

MARCH 24, 2006

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March 24, 2006 LB 746, 817, 817A, 994, 1061, 1126, 1131

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain today is the Reverend Greg Volzke from the Christ Lutheran Church, Juniata, Nebraska, Senator Burling's district. Reverend, please.

PASTOR VOLZKE: (Prayer offered.)

SENATOR CUDABACK: Thank you, Reverend Volzke, for being with us. Reverend Volzke is from Juniata, Nebraska. I call the forty-eighth day of the Ninety-Ninth Legislature, Second Session, to order. Senators, please record your presence. Members, please record your presence. Please record, Mr. Clerk.

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

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

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Messages, reports, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 746, LB 817, LB 817A, LB 1061, LB 1126, LB 1131, all reported correctly engrossed. Report from the Department of Education, and the lobby report for this week, Mr. President. That's all that I have. (Legislative Journal pages 1161-1162.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to Select File, 2006 committee first priority bills. Mr. Clerk, LB 994.

CLERK: Mr. President, LB 994 on Select File, discussed last evening. The first amendment I have this morning, Senator Flood, AM2697. Senator, I have a note you wish to withdraw.

SENATOR CUDABACK: Senator Flood?

SENATOR FLOOD: Yes, Mr. President.

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SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, the next amendment I have, Senator Jensen, AM2685. Senator, I have a note you wish to withdraw that.

SENATOR JENSEN: Yes.

SENATOR CUDABACK: It is withdrawn.

CLERK: The next amendment, Mr. President, Senator Jensen, AM2732. Again, I have a note you want to withdraw, Senator.

SENATOR CUDABACK: It is withdrawn, also.

CLERK: Next amendment, Mr. President, Senator Preister, AM2657. (Legislative Journal page 1040.)

SENATOR CUDABACK: Senator Preister, you're recognized to open on AM2657.

SENATOR PREISTER: Thank you, Honorable President, friends all. Good morning, everyone. This amendment was LB 903, as amended by the Government, Military and Veterans Affairs Committee and then advanced. I do want to take a minute to thank all of the government committee members. They worked on this; it was not an easy bill to work on, but they advanced the bill after good deliberations, I do believe. The amendment itself would change...actually, it would name the new veterans' home what it's already being called, and that's the Eastern Nebraska Veterans' Home. We are building a new home in Bellevue, and it does need to have a name. Originally, the bill, as introduced, was naming it the Bellevue Veterans' Home. I do believe that Bellevue is an appropriate name. The city of Bellevue, the mayor, the city council were very good in working to help bring the home there, in donating the land. And I will mention that that land saved the state money that would have otherwise taken away from the amount of building and facility that we could provide to the veterans. We were on the verge of purchasing land for \$1.25 million prior to Bellevue's donating of this land, so the city of Bellevue certainly saved the state

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\$1.25 million, plus the other contributions of infrastructure and the location being near to Ehrling Bergquist Military Hospital, being near to veterans who will be volunteers at the base. Bellevue has a good reputation for its concern and compassion for veterans, and Bellevue certainly is the location of the new home, which has now got a good start on the construction and the scheduled completion is next summer. The amendment that we have before us, AM2657, would go into effect July 1, which is when we should be scheduling a dedication of that new facility. So the current veterans' home would retain its current name, as it is. There would be no change there. The new home would take the name, Eastern Nebraska Veterans' Home. That's simply what the amendment does. The way it's drafted looks more complicated than that, and I did send an e-mail to everyone, because as it was amended into the Health Committee amendment, LB 994, it struck some sections and then reinserted those sections. And I did check with Senator Jensen, the Chair of the Health Committee, and I want to thank Senator Jensen also for allowing me this opportunity to amend--attempt to amend--this amendment onto the Health Committee bill. I also want to thank Senator Jensen for his support, Senator Wehrbein, Senator Schimek, and those folks all served on the siting committee for this veterans' home, over the last five years. So I also served on that committee, and this is one of the final responsibilities of this process and project, and that's the naming of the home. So my thanks to those senators. The amendment is pretty simple; it is exactly as the Government Committee advanced it, although if you look at it and insert it into the bill, it looks different. That's the way the Bill Drafters determined they needed to insert it into the bill. The actual language that this bill addresses is reconfigured, as I say, but that language is on page 56 of the Select File bill, LB 994, as the E & R amendments. I do want to point out that I've given you some handouts. The first one on top is the minutes of the Nebraska Veterans Council meeting. The meeting was held July of 2005. You can see on the front the list of attendees. The Veterans Council is composed of the AMVETS, the American Legion, the VFW, or Veterans of Foreign Wars, the Disabled American Vets, the Military Order of the Purple Heart, the Paralyzed Veterans of America, the American Ex-Prisoners of War, and the Vietnam Veterans of America. At that meeting it

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was unanimously voted, which is highlighted on the back of that first page, their desire to name the new veterans' home the Bellevue Veterans' Home. They are certainly open to naming it the Eastern Nebraska Veterans' Home, but I wanted to let you see that this is something supported by all of the veterans' organizations in the state. There are individual veterans who may not agree with that. Some of those veterans' groups have also voted individually, to ensure that the name, Thomas Fitzgerald, remains somewhere, and I highlighted in the handout some information that was in a World-Herald article where that was stressed, that they would like to see the Thomas Fitzgerald name somewhere on the home, and I certainly concur with that. That is something that I will continue to work on and that certainly can be done, in the name of continuing to honor former State Senator Thomas Fitzgerald. And I would say that this in no way, neither me nor the veterans' groups who endorse this naming nor the Government Committee, has intentionally or even indirectly sought to dishonor, discredit, or in any way do anything negative to Thomas Fitzgerald, to his family, or to his service to the country and to our state. He was an honorable man, and you cannot dishonor an honorable man. So this has really very little to do with him. He was fortunate that for 25 years he was recognized while he was alive, while he was able to see and be a part of the home, and I'm happy for him. I mean only for good things to happen to him, as I do to everyone. I also want to thank his children, Linda, Tom, and Gayle. They have certainly been very loving and compassionate in wanting to honor him, in wanting to have his name on the new home. I respect that; I respect them. I appreciate their efforts in what they have done. Any father would be honored to have children so devoted, so loving, so concerned for his welfare and for his name. I appreciate them and I appreciate him. I recognize that they have come to the Legislature, as they certainly have a right to do, in championing the cause of having the new home named again in honor of their father. That is not the desire of all of the veteran service organizations, as you see from the memo, but I think in the spirit of compromise, we will be able to name a portion of the facility after him, so that his name will be there, and we also recognize what's in current practice, and that's calling it the Eastern Nebraska Veterans' Home, as it has been, as we've worked through this

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process. The process is just the culmination. It was during these...

SENATOR CUDABACK: One minute.

SENATOR PREISTER: ...past five years that we have worked on it that we have known that the naming time would come. We need to do it before the building is finalized. It's probably close to halfway done now, so this is the appropriate time. I will go along with the committee and their decision to call it the Eastern Nebraska Veterans' Home, and I would ask you to do likewise. I will certainly entertain any questions that anyone has. The amendment itself simply names the new veterans' home the Eastern Nebraska Veterans' Home. Thank you very much, Mr. President and members.

SENATOR CUDABACK: Thank you, Senator Preister. You've heard the opening on AM2657 to LB 994. (Visitors and doctor of the day introduced.) On with discussion of the Preister amendment. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I stand in support of the Preister amendment, and I have to tell you a little bit about the committee process that took place. This bill was heard January 26, and it took the committee about a month and a half to two months, actually, to bring this bill to the floor--probably about a month and a half, I should say. We deliberated and we discussed and we agonized over this bill, but finally the committee did advance it on a 6-2 vote, and we felt that this was the best solution all around. We did write a letter to John Liebsack, the Nebraska Veterans Council Chair, immediately upon sending the bill to the floor, and we copied this also to the family. But what we said in that letter is, as you know from attending the hearing on LB 903, the family of Senator Tom Fitzgerald feels very strongly about continuing to honor their father and all the work he has done for veterans. The Government, Military and Veterans Affairs Committee is also concerned about this issue and would like to find a way to continue to honor Senator Fitzgerald at the new veterans' home, even if the home itself is not named in his honor. Various suggestions have been made as to how to recognize Senator

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Fitzgerald. One idea was to name the chapel or some other room at the home after him. Another idea is to hang his portrait, along with a plaque, in the front entrance of the new home. Again, these are only ideas and suggestions, but the committee is committed to ensuring some kind of recognition of Senator Fitzgerald at the new facility. We hope that you will be able to work with the Fitzgerald family to see that a good solution is found. So with that, Mr. President, I might note that all eight members of the committee signed the letter and sent it, even those who didn't vote to send the bill to the floor. So I would simply urge your support, and thank you very much.

SENATOR CUDABACK: Thank you, Senator Schimek. Further discussion? Senator Dwite Pedersen, followed by Senator Landis.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the Legislature. Living in the town of Elkhorn, the Thomas Fitzgerald Veterans' Home has been very close to us in that area, and I stand in opposition to the change of the name of this home. I am not against it, if we were building a complete new facility, adding onto another facility, but the way I see it, why don't we take anybody's name off from a street, a highway, a building or anything else, a town, after 25 years, if that's the reason for doing so? And I know that it is not the committee's intent to put any harm on that family, but the family itself and the home itself has been friends of Elkhorn, and I personally do not support the change of this home. And I would think any one of you who might be family members of somebody who had something named after them was going to change the name after 25 years or build a new facility and change it, would be offended, and for that reason I stand in opposition. Thank you.

SENATOR CUDABACK: Thank you, Senator Pedersen. Senator Landis, on the Preister amendment. Senator Landis, did you wish to be...

SENATOR LANDIS: Hi. Senator Cudaback, members of the Legislature, I think Senator Preister and Government Committee has done a graceful job in a difficult situation. They've extracted us from what I think was an anomaly. Now I remember

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because I was one of the four votes against the original naming, even though I served with Tom and enjoyed his service, knew this was a pleasant man. It was an act of sentiment by a Legislature that had an affection for Senator Fitzgerald, and in recognition of his long service. But I think the general principle is, we should name public assets for people who have passed on, not who are still alive. It's our normal rule, it's what we normally do, and Senator Preister returns us to the normal, standard practice for this...for public assets in this state, and I think he's done us a service in doing that, and he's done it gracefully at the same time. And at the same time, I want to wish good fortune and thanks to Tom Fitzgerald and to his family, but I also want to approve of this amendment, which I think is well done.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Redfield, on the Preister amendment, followed by Senator Fischer.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I'm a person who loves history, I love architecture, I love to see the cities in America, and as I was walking the streets of Boston one day I came across a lovely church, and it was the first church of...I don't remember the denomination. And down the street just a few blocks there was a plaque and it was the first second church...or no, it was the second first church, because the plaque explained the story of how the first church had been destroyed by fire and then had been replaced. And then I walked a few more blocks and there was another plaque talking about the new second first church, because the congregation had moved again. It's confusing when you take a facility and you move it and you get keep trying to call it by the same name, and so while I think it's very difficult for the family to give up the designation on the veterans' home, I think it makes sense for people to understand that this is a new facility, and it eliminates a lot of confusion. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Fischer, followed by Senator Schimek.

SENATOR FISCHER: Thank you, Mr. President and members. I was one of two members of the Government Committee who did not vote

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for this amendment and the name change. I thank Senator Dwite Pedersen for his comments, and I would echo those. Senator Landis and other members, I know, will be saying that this is the normal practice, that the Legislature does not name facilities after a living member. Well, the exception was made, and it was made by the members who stood in this Chamber years ago. That exception was made, and I believe we need to honor that. I am sorry for what the family has had to go through in the discussion, and I do extend my sympathy to them for what they've had to endure. I've also heard from a number of veterans' service organizations in my legislative district. The local American Legion post, the Veterans of Foreign Wars, they have all sent me resolutions. I have also received a number of letters from individual members of those organizations, and they do not want to see that name changed. Those veterans are fearful of what kind of message we would be sending, if we're willing to honor somebody at one point--if we're willing to honor a veteran--and then years later change that name. I plan to oppose this amendment. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Fischer. Further discussion? Seeing no lights on, Senator Preister, you're recognized to close. I'm sorry. Senator Chambers, your light must have went off. You're recognized.

SENATOR CHAMBERS: Thank you. Mr. President, I had not turned it on, in fact, because you'd mentioned that Senator Schimek was up, and I thought she would be recognized, so I'm sorry I delayed. But what I think should be kept in mind is that building does not belong to an individual, it does not belong to a family. There are many, many veterans. There are many who've passed on, many who still are alive. There will be an increasing influx of veterans as these shooting wars continue. So whatever may have happened in the past, times change, circumstances alter, and there must be an accommodation. So I'm in support of what has been done by the committee. As Senator Preister pointed out, this move does not disparage or denigrate anybody. What this whole situation does demonstrate is the wisdom of the general policy of not naming any public building or facility after a living person. Even if that principle is breached on occasion, that does not invalidate the validity or

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the wisdom of the principle itself. I think that the committee has handled this in a very respectful, tasteful, dignified, gracious manner. Whenever something is done that affects a state policy or a state action, there is never going to be unanimity. In fact, there has not even been unanimity among all the citizens of Nebraska that I ought to be kicked out of the Legislature. So if there cannot be unanimity on that issue, you know there will not be unanimity on others. The senators who spoke in opposition to what is being contemplated exercised their right, delivered on what they felt was their duty, as representatives of this deliberative body, to put into the record their view and why they hold that view. The Legislature is for the purpose of discussing, evaluating issues, then reaching a conclusion. I think the judgment made by the committee and the proposal they have presented to us this morning is the best thing that can be done under these circumstances, and I do intend to vote for Senator Preister's proposal. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. There are no lights on now. You are now recognized to close, Senator Preister.

SENATOR PREISTER: Thank you, Honorable President. I'd ask for a call of the house, please.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye; those opposed vote nay. Record please, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The motion was successful. The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. As you know, your time is running, Senator.

SENATOR PREISTER: Yes, thank you, Mr. President. I do appreciate the reminder. And as members are coming in, I will do my close. I don't know how many of you know, but we have

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16 of us here that serve in the Legislature who have also served in the military. Sixteen of us have served in one way or another outside of this public service capacity, but served our country through the military. Any 1 of those 16, I think, could qualify to have their name on the new veterans' home. Certainly Senator Wehrbein, who has served on the committee for the last five years, along with all of his years of service in the Legislature, would be honored to have his name on this new veterans' home, and I would certainly say he's worthy. Senator Jensen, as well, served in the military, and Senator Jensen also served on this committee for the last five years to establish this new veterans' home. Certainly it would be an honor to have it named after Senator Jensen. I think along with them we've also got Senator Engel who's served, Senator Mines who's served, Senator Janssen, Senator Stuthman, Senator Beutler; and Senator Beutler did something that I particularly feel good about. After Senator Beutler served in the army, Senator Beutler also served in the Peace Corps and has served here in the Legislature. Now to be a warrior is one thing, but to be a champion in the cause of peace I think is equally important, and I particularly respect that. And I think it certainly would be an honor to name the home after Senator Beutler. Senator Cudaback served, Senator Byars has served, Senator Johnson served, Senator Schrock, Senator Landis, Senator Chambers, and Senator Raikes, any one of whom could have this home named after them. Let's not leave out Lieutenant Garrison Avery from Lincoln, who was recently killed in Iraq. How about Corporal Shane Kielion? Shane Kielion grew up in my neighborhood. We recently named a street after him. Corporal Kielion was killed in Iraq. He gave the ultimate in giving his life in defense of his country and certainly would merit having the home named after him. What about our own former Governor and U.S. Senator Bob Kerrey, Congressional Medal of Honor winner? Certainly he could qualify to have the home named after him. Or Senator Chuck Hagel--certainly Senator Hagel would merit it with his service in the service, as well as out. Edward "Babe" Gomez, a Congressional Medal of Honor winner from south Omaha, was killed in the Korean War. Certainly it could be named after him. What about former Senator John Hilgert, who is now the director of the Department of Veterans Affairs, who has worked on this project from the start, as well? Former Senator John

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DeCamp...what about Governor Dave Heineman, who is also a retired military person, who even graduated from the military academy? Certainly he's deserving. But not only the veterans, what about the nonveterans? There are many deserving nonveterans who could equally deserve this recognition.

SENATOR CUDABACK: One minute.

SENATOR PREISTER: I submit to you that we shouldn't single out somebody, that we shouldn't recognize just one person at the expense of all of the other well-qualified people. We have a new home, a new beginning, and at this point it needs to get a name. It's not changing the name of that facility; that facility is currently called the Eastern Nebraska Veterans' Home. This would take effect the 1st of July, 2007. The amendment changes...adds the name, rather, Eastern Nebraska Veterans' Home to the new veterans' home that's being built in Bellevue. I thank you for your consideration.

SENATOR CUDABACK: Thank you, Senator Preister. You've heard the closing on AM2657. All members are present or accounted for. All those in favor of the Preister amendment vote aye; all those against vote nay. Voting on the Preister amendment, AM2657, to LB 994. Have you all voted who care to? Please record, Mr. Clerk.

CLERK: 30 ayes, 2 nays, Mr. President, on the adoption of Senator Preister's amendment.

SENATOR CUDABACK: The Preister amendment has been adopted, and I do raise the call.

CLERK: Mr. President, the next amendment I have, Senator Byars, AM2753, but I had a note from Senator Byars he wished to withdraw.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, the next amendment, Senator Jensen, AM2750. Again, Senator, I have a note you want to withdraw that.

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SENATOR CUDABACK: That, too, is withdrawn.

CLERK: Mr. President, the next amendment I have, Senator Johnson, AM2832. I have a note you wish to withdraw that, Senator.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, Senator Johnson would move to amend with AM2866. (Legislative Journal pages 1163.)

SENATOR CUDABACK: Senator Johnson, you're recognized to open, AM2866.

SENATOR JOHNSON: Mr. President and members of the body, this morning we will more or less finish up on LB 994. What we're talking about here this morning is an effort to prevent the introduction of counterfeit drugs into the pharmaceutical distribution. The reason that we have had the change in the amendments is that we have worked on this bill for nearly two years. All of the pharmaceutical distributors, the wholesale distributors, have been very cooperative in this. The problem has been that there are many ways to skin the cat, as we've found, and so what...the reason for the change is that we had so many amendments to the amendment that counsel Jeff Santema for Health and Human Services was kind enough to put these all under one amendment. All of the people that are affected by this wholesale distributor act all began with saying, we are in support of this measure that you're putting forth; we just have particular problems that affect us, and so could you make this slight adjustment? All of these people that did come forth in this matter, without exception, we felt had a legitimate reason for doing this. So let's just talk just a little bit about what has happened. First of all, all of you, I think, will remember that three years ago in Lexington, Nebraska, there was a repackaging of the drug Lipitor--18 million capsules of Lipitor. This case is still being litigated, but there is a good chance that there were substitutions for the real thing. Nebraska is one of the seven states that doesn't license wholesale distributors. Now what we have attempted to do by going so slow

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and deliberately here is to put together a comprehensive bill, at least 18 months in the making, working with the Board of Pharmacy for the state of Nebraska, but also inviting national representatives of the various wholesaling distributors. They came from as far away as California, but also were represented locally by oxygen distributors. One of the things that we found is that there were so many of these technical aspects. One of the things is that a distributor pointed out that we had not allowed for joint ownership or making of a pharmaceutical. So that was corrected. There were others that were made in different manners, so that we had to allow for this, as well. Getting back to the one about our oxygen distributors right here in the state, technically, oxygen is a drug, and so we had to recognize that, and so in this you will see several paragraphs dealing with this. Now, due to the fact that pharmaceutical manufacturers are regulated by the FDA, this also played a part, and it is the intent of this legislation to exempt these manufacturers and subsidiaries because they are covered under the FDA and their licensing requirements would then be duplicative. For example, some manufacturers ship directly to the provider. These facilities are regulated by the FDA and they would not have to go through the licensing process again. Again, we're trying to blend all of these different entities. Now here's what's in the bill: The Board of Pharmacy will set the rules and regulations. It will do criminal and business background checks. It will put the name of the person in charge. Now here's an interesting statistic: 90 percent of the pharmaceuticals are distributed by three wholesalers. There are 6,000 that do the other 10 percent, and 100 of these don't qualify for belonging to the National--what do they call it--Health Care Management Association. Now what the intent is to do here is to establish what we would call a pedigree, and a pedigree is an historical marker from the manufacturing site through each of the distributing people along the wholesale line. This would start out with a paper trail that we ordinarily would have, but the thing that is neat and kind of caught my eye is that, starting in the year 2008, this will be done electronically. When you go to the grocery store and bring an item to the counter, there is a bar code there that is scanned. What will be possible in the year 2008 is that each of these pharmaceutical products will have a bar code on the

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packaging less than the size of a grain of salt that will have all the information as to where it was manufactured and the places that it went along the distribution chain. To put it in our common terms, this pedigree here is very similar to having a pedigree on a prize dog. It's that simple, as far as tracing what you're trying to do and make sure that this is a "prize dog," or the pharmaceutical it is supposed to be. This will trace the ancestry of the pharmaceutical and each of the steps along the way. The penalties for these were listed as a Class III felony for knowingly and intentionally operating outside this normal distribution chain that would be set up in the rules and regulations. This was advanced with a 7 to 0 vote in the committee. We attached it to LB 994 for convenience and to try and do this expeditiously, since all of the parties now are in agreement with this.

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: So with that, I would ask your support for this measure. Nebraska is behind. I think with this measure and the deliberativeness that has been put into it, we can become a model state, rather than just going on with the crowd. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. You've heard the opening on AM2866. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, after Senator Johnson's exciting, gripping presentation, I have to say what some people say about me--it's a hard act to follow. (Laughter) On occasion, I will stand to speak on a bill and digress. Because Senator Johnson's bill is straightforward, and he did take the time necessary to explain what it's about, I'm going to digress this morning, do something which I have not done, because there's a young man here of whom I'm very proud. And I'm proud of his mother, too. I reminded him and her this morning that often men get credit for things, but not one man would be here were it not for our mothers. There have been instances where a woman would have a child walking down the street, and the husband next to her, and they're going to cross the street, and she'd say, will you carry the baby? And he'd

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say, I can't do that in public. Why should I have to do it? She said, look, I carried this baby for nine months; you can carry it for 30 seconds across the street. Well, at any rate, under the balcony to my left are Geneva Kitching and her son, Brian Michsel Kitching. Ms. Kitching works with us in the Transcribers Office on the tenth floor. And I don't want to embarrass the young man, but there are a few things that I'm going to say this morning. He enlisted in the army in April of 2002. He completed his basic training at Fort Benning, Georgia, and his advanced individual training, known in military parlance as AIT, as a forward observer at Fort Sill, Oklahoma. He moved on to Fort Campbell, Kentucky, and after completing air assault school, he was deployed in March of 2002 with the 3rd Brigade of the 101st Airborne Division to Afghanistan, where he received--and this is what impresses me, among other things--the green and gold scholarship to complete his college education and become a commissioned officer. He returned from Afghanistan and earned his bachelor's degree--and this would make Senator Raikes proud, if he was here--in economics. So when he gets over his military responsibility and functions as competently as an economist as he has during his military career, we're going to see that deficit drop, we're going to see the economy mushroom, and he might--but I would advise him against it, because he'd take a salary cut--be considered to be President of the United States, which will be a much better place, thanks to him. Now he graduated--Senator...I don't even see Senator Brashear, but he likes us to pronounce these Latin terms correctly--he graduated magna cum laude and as a distinguished military graduate in May of 2005. He then went on to serve at Fort Lewis in Tacoma, Washington, where he was an evaluator of future army officers in the Leadership Development and Assessment course. With what he has done, you'd probably expect to look back there and see an old graybeard such as myself, but that is not the case, if you look back there. Upon completion of his training at Fort Lewis, Second Lieutenant Kitching attended the infantry officer basic course at Fort Benning, Georgia, after which he graduated from the U.S. Army Ranger school. He is preparing to move to Fort Bragg, North Carolina, where he will serve as a platoon leader in the 82nd Airborne Division.

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: His awards include--and I'm going to say it so he'll know everything I'm saying will be recorded, transcribed, and I'm going to see that he gets a copy of it--awards include the Army Commendation Medal, three Army Achievement Medals, the Afghan service medal, the Global War on Terrorism Expeditionary Medal, the National Defense Service ribbon, overseas service medal, and the army service ribbon. Now, for the best part of this young man, once you get past his mother, he is married to the former Shanna Harrison of Laurelton, New York, and if they haven't stood already, I would ask that they stand up and face the music. They're under the balcony to my left.

SENATOR CUDABACK: Please rise and let us welcome you.
(Applause)

SENATOR CHAMBERS: Thank you, and I appreciate the reception that they have received. And this was not planned by me or them to occur on the morning that we dealt with the renaming of the veterans' home, but everything turned out by happy coincidence to work well for everybody, and it gave me the opportunity to show what a nice, gentle person I can be when I'm allowed to be. Thank you all very much.

SENATOR CUDABACK: Thank you, Senator Chambers, and welcome to the Nebraska State Legislature. We appreciate you being with us this morning. On with discussion. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I just wanted to take this opportunity to thank Senator Johnson for working with a group of constituents from my district. They're a part of the McKesson Group in Nebraska and appreciate his working with them to make the bill work, and thank you very much. And I support the amendment. Thank you.

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

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. I just stand in support of this amendment. As we worked through this, every time we had a meeting I'd ask Senator

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Johnson, how are you doing? And says, well, we've had another entity show up that we need to address, and like so many times, and it seemed like, I don't know whether in any other committees, but in the Health Committee we have a number of those. But we kept working with this; he kept working with it very diligently, and I'm so happy that now this bill is in a form that I think that we can protect the citizens of Nebraska, that you can be assured that when you do get drugs that they are what they say they are, and it will also eliminate the clandestine operations that were available in this state before that. With that, thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Janssen. You may use that mike if you care to, Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. If Senator Johnson would yield to a few questions, please.

SENATOR CUDABACK: Senator Johnson, would you yield?

SENATOR JOHNSON: Yes, sir. Where are you? (Laugh)

SENATOR JANSSEN: Senator Johnson, would you explain again the paper trail you'll be able to use on the illicit drugs? What did you say, there were 200,000 different types of these pharmaceuticals? How will they be able to distinguish from the bad ones from the good ones?

SENATOR JOHNSON: Well, right now, Senator Janssen, it would be not dissimilar from the grocery business, where you are able to...

SENATOR JANSSEN: With a bar code?

SENATOR JOHNSON: Yes, trace it with...and this will be the next step. Right now, it is a paper trail, that we use invoices and this type of thing. But in the year 2008, and the language is put in here, thanks to Jeff Santema, that without doing anything further when the electronic technology becomes available, that this, then, will substitute for the paper trail and will

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actually make it much easier to keep track of this information.

SENATOR JANSSEN: Okay, thank you, Senator Johnson. I believe this is probably long overdue to have something similar to this. You hear so many things about the pharmaceuticals that are coming from who knows where, and we all trust our pharmacies and our pharmacists, but if some of these filter into the system without any distinction of where they came from, it could be very harmful to society. With that, thank you very much. I will support your amendment.

SENATOR CUDABACK: Thank you, Senator Janssen. No further lights on. Senator Johnson, you're recognized to close.

SENATOR JOHNSON: Thank you. Well, I do ask for your support. This has been a long time in the making, and I think that we have it right by going slow and doing this diligently. And I think where the thanks needs to really go is not to me but to our counsel, Jeff Santema. He has been just absolutely outstanding in his diligence in putting this together in a functional way, so thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. You've heard the closing on AM2866. The question before the body is, shall that amendment be adopted? All in favor vote aye; opposed vote nay. The question before the body is the Johnson amendment, AM2866, to LB 994. Have you all voted on the amendment who care to? Record please, Mr. Clerk.

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Johnson's amendment.

SENATOR CUDABACK: AM2866 has been adopted.

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 994 to E & R for engrossing.

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SENATOR CUDABACK: There's been a motion to advance LB 994 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. We will be passing over LB 994A due to circumstances. We will now go to Select File, 2006 senator priority bills, the Price division. Mr. Clerk, LB 1069.

CLERK: LB 1069, Senator, I have E & R amendments. (AM7179, Legislative Journal page 1026.)

SENATOR CUDABACK: Mr. Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of E & R amendments to LB 1069.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 1069. All in favor of that motion say aye. Opposed, nay. They are adopted.

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

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of LB 1069 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 1069 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. We now go to LB 1069A.

CLERK: LB 1069A, no E & R. Senator Byars would move to amend with AM2824. (Legislative Journal page 1123.)

SENATOR CUDABACK: Senator Baker, you're authorized to handle the amendment. You're recognized to do so.

SENATOR BAKER: Thank you, Senator Cudaback, members. This is an easy one. Senator Byars did request that Senator Don Pederson put this money he's going to save the state in his account for future use. It's \$317,301 cost savings to Health and Human Services the first year. Don't know how much it's going to be after that. But this was an easy amendment because

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of the committee amendments on LB 1069 broadened the scope of those who can provide transportation to those eligible for it to not just nonlegal family members, to include anyone who passes all the background tests and has insurance and so on. It increased the cost savings \$317,301 the first year. I would like to ask for adoption of AM2824 to LB 1069A, please. Thank you.

SENATOR CUDABACK: Thank you, Senator. You've heard the opening. Open for discussion. Senator Don Pederson.

SENATOR D. PEDERSON: Thank you, Mr. President. Yes, Senator Baker, the Appropriations Committee and the state appreciates the fact that they will be receiving money back from this. And let it be known that we are willingly accepting it. Thank you.

SENATOR CUDABACK: Further discussion? There are no lights. Senator Baker waives closing. Question for the body is adoption of AM2824. All in favor vote aye; opposed vote nay. Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Byars' amendment as offered by Senator Baker.

SENATOR CUDABACK: The Byars amendment has been adopted.

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 1069A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion, advance LB 1069A, E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. We now go to LB 962.

CLERK: LB 962, Senator, I have E & R amendments, first of all. (AM7180, Legislative Journal page 1030.)

SENATOR CUDABACK: Senator Flood, please.

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SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 962.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 962. All in favor of that motion say aye. Opposed, nay. They are adopted.

CLERK: Senator Don Pederson would move to amend, AM2780. (Legislative Journal page 1084.)

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

SENATOR D. PEDERSON: Thank you, Mr. President, members of the Legislature. Senator Price has graciously consented to my putting this amendment on after I gave her a blood oath that I wouldn't do anything to damage her bill and this won't damage her bill. This actually is LB 830 that was presented to the Education Committee and approved 8 to 0 by the Education Committee. And what it is, is a follow-up to LR 174, which we entered into in 2003. LR 174 set up a committee to look into higher education...higher public education, that is, in the state of Nebraska. There were three members from the Education Committee, three members from the Appropriations Committee, and three members from the Legislature at large. And we...and I served as Chairman of that task force, and we evaluated higher education's public system in Nebraska and found that there were many deficiencies, many things that needed to be corrected and looked into. And we turned the responsibility of reporting this matter over to the Coordinating Commission for Higher Education, and they have done a wonderful job of evaluating and reporting what's going on with higher education, where the deficiencies exist, and how we can monitor these things. There has been ultimate cooperation from all of the segments of public higher education and now we report to a common source. The national clearinghouse is now the place where we can gather all the information from all of these institutions. Before, we had fragmented reporting through different systems. It was like apples and bananas. Now, why am I introducing this amendment at this time? I presented this bill to the Education Committee and it was presented in a way that, look, there is no more LR 174

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task force. We need a perpetuation of the Legislature's being able to receive a report on what is going on and evaluating higher education in Nebraska. And the Coordinating Commission is very concerned. They prepare the reports. Who do they send it to? Who evaluates what they're doing? And without this method, we will not have anybody to report these things to. And, believe me, it has helped greatly with all of our public higher education to have this because now their foot is held closer to the fire because you don't just say generally, how are things going? They're going fine. You look at the reports and see if they're really going fine. And this gives us a measure to report. And it occurred to me that, you know, unless we do something now, there is no continuation of that kind of evaluation by the Legislature. I think it's very important for the Legislature to retain an interest and involvement in these reports. And, accordingly, I had initially proposed that there be a reinstatement of the makeup of LR 174 task force with the same nine-member makeup, not the same persons but that kind of a makeup, and the Education Committee, in their infinite wisdom, determined that that wasn't really necessary. We're not really going back and reinventing the wheel. This is a reporting mechanism. So, their report and their committee amendment is embodied in this amendment and what it says essentially is that the reports from the Coordinating Commission for Higher Education will be submitted to the Education Committee so now we will have a methodology of continuing the program that was started with LR 174, and it allows us to continue that program. I urge your adoption of this. I think it's important for this Legislature to retain an interest in the higher education public system in the state of Nebraska. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson. You've heard the opening on AM2780. (Visitors introduced.) On with discussion. Senator Raikes.

SENATOR RAIKES: Thank you, Mr. President, members. Senator Pederson has explained very well what's the content of this amendment. I just offer that I do support it. The LR 174 task force was a, I thought, a very successful effort. And I think it's appropriate that we do what is being proposed here to keep that process in place. So, I urge your support of the

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amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Further discussion? Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I was wondering if Senator Don Pederson would yield to a couple of questions.

SENATOR CUDABACK: Senator Pederson, would you yield?

SENATOR D. PEDERSON: Yes, I would.

SENATOR ERDMAN: Senator Pederson, the amendment that is before us would continue the LR 174 task force. Is it your intent that the continuation of the program would actually answer the questions in LR 174 that weren't answered by the task force? Because it's my understanding that the task force took a narrow view of some of the basic principles and didn't actually tackle the bigger issues, as I understand our discussion at the symposium upon the completion of the task force.

SENATOR D. PEDERSON: This...initially, I suggested the continuation of the task force, but it's been converted by the Education Committee to simply serving as a reporting service so that the information from the Coordinating Commission will be reported back to the Education Committee. And, at that point, of course, if there are things that need to be looked into further, the Legislature will have an oversight of that and they can take appropriate response. Does that answer your question?

SENATOR ERDMAN: I think it's probably the best I'm going to get. Members of the Legislature, I, too, am interested in the results of LR 174, and I recognize that it was a monumental undertaking. And I actually have the six questions that were supposed to be answered by the task force. And I do think it's appropriate for us to examine higher education and to look at where we're spending competing dollars, and the sustainability of public higher education in the state is one of the provisions. How do the missions of the different institutions link and what can be done to find efficiencies is the second provision. How many campuses should be supported by the state

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and how do the demographics presently and in the future affect that was the third one. How should the public education institutions be coordinated and governed was the fourth provision. What proportion of tuition, private support, and tax dollars should be used was the fifth provision. What should be the focus of legislation in the next decade regarding public education was the sixth provision. And I think those are valuable, and for the sake of the record, I hope that as we go forward that those questions are actually answered. I think it's also important to recognize that an increasing number of students in...attaining higher education, both who are residents of the state and who are nonresidents who come to the state and stay here, is a benefit, obviously, as what came out of LR 174. But I do think that we have to answer those basic fundamental questions about structure, about coordination. I don't know that we have had that full discussion at this point. And I'm hopeful that under this amendment that we'll actually get the answers to those questions that were originally put forth in the interim study that I and many others signed on to. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Seeing no further lights on, Senator Pederson, you're recognized to close.

SENATOR D. PEDERSON: As a closing, I would simply say that we determined in the LR 174 task force that the only way we could go forward with evaluation such as what Senator Erdman is suggesting is to have some basic facts in connection with this, and that's what we are producing now. I think that the Legislature will be able to evaluate from the facts that are elicited from these reports of the Coordinating Commission whether the goals that were set forth by Senator Erdman, which were the goals we were going to look at, I think that you will know better whether or not those goals are being achieved. But you're never going to get there unless you know the facts, and that's what we didn't have before, was a coordinated fact finding, and we have that now. And it's being reported, and we've determined to have a base year, and from that we can see whether there's an improvement in the various elements of public higher education. I think it's an absolute necessity to have that. And then, those of you who will remain here will have the

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opportunity to evaluate those reports and see if you think further changes need to be made in the existing system. With that, I would urge you to adopt this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson. Heard the closing on AM2780. Question before the body is, shall that amendment be adopted? All in favor of the motion vote aye; opposed vote nay. Voting on the amendment offered by Senator Don Pederson, AM2780, to LB 962. Have you all voted on the question who care to? Please record, Mr. Clerk.

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

SENATOR CUDABACK: The Pederson amendment has been adopted. Mr. Clerk, item for the record, or messages?

CLERK: Thank you, Mr. President. Your Committee on Revenue, chaired by Senator Landis, reports LB 1087 to General File with amendments; LB 1159, General File with amendments. A series of study resolutions: LR 327, Senator Schimek; LR 328, Senator Combs; LR 329, Senator Stuthman; LR 330, Senator Stuthman; LR 331, Senator Stuthman; LR 332, Senator Combs; LR 333, Senator Landis; LR 334, Senator Mines. All will be referred to the Executive Board. I have an amendment to LB 990 to be printed. Mr. President, an announcement: Education Committee will have an Executive Session at 11:00 this morning in Room 2022; Education, 11:00. (Legislative Journal pages 1163-1168.)

SENATOR CUDABACK: Thank you, Mr. Clerk.

CLERK: Next amendment, Mr. President, Senator Raikes, AM2777. (Legislative Journal page 1156.)

SENATOR CUDABACK: Senator Raikes, to open on AM2777.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. This amendment includes two items, one...well, both substantive, but I think a kind of combination substantive and technical. I should recognize that Senator Price has graciously allowed me to offer this to you on LB 962. One of the issues

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deals with Peru State College, one of our three state colleges. The change would allow them, Peru State College, to offer a master of science degree in organizational management with a focus in entrepreneurial and economic development. The background information here is this is the sort of a program that can be offered in our other state colleges. The Coordinating Commission that has oversight on curriculum offerings in the state college has approved this subject to this change in statute. The Education Committee considered this, thought it was an appropriate change to make and so brings this to you as a recommended change in our statute. The other change deals with the Nebraska scholarship program. As a part of that, that's our need-based aid program, as you remember. There were some provisions in that program to provide for a transition from the previous programs to the new program. One of those provisions dealt with the amount of an award, the size of an award that could be given to an individual student. That is gradually taken down over time. This provision would allow a little bit more time for that transition; does not change the overall intent, direction, or anything else of the Nebraska scholarship program, but would ease that transition period by extending it a little bit for some of the institutions that are involved in that program. So those two changes; I would try to address questions and ask your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on the Raikes amendment. (Visitors introduced.) On with the discussion of the Raikes amendment. Senator Brown.

SENATOR BROWN: Mr. President, members, I would like to ask Senator Raikes a couple of questions if he would yield.

SENATOR CUDABACK: Senator Raikes, would you yield?

SENATOR RAIKES: Yes.

SENATOR BROWN: Senator Raikes, when there was an effort a few years ago to do some reorganization and we were going to make a big capital investment at Peru, most of the argument that was used with me by individuals who were graduates of Peru or supporters of Peru was that the rationale for maintaining them

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in the same form that we had traditionally had them was because they provided teacher training. Now what you talked about doesn't have anything to do with teacher training, does it?

SENATOR RAIKES: You're right, it does not. It's entrepreneurial and economic development.

SENATOR BROWN: And it's a graduate program.

SENATOR RAIKES: That's right.

SENATOR BROWN: For a school that is primarily supposed to be not necessarily a graduate program.

SENATOR RAIKES: That's right, Senator. It does, however...this change would put Peru State on a par with other state colleges in terms of the graduate offerings. And certainly you're correct in the historical emphasis in training teachers, but I think you'll find at Peru, as well as on the other state college campuses, the curriculum offering even at the undergraduate level has expanded into other areas and business training programs are a significant part of that. I would tell you that my discussions with the Coordinating Commission were that this was a very narrowly construed expansion of their authority to offer programs, and they have not done it. They have gone through all the correct procedures in terms of waiting for authority before they do, in fact, offer this program.

SENATOR BROWN: On a maybe more broad, philosophical level, do you have any reservations about some of the things that are being done by Peru in terms of competing with other higher education institutions? I would say specifically Creighton University in Omaha, there are billboards around Creighton that talk about the cost of doing their on-line program. I really have reservations about maintaining programs based on their physical location and then having them being competitive with other entities' physical location, using state money to subsidize that kind of competition.

SENATOR RAIKES: Senator, I do share those concerns with you. I think that there can be (inaudible) if we're not very, very

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careful to make sure that, particularly with public institutions, the missions are carefully defined so that we don't have a lot of intercampus competition between institutions. So I do share those concerns. I do think that this change, this proposed change, is consistent with...consistent with a narrow view of...a narrowly defined view of what the mission of Peru State should be, both narrowly defined and consistent with what the other state colleges offer.

SENATOR BROWN: Okay, I'm not...I guess I'm not sure (laugh) whether I think that your statements are consistent. But I have my light on because I'd like to continue to pursue the discussion more generally about whether...

SENATOR CUDABACK: It's now your new time, Senator Brown.

SENATOR BROWN: ...we're doing a good enough job. Excuse me?

SENATOR CUDABACK: It's now your new time.

SENATOR BROWN: Thank you. Whether we're doing a good enough job in that kind of coordination. So I would ask you if you are entirely comfortable that the kind of clear mission that you spoke of, of the different institutions is being accomplished across the board right now.

SENATOR RAIKES: Senator, I probably couldn't tell you that I am entirely comfortable and particularly when you consider that as educational systems evolve, as there are new programs offered. For example, we get the Phoenix University type of a program, an Internet program, the offerings that are predominantly available change, sort of the boundaries or the vision may not stay the same. So, when all these changes occur, how do you adjust mission statements and that sort of thing between one campus and the other to make things fit together? I think that is a continuing challenge and certainly this sort of a change doesn't detract from that. It's still a challenge. This is a relatively minor change. It adds a little bit of scope in one area. It doesn't address the broader issue that you raise.

SENATOR BROWN: Thank you. So, in my peevishness about us not

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being able to deal with the broader issue, I will just vote red on this particular issue. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Further discussion? Seeing no lights on, Senator Raikes, you're recognized to close on AM2777.

SENATOR RAIKES: Thank you, Mr. President and members. I appreciate the comments by Senator Brown. I think that the concerns are certainly valid. I do, however, think that those concerns are broader than what we're talking about here. I think this is an appropriate change at this time and something that we should do, and I would urge you to do so. So, thank you very much.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the closing on Raikes amendment. Question before the body is, shall that amendment be adopted? All in favor vote aye; opposed vote nay. Issue before the body is the Raikes amendment. Have you all voted on the amendment who care to? Record please, Mr. Clerk.

CLERK: 26 ayes, 2 nays, Mr. President, on the adoption of Senator Raikes' amendment.

SENATOR CUDABACK: The Raikes amendment has been adopted.

CLERK: Senator Jensen would move to amend AM2893. (Legislative Journal pages 1168-1169.)

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

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. This amendment is LB 962 and I want to thank Senator Price for her willingness to consider the introduction of this amendment. The amendment adds provisions of LB 953, which was heard by the Health and Human Services Committee and advanced by the committee with no dissenting votes. The bill was brought to me by the Rural Health Advisory Commission. The commission was concerned that the rural health student loan repayment program, although effective, could even be more

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effective if the maximums were increased. And it's been a very effective tool to recruit and retain rural healthcare providers in Nebraska. LB 953 increases the amount that may be paid annually for student loan repayments under the act. The bill increases from \$10,000 to \$20,000 the maximum annual loan repayment for physicians, dentists, and psychologists; and increases from \$5,000 to \$10,000 the maximum annual amount for physician assistants, advance practice nurses, pharmacists, physical therapists, occupational therapists, and mental health practitioners. I was contacted recently by Dr. Don Frye, Chairman of the Rural Health Advisory Commission, and the commission had requested that the provisions of LB 953 be enacted into law without any additional appropriations for the program. When it came through our committee there was additional appropriations and we really felt that that could not...that certainly my seatmate behind me would not go for that, and so we had not advanced the bill. But now, moving it forward without increasing the appropriations I think is a very good way to go. The commission believes that the enhanced payback authority, even if fewer applicants are served under the program, will still make the program much more effective and a very effective tool in the long run. I would just ask for the adoption of the amendment, and I would stress that I'm not asking for any additional appropriations to accompany this change. I thank Senator Price. And with that, I would thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the opening on AM2893. Open for discussion. Senator Jensen, there are no lights on. Senator Jensen waives closing. Question before the body is, shall AM2893 be adopted to LB 962? All in favor vote aye; opposed, nay. Voting on adoption of the Jensen amendment, AM2893. Have you all voted on the issue who care to? Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Jensen's amendment.

SENATOR CUDABACK: The Jensen amendment has been adopted.

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 962 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 962 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 962 is advanced. We now go to LB 962A.

CLERK: Senator Flood, I have no amendments to LB 962A.

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 962A to E & R for engrossing.

SENATOR CUDABACK: Heard the motion by Senator Flood to advance LB 962A. All in favor say aye. Opposed, nay. LB 962A is advanced. That completes that portion of the agenda. We now go to General File, 2006 senator priority bills, the Connealy division. Mr. Clerk, LB 965.

CLERK: LB 965, Mr. President, introduced by Senator Jensen. (Read title.) The bill was introduced on January 9, referred to the Revenue Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM2587, Legislative Journal page 881.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Jensen, to open.

SENATOR JENSEN: Thank you, Mr. President. LB 965 adopts the Long-Term Care Savings Plan Act. The act encourages Nebraska residents to plan for their own long-term care by means of allowing persons to make state income tax deductions for contributions to long-term care savings accounts. Nebraska has one of the most successful student loan acts in the nation. And matter of fact, we have people from outside the state that even will participate in it. And this act is similar to that, only for long-term care; in other words, allowing you to put money

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into a savings account to provide for your own long-term care. Qualified participants may then make withdrawals from the funds deposited to pay for their long-term care expense. By providing such financial incentives, our citizens will be able to plan for their future, their long-term needs, and will alleviate the demand on Medicaid to pay for those costs associated and with their stays in nursing homes, assisted-living facilities. Indeed, the healthcare costs associated with these facilities represent the largest single category of Medicaid expenditures. As such, I believe LB 965 represents a critical component of the Medicaid reform. Under this act, the Department of Revenue selects a plan administrator who enters into participation agreements with all persons designed to set up a long-term care savings account. All money paid by a participant or another person on behalf of the participant is deposited as received into a participant's separate account. And a participant retains ownership of all deposits made under the agreement until the date of utilization. Each participant participation agreement must provide that the agreement may be cancelled or transferred to a spouse upon the terms set by the plan administrator. The act allows Nebraska taxpayers to contribute a lifetime limit of \$165,000 into these accounts, an amount which represents slightly more than the average total cost of care in a long-term facility for a single individual. The lifetime limit is automatically adjusted for inflation as provided in the Internal Revenue Code. A participant's federal adjusted gross income may be reduced by contributions to the plan up to \$2,000 per married filing jointly return and \$1,000 for another return, as well as any investment earnings made to the extent not deducted for federal tax purposes. These deductions only reflect the amount of state income tax a participant will pay. Once a participant sets aside money into an account, any qualified individual may make withdrawals for long-term care expenses. A qualified individual is defined as a person who turns 65 years or older during the taxable year, or any disabled person who had a medical necessity for long-term care, or a person who turns 62 years age or older during the taxable year who made payments for long-term care insurance during the taxable year. The definition of a qualified individual was defined in large party (sic) by the committee amendments to LB 965, which Senator Landis will describe in

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further detail. In addition to allowing persons to use their accounts to pay for long-term care expenses, the committee amendment also allows certain participants to pay for their long-term care insurance premiums. A participant who is not a qualified individual may still make withdrawals from his or her account, but subject withdrawals will be subject to a 10 percent penalty collected by the Department of Revenue and will increase a participant's federal adjusted gross income to the extent previously deducted. Likewise, withdrawals by any person for purposes other than the long-term care expense or long-term care insurance premiums are subject to the same penalty. However, no penalty will accrue on accounts of the death of the owner of the account, and the accounts are also freely transferable between spouses. By providing these financial incentives and encouraging more Nebraska residents to set aside money for their own long-term care needs, we will see to it that fewer residents will require Medicaid to provide for their future care. This will help curtail a growth of Medicaid and, in the process, make Medicaid a more affordable and tenable system. It is in fact incumbent upon us to understand that providing incentives for purchase of long-term care must be considered part of the overall Medicaid reform proposal. Currently, the rate of growth for the state aid to schools and Medicaid exceeds the growth rate of General Fund revenues. Something must be done to curb this growth and if we are able to make Medicaid a fiscally sustainable program. And addressing long-term care is a logical place to start. In the last, I believe, six years, I've introduced bills to incentivize individuals to buy long-term care insurance at least four times in those six years. This is a savings program that individuals can participate in. One thing, if you don't know, and in my own instance, my wife has had skin cancer at one point and that prohibits us from buying long-term care insurance for her. With this, you can put dollars away and to provide for that long-term care. Also, if long-term care insurance is very expensive when you get 65 and older to buy, where you could set up a savings account any time to help alleviate that cost. We're all growing older, we all someday will die, and why not plan for that? So I think this makes perfectly good sense. I would just ask for your adoption. There is an amendment to this. And I appreciate the Revenue Committee and, on their indulgence, they advanced this out 8 to

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O. And several persons testified in favor, none were opposed, and no one offered any neutral testimony. It represents a win-win proposal for our state. Nebraskans with enough money set aside for their own long-term care needs will now not have to spend down or otherwise transfer assets to qualify for Medicaid coverage. The state will not need to provide for them. Every individual that can set up a long-term care savings program can save this state \$150,000. I hope you'll vote for the advancement of this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the...there are committee amendments, as stated. Revenue Committee Chairman Landis, you're recognized to open.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. We've heard two different bills and we decided to put some of the idea of one bill into this one and send it out. LB 965 is the Long-Term Care Savings Plan Act and, of course, you can put money in there and then you can use that for long-term care purchases. But we were interested in the idea of using that money for the purchasing of long-term care insurance, which was a separate bill, and that bill cost \$7 million to \$8 million. What we did was to limit the insurance premiums that could be paid for out of this mechanism but, at the same, use this tax system incentive to reward having long-term care insurance, which is one of the objectives that Senator Jensen has wanted to achieve for years. Under the green copy of the bill, withdrawals from these care savings plans would have to be made by a qualified person, meaning one that's 65 years of age or older, or disabled. The committee accepted the idea of the accounts but thought that withdrawals should also include premiums for long-term care policies when the person reaches an age where the premiums begin to get significantly expensive. The committee amendments define qualified individuals in three ways. First, a qualified individual would be a person that turns 65 years of age during the tax year that has need for long-term care which, by the way, is consistent with the green copy of the bill. Secondly, it is a disabled person of any age with need of long-term care. Both of these were within the original single definition under the original bill. The third definition, however, was added by the committee and that would

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be a person that turns 62 years of age or older within the tax year that is paying long-term care insurance premiums. Long-term care insurance premiums would be defined with reference to the Long-Term Care Insurance Act which is already on our books and is a policy that covers the individual or his or her spouse. Tax-free withdrawals from the account would be for either long-term care costs, which was in LB 965, or insurance premiums, which was in a second bill but it's the idea that we're putting into LB 965, so long as the person is a qualified individual, meaning handicapped, over 65, or over 62 for the purposes of paying for insurance premiums. All other withdrawals would be taxable income and subject to a 10 percent penalty and was provided under the original version of the act. So you get to use this mechanism for other than the paying of direct services. You can use it to pay long-term insurance premiums under two limitations. One, you've got to be 62 years and older. And secondly, the maximum amount of premiums that you can receive this tax benefit for would be \$2,000. That won't be the price of long-term healthcare insurance. I'm 57, my long-term healthcare insurance...long-term insurance, rather, is \$3,300 a year. So if you move somebody who would be 65 years of age, the price of that insurance will be higher than that. I think we'd be looking at half or somewhat less than half of the premium amount would have this benefit. We do not know how much this amendment costs. The underlying bill costs between \$700,000 and \$800,000. If I had to give a rough justice guess based on what we learned in the A bill that accompanied the other...or the fiscal note that accompanied the other bill, I'm guessing that with this amendment we're adding about again as much as is in the bill now. We're probably looking at a bill that moves from \$800,000 a year to \$1.6 or perhaps \$2 million a year at the outside, I would guess. It would be a significant public policy gain if we can create an effective incentive mechanism for people to buy long-term care insurance. Those who serve on the Appropriations Committee, Senator Heidemann and others, will tell you, Medicaid is eating the state budget from the inside out. It's like one of those aliens that comes out of the stomach. And that's what Medicaid is. We've swallowed it into our state budget and it's eating its way out. One of the few ways of controlling that is to move this expensive kind of procedure into a privately funded procedure in which we are not

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paying for those as often as we are now. The best way to do that is long-term care insurance. Oddly enough, Nebraska, that does not have an incentive for this, has one of the highest long-term care insurance rates in the country. In other words, many Nebraskans are doing the right thing even without the tax code encouraging them to do the right thing. There are about 18 or 19 states that have some kind of incentive mechanism for this behavior that we're hoping to have. And those states do not perform as well as this state does. I must say, however, every amount of long-term care insurance that we can sell in the marketplace that will move people away from Medicaid and to private pay will help the state budget in a variety of respects. So this is an investment in hopefully moving people to use the insurance mechanism as opposed to relying on a burgeoning state program that's very cataclysmic to our state budget. I would ask for the adoption of the Revenue Committee amendment.

SENATOR CUDABACK: Thank you, Senator. You've heard the opening on the Revenue Committee amendments. There are no amendments to the Revenue Committee amendments. On with discussion. Senator Cunningham, followed by Senator Redfield.

SENATOR CUNNINGHAM: Well, thank you, Senator Cudaback and members. I rise up in strong support of this, this bill. Senator Landis and Senator Jensen explained to you and all of you in this body know what the cost of Medicaid is for our state. And it's the fastest growing or one of the fastest growing segments of our budget. And quite frankly, I believe it is totally unsustainable. Right now in our state, I think it's very commonplace, the normal person plans to get rid of their assets and the state will take care of them in the nursing home. When you talk about Medicaid and nursing homes, the reality is the biggest share of Medicaid goes to senior citizens living in nursing homes and assisted-livings. And I think we as a society need to do more to plan for our own retirement or our own time when we end up having to live in one of those facilities. I personally have another bill that I consider a companion to this bill and it's an asset protection bill. If you purchase long-term care insurance, you can protect some of your assets when you get older and in that position. Senator Landis talked about...I believe he said his insurance, long-term care

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insurance, was 30-some hundred dollars a year at the age of 57. I'm 51 and I purchased long-term care insurance over ten years ago. And I'm sure my premium is somewhere under \$1,000 a year. So we need to do all we can to incentivize people to buy long-term care insurance, plan for their own future because Medicaid simply is not sustainable at the rate we're going. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham; Senator Redfield; followed by Senator Engel and others.

SENATOR CUDABACK: Thank you, Mr. President, members of the body. I think that we would certainly like to see that there are obligations that they may incur in their senior years. And they want to do something about it but they look at the cost of long-term care insurance and recognize that they might have difficulty maintaining those premiums after they are on a fixed income. At the same time, they know that they need to set aside every dollar they can spare into some sort of savings plan to supplement their retirement years. And that was the genesis for LB 575. I think that this is a real problem. The demographics of this state are more intense than it is in other states. Clearly, this will go a long way to helping our citizens set aside and prepare for their own retirement years and those years when they may not be healthy to remain on their own. I ask you to support the bill. I ask you to support the amendment because it would allow those who have purchased long-term care insurance to use these savings for their premiums in their later years when they're on fixed income and might allow it to lapse due to lack of funds. That's clearly an improvement and a good thing for the state. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I, too, serve on the Appropriations Committee and I can attest, this is

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eating up our budget and our income in the state of Nebraska. We have to do something and they are working on that. They've got a fraud task force working to try to eliminate the fraud. There's a lot of fraud in Medicaid because people are trying to get rid of...getting rid of their assets so that the taxpayers can support them. And the situation is, I'm glad this is part of the bill. I do support the bill, of course, and this amendment. I have...used to sell insurance and you don't sell something you don't believe in. I bought long-term care long time ago and hope I never have to use it. I hope I bought insurance to stay healthy. But the situation is, people don't realize how much it takes to live in a nursing home. You...\$165,000 is a good start, I think, because \$165,000 will not last very long if you're in a nursing home for a period of time. I know most people are in there for just a short period of time, about three years. The insurance I purchased will not take care of all of a nursing home situation because I believe that it will take care of most of it and I think people should use their assets for the balance if they have assets. I don't believe that we should turn that over to the taxpayers. And as far as I'm concerned, any assets people have, it should be used for them first and what's left, gladly leave it to your heirs; you know, not have the taxpayers setting up accounts for the heirs. The only thing is, with this particular amendment, I think it probably should start earlier because the younger you are, the cheaper health insurance, I mean, the Medicare supplement is. And more and more people can qualify for it because normally they're healthier. As you get a little older, because of the medical situation in our country now, we are living longer and longer and longer. And of course, with living longer and longer and longer, there's more things wear out and more things occur to you where you're not eligible to actually buy the insurance. So I believe 62 is probably a good start, but I think if you lower the age to...I could care less what age it is, it could be 25, and as long as they're buying it and keeping it where they could deduct it, you know. So I think it's high time that we are doing this. And I do believe, no matter what it's costing, maybe a little over \$1 million or so as far as in our receivables, the savings in the long run is going to be...just outdo that multiple times. So I think it's a very, very good bill, very good amendment. The only thing is, I

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would like to ask Senator Landis, if you got a moment, if you'd respond.

SENATOR CUDABACK: Senator Landis, would you respond?

SENATOR ENGEL: Thank you, Senator Landis. How did you pick the age 62? Or why was 62 the age where you could start buying insurance and deducting it?

SENATOR LANDIS: Sort of the early retirement age where people are...so that they don't have an income. It was about the earliest that we could think of in which somebody's income might be frozen because they were retired.

SENATOR ENGEL: Well, and the thing is, though, I guess what I'm saying is that it gets more expensive as you get older.

SENATOR LANDIS: Um-hum.

SENATOR ENGEL: And I think if the age was younger, the people out there selling insurance every day, and I sold a lot of insurance, it would incentivize these agents to get out and sell it. And I think that if you were to get someone out there selling this insurance, people, if they've got more of an incentive than just that I might be in a nursing home some day, I can deduct that, I think it would incentivize more sales, more people buying it. And I'm not selling insurance now. I'm just telling you how we can get...

SENATOR CUDABACK: One minute.

SENATOR ENGEL: ...more people into the program.

SENATOR LANDIS: We took a bill that cost \$800,000 and we doubled the cost of it. We thought that was good enough. We wanted to stick our toe in the water and this was as far as we could go. We used a benchmark of where we thought it was likely that there was a significant number of workers who would not have an increasing ability to have income and that they would be frozen in their resources and they could make use of this. The fact that people want more, we knew that was (inaudible). The

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original...the other bill cost \$8 million bucks, which was open-ended; didn't want to do it. This was...we felt we'd try a flier for maybe a million bucks.

SENATOR ENGEL: I appreciate what you did and perhaps, as we see how this gels out, perhaps we can amend it in the future. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Engel. (Visitors introduced.) On with discussion. Senator Howard.

SENATOR HOWARD: Thank you, Mr. Chairman and members of the body. I stand in support of Senator Jensen, my Chairman of Health and Human Services Committee, for two reasons. First off, his bill gives people more control over their own lives, and here in Nebraska we treasure that option. One of the things people fear most about growing older is not being able to remain in their own homes; having something happen to them that puts them in a situation where they're no longer making their own decisions. And having money, honestly, is a big part of what you're able to do in your life. I'm glad Senator Jensen has brought this in. I think this is a significant bill. I know, from having talked with Senator Jensen many times, he is very concerned about the Medicaid rise in costs. He has worked diligently to address this problem, and this certainly is an important factor in that. And I thank him for bringing this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Howard. Further discussion on the Revenue Committee amendments? Senator Combs.

SENATOR COMBS: Thank you, Mr. President and members of the body. I rise in support of the Revenue Committee amendment and also the underlying bill. Having been a director of nursing in long-term care for 9 years, I've worked in long-term care for 14 altogether, I sat down with many families, as they were admitted to the nursing home, and went over their financial status and we worked out how long their assets would last, along with the social work coordinators. And it was very discouraging to see what Medicare does not pay for. Medicare does not pay for what we call custodial care, which could be around-the-clock personal

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care needed for activities of daily living that people are not able to provide for themselves that are essential for that person, that they cannot be alone and they are totally dependent for care. Medicare does not pay for custodial care, much to the chagrin of many people who have been led to believe over the years that, you know, Medicare is a safety net that's going to help me when I get in the nursing home. You know, it is not. Part A, as long as you have a skilled rehabilitative status, will cover you. But as long as you have no rehab potential, the A benefits are gone when you can no longer be predicted to make measurable progress in your condition. And that's when you become custodial. That said, I would encourage people to provide for themselves for long-term care. We don't know what the economy is going to do. We don't know what federal government regs are going to do to the Medicare program. I used to kid around and say, hey, you know, when I get on Medicare, the feds are probably only going to pay for the shot to put me to sleep. And the way they work it, it could be going that way. Who knows? But that said, I do support the bill. I support the amendment. And I do want to encourage all of us, if we have not, to look into getting long-term care insurance and being able to provide for the future. We should be self-sufficient, self-reliant. It is a personal responsibility to provide for ourselves. And as you know, I'm one that doesn't believe in a lot of government interference in your personal life and I believe in personal freedom, and this is one way to express it, is to make sure that you properly care for yourself. Thank you.

SENATOR CUDABACK: Thank you, Senator Combs. Senator Burling.

SENATOR BURLING: Hello. Thank you, Mr. President and members of the body. I, too, stand in support of this proposal. I know, like others have said, it's something that's been worked on for several years. It's something we should do. It's something we need to do. I, too, have been paying long-term care premiums for longer years than I can remember. And this encourages people to set aside money for those years. So I thank Senator Jensen for pursuing and being persistent in this endeavor and bringing it to us. I'd like to ask Senator Jensen a question, if he would respond.

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SENATOR CUDABACK: Senator Jensen, would you respond?

SENATOR JENSEN: Yes.

SENATOR BURLING: Senator Jensen, a qualified individual is one that's in medical need, has a medical need for long-term care. Does that then require an affidavit from a medical doctor or how does that work? I mean, who decides?

SENATOR JENSEN: I don't think we address that in the bill that I can remember.

SENATOR BURLING: Okay. Well, I'm sure it's okay. I was just curious of, you know, if you go to your tax preparer or your financial advisor, who decides if that person really is qualified?

SENATOR JENSEN: You would be talking about the disabled or the medically needy?

SENATOR BURLING: Yeah, any age, any age medically disabled that needs this type of care, does that require a physician's affidavit or anything?

SENATOR JENSEN: Well, certainly a physician's certificate or signature or a letter would be suffice, I'm sure.

SENATOR BURLING: I'm sure it would, too. And I was just curious...

SENATOR JENSEN: Yeah.

SENATOR BURLING: ...if you had addressed that or not. That's okay.

SENATOR JENSEN: Okay.

SENATOR BURLING: Thank you, Senator Jensen. Thank you.

SENATOR CUDABACK: Thank you, Senator Burling. Senator Landis, do you wish to close or speak?

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SENATOR LANDIS: I think closing, since we don't have any known opposition and we probably ought to act on the bill in which...

SENATOR CUDABACK: You're recognized to...

SENATOR LANDIS: ...we're all saying, gosh, what a great bill; well, good, let's pass it.

SENATOR CUDABACK: You're recognized to close.

SENATOR LANDIS: There is a piece of information, however, that you probably ought to have. I gave you an estimate a moment ago and, in fact, it was accurate in that, in the intervening time, in those ten minutes, there was a fiscal note provided for this bill. And I had estimated that I thought that we doubled the amount of the bill or up to \$2 million and, in fact, the note came back that the bill, with this amendment, is \$1.9 million. The estimates for the next three years are \$1.9 million, \$1.98 million, and \$2.1 million from 2006, 2007, and 2008. Of that, \$13,000 is for a revenue operations analyst II and that the implementation costs are only \$20,000. So that's the best guess that we can make as to the cost of the amended version. I'd ask for the adoption of AM2587.

SENATOR CUDABACK: You've heard the closing on AM2587. The question before the body is, should the committee amendments be adopted? All in favor vote aye; opposed, nay. Voting on adoption of the committee amendments presented by Chairman Landis. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion of the bill itself. There are no lights on. Senator Jensen, you're recognized to close.

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SENATOR JENSEN: Thank you, Mr. President. I really thank the body for listening and also I would ask for your support. The offset in revenue is...and the savings on Medicaid I think you're going to find is going to be substantial. We have had a culture in this nation the last several years that I don't need to plan for anything, the government will take care of me. We're now finding that the federal government is shoving more and more down onto the states, and that's going to continue. I think it's going to increase as we move along. So I think this is a great way that the state of Nebraska and its citizens can plan for their long-term care costs as we continue to live longer and longer. So I think it's a win-win situation and, again, I would just ask for your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the closing. The question before the body is, shall LB 965 advance to E & R Initial? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 965 presented by Senator Jensen. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of the bill.

SENATOR CUDABACK: LB 965 does advance. We now go to LB 1010, Mr. Clerk.

CLERK: LB 1010 by Senator Connealy. (Read title.) The bill was introduced on January 10, referred to the Revenue Committee, advanced to General File. I do have committee amendments, Mr. President. (AM2567, Legislative Journal page 882.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Connealy, to open on LB 1010.

SENATOR CONNEALY: Thank you, Mr. President and members. As the Clerk said, LB 1010 provides an income tax adjustment for charitable contributions. It really is a redo of LB 28 that we passed last year. It would be for gifts, planned gifts, to Nebraska-based endowments. LB 1010 would allow taxpayers to

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take the federal tax credit along...the federal tax deduction, along with a Nebraska tax credit. This bill does not allow taxpayers to take both the state credit and the charitable contribution credit. The fiscal note that came back with the bill, even though this is a redo of LB 28 last year, was quite a bit larger than we expected so, with that, we should move to the Revenue Committee amendment that would decrease the scope of this bill.

SENATOR CUDABACK: Thank you, Senator Connealy. There are Revenue Committee amendments, as stated. Chairman Landis, you are recognized to open.

SENATOR LANDIS: Thank you. LB 28 was enacted last year and proposed to grant tax credits for individuals who made planned gifts, also for corporations that made direct contributions, and estates and trusts that make either to a Nebraska-based charitable endowment; in other words, charitable giving not just to the Red Cross or to the United Way but to their foundations so that it would be in a permanent holding of resources that then the interest would be paid out of and used for charitable purposes. The credit amount was 30 percent of the present value of the planned gift, or 20 percent of any direct gift by a corporation. Taxpayers could not claim both this credit and a charitable deduction under LB 28, as it was enacted last year. Many individuals and corporations, if not most, found that the federal deduction represented a larger tax benefit than LB 28, so nobody made use of LB 28, because they generally, although certainly were motivated by altruistic reasons, could give to the same organization for their yearly operations and get a better tax benefit than if they gave to that organization's endowment creating permanent wealth inside that third sector or nonprofit sector of the country. LB 1010 initially proposed adding back the amount of charitable deductions attributable to the value of the credit before calculating the Nebraska tax liability and applying the LB 28 credit against that tax liability. It was a complicated calculation. We simply struck the green copy of the bill and replaced it with a simpler and easier-to-administer system. The committee amendments rewrite the bill; approached the problem from a different perspective. Under the committee amendment, the bill would amend four

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sections of the bill that was passed last year. The changes proposed by the amendments would, number one, allow the taxpayer to receive the federal charitable deduction which was, as we realized, greater than the state deduction that we were creating last year, and a state charitable deduction, that being the LB 28 credit. Secondly, it cuts the percentage in half, from 30 percent for individual contributions to 15 percent, and from corporations to (sic) 20 to 10 percent. And to reduce the maximum credit that can be received in any year for individuals, corporations, or estates from \$10,000 to \$5,000. The net effect of that would be to cut down the size of the A bill considerably, but at the same time create a tax incentive that would be greater to give to a foundation than to simply give it to a charitable organization on an operations use basis. In other words, the endowment giving gets better treatment than straight charitable giving. There's a cap to it, however. There's a maximum, so it can't displace these things. However, the more our charitable giving gets into the hands of endowments that are permanent and are building value, the more you can move their operations from yearly giving to the long-term endowment-based giving, so hopefully it will have that effect. These changes would be operative for the 2006 tax year, the same as for LB 28, which was last year, which projected itself a year ahead so that we're not moving up or back, the ultimate application of this system, and that is that we're going to be doing it for the 2006 tax year. Those are the committee amendments. I would ask for their adoption.

SENATOR CUDABACK: Thank you, Chairman Landis. You've heard the opening on the committee amendments. Open for discussion. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President, and members. I want to thank the Revenue Committee for cutting this down. Even though it's not going to be as aggressive a help to endowments, and I don't know whether it will be used as much as we had hoped in the future, I believe that this is a sustainable amount. We don't know the fiscal note until we adopt the committee (sic) and move it on, so on Select File we should have a better handle on what the exact cost. But it will be dramatically less than the fiscal note now. I urge the body to accept the Revenue

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Committee amendment.

SENATOR CUDABACK: Thank you, Senator Connealy. There are no further lights on. Senator Landis, you're recognized to close on the committee amendments.

SENATOR LANDIS: Three pieces: Allow the taxpayer to receive both the federal and state charitable deductions, cut the percentages in half from what we did last year, and drop the maximum allowable credit from \$10,000 to \$5,000. I ask for the adoption of those amendments in the form of AM2567.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the closing. The question before the body is, shall the committee amendments be adopted to LB 1010? All in favor vote aye; opposed, nay. The question before the body is committee amendments to LB 1010, number AM2567. Have you all voted on the question who wish to? Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays on the adoption of committee amendments.

SENATOR CUDABACK: Committee amendments have been adopted.

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

SENATOR CUDABACK: Back to discussion of the bill itself. There are no lights on. Senator Connealy, you're recognized to close.

SENATOR CONNEALY: Thank you, Mr. President and members. This is a fix for LB 28. It's going to be diminished from where we were last year, but I urge your support of the advancement of LB 1010.

SENATOR CUDABACK: Thank you, Senator Connealy. The question is, shall LB 1010 advance to E & R Initial? All in favor of the question vote aye; opposed, nay. The question before the body is the advancement of LB 1010. Have you all voted on the advancement who care to? Have you all voted? As you know, it requires 25 votes. Members, have you all voted? Record please, Mr. Clerk.

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CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 1010.

SENATOR CUDABACK: That completes that portion of the agenda, the Connealy division. We now go to 2006 Speaker priority bills. Mr. Clerk, LB 1189.

CLERK: LB 1189 by Senator Synowiecki. (Read title.) The bill was introduced on January 18, referred to the Revenue Committee, advanced to General File.

SENATOR CUDABACK: Senator Synowiecki, to open.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members of the Legislature. First of all, I want to publicly thank the Speaker for the designation. Members, you know me, I don't typically bring parole business, tax bills before the Legislature, but this is uniquely different and it's...truly, what this bill is doing, I believe strongly, is simply clarifying what we actually did last year in our incentive act. And I very much appreciate the work of the committee and very much look forward to getting this clarifying language taken care of for our steel industry in the state of Nebraska. The bill, LB 1189, was heard before the Revenue Committee on February 10. It advanced to General File with seven members voting affirmatively. There were five individuals that testified as proponents at the hearing. There were no opponent testimony and no neutral testimony. As far as history, members, in the late 1990s the Legislature adopted a sales tax exemption for certain molds and dies, specifically for plastic injection molds. The Department of Revenue adopted a regulation, effective November 11, 1998, defining the type of mold and die that was exempt from taxation. That regulation, 1-095, specifically allows that molds and dies are exempt from taxation when the mold or die is used to produce a product which is either injection molded from plastic or stamped from metal. Last session, the Legislature passed LB 312, the Nebraska Advantage Act. A part of the Nebraska Advantage Act was to eliminate the sales tax on manufacturing equipment. Manufacturing machinery and equipment is defined as any machinery or equipment purchased, leased, or rented by a person engaged in the business of manufacturing for use in

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manufacturing, including, but not limited to; and subsection (c) within LB 312 included molds and dies for use in manufacturing that determine the physical characteristics of the finished product or its packaging material. Members, there is no language in LB 312 that limits the sales tax exemption to certain types of molds and dies, and there was no debate relative to this issue on the floor of the Legislature. When LB 312 passed, the Department of Revenue did not revise its original 1999...excuse me, 1998 regulation regarding molds and dies. In Nebraska, we have four companies that utilize a temporary mold and die process using sand molds. These molds are used for steel and iron manufacturing. The sand is mixed with chemicals, used as a mold, and then reused. When the sand is no longer usable or viable, it is transported to landfills and utilized as fill material. Quite simply, members, LB 1189 simply clarifies that LB 312 was intended to cover all molds and dies including temporary molds and dies made of sand. I'll be available to answer any questions. I appreciate, again, the work of the Revenue Committee in recognizing what we're doing here and this is simply clarifying the action that we took last year relative to manufacturing equipment. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. You've heard the opening on LB 1189. There are no committee amendments. Mr. Clerk, first amendment.

CLERK: Mr. President, the first motion I have is Senator Landis, but I have a note you wanted to withdraw the indefinite postpone motion.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, Senator Synowiecki would move to amend, AM2426.

SENATOR CUDABACK: Senator Synowiecki.

SENATOR SYNOWIECKI: Mr. Clerk, I'd like to move that to Select File, if I could.

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SENATOR CUDABACK: So ordered.

CLERK: Senator, AM2856, your second amendment. (Legislative Journal page 1145.)

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. This is Senator Byars' amendment that he ran on the Revenue Committee package. He asked that I introduce it, and please bear with me. I really don't know all the intricacies of it. I will defer to Senator Landis, but simply, Senator Byars requested that I introduce this amendment and, Senator Cudaback, if I may, I'll just defer to Senator Landis for the opening.

SENATOR CUDABACK: Senator Landis, you're recognized to open.

SENATOR LANDIS: Thank you, Senator Cudaback and Senator Synowiecki. In fact, I had asked for this amendment to be, not this one, but this same idea to be drafted as amendment yesterday when I learned that Senator Byars would be gone today and this bill would be up and would be subject to amendment, and it's the right location if we're going to do this piece of work. What this amendment is, is the same one that he ran on LB 986, which I resisted on two grounds, and you might recall those. Number one, the bill that he had, had never gotten out of the Revenue Committee and was in committee and had failed to advance 2-1 and 4, something like that. And the second was that we were concerned about whether or not there was a sliding slope and how far that advanced. And, in fact, that the topic had grown during the course of the green copy of the bill because we got amendments. Yesterday afternoon, upon reflection and taking a look at the sentiment of the body, the Revenue Committee met, raised the question, went back through it, looked at the language, recognized that it was limited to nonprofits in these programs, recognized that there was very little to distinguish a program done in one site and a program being done on a community basis, and concluded that the bill made some sense, advanced the bill, I think, unanimously with maybe a...with perhaps one or two abstentions, as I recall. That being the case, I asked for the amendment to be drawn, but found out that, in fact, it had been already introduced. This is an idea that the Revenue Committee has reported out. It is limited to nonprofits. It is

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limited to the community-based programs for which essentially there is an equivalent that is residential in nature so that we don't have an arbitrary distinction between residential and community based. And I would ask for the adoption of AM2856.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Thank you, Senator Landis. Those wishing to speak, Senator Combs.

SENATOR COMBS: Thank you, Mr. President and members of the body. I rise in support of the Synowiecki amendment for Senator Byars' addition of the language. When the bill was first up, I, too, with the Revenue Committee had made the commitment not to change the revenue bill. I do agree with it and I told Senator Byars that I would be fully in support of this; could it be put onto another bill, because I had made the commitment not to alter the revenue bill. This is revenue neutral. It does define better what is already being done in the definition of mentally retarded facilities that had been crafted two years ago that was intended to receive this benefit. But this just better defines the intent of the Legislature and I would ask the body to pass it. Thank you.

SENATOR JANSSEN: Thank you, Senator Combs. Senator Landis, your light is still on. Did you...Senator Landis waives. No further lights. Senator Synowiecki waives closing. No other lights. The question is...Senator Synowiecki, did you waive closing? He waives closing. All right, the question before you is the adoption of the Synowiecki amendment. All those in favor please vote aye; those opposed, nay.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Synowiecki's amendment.

SENATOR CUDABACK: AM2856 has been adopted.

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CLERK: Senators Landis and Synowiecki would move to amend with AM2894. (Legislative Journal pages 1170-1171.)

SENATOR CUDABACK: Senator Landis, to open on AM2894.

SENATOR LANDIS: This is an amendment drawn from another Senator Synowiecki bill that was before the Revenue Committee, and he just must have had a lucky day in the Revenue Committee. The original bill had to do with a tax exemption for memberships and tickets and purchases by all kinds of museums and galleries and the like. It had a relatively high amount and, in fact, was foregoing the chance of getting sales tax receipts from people who were coming from out of state and going to locations in the state. So, it was not a very attractive bill to the committee and didn't get out. But upon reflection, there was a nub of the bill for which there was some sentiment and, basically, it arises out of Joslyn Art Gallery. Joslyn will tell you that their ability to access large donor contributions to turn around and buy artwork is limited by the fact that Nebraska has a rare and exceptional coverage of fine art purchases by nonprofit museums as being a taxable event. At probably someplace between \$20,000 to \$40,000, this amendment exempts the purchase of fine art by a museum from the sales tax. And for \$20,000 to \$40,000 bucks, it's adding to the Joslyn program and the availability of fine art struck us as a liveable outcome. And so we reported out that bill, having amended it into this form, and then offered that bill which was reported out as an amendment to LB 1189.

SENATOR CUDABACK: Thank you, Senator Landis. Open for discussion. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. Just as Senator Landis indicated, the committee significantly narrowed the scope of the underlying bill, and as he indicated, allows for the exemption for nonprofits for artwork purchases only. And the midwestern states, for example, that allow this, so Joslyn can be a little bit more competitive, include Colorado, Iowa, Kansas, Minnesota, Missouri, and Oklahoma, all exempt artwork purchases. And this will be a significant assistance to

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Joslyn with their collection of art, and I appreciate your support. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Further discussion? There are no lights on. Senator Landis, you're recognized to close.

SENATOR LANDIS: I would ask for the adoption of AM2894, which contains the Synowiecki measure as amended and reported out by the Revenue Committee. Thank you.

SENATOR CUDABACK: Thank you. You've heard the closing on AM2894. The question before the body is, shall that amendment be adopted? All in favor vote aye; opposed, nay. The issue before the body is the Landis amendment, AM2894. Have you all voted on the issue who care to? Members, have you all voted? Members, have you all voted on the issue who care to? Record please, Mr. Clerk.

CLERK: 25 ayes, 0 nays on adoption of the amendment.

SENATOR CUDABACK: The Landis amendment has been adopted.

CLERK: Mr. President, Senator Brown would move to amend, AM2895. (Legislative Journal pages 1171-1172.)

SENATOR CUDABACK: Senator Brown, to open on your amendment to LB 1189.

SENATOR BROWN: Thank you, Mr. President and members. We had quite a bit of discussion on the tax bill the other day about the exemption of housing authorities. What we ended up doing on the tax bill was...on the sales tax portion was to exempt the labor and materials for construction purposes for housing authorities. Then, this is a follow-up amendment that adds housing authorities to Section 77-2704.15, the governmental and quasi-governmental agencies that are exempt from sales and use tax. There is provided in this amendment an exception for housing authorities to address the concerns that Senator Smith raised about activities that are conducted by housing authorities which are competitive activities. And so there is

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an exception for purchases for any commercial operation that does not exclusively benefit the residents of an affordable housing project. And so, if this amendment is adopted and if the bill passes and is enacted, there is a repeal in the tax bill of the piece that we put into that bill. And I would just urge the adoption of this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. You heard the opening on the Brown amendment, AM2895. Open for discussion. There are no lights on. Senator Brown, you're recognized to close. Senator Brown waives closing. Question before the body is, shall AM2895 be adopted? All in favor vote aye; opposed, nay. Voting on the adoption of the Brown amendment to LB 1189. Voting on the Brown amendment, AM2895. Members, have you all voted? Record please, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Brown's amendment.

SENATOR CUDABACK: The Brown amendment has been adopted.

CLERK: I have nothing further on the bill.

SENATOR CUDABACK: Back to discussion of the bill itself. Senator Burling.

SENATOR BURLING: Thank you, Mr. President, members of the body. The mold and die issue has been a confusing issue since I came to the Legislature and have been working on it with the Tax Commissioner and other businesses continually since then. And I want to thank Senator Synowiecki for bringing this to us this year, because it is kind of a problem all of its own because there are so many different kinds of molds and dies. And the Tax Commissioners had a problem with identifying and defining which ones are tax exempt and which ones are not. I thought we had it right as Senator Synowiecki has said, but apparently it hasn't been, and so hopefully this will clarify it enough that the Tax Commissioner can carry out the intent of the Legislature. So, I just stand in support of this bill and thank Senator Synowiecki for bringing it. Thank you.

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SENATOR CUDABACK: Thank you, Senator Burling. There are no further lights on. Senator Synowiecki, you're recognized to close, LB 1189.

SENATOR SYNOWIECKI: I think Senator Burling did a fantastic job of nailing what the issues are here. We have some controversies relative to what we did last year. This simply clarifies the action taken by this Legislature when LB 312 was passed last year. Thank you. I'd encourage your advancement of LB 1189. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. The question before the body is, shall LB 1189 advance to E & R Initial? All in favor of the motion vote aye; those opposed, nay. Question before the body is advancement of LB 1189 presented by Senator Synowiecki. Have you all voted? Please record, Mr. Clerk.

ASSISTANT CLERK: 27 ayes, 0 nays on the motion to advance the bill, Mr. President.

SENATOR CUDABACK: LB 1189 does advance. We now go to LB 1189A, Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB 1189A, introduced by Senator Synowiecki. (Read title.)

SENATOR CUDABACK: Senator Synowiecki, to open on LB 1189A.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. The fiscal note does indicate that this bill will have some personnel issues with the Department of Labor (sic). I believe they are, for '06-07, \$26,237 personnel appropriation; and for '07-08, \$26,857 appropriation for, again, personnel with the Department of Revenue. Encourage your advancement. Thank you.

SENATOR CUDABACK: Thank you, Senator Synowiecki. You've heard the opening on LB 1189A. Open for discussion. Senator Chambers, followed by Senator Landis.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I believe a person who has a name is entitled to have that name

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pronounced the way he or she chooses. People often call Louis Armstrong Louie Armstrong. He always referred to himself as Louis. In the last few minutes, I've heard the gentleman whose bill this is and for fear that I may not pronounce his name the way he wants to pronounce it, I'd like to ask him a question.

SENATOR CUDABACK: Senator...I'm afraid to say it. (Laughter)

SENATOR CHAMBERS: Senator, in the last few minutes, I've heard you referred to variously as Senator "Snooky", Senator "Wicky", and Senator Synowiecki. Which do you prefer? And that's the one that I will use, unless I have a lapse of memory.

SENATOR SYNOWIECKI: There's a number of versions of my name in the Legislature, including Senator Bourne's, which is "Synowisky" but...

SENATOR CHAMBERS: Yeah, so which do you prefer?

SENATOR SYNOWIECKI: The Polish version would be "Synovietaki" (phonetic), but I'll let you...for the record, it should be pronounced Synowiecki.

SENATOR CHAMBERS: Thank you, Senator "Snooky." (Laughter)

SENATOR CUDABACK: Thank you, Senator Chambers. I better say it right. Further discussion? Senator Landis.

SENATOR LANDIS: Thank you, Senator Cudaback, members of the Legislature. I just want to go back to the underlying bill and I want to underscore that. Clarification is probably the right word to apply to this. What the companies who want to have this exemption are buying are not molds. What they're buying is sand. That's it, sand. Eventually, that sand becomes a mold or is used in a mold form and then, in fact, it's a temporary mold that's created out of sand. When we passed LB 312, we passed one that created a tax exemption for molds and dies. It didn't say a box of sand. I want to be sensitive about this because there's some implication in the argumentation about this that we are correcting an error. We were not in error. I don't believe that the Revenue Department was in error when it said a box of

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sand is not a mold and a die in that form. We are extending the rationale of the mold and die to sand, in this situation. So some attempt or desire to have this be seen as an error or a mistake or an oversight, I think, is undue. What I think it is, is saying, look, scratching our head, upon reflection, a box of sand which eventually becomes a mold we will treat more by the mold rule than by the sand rule in this circumstance. I think it is a furtherance or a more subtle distinction than where we are up until now. I think it's appropriate. I endorse it. But I do want to resist the idea that somehow what we're doing is undoing a mistake in Revenue Department application. I don't think it is because what we're doing here by this is giving a tax exemption for the purchase of sand only, not a mold. And that's important to me. I'll tell you and it's important to me as to its timing because, among other things, at least the lobbying interests would like to go back to January 1 as if we had made a mistake. Uh-uh. I think LB 1189, in its current form, as amended with every piece of legislation that the Revenue Committee has reported out, in the form that it is now is appropriate. I've endorsed it; I'll vote for it; I'll vote for LB 1189A. But as far as I'm concerned, I'm done on this. We've done our business and it's in exactly the right form it should be for passage. Thank you.

SENATOR CUDABACK: Thank you, Senator Landia. No further lights. Senator Synowiecki, you're recognized to close. He waives closing. Question for the body is, shall LB 1189A advance to E & R Initial? All in favor vote aye; opposed, nay. Have you all voted on the issue who...? Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 1189A.

SENATOR CUDABACK: LB 1189A does advance. Mr. Clerk, items for the record, or messages?

CLERK: Thank you, Mr. President. Enrollment and Review reports LB 605 as correctly engrossed, LB 605A, LB 1060, all reported correctly engrossed. Series of study resolutions: LR 335 actually is a resolution by Senator Langemeier that will be laid

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over; study resolutions LR 336 by Senator Bourne; LR 337 by Senator Bourne; Senator Stuhr and the Retirement Committee, LR 338, LR 339, LR 340, LR 341, LR 342, LR 343; Senator Janssen, LR 344. Amendments to be printed: Senator Thompson to LB 1088A; Senator Jensen, LB 994A; Senator Stuthman, LB 454. That's all that I have, Mr. President. (Legislative Journal pages 1172-1179.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to General File, 2006 committee first priority bills. Mr. Clerk, LB 956.

CLERK: LB 956, introduced by the Performance Audit Committee introduced on January 6. (Read title.) The bill was introduced on January 6, referred to the Executive Board for public hearing, advanced to General File. I do have committee amendments, Mr. President. (AM2479, Legislative Journal page 818.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Beutler, you're recognized to handle this.

SENATOR BEUTLER: Mr. Speaker, Senator Cudaback, the bill creates the position of Legislative Auditor, and let me say right off that it creates that position without a fiscal note. This bill does not have a fiscal note. This is a series of internal changes that in fact and in profile elevates the function of performance auditing as it is done currently in the legislative division of the Legislature. The genesis of the bill is really twofold. First of all, we've had an ongoing process for several years now, increasing the ability and the professionalism of the performance audit function of the Legislature. I'll remind you that performance audits in this state are done in the Legislature, in the Legislative Research Division. Fiscal audits are done over at the Auditor of Public Accounts. And we have been progressing quite rapidly in an historical sense. In the last year or so, for example, the performance audit section, through your judgment, has gained access to all confidential records, all records of all types that it needs to look at. So, it has broadened its authority, it's broadening its professionalism. It's in the process now of being accredited so that there can be no questions about the

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professionalism as viewed from peer groups and peer associations and national associations. We've increased the size of the performance audit group from four to six. They are...two more are currently being trained. Six is still a very, very small performance audit function for a state. It would...it compares, for example, and here I'm not comparing to other states, but over in the Auditor's Office, where you do financial audits, there are 28 people functioning over there. Here, in the legislative side, doing performance audits, we still have just six people. Performance audits are every bit as important as financial audits, as you all know, because money in large sums can be wasted, and the wasting of money is actually a greater concern than financial malfeasance in terms of handling money. So we're doing all these things to enhance and make stronger the performance audit function. I hope, when I'm gone and others take over, those of you who stay will continue to do that. I think we should add a CPA and an IT person fairly soon. I think those would be good additions and I'm sure those who will lead this area in the future will see other things that can be done to make us a truly...truly have a performance audit function which is sized for our state and can intelligently and accurately look into each and everything that we do in this state. Having said that, the other part of the genesis of the bill was really the conversation that went on earlier this year among the Republican candidates for Governor with regard to performance audit. And one was going to do it one way and one was going to do it the other way, and there is this whole conversation. And it seemed like nobody realized or nobody talked about or nobody said anything about the fact that performance audit is done in the legislative branch and not in the executive branch. If you do performance audits in the executive branch here you're essentially...it's essentially the fox guarding the henhouse sort of situation. Nor do we want the Auditor of Public Accounts doing performance audits. You all have made a judgment about that a long time ago. So, it seemed to me that the profile of legislative auditing is not high in this state yet, and that there are some things that we can do that would enhance that profile, one, and two, be a meaningful elevation of the office itself, and, hence, this bill. And I have passed out to you a sheet that describes the five or six things that are done in the bill. Let me just mention two or

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three of the most important things so you can get a sense of what's happening here. Right now within the Research Division, there is a legislative performance audit section, that's what we call it, and it's administered by a person that we call the section director. Well, that doesn't tell you very much about what that person does. That person is, in fact, our legislative auditor, the person in charge of performance audits. And so now we're going to say in the bill that, yes, in fact, we're going to call this person the Legislative Auditor. That person we're going to set forth shall ensure that performance audit work conducted by the section conforms with performance audit standards contained in the Government Auditing Standards, 2003 Revision. And the section shall be composed of the auditor and other employees employed to conduct performance audits. And we're making it clear that that performance auditor is responsible for hiring those people, for managing those people, and in every way being responsible for the performance audit function. And in line with that, we are changing the name of the Legislative Research Division to the Office of Legislative Audit and Research, again, elevating the profile of the function that's being performed. There are other sections to the bill that had to do with the management of the office as it will exist then, and it's with the new profile for the Legislative Auditor. Under the bill, the auditor position would be filled by the Executive Board based on a recommendation by the Legislative Performance Audit Committee. So those are...that's the basic idea of what's going on in the bill. If you are interested in more detail, I'd be very glad to give you further explanation. Thank you.

SENATOR CUDABACK: Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I want to explain the amendment. As originally drafted, LB 956 had a delayed effective date of January 1 of 2007. The committee amendments simply strikes that section so that the bill would become law three calendar months after adjournment of the session. This early effective date will then allow the current Legislative Performance Audit Committee to be involved with the implementation of the...(laugh) I never could say that word, implementing of the changes called for in LB 956. With all that

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goes on at the beginning of a new legislative session, especially next session, with our first year of implementing term limits, it just makes sense to have the current Performance Audit Committee oversee these changes rather than a new committee. I think it is important that we adopt this amendment and I'd certainly ask for your support. Thank you.

SENATOR CUDABACK: One minute. Senator Beutler, did you wish to use the rest of your time?

SENATOR BEUTLER: Pardon me?

SENATOR CUDABACK: Did you wish to use the rest of your time?

SENATOR BEUTLER: No, I'm sorry, I thought we were on the committee amendments. Are we not?

SENATOR ENGEL: That's what we're on. I was called upon and I thought that's what we're on. I didn't have my light on.

SENATOR CUDABACK: Who's on first? (Laughter)

SENATOR ENGEL: I think I'm on third right now, but... (Laugh)

SENATOR CUDABACK: You were opening on the committee amendments, right?

SENATOR ENGEL: That's what I just did. Would you like me to do it again?

SENATOR CUDABACK: I think we had enough.

SENATOR ENGEL: Thank you.

SENATOR CUDABACK: Senator Mines, you're recognized to speak.

SENATOR MINES: Question. (Laugh) I'm teasing. Very briefly, I stand in support of LB 956. In my opinion, we as a body have diminished the role of the Performance Auditor and actually haven't elevated it to the level at which it should stand. We have an obligation to the citizens of Nebraska to ensure that

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the statutes that are passed, the intention is upheld and that we, in fact, are upholding the standards that we set here in the body. I do have to commend Senator Beutler. I think, but for him, the Performance Audit Committee would not be at the level that it is today, and I want to thank him for that. And, Mr. President, again, I urge the body to adopt LB 956. Thanks.

SENATOR CUDABACK: Thank you, Senator Mines. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. Certainly, I would have to commend the committee and their interest in obtaining more training for the people that are there and meeting the credentialing process that exists for auditors across the country. The only concern I would express is my frustration in seeing different parts of government work together because, if you recall when we actually put together the performance audit bill, we talked about working together with the current Auditor's Office and using the resources there so that, in fact, people who do have a lot of training and a lot of credentials might be utilized and bring their expertise, working together to come up with these audits for our benefit. We spend a lot of time in the Legislature encouraging local governments to work together and do projects, share funding, share resources, and I think that's a benefit for government. Certainly, we can gain from the expertise of other people. We can see from their insight and while I respect the separation of powers, I see no harm in working together. And if Senator Beutler would like to respond to that, I would certainly be willing to give him the rest of my time. Thank you.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, Senator Redfield, I agree with you entirely. I'm sorry if you think we haven't cooperated as much as we should have in the past, or maybe you're addressing my remarks with regard to, well, I'm not quite sure what you mean actually. And perhaps I'd return my time to you to explain a little further what you mean.

SENATOR REDFIELD: Well, Senator Beutler, your comments on talking about this is the legislators' auditor, and I recognize

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the fact the state has an Auditor. I'd like to see us all work together and share expertise.

SENATOR BEUTLER: Senator, I agree with you completely, and I hope the body will recall that we also put in place some cooperative provisions. We have provisions that indicate that if the Auditor of Public Accounts, for example, wants to do a performance audit, they can simply send us a letter and we can say, okay, do it, and the Auditor can be doing some audits also. Also, there's a cooperative provision for doing audits together. We hope to learn from the Auditor of Public Accounts and I hope and I'm confident in the future that the golden age of cooperation is going to soon be here because we will have one of our own in the Auditor's Office. And knowing Senator Foley from the past, I absolutely believe that he will be a great Auditor and that the cooperation with the legislative branch will be as never before.

SENATOR CUDABACK: Thank you, Senators Beutler and Senator Redfield. For the record, we are on the Exec Board Committee amendments to LB 956, presented by Senator Engel. Further discussion? Senator Wehrbein.

SENATOR WEHRBEIN: Mr. President and members of the Legislature, I support this. I'd like to ask Senator Beutler another question, though, if I may, please.

SENATOR CUDABACK: Senator Beutler, would you respond?

SENATOR BEUTLER: Senator Wehrbein.

SENATOR WEHRBEIN: Yes, I'd just like the practical effects of this. I'd give a little more detail of what the practical effects will this be. Will it be a broader ability to do performance auditing, I suppose, depending on the budget, things like that? If you want to make a few more comments, you can have the rest of my time.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Yeah, thank you, Senator. I think the

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practical effect would be that it will help us with our certification processes because it will be clear that our auditor, the person who's in charge of our division, is in charge of the responsibility for auditing so it doesn't become mixed up with our research function in terms of people looking down at...with respect to certification, people looking at how it all functions together. With the two people that were added just this last year, next year and then the year after, they'll, of course, come more and more on-line so we'll be able to do a lot more work than we did before. But as I indicated before, if you really want to get in on a regular basis into a lot of what goes on in government, you really need to have a pretty good sized staff. I mean, even going from four to six, six is still small even for a small state. So it's a work in progress and we're trying to take it a step at a time. If we add too many staff, it's not going to work. You know, they need to be trained. They need to know how we function here in Nebraska, and so it's a slow process, too, at least I think it should be a slow process.

SENATOR WEHRBEIN: I would take some of my time back if I...that reminds me, considering some of the criticism we're taking in the public arena right now, at least the fact that there's waste, fraud, and abuse everywhere, so forth, and so on. I think we need to raise it to a higher plane in terms of its visibility because I think we've done a pretty decent job of finding things and we've had intense performance audits and we're gradually getting broader and bigger pieces. I mean, some of the bigger agencies are going to take enormous amount of work, so if that helps that, I'm certainly in favor of it. But I think some of the things we're doing have gone unanswered because there's no format for us to do it. But I think we are taking pretty good care of our internal obligations and responsibilities. It is not widely known or it wouldn't be...risen to the public criticism that's been implied at least. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. Further discussion? Committee amendments are by the Exec Board. Senator Engel, there are no further lights on. You're recognized to close, as Chairman of the Exec Board, on AM2479.

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Senator Engel waives closing. The question before the body is, shall AM2479 by the Exec Board be adopted to LB 956? All in favor vote aye; opposed, nay. Voting on the committee amendments offered by the Executive Board. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted.

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

SENATOR CUDABACK: Back to discussion of the bill itself, LB 956. Senator Beutler, there are no lights on. You're recognized to close.

SENATOR BEUTLER: Members of the Legislature, thank you for your attention. And let me just say one last thing. Twenty of us won't be here next year. Those of you who remain will be here two years and then almost none of us will be here. Term limits, this is an area where you can do something that will be helpful in the new era of term limits. Staff is going to become more and more important to people, keeping good staff around and bridging the gap between senators is going to become more and more important. If you can develop a really good performance audit section...I mean, not that we don't have it already. They do great work, but they're small. If you can continue to build up that function then you can start to rely upon that a little more and there will be a knowledge base there about how institutions have functioned and what kinds of continuing problems persist from year to year. And I think it will be even more helpful to you. Senators are going to have even less time to become experienced and become knowledgeable in areas. And a group of people like this is going to be extremely valuable to you, I think. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the closing on LB 956 by the Chairman of the Performance Audit Committee, Senator Beutler. Question before the body is, shall

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that bill advance? All in favor vote aye; opposed, nay. Voting on the advancement of LB 956. Please record, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays on the advancement of the bill.

SENATOR CUDABACK: LB 956 does advance. Speaker Brashear, you're recognized.

SPEAKER BRASHEAR: Thank you, Mr. President. Members of the body, I wanted to take just a moment. You have had, in my judgment, an outstanding week. You have worked very hard; your work has been excellent. And I simply want to commend that work and thank you for it and I think it just ought not go unnoticed that we have accomplished what we have this week. And we have more to do, so we'll go put out the agenda. Thank you. Travel safely, have a good weekend.

SENATOR CUDABACK: Thank you very much, Speaker Brashear. On with the agenda item, Mr. Clerk, LB 1222.

ASSISTANT CLERK: Mr. President, LB 1222 was introduced by the Transportation Committee. (Read title.) The bill was read for the first time on January 18 of this year, referred to the Transportation and Telecommunications Committee. That committee reports the bill to General File with committee amendments attached. (AM2238, Legislative Journal page 687.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Baker, as Chairman of that committee, you're recognized to open on LB 1222.

SENATOR BAKER: Thank you, Senator Cudaback and members. I'd like to begin with some background information, for those senators who have not been here more than a year or two, how it is or where we are, what we've done to get where we are, and I'm going to start with the process we went through several years ago to implement up to a \$1 per landline surcharge on each phone line within the state of Nebraska, per month, which was set by county commissioners or the board of supervisors in each county. It was a \$1 maximum, with the exception of Douglas County,

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metropolitan Omaha, which was capped at 50 cents, and they are at 50 cents. Some of the counties now are at less than \$1; most of them are at \$1. This money is collected by the telecom, the telephone company. The rate is set, as I said, by the county commissioners. It's collected by the phone companies and submitted to the county treasurers in each county. That money can be used for telecommunications within that particular county, and it has been, although there are some counties that haven't pursued this as aggressively as others. That's the landline portion. A few years ago, Senator Engel had a bill, LB 985, which addressed the emerging technology of wireless--the cell phones. After some discussion, the bill was adopted. That provided for up to...or 50 cents, that was a universal 50 cents collected on cell phones, submitted by the wireless companies to the Public Service Commission, and then that money was used to disburse...or for reimbursed costs on public safety access points. We're going to be talking about PSAPs a lot. That's public safety access points, and that's the point where the 911 calls go into a central hub or the phone is answered and then, of course, the various agencies are dispatched to respond to the 911 issue. Technology is moving forward. This bill is dealing with wireless issues, for the most part. It's trying to catch up some of the counties. There are seven counties that were not up to what we considered a minimum threshold, meaning enhanced 911. We have handed out a map. Those colors...those counties in blue are basic 911, which means that they have a 911 calling system but they do not have the counties mapped or signed, and that is what we're directing part of this bill towards as far as the wire line, the landline part of this, is to get those seven counties. And I believe that nearly all of them are rapidly now pursuing this, knowing full well that they need to get up to a minimum standard. That is addressed in the bill. Is this the last you're going to hear of this? I'd suggest to the body that's going to be back next year, you'll probably come...be hearing again from Public Service Commission and wireless carriers. We have the issues of voice over Internet. We have an issue in the bill dealing with prepaid cell phones. There are companies selling prepaid cell phones. They're becoming ever more popular in the state. Parents are buying them for their children. And we have a provision in the bill that we really haven't solved. We've extended a deadline to try and get

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the prepaid phone cards, cell phones into the mix here, but that...we will discuss that in an amendment. So you're not...this isn't going to be the cure-all or the end of the issue. Those of you coming back after this session will no doubt be dealing with prepaid phone...cell phones, also with voice over Internet and issues like that. I will go into the...actually, the bill...the committee amendment is now the bill. I'm going to run this together and begin talking about the committee amendment, which is AM2238. Perhaps I should go ahead and stop here, I guess, Senator Cudaback, and then the committee bill...or committee amendment does become the bill. Thank you, Senator.

SENATOR CUDABACK: Thank you. There are committee amendments, as stated. As Chairman of committee, Senator Baker, you're recognized to open on AM2238.

SENATOR BAKER: Thank you, Senator Cudaback. I'll continue on. We had hearings across the state last year dealing with this issue. We had a hearing in Scottsbluff-Gering last fall, very good hearing, well attended, got a perspective of what they're doing out there. And I will certainly commend the Scottsbluff-Gering area. They have a model 911 service center PSAP out there that serves not only Scottsbluff-Gering and the surrounding towns, but the county, and then they also have served Banner County and a big chunk of Daves County to the north. I understand they're working with Morrill County to maybe expand their service area. But we had hearings out at Scottsbluff and we had a hearing here in Lincoln dealing with this; had a lot of good input, ideas and so on. Hence, the bill was drafted. As I said, the committee amendment is now the bill. I'm going to briefly go over this. I know we're under time constraints here. We're not probably going to get through the whole bill, but I'll begin with going through, hit the high spots of the committee amendment which, as I said, is the committee bill. Section 3, here we're dealing with the PSAPs and, granted, there may be some controversy on this. We'll discuss this as we go, but no county shall have more than one primary PSAP within its boundaries. PSAPs failing to meet this requirement by July 1, 2007, we've extended this two years. There was some concern about counties not being able to make it

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July 1, 2007. That will be addressed and extended two years by AM2745 later. But if they don't meet these requirements, as amended in AM2745, they shall not be eligible for cost reimbursement from the state. We want to get a minimum level of PSAPs out there. That's what that section does. Section 5 says that each county shall implement enhanced-911 service by July 1, 2008. Now this, this is addressing those seven counties that do not currently have enhanced. They have basic 911, but they aren't mapped and they aren't signed, or a combination of those. And when I say they're not signed and mapped, that means when the call comes into the PSAP it should flash up there an address on there, and it should have the new address based upon longitude and latitude, Road 719, and so on, et cetera. So, those seven counties that are not up to that have until July 1, 2008. And those, you can refer to this map, if you would like, that we handed out just now. The color code is explained there on the bottom left part of the map. You can see those seven counties that are not up. They just have basic 911, not enhanced, are, for the most part, I have two of them in my district. The rest of them are in basically Sandhills region counties. Section 5 addresses that; says we expect you to get up to a minimum standard basic enhanced 911 by July 1, 2008. Dropping down to Section 8, it provides for the 911 surcharge fund shall be subject to audit. In doing our research and having our hearings, we found that counties were collecting this fund, and we didn't...they didn't have a separate account. I don't know what some of the counties were using them for. We had some very candid comments from county treasurers saying, well, it went here, or we weren't collecting it, or it was going to another county because phone company service areas were overlapping counties. We provide some accountability in Section 8. They shall be subject to audit. Section 9 establishes the names, addresses, telephone numbers provided to a 911 service. They are personal information and they may be used only for legitimate public purposes. Any person knowingly who permits disclosure of such information shall be guilty of a Class I misdemeanor. Privacy is going to be more and more of an issue as we go on with this because there isn't going to be a lot of information available to 911 call centers. Section 10 requires each governing body to include the surcharge receipts collected and disbursed for the current fiscal year in its

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annual budget report. These counties have not been doing...some of them have not been doing this, I should say. They must be accounted for. And, as I said, the telecommunications company collects these fees. They're set by the county, but collected by the telecom and submitted to the counties, I believe it's once every 90 days, quarterly. Section 11 establishes the landline surcharge shall be assessed at up to \$1. There are some counties that aren't assessing...or simply don't have the surcharge in place. It gets them up to speed. Section 12 provides that a service supplier must report the number of customers and the amount of service charges collected. That way we have a check there also on the telecoms. Dropping down to Section 18, I briefly mentioned this when we were trying to frame the issue. It defines a prepaid customer, and this is going to be more and more of an issue with an amendment that will follow. We have extended a deadline in order to get the prepaid customers submitting the surcharge, but we define a prepaid customer and eventually are going to have to address these prepaid wireless customers so that we have them also contributing to the fund. Section 20 of the amendment provides that the reseller must collect the surcharge and remit it. As I said, there's an amendment following that does a couple of things with this surcharge on the cell phones. The committee amendment says it shall be \$1...or 70 cents, I'm sorry, 70 cents across the state. It gets, AM2745, which will follow, reduces to 50 cents in the metropolitan city, or county, meaning Douglas County, which is the way it is with the landlines now; that they currently are capped at 50 cents. That amendment will be to the committee amendments and follows on your gadget there. Dropping down to Section 24, I know I'm skipping some sections, but in the interest of time we're going to have to for now. Section 24 states that a wireless carrier for eligible cost compensation may be limited based upon the mechanism established by the commission. Quite frankly, I forgot to mention in my opening that this bill was actually...a similar bill was introduced last year. The commission came to the Telecommunications Committee wanting a dollar and a half cent (sic) surcharge, and we simply balked at that; ssid we didn't have the information we needed to justify a dollar and a half cent...or \$1.50 surcharge per cell phone per month. Had the interim hearings and we arrived, with a lot of committee discussion, I should say, at 70 cents. It's

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not going to cover all the costs. Seventy cents on the... surcharge on the wireless, the cell phones, plus lowering it to fifty cents in metropolitan cities, being in Omaha, is not going to cover all the costs, so we have to provide for some flexibility to the Public Service Commission to sort of pick and choose. Section 25 provides immunity to the PSC. This also...there's included in AM2745, Section 25, I believe it is, is stricken, so that we have the same immunity statutes as we do currently under landline communications. With that, Senator, Mr. President, I believe there is going to be discussion here. I do have some other comments, I guess. I know that it's been difficult for some of the counties to get moving on this. I said we have seven counties that are not up to enhanced 911 after all these years. We have some issues with accountability, where the funding is actually...where the funds that are collected are actually going. The committee amendment does have the consolidation language. It's not forced consolidation. I might point out to those senators not familiar with the bill and those in the rural areas, you don't have to consolidate. It says, two contiguous counties or 5,000 people within the PSAP area; it doesn't say you have to consolidate these counties, but if you don't, you're not going to be eligible for cost reimbursement. I feel that's very important because we have, I believe, 82 PSAPs now across the state. Quite frankly, we can't afford to fund 82 PSAPs; there's no way. And there are many, many counties already merged, combined out there. There's, in fact, I wouldn't say a majority, but there's a lot of counties. As I mentioned, Scottsbluff-Gering PSAP is through Scotts Bluff County, Banner County, and a big part of Dawes County. Region 26 serves, I think, eight counties. The southern part of the Sandhills is all one PSAP. It goes on and on. There are other examples of interlocal agreements. So, to allay those fears you have about forced consolidation, you don't have to consolidate, but you're not going to be eligible for cost reimbursement from the Public Service Commission through this surcharge fund. It does increase the surcharge from 70 cents...Senator Engel has been through these issues. Senator Bromm, I believe, is the one that at that time was chairing the committee. We have to raise them 70 cents...to 70 cents, it seems like is the minimum, with the exception of metropolitan Omaha.

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SENATOR CUDABACK: One minute.

SENATOR BAKER: The bill also, of course, says that we remove that language that says, they shall reimburse costs, and gives the Public Service Commission discretion, and submits...or changes the word "shall" to "may." Those are very important parts of the bill. With that, Senator Cudaback, thank you. I'd be glad to answer any questions. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. You've heard the opening on the committee amendments. There are amendments to the committee amendments. Mr. Clerk, please.

ASSISTANT CLERK: Mr. President, the first amendment to the committee amendments is AM2734 from Senator Baker. Senator, I understand you wish to withdraw this?

SENATOR CUDABACK: It is withdrawn.

ASSISTANT CLERK: Senator Baker would offer AM2745. (Legislative Journal page 1067.)

SENATOR CUDABACK: Senator Baker, to open.

SENATOR BAKER: Thank you, Mr. President, members. As I said, AM2745, strike Section 25 which changed some liability issues dealing with wireless. It simply strikes the section so we're using existing statutes dealing with immunity, same as what we have in wire line. The rest of the amendment is clarification, for the most part. I shouldn't say that. The lines 3 through 6 clarifications, when we have a cell phone user out there, and it simply says that there must be a positive balance greater than or equal to the surcharge. We don't want a 70-cent surcharge put on a prepaid cell phone when it has a balance of 25 cents out there. So that clarifies that. And then sections...or lines 7 through 12 are directed toward the uniformity of 50 cents for a customer in a county containing a city of the metropolitan class. This provides continuity with what we're doing with landlines. As I said, metropolitan class city, which, of course, is Omaha, is at 50 cents surcharge maximum on

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landlines. The amendment says that wireless cell phones, in this case, will also be at a maximum of 50 cents. Be glad to answer any questions about AM2745.

SENATOR CUDABACK: You've heard the opening on AM2745. There are a number of lights on. Senator Smith, you're first, followed by Senator Erdman and six others.

SENATOR SMITH: Thank you, Mr. President and members. I rise in opposition to LB 1222. You might want to take a look at the committee statement. It is somewhat telling, but I have a concern on how we are continuing to ratchet up the fees on cell phones when the fees are already quite high, actually, Alltel Communications. And in light of the issues here in the Legislature with a, quote, unquote, surplus of revenue in the General Fund and there's tax relief and there's other spending issues that have come up, I find it particularly unnecessary to raise fees on a service that is already highly taxed, emphasis highly taxed. And when we look at the evolution of telecommunications over the last hundred years, actually, it becomes even more interesting, because what started out as a luxury tax on telecommunications over a hundred years ago, it's still with us even though a telephone line is no longer considered a luxury. What originally started out with a perception, I guess, of cell phones being a luxury, it's quite different now that cell phones are oftentimes the sole means of communication for an individual. They've gotten rid of their landline perhaps. And I know that there are demands for public safety and other things relating to telecommunications, and I want to be sensitive to that, but I have concerns about raising the fee amidst other budgetary issues that we are facing here in the Legislature or enjoying, if you will, given the surplus. So, again, I rise in opposition to this. I think that if we expect to force consolidation at the local level, we should at least provide a transition period that doesn't seem to exist in there right now. And I also must point out that a lot of these consolidations have started already or are underway, are currently underway. And we aren't quite ready for this bill. Would Senator Baker yield to a question?

SENATOR CUDABACK: Senator Baker, would you yield?

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SENATOR BAKER: Yes, I would.

SENATOR SMITH: Senator Baker, I do want to thank you for your work on this bill. I know that your objectives are pure; just that we might disagree on a few items. Now, is it conceivable that a county that falls under the 5,000 category would be mandated to collect the tax but would not be getting anything back unless they would consolidate?

SENATOR BAKER: That's the way it would work.

SENATOR SMITH: And also, the fact that some PSAPs that are already a conglomerate, if you will, they would basically be levying the tax, the fee, and they wouldn't qualify for some of the funds because they've already accomplished what we're setting out to do?

SENATOR BAKER: That's correct. Let me add a bit there, that they have been accessing the dollar per landline surcharge, which is what they, in most cases, I think, use to get their current PSAP up and going.

SENATOR SMITH: Okay. Thank you, Senator Baker.

SENATOR CUDABACK: Thank you, Senator. Are you through, Senator?

SENATOR SMITH: No. No, Mr. President.

SENATOR CUDABACK: You may continue.

SENATOR SMITH: Thank you. (Laugh) Senator Baker would like me to be through, but I'm not. (Laugh) Again, I would encourage the body to take a look at the map and it should come as no surprise that there are already consolidations...

SENATOR CUDABACK: One minute, Senator.

SENATOR SMITH: Thank you. There are already consolidations taking place. And I speak as a resident of a consolidated PSAP

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that I think works well, and so a lot of the concern was brought to me by folks at home who are on the front lines of this, and they just say that it's not necessary, the timing is wrong, and so I tried to speculate, if you will, on why they would have that position, and I truly believe it's an authentic one that comes from the experts in the field. And certainly when you look at all the issues, and especially raising the fee on an already overly taxed service, I just don't see where that is wise, fair, or the right thing to do at this point. Thank you, Mr. President.

SENATOR CUDABACK: Time, Senator. Thank you, Senator Smith, on the discussion. Senator Erdman. Senator Erdman, sorry, you dropped your light. Senator Brown.

SENATOR BROWN: Mr. President, members, there are pieces of this that are absolutely critical to do and if Senator Smith is unwilling to raise the fee...and I understand. When Senator Baker said that the Public Service Commission came in last year and asked for \$1.50 and (laugh) the reason that they probably changed it is because we asked far too many questions. One of the questions was why was it going to cost more money to do this in Nebraska than it cost to do it in Texas, at least for most of the state of Texas where you're talking about a lot more people and a lot more land mass? And there wasn't a good answer so now it's down to 70 cents. But if we're not willing to do any adjustment to that amount, then we better make sure that we get the terminology out of the existing language which says, the state shall pay for enhanced 911 after the counties that have gotten to the level of the phase two level of 911. And the other thing that you have to realize is that the E-911...I mean, and Senator Baker said this, but I'm going to reiterate it. The 911 money stayed with the counties so they have a vested interest in the little fiefdom that has been created for that 911 landline money. This E-911 money is going to go from everybody to the state, and then the state is going to determine, if the language gets changed from "shall" to "may," who gets it, when they get it, whether there's justification for them getting it. As to the piece about the PSAPs and the consolidation of PSAPs, it is not just that we're arbitrarily saying, as almost every county official, a PSAP official, that

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testified, we're doing a really good job in our county. Well, that's fine. You're doing a really good job in your county with the money, the 911 money that you get for...that stays in the county for landlines that are located in the county. This is supposed to be about a system, a statewide system, that not everybody has been willing to stand up to what they need to provide to participate in this system. And it is about the kind of technology that is mobile, that it isn't located necessarily in that county. And what I worry most about, it's not just about efficiency and whether we can afford to keep these. What I worry most about is this ownership piece that the PSAPs have of their county. What is going to happen in those nonconsolidated areas if there's a multicounty emergency? Who is going to be in control? Who is going to negotiate the traffic of communication that is going to go on?

SENATOR CUDABACK: One minute.

SENATOR BROWN: We expect the PSAPs to be the ones that manage an emergency situation. Well, we can't guarantee that that emergency situation is going to be in Platte County and stay just in Platte County and not go over into the surrounding counties. And if there is no coordination, and if there's such territoriality about them only providing services for their county, this is about a technology that is not about a county; it is about moving from one place to the next and being able to communicate and being able to track where those people are. It's all kinds of issues, and I think that we are jeopardizing people's safety by not requiring protocols and forcing people to...

SENATOR CUDABACK: Time, Senator Brown.

SENATOR BROWN: ...to divest themselves of their territoriality. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Senator Preister, you're recognized for a point of personal privilege.

SENATOR PREISTER: Thank you, Honorable President, friends all. And I say that with meaning and with deep respect because I do

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consider all of you friends, and when I say it, know that there is meaning and feeling behind it. And last night and this morning, in particular, I've just really felt honored to be a state senator and to serve with all of you, some of whom will be leaving after just the rest of this year. But know that I feel a deep sense of honor. I appreciate the contributions that all of you make and I missed all but, I think, one of your birthdays so I'll say, happy birthday to all of you. And I also want to say to the staff that we have very good staff, both our own personal staff as well as all of the staff who serve us through the Clerk's Office and through all of the various departments. And I want to say a hearty thank you to all of them and my deep appreciation to them. Also, happy birthday to all of them which I missed because I don't know when it is. This Sunday we have another birthday that's coming up that I do know about. This Sunday Sally Gordon will be 97 years young, and Sally has been a redcoat serving us and helping to keep us in line. I think she does it with style and grace, and I think 97 years on this earth and almost that many years putting up with the Legislature, she certainly deserves a little bit of a happy birthday, Sally Gordon. Thank you. (Applause)

SENATOR CUDABACK: Happy birthday, Sally. Mr. Clerk, item for the record.

CLERK: An amendment by Senator Mines to be printed to LB 856A. Senator Synowiecki offers LR 345, calling for an interim study; will be referred to the Executive Board. Senator Mines would like to add his name to LB 746; Senator Erdman to LB 965. (Legislative Journal pages 1179-1180.)

Priority motion, Mr. President: Senator Thompson would move to adjourn until Monday, March 27, at 10:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn till March 27, 10:00 a.m. All in favor of the motion say aye. Opposed, nay. We are adjourned. Members, have a nice weekend.

Proofed by: JAH

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March 27, 2006 LB 188, 690, 690A, 786, 808, 872A, 915, 968A
968, 990, 1086, 1086A, 1208, 1208A
LR 346

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain this morning is Pastor Merle Powell, from Auburn Christian Church, Auburn, Nebraska, Senator Heidemann's district, District 1. Pastor, please.

PASTOR POWELL: (Prayer offered.)

SENATOR CUDABACK: We thank you, Pastor Powell, for being with us this morning. Thanks for coming. I call the forty-ninth 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. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Messages, reports, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 968, LB 808, LB 786, LB 915, LB 990, and LB 872A to Select File, some of which have Enrollment and Review amendments attached. Enrollment and Review also reports LB 188, LB 690, LB 690A, LB 1086, LB 1086A, LB 1208, and LB 1208A as correctly engrossed. And Mr. President, new resolution, LR 346, by Senator Kruse. That will be laid over. And that's all that I have at this time. (Legislative Journal pages 1183-1188.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) We now go to first agenda item, General File, appropriations bill, LB 968A. Mr. Clerk.

CLERK: Mr. President, LB 968A, by Senator Redfield. (Read title.)

SENATOR CUDABACK: Senator Redfield, to open.

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SENATOR REDFIELD: Thank you, Mr. President, members of the body. LB 968A is the A bill that follows along with the tax cut that we approved last week through General Funds. Section 1 appropriates \$112,546 from the General Fund for fiscal year 2006 and '07, and \$138,638 from the General Fund for fiscal years 2007-08, for the Department of Revenue, Program 102, which is the general administrative costs of the Revenue Department. Out of that, the total expenditures for permanent and temporary salaries and per diems shall not exceed \$49,522 for '06-07, or \$102,014 for '07 and '08. In Section 2, there is appropriated \$33,150 from the Department of Revenue Contractor Enforcement Fund for 2006 and '07. That also goes to Program 102. In Section 3, there is an appropriation to cover the homestead exemption portion of LB 968. We appropriate \$6,894,000 from the General Fund for '07-08 for Program 108. Section 4, the State Treasurer is asked to transfer \$5 million from the General Fund to the Ethanol Production Incentive Cash Fund on or before June 20...June 30, excuse me, of 2006, and again \$5 million from the General Fund to the Ethanol Production Incentive Cash Fund on or before June 30 of 2007. This would cover the contribution to the EPIC Fund which was amended into the bill with the committee amendment. In Section 5, we appropriate \$12.5 million from the General Fund for fiscal years 2007-08 to the State Department of Education for Program 158. And again in fiscal years 2007-08, we retransfer that money from the General Fund to the TEEOSA fund, so that in fact we can offset state aid that would be lost...excuse me, property taxes that would be lost by the change of valuation for ag land from 80 percent to 75 percent. Section 6 is the E clause, because in fact we have included that in the bill, and an emergency would exist, and therefore be included in the A bill. I ask for your advancement of the A bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. You've heard the opening on the A bill to LB 968. Open for discussion. Senator Kremer.

SENATOR KREMER: Thank you, Mr. President, members of the body. Senator Redfield, I'd like to ask you a question, please.

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SENATOR CUDABACK: Senator Redfield, would you yield?

SENATOR REDFIELD: Certainly.

SENATOR KREMER: I had a question. I think it was \$12 million to the TEEOSA fund, or, what was it, 11...how much was the dollars?

SENATOR REDFIELD: There's \$12.5 million...

SENATOR KREMER: \$12.5 million?

SENATOR REDFIELD: ...for one year.

SENATOR KREMER: Was that under the assumption that the valuation would not increase at all in the next few years, or the next year, or the next year?

SENATOR REDFIELD: That was an assumption, that that 5 percent difference in valuation would cost approximately \$12.5 million.

SENATOR KREMER: Correct, the 80 to 75. But if valuations go up...like, this year, we did not utilize about \$18 million that we anticipated, because the valuations of homes and everything went up. Are you assuming by the \$12 million that the rest of the valuations would not change in the next year?

SENATOR REDFIELD: Valuations do increase from year to year on all property, and TEEOSA aid is then adjusted to reflect that. And that would not take place until we recertify aid in the following year. So this would be correct for at this point.

SENATOR KREMER: Okay, so it's assuming that the valuations would stay the same on that. But I think there's a pretty good anticipation that the valuations are going to go up a lot, so I would almost guess that this is going to be offset even...you know, this \$12 million, down the road, that will be offset by increase in valuations. So, thank you, Senator Redfield.

SENATOR CUDABACK: Thank you, Senator Kremer. Senator Redfield, seeing no senators wishing to speak, you're recognized to close

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 LR 311

on the advancement. Senator Redfield waives closing. The question before the body is, shall LB 968A advance to E & R Initial? All in favor of the motion vote aye; opposed, nay. We're voting on the advancement of the Redfield LB 968A. Have you all voted on the issue who care to? Please record, Mr. Clerk. I did.

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB 968A.

SENATOR CUDABACK: LB 968A advances. Excuse me, Mr. Clerk. (Visitors introduced.)

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following legislative resolution: LR 311. Thank you.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: We now go to the next agenda item. Final Reading, motions to return to Select File for a specific amendment. Mr. Clerk, LB 876E.

CLERK: Mr. President, LB 876. First of all, Senator Mines, I had AM2287. I understand you want to withdraw that?

SENATOR MINES: I do, Mr. Clerk.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, Senator Mines would move to return LB 876 to Select for a specific amendment, AM2736. (Legislative Journal page 1064.)

SENATOR CUDABACK: Senator Mines, you're recognized to open on your motion to return.

SENATOR MINES: Thank you, Mr. President, colleagues. I'm going

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to take a few minutes to explain what we're doing with AM2736. There are essentially six things that this amendment contains. First of all is a correction, a technical correction, drafting error, if you might. And then the second part, we've got five bills that were in the Banking Committee and advanced, and we are asking your indulgence to amend these into LB 876. Let's talk about the correction first. Among other things, the recommendation of the Banking...Department of Banking and Finance is one intended to provide that revocation, suspension, cancellation, or expiration of a sale of checks and funds transmission license shall not affect liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, et cetera. Unfortunately, the green copy, and which is now the Final Reading copy, the word "surrender" appears where the words "revocation, suspension, cancellation, and expiration" should have appeared. If you're interested, these amendments can be found on page 23, line 8 of the Final Reading copy. And we are asking for that change. It just slipped by everyone, including Senator Flood's committee. Number two, again, we've got five bills that we'll be talking about. Bill...the first bill, LB 1259, was introduced by Senator Brashear. It provides a transactional exemption under Securities Act of Nebraska for the offering of certain securities by qualified charitable organizations to other qualified charitable organizations. Section 20 of the amendment relates to the Securities Act of Nebraska, which is under the jurisdiction of the Department of Banking and Finance. This section embodies the intent of LB 1259, and it was advanced by the Banking Committee to General File. LB 1259 in its original form would have amended Sections 8-1122.01 of the Securities Act of Nebraska, and it would have completely repealed Nebraska's opt-out of the Philanthropy Protection Act, which was enacted in 1995, and thus permit charitable organizations to issue certain types of securities without registration of the sellers, either firms or individuals, under the Securities Act. The department opposes...excuse me, opposed that bill because they believed the repeal of the opt-out would have broader effect and would remove its ability to regulate sales of these securities to individuals. Senator Brashear was sensitive to their concerns, and Section 20 is a result of the discussions between the senator and the department. Section 20 would amend

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Sections 8-1111 to provide a new transactional exemption under the Securities Act. A transitional exemption exempts all elements of a securities transaction from the registration provisions of the act, including registration of the securities, registration as a broker-dealer or issuer-dealer for the issuer of securities or a separate firm which may be handling the sale, and registration as agents for the individuals making offers of sale. The antifraud provisions of the act would apply to the transactional exemption, so that full disclosure of all materials, provisions relating to the securities offered is required. Section 20 provides a transactional exemption for the offering of certain securities by qualified charitable organizations to other charitable organizations. Securities generally consist of pooled funds. LB...or, excuse me, Section 20 sets conditions on these offerings to protect the first purchasers, including, no public solicitation and the point of post first sale notice by the department. Section 20 also specifies who can sell these securities, and prohibits any additional compensation to the individual sellers for making such sales. And Senator Brashear will address many of the additional questions you might have relating to AM2736. Number two, the second bill, was introduced by my. Changes...it changed provisions relating to installment sales and loans. Section 25 and 26 and Sections 48 and 50 of the amendments would amend Section 45-335, 45-336 of the Nebraska Installment Sales Act, and Sections 45-1002 and 45-1024 of the Nebraska Installment Act. And it provides that buyers or borrowers in connection with installment sales or installment loans may purchase debt cancellation contracts or debt suspension contracts. The amendment would do two things: first, that a contract shall be a contract of a financial institution; and second, that such contract shall be sold either directly by the financial institution, or by an affiliated, nonexclusive agent of the financial institution, in accordance with the internally referenced federal regulations. The amendments would require that the financial institution shall be responsible for unaffiliated, nonexclusive agent compliance with federal regulations. The amendments would also provide that a debt cancellation or a debt suspension contract is defined as a loan term or contractual arrangement modifying loan terms, under which a financial institution agrees to cancel or suspend all or

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part of the obligation to repay upon the occurrence of a special event. I think, bottom line in this bill, currently, nationally chartered banks can sell these contracts pursuant to federal law, and this amendment would allow state...in state statute, that state-chartered banks can sell these contracts, as well as nationally chartered banks. And, if you will, it's a belt and suspenders piece of legislation. Third bill, LB 1193, introduced by Senator Landis. It changes provisions of the Delayed Deposit Services Licensing Act. Section 36 to 47 of these amendments would amend various provisions of the Delayed Deposit Licensing Act. LB 1193 that was introduced by Senator Landis was done so at the request of the Nebraska Department of Banking and Finance. The primary purpose of the bill is to update laws regulating these entities, and to provide for additional consumer protections. This part of the amendment proposes to update the act by creating a short form procedure for license applications made by persons who have a satisfactory record as a delayed deposit services licensee. This part of the amendments would lengthen the time a licensee has before requiring deposit of a maker's check from 31 days to 34 days. And that's to accommodate three-day holiday weekends. It also would provide a licensee may not renew, roll over, defer in any way, or extend that length of time. Completion of a delayed deposit transaction would be defined, and sanctions for licensees who submit...who permit customers to inappropriate rollover checks are laid out. And there are three other elements to the amendment that protect consumers. First, the director may require an additional surety bond, not to exceed \$100,000, if the original bond is exhausted or inadequate. Number two, the licensee may inform the director of the personnel who are terminated because of the violations or suspected violations of the act. And third, the director may revoke the license of any licensee who knowingly falsifies records. Part of the amendments would also permit off-site storage of older records. And Senator Landis will be able to address many of your questions regarding that bill. The fourth bill is mine. It was introduced by me. It changes requirements relating to the Nebraska Installment Loan Act. If you look in Section 51 of the amendments, it would amend 45-1026 of the Nebraska Installment Loan Act to provide that motor club services as defined in Section 44-3707 of the Motor Club

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Services Act may be provided by an installment loan licensee for the benefit of a borrower or the borrower's immediate family. The amendments would provide that the motor club service contract may be collected from the borrower or financed through the loan contract...

SENATOR CUDABACK: One minute.

SENATOR MINES: ...at the time the loan is made. The amendments would provide the motor club services shall be obtained through a motor club which holds a certificate of authority from the Director of Insurance under the Motor Club Services Act. And finally, the fifth bill changes the Nebraska Trust Deeds Act relating to the sale of property. If you look in Sections 52 to 55 of the amendments, it would amend Section 76-1006, 76-1008, 76-1012 of the Nebraska Trust Deeds Act, to provide that various duties of a trustee or beneficiary regarding a trustee sale of trust, property upon default by the trustee may be fulfilled by the attorney for the trustee or attorney for the beneficiary, including filing of a notice of default, providing notice of sale, and giving notice of the time and place of that sale. That concludes my comments, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening on the motion to return to Select File for a specific amendment. Further discussion? Senator Mines, there are no lights on. Do you wish to close?

SENATOR MINES: Thank you, Mr. President. I would urge advancement of AM2736.

SENATOR CUDABACK: Thank you, Senator Mines. The question before the body is, shall LB 876 be returned to Select File for a specific amendment? All in favor vote aye; opposed, nay. We're voting on the motion to return. Please record, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to return the bill.

SENATOR CUDABACK: The motion was successful. Mr. Clerk, please.

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CLERK: Mr. President, Senator Mines would offer AM2736.

SENATOR CUDABACK: Senator Mines, to open on AM2736.

SENATOR MINES: AM2736 is...replaces the bill. And I think we just went through all the details, and I won't belabor the point, and I would urge your adoption of the amendment.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening on AM2736. Open for discussion. Senator Mines, there are no lights on. Senator Mines waives closing. The question before the body is, shall AM2736 be adopted to LB 876E? All in favor vote aye; opposed, nay. The question before the body is the Mines amendment, AM2736 to LB 876E. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment.

SENATOR CUDABACK: The motion was successful. The amendment has been adopted. Senator...would you like to make a motion, Senator Mines?

SENATOR MINES: I would. I'd move that LB 876E be advanced to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 876E to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced.

CLERK: Mr. President, Senator Chambers would move to return LB 876 to Select File for a specific amendment. (FA636, Legislative Journal page 1189.)

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

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, in the "Bibble," there's a verse that says something like, Pilate's wife told her husband, have thou nothing to do with this just man, for I have suffered much

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because of him in a dream. Senator Mines is aware that this issue that I'm raising has troubled me and disturbed my mind greatly. It is the way that the term "banker's bank" is spelled in the statute. There is an apostrophe in the word "banker's." My amendment would return the bill and strike that apostrophe as it appears in the definition of "banker's bank," and it would then be picked up by Bill Drafting wherever else it would appear. So on page 25, in line 19, you have the word "b-a-n-k-e-r-'-s." My amendment would strike that word and show as stricken, and insert "b-a-n-k-e-r-s" without an apostrophe. Senator Mines listened to the discussion, and, being a child of the modern age and not old-school as I am, he went to the Internet, and he found every conceivable way of this word being spelled. He found "bankers bank" written as I'm intending to do it here, without an apostrophe; he found "banker's bank" with an "'-s"; then "bankers' bank" with an "s-'"; then, in one listing, the Independent Bankers Bank, which has no apostrophe, also refers to "bankers' bank" with an "s-' " and "banker's bank" with an "'-s." To show you that what I'm offering is nothing revolutionary, even in Nebraska, there is a handout that was placed on your desk, and it refers to Citizens National Bank. The word "Citizens" has no apostrophe either before the "s" or following the "s." So I am offering this amendment, with which Senator Mines agrees. And I will say this before I take my seat. One member, and maybe more, actually read the handout. And if the handout is not read, every word, there is something missing which you will miss. But that's all that I would have. This motion is to return the bill to Select File for the specific amendment that I just discussed. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the motion to return. Open for discussion. Senator Mines.

SENATOR MINES: Thank you, Mr. President, colleagues. Just to confirm what Senator Chambers has talked about, even in the lobby there's a sense of apathy about whether or not this should be a singular or a plural possessive or a possessive at all. So I would support the amendment to make it not possessive, and urge your support of AM636. Thank you.

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SENATOR CUDABACK: Thank you, Senator Mines. Further discussion? Seeing none, Senator Chambers, did you wish to...waives closing. The question before the body is, shall LB 876E be returned to Select File for a specific amendment? All in favor vote aye; opposed, nay. We're voting on the motion to return. Please record, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to return the bill.

SENATOR CUDABACK: The motion was successful. Mr. Clerk, please.

CLERK: Senator Chambers would move to amend with FA636.

SENATOR CUDABACK: Senator Chambers, to open on FA636.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I move that the amendment, as having been discussed and agreed to by Senator Mines, be adopted. Thank you.

SENATOR CUDABACK: Thank you. Any discussion? Senator Chambers, there are no lights on. Senator Chambers waives closing. The question before the body is, shall FA636 be adopted? All in favor vote aye; opposed, nay. We're voting on adoption of the Chambers amendment, FA636 to LB 876. Please record, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment.

SENATOR CUDABACK: FA636 has been adopted. Senator Chambers, would you like to make a motion, please?

SENATOR CHAMBERS: Yes. I move that LB 876E be advanced to E & R for reengrossing.

SENATOR CUDABACK: You've heard the motion by Senator Chambers. All in favor say aye. Opposed, nay. It is readvanced. We now go to LB 75. Mr. Clerk.

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CLERK: Mr. President, LB 75. Senator Beutler would move to return the bill for a specific amendment, AM2762. (Legislative Journal page 1070.)

SENATOR CUDABACK: Senator Beutler, you're recognized to open.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, just to refresh your memory, this is the bill that allows political subdivisions, with respect to public endowed funds, to invest in a broader portfolio, so as to get a greater rate of return on their investment. And you may recall that on Select File, Senator Chambers strongly recommended that I eliminate cities of the metropolitan class from that...from the political subdivisions that would be allowed to do this. And since then, Senator Chambers and I have been able to work some things out, and I think he's agreeable to bringing it back and allowing this to happen. And I would yield to Senator Chambers any additional time he may need of my time to speak on this.

SENATOR CUDABACK: Senator Chambers, you have about nine minutes.

SENATOR CHAMBERS: Thank you. And Mr. President, I will not need all of that time. And thank you, Senator Beutler. When this bill was on Select File, I had obtained the adoption of an amendment which would remove Omaha from this bank...from this bill. And I had agreed...I had talked to Senator Beutler about not giving up and either saying he would get all of the bill on Select or it would die on Select. We had a brief preliminary discussion then. He agreed to accept my amendment striking Omaha from the bill, allowed it to move to Final Reading with my amendment which had stricken Omaha. In the meantime, in addition to talking to Senator Beutler, I had a number of conversations with Senator Brown. And although on some matters she cannot persuade me, on this one, she had some very persuasive information that she shared with me. So Senator Beutler is correct in representing that my position is that we should bring this bill back, adopt his amendment, which would put Omaha back into the bill, and by so doing, the peace and serenity that Senator Mines had brought to my mind by accepting

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my "bankers bank" amendment will be replaced by heartburn and headache by being forced to put Omaha back into this bill and do something which may benefit that city, that unworthy city. But nevertheless, an agreement is an agreement, so I'm going to support bringing the bill back, adopting Senator Beutler's amendment, then I will say aye when time comes to readvance the bill. And whatever time remains I give back to Senator Beutler.

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

SENATOR BEUTLER: Again, all this amendment would do would be to restore the ability of cities of the metropolitan class to benefit from the bill, so that then all cities, as well as other public...political subdivisions, would be included in the bill at such time as it goes before the people for a vote. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on the motion to return. Discussion? Senator Beutler, there are no lights on. Senator Beutler waives closing. The question before the body is, shall LB 75 be returned to Select File for specific amendment? All in favor vote aye; opposed, nay. The question before the body is the motion to return LB 75. Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to return.

SENATOR CUDABACK: The motion was successful. It has been returned. Mr. Clerk, please.

CLERK: Mr. President, Senator Beutler, AM2762.

SENATOR CUDABACK: Senator Beutler, to open on AM2762.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I would recommend this amendment to you. Subsequent to taking the city out of this bill, I was reminded on two or three occasions by the city that they wanted to be in this bill. And nine or ten of the Omaha senators fell off of the bill. I think they want the city included also. So I hope you will restore

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the bill, so that we all are on the same level on this matter.
Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Discussion, AM2762? Senator Beutler, there are no lights on. Senator Beutler waives closing. The question before the body is, shall AM2762 be adopted to LB 75? All in favor vote aye; opposed, nay. We're voting on adoption of the Beutler amendment, AM2762 to LB 75. Have you all voted who care to? Please record, Mr. Clerk.

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

SENATOR CUDABACK: AM2762 has been adopted. Senator Beutler, do you wish to make a motion, please?

SENATOR BEUTLER: I would move the bill be readvanced to E & R engrossing.

SENATOR CUDABACK: You've heard the motion to readvance LB 75 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. We now go to Select File, 2006 senator priority bills. Mr. Clerk, LB 968.

CLERK: Senator Flood, I have Enrollment and Review amendments first of all, Senator. (AM7192, Legislative Journal page 1183.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 968.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 968. All in favor of that motion say aye. Opposed, nay. They are adopted.

CLERK: Mr. President, Senator Brown, I now have AM2668.

SENATOR CUDABACK: Senator Brown.

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SENATOR BROWN: I would withdraw that amendment.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, Senator Landis would move to amend with AM2905. (Legislative Journal pages 1189-1190.)

SENATOR CUDABACK: Senator Landis, to open on AM2905.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. We adopted an amendment on General File with respect to housing authorities, and we allowed their labor and their materials to be bought without taxes. When they use a contractor, you've got to find a way to get the contractor to be able to buy those goods without the sales tax, so they can then build it for the housing authority. They need to have a purchasing agent in place. This has precedent in other areas of the statute. This amendment simply harmonizes and does what it was we intended to do on General File by allowing housing authorities the opportunity to hire labor and building materials as, essentially, a homeowner, and have them tax-free, along with the construction labor concept of LB 968. It is administrative in nature, it's existing precedent that we have elsewhere, and it simply creates, in administrative sensible terms, the idea that we passed on General File. I would ask for the adoption of AM2905.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on the Landis amendment. (Visitors introduced.) Discussion of the Landis amendment. Senator Landis, there are no lights on. Senator Landis waives closing. The question before the body is, shall AM2905 be adopted? All in favor vote aye; opposed, nay. The question before the body is the Landis amendment to LB 968. Please record, Mr. Clerk.

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

SENATOR CUDABACK: The Landis amendment has been adopted.

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

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SENATOR CUDABACK: Senator Flood, you're recognized for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 968 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 968 to E & R for engrossing. All in favor say aye. Opposed, nay. The ayes are getting a little weak there, but I heard you. Thank you. It is advanced. Mr. Clerk, Select File, 2006 committee second priority bills. LB 808.

CLERK: Senator Flood, I have Enrollment and Review amendments first of all. (AM7196, Legislative Journal page 1183.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 808.

SENATOR CUDABACK: The motion to adopt the E & R amendments to LB 808. All in favor say aye. Opposed, nay. They, too, are adopted.

CLERK: Senator Kopplin would move to amend. Senator, I have AM2834 in front of me. AM2834.

SENATOR CUDABACK: Senator Kopplin.

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. What this amendment will do is reinstate the language dealing with the greenbelt or special value recapture, which was removed by the adoption of the committee amendment, which incorporates Senator Raikes' LB 407 to LB 808 on General File, with one significant change. Current statute on recapture provides that when land no longer qualifies for special valuation, the assessor, in addition to charging the taxpayer...

SENATOR CUDABACK: Thank you, Senator Kopplin. Are you...gotcha.

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SENATOR KOPPLIN: My mistake. My apologies.

SENATOR CUDABACK: It is withdrawn.

CLERK: Senator, I'm sorry about that. Senator Kopplin, I now have AM2908, Senator. (Legislative Journal pages 1190-1192.)

SENATOR CUDABACK: Senator Kopplin, you're now recognized on AM2908.

SENATOR KOPPLIN: Okay. My apologies. Again, what this amendment will do is reinstate the language dealing with the greenbelt or special valuation recapture, which was removed by the adoption of the committee amendment. Current statute on recapture provides that when land no longer qualifies for special valuation, the assessor, in addition to charging the taxpayer the difference between special valuation and the recapture valuation, which is 80 percent of the actual valuation of land, shall also charge 6 percent interest. This amendment removes the language requiring the 6 percent interest, is also changed. There was some mention on General File that recapture was purely punitive. I don't agree with that. I believe the owner has received a substantial tax break on this land that could have been valued at a higher valuation, and the county is justified in receiving some compensation for subsidizing that lower value. However, it does seem a little punitive to charge interest on the amount owed. It is assumed that the taxpayer was paying the taxes required on the land while it was receiving special valuation, and the taxes weren't delinquent, so charging interest does seem a bit unfair. So with this amendment, the recapture amount would just be the difference between the special valuation and the recapture valuation, with no interest charged on the amount owed. This amendment also leaves intact the new definitions of agriculture and horticulture use, which were part of the committee amendment and the original bill, LB 407. It only reinstates the recapture language, minus the interest payment requirement. I believe the revenue from recapture is important to the county, school district, and other political subdivision receiving property tax revenue, and that the burden on the county assessor is not excessive. In looking

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through the transcript of the Revenue Committee hearing on LB 407, Senator Raikes' original bill to remove recapture, it appears that the only reasons given for removing the language were, one, recapture doesn't seem to collect that much revenue, and two, it's a bother to keep the double set of figures required to determine the correct amounts. Well, at least in Sarpy County, an average of \$780,000 per year between 2002 and 2004 seems like a substantial amount to me, and certainly to Sarpy County. Greenbelting is in and of itself a recognition of the pressure in some counties to convert to a higher use, either residential or commercial. The purpose of greenbelting was and is to try to keep land in agriculture use as long as possible, and to prevent land speculation. Senator Jerome Warner introduced the bill that created special valuation or greenbelting. He said that the individual after individual had found that, because of rising taxes, due to speculative values being attached to their properties, the taxes had reached a point that the income from the land resulted in no income to them. Senator Warner was worried about the pressure to sell agricultural land because of its potential for development. He said special valuation was, for all practical matter, a preferential tax treatment, and justified recapture by noting there is a point where this land use is changed. Local government, whether it is a municipality or a county, frequently incurs additional expense in that process. Senator Warner also said, when development takes place, then the community adjacent to the land usually incurs some additional expenses, whether it be roads, sewers, whatever, police force protection, and on and on. And at that time, the development may take place, and I think it's appropriate some additional money is collected at that time to help offset the cost of development to the community as a whole. Let's not forget where the bulk of the revenue from recapture goes--to the school districts. Our policy as a Legislature with the school aid formula is to strongly encourage school districts to maximize their resources. And what they don't have in resources, the state makes up in equalization. If we lose recapture, that is just more resources lost to the school district which we have to make up here. I ask your favorable consideration and adoption of AM2908. Thank you.

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SENATOR CUDABACK: Thank you, Senator Kopplin. You've heard the opening on AM2908. Open for discussion. Senator Kopplin, there are no lights on. Did you wish to close?

SENATOR KOPPLIN: Only to ask you to consider this. Recapture of taxes is not a huge burden on the developer who may have bought the agriculture land at all. It seems to be that Lancaster County may not be interested in this. But why do we want to punish all the counties simply because one county doe'n't wish to take part? The amount of money is important to the district and to school districts, to the counties, and such. And...Mr. Speaker, I'd like to withdraw this amendment, bracket it for a day. We are reaching an agreement, by the way, so...

SENATOR CUDABACK: Mr. Clerk.

SENATOR KOPPLIN: ...that's the reason for this action.

CLERK: Mr. President, Senator Brashear would ask unanimous consent to bracket LB 808 until Tuesday, March 28.

SENATOR CUDABACK: Seeing no objection, so ordered. And the amendment was withdrawn, for the record. We now go to the next agenda item, Select File, 2006 senator priority bills, the Wehrbein division. Mr. Clerk, LB 786.

CLERK: Mr. President, LB 786. I do have Enrollment and Review amendments first of all, Senator Flood. (AM7195, Legislative Journal page 1184.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 786.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 786. All in favor say aye. Thank you. Opposed, nay. They are adopted.

CLERK: Mr. President, the next amendment I have to the bill is by Senator Mines, AM2867. (Legislative Journal

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pages 1192-1197.)

SENATOR CUDABACK: Senator Mines, you're recognized to open on AM2867 to LB 786.

SENATOR MINES: Thank you, Mr. President, colleagues. You might remember LB 786. That is a recall bill, and we had some discussion about whether or not local officials...local elected officials should be recalled based on three provisions--malfeasance, misfeasance, and nonfeasance--as opposed to their current status, which is a reason or any reasons for recall. LB 786 amends...the amendment would change current recall law to limit the reasons...that we do have three specific reasons. Under current law, as I mentioned, an individual that chooses to recall a local elected official need not have a reason at all. Our language simply says that they must have a typewritten, concise statement of 60 words or less, and it does...and the reason or reasons for which recall is sought is the only standard by which that recall can be taken. I happen to believe that recall of an elected official must be based on something more substantial than simply disagreeing with an official's vote or decisions in office. AM2867 makes changes to the procedure. Here's what it does. If you'll remember, in our debate on General File, Senator Chambers had several amendments that were technical in nature and, quite frankly, made the bill better. This amendment has incorporated his floor amendments, and we agree on all those changes. The most significant change in this amendment, it would change the process by which an elected official can be...can file with the district court. Under this amendment, if you look at page 5, the procedure is changed to something more similar to the standard under a 12(b)(6) motion, which is essentially the Federal Rules of Civil Procedure motion for failure to state a claim upon which relief can be granted. Again, this was after long discussion and thought. And again, I'll credit Senator Chambers with the view. Under this provision, the court presumes the allegations in the statement are true, and they construe them in that light most favorable to the principal circulator or circulators, and without a hearing, without cost of any party, whether the allegations in the statement establish the existence, not whether the statements are true, but whether

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they establish the existence of malfeasance, misfeasance, or nonfeasance, as opposed to what we had before. It's a more simple process for the district court while they're carrying out the objectives of the bill. So with that, Mr. President, I will close and ask the body to advance AM2867. Thank you.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening. Open for discussion. Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I'm going to rise...I'm going to support this amendment, because I think it does bill...better bill drafting. I think there is an idea in here in this bill that's problematical, and that's to take your recall to the courts, to have the court rule in a hearing as to whether or not there is a sufficiency of allegations. It's not clear to me what the evidentiary standard here is or what's being proven. I suppose it...I think the argument is being made that the reason for the petition fits either the definition of misfeasance or malfeasance or nonfeasance, if it's true. That might be one standard. But the other standard might be, it fits those and it is true. And while I get the idea of alleging a reason, it is for the public to vote as to whether or not those reasons are sufficient. They're not for a court to rule on, in my estimation. I understand I'm a carking voice in the wilderness, but when you see a red vote on this bill, I want you to know why, and that is, recall is an electoral right; it is not a litigatory right in which you have courts determine these issues. If you want a court to get in there and do that, do an impeachment process, which has a high standard of evidence, which has a clear bill of attainder...I'm sorry, a clear bill of particulars, it has a, you know, an agenda, and it has defense and prosecutorial regularity. Recall is a no-holds-barred electoral democratic institution by which people who are unhappy petition and vote on whether their people stay in office. And by the way, as ugly and as unpleasant as it is, in the end, it rests with voters deciding whether or not they want to continue with leadership. And I can live with that. So I'm going to oppose LB 786, even as I vote for AM2867.

SENATOR CUDABACK: Thank you, Senator Landis. Further

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discussion? Senator Louden, followed by Senators Mines, Beutler, and Redfield. Senator Louden. Senator Louden, you're recognized.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I have a problem with this amendment, that I, too, wonder why we have to put it into the courts to decide on a recall election. Recalls are usually for county offices and city offices, and anything but state offices and on down. And when you put it into the court, then you're getting it into the judicial branch of the government, and I question whether that takes a lot of the authority from the citizens out of their hands, by going into the court. As I read this amendment, on page 5 there, there's not exactly a time frame or anything on how soon any decision has to be made. I think that would be important in there. A recall election, this could take a length of time before a judge decides to rule on it. It doesn't say he has to rule on it at the time. The question is, he's got...he can't decide whether they have to be...what is that they have to be concerned that they presume the allegations in this statement are true, and they'll act most favorably to the principal circulator. And I question what kind of language that would be, if that's something that would be cut and dried. At the present time, with our recall petitions, you have to have about 35 percent of the voters that voted in that last election in order to sign petitions in order to have a recall election to start with. First of all, that has to be taken care of. You have to have a petition voters. And this is part of our Nebraska law, is to have petitions, circulate petitions to get whatever you want to done, if you feel that something isn't being done. So I'll have to vote against the whole bill, the way it is with this part in here at the court. At the present time, I would consider doing something about this part that puts this into the district court. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Mines.

SENATOR MINES: Thank you, Mr. President, colleagues. Listening to Senator Landis, you know, I think reasonable people can disagree. My...here's what I might respond to, in process. And Senator Louden, as well. The person who's being recalled has

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two courses of action. One is to petition the district court to ask whether or not the statement meets those three criteria; or they can ignore that, file their own response, and let the process work as normal. And frankly, if I were guilty of, let's say, nonfeasance, which I am, usually, at home anyway, I might consider just letting the process work, because certainly, if a court determines one of those three standards is not met, the application goes away. But if it's met, I can understand how the public might interpret that to be a conviction or a reaffirmation that something did in fact happen. The person being recalled does have the option of not going through that process. And it's just...it's a matter...I think, a philosophical matter, that should one be recalled for a reason, a specific reason, or not, I happen to believe that there needs to be grounds to recall someone, as opposed to, they don't like the color of one's shirt. Thank you, Mr. President.

SENATOR CUDABACK: Senator Mines, thank you. Further discussion? Senator Redfield. I'm sorry. There is an amendment to the amendment. I failed to recognize the Clerk. Mr. Clerk, you're recognized.

CLERK: Senator Louden would move to amend the Mines amendment with AM2915. (Legislative Journal page 1197.)

SENATOR CUDABACK: Senator Louden, you're recognized to open.

SENATOR LOUDEN: Thank you, Mr. President. It's true that people start recall drives for petty reasons. It's also true that people cast their votes in the first place for petty reasons. The recall should be treated no differently than the election. It's an unpleasant side effect of having the recall in the first place, but that's the way our republican system of government works. It's not always neat and tidy, and it's not always based on noble intentions, but it's what we have and it's what we should protect from tinkering with. The well-intentioned effort to tidy up what can be a messy process isn't exactly correct. It suggests that the voters, that we don't think they're smart enough to exercise the right to vote, which is what a recall is all about. I think it would be offensive to our constituents to pass a restriction on the

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recall. Generally speaking, candidates for election do not need to meet a long list of qualifications. They simply need to be registered voters residing in a district or the area they are to represent. Voters base their votes on more reasons than we can probably name. Sometimes they vote for someone because the person is qualified by experience or temperament for the job. Sometimes they vote for someone because they share an opinion, or something that has nothing to do with the elected office. Voters also cast votes for someone when they want to vote against another candidate. So the voters elect people for every reason imaginable. Now we are saying that to recall someone from office, voters first must go through a court to decide if the reason for the recall is good enough. We can bestow an office on someone for any reason whatsoever, but we cannot withdraw that office by using the same criteria. We consequently have to go through court. This amendment that I've had drafted leaves in the new language as amended by the Chambers amendments, defining malfeasance and misfeasance and nonfeasance of office. It leaves in the new language on the 60-word statement required by petitioners. That's Section 4 of the committee amendment of the bill. The amendment strikes new language on submitting the petition statement to the district clerk and district judge. The amendment strikes new language on the 60-word statement allowed for the subject of the recall, and reinstates old language on that statement. It leaves recall in place as currently construed, except that the terms "malfeasance in office," "misfeasance," and "nonfeasance in office" are defined as amended by the Chambers floor amendments to the committee amendment. With that, I would ask for passage of this amendment to the AM2867. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Loudon. You've heard the opening on AM2915 to AM2867. Open for discussion. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I was surprised by the amendment that is before us, and actually intended to speak to the bill. And I would agree with Senator Landis that the definition language is an improvement. I would also agree with Senator Landis that the recall system that we have currently in Nebraska does not include the courts

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at this stage, and I think that it puts a great burden on someone who may be serving in an office voluntarily, they may not be compensated in any way. It might be a small town, village, it might be a school board, it might be a number of elected offices in this state. And if in fact we are going to force people to have to make that choice, to defend their good name, of hiring an attorney and going to court, I think we're going to discourage people from running for offices in the state, because it's a very expensive joint...or, proposition at this point if they're forced to go to court. And that is the concern that I do have. Now, Senator Mines makes the argument, well, they could choose not to go to court and just file their paper and let it take its course. But in our public view, I think that many times people would say, well, if they thought they were innocent, they would have gone to court, and because they didn't go to court and exercise that choice, that they're admitting guilt. And so I am concerned about the outcome of this as proposed before us in this bill. I think Senator Mines' intent here is really to protect people from being recalled when in fact they have done their duty and they have not done anything wrong other than exercise a vote that someone didn't like. And I commend that purpose or that goal, but I think that what we have before us in fact creates a very complicated system for someone who might find themselves in that position, who might be very innocent of any wrongdoing whatsoever, but might be forced with a big legal bill. Thank you.

SENATOR CUDABACK: Thank you, Senator. (Visitors introduced.) Further discussion, Senator Louden motion. Senator Chambers, followed by Senator Schimek and others. Is Senator Chambers on the floor? I do not see him. We'll pass over him for the moment. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I stand, first of all, in support of the bill; secondly, in support of the Mines amendment; and thirdly, to talk about the amendment to the amendment. I've worked with Senator Mines pretty hard on this whole concept, and I have to confess that I suggested the court option, I think, in the first place, to Senator Mines. I'm well satisfied with the bill either way, whether you decide to adopt the Louden amendment or not. I

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think what Senator Mines has come up with in the way of definition is very good, and I think that it will go a long ways to improving the whole recall process. I also like that option of the district court, but I think Senator Louden has put up an amendment that gives people a distinct choice here, and I hope people will pay attention to this amendment and what it does. I'm probably not going to vote for the Louden amendment, but I certainly could live with it either way. And Senator Mines, if you would like any of my time, I'd be happy to give it to you. Senator Cudaback, I'd like to give my time to Senator Mines.

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: Thank you, Mr. President. Thank you, Senator Schimek. Senator Louden's amendment I think has been well explained. And you know, who determines the...whether or not any of those three criteria--malfeasance, misfeasance, nonfeasance...I enjoy saying those three words at the same time. (Laughter) Malfeasance, nonfeasance, misfeasance. Who better to determine than the court? And you know, early on, my first application to the Government Committee did not include the court as setting...as being able to determine if that standard had been met. I think we need someone that has...other than a clerk. We talked about the clerk determining, at one point, the clerk or the election commissioner determining whether or not those standards had been met. And I think as written, the amendment as written is...my amendment, AM2867, provides a bit of oversight. It's an elective by that person being recalled whether or not they choose the court or not. If you notice, in my amendment, additionally, there's no requirement that either side be represented by legal counsel. So no one has to bring an attorney, no one has to spend any money. And I guess what...ultimately, what my belief is, if you've got someone willing to serve in a village, one of five members in a village, not paid, there's no remuneration of any kind, and someone files a recall because they don't like the way the street got swept on a particular day--and that has happened--there needs to be a higher standard than that, because this process is hurtful, and it does divide communities. And it...I certainly don't want to put a barrier in front of the recall process where people feel empowered. And this process can still continue. There just

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simply needs to be some basis with a higher standard to the recall. And I think this does it, and it allows the court to make a simple determination. It doesn't have to be a big process. It's simply a hearing, and then they determine if that higher standard has been met in the allegation. There's no determination whether or not someone is guilty or innocent. The determination is, does that 60-word statement meet the criteria of those three conditions? So thank you, Mr. President. Thank you, Senator Schimek.

SENATOR CUDABACK: Senator Schimek, there's about a minute left. Did you care to...she does not wish to use her time. (Visitors introduced.) Senator Chambers, followed by Senator Louden, Senator Beutler, Senator Brown, Senator Smith.

SENATOR CHAMBERS: Mr. President, members of the Legislature, the work that I was doing on this bill in conjunction with Senators Schimek and Mines was to try to find language which would say what they were trying to say in the best way, as I analyze the situation. That work did not mean that I agreed with everything that was in the bill. Senator Louden is making a point. Senator Landis, not only today, but the other day, had made some very cogent comments about this entire matter of recall. I can understand people wanting to have some kind of standard, or, if possible, to insulate officials who have done a good job from being hounded, harassed, harried, trifled with. But we're all adults. We have thick skins. And whatever comes along with the territory which comprises an office is what goes with the territory. Senator Louden and others have talked about the percentage of voters which would have to be in favor of recall before a recall election is held. The petition itself does not remove anybody from office, just as a vote for impeachment does not remove anybody from office. With the recall, it puts the issue to a vote of the people; in impeachment, it puts it before the court. But in neither case does the action which initiates the process terminate or complete it. If the matter becomes too complicated, the purpose of recall will be defeated. In drafting the language that I offered, I was trying to get away from the idea of a full-blown hearing before a court, where evidence is taken. If that were to be the case, Senator Beutler, the other day, had raised

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questions about the possible ramifications. Should there be an appeal process? And if so, of what should that appeal consist? It could go on and on and on, this process, till a point is reached where, in effect, recall no longer exists. I will support Senator Louden's amendment. But if it doesn't go, I wanted language to be in the bill which was at least somewhat more reasonable than the original language was, in my opinion. I'm going to continue listening to the debate, and just see what happens. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Louden.

SENATOR LOUDEN: Thank you, Mr. President. What this really gets down to is, are you going to take recall out of the hands of the people and put it in the court, or are you going to leave it with the percentage of voters that are required to file for a recall. Right now, you've got to have 35 percent of the voters that voted for that particular office in the last election sign a petition in order to have a recall petition. So this is what our government is all about. This is government by the people. When you go and change it so that you have a court decide, there's nothing in the amendment that says whether that court has to decide in ten days or whether it has to decide in six months or whatever. And when you talk about going with...where they don't have to have any counsel or anything, then you're telling me then, I guess, we're putting recall election down in small claims court, because that's about what that amounts to. So I think that as far as the other part for the descriptions, that part I don't have that much of a problem with. I must say that the way it's worked, so far, it's worked quite well for many years, I guess since Nebraska's probably been a state. If someone thinks that it has to be more clearly defined, then that's quite all right, and I can probably live with that. But I really do think that if we start putting some of this into the hands of the court, then we're asking for more problems than probably what we can get. First of all, a judge or someone couldn't make up his mind for a length of time. What...when you have people that are from different areas, right now it says it's in the court that they live in. But then again, there's school boards, there's school districts that cover...probably go

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across different judicial districts or something. Will that make a difference on how this is done? And is the judge supposed to have this done in a timely manner? The only thing I see in there is that after a decision is made, that the clerk has to notify the people within five days, and that's the only place in there I see where there's any length of time mentioned whatsoever. I really think that this is something that we have to consider very carefully. And I think this is legislation that would have more ramifications than what we probably realize, and we would be working on our electoral process that probably will hinder it more than what it...what good it will do. So I would like to see this amendment with a favorable vote. And I'm...certainly, I can support the whole bill, then, I think, with this amendment on there, but as it is at the present time, I would like to see something in there to take this out of the hands of the court. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Louden. Further discussion? Senator Beutler, on the Louden amendment, AM2915 to the Mines amendment, AM2867.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this is a tough one, but this is an opportunity that we really should think about, I think, in terms of possibly making a positive change here. You know, it's interesting that recall doesn't apply to state senators. Why is that? I guess what's good for the goose should be good for the gander, right? But I'm guessing that if we had a debate on applying recall to state senators under the current law, you would be overwhelmingly offended by the idea that your voting on a particular issue one way or another would subject you to recall. Recall is a very, very tight rein, the way it is, because you can vote...you can get a recall going against somebody because you don't like the color of their hair, for completely extraneous reasons, for racial reasons, for reasons that relate to discrimination, or you can do it because you didn't like the way they voted on one issue. It's a tight, tight rein. And I'm wondering, do you get better leadership or worse leadership when the rein is so tight like that? And I'm thinking you probably get worse leadership. If you get better leadership, then we should be applying it to ourselves, I suppose. In any event, I wanted to ask maybe

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Senator Landis...Senator Landis, I'll ask you,...

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

SENATOR BEUTLER: ...if you would respond. Let's say...and I'm just exploring your philosophic position, to a certain extent. Let's say Senator Louden's amendment passes. The court portion is taken out. But what is left in there is still an important, important difference, in the sense that the standard has changed--malfeasance, misfeasance, nonfeasance. First of all, let me just ask you, would you support the bill under that condition?

SENATOR LANDIS: Yes. I think the three definitions are helpful, I think, at least reminding the public that they ought to be relevant in their decision-making. Seems fair. So I would vote for LB 786 if the Louden amendment was successful.

SENATOR BEUTLER: Okay. But would you agree...and I'm not sure of myself here, but I ask, would you agree that even if you take that obvious language, obvious reference to the court and direction to the court out, that given the standards that would be there, an officeholder who thought that he or she was being inappropriately recalled for an inappropriate reason might nonetheless go to the court and say, I want an injunction here against this recall petition because the standard is not met? I mean, isn't that a...one, a possibility; and two, a likely scenario?

SENATOR LANDIS: Let me take that just a little bit further. One could not write a law by which an individual would not be able to go to court and seek an injunction. So the existence of the injunction doesn't lie with the passage of LB 786 or not LB 786. I do think this, however,...

SENATOR BEUTLER: But there's no injunction with the current law, because there's no standard.

SENATOR LANDIS: However, you could...

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SENATOR BEUTLER: You can do it for any reason.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: I think you would say that any individual may go to a court and seek an injunction. The court might well say, you have no grounds, right, and bump it. And by the way, I think that's exactly what a court will do, because these will not be standards, in that case. The ultimate trier of fact, or determiner of whether one of those three things have occurred, will be a voting member of the public. I don't foresee a court entertaining for long an injunction...a request for an injunction, which could be done now, but would be groundless and bumped. But I've got to think that's exactly the same result post-LB 786, as well.

SENATOR BEUTLER: And you would see no rationale that it would be different if the result of a recall was successful and the officeholder who was thrown out then appealed to the court on the basis that it was not malfeasance, misfeasance,...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BEUTLER: ...or nonfeasance?

SENATOR LANDIS: That's right. That's right.

SENATOR BEUTLER: Okay.

SENATOR CUDABACK: Thank you, Senator Beutler.

SENATOR BEUTLER: Thank you.

SENATOR CUDABACK: Further discussion? Senator Brown, followed by Senator Smith and six others.

SENATOR BROWN: Mr. President, members, I have...I serve on the committee that heard this bill, and have listened to a great deal of information about it. I would prefer to keep it in the form that it is currently, even though I agree with some of the concerns that have been raised by Senator Redfield. I do think

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that by involving the courts, it becomes something of an endorsement for the voters on the recall. But we're working ourselves into a lather about something that we...that the state of Nebraska probably has one of the broader recall laws that there is. And not all states even allow for recall of local elected officials. Twenty-one states don't even have it. And so it's not like we are taking away all the rights of the citizens to, within reason, be able to recall local elected officials who do something that is very serious. What we're trying to do is put some parameters on it. And the court piece of it was just to have an objective assessment of whether the allegations fit into those three categories--malfeasance, misfeasance, or nonfeasance. It was not to have the courts make any decision on the merits of the allegations, but only about whether the allegations as described by the person wishing to file the recall petition fell into one of those three categories. And so I really do believe that having the court system as a fallback is very important. But if we have to give up something, I would be willing to give up that piece of it, because I think that the rest of the bill is far too important. So thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Further discussion, Senator Smith, followed by Senator Mines.

SENATOR SMITH: Thank you, Mr. President and members. Would Senator Louden yield to a question?

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

SENATOR LOUDEN: Yes, go ahead.

SENATOR SMITH: Senator Louden, thank you. I'm trying to get a feel for where we are on the bill as it relates to your amendment and so forth. And I guess, for clarification purposes, your amendment would leave us with what kind of changes, then, if your amendment is successful?

SENATOR LOUDEN: Well, what it would do, would take out the part

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with the courts. It would still leave in there that you had to file papers, you'd leave in there that you had to have a percentage of the voters in...sign the petition. And it would leave in there that the person that was being recalled had the right to file a defense statement. And those...usually, what they did before, whenever you had a recall petition, the person that was filing the recall had to put a statement in there, and the person that was being recalled also got to put a defense statement. And that was always on the petition, so that whoever signed that petition had the choice to read both sides of the argument right there on the petition. So that part, I think, should be left in there.

SENATOR SMITH: Okay. Thank you, Senator Louden. I rise in support of the Louden amendment. I'm appreciating his work on this, and certainly, I think that we need to maintain our recall statutes. Of course, that's easy to say, as a state senator who cannot be recalled. But also, I think we need to be reasonable about this, and I think that we're heading in that direction. There are recall elections that take place that I think are unfair. There are also some recall elections that take place that are necessary. So I hope that we can proceed in a positive direction, and so that we can maybe clean up the statutes a little bit, without gutting our recall law altogether. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion, Senator Mines.

SENATOR MINES: Thank you, Mr. Chairman, colleagues. Let me just say about Senator Louden's amendment--and I've told him this several times--I like the amendment. I like how it's been crafted, and I like what it also does. On the other hand, I like my amendment, AM2867, which would involve the courts. I think this is going to be a personal decision for all of us. I think we just...if you want to remove the court specifically in language as an arbiter, then vote for Senator Louden's AM2915. If you think that the court should have...you should have two paths, one is to just let the recall petition process proceed, or you should be able to go to the court to define whether or not a standard is met, then AM2867 is your choice. So I'm going

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to support both amendments, and would urge you...it's a simple matter of choice on your part. And that way, we vote up or down on either one, and we move on. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Senator Schimek, on the Louden amendment to the Mines amendment.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I rise to say, Senator Louden, the recall statutes have not always allowed a statement of defense. In fact, it was only about four years ago that this body passed that legislation which allowed that defense statement to go on the petitions. Before that, there was not any way for somebody to defend themselves, really. But having said that, I would like to engage Senator Beutler, if he's still on the floor, for just a minute.

SENATOR CUDABACK: Senator Beutler, are you available? He's on his way, Senator Schimek.

SENATOR SCHIMEK: Thank you.

SENATOR BEUTLER: Yes, Senator.

SENATOR SCHIMEK: Senator Beutler, I don't know if you were...if you concluded your discussion about the court process. I'd like to give you an opportunity to do that, or kind of find out what you're thinking at this point, if I might.

SENATOR BEUTLER: Senator, what I was attempting to explore was where the court might enter the process anyway, regardless of what language we have in the bill. Senator Landis, I think, would not agree with this, but my question...it seems to me that if you put standards in the bill--malfeasance, nonfeasance, and whatever the other word is--that suddenly you have something that the court can act upon.

SENATOR SCHIMEK: If it would.

SENATOR BEUTLER: Pardon me?

SENATOR SCHIMEK: If it would.

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SENATOR BEUTLER: If it would.

SENATOR SCHIMEK: And the reason I say that is I'm thinking about the initiative and referendum process in which the court, more times than not, chooses not to get involved in the process before the people have voted.

SENATOR BEUTLER: Yeah. And the other point in time when there might be a question as to whether the court would enter would be after the process was over,...

SENATOR SCHIMEK: Right.

SENATOR BEUTLER: ...if there was an appeal by the officeholder as to...as to whether he was thrown out for the right reasons.

SENATOR SCHIMEK: And I would guess...

SENATOR BEUTLER: Now Senator Landis disagrees with that, and I have to say I don't...I have done no research on this, so I'm not sure about this either.

SENATOR SCHIMEK: I would just make a...hazard a guess, at least, that they would be willing to look at it once the vote has been taken.

SENATOR BEUTLER: Yeah. Well, actually there would be no point to putting standards in...

SENATOR SCHIMEK: Unless...

SENATOR BEUTLER: ...if you could just abuse them...

SENATOR SCHIMEK: ...unless you could challenge it.

SENATOR BEUTLER: ...and there's no appeal to anybody.

SENATOR SCHIMEK: Right.

SENATOR BEUTLER: So I'm guessing the courts would be reluctant

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not to enter in at some point in time.

SENATOR SCHIMEK: Right. That's my...that's kind of my thinking on it, and that was really why, in a way, I suggested the whole idea of this court process in the first place, before everybody had to go out and gather signatures. But I just had a conversation with Senator Mines. This isn't like a statewide race where you have to go statewide and get all your signatures and everything. It's a smaller geographic area. It's not as big of a challenge to get those signatures. So maybe it's not as burdensome to those signature gatherers that we have to have some intervening by the courts in the process. It was just a thought. We several years ago actually passed a bill to allow that kind of a trigger to happen in the initiative and referendum process. I don't know if you remember that, but we passed that bill by 30 votes in here, and then the Governor vetoed it. So I was just sort of likening this to that process.

SENATOR BEUTLER: Yeah.

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: But it's not exactly like that process. So maybe, you know, maybe if we adopt the Loudon amendment...I mean if we adopt the Loudon amendment, we're still going to have a good bill here, I think, with the terms defined.

SENATOR BEUTLER: Yeah, I would agree. I would like to see the words put in if, at a minimum, at least it causes people to think about the reasons why you should or should not be doing this.

SENATOR SCHIMEK: Thank you, Senator Beutler. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Schimek. (Visitors introduced.) Senator Kruse, Loudon amendment.

SENATOR KRUSE: Mr. President, question.

SENATOR CUDABACK: The question has been called. Do I see five

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hands? I do see five hands. The question before the body is, shall debate cease on the Louden amendment to the Mines amendment? All in favor vote aye; opposed, nay. Voting on ceasing debate. Record please, Mr. Clerk.

CLERK: 29 ayes, 1 nay to cease debate, Mr. President.

SENATOR CUDABACK: Debate does cease. Senator Louden, you're recognized to close on your amendment, AM2915.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I want to thank the members for their discussion on this, on this amendment, and I appreciate the talking points that you've brought forwards on this thing. The amendment leaves in the new language, as amended by the Chambers amendment. Amendment also leaves in the new language on the 60-word statement required by the petitioners. It strikes new language submitting the petition statement to the district clerk and the district judge, and that's about what it does; takes the courts out of it. It still leaves in a description for the malfeasance, misfeasance--and I should ask Senator Mines to read these off for me; he likes to do it--and nonfeasance of office. With that, I would ask for an affirmative vote to amend LB...or to amend AM2915 to Senator Mines' AM2867, and I would ask for a call of the house and a machine vote, Mr. President.

SENATOR CUDABACK: Thank you, Senator Louden. You've heard the closing. There's been a request for a call of the house. All in favor of the motion vote aye; opposed, nay. Record please, Mr. Clerk.

CLERK: 38 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: Motion was successful. The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. Unexcused senators...I'm sorry. There aren't any unexcused senators. Everybody is present. Everybody report to the Chamber and check in. Senator Cunningham, would you check in, please? Senator Heidemann, Senator Cornett, Senator

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Brashear. Senator Cornett. Senator Cunningham and Senator Cornett. The house is under call. All members are present. Been a request for a board vote. The question before the body is, shall AM2915 be adopted to the Mines AM2867? All in favor of the motion vote aye; opposed, nay. Question before the body is amendment presented by Senator Louden, AM2915. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 26 ayes, 7 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The motion was successful. The Louden amendment has been adopted. I do raise the call. Back to discussion of AM2867. Senator Wehrbein. Senator Wehrbein waives his opportunity to speak. Further discussion? Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I did not vote. I had spoken in favor of Senator Louden's amendment. I listened to Senator Beutler's discussion, because, having taken the court intervention out, the standards nevertheless are there. With those standards, a person cannot be recalled successfully unless one or more of those standards would be met. Senator Schimek, as I listened to her, began to push me even more away from Senator Louden's amendment. When a reason is stated in statute as to why something can occur, that reason must be met. So if an injunction were not available prior to the election taking place, it would mean that the court will be asked to overturn the results of the election should a majority of the voters say recall this person. Now it's possible that after sufficient signatures were found to have been collected, the person to be recalled may, at that point, challenge the appropriateness in court. And when I say "may," I use that word because I'm not sure. I think the law is ambiguous at this point. Some point must be reached when one or more of these standards must be shown to exist. If merely voting in favor of recall, once sufficient signatures have been obtained, there is no purpose in having the standards. The only determining factor will be that a majority of people voted yes. If the vote is unsuccessful, there is no issue. If insufficient signatures would be gathered, there is no issue. Only when there are sufficient signatures to warrant the scheduling of a

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recall election, and if there is no intervention by a court to derail that upcoming election, then if the person is voted out the issue is certainly ripe for judicial consideration at that point. If there is no point at which judicial consideration can be given, the standards mean nothing. Since a court would tend to say that the Legislature meant something when it put those words in, there must be evidence to establish that one of those three conditions exists. In order to submit evidence to a court, there has to be a hearing, and the burden of proof would fall on the ones who sought the recall, unless the court were going to say the fact that sufficient votes were cast to recall the person, the recalled person has the burden of proof of showing that no one or more of the standards would be in existence.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I'm going to listen and see if anybody has anything to say, but since no other lights were on, perhaps nobody does. I'm not sure what the bill means now. I know what it says. I know what the intent is. But I don't know what the legal effect of it is. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. There are two lights on. Senator Wehrbein, followed by Senator Beutler.

SENATOR WEHRBEIN: Mr. President, members of the Legislature, I have mixed emotions about getting in this because I'm not really familiar with this area, but it struck me...I don't know who, under...before we'd pass this bill, I don't know who determines who there would be a recall of an official for malfeasance, nonfeasance, and misfeasance. But it struck me that with the...since it's been taken out now, Senator Louden's amendment, but it would look like if the court...I'd like to have somebody answer this that might know. Senator Landis has left, but I...if the court had determined there was malfeasance, misfeasance, and nonfeasance, it's still possible for the public, and that petition went forward and it was turned in and the recall occurred, it would still be very possible, especially in small jurisdictions, that that recall would not be successful. And in theory, you could have people serving in

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office that have committed felonies, at least unlawful or wrongful acts. And I don't know what the answer is to that, but I guess with Senator Louden's amendment that won't be determined at this point. But I was just interested in comments on that. I know it's 10 minutes till 12:00 and perhaps...I don't know who knows the answer, but I don't know whether Senator Beutler has any comments on that. I'd ask him. If not, I'll drop it. I don't know who to ask, Mr. Speaker. Senator Chambers said he would like to comment, so I'll turn the rest of my time to him.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, and Senator Wehrbein, there are other laws that relate to misconduct in office by an official. This provides what might be called an extraordinary measure that can be initiated by the public without the person having been charged with a crime, tried for a crime, convicted of a crime. The public simply is dissatisfied with the person and says he or she should be out. And if the recall is successful there is no criminal penalty attached. The only thing that happens is the person loses the office. But with the three standards--misfeasance, nonfeasance, or malfeasance--there has been added an element which is what causes me to be unsure as to how and when and by what methodology any one or more of those standards will be shown to exist. If a court does not make the determination, there is no need for the standards. You just allege that this person committed misfeasance, malfeasance, or nonfeasance, and that's it. I just am not sure what the effect of the bill is. But to touch the part about somebody having committed violations of the law, there are other statutes that would allow that situation to be taken care of, and that would go through a court. That's all I would have. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Wehrbein, did you wish to...Senator Wehrbein waives the rest of his two minutes. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think we're moving with a measure of uncertainty here on

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everybody's part, but I would like to ask Senator Mines and Senator Schimek, at least for the record, what their intent would be now that the Louden amendment has been attached.

SENATOR CUDABACK: Senator Louden. I mean...

SENATOR BEUTLER: Now we...now...Senator Mines, Senator Cudaback, please.

SENATOR CUDABACK: Senator Mines, would you yield?

SENATOR MINES: Yes, Mr. President. Senator.

SENATOR BEUTLER: Senator Mines, we now have three standards in the bill which would be a legitimate means or legitimate cause for recall--malfeasance, misfeasance, and nonfeasance. The court has certain procedures and certain rules by which it operates. Whatever those rules may be as they would apply unto this situation, is it your intention that at the appropriate point in the process, wherever that may be, in accordance with standard judicial rules, that you intend the courts to be able to rule on behalf of an officeholder as to whether there is, in fact, misfeasance, malfeasance, or nonfeasance?

SENATOR MINES: Senator, it was never my intent to usurp the power of the court or to take them out of the process, the legitimate process. And if I understand what Senator Louden's amendment has done, it merely takes out in our language that the court is an option, is a direct option, in the process. And you would know better than I if the court can still be engaged at...if that person being recalled so chooses at the appropriate time. So it was never my intention to (inaudible).

SENATOR BEUTLER: Okay. So you intend the court to be involved...

SENATOR MINES: Absolutely.

SENATOR BEUTLER: ...at whatever point in time they may consider to be appropriate under their procedure. Senator Schimek, let me ask you.

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SENATOR CUDABACK: Senator Schimek, would you yield?

SENATOR BEUTLER: I would ask you the same question.

SENATOR SCHIMEK: Yes.

SENATOR BEUTLER: Is it your intent, as Chair of the committee and with respect to the work that you've done on this bill, that the courts could and should be involved, in an appropriate situation, in interpreting what...whether there is in fact malfeasance, misfeasance, or nonfeasance?

SENATOR SCHIMEK: Yes, Senator Beutler. I was just thinking about the fact that we have standards in place for initiative and referendum, for instance. We have the one subject rule. We have the rule that you can't have a petition that's like the petition that was filed less than three years ago. And the courts do...are asked to intervene in those cases where somebody thinks those standards are violated. So I would guess the same thing would hold true here.

SENATOR BEUTLER: Okay. Thank you, Senator Schimek. Senator Cudaback, members of the Legislature, I hope we will adopt the Mines amendment and proceed to make that the operating bill. And I guess my argument would be that on balance it's a better set of standards than the one that is currently in place, which is essentially a nonstandard. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Mr. Clerk, items for the record, please.

CLERK: Mr. President, amendments: Senator Don Pederson, LB 746A; Senator Mines, LB 856. New A bill. (Read LB 965A by title for the first time.) Enrollment and Review reports LB 968A to Select File. A series of study resolutions: LR 347, Senator Price; LR 348, Senator Flood; LR 349, Senator Wehrbein; LR 350, LR 351, all Senator Wehrbein; LR 352, Senator Janssen; LR 353, Senator Janssen, LR 354.

Mr. President, your Committee on Revenue, chaired by Senator

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831, 840, 849, 943, 959, 967, 992, 995, 1009
1042, 1043, 1046, 1047, 1055, 1070, 1075, 1089
1113, 1139, 1146, 1149, 1181, 1201, 1216, 1221
1239, 1251
LR 355, 356

Landis, reports the following bills indefinitely postponed:
LB 235, LB 358, LB 399, LB 523, LB 667, LB 775, LB 781, LB 798,
LB 831, LB 840, LB 849, LB 943, LB 959, LB 967, LB 992, LB 995,
LB 1042, LB 1043, LB 1046, LB 1055, LB 1089, LB 1139, LB 1201,
LB 1216, LB 1221, LB 1239, LB 1251; all those bills reported
indefinitely postponed. (Legislative Journal pages 1198-1205.)

Mr. President, Senator Brashear would move to recess until
1:30 p.m.

SENATOR CUDABACK: Heard the motion to recess till 1:30 p.m.
All in favor say aye. Opposed, nay. We are recessed. (Gavel)

RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon. Welcome to the George W.
Norris Legislative Chamber. Senators, the afternoon session is
about to reconvene. Please record your presence. Members, the
afternoon session is about to reconvene. Please check in.
Record please, Mr. Clerk.

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

SENATOR CUDABACK: Mr. Clerk, do you have any items for the
record, or announcements?

ASSISTANT CLERK: Mr. President, I do. Government Committee
offers notice of hearing. New resolutions: LR 355 and LR 356
offered by Senator Aguilar and Bourne, respectively. Bills
reported to General File: LB 1075 by Judiciary; LB 1009,
LB 1047, LB 1070, LB 1113, LB 1146, and LB 1149, LB 1181; those
with committee amendments attached. And that's all that I had,
Mr. President. (Legislative Journal pages 1205-1220.)

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

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inform the body where we were when we recessed. I'm sorry. It is 1:30.

ASSISTANT CLERK: Mr. President, the next bill for consideration is LB 1199, offered by Senator Bourne and others at the request of the Governor. (Read title.) The bill was read for the first time on January 18 of this year, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments attached. (AM2715, Legislative Journal page 1067.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Bourne, you're recognized to open, LB 1199.

SENATOR BOURNE: Thank you, Mr. President. Members, I think rather than explain what is in the underlying bill, I'm just going to count this as my opening on the committee amendments, rather than explain a 200-page bill and then reexplain what's in the committee amendment. So...and this...the committee amendment does become the bill. I want to go through a little bit what's in there. I do want to thank the Governor's Office, the Attorney General's Office, my staff. Everybody has worked hard on researching this issue and the result of that research is before you in LB 1199, as amended by the committee amendment. The Judiciary Committee did hold interim study hearings in Norfolk, in McCook, in Gering, and here in Lincoln, and that issue...at several of those interim study meetings, the issue of sex offenders residency restrictions and things of that nature were discussed. Let me tell you what the bill, as amended, does. For the first time, we will create a new crime of sexual assault against a child. It enhances criminal penalties. It creates a new offense of first-degree sexual assault of a child, second-degree sexual assault of a child, and third-degree sexual assault of a child. First-degree sexual assault, this is rape of a child by...excuse me, rape of a child under 12 by a person 19 years of age or older. The current first offense for this is first-degree sexual assault, punishable by 1 to 50 years, which is a Class II felony. Under LB 1199, as amended, it would have a new enhanced penalty with a mandatory minimum of 15 years to a maximum penalty of life imprisonment, which is a Class IB felony. And again, this is first-degree sexual assault of a

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child. We also have...oh, and then a current subsequent offense, currently, if it's first-degree sexual assault, the current reoffense, 1 to 50 years, 25 mandatory minimum, is a Class II felony. A new penalty for a subsequent offense is a 25-year mandatory minimum, to life, which is a IB penalty. So again, we're creating for the first time a specific sexual assault crime against a child with enhanced penalties. We also, in the bill, are advocating a second-degree sexual assault of a child penalty. This is a violent molestation of a child under the age of 15. Current penalty is 0 to 5 years; the new penalty is 1 to 50 years, which is a Class II felony. On a current law, if it's a subsequent reoffense, 5 to 50 years; and under the new penalty for second-degree sexual assault of a child, on a second offense, 25 to 50 years, with a 25-year mandatory minimum, or a IC felony. We're also creating the offense of third-degree sexual assault of a child. This is sexual contact with a child under the age of 15 by a person 19 years of age or older. The current penalty is 0 to 5 years. This does not change under LB 1199. And then if there is a current...or under the current law, a subsequent reoffense, 5 to 50 years. It's a IC felony, and that also does not change under the bill. But we do have, again, the new crime, third-degree sexual assault of a child. The bill would enhance the penalties on sex offenders who fail to register more than once by increasing the maximum sentence to 20 years in prison, with a mandatory minimum of 1 year in prison for felons. It amends the Sex Offender Registration Act. It makes a number of changes, including requiring homeless individuals to register every 30 days, adding debauching a minor to a list of crimes that may require registration, and changes the crime of child enticement to an offense for which one must register. The bill, as amended, also clarifies that a sex offender who is required to register in another state but lives in Nebraska must register with the Nebraska State Patrol. And, as I mentioned earlier again, I want to reiterate it does enhance the penalties for failure to register. Also adds a certain element of residency restrictions. We've discussed this a lot. You've read about this in the newspaper. Our research in the Judiciary Committee, frankly, indicates that residency restrictions do not work. However, after the several interim hearings we had and the hearing we had in front of the Judiciary Committee, we felt that the cities must have some ability to

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adopt residency restrictions. So I'm putting forward to you what I would consider common-sense guidelines that municipalities must follow if they want to enact a residency restriction in their communities. So what we are saying in this bill is that a community cannot...this is what they can do. The restriction cannot exceed 500 feet and can include only...limited from schools and licensed day-care facilities. It's limited to high-risk sex offenders, third-degree sex offenders who have committed crimes against children, and this would preempt local ordinances that have already been passed. So again, the residency restriction would say that a community can adopt a restriction no more restrictive than 500 feet from a school or a licensed day-care facility for third-degree sex offenders who have had a previous crime against a child. It also...this bill would also change the Sex Offender Commitment Act. It creates a Sex Offender Commitment Act to make it easier to civilly commit sex offenders who will likely perpetrate future acts of sexual violence and who are unable to control their behavior. It requires 90-day notice to the appropriate county attorneys and the Attorney General of the pending release of a sex offender from incarceration. It requires the county attorney to notify the Attorney General, within 45 days of receiving notice of release, whether or not he or she intends to pursue civil commitment. Part of the problem, as we researched this, is the current practice is, when an individual is getting ready to be released from the prison, the Department of Corrections, if they have determined that that individual is still a danger to society, Department of Corrections would notify the county attorney from which the individual came and say, this offender is getting ready to be released; we feel he's a danger to society; we recommend that you initiate civil commitment hearings. If that county attorney, for whatever reason, doesn't do it, that person will not be subject to a civil commitment hearing. We felt that was a hole in the system, and so what we're advocating is that notice be provided to the county attorney from which this individual came, and then that individual has to notify the Attorney General within a certain time period, and the ultimate authority of whether or not to initiate civil commitment hearings would reside with the Attorney General. It also mandates that the Department of Correctional Services conduct civil commitment evaluations 180

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days prior to the release for violent offenders, repeat offenders, and child predators who refuse treatment. This bill also advocates, and this is the portion of the bill where, quite frankly, the state is going to have to spend some money if we decide we want to go forward with this. Right now when an individual is released from prison and is a registered sex offender, there is simply an obligation to register, but we do not watch that individual. So what we're suggesting is that there are several types of offenders who are so dangerous to society and a danger to our children that they should be supervised by probation and parole. So it establishes supervision of sex offenders who have committed more than one sex offense, who have raped a child under 12, or have forcibly raped an individual 12 years of age or older. The supervision will be conducted by parole administration, and the offender must follow the conditions or be subject to further prison time. And I would like to point out that this component should allow municipalities to rest easy in that this individual would have to go to his parole officer and say I want to live in this particular place, in this particular community, and if that parole officer thinks that that's not a good idea, then obviously that person wouldn't be able to locate there. So as far as our cities and municipalities, we have two levels of protection. We do allow them to adopt certain residency restrictions in certain ways, but those offenders who we should be most afraid of are also going to have supervision. The last component of this bill, as amended, creates a working group of individuals to provide recommendations regarding the credentialing and training of sex offender treatment professionals, and adds...and the creation of mandated sex offender treatment standards. This was a bill that was introduced by Senator Pedersen, Dwite Pedersen that is, and we heard this in our hearing, had great testimony on it, and we decided to include it in our package. With that, I would be happy to answer any questions. I know the bill is extensive and comprehensive. I'd be happy to answer any questions that anyone might have.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: Thank you, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Bourne. Officially, you opened on LB 1199. Now officially you are recognized to open on the committee amendments, AM2715.

SENATOR BOURNE: Thank you, Mr. President, members. And again, rather than go into what was in the base bill, the green copy of the bill, my opening there reflected what's in the committee amendment. Again, the Governor's Office, the Attorney General's Office, my staff, the Judiciary Committee has worked extensively on this. We've had meeting, after meeting, after meeting. We've researched the issue. We've actually worked collaboratively with Health and Human Service and those folks in the sex offender unit, and for once I think we have a package that's done right. We went to the people who provide the treatment, we went to the people who provide the incarceration, and, quite frankly, we actually went to the sex offenders themselves and, in certain cases, asked what would or would not work. So I think what you have before you is a comprehensive package that will keep our communities safer. And again, with that, I'd be happy to answer any questions.

SENATOR CUDABACK: Thank...

SENATOR BOURNE: I do want to point out, you have an outline in front of you that's typed out at the top: LB 1199 outline, as amended, and that's the thumbnail sketch of it. But again, I'd be happy to answer any questions. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on the committee amendments, AM2715, to LB 1199. (Visitors introduced.) On with discussion of the Judiciary Committee amendments. Senator Flood.

SENATOR FLOOD: Thank you, Mr. President. Members, I'd like to acknowledge and thank Senator Bourne, Chairman of the Judiciary Committee, for all of his work, his staff's work, his...the legal counsel's work for the committee, the Governor's Office, Governor Heineman, and Attorney General Bruning for all of their work on this. I prioritized this, in part, because I saw early on in the session that Senator Bourne, by introducing this bill,

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was interested in a comprehensive approach. Iowa, as you all know, passed some pretty limiting residency restrictions, which I might add, by the way, the county attorneys across the state of Iowa are screaming for the repeal of right now, in an effort to do something about the issue of sex offenders. And I think if you look at what Senator Bourne has introduced, what the committee has worked on, you see reasonable, comprehensive reform in how we deal with sex offenders in Nebraska. What Iowa did was nothing more than politics. What Senator Bourne is doing is real...is providing real safety to communities across the state from the most dangerous of sex offenders that we're all afraid of. And he met...he touched on it in his opening, but I want to call your attention to, oh, page 101 of the committee amendment in AM2715. Communities across the state--and it's hard not to fault them given the hysteria in Iowa and the fear of spillover from that state--have passed some pretty extensive residency restrictions in Nebraska. This bill not only has the 500-foot residency restriction, but more importantly, and Senator Bourne talked about it, it has lifetime supervision, lifetime supervision by a parole officer, subject to monitoring, and part of that, on page 102, is a requirement that the individual subject to community supervision reside at a specified location and notify his or her community supervision officer of any change in address or employment. That means when a sex offender gets out, finishes treatment, wherever, either in the prison system or in the Health and Human Services System, if you're afraid that he's moving back to your neighborhood and it presents a legitimate risk, there is a person to go see in state government. That would be the community supervision officer. And the community supervision officer can then assess the risk and make a decision that hopefully results in a real kind of residency restriction, and that's based on the risk, on the offender, on the neighborhood, on the fact that you have a number of children. I'm not saying it's going to work exactly the way you want every single time, but there's a system set up over and above the 500 feet of residency restrictions that I think will protect our communities. And that, to me, is probably one of the most important parts of the bill. The other thing I like about LB 1199, and I thank the committee for looking at this reasonably, is the fact that when a sex offender does offend, especially against a child, there should be severe

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penalties--15 years in prison, no parole; 25 years on the second occurrence, no parole. Fifteen years is a long time. And if that offender remains resistant to treatment, they won't go to their community; they'll go to a regional center. And when they're fit for the community, after a civil commitment, they'll be supervised. If you offend against a child, it should put you in a secure environment, away from the rest of your community, for a very long time, and that is the part of the reform that makes sense. I could talk on and on about the bill. I'm pleased that we're doing something that actually addresses the problem instead of simply playing politics and selling it back home on the front page of the newspaper with a story that protects no one. What we're doing here protects the community. You can go back and, after the residence restriction phase,...

SENATOR CUDABACK: One minute.

SENATOR FLOOD: ...fad dies, you'll be able to say, he's still not getting out of jail for a long time, and if he ever does we will have him civilly committed if he's still a danger to the community. And if he ever gets out of the treatment and responds to it, then he goes to the community that he wants to and he is supervised intensely by our department of parole, by community supervision officers. This bill is comprehensive. I'm proud to say it's in the state of Nebraska, and I think other states around us will start looking at real reform and they'll start looking at what Nebraska does after we pass this. I want to thank Senator Bourne again. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator. Senator Janssen, followed by Senator Engel. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback. Senator Bourne, would you answer a question or two for me?

SENATOR CUDABACK: Senator Bourne, would you yield?

SENATOR BOURNE: Certainly.

SENATOR JANSSEN: Senator Bourne, if I heard you right--now this is a long bill and I haven't looked through it and I probably

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wouldn't know what I was looking at if I did (laugh)--but if an offender is going to be released, the city or county where they are going back to, if they are still a threat to society, they will be notified when they are moving into that county or city. Well, my question is, if they felt as though they were a threat, why would they be released? Now did I hear you right on that?

SENATOR BOURNE: Yeah, that's a great question, and what you're talking about is the current system. What we were kind of surprised to discover when we started researching this is, say, today an individual goes to jail for...and we found this also during our studying of the issue, is a person goes to jail for first-degree sexual assault on an average of nine years, say, which seems to be a little bit low, but that's another issue. Say that individual goes to jail for first-degree sexual assault of a child, serves their sentence for nine years, whatever it may be. If the Department of Corrections, under current law, determines that that individual is a danger to society, they will call the county attorney, say, from Douglas County, wherever that individual came from, and say, Mr. X is leaving jail on April 1, we recommend...and there would be more notice than that, say June 1; we recommend that you begin civil commitment hearings against him because he is still a danger to society, in our opinion. If that county attorney, under current law, is busy or somehow the letter gets lost or the ball is dropped in any way, come June 1, Mr. X just leaves the prison if the state or that county attorney did not begin civil commitment hearings. So what we're advocating for today is that the county attorney from where that individual comes still receives notice of it, but at the same time the Attorney General does. And if that county attorney from where the individual came decides, for whatever reason, not to pursue civil commitment hearings, the Attorney General would still have that option, so that I think we closed a significant loophole under LB 1199, as amended.

SENATOR JANSSEN: So you...essentially, you have...that perpetrator has two hoops that he has to jump through. If the local entity does not do anything about it, the Attorney General will. Is that correct?

SENATOR BOURNE: Right. As a matter of fact, the way the bill

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is drafted, the Department of Corrections has to tell the county attorney and the Attorney General 120 days prior to release, and then I believe 90 days...if the county attorney decides not to do anything, he or she has to notify the Attorney General 90 days out that it's up to the Attorney General. And so the Attorney General would then look at the case and determine whether or not to begin civil commitment hearings. So we've got kind of a belt and suspender approach, and I feel this was the biggest hole in our system, biggest problem.

SENATOR JANSSEN: So you will have a 90-day window, is that correct?

SENATOR BOURNE: Absolutely.

SENATOR JANSSEN: All right. All right. Thank you, Senator Bourne. I have no other questions at this time.

SENATOR CUDABACK: Thank you, Senator Janssen. On with discussion. Senator Engel, followed by Senator Beutler.

SENATOR ENGEL: Mr. President, members of the body, when Iowa passed their law here this last year, anybody living on the border realized that we had to do something. South Sioux City, right across the river from Sioux City, Iowa, in a reactive state, they did pass the same law that would be no residence within 2,000 feet. I know...and since then many communities across the state have done the same thing. So I'm very happy that Senator Bourne and others have come up with this bill to come up with some real legislation to penalize and keep these people away from the youth. But the thing is, like I say, we were reactive and this is proactive, and that I appreciated. But, you know, people are concerned about these sexual predators as far as their rights and so forth. As far as I'm concerned, I think they lost their rights when they first molested the first child or any child. And I talked to a judge one time. I told him, I have a cure. He said, I would like that, too, but you know we can't do that. And I said, I know that, so let's get as close to it as we can. And I think that's what we're doing here. Now the only thing is, people forget that that child is affected for life. Now these people get 15 years or they get 25

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years. What's the difference? But that's...and they'll get out for another day. But those children who are affected, they're affected from the moment they're molested until the day they die. And that's what we have to look out for. And in our community, there's a lady by the name of Julia Munos (phonetic) who came up with this magazine. They call it Variety/Variedad. It's been real stories, real issues, and it's in Spanish and English, and what it does, it talks about...it's for kids, just for kids, and it's an educational tool for these children as far as what to look out for. And I think that's something we have to emphasize, is education. Can I mention in...she wanted me to put a little note in here and I said we are attempting, through legislation, to protect our young children from these most despicable of human beings who prey on them and scar their lives forever. However, no matter what we do, they will still be there, so it is of utmost importance that parents, schools, and media educate our young people to be on guard against these pedophiles. And I think that's something we have to do, too. We put them away and, like I say, people say, they...some people say they can be cured; others say they can't. And I'm with the latter myself. I'm not a psychologist or anything, but any time you see them out there and reoffending it's just despicable. You just thank God it's none of your own kin, or, you know, probably what you would possibly do. So I have absolutely no sympathy for those people. So the more stringent, the more penalties we can pile up on them and make it stick, I'm all for that. So with that, I return the rest of my time to the Chair. Thank you.

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

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Bourne, thank you for a tremendous effort on this bill. Obviously, a lot of time has been put in on it. I'd like to go over some of the things that are in the commitment act and that area, and I'm trying to think through in my mind how these procedures fit together with some of the things I observed when I was kind of looking into this stuff a year ago or so, and even more recently. But starting on...just starting first with the section...this is not starting at the beginning, but starting on Section 92, page 100, the part that has to do with continuing

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supervision, community supervision for the remainder of his or her life, it says any individual who on or after the effective date, and then there are three different categories of offenses that are identified and if you fit into one of these three categories you shall, upon completion of his or her term of incarceration or release from civil commitment, be subject to community supervision. Okay. When somebody gets out of prison, as I think you described earlier, from time to time the county attorney or the Attorney General may want to commit them to the regional center at that point also. Is that correct? I would yield to Senator Bourne, Senator Cudaback, for an exchange of a dialogue here.

SENATOR CUDABACK: Senator.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Senator Beutler, I...don't take this wrong, but I think you're mixing up two...

SENATOR BEUTLER: Okay.

SENATOR BOURNE: ...two areas. One, when an individual leaves prison and if the Department of Corrections feels that he is still a danger to society, ultimately the Attorney General could or would initiate civil commitment hearings against him to determine whether or not he is still a dangerous sex offender. If he is civilly committed and then is ultimately released from the civil commitment, then he would be subject to the supervision that you discussed. So it's a...

SENATOR BEUTLER: Okay. Yeah.

SENATOR BOURNE: ...so it's a continuum.

SENATOR BEUTLER: So...and in the language here it says, shall, upon completion of his or her incarceration or release from civil commitment, be subject to community supervision by the office for the remainder of their life. Is there any

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distinction intended between actually being supervised for the rest of their life as opposed to being subject to supervision? In other words can they choose not to supervise them for a period of time?

SENATOR BOURNE: No. They would be under the control, for lack of a better word, of the Office of Parole, and they would be subject to supervision. And it's those crimes that are set out on page 101 of the bill, are: first-time offenders convicted of rape of a child under 12, those who have more than one conviction for a sex offense, or those convicted of first-degree sexual assault of a person over the age of 12. So it's those three crimes.

SENATOR BEUTLER: Okay. So you wouldn't have any problem with making more direct language like, shall be supervised within community corrections for the remainder of their lives? I'm trying to get...I want to be sure that community corrections doesn't make a decision that these people don't need to be supervised and so they're going to say, well, we've supervised you for five years, now we're not going to supervise you anymore.

SENATOR BOURNE: Yeah, I appreciate that and would be happy to work with you, I think.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: You know, that's certainly the value of this discussion, is that some of those loopholes, or for lack of a better way to say it, can be tightened up. And I do want to recognize the work that you've done in this area, and I apologize for omitting that in my opening.

SENATOR BEUTLER: No. Let me ask you quickly on page 102, line 18, Senator Bourne, that paragraph that begins on line 15 says: "Any other conditions designed to minimize the risk of recidivism, including, but not limited to, the use of electronic monitoring, which are not unduly restrictive of the individual's liberty or conscience." What...is that...is that word really intended there, "conscience"?

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SENATOR BOURNE: That...a lot of this is modeled off of the Kansas law that has survived legal challenge and so that's why that language is there. But again, be happy to work with you on any language changes that you'd like to see.

SENATOR BEUTLER: Okay. I think my time is about to run out, and I'll pick up where I left off.

SENATOR CUDABACK: Thank you, Senator Beutler.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I'd like to engage in a little conversation with Senator Bourne, if I may, please.

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

SENATOR BOURNE: Certainly.

SENATOR STUTHMAN: Senator Bourne, is there anything in this, or maybe there already is in statute, you know, how does an individual ever get off of the sex offender list?

SENATOR BOURNE: That's a good question. I'll find out.

SENATOR STUTHMAN: Okay. I mean that's a concern of mine, and I'm sure there are individuals that, you know, maybe something happened at one time and they've never ever, ever had another intention, and you know, for them to be penalized their full life, I'm concerned with that and for those rights.

SENATOR BOURNE: That's a...

SENATOR STUTHMAN: But I'm...what I'm concerned about, you know, is there after a time period? When can they ever be relieved of that element on their...on their list.

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SENATOR BOURNE: I'll find that out. I do know, Senator Stuthman, that when a person is released from either prison or civil commitment, they are subject to an examination and the results of that examination, coupled with their previous criminal history, places them at a certain level on the registry, either first degree, second degree, or third degree. And I do know that there's a mechanism in current statute where, if an individual is placed as a third-degree sex offender, he or she can petition the court for a review of that placement. So I would assume, given that that's in there, I would assume that there is a way that...or a mechanism where people can get off the registry, but I will find that out and have an answer for you yet this afternoon.

SENATOR STUTHMAN: I'd appreciate that, Senator Bourne, because I just feel that there are possibly some individuals out there that, you know, that hangs over their head and they have absolutely, you know, have paid their dues and would never ever do that again. Another concern that I have is, you know, with the residency, individuals at the 500 feet or away. Would that be individual residency, or would that be a group home, or will that be supervised? I know you've been discussing the supervised parole part of it. Would that be these individuals? I think the supervision is where I feel that there is some type of a problem with, the ones that have gotten into trouble after that, is because of lack of lack of supervision or control of the supervision.

SENATOR BOURNE: Right. Well, today, the way the law exists today, even for a third-degree registered sex offender, there is no supervision. Their only requirement, after they're released from either prison or civil commitment, is that they register. And we don't really today, quite frankly, we don't follow up to make sure that they are where they say they're going to be. So this is new in statute. For those three types of offenders, they will actually be subject to parole, so we'll know exactly where they're at. Now I want to point out a little bit, and if we run out of time I'll push my light on again as well, but this bill does not set out residency restrictions. It does, however, let municipalities or cities, let...it authorizes them to adopt

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ordinances imposing residency restrictions on level 3 sex offenders who have committed crimes against children, but it says that a municipality can offer a...can make it no more restrictive than 500 feet from a school or a day care. And then there is an exception for a correctional institution, a treatment facility, or other facilities where sex offenders would reside while receiving treatment, and that's another component of the problem. With all respect to Senator Engel, I know that South Sioux City, that's the only thing they could have done, but say that there's a treatment facility up there that's within 2,000 feet from a school. Well, those offenders, you know, and it was an inpatient or a...I'm trying to think of the name for a...like a halfway house type of situation,...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...that offender could not reside there and get treatment under those ordinances. And this bill would say that even if it's within that area, they can still live there to get treatment.

SENATOR STUTHMAN: Okay. Okay. Thank you. That are some of the concerns that I had and I think we can work this...work through this. And I really appreciate Senator Bourne taking the time and the effort in working with the penalties and the seriousness of what we're really dealing with. So thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Beutler, on AM2715.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. Senator Bourne, if I could continue a little bit here?

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Certainly.

SENATOR BEUTLER: We were talking about, earlier, the provision that allows for continuing supervision with respect to people who have either come directly out of a prison facility, or who have come out of a regional center but, before that point in

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time, came out of prison. Right?

SENATOR BOURNE: Correct.

SENATOR BEUTLER: Okay. What about persons who are developmentally disabled and who were not sent to prison because of incapacity to commit a crime, but who may, nonetheless, be a dangerous sex offender? Those persons...now we have a new commitment act that applies to the DD category and presumably some or all of them would be committed to the regional center instead of going to prison. They would come out of the regional center and they may have committed an act, the consequences of which to the victim was as serious as the consequences to the victim in other circumstances.

SENATOR BOURNE: Right, those...

SENATOR BEUTLER: How are we applying continuing supervision to the serious offenses that may be committed by such a category of person?

SENATOR BOURNE: It's an excellent question, Senator Beutler, and I will tell you that the...those individuals, developmentally disabled individuals, are committed under a separate act, and if their...if their crime is a first-time offense of a rape of a child under 12, or first-degree sexual assault of an individual over 12, or have more than one conviction, they would be subject to, as I understand it, and I'll double-check this, but they would be subject to the lifetime supervision component of this bill. But I do want to make clear that a DD individual is civilly committed under an entirely separate act, not under this one.

SENATOR BEUTLER: Yeah, and what's troublesome with this language...and I don't mean troublesome--for the broad categories of people, it seems to be very good language--but they will not have been convicted of these things and, therefore, apparently not subject to this particular provision of law. And I would ask if they should not be subject to this particular provision of law.

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SENATOR BOURNE: You know, that's an excellent question, Senator Beutler, and I'll be honest with you. I'm thinking back of our hearings that we had across the state and our hearing on this particular bill, and I don't believe that came up. And so I'm glad that you're bringing it up now, and it's an absolutely valid point. And I'll be...I'll plead ignorance in the regard that I don't...I'm not intimately familiar with how the DD commitment act works. I do know that we had worked with Senator Byars on that act a year or so ago. Maybe it is appropriate that they be included in this, I don't know, but your point is well taken.

SENATOR BEUTLER: One of the things that bothers me and confounds me, as I think it must many people, doesn't have to do specifically with DD but has to do with...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...the conditions under which people are released from the regional center. That is, from my explorations of the matter, I've become convinced that neither the doctors nor society know how to cure a great many of these people. They treat them, but at some point in time there is a state of futility that's reached and people are no longer treatable. Now, if they're not treatable but they're still dangerous sex offenders, do they get out of the regional center?

SENATOR BOURNE: I don't think that they would get out of the regional center until they're deemed to no longer be a danger to society.

SENATOR BEUTLER: Okay. And...but this bill doesn't pick up on that criteria with respect to the regional centers' determinations.

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BEUTLER: Is that...is that accurate?

SENATOR CUDABACK: Your time is up, Senator.

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SENATOR BOURNE: Is that time?

SENATOR BEUTLER: I'm sorry.

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Thank you, Mr. President. And I put my light on because I think this is an excellent discussion. And thank you, Senator Beutler, for bringing this up. I have had some concerns myself relative to this issue and I think there needs to be some discussion. I obviously would offer myself and my staff to work with Senator Bourne and Senator Beutler and the committee to make sure that we have appropriate language treating persons with developmental disabilities. We did try, in the legislation that we did enact last year or the year before, relative to a separate commitment act. We had none. All we did before was take a person with developmental disabilities and lock them away, and we had no way of putting them into a treatment program, and we have established the Bridges program to do that and to try to get treatment so that they can be brought back into the community. But we need to look at this. If there is a situation of not being treatable, we need to recognize that and we need to deal with these individuals appropriately, and I know the community themselves would say the same thing. So we pledge our cooperation relative to this issue and relative to the entire DD community to work with you in this regard. And I would yield the balance of my time to Senator Beutler, if he would like it.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, Senator Byars, thank you for the time and thank you for the commitment. Your commitment to this whole area is...cannot be doubted, and we all appreciate it. We really do. Senator Bourne, if I may continue with you, on that same page, 98, these definitions.

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Senator Beutler, are we on page 98?

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SENATOR BEUTLER: Yeah, 98, and I'm looking at the...well, first of all, there's a definition on line 6 of a dangerous sex offender, and that goes into someone who has a mental illness or a personality disorder. And then you go down to line 15 and it says what a person with a personality disorder means, and in line 18 it defines what a person who suffers from a mental illness means. Now here's where I have trouble putting this all together. A person with a mental (sic) disorder means an individual diagnosed with a personality disorder and who has been convicted of two or more sex offenses. And then a person who suffers from a mental illness means an individual who has a mental illness as defined in 71-907, and who has been convicted of one or more sex offenses. And what confounds me is what relevancy does the number of sex offenses have to whether the problem derives from a mental disorder or a mental illness?

SENATOR BOURNE: A great question, Senator Beutler, and it doesn't...the reason the number of offenses is relevant goes to their propensity to reoffend, not towards their mental capacity. And so what we're trying to do, if you look at lines 6 through 10, dangerous sex offender means a person who suffers...and read on there. That is the new standard for which a person could be civilly committed. And so what we tried to do is, again, those folks who have offended more than once, will, the studies show, statistics show they are more inclined to reoffend, and those are the folks who I think should, and the committee believes should, be civilly committed until they're no longer a danger to society.

SENATOR BEUTLER: Okay. That makes perfect sense to me. And in conjunction with that, on line 20, wouldn't that then logically be two or more offenses?

SENATOR BOURNE: I'm going to cross-reference it. It refers to that Section 71-907.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: So if you'll let me cross-reference that to see what that means. When I read through this on the second or third time, it made sense to me, but as you bring it up, let me

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cross-reference that statute and I'll get back to you.

SENATOR BEUTLER: Okay.

SENATOR BOURNE: While we have just a few seconds--and I punched my light on and I'll sure give you the time--an individual has to be convicted of a sex crime in order to be civilly committed under the developmentally disabled commitment act, to have the lifetime supervision.

SENATOR CUDABACK: Senator Beutler, your light is next, so you may continue.

SENATOR BEUTLER: Okay. Senator Bourne, I'm sorry, I didn't pick that up. Under the DD, they would have to be convicted?

SENATOR BOURNE: Correct. You had asked earlier...

SENATOR BEUTLER: Okay, so we need to look at that a little bit more in terms...

SENATOR BOURNE: Correct. You had asked earlier if they would...

SENATOR BEUTLER: Right.

SENATOR BOURNE: ...be subject to the lifetime supervision if they simply were civilly committed, and I've been informed that they must be convicted in order to be subject to the lifetime supervision upon release from the civil commitment.

SENATOR BEUTLER: Okay. Senator Bourne, looking at this same section now--and this is a question aside from the one I just asked you, which I understand you're going to look back at the statute on--but keeping in mind this subdefinition of dangerous sex offender, that is, the definition of mental illness and the definition of personality disorder, if you follow on through at the bottom of page 98, it starts talking about...the operative provision starts to come into play using the definitions that have been previously described. And it says, "The Department of Correctional Services shall order an evaluation of the following

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individuals by a mental health professional to determine whether or not the individual is a dangerous sex offender." Now keep in mind before you go on here, determining whether they're a dangerous sex offender requires then, under the subcategories of the definition, to see whether they either had a mental illness or a personality disorder, and then further, how many crimes they had committed in one category or the other.

SENATOR BOURNE: Right. But actually, though, if you...the standard is on page 98.

SENATOR BEUTLER: Okay.

SENATOR BOURNE: The standard for the civil commitment hearing, once the individual is released from prison and the question is, should he or she be confined civilly? And the standard would be, is, if you are a dangerous sex offender, it means a person who suffers from a mental illness or a personality disorder, either of which makes the person likely to engage in repeat acts of sexual violence and who is substantially unable to control his or her criminal behavior. So it's a double-pronged test for whether or not they should be civilly committed.

SENATOR BEUTLER: And by virtue of the subdefinitions, you actually bring in two more prongs; that is, the number of sexual offenses under those two subdefinitions. Right?

SENATOR BOURNE: Right. Those with personality disorders and the individuals with mental illness.

SENATOR BEUTLER: All right. Let's say that we have a person...

SENATOR BOURNE: But, if I could interrupt, but only...

SENATOR BEUTLER: Sure.

SENATOR BOURNE: ...those people with personality disorders and mental illness who are likely to commit multiple sex crimes.

SENATOR BEUTLER: Okay. Okay. All right. Here's the example I'm not able to deal with in my thinking this through. Let's

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say the person has a personality disorder, and in order to have a personality disorder you have to be...and to meet the definition of dangerous sex offender you have to have been convicted of two or more sex offenders. Okay?

SENATOR BOURNE: Right, and who is unable to control his behavior.

SENATOR BEUTLER: Right. And then if you go over on page 99, subsection (1), it seems to say that an individual who has been convicted of sexual assault of a child in the first degree is subject to this incarceration.

SENATOR BOURNE: Actually, subject to the hearing.

SENATOR BEUTLER: Subject to the hearing, I'm sorry.

SENATOR BOURNE: Correct.

SENATOR BEUTLER: Even though there's just that one offense?

SENATOR BOURNE: Right. But what...in our opinion--and again I'm...this discussion is excellent--in our opinion, someone who commits a sex offense against a child, they should have an examination to determine whether or not they are a dangerous sex offender upon release from prison, because our research and our studies indicate that if you have one crime against a child, you're likely to do that again. So it doesn't say that they automatically be civilly committed, but it requires that they have a civil commitment hearing.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Senator, I'd be the first to agree with that, but what I'm trying to say, rightly or wrongly, is that that one conviction there conflicts with the definition of a dangerous sex offender as that person is ascertained to be so by virtue of a personality disorder. Because personality disorder, on 15 through 17, lines 15 through 17 of page 98, requires conviction of two or more sex offenses.

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SENATOR BOURNE: Right. But...you're right, but that would fall into the definition of determining whether or not they're a dangerous sex offender, which doesn't discuss the multiple convictions. So if you look at lines 6 through 10 on page 98, it talks about what a dangerous sex offender is, and then it goes on there, and we're saying that in addition to a dangerous sex offender, you can be civilly committed if you're unable to control and likely to engage in that, or you have a personality disorder.

SENATOR CUDABACK: Senator Bourne, it's now your time.

SENATOR BOURNE: Thank you. Senator Beutler, if you'd yield, we could continue this.

SENATOR BEUTLER: Sure.

SENATOR BOURNE: Or a person with a personality disorder. And then it discusses the number of sex offenses, as well as the individual who has a mental illness, as found in Section 71-907. So...

SENATOR BEUTLER: So you're saying the...excuse me, Senator. I...

SENATOR BOURNE: No, no, that's okay. Go ahead.

SENATOR BEUTLER: So you're saying that the only part of, for example, lines 15 through 17, which defines a person with a personality disorder, the only part of the definition is that the individual is diagnosed with a personality disorder. What is the value of saying, "and who has been convicted of two or more sex offenses"? Where does that language...what does that language affect, is what I can't quite...

SENATOR BOURNE: It would encompass those people who have a personality disorder who have been convicted of two or more sex offenders (sic) that don't necessarily meet the definition of a dangerous sex offender.

SENATOR BEUTLER: Okay. If I have a...

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SENATOR BOURNE: Do you see what I'm saying?

SENATOR BEUTLER: Not yet.

SENATOR BOURNE: Okay.

SENATOR BEUTLER: If I have a personality disorder and I have just one sex...conviction of a sex offense,...

SENATOR BOURNE: Correct.

SENATOR BEUTLER: ...am I a dangerous sex offender?

SENATOR BOURNE: I don't know, and that is what...that is what the standard in 6...in lines 6 through 10, on page 98, would determine. You would have a civil commitment hearing, and you would be, throughout this process, you would already be...you would already have a mental evaluation to determine whether or not you had a personality disorder. Say you had a personality disorder, but you only have had one sex offense, convicted of one sex offense. Okay. So when you're released from prison, then they would look at whether or not you're a dangerous sex offender. And the reason is, is the folks with personality disorders who have had more than one offense, or folks who have had a mental illness with one or more offenses are most likely to reoffend, and we're simply highlighting there that those folks might not meet the standard of a dangerous sex offender but are still a risk to society.

SENATOR BEUTLER: Okay. Let me just try...let me try putting it one more way and see if that helps me understand it.

SENATOR BOURNE: Okay.

SENATOR BEUTLER: Let's say in lines 15 through 17 you simply drop the language "and who has been convicted of two or more sex offenses," and in lines 18 through 20, the definition of mental illness, you simply drop the line "and who has been convicted of one or more sex offenses." How would that change the operation of the law in any way?

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SENATOR BOURNE: I...just standing here looking at the language, I don't know. But I will tell you that the goal is, is to incarcerate...or, excuse me. The goal is to civilly commit those folks who are at a high likelihood of reoffending and...but no more, meaning, we made a decision that we don't want to civilly commit people who are not a danger to society, and so we tried to narrowly draft this so that it only would ensnare those folks who are most like...who are dangerous and most likely to reoffend. So I guess what I'm saying, I'm making this the long version, is the goal is to only civilly commit those folks we should be afraid of and no others. So if there's language improvements we can make to accomplish that goal, I'd be happy to sit down and get your input, because I know of your interest in the issue.

SENATOR BEUTLER: Well, there's absolutely no difference between us, Senator, in terms of the goals you're describing and the balance that you have in here and all of that. Let me ask you this. We now have three, with the addition of this one, we'll have three different commitment procedures. We'll have the Mental Health Commitment Act,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...we'll have the DD commitment act, and we'll have the dangerous Sex Offender Commitment Act. Now there's crossover. A person with a sexual offense problem could have a mental illness and conceptually could be committed under the Mental Illness Commitment Act or, for that matter, under the DD act, even though they had...the nature of their problem was in the nature of sexual offenses. What is the protocol here, or what is intended with regard to where a prosecutor or a county attorney or the Attorney General goes? Can they go to any one of the three that applies, and it's an alternative kind of thing? Or if the matter is a sexual offense, is it intended that they would use this new section of law that you're describing?

SENATOR CUDABACK: Time, Senator Bourne.

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SENATOR BEUTLER: If they use...

SENATOR CUDABACK: Further discussion? Senator Stuhr, followed by Senators Flood and Bourne. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. I do want to thank Senator Bourne for...and the Judiciary Committee for all of their work on this issue. I know it is something that's very needed in many of our communities across the state. And I'd like to give the rest of my time to Senator Beutler. Senator Beutler.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Stuhr, very much. Senator Bourne, I think you got the intent of the previous question. And again, forgive me for asking these relatively minor questions, because it is a great bill. There's a lot of good stuff in here and I hope the body understands that.

SENATOR BOURNE: I appreciate your comments, but the discussion is really valuable because we are talking about people's liberty and I think we need to be extremely careful. So I appreciate your reading through this.

SENATOR BEUTLER: So let me just renew the last question then with regard to the three different commitment acts that we will have if this bill is passed. What...is it possible with respect to sexual offenses to use any one of the three, so long as it pertains under the language of each of the separate commitment procedures?

SENATOR BOURNE: I would say not, and the reason I would say that is because, even though I haven't looked at the DD commitment act in some time, I don't know if the definition of dangerous sex offender is in that or in the mental illness (sic) commitment act. I will tell you that the original version of the bill we were using the Mental Health Commitment Act and we had some testimony in the hearing in opposition to that, saying, look, you know, not all mentally ill people are sex offenders and vice versa. And so it made sense, given that we're putting

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the focus on protecting our communities from those offenders we think will reoffend, it made sense to have its own separate commitment section. And so I would say that...again, I'll have to go back and look at both of those acts, but I don't believe that these definitions regarding dangerous sex offenders or those who have been convicted of more than one offense, sex offense, would be included in there. So I think the appropriate commitment vehicle would be the Sex Offender Commitment Act.

SENATOR BEUTLER: Okay. I just don't want strange kinds of things to start to happen where somebody races to the DD statute or races to the mental health statute to get a commitment, a civil commitment, under one of those procedures and thereby avoid, potentially, your permanent lifetime...

SENATOR BOURNE: Supervision.

SENATOR BEUTLER: ...supervision provision here. And so I hope we can take a look at that...

SENATOR BOURNE: Absolutely, I think it's appropriate...

SENATOR BEUTLER: ...before General (sic) File.

SENATOR BOURNE: I think it's appropriate that we look at all three of those sections, and if harmonizing language is required, why, hopefully you'll help us draft that.

SENATOR BEUTLER: Okay. Last question, Senator Bourne. The other part of the experience I had in looking through this with my staff was that it really kind of seemed to us that not only was there a lack of the statutes that you are providing now, but even in cases where available statutes, the mental health statute, might have applied, as people came out of prison, as they came out of the regional centers, there was no interest in instituting additional proceedings on the part of county attorneys. And in fact, as you may know, it got so bad that the regional center and the DHH advised no longer giving notice to county attorneys because...

SENATOR CUDABACK: One minute.

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SENATOR BEUTLER: ...they never did anything. So the county, having to pay for some of this stuff I think is the reason...to me, seemed to be...I don't know, it could be lack of...ignorance, it could be ignorance, it could be lack of will, but it could well have been reluctance to involve the counties an additional expense. And does this bill present the same kind of problem with a new commitment procedure? I mean, do we need to take over the expense of this to be sure people are protected? I'd be interested in your observations on that and the...

SENATOR BOURNE: Yeah. Yeah, I appreciate that. You know, my sense, Senator Beutler, in talking to the county attorneys, it was more a function of how incredibly busy they are, rather than expense. And I think what you see is county attorneys who are, frankly, overworked and it was just simply falling through the cracks rather than an expense issue.

SENATOR CUDABACK: Time, Senator. (Visitors introduced.)
Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. And, Senator Beutler, if you'd like to continue the dialogue, that would be great. And again, I want to just reiterate that in visiting with the county attorneys involved in this process, it was more a function of...it was more a function of time and maybe a lack of knowledge of the process. And so I think it is appropriate, given that these individuals, if they are civilly committed, will ultimately become responsibility of the state. I think it is appropriate that the ultimate authority or the ultimate decider of whether or not to initiate civil commitment hearings against an individual the Department of Corrections still feels is dangerous should rely with the Attorney General.

SENATOR BEUTLER: Okay.

SENATOR BOURNE: And, Senator Beutler, if you have other questions, I'd be happy to continue the dialogue.

SENATOR CUDABACK: Senator Beutler.

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SENATOR BEUTLER: Just a couple more small ones, and then I'll have said everything I wanted to discuss with you, Senator Bourne. On page 80, line 16, I think this is part of the emergency treatment, emergency...I'm not sure if this is in the emergency section or not, but it says: No female subject shall be taken to the treatment facility without being accompanied by another female or relative of the subject. I've never seen that type of thing before in our language, and maybe...in the statutory language in this area, and maybe it's a necessary protection. But is that something that was discussed, the necessity of that? And why is there a necessity of that?

SENATOR BOURNE: Right. Senator Beutler, that does mirror the Mental Health Commitment Act that's currently in our statute.

SENATOR BEUTLER: Oh.

SENATOR BOURNE: And if you look at the sex offender commitment statute or act, civil commitment act, and the mental health one, you'll see some significant overlaps, and that is...and I will tell you I was, when I was reading that, I was surprised to see it as well. It is kind of unusual, but I think it does make sense; that it's appropriate that if we have a female individual that's going to a civil commitment that it does make sense to have a female accompany them. And again, it is in current statute.

SENATOR BEUTLER: Okay. All right, let me direct your attention to page 86, and I'm looking at the language that begins on line 11 there, Senator. It's in the area that deals with review hearings on commitments.

SENATOR BOURNE: Correct.

SENATOR BEUTLER: And it says: The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any individual or it appears upon the record of the periodic reports, da-da-da, to the satisfaction of the board that cause no longer exists for the care or treatment of the subject. And that's not going to

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be interpreted to mean that cause no longer exists because there's no way to treat them, is it?

SENATOR BOURNE: No, and I'll tell you, again, that language is from the current Mental Health Commitment Act that was transferred over to this one, and I would say no. What we're trying to accomplish here is that, frankly, we shouldn't incarcerate or, excuse me, civilly commit someone...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...when the situation doesn't warrant it. And this is the mechanism by how those...one of the ways that these folks can leave the civil commitment confinement. So it doesn't mean that if we determine they are no longer eligible to be treated, or the treatment isn't working, it doesn't mean they can be released, if that...was that your question, Senator Beutler?

SENATOR BEUTLER: Yes.

SENATOR BOURNE: Yeah, it does not...it does not in any way...the intent is that it does not apply. Some people just can't be treated...

SENATOR BEUTLER: Yes.

SENATOR BOURNE: ...and that would...the ability to not be treated is not a mechanism by which they would be released from civil commitment. And if we need to add a little clarity there, I...that makes sense.

SENATOR BEUTLER: Okay. Senator, those are all my questions, and I thank you for enduring them all, and I appreciate the opportunity to look at some of the language.

SENATOR CUDABACK: Thank you, Senator Bourne. That was your third time, Senator. Senator Synowiecki, followed by Senator Flood and others.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. Senator

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Bourne, I too want to kind of join the choir and thank you for your effort relative to this issue, and thank God we have people like you that have provided leadership in this issue and that we did not do a knee-jerk kind of reaction to this situation as other states have done. Would you yield to a question or two?

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Certainly. Absolutely.

SENATOR SYNOWIECKI: Senator Bourne, my questions evolve around the lifetime community...what we're calling community supervision that's going to be handled by the parole administration. And I guess that's my first question, is, it seems, in my reading of the bill, that this is an effort that the parole administration takes on and essentially removes all authority and jurisdiction of the Parole Board, which is not our current practice and procedure relative to those individuals sentenced to a period of parole. Can you just provide me some insights on the committee's thinking relative to removing any and all jurisdiction or provision of the Parole Board from this facet of the bill?

SENATOR BOURNE: Yeah, Senator Synowiecki, I don't believe that that's the case. I think what we have done is that once an individual has been deemed...okay, they've served their sentence, they're civilly committed. Once the civil commitment authorities deem that this individual is no longer at risk of reoffending, then they would go through the parole procedure. And if they are one of those offenders who have multiple convictions of sex offense, if they have raped a child under 12, or a forcible rape of a person over 12, then they would be subject to parole. And as I...as I understand it, now let me look through again, but I believe that once they're released from civil commitment then they do go through the parole process that an individual who's released from prison would go through.

SENATOR SYNOWIECKI: Okay. And the reason why I'm asking that the...let me read you on page 102, the very bottom, beginning on line 26. If the parole administration, through a parole officer, becomes aware that there's been a violation of

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community supervision, there's three things they can do. They can either revise or impose additional conditions of community supervision; number (2), beginning on line 2 on page 103, they can forward to the Attorney General or county attorney where the individual resides a request to initiate a criminal prosecution for failure to comply with the terms of community supervision; or (3), being in line 6 on page 103, forward to the county attorney or Attorney General a recommendation that civil commitment proceedings be instituted. Parole board is not involved in that at all. That's why I, from my reading of this, I gleaned that the jurisdiction and oversight of the Parole Board relative to this lifetime community supervision aspect is entirely removed and that the Parole Board is not involved in any of the criteria for (inaudible).

SENATOR BOURNE: Okay. I see what you're saying, Senator Synowiecki, and technically they wouldn't be under parole, as such. They've served their sentence. They've been civilly committed. But there is another element of supervision that is necessary. They wouldn't technically be under parole, but they would be under the supervision of an individual from the parole department.

SENATOR SYNOWIECKI: Okay. So they're not on parole. They're on what we're calling, a new term now, community supervision. Senator Bourne, may I ask, is that because of constitutional concerns perhaps?

SENATOR BOURNE: Yes. Correct.

SENATOR SYNOWIECKI: Okay. Thank you. I have one other question.

SENATOR BOURNE: Certainly.

SENATOR SYNOWIECKI: Relative to when the parole administration becomes aware of a violation of their community conditions, let's call them, which are, incidentally, very well laid out in your bill, again, page 103, line 6, they may forward to the county attorney or Attorney General a recommendation that civil commitment proceedings be instituted with...

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SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: ...respect to the individual. Was there any discussion on the committee level, Senator Bourne, relative to giving a parole officer or the parole administrator the statutory authority to initiate them proceedings?

SENATOR BOURNE: No. We never discussed that, but that's certainly something that could be discussed. What this is...we felt that given the county attorney from where the individual came, or the Attorney General had the authority to begin the initial civil commitment procedures, we felt it appropriate that if a person was under lifetime supervision, community supervision, and it became clear that they were at a risk of reoffending, it made sense to go back to the entity, i.e., county attorney or the Attorney General that began the original commitment process. So it made sense, rather than to add another person, even though that individual is supervising them, it just...it made sense to us at the time to just kind of keep consistency throughout the entire continuum of...

SENATOR CUDABACK: Time, Senator.

SENATOR BOURNE: ...care.

SENATOR SYNOWIECKI: Thank you.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Flood. Senator Flood waives his time. Senator Bourne, there are no other lights on. As Chairman of the committee, you're recognized to close on AM2715.

SENATOR BOURNE: Thank you, Mr. President, members. This is the closing on the committee amendments. Again, I appreciate the discussion. If there's anyone that has any input, anything they would like to see changed, modified, reworded, we'd be happy to take that input. Hopefully, Senator Beutler and Senator Byars would be happy to work with the committee and other interested parties and come up with the language. We've had a good discussion. I would just urge your adoption of AM2715. Thank

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you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on AM2715. The question before the body is, shall the committee amendments, offered by the Judiciary Committee, be adopted? All in favor vote aye; opposed, nay. Voting on the adoption of the committee amendments, AM2715. Have you all voted who care to? Please record, Mr. Clerk.

CLERK: 35 ayes, 0 nays on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments have been adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Discussion of the bill, advancement itself? Senator Jensen, followed by Senator Chambers.

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. And I, too, want to thank Senator Bourne and the members of the Judiciary Committee and their staff for the excellent work in this very important issue. The public has certainly made known of the fact that they want safer communities and, with that, I think the bill that has come forward, LB 1199, has addressed that in a very substantial fashion. And along with that, there is some cost to this, as we'll see later on in an A bill. But I'd just like to ask Senator Bourne a question, if I might, please.

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

SENATOR BOURNE: Certainly.

SENATOR JENSEN: Senator Bourne, and we've had some conversation with this and you certainly are aware of LB 1083 that was passed, now going on the second year, in an effort to move behavioral health reform, mentally ill individuals into community-based services, and we're well along with that. Also, you're aware of the number of individuals that have been

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committed to our regional centers with sexual offenses. And, matter of fact, we've been growing that number. We've added 40 beds in the last four years, and are continuing to add more beds. But with this and with this plan, certainly you don't envision changing anything in LB 1083 with behavioral health reform. Is that correct?

SENATOR BOURNE: Excellent question, Senator Jensen. I'll tell you we had testimony, frankly, in opposition to LB 1199 because of the issue that you just articulated. And we have separated out and the Governor, the administration, has devoted new money to resolving the issues that brought about LB 1199, while still keeping LB 1083 going forward. And so...and I believe...hopefully, you'll state that you're comfortable with it, because you and I have had discussions about this and I want to make it very clear that we responded to those folks at the hearing who were concerned about exactly what you're saying, have devoted new money to this, and LB 1083 reform will continue to go on and this is funded through a separate program.

SENATOR JENSEN: Thank you. I just wanted to get that on the record. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Further discussion? Senator Chambers, followed by Senator Flood. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I have not had the opportunity to look at the amendment at all. That's why I haven't said anything on it. But Senator Bourne has talked to me in general terms about what it says and I had let him know that should I come across anything that is troubling to me, before we get to Select File I would have that conversation with him. So I'm just making it clear for the record that my failure to say anything doesn't mean that I've reviewed all of the amendment and that I agree with it. I'm not saying at this point that I disagree with it, but there are some areas that I have questions about. However, at this stage, I didn't want to raise them because they have not sufficiently gelled in my own mind. So I do intend to look at this more carefully and will discuss with Senator Bourne

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whatever problems I may have, and if they can't be resolved, or even if they can, I will have more to say on this bill when we get to Select File. And that's all at this time, Mr. President, I would have to say. Thank you.

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

SENATOR HOWARD: Thank you, Mr. Chairman and members of the body. I'm certainly glad that the Judiciary Committee has advanced this bill to the floor. This is a critical area that deserves all of our attention. This is a situation that most of us would rather not have to deal with, and yet we can't ignore it. I appreciate Senator Engel's comments. I think he hit the nail on the head. The effects of child rape are certainly lifelong. I have a question for Senator Bourne, if he would respond.

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Certainly.

SENATOR HOWARD: In reading through the information on civil commitment, which I would say I certainly appreciate that you've included this in here, I'm interested in the concept of the mental illness aspect of it and that this is a requirement, which basically this would boil down to a diagnosis. I recalled a situation where I worked with a very young child whose stepfather had been convicted of raping her repeatedly, and while he was in prison he would send back drawings to her. And while these drawings really had no significance to anyone else, to her they were...they had a lot of impact because they were messages from him, and she lived in fear that he would be released and would be able to locate her. I'm wondering about the condition or how this would come about whether the diagnosis for mental illness or behavioral personality disorder would be received. Do you...do you envision that being a psychiatric evaluation when the individual is at the point where they would be released for prison? Because not everyone that would enter would enter with a diagnosis.

SENATOR BOURNE: Senator Howard, I'm not 100 percent sure of

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what you're asking, but I will tell you that we have carved out a separate commitment act for those folks convicted of sex offenses. And once an individual goes to jail...I don't know in this situation if this was in the jail, when he was incarcerated, that he sent these pictures, or if it was during the civil commitment. But what we're advocating is that once an individual has been released from prison or is preparing to be released from prison, if Department of Corrections still feels they're a danger to society, the Attorney General ultimately would initiate a civil commitment hearing against that individual. The standard for determining whether or not, excuse me, determining whether or not they would be confined civilly is found on page 98, lines 6 through 10, and it, again, it separates out the Mental Health Commitment Act from this one. So that individual, whether or not he would be civilly committed would be determined by this new act. Is that what you're asking?

SENATOR HOWARD: Well, allow me to be possibly more specific. Would this include a psychiatric evaluation?

SENATOR BOURNE: At what...at the commitment level?

SENATOR HOWARD: At the point of release...

SENATOR BOURNE: At the...

SENATOR HOWARD: ...when a commitment is considered.

SENATOR BOURNE: At the point of release from prison...

SENATOR HOWARD: From prison.

SENATOR BOURNE: ...or from the civil commitment?

SENATOR HOWARD: No, from prison.

SENATOR BOURNE: Okay. What would happen, when the individual would present themselves to leave the prison, they would be taken to the Lincoln Regional Center where they would have another hearing to determine whether or not they are a dangerous

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sex offender, and that definition is found here on page 98. And if they are, they would be civilly committed. And so I would imagine, as part of that process, there would be a mental evaluation, because if you go on and look, there's other definitions. Persons with personality disorders, you would have to have a mental evaluation to determine whether or not you had a personality disorder, or a person who suffers from a mental illness, you would again have to have some sort of an evaluation to determine whether or not you're mentally ill. So I would assume there would be a mental evaluation as well as a hearing at which individuals would be represented...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...by lawyers, and the rules of law would apply whether or not they're civilly committed.

SENATOR HOWARD: So...

SENATOR BOURNE: Did that give you clarity?

SENATOR HOWARD: Well, that's very helpful, but what I'm wondering is if this evaluation would happen...it would seem this evaluation would have to take place prior to a commitment, since it's a part of the...of the pieces that are necessary for the civil commitment.

SENATOR BOURNE: The evaluation would be...okay. I would assume that there would be certain types of evaluations while an individual is incarcerated, but there would be a...as it relates to...let me get to my outline here, because I don't want to say anything wrong. There would be certain instances where an individual would have a mandatory civil commitment hearing and where the Attorney General wouldn't have anything to do with it. I guess I'm not...I'm not really tracking what you're asking me.

SENATOR HOWARD: Basically, the question is, when would...

SENATOR CUDABACK: Time, Senator Howard.

SENATOR HOWARD: Thank you, sir.

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SENATOR CUDABACK: Thank you, Senator Howard. There are no further lights on. Senator Bourne, you're recognized to close on LB 1199.

SENATOR BOURNE: Did you...Senator Howard, did you, as part of my closing, want to continue? Would Senator Howard yield to a question?

SENATOR CUDABACK: Senator Howard.

SENATOR HOWARD: Yes.

SENATOR BOURNE: If we could, if you have other questions, I mean, I'd be happy to visit with you now or off the floor, however.

SENATOR HOWARD: Well, in a nutshell, I realize the diagnosis is an important part of the civil commitment, so I just wanted clarity on when that would occur, if it would occur while the individual was in prison, when the individual would be released. Because in the situation that I outlined, there wasn't a civil commitment available, so the stepfather did his time and then simply was released. But with what you outline, there would be a safeguard for this child.

SENATOR BOURNE: Correct.

SENATOR HOWARD: And I just...I would like to know when the evaluation would be done in order to give you that information.

SENATOR BOURNE: Okay. That's fair enough. Thank you. We've had a good discussion, I believe, on the bill. I'd be happy to work with Senator Howard, Senator Byars, Senator Beutler and all. I do think it's a collaborative process and I think the more people that are involved in making sure of this language the better the bill will be. So I hope for and look forward to continued dialogue and participation between now and Select File. With that, I'd urge your advancement of LB 1199, and thank you to all who were involved.

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SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on the advancement of LB 1199. The question before the body is, shall LB 1199 advance to E & R Initial? All in favor of the motion vote aye; opposed to the motion vote nay. The question before the body is advancement of LB 1199, offered by Senator Bourne. Have you all voted on the question who wish to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: LB 1199 advances. Mr. Clerk, LB 1199A.

CLERK: LB 1199A by Senator Bourne. (Read title.)

SENATOR CUDABACK: Senator Bourne, to open.

SENATOR BOURNE: Thank you, Mr. President, members. As I mentioned in my opening on the underlying bill, this is not cheap. There would be costs associated with the lifetime community supervision and risk assessment and evaluation by parole administration. It is estimated that 60 to 80 individuals per year would be required under lifetime probation or parole or supervision. There would be an impact on the...required evaluations as set forth in the bill...excuse me, a fiscal impact. There are a number of other costs associated with the bill. But again, to do good things is not necessarily cheap. I will tell you that this is kind of difficult for me because I don't believe...I think I've had one other bill that even had an A bill throughout my eight years in the Legislature, but I think that this is so important, that our communities are expecting us to resolve the problem. And with that, I'd be happy to answer any specific questions you might have regarding LB 1199. But I do want to point out, as Senator Jensen mentioned, there is a separate appropriation that would further the requirements of LB 1199 that is separate and distinct from LB 1083 and the mental health reform in that area. With that, I'd be happy to answer any questions, or would urge your adoption of the bill.

SENATOR CUDABACK: You've heard the opening on LB 1199A. Open

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for discussion. Senator Flood. Senator Flood waives his time. Further discussion? Seeing none, Senator Bourne, you're recognized to close. Did you wish to...did you waive closing, Senator? The question before the body is, shall LB 1199A advance to E & R Initial? All in favor vote aye; opposed, nay. Voting on advancement of LB 1199A. Please record, Mr. Clerk.

ASSISTANT CLERK: 36 ayes, 0 nays on the motion to advance the bill, Mr. President.

SENATOR CUDABACK: LB 1199A does advance. We now go to the...Mr. Clerk, did you have any items? You may read them.

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LB 962, LB 962A, LB 1069, and LB 1069A as correctly engrossed. New resolutions: LR 357 by Senator Janssen; LR 358 by Senator Cudaback; LR 359 by Senator Cornett; LR 360 by Senator Cornett. Committee on Enrollment and Review reports LB 965 to Select File; LB 1010, LB 1189, LB 1189A, LB 956, all to Select File, some with E & R amendments. I have a notice of committee hearing from the Education Committee, and a report from the Rules Committee that will be printed in the Journal, Mr. President. (Legislative Journal pages 1221-1227.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to LR 259CA. Mr. Clerk, please.

ASSISTANT CLERK: Mr. President, LR 259CA, introduced by Senator McDonald, is a proposed constitutional amendment to increase the amount of state lottery proceeds to be distributed to the Compulsive Gamblers Assistance Fund. The resolution was introduced for the first time on January 5 of this year, referred to General Affairs. That committee reports the resolution to General File without any committee amendments.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator McDonald, you're recognized to open on LR 259CA.

SENATOR McDONALD: Mr. President and members, LR 259CA fulfills what we did last year, last spring, as in a constitutional amendment that permanently increases the lottery revenue funding

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for the Compulsive Gamblers Assistance Program. Last year you agreed to a temporary increase for the program out of the Health Care Cash Funds for two years. LR 259CA increases lottery revenue funding to the Compulsive Gamblers Assistance Fund by an additional \$500,000 per year. The Compulsive Gamblers Assistance Fund would receive the first \$1 million of lottery revenue after the payment of prizes and operating expenses, plus 1 percent of the remaining lottery revenue. LR 259CA reduces the total payments going to all beneficiaries by that same amount of \$500,000 from the September payments each year, according to each beneficiary's set percentage. December, March, and June beneficiary payments would not change. Currently, after payment of prizes and operating expenses, the first \$500,000 in lottery revenue goes to the Compulsive Gamblers Assistance Fund. The remaining lottery revenue, minus the initial \$500,000, is then divided between five beneficiaries according to set percentages. LR 259CA does not change the set beneficiary percentages. To illustrate the effect of LR 259CA all the beneficiaries...on all the beneficiaries, I prepared a handout using the September 2005 payments. The payments have been figured as if LR 259CA were in effect in September of 2005. Since LR 259CA affects only the initial beneficiary payments each fiscal year, which are made at the end of September, the estimates in this handout are based on actual lottery revenue for the first quarter of this fiscal year. Keep in mind that the lottery revenue goes up and down, according to the lottery ticket sales, prize payments, and operating expenses, so beneficiary payments change each quarter. LR 259CA increases lottery revenue funding for the Compulsive Gamblers Assistance Program beginning in September, 2007, if the voters approve it, because it is a constitutional amendment. And please support that constitutional amendment, LR 259CA, and advance it to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. You've heard the opening...you got anything? You've heard opening on it. There are amendments. Mr. Clerk, please.

CLERK: Mr. President, first amendment to LR 259CA is offered by Senator Schrock. Senator Schrock, I have AM2403 with a note you wish to withdraw this.

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SENATOR CUDABACK: It is withdrawn.

CLERK: Senator Schrock would then offer AM2627. (Legislative Journal page 977.)

SENATOR CUDABACK: Senator Schrock, to open on AM2627.

SENATOR SCHROCK: Mr. President, members of the Legislature, this is a straightforward amendment. This amendment would protect the Environmental Trust from being used for purposes other than those for which it was intended. The amendment requires that all funds be distributed exclusively through a competitive grant process, for the purpose of conserving, enhancing, and restoring the natural, physical, and biological environment of Nebraska and related administrative costs. The Water Policy Task Force, rather than take money statutorily from the Environmental Trust, was instructed to apply for a grant for funds with its cost. The task force went through the competitive grant process to obtain funds to begin its work, and it was awarded \$350,000. On the contrary, we took money--raided it, if you want to say--for LB 962, which is something I didn't want to do, but we needed the money, and you know how the Legislature is. When we need the money, we look for a place to take it and we take it from the Environmental Trust, and it wasn't intended for that, I don't believe. I have two handouts that you are receiving. One is a letter to the editor from Ben Nelson, who was Governor of the state of Nebraska, and he's the one who is probably responsible for us voting on and passing the lottery in this state. And the other is a survey, and it appears to me like most of the people in the state strongly agree that they voted for the lottery because the money was going for education and the environment, and that's pretty overwhelming. I'm not going to go through the numbers, I'm not going to take a lot of your time this afternoon, but 55 percent strongly agree that the voters were told that half the money was going to protect the environment, and they don't think we should break that promise. It gets even higher than that when you include those that strongly agree. So I think the public supports this, and those of you who are in rural Nebraska, who may disagree with this, I will tell you that a lot of money has

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been spent in my legislative district and in a lot of rural Nebraska, to protect wetlands and to protect water issues, and I think it's been very beneficially spent. When you stop and realize that 97 percent of the state, the property in this state is owned by private landowners, most of this money is going to private landowners to enhance the environment. A lot of this is for migratory birds, for water enhancement issues. It's done the irrigators in this state a lot of good. And we're just saying, let's go through the competitive grant process. Now I can tell you that the university this year wanted some money for the low-level waste, to clean up at Mead, and I think they would have got it if they would have gone through the competitive grant process, but they didn't. And I don't disagree with what the Appropriations Committee did then. That's a tough decision. What are we going to do about cleaning up the waste at Mead? But I think the university, if they'd have gone through the grant process, probably would have gotten it. Certainly, the Governor was in favor of that, and most of those people are appointed by the...well, they're all appointed by the Governor. But a lot of those people on there have now been appointed by Governor Heineman. If he wanted the Environmental Trust Board to do that, I think he could have made it known, and they would have granted his wishes, anyway. This is a straightforward amendment. I am looking forward to discussion on it. I'm going to be rather quiet, and I'm not going to push my button again, but I want to see how the debate goes, and we'll proceed from there. Thank you.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening on the Schrock amendment. Open for discussion. There were a number of lights on. If you wish to address the Schrock amendment, you may, or you may waive. Senator Chambers, followed by Senator Don Pederson.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm not going to extract my pound of flesh, other than by saying that in the past I've mentioned that people listen to me, but they don't hear me. I had talked about the problem that would happen to this compulsive gambling fund, gamblers' fund, and to the Environmental Trust, but everybody was so eager to get their hands in this money that Senator Landis was able to tell us--and

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I've looked at the transcript--that these different entities were satisfied with the way the original constitutional amendment had been drafted. And I'd like to ask Senator Landis a question, if he is of a mind to respond.

SENATOR CUDABACK: Senator Landis, would you respond?

SENATOR LANDIS: You bet.

SENATOR CHAMBERS: Senator Landis, do you recall--and I know you're having to trust your memory, so if you're not sure, this is not a trick question--do you recall pointing out, when I was interrogating and doing whatever I was doing, you had mentioned that these different groups were satisfied with the way that amendment had been drafted, the original one we're talking about?

SENATOR LANDIS: I think I did make that representation, and at the time, that was true.

SENATOR CHAMBERS: Thank you, and it was true, I just wanted to be sure. And that's why I couldn't budge anybody to try to get anything done. I had stated that in order to protect these entities in the constitution, the language should have been added that says "there is hereby created," and you put it in the constitution. Let me read to you something from Article II, Section 1 of the Nebraska Constitution. The powers of the government of this state are divided into three distinct departments: the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted. The constitution establishes the existence of the legislative branch, the judicial branch, the executive branch. There is nothing in this language that Senator Schrock is offering, there is nothing in the existing constitutional language that creates the Compulsive Gamblers Assistance Fund, or the Environmental Trust Fund or Board. Those are statutory creations. There is nothing in the language of the constitution right now that would prevent the Legislature from abolishing this Environmental Trust Fund and Board, or abolishing the Compulsive Gamblers Assistance

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Fund, or whatever that says. I'm opposed to Senator Schrock's amendment. First of all, if this language that he's offering were adopted by the public, all that a legislature has to do is abolish the Nebraska Environmental Trust Board. It's not created by the constitution. There's nothing that says there is hereby created these entities. They are referred to, because at the time the amendment was adopted, there was statutory language that dealt with them. But there was nothing, and there is nothing that prohibits the Legislature from dealing with these entities in any way it chooses, even to the point of abolishing them. It would be one thing if Senator Schrock's amendment talked about the board having the right and the authority to make decisions as to the expenditure of this money, as directed by the Legislature or pursuant to law. But to take a group of people...

SENATOR BAKER PRESIDING

SENATOR BAKER: One minute.

SENATOR CHAMBERS: ...where the constitution doesn't even say where they will come from, how many people shall constitute this board, what a quorum is, or anything else, is an abdication of our responsibility as the keepers of the purse string. With Senator McDonald's amendment, we're at least putting a specific amount of money into this constitution, and we can discuss that after we dispose of Senator Schrock's amendment. But I am totally opposed to his amendment. I know what he's trying to do, but the constitutional route he is pursuing is not the way to go, in my opinion, which by the way, is not humble. Thank you, Mr. President.

SENATOR BAKER: Thank you, Senator Chambers. Senator Don Pederson is recognized to speak.

SENATOR D. PEDERSON: Thank you, Mr. President, members of the Legislature. I'm hearing several thoughts in connection with this process. Number one, I've never been very wild about this lottery, and it seemed to me that the same people who complained vigorously sometimes about their taxes spend money on this lottery, and it really is another tax, quite frankly. But be

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that as it may, that's what we have. We already have the lottery. I agree with Senator Chambers that this was done in an inappropriate manner when it was all done constitutionally, and I think I spoke a long time about that, as far as the State Fair was concerned. But be that as it may, we are now addressing the issue that Senator McDonald has said is important, and it is. We do have compulsive gambling in the people of our state, and I think that we need to address that issue. We could not address it adequately the last time that we addressed the issue, because we were just not there, fundingwise, and it was with the help of Senator Jensen that we were able to come up with some cash money to enhance this program. But I think that what we are doing here, as long as we have to do it through the constitution, this is probably the way we have to go, and I do support what Senator McDonald is doing. It bothers me that we as a state vigorously advertise the lottery, and then we complain about the fact that we have made people compulsive gamblers. So you know, I think we're feeding the problem. But as far as the amendment of Senator Schrock, I think that...I spoke on this earlier before it was actually here, and I said that if this amendment came up, because of what we ended up doing as far as funding things this year in the appropriations bill, that I would support this amendment in order to fix the amount of money that was going to the Environmental Trust and lock it into a bid process. So with that, I would encourage your vote on that. Thank you.

SENATOR BAKER: Thank you, Senator Pederson. Senator Beutler. Senator Beutler is recognized to speak.

SENATOR BEUTLER: Senator Baker, members of the Legislature, I support this amendment. I understand what Senator Chambers is saying, or at least I think I do. Senator Chambers, let me ask you a couple questions, if I may, to be sure that I do understand.

SENATOR BAKER: Senator Chambers, would you respond, please?

SENATOR CHAMBERS: Yes, I will.

SENATOR BEUTLER: Now you and I both know that at the time this was originally passed, we also passed a set of statutes, and

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those statutes were, I believe, if I'm remembering right, in place at the time that the people voted on the Environmental Trust; isn't that accurate?

SENATOR CHAMBERS: Yes.

SENATOR BEUTLER: And the idea was that people then wouldn't be voting in a vacuum, but they would know what they were voting for; isn't that accurate?

SENATOR CHAMBERS: That is, as far as it goes.

SENATOR BEUTLER: Right. And you're saying the problem with that is it's kind of...it's misleading, in a way, in the sense that...or bad process, in a way, in the sense that people thought they were voting for a statutory framework and they really weren't; they were voting for a constitutional amendment that didn't say nearly as much, right?

SENATOR CHAMBERS: I'm not trying to be...do a Fred Astaire or Arthur Murray by dancing around the question, but when there are several things in one of these provisions--money goes to education, money goes to the gamblers' fund, money goes to the State Fair Board, and then to the Environmental Trust--there's no way to determine which one of those, or which, in combination, the public were voting for. And the amendment itself was promoted as the State Fair Board amendment. So I'm not trying to be evasive, but I'm just saying there's no way to pin down why people who voted for that proposal did so.

SENATOR BEUTLER: Well, I was talking about the original proposition that created the Environmental Trust, not the fair board proposition that amended the language of the Environmental Trust. But let me ask you this.

SENATOR CHAMBERS: You mean...you're talking about the statutory language now?

SENATOR BEUTLER: I'm talking about the original constitutional provision that was put into place, and the set of statutes that were passed along with that, that particular year.

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SENATOR CHAMBERS: I'm probably lost on that, then.

SENATOR BEUTLER: Okay, well, let me check back and be sure I'm remembering correctly the way...the relationship between the constitutional provision and the statutes. But let me ask you this.

SENATOR CHAMBERS: But can I say this? They did not put into the constitution what was put into the statutes. I can say that.

SENATOR BEUTLER: Right.

SENATOR CHAMBERS: Okay.

SENATOR BEUTLER: The provision with regard to the Compulsive Gamblers Assistance Fund. Now you would say, with respect to that provision, that that provision should say the first \$1 million after payment of prizes and operating expenses shall be transferred to a Compulsive Gamblers Assistance Fund, which is hereby created?

SENATOR CHAMBERS: That's what I thought...

SENATOR BEUTLER: Is that what you would say it should say, more or less?

SENATOR CHAMBERS: Yes.

SENATOR BEUTLER: Okay. And if we could say, in the next provision that deals with transfers to the Nebraska Environmental Trust Fund--I think you would say it has the same problem--and if we could say that that trust fund is hereby created and the money deposited therein, which is a specific percentage, shall be distributed in accordance with Senator Schrock's amendment, then you would have a very specific constitutional provision, would you not?

SENATOR BAKER: One minute.

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SENATOR CHAMBERS: Right, and that doesn't get to the policy question, whether his amendment is wise, but you've at least put into the constitution the creation of the fund where this money will go. And the Legislature then could not abolish that fund statutorily, as we can do now, in my opinion.

SENATOR BEUTLER: Okay, so at least you would be satisfied with regard to the correctness of the process, if not the wisdom of the policy?

SENATOR CHAMBERS: Right, because when you talked about the distribution of the money, there would be two things: creation of the fund, then distribution of the money. Even if you gave it...you authorized the board, there should be, in my mind, some legislative direction. But that would be something requiring more discussion than what would be possible under Senator Schrock's amendment and the state of the constitution right now.

SENATOR BAKER: Time.

SENATOR BEUTLER: Okay.

SENATOR BAKER: Thank you, Senators. Senator Fischer.

SENATOR FISCHER: Thank you, Mr. President and members. I rise in opposition to Senator Schrock's amendment. I believe it is totally unnecessary. If you look in the statutes of the state of Nebraska, it talks about the powers and the duties of the Environmental Trust Fund Board right now, and I'd like to read those to you. The board shall have and may exercise the following powers and duties: 1) Adopt bylaws to govern the proceedings of the board; 2) keep records, conduct hearings, and adopt and promulgate rules and regulations to carry out its duties and implement the Nebraska Environmental Trust Act; 3) contract with the Games and Parks Commission for administrative support; 4) contract with governmental and private agencies to receive services and technical assistance; 5) contract with governmental and private agencies to provide services and technical assistance; and what I think the most important one here, that corresponds to this amendment, is 6) establish environmental categories for use of the funds, and

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develop an appropriate rating system for each category. And then it goes on. As I said, I do not believe this amendment is necessary. I would question why Senator Schrock felt compelled to introduce it. Right now the board of the Environmental Trust Fund, they have the power and they do go through a bidding process. They look at grants. You can look through their past recipients of grants and how those applications were rated, and they made the decisions. I think this amendment is in response to something that happened earlier this year, when the Governor suggested to the Environmental Trust Fund Board that some of that money should be used to clean up the waste site at Mead. I personally think that's an appropriate use of those funds. That's an environmental site that...it was damaged. And I think it was an appropriate use of those funds. The Governor made a suggestion. The board did not have to concur with that. They did not. The Appropriations Committee worked with the board, and I think maybe some understandings or deals were reached there. But I think this amendment is coming as a direct result of the Environmental Trust Fund Board maybe having a little fit over this in being told what they're supposed to do. They're not being told what they're supposed to do. Under statutes currently, they already have the power to determine how those grants are going to be distributed. They determine on which ones meet the requirements, which ones meet their standards for what they want done. If you get on the Internet and look at their site, they offer grants for any number of purposes and to any number of private and public organizations. They do a nice job with that. That is not the reason that I am against this amendment. I'm against it because we don't need it in our state's constitution. It's already in statute. Thank you.

SENATOR BAKER: Thank you, Senator Fischer. Senator Brown.

SENATOR BROWN: Mr. President, members. I just had to respond a little bit to the materials that were passed out by Senator Schrock. I do think that many people would strongly agree that half of the money was promised to go to protect the environment, but I'm not sure that they would be as strongly in agreement as it would indicate on the bottom of the page, that the Environmental Trust Board should make all the decisions. I think if you look at the way that these questions were phrased,

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I think that the phrasing was designed to have a particular outcome, in terms of what the...how people voted. Do you think all of the money from the Environmental Trust Fund should be awarded on a competitive basis--those are very nice words that make it sound like a good thing--or should be taken by the Legislature and spent how they see fit? The wording of this I think was very effective in accomplishing the outcome, in terms of the vote, but I don't think that the average citizen would feel as strongly about the process by which the board makes its decisions, and that's really what we're talking about. In this amendment we're not talking about reserving the money for the environment, we're not talking about raiding it. We are talking about the process by which those grants are made. And we're not talking about taking anything away or adding anything to; we are just talking about the Environmental Trust Board wishing to have their process put more specifically into the constitution than what we have right now. And I'm not certain that I believe that this accurately reflects how strongly the average citizen would feel about the process. Thank you.

SENATOR BAKER: Thank you, Senator Brown. Senator Jensen. Senator Jensen? Senator Jensen waives. Senator Wehrbein.

SENATOR WEHRBEIN: Mr. President, members of the Legislature, I rise to oppose Senator Schrock's amendment, primarily because of the taking away of the flexibility that I think is needed. I understand the concerns about locking it in, from the Environmental Trust standpoint, and I certainly would respect that their view is that they should have total control over that fund. But I think over the long term, it's a mistake to put it in the constitution. I understand the statutory change. The statutes is where I think it belongs. It gives some flexibility. But once it's locked in the constitution, it will never change. And if we would promise and guarantee that there will never be another crisis in the future in state government, I would change my mind, perhaps. But I think as this probably, gradually over time, is going to build in the terms of the number of dollars available--it's roughly \$8 million to \$10 million now, and I would assume that it'll at least hold its own, and perhaps increase--I just think it's a mistake to lock this in granite, so to speak, and not give us the...not

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allow the flexibility that I think is going to be needed sometime in the future. We've gotten through the last few years without effort--without a lot of problem, I should say; not without effort. But the real issue is, as I read the list, I think there was a hundred...is that right, Senator Schrock, on that list that the Environmental Trust had; they had them numbered from one to a hundred, the projects that they want to fund? I mean, those are endless. Those projects are endless. And I always recognize they're going to be there, but so will the demands of the state. I think it's a mistake to lock it in the constitution.

SENATOR BAKER: Thank you, Senator Wehrbein. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. I wanted to follow up a little bit on what Senator Wehrbein mentioned. We have gone to this fund during times of budget crisis, and I think collectively the Environmental Trust folks might not, or obviously don't like that. But I will tell you, that helped us out. It saved our bacon, so to speak, in several instances over those tough budget times the last few years. I'm going to vote no on this amendment, as well, and I'll tell you why, because I think oftentimes we treat...well, you know where the lottery money goes. Some parts of it go to the gaming education, I guess; I can't think of the exact words. But a big chunk of it goes to the Environmental Trust, and a chunk is supposed to go to education funding, innovative educational ideas, and then there's some gamblers' assistance, and now the State Fair. We seem to always hold--and this is my opinion, and I'm saying this in a calm, measured way, because one time I spoke on this and Senator Beutler and I, my good friend Senator Beutler and I had words, but I have said this every opportunity that I have had. At every opportunity I've had to say this, I've said this, that we treat the education component different than we do the environmental component. And I've criticized Senator Raikes over the past few years, that we always go and we always take the educational part. We're always tapping that for something and diverting it, and rarely do we touch the environmental part, other than those instances when we had the budget problems. And I think that if we're going to protect any of this, we should protect it all, and I do find it interesting that, once again,

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we're looking to protect the Environmental Trust, but there's no language in here that protects the educational component of it. So I'm going to be voting no on this, and I would urge you to do so as well. I think we're lacking, or we're going to take away some of the flexibility that, frankly, got us through some of the budget times, and I do think that we need to have a balance. If we're going to tap the education part, we should tap the other. If we protect one, we should protect the other. Thank you.

SENATOR BAKER: Thank you, Senator Bourne. Senator Chambers. Senator Chambers? Is he...I...Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm not opposed to the Environmental Trust Fund. I'm not opposed to the work that is being done. But in the same way that when we're dealing with statutes, I will offer an amendment, two, three, or however many, to try to put that statute into the language I think it ought to be in, if it's going to wind up in the statute books, even if I disagree with it, Senator McDonald has brought an amendment that I will support, even though there is nothing in the constitution that guarantees the existence of this Compulsive Gamblers Assistance Fund. That can be abolished by the Legislature. None of these entities is created in the constitution. And the reason I read that Section 1 of Article II of the constitution is to show that most people might think it's automatic that a state would have a legislature, a judiciary, and an executive branch. But the constitution creates them, and it tells where the power is to be located, and it tells what powers each of those branches is to exercise, and it mentions that the only way one can exercise the powers of either of the other two is if the constitution explicitly allows it. So the constitution is not a statute. It is an edifice which should be built brick by brick, with mortar between the layers of bricks, or the rows of bricks. To merely refer to something in the constitution does not, in and of itself, create that thing and give it constitutional status. It means that if there is an Environmental Trust Fund, this is the way things are going to be handled with reference to that fund. But the constitution itself does not create it. So if there's an attempt to protect the constitution...I meant, put the

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Environmental Trust Fund and its board into the constitution and give it constitutional standing as a constitutional entity, the constitution has to call it that. It must be declared to be so within the constitution. If it's not stated there, then it is not there. So if I were going to offer an amendment such as Senator Schrock has in mind, I would first make sure that this fund is given constitutional status. I don't know whether I would put the board into the constitution, but I would give considerable thought, because we don't know who will sit on that board, how those board members are determined, or whether the board can consist of the Governor, the Attorney General, and the Secretary of State, if the Legislature so declares. His amendment is too broad, and I don't think language of that kind should go into the constitution. I'm not even getting into the issue of the underlying policy question, of whether certain things...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...ought to be done by the Environmental Trust Fund and only those things. I'm looking at the language which is attempting to do whatever it is Senator Schrock says ultimately ought to be done with reference to that fund. So as his language stands, there is no way that I would support it. (Laughter) See? Hear them laughing at me over there? That's why I won't watch a football game. When I look on television and I see them in the huddle, I think they're laughing at me. And people say I should not be so arrogant; no, I should not be so sensitive. (Laughter) But I'm going to go along and laugh with them. But at any rate, I'm going to watch and see how this discussion unfolds, but I will support Senator McDonald's amendment, and when we get to it again, I will give more reasons as to why. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Schrock. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, I'm going to withdraw this amendment, but I am going to make a few

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statements first. I think the university would have gotten their \$2 million. I think they could have gone through the grant process. I'll also tell you that we spend a lot of money on healthcare and education in this state. Our natural resources and our environmental issues don't get much money, and so for those of us who are concerned about these issues, this is a little pittance that we get, and I think it's been well spent. Hats off to the Environmental Trust and their board. As Senator Wehrbein said, there's over 100 people who have requests in there for grants from the Environmental Trust Board, and I've liked the projects that I've seen in my area of the state. I don't consider them anti-agricultural projects. So I'm going to let Senator Beutler have a little time. I know that Senator Janssen and Senator Redfield and Senator Kremer are some of those that had some time. If they would like to say anything, just let me know. Senator Beutler, you can have some time.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Schrock, and I hope we can discuss this at a little more length, because we're way off base here, in terms of how this is being viewed by some of the speakers, in my opinion. Let me remind you again that back in 1993, in the spring of 1993, we did two things: We put a constitutional amendment on the ballot--this one that is before you today--and we passed a set of statutes that put into place the entire framework that we were asking the people to approve, so that the people of the state not only saw the language of the constitutional amendment, but they saw the whole grant process, they saw the whole thing laid out, and they knew about it because it was highly publicized, and that's what we voted on...that's what they voted on in November, and that's what they expected us to do. And that's what we did. In fact, we were careful about it. We even that following January went back and repassed the whole statutory framework so that it came after the constitutional amendment. Now this is why we get ourselves in trouble with the people, because we lay out this elaborate framework, we say this is what we're going to do, and then, by golly, we turn around and use it as a cash reserve fund for three years running. Then in a good year, when we don't even need it as a cash reserve fund, we use it one more time. The

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environmental people understood when it was used in the depths of the hard times. At least they understood it in terms of the hard times. They didn't understand it in terms of the promise that had been made. But now we're using it in good times, for other purposes. Not totally other purposes, but for purposes that are not the purposes of the Environmental Trust Board or the statutory language, per se. So I understand what Senator Wehrbein is saying, and nobody feels the pain of appropriations in those tough years more than the people on the Appropriations Committee. But it wasn't what we said to the people, and that's very important. Secondly, Senator Bourne talks about, well, with education we don't treat education the same as we do the Environmental Trust. But look at the language on your green page, which is the language of the constitution. With respect to the education portion of it, it says 44.5 percent of the money...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...remaining after the payment of prizes and operating expenses, et cetera, shall be used for education, as directed by the Legislature, completely different than what we put up in the Environmental Trust part. In the Environmental Trust part we said, as...to be used as provided in the Nebraska Environmental Trust Act, and that act had been passed before the constitutional provision was passed, so that everybody, as a practical effect, knew what that meant. Now Senator Chambers is right, in the sense of there's a little horse-before-the-cart kind of arrangement on this thing. But in terms of what the expectation of the people was, in terms of the difference in treatment as between the education portion and the Environmental Trust portion, let there be no doubt: The Environmental Trust portion was specific, and the education part was as the Legislature may direct.

SENATOR CUDABACK: It's now your time, Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Cudaback. This constitutional provision that Senator Schrock is advocating is not taking away from the Legislature all of its prerogatives. All it is doing is saying that there will be a competitive grant

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process, that a governor of any type can't come in and raid it by simply passing an appropriation and taking the money away, that we're going to follow the procedures that we laid out to the people in the first instance. Now beyond that, there are all kinds of things the Legislature can change. In 81-15,176 there are all sorts of statutory provisions relating to grants for projects that...well, all sorts of outlines on the prescriptions with regard to the kinds of projects that can happen and cannot happen, and will be favored or less favored, or shall be given priority, or if you don't want to compete against private interests you can do things like that. This is not saying anything but that there will be a competitive grant process, and it will be used for the purposes described in the constitutional amendment, both of which are entirely appropriate things for the constitution. Beyond that, the Legislature is still going to have the prerogative to form the program in whatever way it wants. If we want different people on the board or that's not working quite right, the appointment process is not working quite right, we can change that. But we need to get back and reestablish our credibility with the mass of people out there who understand and know that we were supposed to have worked this in a particular way, and who understand and know that in at least four different years, now, both in hard times and in good times, we've raided the Environmental Trust Fund. And so that's all Senator Schrock's amendment does. I understand he's going to withdraw it. I think Senator Chambers has a legitimate point, in terms of maybe redrafting some of this original language so that it actually creates a couple of these things that we need to create, and that would be a more normal constitutional process. But I'm hoping Senator Schrock will reoffer it on Select File, because we really need to do this, to do what we promised the people we would do. Thank you.

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

SENATOR REDFIELD: Thank you, Mr. President, members of the body. When you say the word "environment" to a city girl, you know what she thinks about? She thinks about clean water, she thinks about clean air, and she thinks about clean ground. And so when Senator Fischer talks about using these funds to clean

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up a site like we have at Mead, a city girl thinks that's just fine, because it's about cleaning up the ground. And when we look at the lead that's in the soil in the inner city of Omaha, and we recognize that's an environmental problem, and if we use these kinds of funds to clean up those sites, a city girl says that's just fine. And I think when the people of Nebraska voted for the lottery and they looked at the use of environmental and educational programs, I think that many of them thought, like a city girl, that it meant clean water, clean air, and clean ground. Thank you.

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

SENATOR KREMER: Thank you, Mr. President, and members of the body. I will be brief, but I just want to make a statement that I would have voted against the Schrock amendment, but I just wanted to tell...state that I do support the Environmental Trust Fund. And the reason I would vote against it, because I just don't think it's appropriate to put it in the constitution. I know we have things in the constitution now that, as times change over 20, 30 years, that it's so difficult to get them changed, whereas if it was in statute, you could do something. I think we do drastic things in drastic times, and that's what we've seen in the last two or three years when we were short of money. We made a lot of cuts and we increased taxes. I thought it was kind of interesting when we raised taxes on the income tax of \$50,000...a person with a \$50,000 income was going to have their taxes increase about \$40. Now the cuts on LB 968 were going to be about the same amount. When we raise them, the papers all came out and said what drastic tax, huge tax increases that we're making. Now they're saying it's kind of piddly. But we cut money to the counties, to the cities, to the schools. We raised taxes on the sales and income tax. We raided almost every agency that had a fee base. If there was any balance in there, we took those fees away, and we had to come back and raise fees on them. We did some things that we don't like to do, and hopefully, we don't raid the Environmental Trust Fund any more, unless it's some drastic measure that we have to. But it does give us some flexibility that we can do; if it's in the constitution, that we cannot do. So with that, I'm glad that Senator Schrock did withdraw his bill (sic), but I

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just wanted to state my support for the Environmental Trust Fund. And they've done so much good. There are times that they've given some money to something that I wouldn't have, but I think overall, they've just really done a great job in helping the environment in our state. Thank you.

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

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. I'll give you a little background on Senator McDonald's bill. The General Affairs Committee heard the resolution on February 13. The committee did not advance that bill at the first executive session, and in fact, was one vote short of being IPPed. A special executive session was called to advance that resolution in the same week. At the hearing there were several proponents testifying from the treatment industry, who testified about funding shortages and increased gambling. Well, I don't know whether the lottery has increased in the gambling that much, but there is an increase in gambling in this state from other sources. The LR would amend the constitution, to give the Compulsive Gamblers Assistance Fund the first \$1 million, instead of the \$500,000 of lottery proceeds, after the initial expenses. The constitutional revision is necessary because the statutory changes to the lottery revenue distribution would not be constitutional, and we've heard a lot about that today. Because of the State Fair bill, which was LR 209, which changed the language of the constitution to require a specific distribution mechanism for how the lottery revenue is to be allocated, the Attorney General has said that any attempt to transfer more funds than what was allowed in the constitution would not be constitutional. This LR states that the resolution is to be submitted to the public on November 2006, general election. The current distribution scheme is \$500,000 to the compulsive gamblers, with 44.5 percent to the Nebraska Environmental Trust, and 44.5 percent to education, as directed by the Legislature, as directed by the Legislature; 10 percent to the Nebraska State Fair Board, which at that time...you remember when we were arguing the Nebraska State Fair Board, putting that...it had to be a constitutional amendment to change that. And in my opinion, at that time when we talked about the State Fair, I didn't think the people of this state

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would ever pass that, but they did, they did. And also in the mix is an additional 1 percent to the compulsive gambling fund. The only change would be to the initial distribution of the compulsive gambling fund. The other categories would remain the same, as we have been talking about. The distribution would occur only in the first quarter of each fiscal year. The Nebraska Association of Resources Districts sent a bill, or sent a letter of opposition to the bill in the committee hearing, but that's about the only thing we heard in opposition to the bill. The rest were all proponents from the compulsive...people who were caught up in addictions and so on and so forth. But we did have a good hearing, and I just wanted to bring to a little history of what Senator McDonald has went through. She's worked very hard on this resolution, in trying to convince people that we would put it before the general public to decide the fate. And you never know when you run a constitutional amendment like this,...

SENATOR CUDABACK: One minute.

SENATOR JANSSEN: ...what the public are going to do, but I guess that is our democracy at work, when we allow the citizens of this state to decide their own fate. With that, thank you very much. I don't think I have much time left. We'll just let it go.

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

SENATOR SCHROCK: Mr. President, members of the Legislature, I want the body to know that I'm going to take another look at this, and we may have a proposal on Select File. There are people in this body that I want to work with on that, and I'll try and touch base with those of you who have expressed concern. With that, I would ask for the amendment to be pulled.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, anything else on the bill?

CLERK: Mr. President, I have nothing further pending.

SENATOR CUDABACK: Back to discussion of the advancement itself.

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Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, with the additional drafting that Senator Beutler mentioned, I think it would be good that if the body feels that these entities mentioned in the constitution are entitled to constitutional protection, that should be done. Personally, I think we have encumbered and cluttered that document with far more things than ought to be there. But if the body is of a mind to keep in place this gamblers' fund, the Environmental Trust Fund, the State Fair Board--which I hate--these entities should be created in the constitution as entities with constitutional status. Then at least they cannot be abolished by legislation. There might have to be something that would give the Legislature some degree of oversight, but I'm not the one who has to draft that language. I will support Senator McDonald's amendment. I read in the paper that soon the 1,000th dollar will be coughed up by the fools in Nebraska. Governors...billionth. What did I say? Oh. Billionth. Somebody is listening and hearing. (Laughter) Governors have encouraged people to play that lottery. It is legalized theft, and the state ought to be ashamed of itself. Members of the Legislature should be ashamed of yourselves. Cannot you see the disconnect here, where you're acknowledging the seriousness of problems created by gambling by throwing a pittance of money at the problems created thereby? You cannot give more money, because you want the suckers to think that there's a whole lot of money out there that they may have an opportunity to receive. What I ought to do is sell chances to give every fool in Nebraska the right to go stand out in his or her front yard with their hands upheld, or a wash bucket waiting for a million dollars to drop from heaven into that bucket, and tell them, if you stand facing the right direction at a certain hour of the day and your shadow falls a certain place on the ground, something like Punxsutawney Phil--no reference to Senator Erdman--you'll get this money. And they would buy it. They'd give me money. I don't know why in the world that lottery can operate and be considered legal, when they're going to make it illegal for somebody to write to a fool and say, if you send me \$1,000, I will find a way to get you \$1 million from this fund, but certain fees have to be paid first. They make that a crime,

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when your good sense and judgment can protect you from that. Gambling is an addiction, but they don't make it a crime, when the state is the biggest house. The state knows that the vast majority have to lose, and the state, doing that, can somehow persuade itself that it's acting in the best interests of the public?

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Why will not the state sell drugs, and say that what we derive from that will be used for the schools, to teach people: don't buy drugs? I think this lottery is one of the most--pardon the expression--damnable things that this state has done since I've been a member of the Legislature. I feel no shame, because I've done all I could to stop it, I've offered proposals to abolish it. They get nowhere, but I can raise my voice against it. Senator McDonald is not doing anything to create more use of the lottery, as far as playing it, but a better distribution in a small way, of those ill-gotten funds. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Louden on the advancement of LR 259.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I guess I have a problem with putting something like this in the constitution. First of all, when it's in the constitution, then that money will be used that way, irregardless. As I've said before when we were putting in the Fair Board, you could have kids starving to death out on the street, but by golly, that money will go to wherever it's designated, if it's in the constitution. I don't see why it can't be done by statute, just so that it can be adjusted in the future. We don't know what will happen in five or ten years from now. Perhaps we'd run into other difficulties; perhaps there will be some situations arise that need particular funding. But when we put it in the constitution, it's locked in there. So if that's what you want to do is lock it in the constitution, why then, Senator McDonald's LR 259CA is the one to do it. Myself, I would rather see it in a statute, rather than locked up such as it is. So at the present time, I don't

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know as I'd vote for Senator McDonald's constitutional amendment. I realize it has to pass the voters, but then again, the way that it can be advertised, such as money for the Fair Board was, it was put out that this was something that was going to save the fair, be done for children, and I don't know what all. But the advertising that went with the constitutional amendment on the Fair Board I thought was somewhat slanted, so consequently I believe I would just as soon vote no on this at the present time. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator McDonald, you may either speak or you may close on your amendment. There are no other lights on.

SENATOR McDONALD: Oh, okay. Well, I will close, then.

SENATOR CUDABACK: You're recognized to close.

SENATOR McDONALD: I think all of you were here last year, and you were all part of the debate. You know how important it is that we continue the funding for the compulsive gambling. We tried to find money last year, because we knew that there was a definite need. We tried to find General Funds. We tried to find other monies. We ended up finding it from the...actually, it was the Health Cash Reserve Fund for the tobacco, to be able to fund this. This was temporary; we knew that. It would only allow for two years of funding. We realized that in order to change this, then made it permanent funding, it had to go under the constitution, because the amendment for the State Fair changed that. And so we don't have any other choice to obtain permanent funding for our compulsive gamblers. And I don't know if you remember, just recently we had the biggest Powerball winners in the state of Nebraska, and we'd all like to call them our friends, and maybe they are our friends and maybe they're not. But at some point in time, we think we could be one of them. And so I think that what has happened is that we will end up with more people gambling, because they know somebody personally that did win Powerball. And because the funding was only temporary, we have to come back, it has to go in the constitution, and because this is an election year, this is the year to do this. If we're not successful on the floor with

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this, we have to wait two more years to bring it back to go into the constitution again. And in the meantime, the funding that we used last year for two years will terminate, and we will have more people needing treatment and less dollars to treat with. And so I hope you support this and send this on to General File. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. You've heard the closing on advancement of LR 259CA. The question before the body is, shall LR 259CA advance to E & R Initial? All in favor of the motion vote aye; opposed, nay. We're voting on the advancement of LR 259CA. Have you all voted on the question who care to? Please record, Mr. Clerk.

ASSISTANT CLERK: 29 ayes, 0 nays on the motion to advance the resolution, Mr. President.

SENATOR CUDABACK: LR 259CA does advance. Mr. Clerk, items for the record or messages?

ASSISTANT CLERK: Mr. President, I have a series of interim study resolutions: LR 361 by Senator Preister; LR 362, LR 363, LR 364, LR 365, LR 366, LR 367, LR 368 by Senator Preister; LR 369 and LR 370 by Senator Wehrbein. (Legislative Journal pages 1228-1232.)

SENATOR CUDABACK: Thank you, Mr. Clerk. As the agenda states, we now go back to where we recessed for lunch. The Speaker has ordered that we pass over LB 786, so we'll go to Select File, 2006 senator priority bills, the Wehrbein division. LB 915, Mr. Clerk.

ASSISTANT CLERK: Mr. President, on LB 915 there are E & R amendments. (AM7193, Legislative Journal page 1185.)

SENATOR CUDABACK: Senator...

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 915.

SENATOR CUDABACK: You've heard the motion to adopt the E & R

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amendments to LB 915. All in favor say aye. Opposed, nay.
They are adopted.

CLERK: Senator Beutler would move to amend, AM2910.
(Legislative Journal page 1232.)

SENATOR CUDABACK: Senator Beutler, you're recognized to open on
AM2910.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature,
these are some amendments that Senator Aguilar, myself, and
there may have been input from yet others on. I think everybody
is in agreement with them. What they do are essentially four
things. You may recall this bill has to do with clandestine
drug labs and what happens when one of them is discovered, and
how it's to be dealt with and cleaned up. And at the very
beginning, it directs law enforcement agencies that discover a
lab to do certain kinds of things; first of all, reporting the
location of the lab to the State Patrol. The first part of the
amendment simply indicates that a property owner with knowledge
of a clandestine drug lab on his or her property shall report
such knowledge and location as soon as practical, to the local
law enforcement agency or to the State Patrol. So the idea is,
no matter who discovers the lab, it needs to be reported and
become a part of a process. Part of the process that's involved
involves a report on the lab, that is...the statute outlines
certain things that are to be included in that report. And the
report that the State Patrol makes up has to be forwarded to
certain entities: the DHH, the Department of Environmental
Quality, and the municipal or county where the lab is located,
the director of the local health department. And then the
amendment says that the property owner should get a copy of this
report, too, so that they are fully informed on what's passing
between the agencies and what will be the subject of the
regulatory effort. The third part of the amendment prescribes,
with respect to the regulatory process, that the procedure shall
include deadlines for completion of various stages of
rehabilitation and proper disposal of the contaminated property,
so that everybody is put on notice as to the time frames
involved, and that's put into the statute. And then the fourth
and last thing that the amendment does is to say, with respect

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to the owner of the property who has the obligation to clean up the property, that they shall be subject to a civil penalty for knowingly violating the clean-up requirement portion of the law. So I think that the representatives of property owners are okay with this version of the amendment, and I would recommend it to your attention. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM2910 from Senator Beutler to LB 915. Open for discussion. Senator Aguilar.

SENATOR AGUILAR: Thank you. Mr. President and members, just very briefly, to say that I definitely concur with these amendments. I want to thank Senator Beutler for his work on this. I think he's made a good bill better, and I encourage everyone to support the amendment, as well as the underlying legislation. Thank you.

SENATOR CUDABACK: Thank you, Senator Aguilar. Senator Stuthman, on the Beutler amendment.

SENATOR STUTHMAN: Thank you, Mr. President, and members of the body. I'd like to engage in a little conversation with Senator Beutler, if he may, please?

SENATOR CUDABACK: Senator Beutler, would you yield?

SENATOR BEUTLER: Sure.

SENATOR STUTHMAN: Senator Beutler, in your amendment it says that the property owner shall notify. Do you think that situation is going to occur, or is there going to be a law enforcement that's going to be involved, first of all, of finding a clandestine lab, and maybe the property owner is unaware of it.

SENATOR BEUTLER: Yep.

SENATOR STUTHMAN: So is this the right terminology? I think we're designating that the property owner must notify, you know, the proper authorities that there is a lab right there. But

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what if the property owner has no knowledge of it or anything, and law enforcement are the ones that...who find that there is a lab there?

SENATOR BEUTLER: Senator, I think you're right, that usually it will be law enforcement that will find the lab. And the language in the bill says the law enforcement agency that discovers a lab shall report the lab to the State Patrol. And then the question is, well, what if an owner...what if somebody leaves their property, the renter leaves the property, and the owner goes in and, by golly, there's a meth lab there. That needs to be reported, just the same, for the purposes of the bill, of Senator Aguilar's bill, which is to see that these things get cleaned up.

SENATOR STUTHMAN: So it's all...

SENATOR BEUTLER: That's all it does. Law enforcement will still be the normal discoverer and reporter of the lab.

SENATOR STUTHMAN: So in other words, if there is a lab on some individual's property and the individuals leave the area, but the law enforcement hasn't found that there was a meth lab there, it is the responsibility of the property owner to turn it in, and this is what this is trying to address; am I right in saying that?

SENATOR BEUTLER: You're exactly right. That's what the...

SENATOR STUTHMAN: Okay, thank you very much. That's what I wanted to clear up. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Further discussion? Seeing none, Senator Beutler, you're recognized to close on AM29...Senator Beutler waives closing. The question before the body is, shall AM2910 be adopted to LB 915? All in favor vote aye; opposed, nay. Voting on adoption of the Beutler amendment, AM2910. Please record, Mr. Clerk.

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

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SENATOR CUDABACK: The Beutler amendment has been adopted.

CLERK: I have nothing further, Mr. President.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 915 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance. All in favor say aye. Open for discussion. Senator Landis, did you wish to discuss? He waives his opportunity. All opposed say nay. LB 915 is advanced. Go to LB 990.

CLERK: LB 990, I have Enrollment and Review amendments first of all, Mr. President. (AM7194, Legislative Journal page 1186.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 990.

SENATOR CUDABACK: Heard the motion to adopt the E & R amendments to LB 990. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Senator Brown would move to amend, AM2772. (Legislative Journal page 1126.)

SENATOR CUDABACK: Senator Brown, to open on AM2772.

SENATOR BROWN: Thank you, Mr. President, members. AM2772 is LB 498, which was a bill that extended the Nebraska Venture Capital Forum Act that was originally introduced in 2001 at the request of Governor Johanns. Since that time, the venture capital group, which calls itself Invest Nebraska, has worked with 300 businesses, worked with a number of communities around the state to help them develop investment groups and angel capital. They have worked with at least three businesses very significantly--one Speed Stik, where they have helped them grow

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from one employee to twenty-five employees; they've worked with Advanced Imaging Systems and helped them secure \$800,000 in venture capital; and then worked with Elios (phonetic), which enabled Elios (phonetic) to stay in this state. It is funded with \$200,000 of state money and an annual match from corporations that are affiliated with Invest Nebraska. The sponsors of Invest Nebraska include Union Pacific, First National Bank, Cline Williams, Wolfe Snowden, the University of Nebraska Foundation, Kutak Rock, McCarthy Group, the Nebraska Independent Community Bankers, Wells Fargo, Odin Capital, the Council for Regional Equity, Security National Bank, UniMed, and Ameritas. The communities that they have worked...they have worked extensively with communities around the state, and one of the communities that they've done the most work with is the city of York. This is, I think, a particularly important thing for us to continue, because it has such an impact on small, high-growth businesses, either start-up companies, or companies moving, expanding, and needing venture capital in order to be able to do that. These businesses make up only a small percentage of the businesses but are responsible for a great deal, up to two-thirds of the job growth, the new job growth, and this is something that we will probably only continue for the two years that is called for in the amendment. At that time, hopefully, they will have completed a lot of their work with communities. A lot of their work with businesses should be able to be funded through the matching portion, and we are just at a place where the...we probably sunsetted it at a time when it was just close to being able to operate on its own, and so this is something that is very critical, if we want to continue the development of venture capital in the state. Nebraska is one of the states that has probably done the less in terms of working very closely with individuals of means that can provide venture capital to start-up companies, but also in working to develop venture capital opportunities for individuals and small businesses that may not have the huge amounts, but would be able to provide some assistance for businesses, particularly businesses that would locate in their area. And I would be glad to answer any questions about the amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. You've heard the opening on AM2772 by Senator Brown. Open for discussion.

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Senator Landis, followed by Senator Wehrbein and others.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. I rise to endorse the Brown amendment. The fact that it's going to last only two more years I think is good, in that this has not been a high priority for the economic development department. They've had bigger fish to fry, not that it's been a bad idea. The original one was a bill that I passed, and the underlying bill that's being adopted here is one of mine, as well. On the other hand, in the crush of last year I'd have to say that this did not rise to the top, and apparently, we're going back and doing this piece of work, which is entirely acceptable to me. It is the underlying bill, by the way, that I rise to make one speech, I'll sit down, and I'll leave it alone. LB 990 amends the small tier in our economic incentive packages to allow for some agricultural and essentially livestock operations to receive a tax incentive. You use a tax incentive to encourage behavior for which there's a great deal of competition elsewhere, and for which you need assistance in the tax code to make it work. We do not need to incent livestock operations in the state of Nebraska with a tax incentive. This is a place where it's sensible to do it. We have the land and the water and the resources. To the extent that this is not the leader that it once was, it's because there is a tenor out among our towns that these operations have a high social cost, and what was once open arms and a sense of welcome has dried up around the state in various places. A tax incentive is not going to overcome that. It seems to me that this is a place where we do not need to alter the marketplace, because we have the very resources that should make this an appropriate location, and to the extent that there is a problem out there, it's not the tax code. It's in environmental regulations or the unwillingness of small-town Nebraskans to share their air, water, and current quality of life with livestock operations, and those have created hurdles and obstacles, no doubt about it. Those hurdles and obstacles will not go away by LB 990. All we're going to do is essentially give a tax incentive for something that would have happened anyway, from my estimation, and that in fact, if the goal of this bill was to encourage livestock operations expanding, we would do more to try to create a system of relationships in our

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rural areas in which small-town Nebraskans and neighbors welcomed livestock operations, zoned for them, a DEQ that put them high on the list of priorities for time and attention, and to have an attitude of success or completion or going forth. We would change our priorities in other areas. To the extent there are problems with the livestock market in Nebraska, this will not solve it, and it will wind up being an incentive that doesn't change the marketplace. The problems with the marketplace lie elsewhere, and they should be addressed directly there, if we want to expand livestock operations in Nebraska. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Wehrbein, followed by Senator Chambers.

SENATOR WEHRBEIN: Mr. President, members of the Legislature, I first of all am going to support Senator Brown's amendment with the venture capital part. It's my understanding that we do have venture capital in Nebraska, but it's not...we don't have the framework in Nebraska to encourage it to the extent we should, and much of our venture capital, or the investment capital, goes out of state. I didn't rise to do...I rose simply to talk about Senator Brown's amendment, but talking about the livestock incentive bill, which is the base for this, I do disagree with Senator Landis, respectfully, in terms of the fact that this is not going to help a lot. Admittedly, it's going to be only one of the many tools that are in our reach to encourage and expand livestock in Nebraska. There are many others, and he mentioned many of those--environmental concerns, zoning concerns, and on and on. But this is, I think, part of a bigger picture that we need to use to encourage it, because cost is such a large part of the cost of getting in business or expanding a business, particularly in livestock. We've tried other things. Senator Schrock had LB 975, which we tried to do. We've tried livestock friendly consideration...designations. We've tried many other factors to try to encourage this. Education probably is one of it, but there's an active group or two working on that. But the fact of the matter is, capital is an issue, and this is encouraging those that are going to put their money in, to have a significant capital or significant financial incentive. And so, admittedly, in itself it's not going to be a cure-all, and

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it probably will not be used rapidly, because it falls within a \$3 million cap. I would like to raise the cap, but that's another day and another time and another legislature. In fact, one of the things that I've learned here, that as we move forward, and if there's anybody wants to listen to any advice, is that you can't very often bite off a big chunk at one time. You do little steps, year after year after year. And that's going to be one of the disadvantages of term limits; you're only going to have eight years to make those baby steps, because you cannot get a lot accomplished over time. There's a lot of reasons for that. It's the degree of change, it's the amount of change in one's attitude, one's culture, the amount of money available, all those many things. And I, going back to this issue, it's one step that I think we can take to encourage, because investment credit has worked nationally very well over time, encouraging investment, and whether we like it or not, once again, agriculture is a heavily capital invested industry. It's going to take more and more and more and more money, and that means more and more and more risk. Going back to Senator Brown's, that's one of the reasons that I supported her venture capital and am pleased to have it as a part of this, because it represents risk, and a way to get at risk and bring the money in, the risk capital that those can afford to take the chances to do. I was in...caught the tail end of a seminar that Congressman Osborne had at Doane College Friday afternoon, and one of the things that impressed me in the final panel that I was able to catch is the fact, the necessity for risk capital in Nebraska. There's lots of good ideas. In fact, I was even surprised at the amount of risk capital and interest in two particular gentlemen from Omaha, looking to invest in Nebraska. And they were somewhat frustrated because we weren't able to provide the risk capital they needed for furthering of some of the plans that they've come up...

SENATOR CUDABACK: One minute.

SENATOR WEHRBEIN: ...in the world of biochemistry and in biosciences. We are facing a future that can be bright or not so bright, depending on the amount of effort and money that we're willing to put in it. I think both of these amendments and the one that's following that Senator Kremer has on the

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beginning farmer, tunes that a little bit. It's going to help take some of that risk, or at least encourage more entrepreneurship. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. Further discussion? Senator Chambers.

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

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

SENATOR BROWN: Yes.

SENATOR CHAMBERS: Senator Brown, was this bill discussed on General File?

SENATOR BROWN: The amendment was...it was up on General File and I had it held over to Select File. So it was on the list.

SENATOR CHAMBERS: Here's what I mean. Was the bill which comprises this amendment, did it ever come up for discussion on General File?

SENATOR BROWN: No.

SENATOR CHAMBERS: Or the only time it will be before us is as an amendment?

SENATOR BROWN: Right. It was offered as an amendment and then was withdrawn, so that the bill could move forward. It was late that evening. So...but it's been printed for a while, but it was not discussed.

SENATOR CHAMBERS: Thank you, and I opposed the original venture capital bill, I oppose this one, and I'll tell you why I think it was not dealt with last session. Last session the Legislature was giving the state away to businesses. You know, what they call that new-generation LB 775 gave away everything. They gave away so much that they couldn't ask for this, also. During a lull in state giveaways, they come with this. I had

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told Senator Wehrbein that I was not opposed to his bill. Actually, I don't like it, but not to the point where I would fight it. But I'm going to fight this. If this amendment had been offered on General File, I would have fought it there. I'm not in favor of all of these giveaways to business. If business is thriving so much, and these smart people are encouraging the coming of business to Nebraska, the state doesn't have to give them \$400,000. And I resent, not Senator Brown, I resent business coming here and sucking the last drop out of this Legislature that it can get. I haven't fought against anything today that I can recall. There are things which I have allowed to move today with which I had some disagreement. But I'm not going to keep doing that, and this is where I draw the line. Now Senator Wehrbein can do what he wills with his bill, but I want him to know that when I told him I had no opposition to his bill, it had nothing to do with this amendment. He had told me about some changes that would be made in the Beginning Farmer Program. That program was one I had supported, and it is one which has not been used to the extent that anybody thought it would be used, so an attempt would be made to create a set of circumstances where it might be more user-friendly, if you allow me to use that cliché. That tied into what LB 990 is at least talking about doing. This venture capital has nothing to do with that, and because I support Senator Wehrbein's underlying bill does not mean I'm going to support a proposition which I never have supported. The bill was not prioritized by anybody. And maybe my opposition doesn't mean anything, but it's going to mean something by the time we adjourn tonight, because I'm going to...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...dismantle this particular amendment, segment by segment.

SENATOR CUDABACK: One minute, Senator.

SENATOR CHAMBERS: Thank you, Mr. President. And I do believe that this question is divisible, so I'm going to ask that the question be divided, Mr. President.

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SENATOR CUDABACK: Senator Brown and Senator Chambers, would you both come forward, please. The Chair does rule that the question before us is divisible. Mr. Clerk, would you please read the three divisions.

CLERK: Mr. President, I believe the agreement is three components to this amendment, as offered by Senator Brown. The first component would consist of Sections 1 and 2, that have to do with establishing legislative intent; the second component would consist of definitional sections, which would be Sections 3, 4, and 5 of the original amendment; and the third and final component would consist of Section 6 through the end of the amendment, dealing with the responsibility of the Department of Economic Development. And Senator Brown, I believe you just want to take them up in that order, Senator, so we'll be doing the intent language, initially?

SENATOR BROWN: Yes.

CLERK: Is that okay?

SENATOR BROWN: Yes.

CLERK: Okay.

SENATOR CUDABACK: Well, I guess you have opened, but the Chair will recognize you, if you care to do a summary of your opening again, you may, on the first component. (FA637, Legislative Journal page 1233.)

SENATOR BROWN: Well, I will quickly talk that the first component is the intent language; talks about the situation in the state of Nebraska in terms of venture capital, in encouraging high-growth companies, start-up companies, that what the intent of Invest Nebraska is, is to work with communities, with high-growth businesses, and try to put investors that are willing to invest together with companies that need the money; but more importantly, to work with companies so that they will know how to work to get investment capital. And this is the intent language portion of the bill, and talks about venture capital as it relates to where Nebraska is, in terms of

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encouraging venture capital. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. You've heard the opening on the first component of the divided Brown amendment. Open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, the need for venture capital has been something that's been on the minds of the Legislature and the state and leaders of the state for a long, long time. I remember back in the mid eighties when Senator...Governor Kerrey was Governor. We actually created a venture capital fund where we put in state money. I think it was \$4 million or \$5 million or something like that. It didn't work out particularly well at that time. But I think that we learned something from that experience and the need didn't go away. And what's happening now out there is that this networking organization that Senator Brown is promoting is getting the word out on venture capital, the need for venture capital, the suppliers of venture capital, the potential users of venture capital. It's a networking kind of thing that is funded, as I understand it, in part by the state and in part by the...it has to be matched by private corporations. Is that not true, Senator Brown?

SENATOR CUDABACK: Senator Brown.

SENATOR BEUTLER: She indicates yes. So this is not a deal where we are putting money into the actual capital venture fund. We're not providing the capital; we're providing a system that can be used where...and will assist private people who then put money into a capital venture fund and get us going in that regard. So we don't risk state funds but we assist them in setting up programs. And I think that this is an intelligent way of doing things. I think it has actually been working well enough that it may well afford us the opportunity and result in the creation of a sizable venture capital fund before the expiration date of Senator Brown's amendment runs out. I know at least two entities in Lincoln that are thinking very seriously and have drawn up propositions for their boards with respect to applying part of their assets to a venture capital fund. So the idea is taking hold and the timing on this might

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be very good. And for myself, at least, I'm very willing to risk our \$200,000 a year for a couple years with the hope that there will soon be tens of millions of venture capital available encouraged by and assisted by this particular program. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. On with discussion of FA637. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I'm very supportive of venture capital. But there's one thing that I have a little question about and I would like to ask Senator Brown if she would respond, please.

SENATOR CUDABACK: Senator Brown, would you respond?

SENATOR BROWN: Yes.

SENATOR STUTHMAN: Senator Brown, what do you realistically mean by high-growth Nebraska businesses? What would constitute a high-growth business?

SENATOR BROWN: They're usually either start-up companies that need capital or companies that are in a position to expand rapidly but they need capital in order to do the expansion. And in some, probably fewer, cases they are companies that might be in a position to be acquired and need to bridge the time between the time that they have...they just need capital to bridge the time until they're acquired.

SENATOR STUTHMAN: So in other words, I truly understand the new businesses. But the high-growth one, realistically, that would be businesses that have really...are in...the intent is to really expand because their business has...they're really outgrowing their business?

SENATOR BROWN: Or something changed that they just, they took off and they were set up to be...the Speed Stik Company that they work with started out, had one employee, and all of a sudden, boom, there was a great demand for their product and they needed to add employees. They needed to be able to have

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some capital to be able to gear up to meet the demand for their product. And they just needed to, from a business standpoint, they needed an infusion of capital in order to be able to be what they were going to be when they grew up.

SENATOR STUTHMAN: Okay, thank you, Senator Brown. That answers my questions. I'll return the balance of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. I do stand in support of Senator Brown's amendment. Not going to dwell on different parts of it. But as has been stated before, I think that this is a need in Nebraska. We are one of the few states that do not have such programs. And there is definitely a need. I know last year in the Rural Development Commission as we were looking at priorities that we wanted to support, this was certainly something that came before us. We felt that we couldn't do everything in one year. But I'm glad to see the amendment back because it is an important part of what we did last year, particularly Senator Cunningham's bill that looked at entrepreneurship in different communities. And as has been stated, I think particularly in our rural communities, this is where this venture capital is needed, to conduct those programs, to assist those new businesses or, as Senator Brown said, sometimes there are businesses that have grown and need to expand and need some help in doing this. So I stand in support of the amendment in the fact that I do believe it is something that Nebraska needs. Thank you.

SENATOR CUDABACK: Senator Brown.

SENATOR BROWN: Thank you, Mr. President and members. One of the things that I wanted to speak to, because I don't want it to seem like we are talking about big businesses, there were a number of big businesses that I referenced who have contributed significantly to the matching money. But this is really about the little guy. This is about businesses, somebody who has a good idea who needs money to start out. A small business, very small business, who has the opportunity to grow that needs capital to get going. But it's mostly about how our state,

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through its small communities and bigger communities, puts together investors who may not have a ton of money that they wish to risk on one idea but might be willing to come together to put together funds that then could be used to promote businesses in their locality. All of the businesses that are worked with by Invest Nebraska are Nebraska-based businesses. These are businesses that are providing the growth potential for the state of Nebraska. But I understand that...I understand the importance of the underlying bill and I don't want to jeopardize that underlying bill. And I'm afraid, with the time being what it is and with Senator Chambers' attitude being what it is, that we may not be able to advance LB 990 with this amendment on it. I would ask you to very seriously consider whether there...supporting the idea of this, we might be able to find another place for it. I disagree with the position that Senator Chambers has that this is a giveaway to business. This is about us developing our own abilities as a state to work with venture capital, keep venture capital here for Nebraska businesses, help businesses link with small start-up businesses and high-growth businesses, link with individuals and groups that have money that they're willing to invest. And we need more of it. But I'm not willing to jeopardize Senator Wehrbein's bill, and so I will withdraw the amendment at this time. Thank you.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, the next amendment I have is Senator Kremer, AM2853. (Legislative Journal page 1168.)

SENATOR CUDABACK: Senator Kremer, you're recognized to open.

SENATOR KREMER: Thank you, Mr. President, members of the body. AM2853 is really the LB 346. LB 346 was introduced last year but did not have time to be taken up. And LB 346 is really in response--and it deals with the beginning farmer program--it's in response to a study that we had in 2004, it was LR 303. And that was in response to a survey that was put out by the Beginning Farmer Board. The beginning farmer program was enacted in 1999. It was a bill by Senator Wehrbein, LB 630. And in response to the fact that we are getting less and less beginning farmers and our average age of our farmers and

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ranchers is increasing. It think there's some counties where it's getting up to the average age is close to 60 years old. So Senator Wehrbein was trying to figure out how we could have an incentive for retiring farmers or ranchers to look to a beginning farmer to rent their property to. Maybe it's going to be more risky because a person doesn't have a track record of doing, you know, being a good farmer, being progressive. And so we looked at some ways to help that. And the bill originally was that it would give a 5 percent income tax refundable credit for the amount that it was rented out for to a beginning farmer. It was initially thought that it would take about \$1 million, but it was considerably less than that and it's only been an involvement of about \$65,000 a year. So the Beginning Farmer Board put out this survey to those that made applications that did not follow through on the applications to find out just why it was not used more. And they came back with four different reasons. The first of all was that the landowner thought there was just insufficient amount of incentive there to cover the opportunity costs of maybe taking the risk or whatever might be. So in response to that, we upped in LB 346 the 5 percent to a 10 percent if it was cash rented and 15 percent tax credit if it was sharecrop. Now the reason for that is, when you sharecrop, some of the risk goes onto the lessor, the existing farmer that's renting out. Cash rent, many times it's half the rent is paid up front and the young farmer would have to take care of all the risk. And so we thought we'd make a bigger tax credit for those that were willing to go sharecrop. So the bill contains 10 percent for cash rent and 15 percent for a sharecrop. The second ingredient that they found that was people were not following through it was that the net...it was required in the original bill, the net worth of a beginning farmer could not be over \$100,000. Hardly any bank is even going to loan any money to a beginning farmer if they don't have any more of their own money to put into that. So we raised that to \$200,000. So any beginning farmer with less than \$200,000 net worth could qualify. Third aspect is that many times the land that was up for rent was because the owner had deceased and the heirs could not use the program. So the bill, LB 346, now says that the heirs of someone that would have qualified, they would also qualify. So that's talking about the siblings, the wife, or their children could take part in the beginning farmer

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program if the person that's deceased would have qualified. The fourth aspect is that the beginning farmer is required to take a management course so that they had some good knowledge on how to manage a farm, how to manage your finances, and it did not allow them to get any reimbursement for that cost. So now the beginning farmer can be reimbursed for the cost of the management course that they take. The Beginning Farmer Board does have a set of programs that do qualify, if they've gone to college already, that would qualify. But it would only qualify the reimbursement on the year that they took the course. So if somebody went to college for a few years and came back and took part in this program, that would not qualify. So it will reimburse the beginning farmer for the amount of what the management course cost them, not to exceed \$500,000. I think those four aspects are what we're trying to do to enhance this. In the fiscal note, the fact that it's 5 percent up to 10 percent is going to double it, and the fact that there will be more qualifying. So we're thinking that even with these new incentives in here, that it would only be about half of what the original \$1 million was. Instead \$65,000, we think it could go up to about \$450,000, but still considerably less than the first...the bill that was passed and we anticipated that it would cost. So these are the basic aspects of this, and I'd like to give the balance of my time to Senator Wehrbein--it was his bill and I think it was a good bill--and let him make some comments if he'd like. Thank you, Mr. President.

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

SENATOR WEHRBEIN: Thank you, Mr. President, members of the body. I will be brief. Senator Kremer described the bill very well and I also want to express my appreciation to the board, the Young Farmer Board that has done a lot of work on this over the last three or four years, have taken their obligations and job very seriously, and have come up with these suggested amendments that I think will improve the bill, make it more usable. It is gradually catching on. I think there's about 50 that have participated in this if my memory is right. They do have an annual report that you all get if you want to know more about it. But I encourage your support of this. I'm pleased to have Senator Kremer put this on it. We drafted...we worked on

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the bill together and I'm happy to have it on this bill and I urge your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. On with discussion of the Kremer amendment, AM2853. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is something that I had mentioned earlier that I do support. And although I'm supporting it, I do not have any false notions of how this is going to be the salvation of anything. The only thing that this proposal can do is maybe offer an opportunity and open the door a bit wider and some people might try to come through who, under the present circumstances, would not or could not do so. And if this proposal does not do great things, people can avoid feeling great disappointment by lowering their expectations. I doubt that anybody with any perception of what's going on out there in the farm sector believes that once we put this proposal into law, that that economy is going to take off like a jet plane and it will cut through debt, rural debt, like a hot knife through butter or Sherman marching to the sea. None of those things will happen, in my opinion. But it might be a last gasp effort to bring something out of a program which has good intentions and if it worked would do something of value. I'm going to support it only because I told Senator Wehrbein that I would and that there might be a possibility of something of value coming from it. And if it does, by that I meant if something of value does come, then I think all of us will be pleased. But I don't have high expectations. I'd like to ask Senator Wehrbein a question.

SENATOR CUDABACK: Senator Wehrbein, would you yield?

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Senator Wehrbein, there's a difference between hoping something will work and trying to make it work and an expectation that it will achieve what we want it to. If you were going to rate your expectation on a scale of 1 to 10...before you do that, I will say that rating our hope on a scale of 1 to 10, we both probably would hit the 10 and stick

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there rigidly, unmovable, immovable. If we're rating your expectations, where would you be on that scale from 1 to 10?

SENATOR WEHRBEIN: That's a good question. I like number 6.5 to 7.

SENATOR CHAMBERS: Thank you. And this is something like after we've caught a fish, we kind of...we have a little wiggle room there. And I'm only doing this so that nobody will think any of us is making grandiose predictions or promises. It's an effort to make something go and work. Senator Wehrbein, would you agree, at least generally, with that assessment?

SENATOR WEHRBEIN: Yes, except the fact that there has been, if my memory is right, about 50 apps and use in the last three or four years. So there have been some and that's worthwhile and it's cost very little money thus far. This should broaden its support and give some encouragement to young people. So I'm a little more optimistic than you.

SENATOR CHAMBERS: And if it works, you might come back, even though you're term-limited out, if that sticks, and have a Snickers bar with me by way of celebration?

SENATOR WEHRBEIN: What I was planning on doing was coming back next year and having you offer an amendment for me. (Laugh)

SENATOR CHAMBERS: I'll work on it seriously. Thank you, Mr. President. Thank you, Senator Wehrbein.

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

SENATOR BROWN: Just a comment...thank you, Mr. President and members. Just a comment on the interchange that just went about between Senator Chambers and Senator Wehrbein--6.5 to 7 on a Richter scale is pretty substantial.

SENATOR CUDABACK: Thank you, Senator Brown. Any further discussion? Seeing no lights on, Senator Kremer, you're recognized to close.

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SENATOR KREMER: Thank you, Mr. President, members of the body. I'll make this very short. And I would agree with Senator Chambers, I don't think we're going to see a great rush of new beginning farmers be able to come in and utilize this. But what I see happening is that many, many times when a farm comes up for rent, there's a large operation that comes in and they can outbid the beginning farmer. If this would just be a little incentive for that retiring farmer to look another direction that could maybe...maybe he's not going to get quite as much for rent as he would if that person that's got a large operation. But if they could be equal and he would see that he would like to help out a beginning farmer, I think it would be profitable. And so it's a step, it's not a big step, but it's just a step in trying to encourage young farmers to get started. So with that, thank you and I'd urge you to vote for the amendment to LB 990. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the closing on AM2853. The question before the body is, should that amendment be adopted? All in favor vote aye; opposed vote nay. The question before the body is the Kremer amendment, AM2853, to LB 990. Have you all voted on the question who wish to? Please record, Mr. Clerk.

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

SENATOR CUDABACK: The Kremer amendment has been adopted.

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 990 to E & R for engrossing.

SENATOR CUDABACK: The motion to advance LB 990 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. Mr. Clerk, items for the record or messages?

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CLERK: Thank you, Mr. President. Your Committee on Education, chaired by Senator Raikes, reports LB 1006 and LB 1256 to General File with amendments. And a series of study resolutions: LR 371, Senator Janssen; LR 372, Senator McDonald; LR 373, Senator Aguilar; and Senator Aguilar, LR 374. That's all that I have, Mr. President. (Legislative Journal pages 1233-1237.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to General File, 2006, committee first priority bills, Mr. Clerk, LB 1222.

CLERK: Mr. President, LB 1222 introduced by the Transportation Committee and signed by its members relates to telecommunications. The bill was discussed briefly on the floor last Friday. Senator Baker, as Chair of the Transportation Committee, had opened on the committee amendments, Mr. President. And we left, when the Legislature adjourned for the day, pending was an amendment to the committee amendments, Senator Baker's AM2745. (Legislative Journal page 1067.)

SENATOR CUDABACK: Senator Baker, would you like to take a minute or so and brief us on the bill and amendments to it?

SENATOR BAKER: Yes, thank you, Mr. President, members. The bill is dealing with telecommunications issues, specifically wireless issues. And as wireless progresses, the technology, this is simply the next step from what Senator Engel had as a priority bill, I believe, a few years ago. And I'd be glad to...I'll go ahead and put my light on then and we'll talk about the amendment.

SENATOR CUDABACK: Okay. You may do that now, Senator Baker.

SENATOR BAKER: Thank you, Mr. President and members, once again. We have two pending amendments here and then you'll see that Senator Fischer has filed an amendment that we've been working on today. So the first step in this process would be to adopt AM2745 which, as you said, was discussed last week when we began debate on the bill. AM2745 has some language in there clarifying when a surcharge can be placed upon a wireless carrier and that has to be a positive balance. We're talking

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about prepaid cell phones now. You don't want to put a surcharge with less than a 70 cent credit on it. And secondly, it gets into uniformity, the fact that metropolitan city, Omaha, we're not going to change the surcharge that's on wireless phones. It's 50 cents now. The amendment would maintain that 50 cents. The actual committee amendment had it raised to 70 cents. We've agreed to lower it...or leave it where it is at 50 cents. And that's also where their landline surcharge is, so that we have uniformity on both of those. And I would ask for adoption of AM2745 so that we can move on to really the crux of the bill now as Senator Fischer's amendment. But I'd ask for adoption of AM2745. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. You've heard the discussion on AM2745. Continue discussion? Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Baker started talking awfully fast toward the end and said, and this is what this amendment does (mumble) and let's hurry up and get on past that and get to the crux which is Senator Fischer's amendment. I'd like to ask Senator Baker what he was kind of chewing up and swallowing as he presented to us this AM2745. If I understood anything, it has to do with the surcharges. Isn't that correct?

SENATOR CUDABACK: Senator Baker?

SENATOR BAKER: Yes, Senator Chambers. The surcharge now in metropolitan Omaha, which you were the architect of that, on wirelines is 50 cents. The rest of the state can go to \$1.

SENATOR CHAMBERS: Now when we say I'm the architect, what we mean is that I'm the architect that prevented it from going higher, is that correct?

SENATOR BAKER: That's correct.

SENATOR CHAMBERS: Because I have never supported surcharges because they're taxes called by a different name. But that part I'm going to leave. Seventy cents is the amount of surcharge that can be put on wireless throughout the state except the area

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that Senator Fischer wants to carve out, is that true?

SENATOR BAKER: No, and her amendment deals with the consolidation issue. This amendment, AM2745, is what maintains the Omaha surcharge at 50 cents on wireless. That's what you're paying now in Omaha is 50 cents.

SENATOR CHAMBERS: Well, you don't need an amendment to do that because that is the status quo. What is different or in addition to that which is in this amendment that...

SENATOR BAKER: Why this has to be included in this amendment we're debating now is because the committee amendment had it at 70 cents for the state and it was statewide.

SENATOR CHAMBERS: Oh, so this now...

SENATOR BAKER: Gets us back.

SENATOR CHAMBERS: Okay, okay, then I'm in favor of this amendment. Thank you, Mr. President. Thank you, Senator Baker.

SENATOR CUDABACK: Further discussion? Seeing none, Senator Baker. Senator Baker waives closing. The question before the body is the adoption of AM2745 to the Transportation Committee amendments. All in favor vote aye; opposed vote nay. Voting on adoption of the Baker amendment, AM2745, which amends the Transportation Committee's amendments to LB 1222. Have you all voted on the question who care to? AM2745. Members, have you all voted who wish to? Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays, on adoption of the amendment to the committee amendments.

SENATOR CUDABACK: The amendment has been adopted.

CLERK: Senator Baker would move to amend with AM2775. (Legislative Journal page 1073.)

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

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SENATOR BAKER: Thank you, Senator Cudaback and members. This amendment is very simple and straightforward. There's a portion of the bill as it exists in the committee amendment now that had an implementation date July 1 of 2006 for the surcharge on prepaid cell phones. They're becoming more and more of a factor in the market. Your "big box" retailers are selling a lot of these now where you can go in and purchase a cell phone with \$50 worth of time on it. Quite frankly, none of the states working on this issue have a viable solution. So this amendment, AM2775, extends the requirement that they pay into the surcharge fund for one year. And the date now is July 1 of 2007. Within the committee amendment, it was July 1, 2006. I would ask for adoption of this amendment. We'll try and...staff will work on this between now and then with the prepaid phone suppliers and hopefully the other states and we can come to some agreement on how we're going to handle it. But that's all the amendment does. Thank you.

SENATOR CUDABACK: Senator Baker, are you finished?

SENATOR BAKER: Yes.

SENATOR CUDABACK: Open for discussion on AM2775. Senator Baker, there are no lights on. He waives closing. The question before the body is the adoption of AM2775 to the committee amendments to LB 1222. All in favor of the motion vote aye; opposed, nay. Voting on adoption of the Baker amendment, AM2775. It amends the committee amendments. Please record, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of the amendment to the committee amendments.

SENATOR CUDABACK: AM2775 has been adopted.

CLERK: Senator Fischer would move to amend the committee amendments. (AM2916, Legislative Journal pages 1237-1238.)

SENATOR CUDABACK: Senator Fischer, you're recognized to open on your motion.

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SENATOR FISCHER: Thank you, Mr. President and members. AM...I don't believe you have it up yet.

CLERK: AM2916, Senator.

SENATOR FISCHER: Right, there. AM2916 would strike Sections 1-14, Section 25, and 27. The striking of Sections 1-14 effectively eliminates any consolidation of the public safety answering points or the PSAPs and any provisions pertaining to that end goal. That includes striking the language that requires counties to implement enhanced 911 services by 2008. It does not change any of the language that allows the Public Service Commission to have discretion on what costs will be funded. The language that allows the PSC to develop a funding mechanism is also kept. I believe it is only fair that the PSC has the discretion on how to spend limited funds. The amendment also strikes language that does not require the PSC to provide compensation for costs of public safety answering points that serve fewer than 5,000 residents, and that is on page 15. This language was just another indirect way, I thought, to force consolidation on smaller-population counties. The amendment does not change the PSC's right to restrict funding to one public safety answering point per county. This will provide incentive for each county to move towards having one PSAP, which I believe is a fair objective for the state. I cannot support a bill that forces consolidation of the PSAPs. I have several counties who don't have the means or the need to consolidate. Consolidation should be a local decision made by the affected taxpayers, and this amendment accomplishes that goal while allowing the Public Service Commission to have discretion on what may be funded. So in wrapping this up, basically this amendment is taking out the language on consolidation. It reinserts the language on the prepaid part of the amendment. And I would be happy to try and answer any questions on this. Thank you.

SENATOR CUDABACK: Thank you, Senator Fischer. Open for discussion. Senator Baker.

SENATOR BAKER: Thank you, President Cudaback and members. I have worked with Senator Fischer on this to make sure that we do

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keep in the absolute necessities in this bill. I've worked long and hard on this consolidation part of the amendment she has here. But I'm not going to vote for it. But I want to make sure it's clear in the record that the Public Service Commission, this 70-cent surcharge is flat-out not going to cover all the requests they have for reimbursement of costs. It's not going to do it. They came in a year ago and wanted \$1.50 per cell phone line per month. We came back this year with \$1 and ended up moving 70 cents out of committee. They're not going to have the funds to do this. So we have to give them discretion, as Senator Fischer did mention. They're going to have to use their best judgment, if we adopt the Fischer amendment, so that they simply are not going to fund all the requests they get from, say, counties that are serving a few thousand people are probably going to be refused reimbursement. Number one, the money is not there and the PSC should focus on those PSAPs, 911 call centers that are the most efficient and thereby send a message to these folks out there that are trying to maintain a 911 call center for 2,000-3,000 people. You had a handout come around on current consolidations. And what we're trying to do with 911 call centers is not unlike what we did with area health service areas. Remember those of us here two or three years ago required that in order to have state funding they serve 35,000 people? I can equate that somewhat with what you're doing here with 911 call centers. There simply is not a good rationale to say that we need all these PSAPs. There's 82 of them now in the state. Granted, they've gone down voluntarily, they've consolidated. I know the issue was brought up, well, it's happening anyway. But we have some people that have drug their feet along here and not done a lot of these things. And I have talked to various PSAP operators over the weekend and today, and they would like to have some of their bordering counties come to them and share some of the facilities they have in place, because there's no point in duplicating them. If you'll look at that current consolidations map, you'll see that Senator Fischer does in fact have a large area in the green and I think Senator McDonald also shares in that. There's eight counties: Thomas, Blaine, Loup, Garfield, Wheeler, Valley, Greeley, and Sherman. They all have one PSAP service to all those areas out of Taylor. And their costs on that are tremendous in the savings compared to what each one of them

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would have to have a PSAP. They're doing this, as an average, around \$20,000 per county per year. You couldn't staff a PSAP with one person for that in a county. Blaine County, for instance, pays Region 26 \$10,388; Garfield, \$25,000; so on. Tremendous cost savings doing this. And they came down to the hearing we had in Lincoln, I believe their director, and had no complaints. So I want to make sure it's in the record that we expect the Public Service Commission to look long and hard at what they're refunding disbursements for because, quite frankly, we can't...we're not going to have the money to fund all the requests for reimbursement. They're going to have to make some choices here. Go ahead and look at the map. There's another large region there in Senator Fischer's, the west end of her district, and Senator Erdman's. There's, what, seven counties that are all dispatched out of Ogallala, out of Keith County. They have even less costs. And then we've got, in Senator Smith's district, Banner County. And I misspoke the other day, it's the south part of Sioux County is dispatched out of Scotts Bluff County. They're basically doing it for nothing for them. So I can't blame those...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...guys for going in, certainly. My point is, if the Fischer amendment is adopted, she's exactly right, it strips the consolidation piece out of the bill. It remains the 70-cent surcharge on the lines outside of metropolitan Omaha. And I want to make sure the PSC understands that we expect them to make some hard calls here when people come in and want reimbursed, the money is not there, they're going to have to make some choices if we adopt Senator Fischer's amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Cunningham followed by Senator Brown.

SENATOR CUNNINGHAM: Well, thank you, Senator Cudaback and members. Oh, I'd like to thank Senator Baker for the work that he's done on this issue. But I would tell you, I am going to support Senator Fischer's amendment here. I do believe that this issue is best left up to the local supervisors and

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commissioners. I think they know best what needs to be done for those counties. So I'm going to be very brief. I would just say that I support the amendment. And Senator Fischer, if you would like the time, you're welcome to it.

SENATOR CUDABACK: Senator Fischer, did you wish...?

SENATOR FISCHER: Thank you, Senator Cunningham, Mr. President, and members. As many of you probably know, I had some concerns with this bill as it was first drafted. My district is the Sandhills of Nebraska. And when I say we don't have cell service, you probably think that it's out in the hills that we don't have cell service or maybe on our ranches where we still have analog lines. We don't have digital lines there. Well, we don't have cell phone service in some of the communities in my area. We have very poor service in Ainsworth. Atkinson is getting a tower, but there was no cell reception in Atkinson. When I'm in Arnold, Nebraska, I have to drive east of town and get up on a hill before I can get any kind of cell service. You know, and we have that in many communities, not just many areas, in my district. So I had concerns with this bill, trying to force these counties into doing something that we aren't even able to do right now. We don't have the infrastructure to accomplish a lot of the mandates that are coming down. And I have a number of counties who are also at their levy limits and they're having problems deciding if they can even keep a public library open in Brown County without having to worry about how they can implement this and get all the signage out. So that was my first concerns with this bill. As Senator Baker said, we did work on these amendments today. He came in my office this morning about 8:15 with an amendment, we discussed that. We've gone through and this is, the one I introduced, is now the third amendment that we tweaked and agreed on. So I'm hoping that you will look favorably upon it and support it. Thank you.

SENATOR CUDABACK: Thank you, Senator Fischer and Senator Cunningham. Senator Brown.

SENATOR BROWN: Mr. President, members, I oppose Fischer amendment. I think that if we were talking about landlines as is in another part of the bill, and we're really not changing

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that aspect of it, it would be a totally different thing because then you are talking about services that are only required in that county. But in this, we are talking about the new technology that allows people to go from one county to another. In her opening, Senator Fischer said that there are PSAPs that do not have the means or needs to consolidate. Well, if they don't have the means or needs to consolidate, then how do they have the means or needs to exist in the first place? But what I really am most concerned about in terms of this, there are two things. First of all, I think that the issue has been addressed in that the Public Service Commission will not be giving money to PSAPs that are not doing that which they are supposed to be doing. We have PSAPs right now that are using the money for things like cleaning the courthouse rather than using that money that they get, and this is from their landline side of things, to provide the services that they're supposed to be providing. They are unwilling to do the things that they need to do to be part of the system. Well, that's fine. But just as long as they do not get any state money, any of the money from this fund. If those cell services are not available, then there are probably fewer people who have cell phones and so there will be less surcharge revenue available for those areas. What was hoped for in this was some sort of a statewide system that would best have a similar degree of service wherever you happen to be that would allow for a response to emergency situations. And that's the second issue that I'm very concerned about. Because the very same PSAPs that are intransigent about providing the services are also intransigent about working with other people. And so they will not develop protocols about what would happen in a multicounty emergency. And so if there's something that happens in those counties, then I hope the counties are willing to stand up and take the responsibility and the liability that comes with their PSAP not having a protocol that would allow for the transfer of information in a multicounty emergency, because that's going to be exactly what happens. The very same people that are intransigent about providing the services are also intransigent about working with others to make sure that we have a system that does what we want it to do. So that's fine as long as we don't give them any money for being intransigent. Thank you.

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SENATOR CUDABACK: Thank you, Senator Brown. Senator Mines, on the Fischer amendment.

SENATOR MINES: Thank you, Mr. President, colleagues. Let me just weigh in a little bit from the communication perspective of PSAPs. And I'm by far not an expert on this, although I understand a bit. In my mind, the fewer PSAPs we have in Nebraska, the better off Nebraskans are to receive a higher level of service. In other words, the more PSAPs we have in a state, the less services...the lower grade of services provided to all Nebraskans. If we had one PSAP, as an example, I believe we'd have a higher level of service. But that won't happen in Nebraska. Senator Fischer is...I've heard your discussion. Much of it centers around maintaining local control and I applaud that. I'm not sure that this is a local control issue. And I, above all, am all for local control. I think this is about delivering a grade of service to Nebraskans when, even though I may not live in the same area, I do drive through. And if I'm driving through and need E-911 services, I want to be sure that I'll get a high level of service. The 5,000 number population is certainly arbitrary. You could pick 6,000, you could pick 10,000. You know, I don't know what you'd pick, but it is a number. And one of my concerns is that each county won't be required...I think if Senator Fischer, she's off the floor, but if each county...if her amendment is adopted, I think that the restriction or the provision that each county will provide E-911 service by July 1, 2008, is also withdrawn. Mr. President, may I ask Senator Fischer a question, please? Mr. President, would Senator Fischer yield?

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

SENATOR FISCHER: Yes.

SENATOR MINES: Thanks. Senator Fischer, I just want to clarify that I understand this right. If your amendment is adopted, would the requirement that each county shall provide E-911 service by July 1, 2008, be stricken as well? And you're looking it up and that's great. The reason I'm asking is...

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SENATOR FISCHER: I believe, Senator Mines, that it is, but I just wanted to look at the section. Do you have that?

SENATOR MINES: Okay. I'm not sure that that...

SENATOR FISCHER: Section 5?

SENATOR MINES: Yeah, that's it.

SENATOR FISCHER: Yes.

SENATOR MINES: And is that...do you think that's intentional or...see, I would, from my perspective, would like to see Nebraska get to a point where everyone has E-911 service. And this would eliminate that provision. Is that your intention?

SENATOR FISCHER: Working with Senator Baker, that's what we came up with.

SENATOR MINES: Okay.

SENATOR FISCHER: That was in the first amendment that Senator Baker brought me. I don't disagree with your view that Nebraska needs to be working towards having E-911 across the state. What I am saying is, until the infrastructure is there, how can you require this of counties that don't even have the capability of doing it? Are the counties then going to be required to put up towers in order to have that cell coverage throughout the state?

SENATOR MINES: Well, no, because...and I think you had made a point earlier that many places in greater Nebraska...

SENATOR CUDABACK: One minute.

SENATOR MINES: ...don't have coverage. Many places in eastern Nebraska don't have coverage as well. That is a different issue than providing E-911 service. And you're talking private marketplace, delivery of cellular service, and you're talking government provision of E-911 service. And I would like to see us get to an end game where eventually in the near future we do have E-911 available everywhere in the state, irrespective of

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availability of cell phone service or not. That was just one of my questions. I'm still listening and I'm just, I'm not there yet but I have some questions and I appreciate conversation. Thanks. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President and members. I would like to ask Senator Fischer a question, too.

SENATOR CUDABACK: Senator Fischer.

SENATOR CONNEALY: As I was following...Senator Fischer?

SENATOR CUDABACK: Senator Fischer, would you respond?

SENATOR FISCHER: Certainly.

SENATOR CONNEALY: Thank you, Senator Fischer. As I was following, you said you worked on this with other groups, you worked with Omaha and the counties have agreed to this?

SENATOR FISCHER: Yes, I was just out in the Rotunda all morning. And just a few minutes ago, the Public Service Commission, NACO, and Omaha are fine with my amendment.

SENATOR CONNEALY: Okay, thank you. That's all I wanted.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Fischer, you're recognized. Senator Fischer waives her opportunity. Senator Erdman. Is Senator Erdman on the floor? Yes, he is.

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I was wondering if Senator Baker would yield to a question.

SENATOR CUDABACK: Senator Baker, would you yield?

SENATOR BAKER: Yes, I would.

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SENATOR ERDMAN: Senator Baker, the handout that you've given us that talks about the current consolidations, what is the statute now that requires them to consolidate?

SENATOR BAKER: There is not one.

SENATOR ERDMAN: Okay, thank you. Members of the Legislature, I think if you review the language in Senator Fischer's amendment and if you look at the language that's actually in the bill, you'll find some similarities on the issue of consolidation. There is language in the original bill, or at least in the amendments, that say that you won't be reimbursed if you are not under a consolidation model, which is same as a voluntary idea. You have that option of whether you want to proceed down that path and not get reimbursed or not. The idea that by passing the Fischer amendment on the issue of consolidation it somehow takes it off the table, that's simply not true. It simply allows the Public Service Commission the authority to decide, because the language is changed from "shall reimburse" to "may." It simply allows them to make that decision, which is currently what we have in the process. Now the difference is, is that it changes the dynamics a little bit, but again, you're still looking to try to find efficiencies. If you look at the map, and Senator Baker is correct, there's a number of counties in my legislative district, both that are affiliated or consolidated with Scottsbluff/Gering's call center as well as the one that's in Keith County, those counties are doing that currently and they're recognizing the need to have efficiencies and they're recognizing the need to work together with one another. So I think we should be cautious about how we paint this. They're doing this now. All of this wonderful map that Senator Baker has given us is under the current law, which doesn't mandate consolidation. Senator Fischer's amendment doesn't mandate consolidations. It gives discretion to the Public Service Commission on how to allocate the funds necessary for the implementation of the service. So I think we should be careful, just simply on the fact that what is meeting the eye here on this map could very well happen under the Fischer amendment. And if the idea that Senator Fischer has brought to us helps us through this process, this is not a one-time problem that we're going to fix with one bill. As Senator Baker has pointed out

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prior, we're going to come back and we're going to have other issues that either have delayed implementation dates or future policy decisions that we're going to have to make. If this helps us bridge that gap for the time being and allows the counties the opportunity to work with one another and clarifies in statute what the Public Service Commission needs as far as authority for reimbursement, then I don't see a problem with Senator Fischer's amendment. I think it goes further to alleviating the concerns and trying to create a cooperative environment then maybe what the underlying committee amendment does. And to me, that seems like a step in the right direction. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. On with discussion. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I brought up the original legislation on this subject about four or five years ago. And when it was first presented to me, it took about two to three years to get all these entities together. And I noticed on the committee statement that there's several opponents to this this time also. But it did take a long time to get them together before I'd even bring it on the floor. And then we brought it on the floor, it took quite a bit of time but we got the bill through. And I think it was very important legislation. At that time, we asked for \$1 so we could fully fund it. But that didn't go so we're back to the 50 cents and we're finding out that we probably didn't need more than 50 cents. But the thing is, what I'm trying to emphasize, it takes a little time, I think a step at a time is fine. So I do go along with Senator Fischer's amendment, and they'll continue to work on it. As NACO has said, they pledge that in the event this bill is not amended or does not pass, that they will work with all of the parties involved to bring forth legislation in the upcoming session that is workable for all interested parties. In other words, they're satisfied with what Senator Fischer is doing. They're satisfied with the bill as going through. And they will continue working to make it a better bill in the future. So I think, as a lot of things do not, like Senator Erdman just said, it does not happen overnight. And I think that by letting more and more counties get together on

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their own, I think we're better off and that has happened. There's fewer PSAPs now than there were when I introduced the bill and I think you're going to find fewer in the future because of the economies of scale. They're going to find out it's much more economical to join another county and...or an area. So I think it will take care of itself with a little prodding. And we can continue to prod. But as far as now, I think this is very satisfactory and I approve her amendment. And of course, I certainly approve the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. Senator Stuthman followed by Senator Kremer.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I think there's one thing that I truly respect with Senator Fischer's amendment. And I think it is the fact that we need to give credit where credit is due. And the credit is due to county official board members. These county official board members, they, I feel, will do the right thing when resources are available for them, and they truly want to do the best thing for the safety of their communities. I think we must respect that. Those people are elected officials and the constituents that they have, if there is a problem, those issues will be raised. And I truly respect those county officials that they will make the right decision. The thing that concerns me is if we, as a legislative body, you know, push something down onto them, that is when we start to have and create some problems. I think things are going to fall into place. We just probably need to do a little bit information, get that out to the communities as to how we can hopefully through information and conversation to try to enhance them to get to that point. So I truly support this amendment and I truly respect the county officials and I think they will be doing the right thing. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Kremer, on the Fischer amendment.

SENATOR KREMER: Thank you, Mr. President and members of the body. I will be very brief also. And I just want to stand in support of the Fischer amendment. I do have a county, Nance

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County, that is under 5,000 population. I just feel like that they need to be able to participate in these funds. I would hope that maybe in the future that they would consolidate with some other counties if it saves them a lot of money. And I would think I'd like to leave that up to them to do that. So I do stand in support of the Fischer amendment. Thank you.

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

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I was wondering if Senator Baker would yield for a question, please.

SENATOR CUDABACK: Senator Baker, would you yield?

SENATOR BAKER: Yes, I would.

SENATOR LOUDEN: Senator Baker, on these now, how do the landlines and how do the cell phones work on this E-911? Is this completely just for landlines or is it just for cell phones or will both of them work off of that?

SENATOR BAKER: The landline fund is administered, is set up by the county supervisors or county commissioners with a maximum of \$1 per landline. That money is sent directly from the telecom to the county treasurer where it's accounted for on the budget. The wireline fee that we're paying now of 50 cents per wireline phone goes to the state and to an enhanced wireline fund that Senator Engel spoke of which was his bill years ago that will continue to do that. The money that's collected locally by the counties stays in the county for their 911 call center or their interlocal agreement. And the other fund that's administered by the Public Service Commission and they have to apply for cost reimbursement from the PSC.

SENATOR LOUDEN: How is that decided then that...what money goes to the counties? Because you have some of your phone centrals would be in one county and maybe serve two or three counties. Is that done by somebody who figures out the address on each one of those telephones, or is that by what comes out of the telephone central, or how is that figured out which county that

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goes to?

SENATOR BAKER: Senator Louden, we have, in the discussion over this bill, we have found some counties that it was not being properly accounted for that was maybe collected in one...sent to one county that still had a lot of phone numbers in another county and the same exchange. We're straightening that up with some counties and county officials, trying to get the money going where it's supposed to, Senator Louden.

SENATOR LOUDEN: That's what I question. Now with your cell phones on your E-911, there's a lot of country out there. As you look on your map, if you look at Sheridan County, why, if you're down in the southeast corner of Sheridan County and you try and you call a 911 number there, you're going to come up with someone out of Ogallala. If you happen to be about ten miles west then you'll probably come up with somebody out of the Alliance area. And then as you go north, you don't have any cell phone service whatsoever. So there's plenty of towers out there, but for some reason we can't seem to get them to be able to use each other's towers, even for just a 911. Is there any way that this can be addressed if you're going to levy some money? Those problems have to be addressed or else you don't have any 911 service as far as cell phones are concerned.

SENATOR BAKER: Well, my reply to that would be, in those cases, it would be nice if Sheridan County were consolidated, say, with Box Butte or parts of it maybe even Sheridan County with the group out of Ogallala. But to answer your question about the cell phone service, there will be requests made for reimbursement of costs dealing with this lack of cell phone service within the state. As you know, there are companies out there trying to build towers now and I'm sure that they'll be in front of the Public Service Commission trying to justify their cost reimbursement requests.

SENATOR LOUDEN: Well, at the present time, as far as I know, we have 911 service out of the south end of Sheridan County. It goes out of the Alliance area. And same way down to north end of...northwest corner of Garden County. Some of those areas...and probably the north side of Morrill County, is out of

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the Alliance area. Are you telling me that that...that the map isn't colored in or that isn't happening? We've been using that 911 for several years.

SENATOR CUDABACK: One minute.

SENATOR BAKER: It would seem to me like that would be a good reason to consolidate those counties that you're talking about in with Box Butte County so that they are all part of the same 911 system.

SENATOR LOUDEN: Well, they've already been consolidated. I don't know how many years we've had that system out there in that part of the county there.

SENATOR BAKER: Well, they're not consolidated by county. What you're saying is when you call that 911 center...911 number on a wireless, it goes to, say, Alliance. That's just the nature of the beast out there on that cell phone network.

SENATOR LOUDEN: And the same way with your landlines. I mean, it doesn't have anything to do with county lines. It has more to do with where your exchanges are out of. Is that correct?

SENATOR BAKER: You're exactly right. And that would lend itself well to consolidation, Senator Louden, it really would.

SENATOR LOUDEN: Well, I think they already are consolidated. It's just a question of where the money goes when they are consolidated. That's the reason I ask is, is the money that comes out the Alliance exchange, does all that go into Box Butte County? I'd believe it does.

SENATOR BAKER: I can't answer that specific question, Senator Louden.

SENATOR CUDABACK: Time, Senator Louden.

SENATOR LOUDEN: Time?

SENATOR CUDABACK: Yes.

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SENATOR LOUDEN: Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Fischer, I will recognize you to close on AM2916.

SENATOR FISCHER: Thank you, Mr. President and members. Senator Mines made the comment that we have fewer PSAPs today and that that's better for Nebraska and that we need to continue in that mode. I don't disagree with that. What I disagree with is forcing counties into doing something. We're only talking about a few counties in the state here. We've seen that PSAPs on their own are starting to merge together and to consolidate when they see efficiencies. We're going to find that true on counties also. I don't disagree that we need to have this system across the state. What I disagree with again is the forcing of it. In this amendment, the Public Service Commission still has the discretion on how they want to fund. That's not being taken away and I'm sure the Public Service Commission is going to make wise decisions on how they're going to use that money to fund these projects. Senator Mines and I also just had a visit and I think we're willing to move this and then work on Select File and maybe tweaking some areas of it. Once again, I would just like to remind you that the counties, Public Service Commission, and Omaha are all in favor of my amendment. And I would urge you to support me in passing it. Thank you.

SENATOR CUDABACK: Thank you, Senator Fischer. You've heard the closing on the Fischer amendment, AM2916. The question before the body is, should that amendment be adopted? All in favor vote aye; opposed, nay. The question before the body is the Fischer amendment to the committee amendments to LB 1222. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 26 ayes, 6 nays, Mr. President, on the adoption of the amendment.

SENATOR CUDABACK: The Fischer amendment has been adopted.

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

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SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion of the committee amendments themselves. There are no lights on. Chairman of the committee, Senator Baker, you're recognized to close on the committee amendments to LB 1222.

SENATOR BAKER: Thank you, Mr. President and members. That went about as I suspected. I want to make sure that the Public Service Commission, we have a record on the mike here that we are not expecting the Public Service Commission to fund...or refund cost reimbursement to these counties that may want to maintain a PSAP for 1,000 people in a county. That doesn't make any sense. What Senator Erdman did say, yes, it's going along quite well, consolidation. But there's some going to be dragging their feet just like the ones that aren't even up to enhanced 911 landline. Those are not mapped, they're not addressed, and so on. And you say, why do we need this? We need, you know, we need to get these counties' public awareness up to get them up to a minimum at least. So I think the discussion has been good. I think the Public Service Commission has an idea of what we want to do here. And although I'd like to have had it in statute, we have a record of what we want the Public Service to do, so I'm in support of where we're headed here. I would ask for the adoption of AM...the Transportation, Telecommunications Committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. You've heard the closing on AM2238. The question before the body is, shall that amendment be adopted to the bill itself? All in favor vote aye; opposed, nay. Voting on the Transportation, Telecommunications amendment to LB 1222. Please record, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: Committee amendments have been adopted.

CLERK: I have nothing further on the bill.

SENATOR CUDABACK: Back to discussion of the bill itself, advancement. Seeing no lights on, Chairman Baker, you're

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recognized...Senator Baker waives closing. The question before the body is, shall LB 1222 advance to E & R Initial? All in favor vote aye; opposed, nay. Have you all voted on the advancement who care to? Please record, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB 1222.

SENATOR CUDABACK: LB 1222 does advance. Mr. Clerk, items for the record, or messages?

CLERK: Mr. President, additional study resolution LR 375 by Senator Schimek. Senator Cunningham, an amendment to be printed to LB 489. (Legislative Journal pages 1238-1243.)

Mr. President, priority motion. Senator Flood would move to adjourn until Thursday (sic), March 28 at 9:00 a.m.

SENATOR CUDABACK: Did you say...

CLERK: Tuesday.

SENATOR CUDABACK: Thank you, Mr. Clerk. Tuesday, March 28, 9:00 a.m. All in favor say aye. Opposed, nay. We are adjourned.

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