

FEBRUARY 5, 2001

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February 5, 2001 LB 36, 114, 313A

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber, twenty-second day. Our chaplain this morning is Pastor Todd Schave from the First Baptist Church in Blair, Nebraska. That is Senator Connealy's district. Pastor.

PASTOR SCHAVE: (Prayer offered.)

SENATOR CUDABACK: Thank you very much, Pastor Schave, for being with us. We appreciate it. I call the twenty-second day of the Ninety-Seventh Legislature, First Session, to order. Senators, please check in. Record, please, Mr. Clerk.

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

SENATOR CUDABACK: Have corrections for the Journal?

CLERK: (Read corrections, Legislative Journal page 539.) That's the only correction I have this morning.

SENATOR CUDABACK: Thank you, Mr. Clerk. Are there messages, reports, or announcements?

CLERK: Mr. President, the last bill read on Final Reading, Friday, LB 36, was presented to the Governor on Friday at 12:00 p.m. New A bill, LB 313A by Senator Coordsen. (Read by title for the first time.) And Senator Quandahl has selected LB 114 as his priority bill for this session. That's all that I have, Mr. President. (Legislative Journal pages 539-540.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Next agenda item.

CLERK: Mr. President, Senator Janssen, as Chair of General Affairs, offers a confirmation report found on page 479 of the Journal.

SENATOR CUDABACK: Senator Janssen, you're recognized to open on your confirmation report, as Chairman of the General Affairs Committee.

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SENATOR JANSSEN: Thank you, Mr. President, members of the Legislature. We have one, two, three, four, five, six new appointments to the..to the Nebraska Arts Council which we heard last...I think it was last Thursday. We have two men and four women. The men, I'll go with the two men first. The first one was Terry Ferguson. He is a level three communications graduate of...and he's a graduate of Harvard Law School, and he is presently the Chair of the Arts Council. The second one was Fred Simon. He's a new member. He is part owner or owner of the Omaha Steaks and he has a liberal arts degree. The women are Nancy Schwertley, and she is a reappointment and she is a teacher from Norfolk, Nebraska. Second one is a new appointment, Donna Woods. She's a widow from Lincoln, filling out her late husband's term. Louise Bahr is from Grand Island. She had a emergency and was not able to attend the hearing. The last one is Janet Korell. She's a homemaker from McCook, Nebraska. She is a new appointee also. We looked...the committee looked favorably upon all of the appointments and reappointments, and I'd ask for your consent in approving these members to the Arts Council. With that, thank you, Mr. Chairman.

SENATOR CUDABACK: Thank you, Senator Janssen. We're open for discussion on the confirmation report found on Journal page 479. Open for discussion. Senator Janssen, I see no lights on. Did you wish to close? Senator Janssen waives closing. The question before the body is the confirmation report of the General Affairs Committee. All in favor vote aye, opposed nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 540.) 29 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: The confirmation report is adopted. Mr. Clerk, next confirmation report.

CLERK: Mr. President, the next report is by Senator Schrock, as Chair of Natural Resources. It's found on page 480 of the Journal.

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SENATOR CUDABACK: Senator Schrock, to open on your confirmation report, as Chairman of the Natural Resources Committee.

SENATOR SCHROCK: Mr. President and members of the Legislature, on January 31st, the Natural Resources Committee held a hearing and appearing in front of us was James Stuart Jr. He's known sometimes as Jim Stuart and he has been appointed by the Governor to serve five years on the Game and Parks Commission. Had a good hearing. He was voted unanimously by members of the committee; has a long career in banking; served in the army during Vietnam, was a helicopter pilot. If you have any questions, I would be glad to answer. Like I said, he was voted upon unanimously by the committee.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening from the Natural Resources Committee Chairman, found on page 480 of the Journal. Any discussion? Senator Chambers.

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

SENATOR CUDABACK: Senator Schrock, would you yield, please?

SENATOR SCHROCK: Yes, I will yield, Senator Chambers.

SENATOR CHAMBERS: Senator Schrock, I was going through some other material. What is this position that is involved?

SENATOR SCHROCK: It's a commissioner for the Game and Parks. There's seven commissioners on that and they serve five-year terms and they are not eligible to be reappointed.

SENATOR CHAMBERS: When this gentleman came before the committee, was there any discussion of the killing of the mountain lion in Saint Paul in November of last year?

SENATOR SCHROCK: Senator Chambers, there was not any discussion of that at that time.

SENATOR CHAMBERS: And he probably did not express an opinion.

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SENATOR SCHROCK: He did not.

SENATOR CHAMBERS: Do these individuals, when they come before a committee, give any information relative to their financial worth?

SENATOR SCHROCK: That was discussed by committee members.

SENATOR CHAMBERS: Is this a wealthy person?

SENATOR SCHROCK: According to your standards and my standards I think the answer would be yes.

SENATOR CHAMBERS: All of the members of the commission are wealthy persons by that standard, aren't they?

SENATOR SCHROCK: Senator Chambers, I've not analyzed every member on the Game and Parks Commission, but it appears like some of them are wealthy.

SENATOR CHAMBERS: Thank you. And this...thank you, Senator Schrock. This is not to put Senator Schrock on the spot, but I've...I begin to see the Game and Parks Commission more and more as a rich, good old boys club. Fees are raised to produce more convenience for these wealthy people, and I do not think a state agency ought to take on that particular characteristic. Not all of the members of the Game and Parks Commission do as they should do. I keep articles. December the 3rd of last year...this has nothing to do with the killing of the mountain lion. This comes from the Omaha World-Herald, page 6B, which means it was a Sunday edition. Headline: Parks Panel Member Faces Hunting Count. Quote: A special prosecutor plans to file charges against a member of the Nebraska Game and Parks Commission who is accused of hunting on private land without permission. The special prosecutor said he would file charges early next week in a case involving Rob, R-o-b, Coupland, C-o-u-p-l-a-n-d, of Valentine who was appointed to a five-year term on the commission by former Governor Ben Nelson. Coupland's term expires in September 2002. He declined to specify the exact charges. Coupland, of Valentine, was not in

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his office Friday and could not be reached for comment. Coupland, a former Cherry County attorney, who is now the Valentine city attorney, and Valentine City Manager Rick Medema, M-e-d-e-m-a, were reportedly caught getting ready to hunt grouse November 16th on a farm near Valentine without permission. The owner of the land has filed a trespassing complaint against the two men. Now a few days ago there was an article, February the 2nd of this year: Commissioner is Fined \$50 in Valentine. Rob Coupland of Valentine, Chairman of the Nebraska Game and Parks Commission, pleaded no contest Wednesday in Cherry County Court to a charge of attempting to hunt without permission and was fined \$50. In return for his plea, an identical charge was dropped against Rick Medema, Valentine's city manager. Coupland is the city attorney and formerly was the Cherry County attorney. Members of the Legislature, this is as good a time as any to raise some points. When those whose job it is to uphold the law violate the law, they bring the whole law...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...into contempt. I have my light on again, so I'm not going to try to rush to get it all said this time. Here...

SENATOR CUDABACK: We are dis...

SENATOR CHAMBERS: ...is a city attorney, a former county attorney, whom I'm sure has brought charges against other people. Now he holds a high position with the Game and Parks Commission as Chairperson. He certainly understands the laws, the rules and regulations relative to hunting. I will resume this when I'm recognized to speak again because I cannot finish it this time.

SENATOR CUDABACK: Thank you, Senator Chambers. We are discussing the confirmation report by the Natural Resources Committee. Senator Bruning, on that report.

SENATOR BRUNING: Mr. President, members of the Legislature, with all due respect to the senior member, what does any of that have to do with Jim Stuart Jr.? That's the appointee we're

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talking about. We're not talking about somebody else who got arrested some time whenever or got picked up for whatever. Talking about a good man who built a business in this state, stayed in the state, pays taxes in the state. Talking about a guy who, like Senator Preister, Jim Stuart Jr. served in Vietnam honorably, rode in a helicopter if I recall, which is a pretty gutsy thing to do. So if he's...if he's...if he's got money, well, congratulations to him. It sounds like he's living the American dream. Who can...who can knock a guy for that? This is a good man. He's done good things with his life. He's done a lot of good things for the state of Nebraska. This is somebody we need to confirm. And, by the way, he's replacing Tip O'Neill, aren't we all lucky? (Laugh) No, I'm kidding, Tip. Tip is a good guy. Jim Stuart Jr. is a good man. This is somebody we need to confirm, and any problems with any particular agency, I'm not sure where the senior member is going with this. Who knows? "Senator Don Quixote" up here tilting at windmills, none of it has anything to do with Jim Stuart Jr. This is a guy we need to confirm. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bruning. Senator Chambers, on the report.

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

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

SENATOR BRUNING: I will.

SENATOR CHAMBERS: Senator Bruning, are you on the committee that heard the presentation of this gentleman's credentials?

SENATOR BRUNING: I am.

SENATOR CHAMBERS: Is that where you found out that he was a person who served in Vietnam?

SENATOR BRUNING: Yes, it is.

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SENATOR CHAMBERS: Is that where you heard that he flew a helicopter in Vietnam?

SENATOR BRUNING: I'm not sure he flew it, but he...that's where he...he may have been a gunman or...but, yes, that's where I heard that.

SENATOR CHAMBERS: Is a part of his duty to ride a helicopter or fly a helicopter as a gunman when he gets to be a member of this commission?

SENATOR BRUNING: No, it is not.

SENATOR CHAMBERS: What does that have to do with our consideration of his appointment this morning.

SENATOR BRUNING: Shows he's an honorable man who served his country.

SENATOR CHAMBERS: Does his having served in Vietnam have anything to do with his appointment to this commission?

SENATOR BRUNING: It shows me he's an honorable person.

SENATOR CHAMBERS: Do you know whether he was honorably discharged or not?

SENATOR BRUNING: I am told he was.

SENATOR CHAMBERS: Did you see his discharge papers?

SENATOR BRUNING: No.

SENATOR CHAMBERS: Who told you that he was?

SENATOR BRUNING: Well, I guess I'm assuming it from the description of service and the conversation between he and Senator Preister about their service in Vietnam.

SENATOR CHAMBERS: So you assumed it, but nobody told you that.

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SENATOR BRUNING: I'd bet you all...all the tea in China, Senator, if you (inaudible).

SENATOR CHAMBERS: No, no, that's not the question. You said you were told that and I just want the record to be clear nobody actually told you that. Is that correct?

SENATOR BRUNING: I suppose that's correct, yes.

SENATOR CHAMBERS: Thank you. Members of the Legislature, some people are a little testy this morning because when they are not here for votes they get upset and I was warned this morning that what I did in calling for record votes when Senator Bruning was not here may hurt my friends. I don't know who he considers my friends and so he's testy and that's why he brings up things that have nothing whatsoever to do with the qualifications of this gentleman. If he wants to know where I'm going with something he ought to just sit and pay attention. Obviously, he didn't pay attention before because he was trying to relate something that I had said earlier and made a reference to when this gentleman had been arrested about whom I am speaking, and he said this man who was arrested, well, whenever. Well, there was not that much to remember and pay attention to so I would advise the junior member, if he's going to stand on the floor, then maybe it would do him and all of us a service to pay better attention. But if he is of a mind to deal with me on various issues, I welcome that because it will give us an opportunity to bring some things out in the open which ordinarily I would not even deal with. But back to what I was saying, whenever one of these matters comes up and an agency, whose responsibility it is to deal with certain issues, has not dealt with it in a way that I think is appropriate, I'm going to take that opportunity. Now we have the Chairman of the commission fined for attempting to hunt without a license. He violated the law. Those whose job it is to uphold the law should not do it. I read the newspaper on other matters. There was a high-ranking military official at an institution whose job it was to impose discipline on the young troopers, if you want to call them that, who violated drinking rules. Well, he was found to have been guilty of drunk driving, trying to climb over a fence to get into the compound, and he was removed from his position and those who removed him

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said that, since it is his responsibility to discipline young people for liquor...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...violations, it was not appropriate that he retain that position when he, himself, had committed such a violation. So when those who are sworn to uphold the law, when those who are given special authority and status violate the law, it carries a greater weight in the minds of the public, as it should. For as little Jesus said, where much is known, much is required.

SENATOR CUDABACK: Thank you, Senator Chambers. We are discussion (sic) the Natural Resources Commission (sic) report. Senator Schrock, followed by Senators Byars and Chambers. Senator Schrock.

SENATOR SCHROCK: Senator Chambers, back to the issue of James Stuart, we had a fairly routine hearing and I thought things that we heard about Mr. Stuart were positive. A lot of the members on the committee knew who he was, but you got to realize I live 150 miles west of Lincoln in a rather isolated area, but we have started getting magazines and newspapers and television has come to our area of the state so...so I'm becoming better informed. But I still don't know all these people in Omaha and Lincoln that I should know. I can tell you that the Natural Resources Committee had a hearing last fall on mountain lions. It was rather interesting. Kind of reminds...mountain lions kind of behave like the old barn cats on our farm used to when I was growing up, so. But if you'd like to discuss any of these further we can do it on the floor or we can do it one on one, but a discussion of Game and Parks issues when Senator...when...not Senator, when Mr. Stuart is being confirmed on the floor is an appropriate subject matter. So if you'd like the rest of my time, I'd give it to you.

SENATOR CUDABACK: Senator Chambers, you have about three and a half minutes.

SENATOR CHAMBERS: Thank you, Senator Schrock. Thank you,

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Mr. President. Many times Game and Parks matters go across the floor without a lot of discussion. I'm concerned about this mountain lion shooting, to get back to that since Senator Schrock touched on it, because this animal, in effect, was butchered. There was a gun-slinging sheriff out there who is the one, I believe, shot the animal with a shotgun. I don't hunt. I don't believe in hunting. Let those who want to kill defenseless animals do so, and they're going to do it whether I care or not, but I hear so much conversation about how these animals are not tortured; there's no intent to torment them. And this animal had been seen by a student. It went past a school. Somebody was using a snow blower and turned around and saw the animal and said it was swiping with its paw, so he turned his snow blower off and went behind a wooden fence that surrounded the house, and it said the animal backed off and gave him space so he was able to dart into the house and dial 911. The animal made no aggressive move toward any of the children in a school, made no aggressive move toward this person. This person wanted to put his dog in the truck for safety, which he did. Then the animal wound up under a vehicle. Then along comes the sheriff with a shotgun and shot the animal, but didn't kill it. So a person from Game and Parks, a conservation officer I believe, was summoned to the scene. I don't know what he used but I may have read that he used a rifle, but he dispatched the animal. The sheriff said when he heard the animal was on the premises, in town, he had made a decision to kill it. These animals are not available to be hunted. They're going to let the creature be stuffed, that may have been done now, and given to the school to be put on display, and I'm wondering if killing one of these endangered animals and allowing it to be put on display is giving the proper message to the youngsters in school. We talk so much on this floor, and I hear it nationally, about values. Values encompass more than just how human beings treat each other. Sometimes you can get an insight into how somebody may treat another human being...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...by how that person treats animals. And I was very upset when I saw that that this animal was killed, and it was compounded by the manner in which the butchery took

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place. There have been other cities throughout the country where animals, whose habitat has been encroached on by human beings, will wind up in and around human habitations. These animals are usually taken alive, sometimes a net, sometimes a tranquilizer device, but they are not butchered in the way that this one was according to Nebraska standards. And when these things happen I will have no choice other than to discuss them. The next time I speak, I will comment on the gentleman whose...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...confirmation we're considering this morning.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Schrock. Senator Byars, on the confirmation report.

SENATOR BYARS: Thank you, Senator Cudaback. Senator Chambers, I came on to the floor late, so please forgive me. I kind of got in the middle of this debate, but I...if you'd respond to a question, please.

SENATOR CUDABACK: Senator Chambers, would you yield?

SENATOR CHAMBERS: Yes, I will.

SENATOR BYARS: We are talking right now about the...the appointment of James Stuart Jr. to the Game and Parks Commission.

SENATOR CHAMBERS: Yes.

SENATOR BYARS: Okay. And I realize this is a forum for you to talk about other issues, correct?

SENATOR CHAMBERS: Correct.

SENATOR BYARS: Okay. Thank you. I wanted to speak to the appointment of James Stuart Jr. Mr. Stuart has been a friend of mine for somewhat over 40 years. We attended the University of Nebraska together. We have maintained a friendship for a

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variety of reasons over that 40 years, and I wanted to speak to his character, to what he has done for the community of Lincoln, for Lancaster County, and the state of Nebraska as he has launched and been successful in his career. There probably hasn't been anyone within the city of Lincoln that financially or through their resources unselfishly has shared with social service organizations and worthwhile individuals and organizations in need, and I speak so highly of the fact that this is an individual who, instead of just lining his own pockets, found a way to support those people who were unable to support themselves on their own. And I looked through his business, as he was one of the first business leaders to establish a day care paid for by the company for their employees. Senator Landis has introduced legislation in this body, it has not moved forward yet, but to give businesses tax credits for doing the same thing that Jim Stuart Jr. did without any type of financial break whatsoever. And I want to speak very strongly to the character of this individual who has been fortunate. He has been able to accumulate wealth, but has also shared in that wealth, and I think will bring a tremendous amount of knowledge of the outdoors and in his passion for animals and for...for the things that I think will qualify him immensely for this position. But this is what we're talking about this morning and I, personally, want to attest to the character of Jim Stuart Jr. Thank you, Mr. Speaker.

SENATOR CUDABACK: Thank you, Senator Byars. Senator Chambers, on the report, and this is your third time, Senator.

SENATOR CHAMBERS: I'm aware of that, Mr. President, and I appreciate, though, you reminding me. Senator Byars, since you were not here at the beginning, very little that I've said has applied to the gentleman whose appointment is being considered. My question with reference to him specifically was asked to his wealth. Wealth should not be a disqualification, but it should also not be the only qualification. And what I'm...I'm going to start paying more attention to is what happens with the Game and Parks Commission. Some people put an "s" on the first word and call it "Games" and Parks. When you look at the makeup of the commission, perhaps "Games" may be appropriate. But it is the Game and Parks Commission and it is nice to have people on there

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who have done wonderful things. But, to my understanding, the parks of this state and the other areas governed by Game and Parks are for the entire populace, a diverse populace, and the makeup of the commission is not diverse in any respect. I'd like to ask Senator Schrock a question before I get into some deep water.

SENATOR CUDABACK: Senator Schrock, will you yield to a question, please?

SENATOR SCHROCK: Yes, I will.

SENATOR CHAMBERS: Senator Schrock, are all of the members of the Game and Parks Commission males?

SENATOR SCHROCK: At the present time, I think that's the case.

SENATOR CHAMBERS: Are all of them of the Caucasian persuasion?

SENATOR SCHROCK: Yes.

SENATOR CHAMBERS: Thank you. Members of the Legislature, when you have one point of view, no matter how well-intentioned those are who hold that view, much escapes that view. There are other points of view, other philosophies which ought to be represented on these boards and commissions whose responsibility embraces the entire state and all citizens who want to participate in any activity within the jurisdiction of such agency or commission. As is my custom as a member of this Legislature, whenever a subject comes before us and there are comments I intend to make on that subject, I'm going to make them. If other senators don't operate on that basis that is their choice, but they cannot presume to place their limitations on me. I want to emphasize that I intend to pay far more attention to what happens with Game and Parks; the attempts to raise the fees; the purposes for which these increases are intended; the powers, the duties of the commissioners, the conservation officers and other employees of Game and Parks; and I also want to find out if they have a policy in place for dealing with the situation, that, the one I've touched on relative to that mountain lion or cougar or panther or puma or whatever term a person uses to designate that

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unfortunate creature. In Florida, there are instances when alligators come near people's property and they call somebody who will come take them out of swimming pools, out of people's backyards. The human beings go where the animals are first, then the animals...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...respond. They're trying to survive. They're not interested in harming human beings. They try to escape and evade when human beings are on the scene. The only bears that see human beings as meals on wheels are those bears in Yellowstone and other parks where people in cars and other means of transportation feed the animals and take them out of their normal zone. This gentleman whose confirmation gave me the opportunity to say these words has probably earned the right to be confirmed on that basis alone, but I'm not able to vote yea or nay on this and, as time goes on, maybe my education will be improved to the point where I will feel about these things the same way the majority of members on the floor of the Legislature feel.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Schrock, there are no further lights on. Do you wish to close on your...Senator Schrock waives closing. The question before the body is the confirmation report adoption, found on page 480, of the Natural Resources. All in favor of the report vote aye, opposed nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 540-541.) 39 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: The report is adopted. Mr. Clerk, next item.

CLERK: Mr. President, a confirmation report offered by the

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Government Committee, found on page 488 of the Journal.

SENATOR CUDABACK: Thank you. Chairperson Senator Schimek, Chairman of the...Chairperson of the Government and Military Affairs Committee (sic) you are recognized to open.

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. The Government, Military and Veterans Affairs Committee had a confirmation hearing last week and voted unanimously to advance this confirmation to the floor for the new Adjutant General of the National Guard. And I'd like to just tell you a little bit about his background. He was raised in Tecumseh, Nebraska, and graduated from high school there. He attended and graduated from the U.S. Air Force Academy, and went to pilot training school in Texas, became a pilot instructor, among other things. He became a...or he went to squadron officer school, pilot academic instructor training, and in 1984, I believe it was, he joined the National Guard, the Nebraska Air National Guard, as a guardsman after a stint in the Air Force Reserve at Offutt Air Force Base. Then, after attending maintenance officer school in 1987, he served in various maintenance officer positions and, in 1996, was nominated for the rank of colonel and assigned to lead the 155th Logistics Group. On the civilian side, Colonel Lempke rose to vice president in charge of manufacturing, purchasing and data resources for a company in Lincoln that manufacturers high-technology pressure vessels for aerospace and defense industries. The committee received the Adjutant General very well, asked him a number of questions, and is happy to report him to the floor for your confirmation. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. You heard the confirmation report by Senator Schimek from the Government, Military and Veterans Affairs Committee. Open for discussion, Senator Vrtiska.

SENATOR VRTISKA: Thank you, Senator Robak (sic). I rise in strong support of General Lempke. General Lempke comes from an outstanding family in southeast Nebraska that I've known for a number of years, and he has an outstanding record in the military. I think that we were impressed with his credentials,

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also the fact that he has been in the business world and understands business as well as military issues. I've heard from many... a number of people in the National Guard who are overjoyed with the fact that he was the person who was chosen to lead that group after Major... or after General Heng decided to retire. I'm sure that the things that the National Guard have done in the state of Nebraska are well received by all of us. General Heng has been an outstanding leader and I'm sure and I'm positive that General Lempke will continue the... the excellent record that we have known about the National Guard. So I heartily endorse the appointment of General Lempke as the Adjutant General. With that, thank you.

SENATOR CUDABACK: Thank you, Senator Vrtiska. Anybody else wishing to discuss the report? I see none. Senator Schimek. Senator Schimek waives closing. The question before the body is the report, the Government, Military, and Veterans Affairs Committee, on the confirmation report. All in favor of the report vote aye, opposed nay. We're voting on the confirmation report. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 541-542.) 36 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: The confirmation report from the Government, Military and Veterans Affairs Committee is adopted. Mr. Clerk, next agenda item.

CLERK: Mr. President, on Select File, Senator Erdman, first bill, LB 209A. Senator, I have no amendments to that bill.

SENATOR CUDABACK: Senator Erdman, you are recognized for a motion.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 209A to E & R for engrossing.

SENATOR CUDABACK: The question is to advance LB 209A to E & R for engrossing. All in favor say aye. Opposed nay.

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SENATOR CHAMBERS: (Microphone malfunction) My light is on.

SENATOR CUDABACK: I'm sorry, Senator Chambers, your light is on. You're recognized to...

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

SENATOR CUDABACK: Senator Jensen, will you yield to a question?

SENATOR CHAMBERS: Senator Jensen, how much money is involved in this A bill?

SENATOR JENSEN: There are two separate items there. One is about a \$1,200 expense that will be reimbursed by fees. Actually it will, I think if all goes well, it will probably be reimbursed by about \$35 to the good. And then there is a savings of about \$10,000 in the abolishment of that present commission.

SENATOR CHAMBERS: So nothing of consequence is being spent.

SENATOR JENSEN: No.

SENATOR CHAMBERS: Thank you. That's all that I need to know.

SENATOR CUDABACK: Thank you, Senator Chambers. Any further lights? Seeing none, Senator Erdman, for the motion again, please state it, restate it.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 209A to E & R for engrossing.

SENATOR CUDABACK: Question before the body is advancement of LB 209A to E & R for engrossing. All in favor say aye. Opposed nay. It is advanced.

CLERK: Senator Erdman, LB 24A. Senator, I have no amendments to that bill.

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SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 24A to E & R for engrossing.

SENATOR CUDABACK: Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator Suttle a question.

SENATOR CUDABACK: Senator Suttle, would you respond to a question?

SENATOR SUTTLE: Yes.

SENATOR CHAMBERS: Senator Suttle, how much is the money proposed to be spent based on the amount in this A bill?

SENATOR SUTTLE: This A bill has to do with the Immunization Task Force and to fund that task force it was estimated that it would cost \$31,000 for reimbursement to those task members that will be coming from across the state to work on this issue.

SENATOR CHAMBERS: Thank you, Senator Suttle. Based on the purpose to which this money is to be spent I will not make an extensive comment, but I'm looking...I'm searching for A bills which, based on a pro rata principle, I can try to subtract amounts until we get a total equal to that in that giveaway venture capital bill. But those A bills which have what I deem to be a very worthwhile purpose, I'm not going to toy with those. Plenty of the other variety will be clip clip clipetty-clopping over my bridge. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. Seeing no further lights, the question before the body is advancement of LB 24A to E & R for engrossing. All in favor say aye. Opposed nay. It is advanced. Mr. Clerk, next item. Yes, it just now came on. Senator Bruning, for what purpose do you rise?

SENATOR BRUNING: Mr. President, I rise for a point of personal privilege.

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SENATOR CUDABACK: You are recognized.

SENATOR BRUNING: I want to lay...I want to lay out to the body what exactly happened...

SENATOR CUDABACK: State your point, please.

SENATOR BRUNING: ...on Friday, for those of you who might have missed it. I have good friends out in North Platte. They invited me to come out and jump in the river, which I did, and I survived, but it was mighty cold. The purpose of this is not just for fun. We're raising money for the Lincoln Connection, a homeless shelter out there, and we raised \$17,000 for the homeless shelter in North Platte. Now that, of course, is...is a good thing, but the reason I bring it to the body's attention is you may have noticed that when I got in my car about 10:30, and I left here about 10:30, the wily senior member noticed that I had left, and you may have noticed there was a number of record votes that were kind of odd for the way the Legislature typically does business, nine of them to be exact, votes that would typically not be record votes. And just typical motions from Select File, like the two we just had that are voice votes, senior member asked for them to be record votes. I went down and asked him this morning, because he had warned me earlier, and, sure enough, he said, Jon, they're for you, they're for you. So let me give you a little history. Last year, Senator Shelley Kiel, State Senator Shelley Kiel, decided to run for Congress. She ran and lost and one of the issues was her voting record and how many votes she had missed. Now, for some reason, I am being blamed for calculating the number of votes that Shelley Kiel missed. How the number of votes she missed has any relation to me, I have no idea. Well, you'll have to ask the senior member. I have no idea. But he's decided that these votes are my fault, so each time I leave the room to go to the bathroom...

SENATOR CHAMBERS: (Microphone malfunction) Point of order.

SENATOR CUDABACK: Senator Chambers, a point of order.

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SENATOR CHAMBERS: Mr. President,...

SENATOR CUDABACK: State your point.

SENATOR CHAMBERS: ...I believe that this diatribe is way outside the parameters of the purpose of a point of order. There may be some other time during debate when these matters can be considered, but on a point of order I think it's totally inappropriate.

SENATOR BRUNING: Mr. President, let me read the rule to you, if I may. Point of personal privilege is...

SENATOR CUDABACK: Senator Bruning, would you be quiet for a minute, please.

SENATOR BRUNING: Certainly.

SENATOR CUDABACK: Senator Chambers, your point is well taken. Senator Bruning, would you please conclude your remarks as quickly as possible.

SENATOR BRUNING: I will. Bottom line here is if the senior member wants to issue a challenge as to my voting record, I welcome it. If a man is defined by his opposition, I welcome being defined by you, Senator Chambers. But I have no...

SENATOR CUDABACK: That's...

SENATOR BRUNING: ...idea how I can be...

SENATOR CHAMBERS: (Microphone malfunction) Point of order.

SENATOR CUDABACK: Senator Bruning, would you...I think your statement...you made your point. Thank you very much.

SENATOR BRUNING: Thank you, Mr. President.

SENATOR CUDABACK: Mr. Clerk, next agenda item.

CLERK: Mr. President, the next bill, LB 244, was a bill

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introduced by Senator Bromm. (Read title.) Bill was introduced on January 5 of this year, referred to the Transportation Committee, advanced to General File. Mr. President, at this time, the bill was presented on Friday, I believe. I have no amendments pending to the bill at this time, Mr. President.

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

SENATOR BROMM: Thank you, Mr. President. Timing is everything. I don't know if this is a good time for this bill or not (laugh) but...but here it goes. Let me...can I...can I bring us up to speed, Mr. President? We did debate this bill previously on General File and it came close to noon and we adjourned, and I had explained that the committee had advanced the bill which is to adopt the Midwest Interstate Passenger Rail Compact. I had pointed out that this has been adopted by three of the Midwestern states so it is now in effect and operational. Questions had been raised by Senators Hilgert and Wehrbein regarding the fact that this was, by Senator Hilgert, this was a compact and...and concerns about being able to get out without incurring some significant obligations and...and we also discussed how this relates to some of the other compacts the state has been involved with that haven't been very pleasant. Then Senator Wehrbein mentioned some strictly, I think, financial concerns and, following that discussion, we contacted the Midwest Interstate Passenger Rail Compact point person who had been here to testify to our committee, Laura Kliever from the Council of State Governments, and to get an update on things. For one thing, I had mentioned or represented to the body that the assessment could be \$25,000 per year. That's what...that's what the first assessment was with three states. Laura said that...that this may go down as additional states join; that they have no expectation of significant increases in dues in the next...well, she mentioned ten years. I think it's hard to envision that far. Other states we had mentioned, we were concerned that Iowa would join because if Iowa joins that means we have a greater likelihood of...of getting some benefit out of this compact and, just to update us, Iowa has introduced a resolution. It's first sent to a subcommittee of the house. It was advanced to a full committee hearing, which hearing will be, as a matter of fact, today, the 5th of February, so Iowa is

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serious about progressing with joining. Michigan is introducing the legislation in this session. North Dakota has introduced it and it is in the house Transportation Committee and the committee Chair is a cosponsor of the bill. Indiana was the first state to adopt it, Minnesota was the second, Missouri was the third. Those all three occurred last year. They will have a meeting in August regarding this, this effort, and I'd also like to mention, if I could, that since our first debate on the floor that I've been contacted by at least one group that I've not heard from before on this particular issue and they expressed some interest in possibly an amendment to the bill which would allow some private donations to a fund to help finance our membership, and this particular group mentioned the figure of \$5,000, which isn't insignificant. So if the body sees fit to advance this bill and we do go to Select File, it would be my...my hope that we could, number one, gather more information about what these other states are doing and, number two, I would be willing to work on an amendment which would facilitate the use of private money to help pay the membership if such money would...would be there or would be offered. So that...those are the two things I wanted to for sure mention to the body. Now, Mr. President, that's maybe more than an update on the status of the bill, but that's where we're at. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Bromm. We're discussing the advancement of LB 244 to E & R Initial. On that discussion, Senator Schimek, Hilgert, and Wehrbein. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I rise in support of the advancement of LB 244. I've had the opportunity to listen to the progress of this idea over the last three or four years at the Midwest Legislative Conference, and I am...I'm fairly convinced and fairly positive that...that all the states ultimately will join this compact, all of them in the Midwest. And you'll notice there's even one who doesn't belong to the Midwest Legislative Conference, and that's Missouri, and they have already joined also. But I do have a couple of questions that I'd like to just ask Senator Bromm to make certain that I...that I heard him when he was making an explanation earlier, if I might.

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

SENATOR BROMM: Yes, I would.

SENATOR SCHIMEK: Yes, Senator Bromm, I don't know if I heard you say this or not, but I did hear you say it in conversation that we had the other day, and that is that \$25,000, did you mention that that will go down as more states join or at least there's the probability that it will? Did you mention that on the...on the record?

SENATOR BROMM: I...I don't know if I did, Senator Schimek, but...but that is in fact what...what we are being told by...by the Denver office, that as more states join it's likely that that amount would go down.

SENATOR SCHIMEK: Okay. Thank you. And then the second question I have to do...have to ask is regarding the language on page 6 and it just...it just came to my attention as I was looking at this bill again. On page 6, in line 5, it says, "Nothing in this compact shall be construed to commit a member state to participate in financing a rail project," oh no, that's...is that the right word, "except as provided by law of a member state." That's not the right language that I was looking for. Here it is. It's on page 7, line 9, and it says that the compact statute shall take effect one year after...the compact "shall take effect one year after the effective date of such statute." Then it says, "A withdrawing state shall be liable for any obligations which it may have incurred prior to the effective date of withdrawal." So is the effective date one year after the statute is passed, or is the withdrawal...withdrawing state...is the withdrawing state liable for obligations prior to the effective date of withdrawal? And I...I don't think I'm expressing myself very well. What is the actual effective date, one year after the statute is passed?

SENATOR BROMM: Senator Schimek, as far as joining the compact, and I don't know if that's part of your question, but the joining of the compact would take effect when the Governor signs

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the bill and whenever the effective date of the bill is, whether it has the emergency clause or not would make a difference. But withdrawing, the withdrawal provision, if we would pass a statute two years from now withdrawing, the withdrawal would not be effective until one year after the effective date of that statute, after the signing of the Governor and...

SENATOR SCHIMEK: After the statute for the withdrawal.

SENATOR BROMM: Correct.

SENATOR SCHIMEK: Okay. Okay, thank you. And then there's just a couple of more points that I wanted to address.

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: I think the more states that join this compact the better message it sends to Congress that we are really serious about this and the better opportunity we will have to actually see that the act passes at the national level. And I should mention that NCSL is having a lobby effort back in DC on February 28th and March 1st on the High-Speed Rail Investment Act, and I think that it would be very...a very good signal for us to have indicated that we are interested in joining this compact. So I would just urge the advancement to Select File.

SENATOR CUDABACK: Thank you, Senator Schimek. Senator Hilgert, followed by Senator Wehrbein, on the advancement of LB 244.

SENATOR HILGERT: Thank you, Mr. President, members. I did raise some questions the last time we had debated this bill, LB 244, and one of them was the amount of financial exposure that we are committing ourselves to. Since then, Senator Bromm, and I appreciate his efforts, has obtained some information, and Senator Schimek certainly is supportive as well, that seems to indicate that our financial exposure, should we be participants and adherents to this compact, would in fact be limited. Now the cynic in me, though, says, well, then it's one thing to have assurances and telephone conversations and policies and so forth; it's another thing to hold up the bill and the writing and say, see, this is where it says that. If I was buying a car

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from a car dealer and the dealer says, don't worry, the interest rates are going to be low, well, okay. A lot of people probably wouldn't do it. They'd say, well, what are the interest rates? Let's see if they are low or not before I sign my name on the dot. That being said is probably a little bit too close to the private sector versus the public sector. Sometimes we do have to have a leap of faith, as it were. I'm willing to support the advance of this bill to Select File. The discussions that Senator Bromm has had with some of the private sector sources on being partners in this compact, as part of the financial requirements of this compact is certainly encouraging. Certainly the private sector would have to be part of a major project if we were to do one, so that only makes sense and I applaud him for that and for the parties that have come forward. I'm still not 100 percent there on...on being very assured that our exposure is, in fact, limited. I'd certainly love to see something in the bill itself but, again, we understand that it has to be uniform in nature and that we can't make specific changes if all these states are going to sign on the same...same language. But...so I'm willing to support this to Select File, but I would just certainly remind the body that this is somewhat open-ended and that there maybe is some more exposure there than perhaps we realize and certainly I wish that if we're going to limit exposure, financial exposure, I wish it would have been in the bill itself and...but I understand that that can't happen. But I'm willing to take it on Select. I do have one...only one question. If there is to be an amendment on Select File regarding the private sector helping support the financial end of this compact, how is that amendment not going to invalidate the language of the compact, which was the valid point that you brought up, Senator, the last time we talked about this that no changes could be made? That's the only thing I have. But I'm certainly willing to let this go to Select. Senator Bromm.

SENATOR CUDABACK: Senator Bromm.

SENATOR BROMM: Yes, thank you, Senator Hilgert, and I...I've been thinking about that question, was going to try to deal with it in closing if I didn't have another chance. The entire bill...the compact is Section 1 of the bill. Now I think...and I'll do some further checking before Select. I think we could

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do a Section 2 and say, in order to facilitate and assist with the financing of the state's dues, the state adopts this...creates a fund which would be able to accept grants, donations, whatever, from the private sector. So we'd keep it separate from the compact language but...and I'll check to see if this would screw it up, but I don't think it would, as a separate section of the bill.

SENATOR HILGERT: Okay. Thank you, Senator Bromm. Thank you for your work on this and I'll support it to Select.

SENATOR CUDABACK: Thank you, Senator Hilgert and Senator Bromm. Senator Wehrbein, on the advancement.

SENATOR WEHRBEIN: Yes, thank you, Mr. Speaker, members of the body. I, too, rise to support this. I keep thinking about this. I've had some other conversations on other matters in the last...seems like, oh, last week and it's always difficult...my point is it's difficult to be out ahead. It's difficult to be visionary and know whether you're making the right decisions on this. This is a good example, I think, where public transportation is going to go in the future. I think it's going to be a long-term issue, but it looks like to me it would be better if Nebraska is inside the tent, so to speak, than outside the tent, and to have some representatives on that. I see that it's four, according to the bill. So I'm going to support this at this point. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. Senator Vrtiska.

SENATOR VRTISKA: Thank you, Senator Cudaback. I...I'm trying to recall. If I could ask Senator Bromm a couple of questions.

SENATOR CUDABACK: Senator Bromm, do you yield, please?

SENATOR BROMM: Yes.

SENATOR VRTISKA: Senator Bromm, when we discussed this last week, I'm trying to remember, did you indicate that this compact that Nebraska would join would bring the rail only as far as

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Omaha? I notice in the bill that there are no states to the west of us who are involved in the compact. Did you make that comment, or where did I get that idea?

SENATOR BROMM: Senator Vrtiska, we handed out a little packet of material and the Midwest High-Speed Rail Network that's envisioned by this compact so far envisions a line from Chicago through Des Moines to Omaha, that's correct.

SENATOR VRTISKA: Well, the reason I bring it up, you know, we had discussion a year ago about a high-speed rail between Lincoln and Omaha and it's been discussed in a matter of trying to alleviate some of the overflow of traffic along the interstate and I was, you know, I realize this is all in the early stages of planning, but I was just curious about that discussion and the fact that there are no states involved that are to the west of us, which would lead you to believe that we're sort of on the...we're on the very edge of the whole process. I'm going to support the thing because I agree with what Senator Wehrbein said, that it's probably better to be on the inside to determine how this is going to develop than to sit on the side and then jump in after all the decisions are made. But I was just curious about that part of the discussion and the fact that we're not including any more of the state given the fact that there is...there's a lot of discussion about the amount of traffic that's on I-80. Do you have any comments at all in that regard, Senator Bromm?

SENATOR CUDABACK: Senator Bromm, would you yield, please?

SENATOR BROMM: Sorry. Yes. What was that?

SENATOR VRTISKA: Oh, do you have any comments about the fact that...with the earlier discussion last year about the heavy traffic on I-80 that we were...there was discussion about a high-speed rail from Lincoln to Omaha, which would take some of the...some of the pressure...

SENATOR BROMM: Right.

SENATOR VRTISKA: ...off of the highway, and I was just curious

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and, as I said, I guess the fact that, as Senator Wehrbein indicated, the fact that we...I'll support this because it's better to be on the inside working with it than standing on the outside as a cheerleader. But I just wondered if you have any comments regarding that particular part of it.

SENATOR BROMM: Right. Senator Vrtiska, in fact, there was a little bit of discussion in committee on that and the next bill is asking the Legislature to extend the...the rail council that is trying to do a study on the area between Lincoln and Omaha and I think, should that study occur, the information that's generated from that would certainly be relevant to whether or not this type of network should end in Omaha or whether it...or whether it should be extended at least as far as Lincoln. So it's...it's relevant. It is.

SENATOR VRTISKA: Well, I appreciate that, Senator Bromm, and I just wanted to bring that point to the attention and, as I said, I understand this is in the preliminary stages and so it will be nice to sit back and see what develops, and certainly as it does move forward this discussion can be continued on what the future of rail service should be in this country. And, with that, I appreciate your comments and your answers and I'll turn the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Vrtiska. We're have...open for discussion on the advancement of LB 244. I see no lights. Senator Bromm, did you wish to close?

SENATOR BROMM: Thank you, Mr. President and colleagues. Once again, if you choose to advance the bill, I'm going to work on seeing what we can do with respect to the funding mechanism. We're going to keep track of what's happening in the adjacent states and keep you apprised of that. I'm not going to...I'm not going to leapfrog too far ahead of what I think is happening in the general region, but I do think that this...this proposal is worthy of moving forward and trying to keep on top of because I think we don't know what fuel prices are going to be like down the line a little bit. We don't know what technology is going to offer us in terms of alternatives for transportation to what we know right now, and I think this is a way to position

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ourselves for some of those developments that could happen. So thank you very much.

SENATOR CUDABACK: Thank you, Senator Bromm. The question...the question before the body is advancement of LB 244 to E & R Initial. All in favor vote aye, opposed nay. We're voting on the advancement of LB 244. Have you all voted who care to? Record vote has been requested. Record, please, Mr. Clerk.

CLERK: (Record vote read, Legislative Journal page 542.) 35 ayes, 2 nays, Mr. President, on the advancement of LB 244.

SENATOR CUDABACK: LB 244 does advance. Mr. Clerk, next agenda item.

CLERK: Mr. President, LB 245 was a bill by Senator Bromm. (Read title.) Bill was introduced on January 5, referred to Transportation, advanced to General File. I have no amendments to the bill at this time, Mr. President.

SENATOR CUDABACK: Senator Bromm, to open on advancement of LB 245.

SENATOR BROMM: Thank you, Mr. President. This bill is a follow-up to LB 829, which was passed by this Legislature in...in 1999, which created the Nebraska Transit and Rail Advisory Council, and in that particular piece of legislation, it stated that a feasibility study on the...on the corridor from Lincoln to Omaha, and Omaha to Lincoln, and the...the feasibility of high-speed rail transportation in that area should be studied and completed by January 1 of 2002. It also set a termination date for that council of June 30th of 2003. LB 245 would extend those time lines for two years, to 2004 and 2005 respectively. When LB 829 was passed, there was no funding, there was no funding approved by the Legislature, and so the advisory...Rail Advisory Council set out to try to secure some funding through the Department of Roads or through grants or through federal funds or through private funds, and they did raise some private funds, but they did not raise enough to do a comprehensive study like was envisioned in LB 829. The purpose of LB 829 was to do a thorough feasibility study on that

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corridor to determine whether or not there was good reason to move ahead with trying to do something with respect to rail transportation between these two major centers of population in our state. Now the...the Rail Advisory Council came to me and asked us to extend this for two years. They have...in the process of submitting a transportation and community grant request to the Federal Highway Administration. Those grants will be awarded in October of 2001 and LB 245 would give the council extra time to secure funding and complete the feasibility study and report the findings to the Legislature. Now, are we assured of getting funding? We certainly are not, but we have a group of people who are certainly...they've put in a lot of volunteer time on this thing and...and the...the handout that I passed around gives you the names of those individuals that have been on the Rail Advisory Council and I have talked with a number of them and...and they have...they've worked hard and...and if we're going to give this a serious look, and I think we should, we've got good people there to try to look over this. There isn't...we're not asking for an A bill or an appropriation with this bill. We're simply asking that this council be extended, with their duties and powers, for two years to see if they can secure some funding and get this study done. So that is the essence of it. We did have...we had a hearing. We had about three proponents and Department of Roads was neutral and we didn't have any...any opponents, so that is it, Mr. President. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. We're open for discussion on advancement of LB 245. There are no lights on, Senator Bromm. Did you wish your option to close? He waives closing. The question before the body is advancement of LB 245 to E & R Initial. All in favor vote aye, opposed nay. We are voting on the advancement of LB 245. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 245.

SENATOR CUDABACK: LB 45 (sic--LB 245) does advance. Mr. Clerk, next agenda item.

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CLERK: Mr. President, LB 375 is a bill by Senator Bromm. (Read title.) Bill was introduced on January 8 of this year, referred to the Transportation Committee, advanced to General File. I have no amendments at this time, Mr. President.

SENATOR CUDABACK: Senator Bromm, to open on LB 375.

SENATOR BROMM: Thank you, Mr. President. This bill is the annual adoption of new amendments to the federal Motor Carrier Safety Regulations. We generally adopt these amendments because, if we don't, we're out of compliance, and that has an impact on our relationship with the federal regulators and also with respect to funding. This amendment...sometimes these amendments are so technical that you can't...it's hard to even know what they're doing, but this one actually I think is understandable. Primarily, the only change is that it expands the regulations, the Motor Carrier Safety Regulations, to vehicles of intrastate motor carriers, that is vehicles within the state of Nebraska, transporting more than eight passengers for compensation. If you have a ten-passenger van that was transporting passengers for compensation, the regulations will apply if we adopt LB 375. The other thing it does is it subjects to these regulations vehicles transporting 15 or more passengers not for compensation, and I...I suppose that that could be a shuttle bus where they don't charge but it's capable of holding 20 people. That would be subject to these regulations and that is traffic within the state of Nebraska. So that's what the regulation change does. I will try to respond to questions if I can. We do have people outside the glass that are more intricately familiar with federal Motor Carrier Safety Regulations than I am by a long shot, but that's the explanation, Mr. President. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. Open for discussion on advancement of LB 375. Senator Vrtiska.

SENATOR VRTISKA: Thank you, Senator Cudaback. Senator Bromm, another question if I could, please.

SENATOR CUDABACK: Senator Bromm, please.

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SENATOR BROMM: Certainly. Yes.

SENATOR VRTISKA: I understand you're including these vehicles, but the question I don't...I guess I can't get a handle on, does this require those people then under the federal regulation to have a CDL license along with their regular license in order to...in order to be the driver of these vehicles, of do you know?

SENATOR BROMM: I will find out for certain. My impression is yes, but I will...I will find out right away and tell you.

SENATOR VRTISKA: Well, I was...I was of the impression, since it's under federal regulation, many of the heavier vehicles obviously are required to have a CDL license and I was...had some concerns of whether this, in fact, would cover those particularly with an eight-passenger vehicle. But I'm not going to oppose the legislation. I just would like to have some clarifications at whatever time it was available. And so maybe we can talk about it later. With that, thank you.

SENATOR CUDABACK: Thank you, Senator Vrtiska. Senator Bromm, there are no further lights on. Did you wish to close on the advancement of LB 375?

SENATOR BROMM: I will, Mr. President. I...I do...I do want to answer Senator Vrtiska's question, but I don't have the...the answer yet and so I'll be sure to let him know before the bill comes up again. But as I read the...as I read the green copy of the bill without the changes, it certainly appears to me that CDL licenses will be required under these conditions and I will verify that. But hopefully, if there are any other questions, you can get back to me or we can discuss them on Select. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. The question before the body is, shall LB 375 be advanced to E & R Initial? All in favor of the advancement vote aye, opposed nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of

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LB 375.

SENATOR CUDABACK: LB 375 does advance. Mr. Clerk, next agenda item.

CLERK: Mr. President, LB 376 is a bill by Senator Bromm. (Read title.) Bill was introduced on January 8th, referred to the Transportation Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President.

SENATOR CUDABACK: Senator Bromm, you are recognized to open on LB 376.

SENATOR BROMM: Thank you, Mr. President. This bill is to change the law to conform with what the practice has been for many, many years in this state and other states with respect to these larger motor homes and travel trailers that you see going down the road. Many of these travel trailers, because of the...of the awning that they have on the side, when it's folded up that awning might stick out four to six inches and because of that it is wider than the law permits to go down...to go down the interstate. And many of them are three to five feet longer than the existing law allows for them to be on the highways. This would...this would change the law to allow for these motor homes to have 102-inch width maximum, which...with the permanently affixed awnings and appendages, including the hardware for those awnings, which is a...which is the way they are. And I've got a picture of one here. We've all seen them. We see them on the road, and I'm not talking about going down the road with the awning out. I'm talking about going down the road with the awning folded up, which is important. The...the bill would allow these motor homes, which now are only permitted to be 40 feet in length, to be an additional 5 feet, or 45 feet, which would be similar to a bus length of a normal bus. It provides...it provides for a permit to be issued by the Nebraska State Patrol or the Nebraska Department of Roads to operate one or more of these vehicles. If the permit is...is...it must be carried with the...with the vehicle, and our committee had no...had no problems with it. The...we had no objections in the hearing. It seems like it's...it's a practical suggestion to do what actually...to approve what actually is happening right now.

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So, with that explanation, I will yield the rest of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Bromm. We are debating the advancement of LB 376 to E & R Initial. Senator Wehrbein, on the advancement.

SENATOR WEHRBEIN: Mr. Speaker, members of the body, Senator Bromm, I guess I have a question. I didn't know whether to punch my light or not.

SENATOR CUDABACK: Senator Bromm, for a question, please.

SENATOR WEHRBEIN: This kind of hits me wrong. Is this a...is this going to be a chicken or an egg situation where they'll keep building bigger ones and then we have to change the law to accommodate them? Other states apparently have gotten this. They...this is not confined to the interstate or versus other state highways. I...I just...these huge outfits, and I guess I'll be very blunt here, you don't need a CDL to drive them, as I understand it,...

SENATOR BROMM: No, that's right.

SENATOR WEHRBEIN: ...but they make those of us on the farm with a little 16...not "16 footer", but this called tandem axle truck have to have a CDL, and I know the gross weight isn't there but certainly the size is there. And I have some frustrations with those on the highway sometimes because they're not driven like a truck is driven in terms of safety, by my observation. So I was just wondering kind of what was behind this if...or if anything. Or do we have to kind of do this to bring ourselves in line with other states, and what...if they're blinking their eyes at us now, is this permit system a little bit of a farce anyway? I'd like maybe...I'd like to ask Senator Bromm the questions.

SENATOR CUDABACK: Senator Bromm.

SENATOR BROMM: Thank you, Senator Wehrbein. And I...I don't know how to respond to your suggestion that are they going to keep making them longer and longer and wider and I don't know.

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I...I would think there would become a point where highways aren't made wider that it just wouldn't...wouldn't be feasible. But, in fact, this situation, as it was explained to me, most states accommodate this width for this kind of vehicle and this length for this kind of vehicle, and when they get to Nebraska, technically, they're in violation of the law. But the State Patrol and those that enforce our highway laws have tended to look the other way because we probably don't want to send a message that these people can't pass through our state. That isn't practical either, so...especially we got Interstate 80 running from one end of the state to the other. So all I can tell you is that it is...the motivation is to conform the law to what the practice is and to what most of the states allow. The permit is really not, I don't think, a significant thing or part of this at all, although it would permit a retailer to move a vehicle before it had been sold that was especially large with a permit and that kind of thing. So that is...that is...I don't know if I've answered your questions, but that's my feeling about it.

SENATOR WEHRBEIN: Well, I don't want to be overzealous about this. I...probably when this comes up again, none of us will probably be here if that...if that, in fact, happens, (inaudible) but I was most concerned about CDLs. I've seriously considered introducing legislation to demand CDLs for these large, large vehicles because of, frankly, the way they're driven many times. I don't think there's a recognition of how large they really are as compared to other vehicles of similar size that do need them. So that's maybe a pet peeve that I shouldn't bring into this, but I did want to, I guess, ask questions about it. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. We're open for discussion on advancement of LB 376. Seeing no lights, Senator Bromm, did you wish to close on the advancement?

SENATOR BROMM: Thank you, Mr. President. Again, if there are questions that I can respond to between now and Select File, please let me know. I think the bill is...is a practical bill. We're not going to keep these large motor homes from passing through our state nor make a practice of ticketing them. It

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just wouldn't...it wouldn't...it wouldn't be feasible, and so I think the law will actually just conform with what the practice is. Thank you.

SENATOR CUDABACK: You've heard the closing on the advancement of LB 376. The question before the body is, shall LB 376 be advanced to E & R Initial? All in favor vote aye, opposed nay. We're voting on advancement of LB 376. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 376.

SENATOR CUDABACK: LB 376 does advance. (Visitors introduced.) Mr. Clerk, next item.

CLERK: Mr. President, LB 387 was a bill introduced by Senator Bromm. (Read title.) Bill was introduced on January 8 of this year, referred to the Transportation Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President.

SENATOR CUDABACK: Senator Bromm, you're recognized to open on LB 387.

SENATOR BROMM: Thank you, Mr. President. LB 387 is, and the key word here I think, is a cleanup of the statutes governing driver's license examining and...as well as motor carrier services, which was brought to us by the Department of Motor Vehicles. It removes a number of inconsistencies in our statutes with respect to these subject areas. It eliminates some redundant testing for driver's licenses and updates the statutes to reflect our current practices. To...to hit on a few highlights, I guess, that were discussed at the hearing and by the committee, it eliminates the word "sworn" when it comes to presenting documents to the examiners for the driver's license testing. Rather than...than producing an affidavit, for example, that an 18-year-old driver's license who cannot provide a birth certificate is 18 years old and an affidavit requires a notarization or a notary public to acknowledge that document, the DMV's proposal would eliminate that affidavit or notarized

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document and have individuals certify the forms instead. Many times when individuals present these documents or come with their son or daughter to obtain a license, they don't have a notary public with them, it slows down and impedes the process, and so they will be asked to sign a form that certifies that the information is correct. Now that doesn't mean that if they falsely certify the information that they are immune from...from prosecution or from committing a crime. The statutes do provide for if you do...if you do present false information you can have your own driver's license suspended for that, and there are...it's also a possible Class III misdemeanor. So there is...there is con...there are consequences, there can be consequences for falsely certifying this information to the examiners. Other than that, it...that was the main thing that I think we discussed at the hearing. It would also require that those learner's permit applicants who want to waive the written exam for the POP license, or the provisional operator permit, surrender the actual learner's permit to the examiner and have a...a Nebraska issued learner's permit, and several other clean-up things that I don't think are...are terribly significant. Again, we do have the Department of Motor Vehicles available to answer more technical questions if you would have any. We felt that the bill was definitely in the category of clean up and not any significant policy changes. The one that I recited to you regarding the affidavit birth certificate is probably the biggest policy change in the bill. So, with that, I'll yield the rest of the time to the Chair.

SENATOR CUDABACK: Thank you, Senator Bromm. You've heard the opening on advancement of LB 387. We're open for discussion on advancement. Seeing no lights on, Senator Bromm, did you wish to close? Senator Bromm waives closing. The question before the body is advancement of LB 387 to E & R Initial. All in favor of the advancement vote aye, opposed nay. We're voting on the advancement of LB 387. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB 387.

SENATOR CUDABACK: LB 387 does advance. Mr. Clerk, next item.

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CLERK: LB 165, Mr. President, introduced by Senator Kristensen. (Read title.) The bill was introduced on January 4, referred to the Transportation Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0071, Legislative Journal page 418.)

SENATOR CUDABACK: Senator Kristensen, you are recognized to open on LB 165

SPEAKER KRISTENSEN: Thank you, Mr. President, and members of the Legislature. Senator Cudaback, you get a letter in the mail, it looks pretty important, looks real official and it says this is not a sweepstake, this is not a contest or lottery. Dear Jim Cudaback, you are hereby notified that your cash will be sent to you directly pending the receipt of your official release form that's attached below. This guarantees that you will receive a certified bank check in the amount of \$3,129.87 made payable to Jim Cudaback which may be deposited in any bank that you choose. That's one. The next one is, this is an authentic grand prize. All you need to do is send in your release form so that you can receive your cash prize. The next letter that Jim opens up says you, in big bold letters, you have won \$15,000 in cash; you must send in the receipt so that you can get your check. All of them requires Jim Cudaback to send in a check. The one requires him to send in \$9.97, the other one requires him to send in \$12.98, this one requires him to send in \$24.50. What do you think Jim Cudaback is going to do? That's right, he is going to send in the money, although it hurts him to write that personal check. When he gets back this letter, he knows full well that he is going to receive this cash. There are several people in this state who receive those letters every day. They may not be as cagey as Jim Cudaback, but they are just as trusting. And what happens in this state, the number one complaint, I think it's number four in all fraud lists, are prize notifications where people are sent these letters every day. It doesn't say you have a chance to win. It doesn't say you may win if your number is picked out. It says you have won and you will get money; all you have got to do is send us a processing fee. I know someone who sends in roughly between 100 and 150 dollars every month because they think they

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owe that money to get it back, and when they are on a fixed income, that's a very, very difficult thing to do when you are sending in somewhere between 1,200 and 2,000 dollars a year. LB 125 (sic LB 165) would prohibit that practice and would allow that...we have an existing statute that talks about solicitors, sponsors and sellers that does not apply to...impact charities, okay, we are not talking about charities, who get a contribution and give someone back a prize as a result of that. We're talking about those people who solicit and send out a letter which says you have won, you may win, or you will win providing you pay us a fee or a processing fee. This practice is illegal in a number of states. It is not in Nebraska. Nebraska is one of those states where it is fine to send that letter, ask the people for the money to be sent in and, of course, they never their prizes. And that happens regularly. Last year, there was probably roughly \$10,000 worth of complaints but that is just a small tip of the iceberg because most people are so embarrassed when they find out that they've been taken that they never report it. As a result, I've introduced LB 120...or LB 165; LB 165 would add to the existing law a paragraph that says that it is unlawful for a solicitor, sponsor or seller to request or accept any payment or create the impression that any payment is required from an individual prior to the receipt of a written prize notification by such individual. If you have won a prize, that's okay, but you actually have to have won. If not, this will become a practice that is prohibited under the Telemarketing Act. I think that it is one that we need to probably put into place to protect these people. It is not going to stop them from sending the letters. I don't want to mislead anybody. It is not. It is not going to chill someone from sending the letter, but what it does do, and I think there is a committee amendment which allows for a civil penalty to be collected if these people have this practice and do collect the money from these unsuspecting people. I would be happy to answer any questions. I think this is probably one of those bills that we intended to so sometime ago but as the telemarketers become...well, or has become the solicitors, they are not going to serve the telemarketers because they do that by telephone, which is harder to prove, but the solicitors, as they become more sophisticated in trying to get money from people, this is the most common practice at the time.

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Mr. President, I'd be happy to answer any questions.

SENATOR CUDABACK: Thank you, Senator Kristensen. I'd like to remark but the rules wouldn't allow me to. We are open for discussion on LB 165, next, Senator Vrtiska.

SENATOR VRTISKA: Thank you, Senator...

SENATOR CUDABACK: I think there are committee...I think there are committee amendments so we will go right to the committee amendments. Senator Bromm, are you handling the committee amendments?

SENATOR BROMM: Thank you, Mr. President. Yes, there is a committee amendment and this amendment was actually presented to the committee by Senator Kristensen, and we adopted it, and it imposes or in addition to the bill provides for a penalty for anyone who violates the Telemarketing and Prize Promotions Act; provides that they shall be subject to a civil penalty of not more than \$2,000 for each violation, and the Attorney General may seek recovery of such civil penalties in a civil action. If you have a provision like this and it's violated, it seems to me and it seems to the committee that there should be a possibility of some consequences. Otherwise, probably it would be summarily ignored by some concerns that would be involved with this kind of solicitation. So that's what this amendment does. It provides for a possible civil penalty up to \$2,000 per violation, and that would be pursued by the Attorney General of the state of Nebraska, and that's the amendment.

SENATOR CUDABACK: Thank you, Senator Bromm. You've heard the opening on the committee amendments from the Chairman of the Tele...the Transportation Committee. Open for that discussion, Senator Vrtiska, did you wish to?

SENATOR VRTISKA: Yes. Thank you, Senator Cudaback. Let me address the issue. I would certainly support the amendment. I don't think that the bill would be very effective if it didn't have the civil penalty in it and, therefore, I think that the amendment adds to the bill. I might also say, since you didn't, that if anybody was ever able to ripoff Cudaback for that much

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money, I want to be around to see it.

SENATOR CUDABACK: Have you concluded, Senator Vrtiska?

SENATOR VRTISKA: I have concluded. Thank you.

SENATOR CUDABACK: Open for discussion on the committee amendments? Seeing none, Senator Bromm, did you wish to close?

SENATOR BROMM: I will waive closing.

SENATOR CUDABACK: The question is the adoption of the committee amendments to LB 165. All in favor vote aye, opposed nay. Voting on the committee amendments to LB 165, have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. We are now open for discussion on advancement of LB 165 to E & R Initial. Senator Vrtiska, on advancement.

SENATOR VRTISKA: Thank you, Senator Cudaback. I'd like to ask Senator Kristensen a letter...a letter, a question, please.

SENATOR CUDABACK: Senator Kristensen, will you yield please?

SPEAKER KRISTENSEN: Yes.

SENATOR VRTISKA: Senator Kristensen, in your reviewing your bill, if you were made the promise that was indicated, the prize that you would get would be of such-and-such a value, if it was considerably less than the value, does that come under this legislation? Let me explain to you why I...

SPEAKER KRISTENSEN: Yeah, I was...I'm trying to think how to respond just...I'm a little slow this morning so help me with...

SENATOR VRTISKA: Well, the reason I'm asking the question, we had an incident happen in our community. A couple was told that

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they were to be awarded a television set, and when the set came it had a C.O.D for like...well, they were told that it would be such-and-such a size and model television set; when it came it was in a box a normal 24 or 22 or whatever inch television set would be in, and so they finally accepted it and paid the 200 and some dollars. When they opened it, there was a small, very small, almost...almost wasn't a television set that was in that. So, in other words, I guess what I'm saying is the fact that they were told that it would be...I'm trying to understand if you were promised something and it was not nearly the value that it was indicated in the letter that you got, would this cover that?

SPEAKER KRISTENSEN: This particular bill is not going to address that type of fraud, where you...where they said you'd get this and it's actually something else. That is included, however, though in other parts of the statutes that are already in law. What this says is that if they send you a letter that said we're going to send you a TV set but you've got to send us \$200 before you get it, it will prohibit that.

SENATOR VRTISKA: Well, in this case, it was a...it came by C.O.D. and the people, after much deliberation and looking at the box, decided it must be of the size and the value that they thought it was, and the result, they got a 6 inch or I think, if I remember right, I think it was a 6 inch television set. It was black and white and, obviously, they were ripped off, and the bottom line was they were never able to get their money back because the company claimed that they weren't misrepresenting, they did get a television set, and the value was there. And I'm just curious about how this bill affects that kind of a scam. I don't know whether it is going on now or not, but this just happened a couple, three years ago.

SPEAKER KRISTENSEN: It would have been wrong and that this bill would have addressed it if they said you have to give us \$200 before you can get your prize. That would be prohibited. The trouble is once they paid it, then they've got a civil action, they are going to have to go against the company for misrepresentation. Is it worth \$200 to go sue somebody from outside the state of Nebraska? That's...therein lies that

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problem on that particular fraud. It's not worth enough to go pursue your remedy. But this would allow the civil action, and if it's bad enough, I assume that the other penalties of the existing act kick in for those people.

SENATOR VRTISKA: All right, thank you very much.

SENATOR CUDABACK: Thank you, Senator Vrtiska. Open for discussion on advancement of LB 165? Seeing no lights on, Senator Kristensen, did you wish to close?

SPEAKER KRISTENSEN: I do, Senator Cudaback. Thank you, and I didn't mean to pick you out. It's just that you are the most trusting soul in the body, and you make a good example. If there are other questions between now and Select File, I'd be happy to visit with you. I'd be glad to show you some of the samples of some of these letters, and I thank the committee for putting the bill out. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Kristensen. The question before the body is the advancement of LB 165 to E & R Initial. All in favor vote aye, opposed nay. The question before the body is advancement of LB 165 to E & R Initial. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB 165.

SENATOR CUDABACK: LB 165 does advance. Mr. Clerk, items for the record.

CLERK: Mr. President, thank you. Your Committee on Enrollment and Review reports LB 24, LB 137, LB 138, LB 151, LB 162, LB 173, LB 197, LB 198, LB 209, LB 214, LB 295, LB 302, LB 362 as correctly engrossed. Health Committee reports LB 21 to General File, LB 230 General File, LB 678 General File, those signed by Senator Jensen. Revenue Committee reports LB 170 to General File, LB 171 as indefinitely postponed. And, finally, Mr. President, Senator Beutler, an amendment to be printed to LB 51. That's all that I have. (Legislative Journal pages 543-545.)

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SENATOR CUDABACK: Thank you, Mr. Clerk, for that. Next agenda item.

CLERK: LB 155, Mr. President, a bill by Senator Chambers. (Read title.) The bill was introduced on January 4, referred to the Judiciary Committee, advanced to General File. I have no amendments to the bill, Mr. President.

SENATOR CUDABACK: Senator Chambers, you're recognized to open on LB 155.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is a very simple bill in what it does. It relates to the offense of sexual abuse of an inmate. That offense occurs if a person subjects an individual, who is confined...confined in a correctional institution and new language, "or a city or county correctional or jail facility" or who is under parole supervision to sexual penetration or sexual contact as those terms are defined in Section 28-318. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact. A couple of years ago, or maybe last year, the department asked me to introduce a bill that would make this offense a violation, if committed, by an employee of the Department of Correctional Services or the Parole Administration. That was done. Subsequent to that, I received calls from local law enforcement officials asking that the provisions of the law be extended to local jails and county correctional facilities, so that their employees would be under the same restrictions. The key to all of this is the fact that an individual in this position is vulnerable to the individuals who might commit this kind of act. Therefore, the mere expression of consent by the vulnerable protected person does not constitute legal consent so as to provide a defense. A problem of this kind arose in Lancaster County. When the investigation was undertaken, it was determined that there had been inappropriate contact but the statutes that they were attempting to use applied only at the state level. So, apparently, there may have been some question as to consensual contact. This takes away all of that. No person who has custody or charge of another individual should be

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in a position to utilize that upper hand to take sexual liberties. That may be more explanation than is needed but I want the record to be clear in terms of what this bill does, why the amendment is being offered, the condition that exists which needs to be addressed by a change in the law. If you have any questions, I will answer them.

SPEAKER KRISTENSEN PRESIDING

SPEAKER KRISTENSEN: Debate on advancement, Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. Speaker, members of the Legislature. Just very shortly, I'm very supportive of this bill and want you to know that this is not uncommon that this happens. It doesn't happen that often but it's not really uncommon in correctional institutions that this does happen from time to time. Thank you.

SPEAKER KRISTENSEN: Further debate? Seeing none, Senator Chambers, you're recognized to close. He waives that closing. The question before the body is the advancement of LB 155. All those in favor vote aye; all those opposed vote nay. Record.

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB 155.

SPEAKER KRISTENSEN: LB 155 advances. LB 163.

CLERK: LB 163 is a bill by Senator Cudaback. (Read title.) The bill was introduced on January 4, referred to the Judiciary Committee, advanced to General File. I have no amendments at this time, Mr. President.

SPEAKER KRISTENSEN: Senator Cudaback, you are recognized to open on LB 163.

SENATOR CUDABACK: Thank you, Senator Kristensen. You might say, LB 163 is simply a clean-up bill, although I hate to use those words. As many of you know, or most of you know that several years ago we passed LB 695, which was my priority bill

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and several others worked on that vigorously, Senator Wickersham, Senator Don Pederson, Senator Chambers, and a number of us. I hate to name names but, anyway, we worked on that and brought money back to the counties, \$35 a day for the state prisoners, if they were convicted and sentenced to a correction facility. We thought we had covered all bases, but as you know, many times we do not carry all...cover all bases. We have to go back and correct what we did not do. We forgot to put the word "parolees" in there, so any time a person is on probation and he breaks that probation and has to go back to the prison, unfortunately the law states, the statute doesn't state that they can be reimbursed for those dollars also. So it's simply, LB 163 simply does what we thought we did under LB 695. So I guess that's where we stand. We thought it was there but the statute does not state that we can do this. So we thought we should go back and change the statute and make it right. It also puts the word, rather than in the rules, that the Corrections Department can audit the records to make certain that the counties are doing it correctly, and they are...and expenses and so on are justified. It says that they can go in and look at those records when they wish, and every two years they will go in and do that. The Attorney General's Office said the rules do not work in this case. We are doing it, but we are doing it under the rules, and I guess you can't do things under the rules, it has to be in statute. So this is what it does. It simply puts into place what we thought we did several years ago but, unfortunately, and I'll take the blame for it, we forgot the second conviction under the parolee status and the rules are not adequate. It must go through the statutes. Attorney General ruled on that. So to make it...correct the situation that I fouled up on, I'll take the blame for it, I'd just vote for the...I ask for your vote for the advancement of LB 163.

SPEAKER KRISTENSEN: Debate on advancement of the bill? Seeing none, Senator Cudaback, you are recognized to close. He waives that opportunity. The question before the body is the advancement of LB 163 to E & R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted who care to? Record.

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ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER KRISTENSEN: LB 163 advances. LB 129.

ASSISTANT CLERK: LB 129 was introduced by Senator Schrock. (Read title.) The bill was read for the first time on January 4th of this year, referred to the Natural Resources Committee. That committee reports the bill to General File with no committee amendments.

SPEAKER KRISTENSEN: Senator Schrock, you're recognized to open on LB 129

SENATOR SCHROCK: Mr. Speaker, members of the Legislature, this bill was presented to the Natural Resources Committee by the Department of Natural Resources. The bill removes the cap from projects eligible to receive assistance from the Nebraska Resources Development Fund. Current law sets the cap at \$17 million. It does not mean that additional state funds would be expended on any particular project. A couple of projects that may run over that might be the Antelope Valley Project or Lake Wanahoo. And Section 2 of the bill makes it clear that a decision or recommendation by the director or staff under the Nebraska Resources Development Fund does not prejudice any future decisions the director or staff may have to make under other statutory considerations. In other words if something else is brought to light at a later point in time, they could change their mind on an issue. In Section 3, subsection (8), the department would be allowed to issue a temporary permit for not more than ten acre-feet of water for road construction or public use construction. Applications for this permit must contain the location of the diversion, the location of the use, a description of the project, the amount of water they use, and a contact person. Of course, this section is very...is being watched very closely by our road contractors. Section 3, subsection (9), no permit will be required by a fire department or emergency response service for water diverted for the purposes of extinguishing a fire in progress in an emergency situation. That came about because of a fire in Smithfield, Nebraska, where the fire department was pumping out of the

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irrigation canal without a permit. Under this, there is some question as to whether that is legal at the present time; this would make that type of a use legal. Section 4 changes the appeals process and the requirement to appeal to the district court under the Administrative Procedures Act to allow an appeal directly to the appellate court, when decisions are made under the Industrial Ground Water Regulatory Act. That is the essence of LB 129. If you have any questions, I'd be glad to try and answer them.

SPEAKER KRISTENSEN: Discussion on the advancement of the bill, Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, Senator Schrock, just a couple of questions so I can understand it a little bit better. Remind me with regard to cost sharing from the development fund, I think, in fact, and perhaps it's by rule and regulation, they do require some kind of cost sharing, do they not, on almost all projects?

SENATOR SCHROCK: Yes, they do, Senator Beutler.

SENATOR BEUTLER: Okay.

SENATOR SCHROCK: And it's usually a local cost share, and from my knowledge, I don't think there is...I don't believe there is federal money involved.

SENATOR BEUTLER: Okay, and...but that's...but that cost share is not statutory, or is it statutory? I couldn't find where it was in the statutes. Do they...is that...does that fluctuate and is that determined by the department?

SENATOR SCHROCK: You know, Senator Beutler, I believe the Natural Resources Commission sets the percentage that is...that is cost shared on, and it is set forth by policy by the Natural Resources Commission, and they determine the percentage that they will cost share with depending on the type of project it is.

SENATOR BEUTLER: Okay. Then on page 4 of the bill, there is

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that peculiar provision that says that the director and staff of the department shall carry out their powers independently of and without prejudice to their powers and duties under other provisions of law. They've been performing this function for sometime now, I believe, why is it thought to be necessary to have this provision in the law suddenly?

SENATOR SCHROCK: Senator Beutler, I think the best way I can explain this is to give an example. The Director of the Department of Natural Resources serves on the commission and may make a recommendation. For example, he may recommend that Lake Wanahoo be built, but at some point in time, he may discover that the water has already been appropriated so there is no water for the reservoir. Now that's an example and I don't think it applies to that project. But that, he might think this is a good project, the project should be built, and then they discover that in his other capacity, as Director of the Department of Natural Resources, that there may not be any water for the project.

SENATOR BEUTLER: Okay, it just...it just seemed to me that something must have happened that called that into question, otherwise, why suddenly now are we worried about that?

SENATOR SCHROCK: Senator Beutler, I don't think there is anything happened that has precipitated this, but there is evidently someone over there brought this into question and said what if this happens in the future, what then, and that's the reason for the bill. Nothing, nothing took place that caused this to be a concern but, evidently, somebody's crystal ball says this may be a concern in the future.

SENATOR BEUTLER: Okay. Last question, on page 8 of the bill, where it talks about or provides an exemption from standards for these various small water uses that are for road construction or other public use construction, public...what is the other public use construction that would be a likely kind of construction that would be encompassed by this provision?

SENATOR SCHROCK: Senator Beutler, I can only speculate on this but I suppose if you were building a dam and needed water to

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compact it; maybe you were building a railroad track roadbed, that would not be under the Department of Roads, but I can tell you the road contractors wanted...would have like to have seen 50 acre-feet of water rather than 10 acre-feet of water.

SPEAKER KRISTENSEN: One minute.

SENATOR SCHROCK: The most practical use for them to get water for compacting on road projects is to get a farmer with an irrigation well pump the water because they can pump all the water they want out of that unless, of course, they are in the Upper Republican NRD.

SENATOR BEUTLER: The...the public use, does that mean that the use has to be for some construction that is being done by a public entity of one sort or another? Is that what public use means in this context?

SENATOR SCHROCK: It has to be used for public use and not for private use, so we assume that what you are stating is correct.

SENATOR BEUTLER: That the construction is being done by or on behalf of or for a public entity of one sort or another?

SENATOR SCHROCK: Yes.

SENATOR BEUTLER: Okay, and then when it describes the temporary permit, one of the things I noticed...

SPEAKER KRISTENSEN: Time. Senator Beutler, you may continue.

SENATOR BEUTLER: ...one of the things that I noticed that it...that it didn't describe what the length of the...the proposed length of the diversion. Would that be of any...wouldn't that be of some interest to somebody who is granting the permit? What is temporary, I guess, under or what is intended as temporary under the bill?

SENATOR SCHROCK: Senator Beutler, I think the amount of water used is probably more critical than the time that it is consumed in, but you raise an issue that I suppose we could address. I

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am not sure...I am not sure we need to, but the amount of water I think is the critical item here. Of course, if you are a road contractor, you've got deadlines to meet, so I would assume that when you are going to use that water is pretty...is pretty obvious.

SENATOR BEUTLER: Okay, those are my only questions. Thank you.

SPEAKER KRISTENSEN: Further debate on advancement? Seeing none, Senator Schrock, you are recognized to close on the advancement of the bill. He waives that opportunity. The question before the body is the advancement of LB 129. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record.

ASSISTANT CLERK: 30 ayes, 0 nays on the motion to advance LB 129 to E & R Initial, Mr. President.

SPEAKER KRISTENSEN: The bill advances. We next move to LB 472. Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB 472 was offered by Senator Hudkins. (Read title.) The bill was read for the first time on January 10, referred to Natural Resources Committee. That committee reports the bill to General File with no committee amendments.

SPEAKER KRISTENSEN: Senator Hudkins, you are recognized to open on this bill.

SENATOR HUDKINS: Thank you, Mr. Speaker. LB 472 grew out of an interim study that we held over the last summer, and the purpose of that study was to examine Nebraska's current ground water transfer laws, most especially how it relates to small private transfers of ground water off overlying lands for domestic use on farmsteads and acreages. The common law in Nebraska is that ground water transfers off overlying lands are prohibited. However, according to the Nebraska Supreme Court, we, as a Legislature, do have the authority to create statutory exemptions to that law. And, in fact, we did that, most recently in 1995 with LB 251, and that resulted in the

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Agricultural and Remediation Transfer Act, and that law created two specific exemptions to Nebraska common law. It would allow for transfers made for agricultural purposes, and it would also allow for transfers made pursuant to a remediation plan under the Environmental Protection Act. Well, both of those transfers were needed at that time, but they didn't address the issue of transfers made specifically for domestic purposes. And what this means is that anyone who owns a farmstead or a residential acreage without either its own well or other independent source of water is at risk of finding that that property is worthless simply because they don't have the water and the common law here prevents obtaining that water elsewhere, if that water happens to be located under some other piece of ground. I passed out a map, and if you'd like to refer to that, what you see here is the old Lincoln Dairy, and I don't know when that was sold and divided up, but it was a number of years back. But at the top of the left-hand side of the picture you see the property, and I will just, for ease, I will just refer to it as the G property. The house on that property is old, a hundred, maybe approaching a hundred years old. Unfortunately, the well for the house on the G property comes from the lower left-hand corner on the C property. These two gentlemen got into a snit and Mr. C decided that he was not going to allow Mr. G to have any water. The only well on that property, the only place to get water on that property is in that lower left hand corner. Through a court action, it was decided that the Natural Resources District and the Water Resources District did not have the authority to decide this case and, in fact, the Supreme Court said, Legislature, you do have the authority to change the statutes. So that is what this particular bill will do. You can see that there is an underground water transfer line from the one property to the other, and that is the only source of water for the G property, and the goal then of this bill is to correct such a problem. Specifically, the bill says that any person, other than a public water supplier, may transfer ground water off the overlying land for domestic purposes if, number one, the location and use of the well and any pipeline are authorized by easement or other adequate property interest on the land on which the well and pipeline are located and, number two, the capacity of the well or series of wells connected together doesn't exceed 50 gallons a minute. And also domestic use of

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ground water is defined as that required for health, fire control or sanitation. Now it's important to note that this bill is not a blank check which would permit unrestricted domestic use ground water transfers. Remember, the capacity of the well or series of wells cannot exceed 50 gallons and, in addition, the person making such a domestic transfer would be liable for damages if he, in fact, withdrew unreasonable water and would cause harm to another person through lowering of the water table or by reducing the artesian pressure. That's it in a nutshell. So the bill would allow transfers of water off overlying land for domestic purposes, and I would appreciate your support on this bill. Thank you.

SPEAKER KRISTENSEN: Debate on advancement of the bill? Seeing none, Senator Hudkins, you are recognized to close. She waives that closing. The question before the body is the advancement of LB 472. All those in favor vote aye; all those opposed vote nay. Have you all voted? Please record.

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB 472.

SPEAKER KRISTENSEN: LB 472 advances. LB 55.

CLERK: LB 55, a bill by Senator Landis. (Read title.) The bill was introduced on January 4, referred to the Banking Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0089, Legislative Journal page 419.)

SPEAKER KRISTENSEN: Senator Landis, you are recognized to open on the bill.

SENATOR LANDIS: Thank you, Senator Kristensen, members of the Legislature. This bill was reported out of the Banking, Commerce, and Insurance Committee with a unanimous vote of its members. It had the support of both the trial attorneys and the insurance industry, which is the lions and the lambs, or the lions and the tigers, minus the bears, or some strange conglomeration that we don't normally expect to see in a bill. LB 55 comes originally from some model language suggested to the

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states by a Conference of Insurance Legislators, something that Senator Redfield and I have attended in the past. The...I think Senator...actual, Abboud was the last sitting member of the executive committee of that organization of legislators. And every now and then they will find a problem and write a model law that they suggest to states and this is one of them. It has to do with structured settlements. This document on your desk is something that might help you understand what this bill is about. The first page is what can occur, what normally occurs, it is not what gives rise to this situation but it is a necessary precedent for me to explain it. You get a lawsuit. Lawsuit is, in this hypothetical, \$400,000. But rather than giving that individual \$400,000, there is a structured settlement. The structured settlement will say we are going to give you, in essence, an annuity over time that's going to pay you not \$400,000 in a lump sum, but it's going to pay you ultimately the net value of \$400,000 in present value, but we're going to do it over time. Why would we do such a thing? The court would approve that mechanism because they are going to have continuing medical costs. They are going to have living costs. They are afraid that if there is \$400,000, it might get spent in a way that would be not in the long term interest of the injured party. This structured settlement allows them to manage that money over time. Let's say you've got some kids to educate, let's say you've got some housing to be concerned about, some medical fees that might be there, if you use the structured settlement, you can take that money rather than in the lump sum and stretch it over time. Because that's a good thing to do, because it allows...it shows self-restraint, it puts money in an amount that doesn't let you go to South America for a fabulous vacation and then come back and already you've spent up your money. The tax law makes some tax advantage for using this structured settlement model; in essence, because it is a greater assurance that that party, who was injured, will not come back onto the social welfare network that the rest of us support. Well, something has arisen, and that's on page 2. Page 2 takes that lawsuit award of \$400,000 and the court awarded annuity, and then you will see that it comes down to that income stream to the plaintiff, the injured party, and now we have people who are out there buying the income stream of a structured settlement. As a matter of fact, if you watch TV

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late enough into the evening, as I do, you will see their ads. Now for Mark Quandahl, who goes to bed at nine-thirty, he's never seen these ads. You have to stay up to see Jay's monologue and compare it to Dave Letterman's top ten, and he doesn't stay up to watch those black and white movies from the thirties that I love that's on about midnight. So those of us who are nighthawks see these ads in between the telephone ads to where you are supposed to call, you know, for women that are waiting for you to call them. The other common ad at night besides those is this ad where you are supposed to call about if you've got a structured settlement, go ahead and call us, and we will see what we can do to turn that money into cash now. Well, the cash now deal is you've got an annuity, you've got an income stream. It's guaranteed against your life, and we will lump sum back to you without court approval for any amount that we can get away with, essentially. So they might lump sum this for \$200,000. Well, the plaintiff is in a little bit of trouble, and the plaintiff says to himself I want my money in...all in one piece or I want to be able to enjoy my money, or I'm desperate, and they might just accept the diminution of the value of their annuity by some huge sum or significant discount because they are pressured. Then after that money is spent up, what happens to that injured plaintiff? They can't work, let's say; they've got some kind of disability, and what now takes its place? All of a sudden they are back on Social Security or they are back on the state welfare program, whatever, because they have unmet needs. They've taken the lump sum money. They've spent it up, and it's not there on a month to month basis. Third page, because the third page is the bill; third page says if there is a lawsuit, let's say \$400,000, and there is a court appointed...approved annuity, and that becomes the income stream to the plaintiff, and if the plaintiff wants the lumps sum even after that time, the plaintiff will have to have the court's approval to do that. They are going to give notice to the court appointed...court approved annuity, that's an insurance company. Then they are going to have to go to court and ask for court approval for this structured settle...I am sorry, for this lump sum, and the court is going to have to say, this is not against the interest of the individual, this is not contrary to the interest of the dependents of the once-injured plaintiff, and it's also going to insist that there be an accounting or

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disclosure, if you will, in which the structured settlement company says here is the percentage of your total award you are going to get. Here is the net amount. Here is the fees we're going to deduct and it also limits the fees that are used in...in the finance fee to the maximum consumer loan fee, which is, I think 19 percent in this state. This business is going on and I think it preys upon the weak and the unwary with the promise of a pot of gold. And for that pot of gold, people give up the appropriate timed basis of their settlements and they also give up the tax benefits when they come back and get the lump sum in this form that they wouldn't get through the court-approved annuity. By going back to the court, I think the tax benefits stay in place, as I recall, but let me not hold that out as the reason to vote for this bill. The reason to vote for this bill is this is a protection for the weak and the unwary from those who are profiting at their expense. Now these profiteers have recently organized. They have an association. They've just sent us a list of amendments they'd like to see. Apparently, it got to the Director of the Department of Insurance on Friday or Thursday. They are represented by Bill Mueller. My guess is that Bill, we may be hearing from them on Select File. I think the director is going to meet with them and talk to them and see what the amendments are about. I don't think the amendments are necessary. At this point, I ask for the advancement of the bill, and when called upon, I will explain a very small committee amendment that we have. Thank you.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Landis. There are committee amendments. Senator Landis, as Chairman of the Banking and Commerce and Insurance Committee, you are recognized to open on your committee amendments.

SENATOR LANDIS: Thank you, Senator Cudaback. The Uniform Commercial Code had the provision against the rest of the state laws' antiassignment rules. An assignment is where a contract has been formed, and one party gives a third person, who is not part of the contract, the benefits of the contract. For example, if I was to receive \$100 a month, I could assign that

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\$100 a month to a third person saying, rather than giving me the \$100 that I am entitled to under my contract, give it to the third party, and that written agreement to give it to the other person is called an assignment. Well, under common law, you can make an assignment only when it is not prohibited by state law. The Uniform Commercial Code comes on and says, no matter what else happens, if you do make an assignment and we happen to make a security interest against that, it's enforceable. What we've done here is to go back and essentially say, UCC, take a back seat. Structured settlement is going to have to have the approval of the court. To the extent that that limits an ability of an individual to make an assignment, that is a legitimate thing to do and the UCC does not undo that. In fact, this limitation on the power to make an assignment will be valid and it will be valid with respect to the UCC as well. So in that sense, I think it makes sense to do the committee amendments and I would ask for their adoption, and I stand ready to explain or answer questions about the bill as best I can.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on the committee amendments to LB 55. Those wishing to speak, Senators Kristensen and Foley. Senator Kristensen.

SPEAKER KRISTENSEN: On...on the bill,...

SENATOR CUDABACK: On the bill..

SPEAKER KRISTENSEN: ...not on the amendment.

SENATOR CUDABACK: Thank you, Senator. Senator Foley, did you wish to speak on the bill or on the committee amendments? On the bill. Seeing no discussion the committee amendments, Senator Landis, did you wish to close? He waives closing. The question before the body is the committee amendments to LB 55. All in favor vote aye, opposed nay. We are voting on the committee amendments to LB 55. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

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SENATOR CUDABACK: The committee amendments are adopted. We are now discussing the advancement of LB 55 to E & R Initial. Senator Kristensen.

SPEAKER KRISTENSEN: Thank you, Mr. President, members of the Legislature. Senator Landis, I, if I can indulge you, I'm going to try to go through just a couple of quick things and then give you my time to speak. One is that we see more and more of these advertised, these structured settlements, I assume that that's an opportunity for those businesses or companies to make money or otherwise they wouldn't be advertising. And so whether that's a smart thing or not for a plaintiff or recovering party to do, I don't know. I can't protect them from themselves. The question I have is philosophically, I get a judgment. Even though its a structured settlement, the structured settlement is between, let's say, the insurance company or whoever the defendant may be. Isn't that my judgment and shouldn't I be able to do with my judgment whatever I want to do? So that's a philosophic question. The second one is if I'm...if I'm the court and I get a petition to ratify this structured settlement, what...what is the standard of review and what sorts of things do you consider to be good cause, is it that I need my money now? Do you look at what the use of the money is going to be? Or do you merely make sure there is a disclosure so that the plaintiff is aware that there are fees, that they are going to get less than they thought they'd settled? Is it sort of a consumer protection notice type of thing that the court does? And my third question, does that open up the original judgment for collateral attack, particular from those people who, let's say, maybe were defaulted out prior? Do they have standing to come back in and somehow reopen the case or, at least, have some standing even though they were defaulted? And I would yield the rest of my time to try to touch on those areas. Thank you.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Senator Kristensen, I'll do my best on one or two of them, and on the other one I will put my light on and I'll need a moment to refer. Is the judgment my own? Well, let's see, the judgment came about with a court approval and, by the way, oftentimes these are negotiated. They are two parties

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who agreed, look, I'll agree to liability and you'll agree to this amount, and we'll agree it will be a structured settlement. So it is a negotiated result between two parties that arrive at the structured settlement. Then the structured settlement is approved by a court. Is it your settlement, philosophically? Yes, I guess it is and, yes, having gotten court approval, are you entitled to be a wastrel? And I guess we're saying, no, you don't have the right to be a wastrel, and if there was a reason for that, my guess is it's this reason. The lawsuit stems from an injury or loss you suffered, and rather than looking at the state, you have used the court system to achieve a recovery from another entity, from a private entity who has caused the injury, the person who is at fault. You have your source of recovery for your fault...for the fault-based inj...fault-based injury you suffered, and we have established a system of law by rather than asking from the state, you got it from this other private source. It's been approved by a court. It's been awarded by a court, and the court is prepared to use the force of the state to exact it from the private party.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: You aren't a wast...you don't get to be a wastrel to the extent that you take this mechanism created by your legal rights and enforced by the legal system and to become a wastrel to the point that you could be against your better interest or your dependents and then fall back on the private sector...I am sorry, on the public sector to make up the difference, to become a ward of the state, to look to the rest of us for the amount of money necessary to take care of your injury because you were a wastrel with the settlement from the private malefactor who caused the injury. I guess to that extent, we are saying it's not your settlement because of the implications it would have for the rest of us if we move the private judgment into being a public responsibility. If I had to say off the top of my head, I guess that will be the answer to that point. I will put on my light. I guess the time is up.

SENATOR CUDABACK: Thank you, Senator Landis.

SENATOR LANDIS: And I'll put my light on to continue the

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discussion or maybe I'll ask you for more follow-up questions when my light is on.

SENATOR CUDABACK: Thank you, Senator Landis and Senator Kristensen. Senator Foley, followed by Senators Kristensen and Landis.

SENATOR FOLEY: Thank you, Senator Cudaback. Senator Landis, I wonder if you might entertain another question or two?

SENATOR CUDABACK: Senator Landis, would you respond?

SENATOR FOLEY: And I think it's going to be I think essentially quite similar to what Senator Kristensen was raising, and that is, just using your hypothetical, let's just say that I am the plaintiff and I've been awarded a settlement of \$400,000, and that for whatever reason, I make the determination given my own finances that I really would prefer \$200,000 up front, right now, today, rather than getting this stream of money over a period of years. I guess...I guess I'm not quite appreciating why you are going to require me, by this bill, to go back to court, presumably at my expense, and beg the court's permission to receive this cash up front, when I'm quite capable of making a determination on my own as to whether or not I'd prefer to get a smaller sum but get it all in cash right now?

SENATOR LANDIS: Senator Foley, I have every confidence in your ability to determine a flimflam from a rational choice, and I can say that for at least six other people on the floor of the Legislature at least, maybe more. But...

SENATOR FOLEY: Name them. (Laughter)

SENATOR LANDIS: I'm have that list in a coffee jar on the back of my porch. But this...the kind of discounts that have occurred here and the kinds of fees that have been achieved here and the fact that this oftentimes preys on people at a time of weakness or certainly perhaps need or just a desire to go Las Vegas, takes this structured settlement, and I've got to confess, it says that's right, that it is granted to you as a matter of law. It is given to you by a court. It is a matter

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of a result. It is not a private transaction. It has been a state-authorized transaction, and there are enough examples of misuse, abuse, and discounts that would make both of us blush in the amount of discount that has been achieved. However, I...I think one of my faults is I don't have a specific hypothetical that I could give you in my file immediately that would tell that story better.

SENATOR FOLEY: Oh, let's just play this out a little bit.

SENATOR LANDIS: Okay.

SENATOR FOLEY: I don't know if you dabble in the stock market. I do, I'm not an expert but I like to play around with it a little bit, and let's just say using your hypothetical that I receive this award of \$400,000 and I really don't want to receive that over a period of years, that a stock opportunity has presented itself to me, and I'm convinced that this stock is going to go to the moon, and I would prefer, hypothetically, to take \$100,000 today, buy this stock, and take my chances. I think what you're telling me in this bill is I can't do that.

SENATOR LANDIS: No.

SENATOR FOLEY: Because the court would rule, no, no, no, \$100,000 today, there is no way that's fair in the court's view. Go ahead.

SENATOR LANDIS: Actually, not in the way that you described it, but there is a variation in which that is true. I think what you just said is, I interpreted the question, look, if I have this...if I have this judgment or I have this award, I can't have it in a lump sum form, and that's not right. In the first instance, you may well be able to get it in a lump sum form.

SENATOR FOLEY: But the court is going to make a determination as to what is a fair lump sum, not me.

SENATOR LANDIS: In the initial circumstance, there should either be a negotiated award or, that is to say a negotiation between you and your defendant, and the two of you agree as to

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what that was, or there will be an award from the court, and that will be in the form of a lump sum.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: But, oftentimes, it's either in the case of workmen's comp, which is in time...over...over time, or in the case of a negotiated result where you will get a structured settlement offer and you will have said, yes, to a structured settlement. Courts rarely impose structured settlements. In fact, I don't know of courts imposing them except in the workers' comp area. What they do is they will take an agreement that the two parties have to use the structured settlement and permit it. So in the hypothetical you've said, could I have gotten my money, the \$100,000. Well, if the defendant said to you, I'll lump sum my settlement with you at 100,000 bucks, you would have had that option. But if the defendant said, look, I will give you as our settlement an annuity for \$125,000, and the court awarded that, then you don't have that right.

SENATOR FOLEY: I guess what...

SENATOR LANDIS: But you do at one point have that right.

SENATOR FOLEY: My key concern here is just that the court, in its wisdom,...

SENATOR CUDABACK: Time.

SENATOR FOLEY: ...is substituting its...its view, imposing its view on me.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Kristensen, you are recognized.

SPEAKER KRISTENSEN: Thank you, Mr. President, members of the Legislature. Senator Landis, I am sure is going to do a little looking for me so I am not going to ask him a direct question. My...what I think we're trying to determine here is you gain an award. It can be from another individual. It can be primarily an insurance company or someone who is the guarantor insurer of

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a defendant, and you often get what's called a structured settlement, which means that you get a little less now, instead of, let's say, \$100,000 today, we're going to give you \$25,000 today and then over the next period of years we're going to make payments to you in the form of an annuity contract is generally how it is put out. And over a period of time, you actually get more money because there is interest into it. Now the issue Senator Foley raises is, could I...could I make more money if I was doing it myself? That may...the insurance company may say, well, look, I'm...I can make money also because if I get to keep that money, it's a form of a settlement or a negotiation. So there is reasons for the original structured settlement. You would, in the long run, you'll get more money. And if you're less of a sophisticated person, that's an easy way, if it's like a minor. I mean some of these happen for children, and so we don't put all that money into a conservatorship right away. They will get just an initial amount of money and then those payments will come over time, and as they grow older, that money is held back for them for management. The issue becomes, here comes...this is all done, here comes this business or this company and says, you know what, I can give you all your money today. It's going to cost you a little bit, but if you need the money right now, you've got to buy a house, or you need a car, you got college to pay for, I will reduce that structured settlement to a sum certain. And, again, they would take that money out and, Senator Landis, I'm kind of looking for you for approval, if I'm...if that follows what you think generally the practice is. The issue becomes when you, to have this additional company come in, is that solely an agreement that should be had between a plaintiff and a third company, and does the insurance company or the defendant have any rights into that? Senator Landis' bill would say, yes, they do. They need to...there needs to be court approval to make sure that this is in the best interest of the plaintiff, and my question, Senator Landis, if I am the judge and this case gets dumped on my lap, what am I going to look at? Am I going to say, well, you're a sophisticated person, buyer beware. Here's all the commissions and the brokerage fees and everything. As long as you know that, I'll do it. Or does there have to be an evidentiary hearing to show that you are competent to manage the money, or is it one of these things where the insurance company can come

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in and say, now hold it, we don't...we don't think this is something we want to participate in? And I can't articulate why they would say that. I'm struggling with that, and that's something I need to figure out between now and Select File, and would have questions. Senator Landis, I'll give you the rest of my time and I appreciate your efforts.

SENATOR LANDIS: You bet, thank you, and...

SENATOR CUDABACK: Senator Landis, you have a minute and a half.

SENATOR LANDIS: ...right. I'm not sure had you been listening to my answer to Senator Foley's question that you would have gotten the point that I was making, and I will come back to a point that Senator Kristensen has mentioned. Senator Foley, you would have had the opportunity for a lump sum settlement at least once on your own volition, and it would have been at the time you made...had made a decision as to whether you are going to accept an offer to settle the case for X...in X form. It's usually an X form or Y form; X form is lump sum, Y form is a structured settlement.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: You would have had the \$100,000 in X form usually. It was the case and you got a chance to compare X to Y and you picked Y because it made sense. This is what Senator Kristensen is asking. I think he said it a lot better than I did. In response to the question then, it's not as if the court substitutes its opinion for your opinion in all circumstances. You will have had your opinion in the first circumstance in which you would have chosen the structured settlement form immediately. So the court doesn't substitute. It approves of the decision that you've made but it doesn't substitute it. What is true is once you have made that decision on those terms, if you want to change it because somebody induces you to make a change, that will require court approval and the rate of discount that's occurring here is very easily 25 percent a year or more...

SENATOR CUDABACK: Time.

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SENATOR LANDIS: ...in the fees.

SENATOR CUDABACK: But you may continue, Senator Landis, your light is next.

SENATOR LANDIS: ...a number that, thank you, I will continue on, that was an amount that would have been usurious at the point of which we had a usury statute, and which we don't anymore, but it's a ve...and it goes up from there in the amount of discorn...discount that you will see in this as well as a rather large number of fees that are tacked onto that as well. Senator Kristensen asked me another question, does this make the original case subject to collateral attack? The answer, Senator Kristensen, to the best of my knowledge is, no, it does not. In looking at what the court is to make a determination, the standard is on page 6. There is a number of things that have to be done as far with respect to notice, but on line 23, it says: The court has made a determination that the net amount payable to the payee is fair, just, and reasonable under the existing circumstances and does not contravene public policy. It seems to me that what that means in part is you do have to look at the circumstances. I think it makes a lot of difference whether or not Mike Foley is taking his 100,000 bucks and doing it when he has no other forms of income and he has young children and he is going to play the stock market with it. Maybe that does make a difference. It doesn't in the context of the circumstances. My guess is that if he is well-to-do and he is taking \$100,000 out and he has alternative means of support for his dependents and him, then my guess is that the court would look at that differently. So that is the purpose of the bill. I can tell, as I have this conversation with you, that I have not been able to give you a hypothetical or in fact, even better yet, a real example from a real case, and I will strive to do that before Select File in the event you permit this bill to go to Select File. I think they do exist. In fact, I think when I say a 25 percent discount, essentially we're looking at the shy end of some of the things that happen. And I will...my light is off now, but I will give the rest of my time to Senator Kristensen to pou...propound other questions that I could answer.

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SENATOR CUDABACK: Senator Kristensen, you have about two and a half minutes.

SPEAKER KRISTENSEN: Thank you, Mr. President and members. I don't plan, Senator Landis, to at this point in time prolong the discussion. Merely, I'd like to put out additional questions and hopefully on Select File we can have a discussion about those. If the court is going to look at that and they are going to then look at the use of the money, the proceeds, my questions would be whose judgment or whose standard, and if it's just wide open, that can lead to forum shopping, if you have to. The other parts of that would be, what happens if they don't do what they say they're going to do? I am going to go out and buy a house. I need the lump sum so that the transfer company or the transferee, I assume, gives the money to them, the court approves it, and says, fine. They go out and spend the money somewhere else, and they don't buy the house with it, what's the remedy? Do you come back, does the court come back and take the money that they've squandered if there is no money to get? And what remedies are there for people basically misleading at the time that they enter into this? Now they can say, well, circumstances changed or emergencies came up, are we inviting them to play games? I do think that it's a good public policy for those people to understand what they are losing because they...

SENATOR CUDABACK: One minute.

SPEAKER KRISTENSEN: ...can have substantial fees and money taken out just to get the money today, and that's very attractive. And so I do think there is some need for some protection in there to advise people. I am just worried about are you going to have one court that is going to say, nope, you know I only want houses bought with this money. What about college tuition? I've got four kids but, you know, I am not going to be paying that tuition all up front, I am going to be paying it out a little at a time, how does that work? And I'm just interested in what practical standards we would have. I plan to advance the bill today, Senator Landis. I would vote for it. I certainly would like on Select File to explore those possibilities of what standard does the court use and how do we

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make sure that we aren't just substituting their judgment for someone else's judgment. If there are certain standards to put out there, great, let's do those. I would yield back any time that I have to Senator Landis.

SENATOR CUDABACK: Your time is up, Senator. Thank you, Senator Landis and Senator Kristensen. Senator Foley, you are next.

SENATOR FOLEY: Well, again, I think Senator Kristensen and I are on the same page on this. I can certainly appreciate those instances where someone who does not lack...someone who lacks financial skills might be tempted to take a settlement that's really not fair to him or her and, perhaps, there is some consumer interest here where, that needs to be served, whereby the court would step in and explain to the person the nature of the loss that they are about to take by taking a huge discount on their settlement. But what I think this bill does, and maybe I'm wrong, but what I think this bill does is it'll enable the court to tell me, no, you cannot discount that settlement. We think...we think we know more than you do about the value of what you are about to do and we're going to prohibit you from discounting your settlement. And if that's an accurate interpretation of this legislation, then I will not be able to advance it. And, Senator Landis, I've got considerable time remaining I think on this turn, so I yield it to you if you want to speak to the question.

SENATOR CUDABACK: Senator Landis, you have about...about four minutes.

SENATOR LANDIS: I have...actually, I have my light on to close. I will be able to respond during my closing. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis and Senator Foley. Senator Landis, your light is next. Did you wish to close at that time or did you wish to speak on it?

SENATOR LANDIS: No...

SENATOR CUDABACK: You are closing?

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SENATOR LANDIS: Yes, I think Senator Foley has identified a point at which there is a departure between his philosophy and the philosophy of the bill, and my guess is that you'll need to vote red because the operative section on page 6 does say that the court needs to determine that the net value is fair, just and reasonable, and if that...if that shift of responsibility is not something that he can live with, it is part of the bill and that's there. I heard him say that he supported the idea of letting the individual know what they were entitled to and what they were getting, and that would appear on page 5 and page 4. There is an alternative that we haven't talked about that can arise, and that is notice back to the original annuitant may start a bidding war between the structured settlement paying company, who is doing this late night advertising, and the original insurance company, as to what, you know, what...whether there can be a better deal or not. With respect to Senator Kristensen, I hope he listened to my answer, and I think I might have overstated it, but understand what they are talking about here is fair, just, and reasonable amount payable under existing circumstances. Actually what I...if I was sitting on the court, I think it would make...I think whether I had minor children, whether I had alternative sources of income, whether I had a good chance of falling back under the social net would be things that would help me to determine whether it was fair, just, and reasonable under existing circumstances. I didn't mean to...I was building on the Foley example of what are you going to spend the money for. In fact, I don't think that is part of this standard. It says, what is the net amount, and is that amount fair, just, and reasonable under the existing circumstances. It is not what are you going to do with the amount? It is, is the amount fair? And when I was doing that hypothetical, I was building on an example of Senator Foley, but the points that I wanted to raise were, do you have kids, do you have dependents, do you have alternative sources of money, is this the sole means of support that you have? In that case, it may make a difference as to what's fair, just, and reasonable under existing circumstances. And I think that's the standard that we are doing here, but if it needs to be looked at, I'd consider doing that. I would regard this as a measure of consumer protection, perhaps overprotectiveness from Senator Foley's perspective. But I do think it's an opportunity...I do think

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that this is a situation that takes people at a dangerous time and invites them to make a decision that can certainly be against their long term best interest and notice is certainly appropriate. And in this case, a court approval I think makes sense. We will see if the body agrees with me or not. I ask for the advancement of LB 55.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Kristensen, I am sorry, but he was closing. The question before the body is the advancement of LB 55 to E & R for engrossing. All in favor vote aye, opposed nay. Voting on advancement of LB 55. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 29 ayes, 1 nay, Mr. President, on the advancement of LB 55.

SENATOR CUDABACK: LB 55 does advance. Mr. Clerk, next item

CLERK: LB 146, a bill by Senator Kremer. (Read title.) The bill was introduced on January 4, referred to the Banking Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0110, Legislative Journal page 423.)

SENATOR CUDABACK: Senator Kremer, you're recognized to open on the advancement of LB 146.

SENATOR KREMER: Thank you, Mr. President. I brought this...I introduced this bill on behalf of Nebraska Equipment Dealers Association, and it has to do with amendments to sections of the Nebraska Installment Sales Act regarding origination fees. At the present time our statutes say the maximum that can be charged for origination fees is \$10. Almost all states, or all that I have listed, and I do have list of them if anybody is interested, has a maximum of \$500, and some have a variable amount or a different amount for different sizes of the sale. This has only to do with installment sales. It has nothing to do with cash sales or sales where you would get your financing from other sources, other than the manufacturer of the equipment. As an example, John Deere Company had a

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representative that testified at the committee hearing, and he was very open and candid. He said many times they will have very attractive interest rates in order to attract sales; maybe zero interest or 5 percent or something other than what the going interest rate would be. And he said they were in the business for making money and sometimes when they have a very low interest rate, they would charge higher installment origination fees on their installment sales plan then. I really had hesitation on whether to introduce this or not because I thought it's just another way for machinery dealers to maybe tack on some other charges that would be carried by the...by the purchaser, but we found out, when I heard the rest of the story, that the machinery dealers charge us no matter whether we have a limit on it or not. They charge us through the dealer. If we have a limit of \$10, John Deere at the present time charges \$175 origination fee, and then the dealer can only charge \$10, so they bill the dealer for the balance of the amount. So the dealer only discloses the 10 dollar fee, but then he probably hides it somewhere else in the sale price, the balance of the origination fee. So it's really there no matter whether we have a limit on it or not. Right now, the bill reads that it will be a maximum of \$500 for business or commercial purposes. We do have committee amendments which changes that somewhat, and I think I would like to let Senator Landis open on the amendments, unless somebody has some questions they would like to ask.

SENATOR CUDABACK: Thank you, Senator Kremer. Senator Landis, to open on your committee amendments, as Chairman of the Banking and...

SENATOR LANDIS: Thank you. Members of the Legislature, this is an origination fee for an installment contract. Originally the bill came to us for a commercial and business purpose, which is, you know, all kinds of possible transactions. But all of the evidence before the committee had to do with ag equipment. So since there was no other squeaky wheel out there and we noticed that by looking at other states, states differentiated between the kinds of installment loans that were being made, that we decided to change the existing installment loan where there had been a claim this number was out of date. Now the installment loan, I think, was in fact set in 1992 at \$10. However, the

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truth of the matter is there is...there is a cost to the creation of a loan, and so we took what would be a relatively modest approach compared to other states, which normally have a \$500 fee, 500 dollar fees, as the maximum and which, by the way, the Nebraska maximum origination fee is in the installment...in the installment loan contracts situation. This is in installment sales as I recall. Rather than using that model of 500, what we said is we will pay an origination fee of not to exceed \$100 in cash if the sale price is \$25,000 or less for the agricultural equipment, and if it's more than \$25,000, then it is a maximum of \$250 as an origination fee. The truth of the matter was, we had a relatively candid testifier in John Hiatt from the John Deere Credit Company who said, we sell money. We sell money. And if we don't get it here, we will get it someplace else. Truth of the matter is an origination fee is meant to be an acknowledgement that there is an administrative cost through the creation of a fee and it tells you where your money is going. Ten dollars is not an accurate statement of what that cost is. I am not sure that these are more accurate. These two numbers are on the light side. They are on the low side compared to the rest of the country. They are made from the only industry that has shown us a concern in this area which is the farm equipment industry, and for that reason, we decided to pass out this bill in this form knowing that there might be an amendment on the floor to the Installment Sales Act that some other industry might want to use, but we dealt with the information in front of us which was that large sales of farm machinery do not allow the seller to recover the actual cost of making the loan, the administrative cost, and an origination fee more consistent with what the rest of the country was doing would be appropriate, and you weren't saving the customer a dime because, one way or the other, they were going to get the ultimate cost of these transactions from the consumer, and that this was a way of acknowledging the cost of making a loan. So with that, the committee adopted this amendment and reported the bill out. I ask for the adoption of the amendment. It cuts out this increase, it cuts down the increase from \$500 to 100/250, and it cuts it down from all installment sales to ag equipment installment sales. I ask for the adoption of the amendment.

SENATOR CUDABACK: Thank you, Senator Landis. You heard the

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opening on the committee amendments from the Chairman of the Banking, Commerce, and Insurance Chairman on LB 146. Open for discussion, Senator Landis, your light was next. Senator Landis waives his right to speak. Senator Kremer.

SENATOR KREMER: Thank you, Mr. President. I agree with the committee amendment. In fact, I had an amendment already drawn up before we even went into the hearing to reduce it from 500 to 300 dollars, and so this just reduces it to \$250 for sales over 25,000 and \$100 for sales under 25,000. It's only on ag equipment now. I really think it should also include industrial equipment, and we may come back with that on Select File. Many times industrial equipment is sold by the same dealer. They use the same forms. We really have not heard from the dealers that sell industrial equipment. Caterpillar, for instance, would sell to industrial purposes, as well as ag purposes. Then they would have to have a different amount of the limit on there from one to the other. You might buy a loader for ag purposes. It would be a maximum of 250,000...or \$250 you could charge, and if you bought that loader for industrial purposes, it would be \$10. So it seems like it should be on there and I guess the purpose, if we do amend it on at Select File, would be that we don't have to come back next year and add on the industrial equipment. So we're waiting to kind of hear from them to see what they say, but this time it was only the ag dealers that really approached us. So I support the committee amendments and urge you to vote for them.

SENATOR CUDABACK: Thank you, Senator Kremer. Senator Landis, on the committee amendments.

SENATOR LANDIS: Is this to close?

SENATOR CUDABACK: No, Senator. There is Senator Tyson's light on also.

SENATOR LANDIS: I'll pass.

SENATOR CUDABACK: Senator Tyson, you're recognized to speak on the committee amendments to LB 146. Senator Tyson.

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SENATOR TYSON: Thank you, Senator Cudaback. Members of the body, I was one of the two senators to vote against bringing this out to committee. I have received, however, some information from a friend who is in the implement business, and I would like to read a portion of it into the record: Our main retail credit source has alrea...already has us, that is the state of Nebraska, in a tier interest rate of 1.5 percent above their standard rate for most states. Without LB 146, they probably will hide and make us less competitive. I am not sure that I still understand every thing that he said about the interest rate, but I think that he is saying that their main credit source, and he doesn't identify that, has already increased the rate charged in Nebraska because my main objection to this bill in committee was that it was another way to get more money without violating an interest rate. Essentially, what this says, I believe, is if they don't get it one way, they get it another. So I am going to vote for the committee amendments, and when that becomes the bill, I ask everyone to support LB 146. Thank you.

SENATOR CUDABACK: Thank you, Senator Tyson. Senator Landis, your light is on. Did you wish to close or did you wish to use your five minutes first?

SENATOR LANDIS: No, that's all right.

SENATOR CUDABACK: You are closing?

SENATOR LANDIS: Am I the last light? Yeah, I'll close on the committee amendments. I think I've explained the committee amendments. I do want to give notice. If there are those who wish to piggyback on this bill, I will resist that, modesty on my...I don't care a great deal about it, but there is only one industry that's made a showing here, and that's the agricultural equipment industry. If the industrial folks want to come in, they haven't made a showing. Consum...the business equipment people have not made a showing, they...they need to come and answer questions, just like anybody else, rather than hop on, come Select File, because it's an appropriate moment, in my estimation. So, should there be an amendment on Select File, I would resist that. If it was successful, I would resist the

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bill because we wouldn't have had the evidence before us nor the accountability of having those people in open session on the record telling us their story, and I'd want that before I'd extend the provisions of this act. I'm reluctant to raise fees in this amount; it's just that I'm convinced that with a combine that costs 104,000 bucks it doesn't make a darn bit of difference what you call the origination fee, they're (laugh) going to get their money for whatever they negotiate, and that this is a...it's like a...it's like Bartleby's lost letter in the post office, from the story, "Bartleby, the Scrivener", in Melville's story, it is an afterthought, it is a minor element and it's not really an inhibition on the ultimate recovery of John Deere or whoever is selling it, a \$90,000 piece of equipment. So it's just a sense of putting us closer to where everyone else is, but still less than most states which are at \$500. I ask for the adoption of the amendment. I think it's a...it is an appropriate increase in a one place that's shown us the need for this change. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the closing on the committee amendments to LB 146. The question before the body is the adoption of those committee amendments to LB 146. All in favor vote aye, opposed nay. We're voting on the committee amendments to LB 146. Have you all voted? Record, please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. We're now on discussion of the advancement of LB 146 to E & R Initial. Seeing no lights, Senator Kremer, did you wish to close?

SENATOR KREMER: Yes, I will. Thank you, Mr. President. I'll just make it real short. We're out of time. As Senator Landis mentioned, I think it is appropriate. I did...Senator Baker just mentioned that he had contact with an industrial equipment dealer, feeling that they should be on here, too. And I don't know if they were aware of the bill or what, but it's not business equipment. It started out being business equipment, and that was kind of a misunderstanding and not intentional to

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include them, because it could be a fax machine, or a computer, or something else in a business and it was only supposed to be equipment. So I think industrial equipment would be very appropriate to put on here. But since we didn't hear from them, it's not on here right now. So we'll see what happens on Select File. With that, I'd urge you to vote yes on this. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. The question before the body is, shall LB 146 be advanced to E & R Initial? All in favor vote aye, opposed nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 146.

SENATOR CUDABACK: LB 146 does advance. Mr. Clerk, items for the record?

CLERK: Mr. President, confirmation report from Natural Resources Committee. Agriculture Committee reports LB 273 and LB 804 to General File with amendments; Health Committee reports LB 429 and LB 452 to General File with committee amendments; and Enrollment and Review reports LB 225 to Select File with E & R amendments. Mr. President, Senator Hudkins would like to add her name to LB 836 and LB 837. And that's all that I have. (Legislative Journal pages 546-547.)

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

SENATOR JANSSEN: Thank you, Mr. President. I move we adjourn until 9:00 a.m., tomorrow morning.

SENATOR CUDABACK: The motion is to adjourn until 9:00 a.m., Tuesday morning. All in favor of the motion to adjourn. Opposed. The ayes have it, we are adjourned.

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