And if he offers it, I might support him, and then I might not. When we started on this bill this morning, I was of a mind to work with the sponsor of the bill, work with whomever he is working with, whispering in his ear. But I'm not going to let anybody dictate to me what I ought to do as a member of this Legislature, and no staff member is going to overrule my judgment, when I can read English and he cannot. And you all need to know that. I'm not like the rest of you. I'm not going to try to go along to get along and grin when nothing is funny and play like everything is all right. No more letting bills go to Select File and we work it out there, because you know who's going to do the work? I am, and it's not my bill. And I do have motions I can put on this bill to hold it. I'm not going to say "by God," because I don't want to offend any of you "Chrishians" and others who pretend to believe that. I will say what Andrew Jackson used to like to say: by the Eternal. I will hold this bill. And it should be easy for him to get 33 votes for something like this. But you all are going to give me some time, and I'll take it, and I'll talk about some of the problems we have on the floor of this Legislature, and when it comes to the way we're supposed to do our work and we don't do it, and we let other people outside this body tell us what we ought to do. We know what the meaning of "may" is, and we know what the meaning of "shall" is, and why do we need somebody out there to tell us? Because we have no

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confidence in ourself, or we don't know what the bill is about, and we need somebody to lay it out for us step by step and say, you go three steps, turn to the right, take two steps, turn to the left, go three steps, turn to the left, take three steps, and you're back where you started from, meaning you still don't know whether what you did is the right thing or not, because you're not using your judgment, you're not using your knowledge, you're relying on what somebody else told you. But I'm not going to do that. When I ask these questions, I stand to be informed. If I'm offering an amendment about something and I'm not sure that that is appropriate, I will make it clear. This amendment is being offered because I want it discussed. And if it ought not be adopted, if it would hurt the bill, I'm not going to pursue it. That's if we're on a bill that I'm not just trying to kill. If I'm trying to kill it, the more the amendment makes you squeal, the more likely it is I'm going to hold onto that amendment and keep it before us as long as possible. But as far as disturbing the Department of Ag, I'm going to give them what they want. How much time do I have, Mr. President?

SENATOR CUDABACK: About one minute and five seconds. Thirty seconds, Senator Chambers.

SENATOR CHAMBERS: Mr. President, I'm going to withdraw that pending amendment.

SENATOR CUDABACK: Are you asking to withdraw it?

SENATOR CHAMBERS: Yes, I am.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, motion on the desk.

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone LB 874. Senator Kremer, you'd have the option to lay the bill over, Senator.

SENATOR CUDABACK: Kremer?

SENATOR KREMER: No, we'll take it up.

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SENATOR CUDABACK: Senator Chambers, to open on your motion to indefinitely postpone LB 874.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I need to do some educating around here. People wonder why I talk about black and white. They don't like that. They don't like it. When I read about Senator Beutler doing something, and I can use his name because he'll understand, they don't say, Senator Beutler, one of 48 white senators. Senator Howard, one of 48 white senators. Ernie Chambers, only black senator. White people are the ones who bring it up. That's what I mean about white people doing things, never thinking about it. It impacts us, but we're not supposed to react to it. So then when I demonstrate to you by referring to black and white, that's not a part of your lexicography, so it seems inappropriate. Well, why doesn't everybody, when they describe anybody on the floor of the Legislature, attach that person's race? You all have seen it. Ernie Chambers, only black member of the Legislature; Ernie Chambers, only African-American member of the Legislature. I don't write it; white people write it, because white people demand that everything they say be accepted as all right. They make the definitions, they set the rules, and everybody is supposed to go along. But I won't. So I'm not going to just tell you what you do; I'm going to show you by causing an emotional, visceral reaction in you, on one occasion, how some of this mess that goes on in America all the time affects black people. You're going to know. And you can ignore it if you please, but you can't make me go away, unless white people are successful, through term limits, in getting me out of here. They will have shown that with their numbers they can deny to a group of black people the right to choose representation of their choice. That's what we don't like. You all don't like words. We don't like the negative action that white people direct against us. And you think I ought to swallow spit and accept the terrible things done to us, and you don't even like to hear words. And I'm supposed to stop talking because you all don't like it? Why, you must be completely out of your mind, because I'm going to do what I think I ought to do on this floor. I don't care who doesn't like it. And by the same token, I don't care who does. I'm not doing what I do to

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receive affirmation from white people, confirmation from white people, approval of white people that I'm all right. I don't need them to tell me anything about me. They don't know me. They don't know anything about me. You may have read a thousand articles that are written about me, and you still don't know me, and you still don't know anything about me, because white people live on the surface, and if a lot of words have been written, they assume that there must have been a lot of information in there. But there's not. You all don't even care enough to be aware of what we as black people or other nonwhite people are about. So I'm going to give you a little discomfort if I can. But here's where the difference comes in. If you treat me decently, I'll treat you decently. You all are the ones who carry grudges. We don't go out and blow up a church and kill little white children because we don't like what some white politician said. We're not the ones who go burn crosses on people's yard because we think they should not live in a certain house. We don't throw bricks through their windows. I saw on a couple of occasions where Bob Gibson was being honored and recognized. They even named a little stretch of street after him in Omaha. And when he moved into a white neighborhood, the white people threw paint on his house and threw toilet paper in the trees and intimidated his children, in Omaha, Nebraska. And you all want to tell me there is no racism? Bob Boozer, who was an All-American at Kansas University, made the United States Olympic Team, wearing red, white, and blue Uncle Sam clothes for this country, played honorably as a professional basketball player, and in Omaha they refused to sell him a house because it was in a neighborhood where white people lived and he was not fit to live there. This is what happens to us. You all don't know about it, and you don't care. And you think I'm going to come around here like you all and sit and drink coffee and play like everything is all right, rub elbows with these lobbyists, then you're going to bring trashy legislation to me and think I should go along with it because you go along with it, because some lobbyist you like tells you he needs this? Well, you've got another think coming, and you need to hear it from me. Not like you all, skulking around in the halls, whispering behind my hand, pretending I'm one thing and I'm something else, scared to say what I got on my mind. I don't go to any of you all and say, I'm scared to do this; will you do it? And you know where

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I'm different again? If it's something that has merit, I will do it, because I take seriously the job that I've voluntarily placed myself in. Nobody makes me come here. Nobody makes me work as hard as I work. I do that because it's what I believe I ought to do. And since I'm acting in accord with my belief, you all cannot change anything in me. You've got nothing you can give me, you've got nothing you can take from me. There's nothing I want from you. That's why you can't control me, it's why the Governor can't control me, and nobody else can. They don't have any chains on me like they got chains on you all. You...if the chains you have on you, the obligations you have undertaken which destroy your personal independence, were to be converted into literal chains, you would make more noise clanking around these halls than Marley, who was Scrooge's friend, made when he came to haunt Scrooge, had all those chains and cash boxes and ledgers hooked to him. Why, he sounded like an earthquake or a typhoon in a junkyard, he made so much noise. That would be you all. You cannot gainsay or deny anything that I'm saying, because you know it's true, and everybody in that lobby knows it's true, and these reporters know it's true also. And because much of what we do in here the public is aware of through this television, more of the public is becoming aware of it also. You don't recognize collegiality when you see it. And maybe my version of collegiality that I've been trying to manifest you will not even see. Then, when there's a contrast, you'll say, I wasn't paying attention, I didn't realize what was going on, but now that it's gone, I do realize what was going on. You all don't have sense enough to know, when there is discussion of a bill, to try to make corrections and improvements, needed changes, and an effort to just do everything possible to delay or stop a bill. But you don't have to think about it, because I tell you. I don't leave you questioning. And if I haven't made it clear, you can ask me. And I'm not going to be mad at you because you ask me a question. Now, I might sneer a little bit, be a bit satirical, and say something like, if you'd been paying attention, you'd know what I was doing. But since you don't know, and you came to the source, I will not send you away empty, for my philosophy is, ask and it shall be given you, because I know you're not going to seek, because if you were doing some seeking, you'd be finding. I think Senator Kremer has had time to think and

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decide...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...how he's going to proceed. But I will proceed in any way he chooses. The ball is in his court. I do not believe that the original subdivision (e) should be done away with. As it stands, it's all right. It says, when the pesticide is detected in the ground or surface water, then more rigorous management practices may be imposed. That's good. That's all right, because you're not talking about the need to find a harmful effect. But the new language introduces the concept of a demonstrated adverse effect; therefore, the imposition of these more rigorous management practices should be mandatory. Mr. President, are there any other lights on?

SENATOR CUDABACK: There are not.

SENATOR CHAMBERS: There are none?

SENATOR CUDABACK: None.

SENATOR CHAMBERS: Then I will withdraw that pending motion.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, motion on the desk.

CLERK: Mr. President, Senator Kremer would move to amend, FA403. (Legislative Journal page 564.)

SENATOR CUDABACK: Senator Kremer, to open on FA403 to LB 874.

SENATOR KREMER: Thank you, Mr. President, members of the body. This amendment is the...identical to the amendment that Senator Chambers had earlier, that he agreed if I would want to submit that, that he would support it. It takes away all the new language on Section 3(e), and it reinstates the stricken language. And with that, we will be glad to work on something during the interim. I think there are...I know there are some changes that need to be made, when...the "shall" or "may," and the...and just a specific response, too. So we'd be glad to

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work on it. And it just strikes that new language and reinstates the old language. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the opening on FA403 to LB 874. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I'm going to exercise the integrity, the character, of the devil. See, when the devil strikes a deal, the devil sticks by it. When the devil makes a deal, you can count on the devil keeping his word. It's these "Christians," these religious people, and these gods who don't keep their word. So this morning, in complying with the integrity, character, and honor of the devil, my view is that a deal, having been made, must be kept. Senator Kremer has lived up to the part of the deal that I said would cause me to act in a certain way to complete it. He has done his part; I'm going to do my part. I will have nothing further to say on this bill on General File. I will not impede its movement. And in fact, because I'm not opposed to the thrust of the bill, I'm going to vote in favor of advancing what's left of the bill, should Senator Kremer's amendment be adopted. Thank you, Mr. President. Thank you, Senator Kremer. And Satan love you.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the Kremer amendment, FA403? There are no lights on. Senator Kremer, you're recognized to close. Senator Kremer waives closing. The question before the body is, shall FA403 be adopted? All in favor vote aye; opposed, nay. We're voting on the adoption of the Kremer amendment, FA403 to LB 874. Have you all voted on the Kremer amendment who care to? Kremer amendment FA403. Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays on adoption of Senator Kremer's amendment.

SENATOR CUDABACK: The amendment has been adopted.

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

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February 7, 2006 LB 771, 823, 859, 862, 874, 899, 900, 921
941, 955, 1003, 1048, 1111, 1161

SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion of LB 874, advancement of E & R Initial. Open for discussion. There are no lights on. Senator Kremer, you're recognized to close.

SENATOR KREMER: Thank you, Mr. President, members of the body. I would like just to say again that this is a...this amendment, or this bill, is brought to us to update the act so that it remains current with the federal program. Several things that are just corrections, and trying to be responsive to things that need to be changed. And as we agreed to, Section 3(e) we will leave the same, and we will work on it. And if we could come up with some improvements on Select File, we'll be glad to do that, and be glad to work with Senator Chambers and Senator Beutler and any others that might have some concerns. With that, I'd just ask you to vote to adopt the...LB 874. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the closing on LB 874. The question is, shall LB 874 advance to E & R Initial? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 874. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 874.

SENATOR CUDABACK: LB 874 does advance. Mr. Clerk, items or announcements?

CLERK: Mr. President, priority bill designations: LB 1111, selected by the General Affairs Committee as one of its two committee priorities. Your Committee on Government, chaired by Senator Schimek, reports LB 823 to General File; LB 921, General File; LB 941, General File; LB 771, General File with amendments; and LB 899, LB 900, LB 955 indefinitely postponed. Transportation Committee, chaired by Senator Baker, reports LB 859 indefinitely postponed. General Affairs Committee reports LB 1111 to General File, that signed by Senator Janssen as Chair; and LB 1048 indefinitely postponed. Amendments to be printed: Senator Howard to LB 862; Senator Preister, LB 1161; Senator Landis, LB 1003. Hearing notice from the Agriculture

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Committee, and from the Education Committee. And two confirmation reports: one from Education, and a second report from General Affairs. That's all that I have, Mr. President. (Legislative Journal pages 564-567.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to the next agenda item, LB 1007. Mr. Clerk, please.

CLERK: LB 1007, introduced by Senator Baker. (Read title.) The bill was introduced on January 10 of this year, referred to the Transportation Committee. The bill was advanced to General File, Mr. President.

SENATOR CUDABACK: Senator Baker, you're recognized to open on LB 1007.

SENATOR BAKER: Thank you, Mr. President, members. LB 1007 is the bill dealing with the hours of service issue for commercial driver's license holders. It...the past year, the U.S. Department of Transportation, for the second time since 1939, changed those hours of service regulations. The first change was published on April 28, 2003, and they were vacated by the U.S. Court of Appeals in District of Columbia on July 16 of 2004. And if you recall...well, this is an annual bill that we...each year comes through the Transportation Committee. But Congress subsequently, after those were struck down, those new hours of service rules were struck down, they extended them through the Surface Transportation Extension Act, 2004, that said they would remain in effect until effective date of a new rule. Well, we have the new rules now. In response to this, Congress mandated in...or, federal Motor Carrier Safety Act published a final rule on August 25 of 2005, with an effective date of October 1 of 2005, revising those federal hours of service regulations. People have asked about, what does it change? It changes, basically, that the ten hours off duty may be split...it used to be the ten hours of duty may be split into two periods of time, one not less than two hours, eight hours in a sleeper, so on. It changes so that commercial drivers using the sleeper berth provision must take at least eight consecutive hours in the sleeper berth, and then those other two hours either in the sleeper berth, off duty, or any combination of the

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two. That's basically it. It does not change anything dealing with intrastate CDL drivers. There's no change in physicals. Nothing...none of that is addressed in this. This...those are state regulations, rules and regulations. What we're responding to here in LB 1007 is a change in the federal hours of service. And I would be glad to answer any questions. Some of those changes are...I'm going to quote from 49 CFR Parts 390, 392, and 393. The amendment changes to remove obsolete and redundant regulations, respond to several petitions for rule making, and provide improved definitions. That rule is effective September 14, 2005. Here's 49 CFR 385, 390, and 395. The rule addresses requirements for driving, duty and off-duty time, which I just covered, recovery periods, sleeper berth, and new requirements for short-haul drivers, and so on. Hours of service is included in this. I didn't print this off. Anyone who has questions about it, or, there is a brochure out here provided by the U.S. Department of Transportation. I'd be glad to share that with people who are interested, to get copies for you of this. The bill was heard January 23 of this year, reported out with no opposition votes. There was no opponents. There were no opponents testified. And quite a lot of this comes down to the trust of the Nebraska truckers' association. They testified in favor of the bill. As I said earlier, there doesn't change any of the intrastate rules or regulations. It's dealing only with the federal hours of service. And I would be glad to answer any questions. If I can't, we'll get the answers for you for that. And anyone who'd like a copy of the Federal Register on these things, we can make copies of you for that. But it's a response that the state of Nebraska has to make to get into compliance with the federal Department of Transportation rules and regulations. It's dealing with hours of service for commercial drivers. With that, I would return any time I have left to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. You've heard the opening on LB 1007. Mr. Clerk, motion on the desk, please.

CLERK: Mr. President, Senator Chambers would move to amend with FA397. (Legislative Journal page 567.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open

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on FA397 to LB 1007.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, if Senator Baker looked at this amendment, he'll see that it's one of those that I've been offering to other bills. What, basically, this will do, this amendment, is strike where the language says "shall mean" in these definitional places, and insert the word "means." In the bill as it exists now, if anybody would turn to page 8, they would see that in definitional sections, the word "means," rather than "shall mean," is there. This will not always be picked up, so I'm doing it whenever it comes to my attention. And usually it's the type of bill which we have before us today, where it is technical. There will be a series of definitions which are necessary to make clear what the bill is doing. So all of my proposals, and I will read them for the record, will deal with changing the words "shall mean" to the word "means." And then in another place I will strike "shall include" and substitute the word "includes." So on page 3, lines 5, 8, 11, 13, and 24; page 4, lines 4 and 13; page 5, lines 15, 19, and 24; page 6, lines 6, 10, 13, 19, and 25; page 7, lines 11 and 19, strike the words "shall mean," and show as stricken, and insert the word "means." On page 6, line 16, strike the words "shall mean," and show as stricken, and substitute...oh, "shall include," and show as stricken, and insert in their place the word "includes." I would like to ask Senator Baker a question.

SENATOR CUDABACK: Senator Baker, would you respond?

SENATOR BAKER: Yes, I would.

SENATOR CHAMBERS: Senator Baker, have you had the opportunity to review this proposed amendment?

SENATOR BAKER: Yes, I have.

SENATOR CHAMBERS: Do you have any problem with it?

SENATOR BAKER: No. I just hope, and you mentioned it, that we...you caught them all. I don't know that you did. But I would assume this is sending a message to Bill Drafters, saying,

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let's clean up some of the grammar, maybe.

SENATOR CHAMBERS: (Laugh) Well, I'm not sending a message really. What I'm doing is looking at these bills, and as I see things that should be corrected, or that I think should be changed, that's what I'm doing. But now I'd like to ask you another question. There are several references to just this, 49 CFR, and then it gives the part. The reason that you don't put, as that appears on an effective date of this bill, would probably be found on page 9. And I'm going to ask you this for the record. On page 9, in line 9, there is the striking of "49 C.F.R." and the insertion of "Title 49 of the Code of Federal Regulations as they exist on the effective date of this act." Because you have named the code and stated that we're talking about the provisions as they exist on the effective date of this act, it is not necessary to include that date language every time 49 CFR appears the rest of the way throughout the bill. Would you agree with that?

SENATOR BAKER: Yes, I would.

SENATOR CHAMBERS: Thank you. And I think that was a very good way for that to be handled. Now, Senator Baker, you have heard me question at length and offer numerous amendments to bills of this type, if you've paid attention. Is that correct?

SENATOR BAKER: That's correct.

SENATOR CHAMBERS: Would you like me to ask you a lot of questions and offer a lot of changes to this bill?

SENATOR BAKER: Not really.

SENATOR CHAMBERS: Then I'm going to comply with what you request, because I'm being very collegial again. That's all I have, Senator Baker. This amendment that I'm offering is of the type that I've offered on other bills. Senator Baker does not object, so I am presenting it for your approval. Thank you, Mr. President. Thank you, Senator Baker.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard

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the opening on FA397. Open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Baker, I'm trying to follow the structure of the changes made in this particular bill, and it's kind of hard to follow. Can you help me a little bit to kind of get through it? What I'm interested in, first of all, is, at page 25 and on after page 25, all this new language appears. So we're obviously putting a lot of new language in place, and I don't see where there's a lot of stricken language. So are we replacing state law with something that used to be federal law? Is that what's happening here?

SENATOR CUDABACK: Senator Baker, would you yield?

SENATOR BAKER: Yes, I would. These are...you're talking about from Section 14, on. These are definitions that have been inserted into the bill we've never had before. And they're inserted now for clarifying purposes. You know, we're talking...for those not actually have that out, "accident means," and "fatality," and so on. Those are...granted, that's new language. But it's definitions that have been inserted now to clarify our...you know, these actual...and my...

SENATOR BEUTLER: And we've been regulating in this area and we suddenly need 12 pages of definitions?

SENATOR BAKER: It's pretty aggressive, yes. But we have not had these, and these are...the definitions actually come from the federal regulations, and we have included them now in Section 14. But you're correct, we have not had these in our definitions within the statutes in the state of Nebraska.

SENATOR BEUTLER: Okay. Let me refer to lines 10 through 12 on page 25. It says, "49 C.F.R. 392.9a," a reference to federal law, apparently, "Operating Authority." So we're saying this CFR "shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce." Under current law today, without this change, does 49 CFR regulate Nebraska commerce within the state...

SENATOR BAKER: No, it...

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SENATOR BEUTLER: ...with respect to commercial carriers?

SENATOR BAKER: No, it does not.

SENATOR BEUTLER: Okay. So why do we have to say that this federal law shall not apply?

SENATOR BAKER: Clarification, I guess, to make sure that people understand that. And I...our office has had numerous calls from intrastate carriers, meaning...I think the last one I got was a landscape company, wanting to make sure that we're not changing intrastate regulations.

SENATOR BEUTLER: Intrastate, within the state?

SENATOR BAKER: Right. This is strictly addressing commercial driver's license issues dealing with the federal CFR 49, as you've noted.

SENATOR BEUTLER: Well, are we changing the law with regard to interstate commerce, between states, as opposed to within states?

SENATOR BAKER: Well, yes. We're changing the hours of service, is mostly what this bill deals with, of commercial driver's licenses traveling interstate.

SENATOR BEUTLER: We're changing the commercial hours for vehicles driving between states?

SENATOR BAKER: Yes. Actually, we're not changing the hours, but we're changing how those hours of service are to be distributed between sleeper time and off duty and so on. That's what the court struck down in 2004, I believe. And we...then the Congress went ahead and passed a new bill, and the regulations were developed over a series of months between the passage of the bill and now.

SENATOR BEUTLER: So we're...let me go back again. For interstate commerce, between the states, we are...

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SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: One minute.

SENATOR BEUTLER: ...changing the rules with respect to how hours are calculated.

SENATOR BAKER: That's...

SENATOR BEUTLER: Is that right?

SENATOR BAKER: ...correct. That's correct.

SENATOR BEUTLER: All right. And with respect to commercial motor vehicles that are operating only within the state, we're not changing any rules for them. Is that right?

SENATOR BAKER: That's correct.

SENATOR BEUTLER: All right. And...

SENATOR BAKER: Any...let me add that any rules affecting intrastate drivers will be proposed in...through the...in this case, the State Patrol would propose these. They'd have a...obviously, time for citizens to provide input and so on, and follow the normal rule-making process for the state of Nebraska, for intrastate carriers.

SENATOR BEUTLER: For within the state?

SENATOR BAKER: Yes.

SENATOR BEUTLER: Does that represent a change?

SENATOR BAKER: No.

SENATOR BEUTLER: Okay. So the only thing we're changing is...are some of the rules with regard to vehicles that travel between states?

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SENATOR BAKER: That's correct.

SENATOR BEUTLER: Is that right?

SENATOR BAKER: Yes.

SENATOR JANSSEN: Time is up, Senator Beutler. Thank you.
Senator Schimek, your light is on next.

SENATOR SCHIMEK: Thank you, Mr. President and members. Senator Baker, I just have a quick question or two. And it's just because of something that I heard you say earlier, I thought, about sleeping times and so forth. For...these would be for interstate drivers, correct, not intrastate? Do we have regulations governing intrastate drivers at all?

SENATOR BAKER: Yes, we...

SENATOR JANSSEN: Senator Baker, would you respond?

SENATOR BAKER: Yes, we do have intrastate rules and regulations, as set by the state of Nebraska.

SENATOR SCHIMEK: Are they a lot different from the interstate regulations?

SENATOR BAKER: Quite a lot, yes. You obviously are not dealing with great distances when we're talking about a carrier only within the state. They're not crossing state lines, and there's rules dealing with, you know, distance from their headquarters, and things like that.

SENATOR SCHIMEK: Well, unless you have somebody who is driving across state and then turning around and driving it back across state. I mean, that conceivably could happen.

SENATOR BAKER: And we do have rules and regulations within the state of Nebraska dealing with those intrastate carriers.

SENATOR SCHIMEK: Okay. Okay.

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SENATOR BAKER: I don't have those here, but we can get those for you, those rules and regulations.

SENATOR SCHIMEK: Well, I guess it just caught my attention because of the unfortunate fatalities last week, I believe it was, down in Georgia or somewhere.

SENATOR BAKER: Florida.

SENATOR SCHIMEK: Where?

SENATOR BAKER: Florida.

SENATOR SCHIMEK: Florida, that was right. And so I was wanting to see, where in this bill is that part of federal statute referenced?

SENATOR BAKER: I don't know that this does. I can ask legal counselor if it's in here. But there was apparently some violations, there was plenty of blame to go around on that. But that was interstate, obviously,...

SENATOR SCHIMEK: Right.

SENATOR BAKER: ...and that's subject to the federal...

SENATOR SCHIMEK: I understand that.

SENATOR BAKER: ...rules and regulations. And there was some alleged violations of the 34 hours...

SENATOR SCHIMEK: I understand that also.

SENATOR BAKER: Yeah.

SENATOR SCHIMEK: I was just...I mean, it just piqued my curiosity, and I just wondered exactly where that's referenced in here, and how that...

SENATOR BAKER: I can elaborate a bit on your questions about intrastate. There's obviously...you know, an interstate

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commercial driver's license requires physicals and log books and all these things, and different hours of service. It's obviously not as stringent to have an intrastate CDL. The rules and regulations are a lot different, obviously, and they don't address...or, they don't require physicals and log books, in most cases, and so on.

SENATOR SCHIMEK: Okay. That...

SENATOR BAKER: They're complicated. I don't pretend to know them all. I am a CDL driver, but I...intrastate, so I can answer some of those, but...

SENATOR SCHIMEK: Well, that's enough. I was just curious. Thank you, Senator Baker.

SENATOR BAKER: You're welcome.

SENATOR JANSSEN: Thank you, Senator Schimek. (Visitor introduced.) Senator Beutler, your light is on next.

SENATOR BEUTLER: Senator Baker, I'm sorry I'm having so much trouble orienting myself to this bill. Tell me where in the bill those matters that change the calculation of hours, where that's contained in the bill.

SENATOR BAKER: We're...

SENATOR BEUTLER: I would yield to Senator Baker.

SENATOR BAKER: We are getting the exact...

SENATOR JANSSEN: Senator Baker, will you yield?

SENATOR BAKER: ...looking at some reference material we have here, what page to refer you to.

SENATOR BEUTLER: Okay.

SENATOR BAKER: Actually, the changes are not dramatic. As I mentioned in my opening, what precipitated these changes was a

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federal court, I think, in the D.C. district, ruled these rules that were developed in 2003 inadequate, and they had to go back and do it. And some of it was dealing with safety issues and health concerns. It's on page...Part 395 is...hours of service, is on page 22, line 18, we reference Part 395, the hours of service. And that's most of what we're doing here. We are harmonizing the state statutes with what the new regulations are through Part 1...395, which is, as I've said, mostly dealing, in this bill, with hours of service.

SENATOR BEUTLER: So page 22, line 18, did you say?

SENATOR BAKER: Line...yes, sub (g), it references.

SENATOR BEUTLER: There's no change in the law there, right?

SENATOR BAKER: No, we're just simply referencing Part 395, which is where...in the...

SENATOR BEUTLER: That's always been referenced, right?

SENATOR BAKER: Yes.

SENATOR BEUTLER: But you said there were some changes made.

SENATOR BAKER: Within that...on the federal level, through rules and regulations, there has been changes made to that Part 395. That...CFR 49 is dealing with hours of service.

SENATOR BEUTLER: So this bill doesn't change what's in federal law, but you're adding all these definitions sections so that federal law can pertain under the court ruling? It's...

SENATOR BAKER: Well, the definitions...

SENATOR BEUTLER: ...this is not hanging together for me.

SENATOR BAKER: ...the definitions were added for clarity. They've never been in our state statutes. And it was an initiative taken upon, in this case, I believe, the State Patrol, for the most part, to put these acts...these definitions

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in, in Section 14, on page 25, is the beginning of them. But what we are doing is harmonizing our statutes here to recognize the changes in Part 395. It's in here, if you go back up above here, it will...says, the Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the CFR, and then it references Part 395, which is the hours of service, so that it puts us in compliance with what the federal regulations are dealing with hours of service.

SENATOR BEUTLER: Okay. Maybe it would be helpful if you could help me through page 24 a little bit, on line 20 to 25. There it references Part 395, hours of service. And you're changing the reference to the federal...

SENATOR BAKER: Well,...

SENATOR BEUTLER: Or, you're changing...

SENATOR BAKER: ...it recog...

SENATOR BEUTLER: You're eliminating language that says, relating to maximum driving and on-time service for drivers, right?

SENATOR BAKER: That's...and what you're discussing here, legal counsel tells me, is what we're referencing that is not applicable to intrastate commerce CDLs. So I perhaps should get you some of the material I have in front of me here that maybe would clarify this, Senator Beutler. But when we're talking about driving ..maximum driving and on-duty time, that's some of the changes that were made on the federal level that we have to...

SENATOR BEUTLER: We have to follow?

SENATOR BAKER: We have to follow.

SENATOR JANSSEN: One minute.

SENATOR BEUTLER: Okay.

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SENATOR BAKER: And those on-duty times, I've mentioned, it's technical, but you have to have eight continuous hours in the sleeper; the other two hours out of that ten are optional.

SENATOR BEUTLER: Let me ask the question this way. Are these changes making the requirements more difficult, or easier, with respect to the industry?

SENATOR BAKER: I think that they actually made it easier to understand and to comply with. I really do. I believe the lawsuit...the suit that was filed against the 2003, I believe, regulations was dealing with fatigue and health issues concerning those new rules and regulations, back in 2003. And I'd say this...the new hours of service are probably more user-friendly than the old, and also more practical.

SENATOR BEUTLER: Okay. And those new hours of service are what are...

SENATOR JANSSEN: Time, Senator Beutler.

SENATOR BEUTLER: ...currently required by federal law?

SENATOR BAKER: Yes, they are. That's correct.

SENATOR JANSSEN: Thank you, Senator Beutler. (Visitor introduced.) Senator Brown, your light is on next.

SENATOR BROWN: Mr. President, members, in responding a little bit to some of the issues that have been raised by Senator Beutler...and I am operating off of a report from the U.S. Department of Transportation about their new hours of service regulations. And Senator Baker can respond better in the specifics of the bill. But the 2003 rule is being maintained in the three factors of: may drive a maximum of 11 hours after 10 consecutive hours off duty, that is maintained; may not drive beyond the 14th hour after coming on duty following 10 consecutive days (sic--hours) off duty, that's being maintained; may not drive after 60 to 70 hours on duty in 7 or 8 consecutive days, that is being maintained. The only minor change is that a driver may restart the 7- or 8-day

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consecutive period after taking 34 or more consecutive hours off duty, which is all very complicated, but those things are being maintained. The change is that CMV drivers using a sleeper berth provision must take at least eight consecutive hours in the sleeper berth, plus two consecutive hours either in the sleeper berth, off duty, or any combination of the two. That's the only piece that's being changed. Previously it was that the sleeper berth must take ten hours off duty, but may split the sleeper berth time into two periods, provided neither is less than two hours. So it's become more stringent in terms of the time off requirements for those drivers using a sleeper berth. And I hope that that's helpful to Senator Beutler and Senator Schimek. And I would...thank you.

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

SENATOR BEUTLER: Senator Baker, I think I'm understanding better. And correct me if I'm wrong here now. We're changing to incorporate new federal law. The new federal law contains the changes that Senator Brown has described. All right. Now just tell me again why on page 25 we have all of these new definitions.

SENATOR BAKER: The reason we have those, Senator, is we had a federal audit by the Department of Transportation, said we didn't have those definitions in the statutes, we should put them in there, and we did.

SENATOR BEUTLER: Oh.

SENATOR BAKER: That's the result of a federal audit. And obviously, we didn't have them in there before. We have them in there now. And granted, it's a lot of definitions. And I'm like you; I'm surprised they weren't in there before. But the audit caught it, and says, put them in, so hence, here they are in LB 1007.

SENATOR BEUTLER: Okay. Now I understand. And with respect to the repealed statutes, 75-381 and 75-382, which was a misdemeanor penalty for violating hours of duty statutes, why are they repealed?

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SENATOR BAKER: Off the top of my head, they were replaced. And I'm waiting for legal counsel as to why those were repealed, but they were replaced with different classification of offense, I think. We're checking on that.

SENATOR BEUTLER: Okay. Well, I can follow up off the floor, Senator. Thank you for your patience.

SENATOR JANSSEN: Thank you, Senator Beutler. I see no further lights on. Senator Chambers, would you like to close?

SENATOR CHAMBERS: Yes. Mr. President, members of the Legislature, let me clarify something, for some of these reporters around here, that I said earlier about referring to me as the only black member of the Legislature. They have a role and a function to play, and it may be deemed, in this society, that being the lone black member of the Legislature is of such consequence that it has a bearing on the story. So for whatever reason that is done by reporters and editors, it is done. They can continue to do it, as far as I'm concerned. I mentioned it for this reason. To white people, my being black has a lot of significance. If I make reference to it, their lips stick out as long as a fishing pole and they look as ugly as Lena the Hyena because they don't want me to mention it. But they acknowledge how much consequence it has when reporters and editors feel they need to inform their white readers that this is a black man. So being black still carries a lot of juice in this society. In 2006, it is still deemed necessary to inform white people of this factor. So white people need to stop telling black people that if we would not mention racism it would go away. If that would work, you'd never hear the word cross my lips again. But in order for that principle to work, I have a kindred principle to mention, and it ought to work, too. If nobody would ever mention cancer, there would never be a cancer-stricken person. If microbiologists stop referring to bacteria and viruses, there'd be no diseases caused by pathogenic bacteria or pathogenic viruses. And in fact, if microbiologists stopped talking about microbes, when they looked under the micro...through their microscope, they wouldn't even see any. If white people are so crazy that they think merely

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neglecting to mention a reality causes it to go away, they are the ones who need therapy. But they're never going to persuade me to stop talking about racism as long as it is here. I think this amendment will be adopted, so I have one more point to make. If any of the white people in here want to see how racism manifests itself in stores, you just watch when a black person comes in. Now, if a black person comes in with a white person, maybe there is no flutter and stir among the white employees. But if a black person comes in alone, the black person sees, all of a sudden, a great interest on the part of some white employee to be near that black person, rearranging things on the shelves, dusting this, checking price tags. And as soon as a black person moves, then the white person's duties will cause that white person to move and follow and spy also. You all don't notice it because it doesn't happen to you. What I would like to do to demonstrate this principle to you about something not bothering a person because it doesn't affect that person, I'd like you to accompany me to the office of Senator Bourne, which is right next to mine. He has a very large desk in that office. And what I'd like you to do is allow...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...me to lift one corner of that desk so that the leg is off the floor, then you stick your foot where that leg rested, then I'm going to let the chair...I'm going to let the desk go and fall on your foot. Then when you holler, I'm going to say, man, what are you making all that noise for; it's not bothering me. And then what you'd say, if you can gather your wits, well, the desk is not sitting on your foot. You see what we...lengths we have to go to, to try to explain to the master race what we confront in this society, why it is a problem? We're in a constant struggle every day. Any black person, who can think, who does not feel rage the majority of a day is either in a nut house, is drunk, high on drugs, or has just decided to space out everything that he or she confronts.

SENATOR CUDABACK: Time, Senator.

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SENATOR CHAMBERS: The rest of us know what we're dealing with. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on FA397. The question before the body is, shall that amendment be adopted to LB 1007? All in favor vote aye; opposed, nay. We're voting on adoption of the Chambers amendment, FA397, which is an amendment to LB 1007. Have you all voted on the Chambers amendment who care to? Record please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment.

SENATOR CUDABACK: The Chambers amendment has been adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion of the advancement of LB 1007. Anybody wishing to discuss the advancement? Senator Baker, there are no lights on. The Chair recognizes you to close on the advancement of LB 1007.

SENATOR BAKER: Thank you, Mr. President. Very briefly, I want to commend the senators for the discussion here. And I would be glad to work with anyone, as my staff would, to answer those specific questions they may have from a constituent. There are pamphlets that we can hand out. If anybody is interested in that, we'd get those. With that, I would ask for advancement of LB 1007 to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. You've heard the closing on the advancement. The question before the body is, shall LB 1007 advance to E & R Initial? All in favor of the motion vote aye; opposed, nay. The question before the body is advancement of LB 1007. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 28 ayes, 0 nays on the advancement of LB 1007, Mr. President.

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SENATOR CUDABACK: LB 1007 does advance. Mr. Clerk, next agenda item.

CLERK: LB 853, a bill by Senator Stuthman. (Read title.) The bill was introduced on January 4, referred to the Transportation and Telecommunications Committee, advanced to General File. I do have committee amendments, Mr. President. (AM1986, Legislative Journal page 455.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Stuthman, you're recognized to open on LB 853.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. LB 853 amends the reference dates for three specific DMV programs that are governed by federal laws. First, LB 853 adopts the most recent version of the International Registration Plan, or, commonly known as the IRP. Nebraska has been an IRP member since 1975. Membership in IRP allows trucking companies in Nebraska to pay a registration fee in Nebraska for all the states through which the company operates. The Motor Carriers Service Division of the department distributes the collected registration fees to other states based upon the mileage the carrier travels. Generally speaking, IRP has made registration of trucks traveling in interstate commerce more efficient for the industry. These amendments will allow Nebraska to follow IRP as it was revised in October 1 of 2005. LB 853 also updates the reference to federal registration governing commercial motor vehicles and the issuance of commercial driver's licenses. The change allows DMV to follow the federal regulations as they exist on January 1, 2006. It is important for Nebraska to remain in compliance with the federal law in this area. If Nebraska fails to comply with these laws, the Federal Motor Carrier Safety Administration has the authority to withhold funding from the Nebraska Motor Carriers Traffic...Carrier Safety Assistance Program and federal highway funds. Finally, the bill also updates references to federal law governing occupant protective systems, most commonly called seat belts, to incorporate the most recently published version of the federal laws through January 1 of 2006. This does not represent any change in the substantive requirements applicable to seat belts in Nebraska, but allows the state to reference the newest

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printed...printing of the federal rules instead of the 2004 releases. This is the components of my LB 853.

SENATOR CUDABACK: Thank you, Senator Stuthman. As stated by the Clerk, there are committee amendments. Senator Baker, as Chairman of the Transportation Committee, you're recognized to open on those amendments.

SENATOR BAKER: Thank you, Mr. President, members. Senator Stuthman did a good job there. LB 853 was the underlying bill, that's his, dealing with IRPA (sic), International Registration, and so on, trucks. I'm going to go ahead and briefly go through these, and then the various senators, we combined a number of these regulatory-type bills into Senator Stuthman's bill. LB 832 is actually Senator McDonald's bill dealing with an impoundment issue of school permits. It's one that we've addressed previously in the committee. It allows a judge the discretion of, rather than revoking a school permit, to impound it. There's problems with an impound...a revoked school permit, as far as SR-22 insurance filings, and so on. Senator McDonald has a very simple solution to that. That's LB 832. Moving along, LB 8...let's see, LB 895, that's Senator Langemeier's bill, dealing with military personnel that are driving military vehicles that normally would require a CDL. They have a military driver's license in order to enable them to conform to the federal regulations when they're driving these military vehicles and so on. It's gotten to be a little bit more of a problem with the activation and all the activity dealing with the war on terrorism and the National Guard and those military personnel. That is Senator Langemeier's bill, LB 895, a very straightforward, noncontroversial bill. And then LB 8...Senator Flood has a bill dealing with trucking companies, and it was brought to him, I believe by the Department of Motor Vehicles, who occasionally receive a check or payment for their fees to operate in Nebraska. And when that check is no good,...I didn't realize it was such a problem, but when they do receive a bad check,...obviously, they've had a trucking company out there operating on the state roads system, and has not paid for these various permits and so on required for their trucking company. And it's quite a few dollars in some cases. So Senator Flood's bill, LB 947, incorporated in this, allows the director to

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suspend, revoke, cancel, and refuse to issue a new registration, and so on. And it also directs the State Patrol to go get those plates, and so on, if those check...that check is not made good or payment made within ten days. So they're bills that we felt all needed to be addressed. And I believe, with...at this time, and I see we're about out of time, but we'll let individual senators speak a little bit about each bill, and see where that takes us. With that, I would...that would be my opening statement on the committee amendment. Thank you.

SENATOR CUDABACK: Senator Baker, did you wish to have anybody else use your time?

SENATOR BAKER: I...since Senator McDonald has the first of the group numerically, LB 832, I'd yield the rest of my time to Senator McDonald.

SENATOR CUDABACK: Senator McDonald.

SENATOR McDONALD: Mr. President, members of the body, I rise to support the committee amendment in LB 853, particularly Section 9, and that's the bill that I'm...the amendment that I'm concerned about. Under current law, when a student has a school permit violation, a judge's only option is to revoke the school permit. The student whose school permit was revoked can apply for a provisional operator's permit when they reach 16. Because the school permit was revoked, they're required to file an SR-22 for three years, and pay a \$125 reinstatement fee. The SR-22 throws them into the high-risk category, which makes their insurance premiums often four or five times higher than the standard insurance rates. The committee amendment adds two words to Section 60-4,124. All school permits will now be subject to impoundment or revocation. The judge will decide the proper punishment for a school permit violation. I encourage you to support the committee amendment to LB 853. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. There's still a couple of minutes left, Senator Baker.

SENATOR BAKER: I would yield whatever additional time I have to Senator Langemeier, and if he doesn't use it all, then to

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Senator Flood.

SENATOR CUDABACK: Senator Langemeier.

SENATOR LANGEMEIER: Thank you, Senator Baker, Mr. President, members of the body. This bill contains a chunk that I put in there that was amended in. I, too, support the bill. Section 14 of AM1986 is a portion that allows a military exemption. Currently, we ask military personnel who are licensed through the military to drive with a CDL license, Nebraska, we currently require that they have a Nebraska CDL. This particular portion would exempt that requirement for a Nebraska CDL license when acting in their military profession, as they've been activated on a little more regular basis. And that section,...I would return the rest of my time to Senator Flood, if he'd like to talk about his section, or back to Senator Baker if he'd like to. Thank you.

SENATOR CUDABACK: Senator Flood, about a minute.

SENATOR FLOOD: Thank you very much, Mr. President, members. And thank you, Senator Langemeier and Senator Baker. The provision of the bill that I introduced, or I guess the section of the amendment, represents a bill that I introduced, which was originally LB 974...I'm sorry, LB 947. It essentially allows the Department of Motor Vehicles the opportunity to suspend a carrier, or a truck driver, essentially, that has written a check that has essentially bounced for their fees paid for the year. And I'm sure Senator Chambers, as I understand, has a number of questions on this, so I'll look forward to those. And right now, under our current plan, or under the current regulatory scheme, if the department receives a bounced check, then they have to notify the individual that wrote that check out, they get seven days to respond, and then it goes through an administrative procedure where they have 30 days to appeal, and it will ultimately go to district court. And county attorneys have been reluctant to enforce the issuing of bad check criminal prosecution against folks that write bad checks to the Department of Motor Vehicles. And I'm sure we'll be discussing that in Chapter 28 throughout the duration of the debate. So, thank you, Mr. President.

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1249

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

CLERK: Mr. President, your Committee on Health and Human Services, chaired by Senator Jensen, reports LB 949 to General File; LB 1088, General File; LB 882, General File with amendments; likewise LB 892, LB 953, and LB 1002; the following bills reported indefinitely postponed: LB 846, LB 866, LB 908, LB 951. Priority bill designation: Senator Landis, LB 1249. Amendments to be printed: Senator Kremer, LB 346A; Senator Chambers, LB 249. Senator Bourne would like to add his name to LB 99; Senator Howard, LB 354; Senator Dwite Pedersen, LB 957; Senator Flood, LB 957; and Senator Dwite Pedersen, LB 1104. (Legislative Journal pages 568-574.)

And, Mr. President, I have a priority motion. Senator Janssen would move to adjourn until Wednesday morning, February 8, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn until Wednesday morning, 9:00 a.m. All in favor say aye. Opposed, nay. The ayes have it. We are adjourned.

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