

CLERK: 5 ayes, 0 nays to go under call.

SPEAKER BAACK: The house is under call. All members, please report to the Chamber and record your presence. The house is under call. All members, please report to the Chamber. Senator Chambers, do you wish to close while they're coming?

SENATOR CHAMBERS: Yes, I do, Mr. Chair...Mr. Speaker. Members of the Legislature, I have leveled a lot of criticisms at this bill and this amendment does not remove most of them, but at least it does not give the impression that this agreement must affirmatively contain these types of propositions or that the committee's...the commission's decision can be...excuse me, overturned, if there is not an affirmative showing that these types of things are going to be advanced by the agreement. There is nothing in the statute that says even if the commission considers or thinks about, talks about, whatever the term considers means, that their decision is not valid, if, in fact, the agreement does not do these things. It does not say that the agreement has to achieve the promotion of agriculture, horse breeding, or any of these other things. It just says the commission shall consider them. I'm saying, by this amendment, the commission may consider them, because that's all that this language really means anyway. When a provision of law grants discretion, as this one does, the term shall means may. You cannot compel a person exercising discretion to act in one way rather than another way. If you compel that, there is no longer any discretion, there is a mandatory ministerial duty that must be carried out. We are not saying, by use of this word shall, that the agreement has to reflect any of these things, or promote any of these items. Now, if you want to change the language so that it says the agreement shall promote these things, then shall has a meaning. Then the agreement can be overturned if, in fact, the agreement does not promote horse breeding, agriculture and so forth. But to say that they shall consider these things is really advice, and that's all. I don't even think it's good advice. But I'm asking that the shall be converted to may. And, Senator Will, the last...Senator Will, how do you feel about this amendment, because you said we may have an arrangement. I don't like that word deal. (Laughter.)

SENATOR WILL: Senator Chambers, I will support this amendment.

SENATOR CHAMBERS: You will? Okay, that's all I have to say