TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE Transcriber's Office FLOOR DEBATE

May 18, 2005 LB 478

pensions, and private pensions -- four different categories. And if you scan down through the various states and across at all four categories, you'll find that generally speaking if you made an exemption in one category, you made a similar one in all And then reading on further as to why that may be the case, you come across language such as this in the Research Division's analysis of the law in this area: "If a state constitution guarantees equal protection and prohibits special legislation, courts might use a test that is more stringent than the rational basis test. Article III, Section 18, of the Nebraska Constitution guarantees to Nebraskans equal protection of the law. This means that the law must apply equally to everyone or, if some people are penalized or benefited by the law, there must be some rational basis for the exception." then goes on to conclude, "Therefore, depending on the circumstances, discriminatory pension tax laws in Nebraska might subject to constitutional challenges based on the intergovernmental tax immunity doctrine, principles of equal protection, and the prohibition of special legislation." The fact that all of these states seem to treat, by and large, all four categories equally, would seem to indicate to me that there is a danger if you treat any one of those four categories differently. So, in other words, absent this amendment, if you were...if you were exempting all of military pensions, the argument could be strongly made that you need to exempt all pensions. And so I wanted to ... and I think, if I'm remembering right, that that's one of the reasons we never wanted to go here, because it tends to be something where you have to treat everything equally. But I wanted to ask Senator Landis, with the committee amendment you've not only cut down on the fiscal note but you've created a different kind of rationale for distinguishing a portion, not only of a...you've distinguished a particular category, military retirement, from the other three categories in this analysis in this document, but even within military categories you've distinguished on the basis of a presumed state need for incent...in giving incentives to fill certain positions in industry. I just wanted to ask whether there had been any...

SENATOR CUDABACK: One minute.