

FEBRUARY 20, 2001

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Transcriber's Office
FLOOR DEBATE

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179, 243, 268, 308, 317, 360, 397, 408, 411
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LR 1

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good morning. Welcome to the George W. Norris Legislative Chamber for the thirty-first day of the Ninety-Seventh Legislature, First Session. Our chaplain this morning is Pastor Tom Peyton of the Community Bible Church from Bayard, Nebraska, in Senator Erdman's district. Pastor Peyton.

PASTOR PEYTON: (Prayer offered.)

PRESIDENT MAURSTAD: Thank you, Pastor Peyton. Members, we will call the Legislature to order. Please record your presence. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: Thank you Are there any corrections for the Journal?

CLERK: Mr. President, I have no corrections this morning.

PRESIDENT MAURSTAD: Are there any messages, reports, or announcements?

CLERK: Mr. President, your bills read on Final Reading last Thursday, February 15, were presented to the Governor at 12:00 p.m., and the constitutional amendment was presented to the Secretary of State at 12:00 p.m. as well. (Re: LB 104, LB 105, LB 126, LB 128, LB 128A, LB 162, LB 179, LB 268E, LB 317, and LR 1CA.)

Mr. President, your Committee on Enrollment and Review reports LB 360, LB 308, LB 397, LB 432, LB 411, LB 243, LB 34, LB 106, LB 108, and LB 477 to Select File, some of those having Enrollment and Review amendments attached. In addition, Mr. President, Retirement Systems Committee reports LB 526 to General File; LB 408, General File with amendments; and LB 711, General File with amendments. Senator Bromm has selected LB 827 as his priority bill for this session; Senator Cudaback, LB 92. And, Mr. President, a series of reports from the Nebraska Rural Development Commission and the Nebraska Investment Council.

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Both will be on file in the Clerk's Office, available for member review. That's all that I have, Mr. President. (Legislative Journal pages 699-702.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. (Doctor of the day introduced.) Mr. Clerk.

CLERK: Mr. President, the first order of business this morning, a confirmation report by the General Affairs Committee, found on page 671.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Janssen, you're recognized to open on the confirmation report from the General Affairs Committee.

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. We have two appointments this morning to the State Electrical Board. Mr. Ted Stutheit is from Senator Raikes' district, and they are both reappointments. Mr. Stutheit lives in Lincoln, Nebraska. He attended Kearney High School and he was in the United States Navy and served in the...in the nuclear power division while he was in the Navy. And, other than that, he...looked at his qualifications, looked good, and I would hope for a favorable response for Mr. Stutheit. The other one is Mr. Sterling R. Johnson, and he is from Columbus, Nebraska. Mr. Johnson attended Burwell High School and a junior college in Torrance, California. He's married and has a family. He has...he's been married for 43 years, has four grown daughters, ten grandchildren, ten great-grandchildren, and two sets of twins, by the way. So we looked upon both of the appointments favorably and hope you can give them your blessing, too. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Janssen. Discussion on the confirmation report? Senator Janssen, you're recognized to close. Senator Janssen waives closing. The question is the adoption of the confirmation report of the General Affairs Committee, found on Journal page 671. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: (Record vote, Legislative Journal page 702.) 33 ayes,

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O nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT MAURSTAD: Confirmation report is agreed to. (Visitors introduced.) Mr. Clerk, Select File.

CLERK: Mr. President, LB 51. Senator Erdman, I have E & R amendments, first of all, Senator. (AM7027, Legislative Journal page 489.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: You do have amendments?

CLERK: E & R amendments, yes, sir.

SENATOR ERDMAN: Okay. Mr. President, I move the adoption of the E & R amendments to LB 51.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the adoption of the E & R amendments to LB 51. Those in favor say aye. Those opposed nay. The amendments are agreed to.

CLERK: Senator Chambers would offer AM0197, Mr. President. (Legislative Journal page 471.)

PRESIDENT MAURSTAD: Senator Chambers, you're recognized to open on your amendment.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I believe this is what I refer to as the Chambers amendment. Is that right, Mr. Clerk?

CLERK: Yes, sir, it sure is.

SENATOR CHAMBERS: Thank you. And what this amendment is, members of the Legislature, is simply a statement that whatever federal rule or regulation is being referred to is being adopted as of the effective date of this act. And I've talked about this amendment with whoever's bill it is, so I ask that you adopt it. Thank you.

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PRESIDENT MAURSTAD: Thank you, Senator Chambers. Is there discussion on AM0197? Senator Chambers, you're recognized to close. Senator Chambers waives closing. The question is the adoption of AM0197 to LB 51. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment.

PRESIDENT MAURSTAD: The amendment is agreed to. Mr. Clerk.

CLERK: Mr. President, Senator Beutler has AM0167. A note, Senator, to withdraw AM0167 and offer, as a substitute, AM0558. (Legislative Journal page 703.)

PRESIDENT MAURSTAD: Without objection, Senator Beutler, you're recognized.

SENATOR BEUTLER: Members of the Legislature, this is an amendment that involves the reporting requirements of the bill. Under the language of the bill currently, an insurer who has some sort of contract or an agreement with an insurance producer is required to report certain kinds of things to the department in the event that they should terminate their relationship with that insurance producer. Sometimes in the practical course of things, it may, in a technical legal sense, be the other way around. The insurance producer may terminate the relationship, even though it was done under pressure from the insurer. And so all this amendment does is to expand the reporting requirement for the insurer in the event...and applies it to a situation where legally and technically it was the insurance producer that ended the relationship, so that you have a broader reporting requirement, which I think comprehends what was intended in the original bill, and that is to have reported to the department any of those kinds of violations that might affect or arguably affect a license of a producer. You may recall that this bill is the Insurance Producers Licensing Act, the total rewrite of our licensing law that was required under the pressure of federal legislation and which 29 states are required to adopt in substantially similar form by a date specific at a future point

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in time. This amendment itself was actually drawn up by the Department of Insurance so I assume it's in correct form and I didn't have a chance...I talked to Senator Landis' staff, but I didn't have a chance to talk to him directly about it, although I think he's without objection. With that, I would return my time to the Chair.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. Debate on the Beutler amendment, Senator Landis.

SENATOR LANDIS: Just to say that in a cursory look at the language, I think it's acceptable and clarifying. I would acquiesce to the notion of the adoption of this amendment and ask my colleagues to agree.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Further discussion? Senator Beutler, you're recognized to close. Senator Beutler waives closing. The question is the adoption of the Beutler amendment to LB 51. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment.

PRESIDENT MAURSTAD: The amendment is adopted. Mr. Clerk.

CLERK: Mr. President, Senator Beutler has AM0280, but I have a note you want to withdraw, Senator, and offer your next amendment, which is AM0564. (Legislative Journal page 704.)

SENATOR BEUTLER: That's right, Mr. Clerk.

PRESIDENT MAURSTAD: Without objection, Senator Beutler, you're recognized to open on AM0564.

SENATOR BEUTLER: Members of the Legislature, this amendment has to do with the power of the Legislature itself and the future of the Legislature with regard to certain types of suggestions that have been, are at this instant being made, and if this is successful we'll have to face in the future in other areas. I'm talking about this new process that the federal government has

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laid upon us, and that new process is a result of the Gramm-Leach-Bliley Act at the federal level. And what that act says is, look, we have the right...we think we have the right to regulate insurance but we, the federal government, for whatever reasons, perhaps because so many of our representatives at the federal government level are pledged to preserve state rights, for whatever reasons, they're just not going to take back the regulation of insurance and do it at the federal level. That's the usual process, isn't it? Either we regulate it here in our State Legislature, or we regulate it at the federal level through the Congress. And we're familiar with the process by which the federals, having power, say to us, you do it this way or we'll take back our money and do it ourselves, but that's not what they're doing in this case. In this case they're setting about an entirely new process, and I hope you'll pay attention to what it is because, you see, it doesn't shift power back to the federal government, which is bad enough, but it takes power away from us, and who does it give it to? Bottom line, I'm going to argue that it gives the power to the National Governors Conference. That's where it ends up. Let me...let me tell you how I get there. What they've said with regard to this act is that we need to adopt the model of the National Conference of Insurance Commissioners. Who are they? They're Senator (sic--Governor) Johanns, appointed head of the Department of Insurance in this state. And in every state they are the appointed person of the Governor of that state. Now, they're saying that that model act has to be...it has to be, this is not like the other model acts that Senator Landis has brought forth, all of which are excellent. In fact, you can even argue that this one is excellent, but this one has a different meaning because they're saying 29 states have to have substantially similar laws and that law is the model of the National Conference of Insurance Commissioners. Now, think for a minute, how do you go about changing that law? Well, normally, we would just pass a bill and our law is changed, but we're not going to be able to do that anymore because, obviously, if we pass a law that substantially changes it then we're out of sync with all these other states and we cannot act alone. So how is it that we will get this done? Let's say your constituent comes in and says, darn it, there's a flaw here and here's what it is, and you say, by golly, there is a flaw there and it's important and

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we need to do something about it. So what are you going to do? Are you going to put in a bill in the Legislature? That's not going to do you any good because we can't pass anything until it goes through a different process. Obviously, it's going to have to go through the process of getting to the National Conference of Insurance Commissioners. Then that body, whatever their processes are, and, of course, we don't know if they have open meetings law. They're not subject to any state laws or rules or regulations; they're just subject to their own bylaws. But whatever those are, we'll trust that they're good, and some day they may not be so good, but we'll trust that they're good today. They're going to have to go through the process of getting some kind of majority at that level before they change the law. So you don't put in a bill and you decide, well, by golly, I'll go talk to our Insurance Commissioner and ask him to take that up to the National Conference of Insurance Commissioners and get the job done. Well, and you go over there and talk to the Insurance Commissioner and he doesn't agree with you. Well, I guess it's just too bad for you. You don't make the laws anymore; he makes the laws. Or maybe you get a different reaction. Maybe he says, gee, Senator Janssen, you're right, that needs to be changed, I'll take it up but, you know, I got to...got to check with the Governor first because I work for him. And he checks with the Governor and the Governor says, no, I don't...I don't agree with that. So who has the power to make laws now? Do we or does the Governor? And even at that the Governor can't get it done unless he takes it up to that higher level, right? Is he going to take it to the National Conference of Insurance Commissioners? Why would he do that? Why doesn't he take it...he'll take to the people who make the decision--the National Governors Conference--because they're the one that are going to direct all the commissioners as to whether they should agree or not agree to some change in this particular area of law. So we're starting a whole new thing here and we're the losers. The State Legislatures are the losers and it's turning legislative power over to the executive branch of state government, and it's wrong. It's wrong. I'd rather give it back to the federal government than to let the federal government work us into a process by which we turn legislative power over to the executive branch at the state level. I don't know what the right answer is, but I pose it to you as a

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question--isn't it worth considering? And what this amendment says is that: "The Executive Board of the Legislative Council shall study the problem of future state legislative prerogative with respect to the Insurance Producers Licensing Act, enacted by this legislative bill under the pressure of the federal Gramm-Leach-Bliley Act, and recommend to the Legislature those changes or initiatives which would best preserve the power of the Legislature to control its own law in this area." The Clerk of the Legislature shall send a copy of this section to each of the Nebraska representatives in the Congress of the United States. It is the intent of the Legislature to express by this action its strong disagreement with the coercive strategy of the Gramm-Leach-Bliley Act which in practical effect seriously curtails state legislative initiatives and prerogatives in this area. Let the Exec Board look at it and let them make a recommendation to us as to how we should react. There are other ways of doing this. At least, for example, if that body up there who is deciding the matter was the National Conference of State Legislators and we appointed...this body appointed a member to that group, at least we're still making the law, albeit directly and with loss of power, but at least by that mechanism it's not turned over effectively to the executive branch. So there are other alternatives out there. I don't know which is the best alternative, but what's happening right now is bad, and if we go down without a battle, if we go down with just a whimper, bring it on. It will be coming on in one federal act after another. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. For debate on the Beutler amendment to LB 51, Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I have a rather good deal of sympathy for Senator Beutler's issue that he's raised for us. I think he's framed it correctly in the sense that he describes it as a loss of legislative prerogative in a real sense. That is to say nothing has changed in our ability to pass laws, but there are consequences if we don't pass certain kinds of laws, consequences that I don't think are in our long-term best interest. I think Senator Beutler has described this is a new and more, perhaps, pernicious alternative than others. I think of it as a variation of an old

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one, and that is the federal government coercing states into doing what the federal government wants. Whether that's a new wrinkle to an old face (laugh), a new leaf in an old book, I don't know. I think Senator Beutler describes it as new; I would describe it as old. I think what he's complaining here is the strong disagreement with a coercive strategy of the federal government. It's .8 (sic-- .08) done over again. It is Health and Human Services money done over again. Do what we want or we'll pull the rug out from you and there will be bad consequences. Normally, it's money. Here it's pulling back the ability to regulate. I think it does shift power. I see it, however, as ultimately going to the federal government as opposed to the National Governors Conference but, be that as it may, my recommendation to the body is this. If you feel as Senator Beutler feels, do it in a resolution and do it in the form that we normally do. Create a study, if you want, by the Executive Board, that recommends changes. Understand what this amendment says. It says, the Executive Board shall have a study. We do that by resolutions. We don't need to write it into substantive law. It says the Executive Board should make recommendations..we get those from committees all the time; that's an appropriate thing by resolution...shall send a copy of this section to each of the Nebraska representatives in Congress. We send our resolutions to members of Congress. We don't xerox our statute book and send off the xerox of the statutes to Congress very often. We don't say, here's a 40-page bill, but we're going to xerox one page of it and send it to Chuck Hagel to make sure he sees it, but we do that with our interim...not our interim studies, we do it with our resolutions, so I think a resolution is the right way to go. Variations on a theme here. Senator Beutler makes the argument that the federal law empowers the NAIC to do this drafting of the legislation and...and...and that we're...we have to pass the NAIC model. That's not quite right. What we have to pass, according to the feds, is something that is substantially uniform across states. That's our obligation. And the NAIC is specifically mentioned in GLBA, or Gramm...Glam...Gramm-Leach-Bliley, GLBA hereafter, and that is that the federal government doesn't determine what is substantially uniform; they devolve on the NAIC to determine what is substantially uniform. So the decision as to what

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constitutes substantial uniformity is handed over to NAIC. But I think Senator Beutler makes a fair point. Who is logical to create this law if not NAIC? The feds didn't say it, but this quite logically comes from there. It could have come from any place. Any place that would have gotten us 29 states would have been satisfactory, but...

PRESIDENT MAURSTAD: One minute.

SENATOR LANDIS: ...quite logically this is one place to do it. My initial objection to the amendment is that it's in the inappropriate form of an amendment to a substantive law that asks us to do what we regularly do on resolutions. If you'd change it to the resolution I think we can then talk about whether the resolution is wise or a sensible expression of our interests. I am far more concerned about the fact that we have been made, as a nation, an opt-out rule nationally for financial information. I'm much more concerned about the privacy of our financial information and the fact that we can only get out of the exchange of information by making personal contact with our bankers. The bankers controlled the Congress and they got the rule that they wanted so they can trade information about our financial interests and that's what really offends me, and I'd send off a resolution on that topic. But I...

PRESIDENT MAURSTAD: Time.

SENATOR LANDIS: ...wouldn't put it into a substantive law. I object to the amendment. I think the sentiment can move over to the resolutions...

PRESIDENT MAURSTAD: Time.

SENATOR LANDIS: ...and I think there might be a chance to talk about it at that form. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Further debate on the Beutler amendment? Senator Beutler, you're recognized to close.

SENATOR BEUTLER: Senator Maurstad, members of the Legislature,

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let me say that the part that I disagree with Senator Landis about, I think, is the newness of this approach. This is very different because it doesn't take federal power back; it creates a whole new Legislature out there that's not us and it's not them. It's the National Conference of Insurance Commissioners or, rightly understood, it's the National Governors Conference. Senator Landis didn't say that there was anything technically wrong with the amendment or advising the study this way or sending notice to the federal representatives in this manner, because there's nothing technically wrong with it in that respect. Senator Landis is correct, of course, as those of us who have been here for even a short period of time know, typically we do this with a resolution, a separate resolution of some type or another. But new circumstances require new responses, and such an immediate and direct and debilitating attack on state power such as this one I think deserves to be responded to immediately and to the point and in, if possible, in the very manner, in the very bill which constitutes the taking of power. Why not? It's more emphatic, it lets people know how we feel right now, and it puts people on notice that we're going to be working on this problem. I know this is difficult to think about because this is long term. This is not immediate. This is process. This is not substance. But that which is process will become substance to you some day when you want to change this for substantive reasons and the process doesn't allow you to. So I'm not withdrawing this amendment. I think it's important to do it now and if the amendment is defeated I will put up before you the opportunity to do it by resolution. I think it's very important, but I hope you will not miss this opportunity to do it in the way...in a way that means the most, by adopting the amendment right now. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. The question is the adoption of AM0564 to LB 51. Those in favor vote aye; those opposed vote nay. A request for a roll call vote. Mr. Clerk, when you're ready, please call the roll. Senator Beutler.

SENATOR BEUTLER: (Microphone malfunction) (inaudible).

PRESIDENT MAURSTAD: The question is, shall the house go under

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call? Those in favor vote aye; those opposed vote nay.
Mr. Clerk, please record.

CLERK: 23 ayes, 0 nays, Mr. President, to place the house under call.

PRESIDENT MAURSTAD: The house is under call. Would unauthorized personnel please leave the floor. Would members please return to the Chamber and record your presence. The house is under call. Senator Hilgert, Senator Suttle, the house is under call. Senator Pedersen (phonetic), could you please check in? Thank you, Senator. Members, if you could please return to your desks. Members, you are voting on the Beutler amendment to LB 51. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal page 704.)
15 ayes, 27 nays, Mr. President.

PRESIDENT MAURSTAD: The amendment is not agreed to. Further debate on the advancement of LB 51? The call is raised. Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 51 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 51. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, with respect to LB 53, Senator Erdman, I have E & R amendments first of all, Senator. (AM7028, Legislative Journal page 533.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the adoption of the amendments to LB 53.

PRESIDENT MAURSTAD: Question is the adoption of the E & R amendments. Those in favor say aye. Those opposed nay. The amendments are agreed to.

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CLERK: Mr. President, Senator Landis, I have AM0250 in front of me, Senator. (Legislative Journal page 536.)

PRESIDENT MAURSTAD: Senator Landis, you're recognized to open.

SENATOR LANDIS: Want to withdraw that one.

PRESIDENT MAURSTAD: The amendment is withdrawn.

CLERK: Senator Landis would move to amend, Mr. President, with AM0339. (Legislative Journal page 571.)

PRESIDENT MAURSTAD: Senator Landis, you're recognized to open on AM0399.

SENATOR LANDIS: Thank you, Mr. Lieutenant Governor, members of the Legislature. I was shocked and amazed this morning to arrive and find this clutch of senators around my office. They said they had been there about since 7:15 this morning, about 12 of them, and they said that they had been reading this bill and that on page 49 that there was a problem with some words on line 25 and 26. I would guess 12-15 of my colleagues, they pointed out that the existing language said that notice shall be set forth immediately above the place at which the borrower signs the contract in at least ten point type, and these 10 or 12 senators that were there this morning about 7:15 said, no, no, no, it shouldn't be that the borrower signs the contract, it should be that the borrower signs the loan brokerage agreement. What was I thinking of? And I had to say that I was...I was sorry, that I didn't know how I had overlooked that kind of a thing, that I wanted to respond to my colleagues, that it would never happen again, and that I wanted to thank them from their sharp-eyed perception of that misstatement and I was totally wrong; they were totally right; and that before that anybody could have their oatmeal at the breakfast place downstairs I'd have an amendment up here and change the phrase "signs the contract" to "signs the loan brokerage agreement". So, in honoring the pledge I made to those of you who were here over the weekend scouring this bill and discovered that mistake, I informed the caucus, the loan brokerage agreement caucus, that

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met with me this morning, not only my apologies but this my...my fervent attempt to make sure I get back on the good foot and draft this thing as it should. Your oversight is what keeps me sharp. If not the vigilance of the citizens, at least the loan brokerage agreement caucus is at work. I would ask for the adoption of AM0339 and the improvement of the bill to the last measure of perfection which my colleagues demand of me. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Debate on AM0339? Senator Landis, you're recognized to close.

SENATOR LANDIS: (Laugh) Thank you. My staff tells me this would be a good idea and I think it is. I ask for the adoption of the amendment.

PRESIDENT MAURSTAD: Thank you, Senator Landis. The question is the adoption of the Landis amendment to LB 53. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is agreed to. Senator Erdman.

SENATOR ERDMAN: Thank you. I move the advancement of LB 53 to E & R for engrossing.

PRESIDENT MAURSTAD: Question is the advancement of LB 53 to E & R. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 166, no E & R's. Senator Baker would move to amend with AM0386.

PRESIDENT MAURSTAD: Senator Baker, you're recognized to open on your amendment to LB 166.

SENATOR BAKER: Thank you, Mr. Lieutenant Governor and members. This amendment was on the floor as...I think as we adjourned on

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this bill last week. Briefly, what the amendment does is earmark this so-called bonus money that we would get by enacting the .08 law before October 1 of this year. It amounts to...and I've looked at the fiscal note on this and it projects \$1.5 to \$3 million, and, Senator Hudkins, correct me if I'm wrong, but I think we're talking about more like a million dollars, maximum. And when you have this so-called bonus money sitting out there on the table, it seems like everyone wants it. I've heard from lots of people in the last few days dealing with this amendment. I still believe that it belongs to the Roads Operations Cash Fund. This is highway money that we're working with here by enacting this .08 law. It was all dealing with highway, a mandate basically from the federal government. This so-called bonus money, I can see right now if we throw it in the air and wait to see where it comes down there's going to be a big squabble because I...and I've had lots of input from people this morning already again on the thing. I think I'm just going to leave the amendment and see where it goes from there. As the amendment is drafted, it goes to the Operations Cash Fund of the Roads Department, which I firmly believe that's where it belongs. The people...some people are saying let's put it in safety and the MADD folks want some part of it and there's some question about telecommunications funds, and I can see if we don't earmark it we're not going to really know where it goes; and if we do, if we adopt the amendment, it will go to the Roads Operation Cash Fund for road construction. I firmly believe that's where it belongs. So, with that, I'd listen to any discussion and urge adoption of this amendment as a method of earmarking where this so-called bonus money...this is only the money we earn through an incentive program that is a result of passing this into law before October 1 of this year. With that, I'd return the rest of my time to the Chair and listen to the discussion. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Baker. Senator Wehrbein, you're recognized on the Baker amendment.

SENATOR WEHRBEIN: Mr. Speaker and members of the body, I would be interested in Senator Bromm's reaction to this. I...I was interested in this when we closed the other day and I'd kind of forgotten about this coming up today, but I am concerned that

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this takes away some...some flexibility in Department of Roads, especially since they can't use it for highway safety. If I see it and/or highway safety projects...Senator Baker's amendment takes that ability away and simply goes to road construction. I'm concerned that this amendment does focus just a little bit more or puts a little bit too much emphasis on road contracts. It isn't that I don't have a problem with roads. It's just that I question whether this amendment is necessary and that the roads really should have the flexibility to use it for highway safety also, which is really the crux of the mandate in the bill, going from .10 to .08. I was hoping Senator Bromm might react to what the committee thought, or what his reaction was. Did you hear what I was saying, Senator Bromm? I was wondering why the...I don't know whether you discussed this in committee or not about the man...this amendment mandating that this money go to the road construction rather than highway and/or safety projects, as...as proposed in the original bill, and I wonder if you had a comment on it as Chairman of the Transportation Committee.

PRESIDENT MAURSTAD: Senator Bromm.

SENATOR BROMM: Thank you, Senator Wehrbein. I didn't think we'd get on this bill quite this quickly. I apologize. I just slipped out for a minute. As a committee, we did not discuss this amendment, so I can't represent that. I can say that in my...in my judgment I think we're better off to leave ourselves some flexibility. I support highway construction, and all the money we can get into that I'll certainly be supportive of, but I don't know if we have all the facts to make a judgment on the priority of the use of those funds and so I...I'm not going to be supportive of the amendment. Do you want the rest of your time back or...?

SENATOR WEHRBEIN: I'll come on again. I...if you're done, that's all.

SENATOR BROMM: I've got a couple more comments if I catch my breath.

SENATOR WEHRBEIN: Okay, I'll let you have my time if you're

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not...

SENATOR BROMM: Yeah.

SENATOR WEHRBEIN: I'll make a closing comment. I feel the same way. It may be a philosophical thing as much as a serious difference of opinion, but it just seems to me department...I've not had any contact with Department of Roads, but it seems to me the flexibility is more...is wider in the original bill than it is with this amendment and, for the sake of that type of flexibility that Department of Roads have. Point 08 is a road safety issue, it looks like to me. That's the reason for the mandate. It seems to me to make sense to give wider ways for them to use that money and promote road safety is more appropriate, so I will oppose the amendment at this point also. And if I have time left on my next bill, I would give it to Senator Bromm, if he hasn't punched in.

PRESIDENT MAURSTAD: Thank you, Senator Wehrbein. Senator Bromm, you're recognized.

SENATOR BROMM: Okay. Thank you, Senator Wehrbein. I would just say that under the laws that exist and the parameters under which this money would be received, it could be used for road construction or it could be used for some safety projects. It has been suggested to me that we'll be searching for money for our statewide communications effort, which is a safety effort, and that that is another option for which the money could be used. And so I would just rather leave the judgment call on that to the Department of Roads in conjunction with the administration and all of the safety efforts that I know are being contemplated. Maybe the amendment makes it more palatable for some people to support the bill. I don't know that. I can't judge that. But I would hope that we would do .08 for .08's sake and for the benefit or the advantages we see of having .08. We certainly, if we're going to do it, I think can benefit from having the incentive funds. But I'd rather leave our decision making open on how to use that money when we know what all the options are, and determine where the greatest need is. Thank you.

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PRESIDENT MAURSTAD: Thank you, Senator Bromm. Senator Baker, you're recognized to close.

SENATOR BAKER: Thank you, Mr. Lieutenant Governor. Members, this also is not a issue that I'm going to go to the mat on, I guess. It does eliminate some flexibility and earmarks this roughly million dollars, I believe, and it is kind of a judgment call. It's an interesting scenario when you have a million dollars of what I'm calling bonus money or incentive money here that everyone wants it, of course, and everyone has an idea about where to...what they're going to do with it and so on. And I also have been alerted to the fact that there's some talk about using this for the statewide communications network and, to be honest with you, we have begun to do some work on that. That's going to be a major ticket item. I've worked with several people on this so we...we do have some alternatives here and it's...a million dollars is going to be a start on that, but it's certainly not going to cover the whole thing. So what this boils down to is whether you want to earmark this...this million dollar bonus money, incentive money, to Department of Roads Cash Fund, road construction, or whether you want to provide some flexibility and see where it lands. It's kind of like throwing it in the air and see who can pick up the million dollars fastest. So, with that, we're just going to have to determine where this body wants to go with the million dollars and how much flexibility we want to allow with it. So, with that, I'd urge adoption of my amendment and we'll see what happens. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Baker. The question is the adoption of the Baker amendment to LB 166. Those in favor vote aye; those opposed vote nay. Voting on the Baker amendment. Mr. Clerk, please record.

CLERK: 12 ayes, 19 nays, Mr. President, on the amendment.

PRESIDENT MAURSTAD: The amendment is not adopted.

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

PRESIDENT MAURSTAD: Senator Erdman.

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SENATOR ERDMAN: Thank you. I move the advancement of LB 166 to E & R for engrossing.

PRESIDENT MAURSTAD: Question is the advancement of LB 166. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 166A, Mr. President. Senator Erdman, I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the advancement of LB 166A to E & R for engrossing.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the advancement of LB 166A. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 225. Senator, I do have E & R amendments. (AM7029, Legislative Journal page 547.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the adoption of the E & R amendments to LB 225.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments to LB 225. Those in favor say aye. Those opposed nay. The amendments are agreed to.

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

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the advancement of LB 225 to E & R for engrossing.

PRESIDENT MAURSTAD: Senator Chambers, you're recognized on the advancement of LB 225.

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SENATOR CHAMBERS: Mr. President, members of the Legislature, I simply want to go on record as continuing to be strongly opposed to this bill and bills of this type. However, I lost the main battle on General File, so I do not intend to engage in an extended debate. I believe that the record that I made on General File will make it clear why I'm opposed to this bill. I believe that I pointed out defects in the bill and the flawed philosophy behind it, so I simply want my opposition to be recorded at every stage of this bill's consideration. Therefore, I'm going to ask for a machine vote when we get around to doing that.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Further debate on the advancement of LB 225? Members, the question is...a record vote or a machine vote has been requested. The question is the advancement of LB 225. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 27 ayes, 3 nays, Mr. President, on the advancement of LB 225.

PRESIDENT MAURSTAD: The bill is advanced. Mr. Clerk.

CLERK: LB 225A. Senator, I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 225A to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 225A. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 244. Senator, I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. Lieutenant Governor. I move the advancement of LB 244 to E & R for engrossing.

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PRESIDENT MAURSTAD: Thank you, Senator. The question is the advancement of LB 244. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Senator, I have LB 244A. I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: I move the advancement of LB 244A to E & R for engrossing.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the advancement of LB 244A. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 245, Senator, I do have E & R amendments first of all. (AM7030, Legislative Journal page 549.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: I move the adoption of the E & R amendments to LB 245.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the adoption of the E & R amendments. Those in favor say aye. Those opposed nay. The amendments are agreed to.

CLERK: Senator Beutler would move to amend with AM0282. (Legislative Journal page 562.)

PRESIDENT MAURSTAD: Senator Beutler, you're recognized to open on your amendment to LB 245.

SENATOR BEUTLER: Mr. Clerk, let me ask Senator Bromm a question quickly. Senator Bromm, I think you have a substitute amendment, do you not, that encompasses this particular amendment?

PRESIDENT MAURSTAD: Senator Bromm.

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SENATOR BROMM: Yes, Senator Beutler, I do, and it's just filed right behind yours now.

SENATOR BEUTLER: Okay.

SENATOR BROMM: It includes your amendment and then the language about receiving bequests or gifts or grants to fund the project.

SENATOR BEUTLER: Mr. Clerk, I'd withdraw my amendment and await Senator Bromm's amendment.

PRESIDENT MAURSTAD: The amendment is withdrawn. Mr. Clerk.

CLERK: Senator Bromm, AM0508, Senator. (Legislative Journal page 706.)

PRESIDENT MAURSTAD: Senator Bromm, you're recognized to open on AM0508.

SENATOR BROMM: Thank you, Mr. President, members of the body. Senator Beutler just withdrew an amendment which comprises the first section of this amendment and, basically, that indicates that the state shall not participate in any rail project or appropriate funds for any rail project proposed by the Midwest Interstate Passenger Rail Compact unless the specific project is authorized by the enactment of a legislative bill by this body. A rail project would include the planning phase of such a project. There were concerns discussed and expressed on General File about whether we could get drawn into supporting a project just by virtue of being a member of the compact and be required to appropriate large sums of money for either planning or construction of a project that we...that we didn't favor and so, in response to that, Senator Beutler proposed this idea and I think it's a good one. At the same time, we also discussed, and I had mentioned on General File, that we have had an expression of interest in donating or providing some funds for the state's compact membership fee which we had estimated to be \$25,000 or perhaps a lesser amount if more states wind up joining, and progress in that area is...is being made. Other states are taking action, it seems, pretty promptly. So Section 4, or the

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second section of this amendment, provides that the...that we are establishing a Midwest Interstate Passenger Rail Compact Cash Fund for the purpose of receiving not only appropriations from the Legislature but also gifts and grants or bequests from any source, including federal, state, public or private, to be used in carrying out the passenger rail initiatives under the Midwest Interstate Passenger Rail Compact. So, rather than put this on LB 244, which was the compact itself which I have felt that we need to keep that pretty clean in order for that compact to be a mutual agreement between the states, we have inserted this language or proposing to insert this language into LB 245, which is a related bill which extends the deadline and the date for doing the study on the corridor between Omaha and Lincoln. So, with that, I would yield any balance of my time, if he would like it, to Senator Beutler. He waives off, so thank you, Mr. President. Yield the rest of the time to the Chair.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Further debate on the Bromm amendment? Senator Bromm, you're recognized to close. Senator Bromm waives closing. The question is the adoption of AM0508 to LB 245. Those in favor vote aye; those opposed vote nay. Please record.

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

PRESIDENT MAURSTAD: The amendment is agreed to.

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

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the advancement of LB 245 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 245. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 375, Mr. President. Senator Erdman, E & R amendments first of all. (AM7032, Legislative Journal

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page 549.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: I move the adoption of the E & R amendments to LB 375.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments. Those in favor say aye. Those opposed nay. The amendments are agreed to.

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

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the advancement of LB 375 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 375. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 376, Senator Erdman, I do have E & R amendments first of all, Senator. (AM7034, Legislative Journal page 562.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the adoption of the E & R amendments to LB 376.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the adoption of the E & R amendments to LB 376. Those in favor say aye. Those opposed nay. The amendments are agreed to. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to amend. (AM0320, Legislative Journal page 571.)

PRESIDENT MAURSTAD: Senator Chambers, you're recognized to open on AM0320 to LB 376.

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SENATOR CHAMBERS: Mr. President, members of the Legislature, because this is a bill in which I have no interest, I'm sure that the amendment is the one that I refer to as the Chambers amendment, which indicates that whatever federal rule or regulation is being incorporated will be as of the effective date of this act. I ask that the amendment be adopted.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Discussion on the Chambers amendment? Senator Foley.

SENATOR FOLEY: If Senator Chambers would yield to a question.

PRESIDENT MAURSTAD: Senator Chambers, would you yield?

SENATOR CHAMBERS: Yes, I will.

SENATOR FOLEY: Senator, I appreciate the fact that you continue to offer this amendment, the same amendment on quite a number of pieces of legislation. I appreciate why you're doing it and I just can't help but wonder, as a new member of this body, if there isn't an more generic way of just uniformly getting that language into these bills on a regular basis without your having to do this time and time again.

SENATOR CHAMBERS: Well, Senator Foley, I had thought about that too. What would have to be done, perhaps, is to draft a bill which would...but, no, here...let me tell you the problem. Some senators have a strategy when they put things in a bill or leave things out of a bill, so I had even thought about saying that when a piece of legislation is being construed, any time it refers to a federal statute or regulation or whatever, it means as of the effective date of that bill, but that is putting something into a senator's bill that he or she may not want. Sometimes senators offer bills which they don't really think ought to be put into law but somebody brings it to them. So, by leaving out a significant element, that becomes a basis for saying the bill ought not be enacted at this time because it contains a flaw. So I decided, rather than put into the statute an obligation on the bill drafter or those who are going to construe the law something that a senator may not want in his or

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her bill, it would be best to do each one of these as it comes up. Then, if the senator, whose bill it is, says he or she does not want that amendment added to the bill, then I will not offer the amendment to that particular bill.

SENATOR FOLEY: Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Foley. Further discussion on the Chambers amendment? Senator Chambers, would you like to close? Senator Chambers waives closing. The question is the adoption of the Chambers amendment to LB 376. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment.

PRESIDENT MAURSTAD: The amendment is adopted. Mr. Clerk.

CLERK: Senator Wehrbein would move to amend. (AM0394, Legislative Journal page 637.)

PRESIDENT MAURSTAD: Senator Wehrbein, you're recognized to open on AM0394.

SENATOR WEHRBEIN: Thank you, Mr. President, members of the body. This is generally a corrective amendment to a bill that was passed a year ago allowing implements of husbandry on the farm, in this case it's sprayers, to be transported on highways with a permit, so it's a permit process. When we changed it a year ago it was for sprayers in this case, implements of husbandry. We changed the length part of the bill but we did not change the width part of the bill, and this amendment seeks to insert the words "implements of husbandry" in addition to "combine", which is already in the...in the statute. So if you'll look on page 11 of LB 376, this adds the words "other implements of husbandry" in line 10, and also "other agricultural work". So it...obviously, a combine is the only thing that harvests. Implements..."other implements of husbandry" would be included in the width section of this, as well as the length, once again which we've already done. So

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this is an effort to...to reconcile the statute so that it is correct throughout its entirety as far as length and width, and will help in many situations where the permit process is being followed and carrier enforcement has stopped. They're all right on the length but, because we didn't change this in the width area of the statute, they have been...and up until now, have been given warning. It's only during daylight hours. It doesn't change the permit process or anything like that. It simply reconciles the two so that we have implements of husbandry in addition to combines in the statute for the permit process.

PRESIDENT MAURSTAD: Thank you, Senator Wehrbein. Debate on the Wehrbein amendment? Senator Bromm.

SENATOR BROMM: Thank you, Mr. President. I would ask whether Senator Wehrbein would yield to a question or two.

PRESIDENT MAURSTAD: Senator Wehrbein.

SENATOR WEHRBEIN: (Microphone malfunction) Yes.

SENATOR BROMM: Yeah, Senator Wehrbein, I think in proposing this amendment you've made some effort to determine whether or not the insertion of this language would cause some difficulty in noncompliance with federal regulations. You've attempted to find that out?

SENATOR WEHRBEIN: Yes.

SENATOR BROMM: And have you received a definitive answer yet?

SENATOR WEHRBEIN: That's right, we haven't been able to receive a definitive answer.

SENATOR BROMM: And what I have asked Senator Wehrbein, prior to this amendment coming up today, is...is if we're able to determine that the definitive answer is that this is a problem with regard to federal regulations of motor carriers and so forth, whether he would join in pulling the amendment on...on Final Reading. I'd ask him again if he would confirm that he

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would?

SENATOR WEHRBEIN: And I'm willing to do that.

SENATOR BROMM: Okay. I think...I think that most likely that if this amendment is adopted and if...if it is a problem then...then there are other problems in this particular area of the statutes as well. I suspect that...that...that our length exception would be a problem as well as the width, but we haven't determined that it is a problem, so I am a little bit in a quandary but I, with Senator Wehrbein's assurances, and I know his word to be good, I...I'm going to support the amendment and suggest that we advance the bill and we'll seek definitive answers. I understand why he's doing it. It's sort of useless to provide that you can transport this equipment with a permit during daylight hours and allow it to be done with a length exception but then not have a width exception and so, technically, they're still in violation. That...that makes no sense. So I do appreciate him bringing the amendment and we'll continue to research it and come up with some answers before Final Reading. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Senator Chambers, on the Wehrbein amendment.

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

SENATOR WEHRBEIN: Yes.

PRESIDENT MAURSTAD: Senator Wehrbein.

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Senator Wehrbein, I didn't have a chance to look at the language of this bill, so are we talking only about state highways?

SENATOR WEHRBEIN: Yes.

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SENATOR CHAMBERS: Because these implements cannot be on the interstate anyway.

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Now, what is it that your bill does that wasn't currently in the law?

SENATOR WEHRBEIN: Well, I'll give you just a little bit of history. What...we already have in the law the permitting process for combines, both length and width. Last year I added implements of husbandry because sprayers that are commonly used today, huge sprayers in agricultural operations, I simply injected the words "implements of husbandry" in addition to "combines", because they are both large machines. When we did that last year we only did in the length section; we did not do the width section. Both length and width are a problem in these special permit transporting during daylight hours.

SENATOR CHAMBERS: Now, when one of these sprayers is transported, is it towed or is it sitting on another vehicle?

SENATOR WEHRBEIN: This case it's on...I think it'd be all right without being towed. It's...this is on a transporting vehicle.

SENATOR CHAMBERS: So what would the maximum length likely be? Just an estimate.

SENATOR WEHRBEIN: Oh, 60-65 feet.

SENATOR CHAMBERS: So if I'm on one of those roads and I want to go around, I better make sure there's a whole lot of space between me and the oncoming traffic before I would try to go around.

SENATOR WEHRBEIN: Yes, this would probably be the maximum. That's extraordinarily long, but it could go up to that high.

SENATOR CHAMBERS: How great a distance may these implements travel?

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SENATOR WEHRBEIN: Twenty...twenty-five miles.

SENATOR CHAMBERS: How long?

SENATOR WEHRBEIN: Twenty-five miles.

SENATOR CHAMBERS: Because I'm not really familiar with all of this, I'm not going to vote for your amendment and I'm not going to vote for the bill, and that does not bespeak opposition. It bespeaks my lack of understanding, but also a question in my mind as to the poli...oh, that's all I will ask you, thank you...a question in my mind as to the policy of implements of this magnitude being on the highway even during daylight hours. It is not on a regular basis that I drive state highways, but I have had occasion to do so. In some instances, a self-propelled vehicle, not one that's being towed or lugged or carried or transported by another, is on the state highway, a piece of farm equipment. They don't always move very rapidly and I don't mean at the speed of a motor vehicle. They do not always get as far to the right, if you're traveling in the same direction they do not move as far to the right as they're able to do, and there's nothing you can do about it if you're a driver like me. You're not going to get up and tailgate and honk the horn or match your small vehicle against that one and try to run into the side of the vehicle. So this is an area about which I'm going to have to do a lot of thinking, but I'm only one vote. My vote is not going to be of any consequence on this bill, but I still want the record to demonstrate concerns that I have because in the future I may take a greater interest and even see the need to offer some kind of more restrictive legislation. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Senator Cudaback, on the Wehrbein amendment.

SENATOR CUDABACK: Mr. President, members, I'd like to ask Senator Wehrbein a question, please, if he would.

PRESIDENT MAURSTAD: Senator Wehrbein.

SENATOR WEHRBEIN: Yes.

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SENATOR CUDABACK: Senator Wehrbein, we all come up on machinery, and I live in a rural area myself and I pull machinery as well, but I've often wondered when I come up behind a machine in the so-called evening, in the dusk or whatever, is there any type of rule or regs or whatever that says that there has to be a flashing light on the edge, on the very edge, of where that machinery hangs over the lane, so to speak? Or is there had to be a red reflector? Is there anything...what...what controls that, regulates that?

SENATOR WEHRBEIN: I think that's in statute too about flashing lights. Now, for wider machines, they're in this same section if you'll see, it says a well-lighted pilot vehicle or flag person during hours of darkness...

SENATOR CUDABACK: Okay.

SENATOR WEHRBEIN: ...when clearance right...light requirements of section are fully complied with. So I don't know what specific area you're talking about. This is for daylight. This is on a transportation vehicle.

SENATOR CUDABACK: This is strictly on daylight.

SENATOR WEHRBEIN: Yes. I mean I don't...this is...there's a...this is a whole big section of law to be looked at. This is just the one specific thing...

SENATOR CUDABACK: Okay.

SENATOR WEHRBEIN: ...for daylight transportation on another vehicle,...

SENATOR CUDABACK: Now was...

SENATOR WEHRBEIN: ...on a "transportating"...transporting vehicle.

SENATOR CUDABACK: And they could not do this at night, traveling, even...

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SENATOR WEHRBEIN: This does not...this does not speak to that, no.

SENATOR CUDABACK: Yeah, even though they had somebody following or whatever, they could not do that.

SENATOR WEHRBEIN: That is in the statute in another area for wider implements. This is limited to 15 feet.

SENATOR CUDABACK: Yeah, I just wanted to make that clear. I know even for the farmer's protection we need to make that very clear in statutes, if not in a rule, or not (inaudible) rule not in statute, that we do something like this here. Because last evening I come up on a machine that this farmer was pulling and it was absolute no tail light, there wasn't a flashing, there was nothing, and you know...

SENATOR WEHRBEIN: Well,...

SENATOR CUDABACK: ...it calls for, and for the farmer's own protection, and maybe we can work on this.

SENATOR WEHRBEIN: Well, you're supposed to have SMV signs too, and that probably is some violation of the law occasionally.

SENATOR CUDABACK: Yeah. I think we need to work on it. I'm for your amendment, but we need to work on it, make it even more safety. Thank you.

PRESIDENT MAURSTAD: Senator Wehrbein, you're recognized to close.

SENATOR WEHRBEIN: Well, simply say if this does run us afoul of any federal regulations, I'm certainly willing to pull it off. We've been trying for the last week, actually, to see where we're at on this. On the other hand, I want to reiterate in a state like Nebraska, which is heavily agriculture, our machines are getting bigger and bigger, not necessarily to my enthusiasm. But moving between fields today is getting more and more difficult. You can't be on county roads all the time, which I think most people will certainly pursue county roads if at all

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possible. But many times you have to get on state highways because of access and you're locked in to going a specific way and there's no other alternative. This is a Monday through Friday situation; it's not on the weekends. And I think it's a recognition that there's a dilemma out there for many farmers moving between their fields. It isn't to say that we shouldn't be safe. It isn't to say that we're not supposed to have all the things we should have in terms of safety features, flashing lights, clearance lights, pilot vehicles, whatever, when the time is. This is, yeah, the one of the reasons I decided to bring this forward, because I don't want to be in violation of federal law. The point is if this is a problem we've already gone there a year or two ago by...when we changed the length restriction, so this will not be, in itself, the problem. So I hope that you can support this and recognize that this is a practical problem in the country and this should help to solve that. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Wehrbein. The question is the adoption of the Wehrbein amendment to LB 376. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 27 ayes, 1 nay, Mr. President, on the adoption of Senator Wehrbein's amendment.

PRESIDENT MAURSTAD: The amendment is agreed to.

CLERK: Nothing further on the bill, Mr. President.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. Lieutenant Governor. I move the advancement of LB 376 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 376. Those in favor say aye. Those opposed say nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 387. No E & Rs. Senator Chambers would move to amend. (AM0326, Legislative Journal page 636.)

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PRESIDENT MAURSTAD: Senator Chambers, you're recognized to open on your motion to LB 387.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this again, and Senator Foley, is that amendment which makes it clear that the reference to whatever federal rule or regulation it is will be adopted as of the effective date of this bill. That's all the amendment does.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Debate on the Chambers amendment? Question is the adoption of...Senator Chambers, would you like to close? Question is the adoption of the Chambers amendment to LB 387. Those in favor vote aye; those opposed vote nay. Please record.

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

PRESIDENT MAURSTAD: The amendment is adopted.

CLERK: I have nothing further on the bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 387 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 387. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 165, I do have E & R amendments, Senator. (AM7031, Legislative Journal page 562.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 165.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the

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adoption of the E & R amendments. Those in favor say aye. Those opposed nay. The amendments are agreed to.

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

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 165 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 165 to E & R. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 155, Senator, I have no amendments to the bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 155 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 155. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 163. Senator, I have no amendments to LB 163.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 163 to E & R for engrossing.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the advancement of LB 163. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 129, Senator, no amendments to the bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the

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advancement of LB 129 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 129. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 472, Senator, I do have E & R amendments to that bill. (AM7035, Legislative Journal page 563.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: I move the adoption of the E & R amendments to LB 472.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments. Those in favor say aye. Those opposed nay. The amendments are agreed to.

CLERK: I have nothing further to LB 472, Senator.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 472 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 472. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 146. Senator, I do have E & R amendments to the bill. (AM7035, Legislative Journal page 563.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 146.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments to LB 146. Those in favor say aye. Those opposed nay. The amendments are agreed to.

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

PRESIDENT MAURSTAD: Senator.

SENATOR ERDMAN: Mr. Lieutenant Governor, I move the advancement of LB 146 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 146. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 418, Senator, I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 418 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 418. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 192, I do have E & Rs, first of all, Senator. (AM7037, Legislative Journal page 619.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: I move the adoption of the E & R amendments to LB 192.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments to LB 192. Those in favor say aye. Those opposed nay. The amendments are agreed to.

CLERK: Senator Chambers would move to amend. (AM0318, Legislative Journal page 621.)

PRESIDENT MAURSTAD: Senator Chambers, you're recognized to open on AM0318 to LB 192.

SENATOR CHAMBERS: Mr. President, members of the Legislature,

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after a great contentious struggle between the two Titans--myself and Senator Connealy--we have agreed that this amendment should be adopted. It is what I have come to call the Chambers amendment, which refers to the incorporation of federal rules, regulations and whatnot. I ask that you adopt this amendment. By the way, Senator Connealy won the battle, but I won the war. (Laugh)

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Further discussion? Senator Chambers, you're recognized to close. Senator Chambers waives his closing. The question is the adoption of the Chambers amendment to LB 192. Those in favor vote aye; those opposed vote nay. Voting on the Chambers amendment. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is agreed to.

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

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 192 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 192 to E & R. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, next bill, LB 257. No E & Rs. Senator Jensen would move to amend with AM0466. (Legislative Journal page 708.)

PRESIDENT MAURSTAD: Senator Jensen, you're recognized to open on your amendment to LB 257.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, AM0466 represents the contents of LB 693 (sic--LB 639) introduced this session on behalf of the Nebraska

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Health and Human Services System. I want to thank Senator Wehrbein for his willingness to consider this issue as an amendment on LB 257, which also concerns itself with Medicaid. Just last month, the Nebraska Supreme Court issued an opinion relating to current law governing Medicaid estate recovery. Current law, in Section 68-1036.02, provides that the estate of a deceased Medicaid recipient is indebted to the state for the amount of medical assistance paid to the recipient during their lifetime under certain circumstances: if the recipient was 55 years or older when the medical assistance was provided; or, B, is the recipient was institutionalized or when they applied for medical assistance, whichever is later, that the recipient couldn't reasonably be expected to resume living at home. Last month, the Nebraska Supreme Court decided a case in Estate of Tyrz. In that case, the court said that the debt did not occur until the death of recipient because there was no specific language in the statute that said the debt occurred during the person's life. This amendment simply clarifies that debt occurs during the life of a Medicaid recipient but is held in abeyance until death. The amendment maintains the status quo in the way the state currently implements the Medicaid estate recovery statute. In other words, this would just keep it at the same status quo that we are right now. With the court's decision, the state would lose approximately one million annually in lost recoveries. I have provided you with a copy of the testimony submitted by the Nebraska Health and Human Services System in connection with LB 639 and the reason for its introduction. I would simply ask the adoption of the amendment. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. (Visitors introduced.) Debate on the Jensen amendment to LB 257, Senator Wehrbein.

SENATOR WEHRBEIN: Yes, Mr. President, members, I just want to say I endorse Senator Jensen's proposed amendment and it's fine with me to be on the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Wehrbein. Senator Jensen, would you like to close? Senator Jensen waives closing. The question is the adoption of the Jensen amendment to LB 257.

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Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 26 ayes, 1 nay, Mr. President, on the adoption of Senator Landis'...I'm sorry, Senator Jensen's amendment. Excuse me.

PRESIDENT MAURSTAD: The amendment is agreed to

CLERK: I have nothing further on the bill, Senator Erdman.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 257 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 257 to E & R. Those in favor say aye. Those opposed nay. The bill is advanced. (Visitors introduced.) Mr. Clerk.

CLERK: LB 257A, Senator Erdman, I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the advancement of LB 257A to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 257A. Those in favor vote aye...say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 193, I do have E & Rs, first of all, Senator. (AM7036, Legislative Journal page 625.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the adoption of the E & R amendments to LB 193.

PRESIDENT MAURSTAD: The question is the adoption of the E & R

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amendments. Those in favor say aye. Those opposed nay. The amendments are agreed to.

CLERK: Senator Connealy would move to amend the bill. (AM0504, Legislative Journal page 709.)

PRESIDENT MAURSTAD: Senator Connealy, you're recognized to open on AM0504 to LB 193.

SENATOR CONNEALY: Thank you, Mr. President. Members, this amendment would make a simple change to the Workforce Investment Act; it's something that we discussed on General File in the E & R amendment, on page 12, line 23, strike the words "presiding officer" and insert "Speaker". Presiding officer language was used in the federal act, and the federal language didn't really take into consideration our unique system of a one-house nonpartisan Legislature. The current Workforce Investment Act is operating under executive order, which had the Speaker appoint members to this board. And it's been determined that the intent for each state would be the leader of their senate. It would fit that. This clarification would strike "presiding officer" and add "Speaker". So I'd ask you to support this amendment.

PRESIDENT MAURSTAD: Debate on the Connealy amendment? Senator Connealy, you're recognized to close. Senator Connealy waives closing. The question is the adoption of AM0504 to LB 193. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is adopted.

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

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 193 to E & R for engrossing.

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PRESIDENT MAURSTAD: The question is the advancement of LB 193 to E & R for engrossing. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 25, Senator, I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 25 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 25. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 25A, Senator, I have no amendments to that bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 25A to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the...thank you, Senator. The question is the advancement of LB 25A to E & R. Those in favor say aye. Those opposed say nay. The bill is advanced. Mr. Clerk.

CLERK: LB 238, Senator, I have no amendments to the bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 238 to E & R for engrossing.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the advancement of LB 238. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 238A, Senator, I have no amendments to the bill.

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PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 238A to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 238A. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 152, Senator, I have E & R amendments first of all. (AM7038, Legislative Journal page 625.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 152.

PRESIDENT MAURSTAD: The ques...thank you, Senator. The question is the adoption of LB...of the amendments, the E & R amendments to LB 152. Those in favor say aye. Those opposed nay. The amendments are agreed to. Mr. Clerk.

CLERK: Mr. President, Senator Beutler would move to amend. (AM0569, Legislative Journal page 709.)

PRESIDENT MAURSTAD: Senator Beutler, you're recognized to open on AM0569 to LB 152.

SENATOR BEUTLER: Senator (sic) Maurstad, members of the Legislature, this is a little amendment that I thought might be helpful in getting information. It's not a problem with the bill or anything, but this is the trauma bill. There is a reporting requirement in the trauma bill from hospitals and aftercare kinds of facilities. And the reporting requirement indicates that you should state the cause of injury. And I was going to add language, this amendment would add language to that little reporting requirement to say the cause of injury and, if known, whether the injury resulted from an accident involving the use of alcohol. I'm interested in gathering as much information as we can about the effects of alcohol on society and all the various costs involved. And I thought that this

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might be helpful to that end. Oftentimes, in an emergency room, law enforcement asks the hospitals, for example, to do alcohol tests and that kind of thing. And remember, all of this is confidential information, it's not individual-specific. But these are the most expensive types of injuries, of course, and so I was interested in having available to us whatever information we could obtain that might indicate that these very serious kinds of injuries involved some alcohol testing at the emergency facility at the same time that they were receiving these people, so that if they did that, if they know, for example, and in many cases they would not know, but if they did know then to record that information also to help us get a handle on what's happening out there with respect to alcohol-related accidents. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. (Visitors introduced.) Debate on the Beutler amendment to LB 152, Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. Members of the body, I really don't have any problem with this. I think it could be advantageous for us to get a little better line on, first of all, what the cause of the injury is, if alcohol is indeed related to that, and then somewhere down the line hopefully we can use that information to determine the exact cost of alcohol in our society today. With that, I would just endorse the amendment. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. Senator Beutler, you're recognized to close. Senator Beutler waives closing. The question is the adoption of the Beutler amendment to LB 152. Those in favor vote aye; those opposed vote nay. Please record, Mr. Clerk.

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

PRESIDENT MAURSTAD: The Beutler amendment is agreed to.

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

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PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 152 to E & R for engrossing.

PRESIDENT MAURSTAD: Thank you, Senator Erdman. The question is the advancement of LB 152 to E & R. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 152A, Senator, I have no amendments to the bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you. I move the advancement of LB 152A to E & R for engrossing.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the advancement of LB 152A to E & R. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk, General File.

CLERK: Mr. President, the first bill on General File this morning, LB 329, a bill introduced by Senator Wickersham. (Read title.) The bill was introduced on January 8 of this year, referred to the Revenue Committee, advanced to General File.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Wickersham, you are recognized to open on LB 329.

SENATOR WICKERSHAM: Mr. President, members of the body, LB 329 is a bill that does three different things, two of them are closely related, the other deals with a different political subdivision. What the bill does with regard to municipalities, and there are two things that it does with regard to municipalities, is, number one, it places occupation taxes within the municipal budget limitations, places occupation taxes within the municipal budget limitations. And then, to make sure that that does not impinge on municipalities, it allows municipalities to gross-up their prior year's budget in the amount of occupation taxes received and then they get to go forward. Now, why would I be bringing that bill that affects

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that particular tax for municipalities in that way? At the current time I think that...well, there may be one or two municipalities that do not levy occupation taxes, but most of them do in varying degrees. The most common occupation tax that a municipality will levy is against a liquor establishment. Now, I'm bringing up that particular occupation tax so that you can quickly distinguish between it and the other kinds of occupation taxes that municipalities impose. The liquor occupation tax is limited by statute in an amount that is double the state licensing fee. That occupation tax on liquor establishments is limited, limited in the amount that can be collected, or limited as to rate, however you want to characterize it. Other kinds of occupation taxes imposed by municipalities are unlimited, they are completely unlimited; they are unlimited as to rate and they are unlimited as to the amount that can be raised. And the primary requirement for their imposition is that they be imposed uniformly. But that is about as far as it goes. There is some...there are some restrictions that you can't impose them on, band concerts that are given by local organizations that are what you would normally deem to be kind of charitable in nature, but otherwise municipalities are largely free to impose occupation taxes. Occupation taxes are commonly imposed, for example, on telecommunication services. Some municipalities impose an occupation tax as a kind of lodging tax; there's an occupation tax on hotel establishments or motel establishments. Most of the time the occupation tax is expressed as a rate and, if you didn't know better, you'd think it was a sales tax. And you've probably seen on some of your bills that little line that says "occupation tax". Usually, it's calculated at a rate on the volume so it looks just like a sales tax. Now, if it was actually a sales tax, however, it would be limited both as to the rate and it would be placed within the budget restrictions so that, if that particular source of revenue grew rapidly, that would mean that the municipality would have to reduce other sources of revenues. So here you have a tax that is imposed in a fashion that makes it look like a sales tax but is not limited in the same way that sales taxes are limited. It is not limited as to rate, nor is it within the budget limits, the spending limits. So the bill proposes, as I've said before, to put that particular source of tax dollars inside the budget limits, but

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to attempt to make the cities whole by allowing them to gross-up their budget for the prior year by the amount of occupation tax collections and let them go forward. Now, occupation taxes in gross have been rising rapidly as a source of revenue for a variety of municipalities, largely due, I think, to the growth in telecommunications. Although they also impose occupation taxes on natural gas carriers, for example, and we may see some growth in that source of revenue, placing those revenues inside the budget restrictions will do two things. One, if that source of revenue continues to grow rapidly, it will push down revenues from other sources, probably property taxes, within the context of a municipality. Secondly, it will reduce any incentive, if you will, that municipalities might have to raise the rate or expand the base unnecessarily. Because right now for municipalities, quite candidly, it is free money, it is absolutely free money, subject to no restrictions, and they can raise as much as they want. And the folks that have to pay the tax are captive, because for the most part they're imposed on services that have to be used. Now you may complain when you get your telephone bill or your gas bill or wherever they've imposed the occupation tax, you might complain, so there is the political check, but in truth in fact we have not treated occupation taxes like we treated other taxes; they're not limited at all. Now the other provision in the bill is one that concerns NRDs, and again it is the gross-up concept. We want to allow NRDs to be held harmless when a source of revenue is no longer available to them. This is the fertilizer tax issue. And, remember, we've had that come before you in a variety of contexts before, people wanting to extend the fertilizer tax, others wanting to replace the fertilizer tax with something else. And I shouldn't call it a tax, it was a fee in the statutes, the fertilizer fee. The fertilizer fee went to NRDs for the provision of water quality programs. The fertilizer fee expired December 31 last year. So the issue now is, where will NRDs go for revenues to replace the fertilizer fee and maintain the water quality programs that they have in existence? The answer from the Revenue Committee, the suggestion from the Revenue Committee is that they can go to the property tax; others still want them to go to different sources, but the suggestion from the Revenue Committee is that NRDs can fund their water quality programs out of property taxes, and they can

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do that without exceeding, with one or two exceptions, the levy limitations. And if we give them the spending authority to do that, they'll be able to do it. So the bill gives them the spending authority to do it and, as I've said, maybe one or two of the NRDs would find themselves at their levy limitation and might not be able to raise locally the dollars that would be necessary to fully replace the fertilizer fee. One of them that could be affected is the Upper Republican NRD, although in pure dollar terms I don't think the effect is very significant, it is significant only in the terms that they would reach their levy limitation, and I think the same thing can be said of the Lower Platte North NRD, which might not be able to, because of levy limitations, fully replace the fertilizer fee, even if we passed LB 329, although all of those discussions are dependent on what valuation growth does in those two NRDs.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: And I think...but the clearest case where an NRD might not be able to replace the fertilizer fee dollars is the Upper Republican NRD. And even with higher than expected growth in values, they might not be able to fully replace the dollars that they are getting out of the fertilizer fee. Now, that's the bill. Senator Beutler has filed two motions and two amendments that I'm aware of, and maybe more by now. So I think we'll get to hear from Senator Beutler.

SENATOR CUDABACK: Thank you, Senator Wickersham. Mr. Clerk.

ASSISTANT CLERK: Mr. President, the first motion on LB 329 is a motion to indefinitely postpone by Senator Beutler. (Legislative Journal page 673.)

SENATOR CUDABACK: Senator Wickersham, you have the option to lay it over or take it up. Take it up? Senator Beutler, to open on your motion to indefinitely postpone.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I'm sorry to come forth immediately with such an aggressive

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motion, but I feel rather strongly with regard to the two aspects of the bill that in the one case of the natural resource districts it's definitely very bad policy, and with regard to the municipalities, although I'm willing to listen, I think it is also unwise policy there. And let me try to go back and tell you what I mean. With regard to the NRDs, basically, what happens when you allow the Enhancement Fund, the old state funds that came down from the state, when you allow those to be picked up as property taxes you're doing the very opposite of everything we've been trying to do. For years and years in this Legislature the pressure has been to reduce property taxes, keep them down, keep them down, and, now, all of a sudden, with regard to more than \$2.5 million of state funding, we're saying, okay, increase property taxes to take care of this. That is bad policy as far as property taxes are concerned. Beyond that, it's not going to solve a problem we need to solve, and, in fact, it's going to make it worse because it will delay action. And what I mean by that is, and I would go back and relate to you a long process of working with the NRDs to get them to take on the job of really protecting our water quality, and in the eighties and in the early nineties they're very, very reluctant to do that. The NRDs are very reluctant to spend property taxes on any kind of true regulatory program. There are a number of reasons for that. First of all, just the general antipathy to the property taxes, but in addition to that the load of property taxes, as we all know, falls heaviest on farmers and ranchers, and we have moved time and again to try to alleviate that in this body, and I have voted, for example, for every one of those. But the fact is, the way the NRDs are structured, they are not one person, one vote, by and large, and so the...the...the favoring of the rural community within the NRD, that part of the community that pays most of the taxes, leads to a situation where it is even more difficult to persuade a governing body to use property taxes to take care of a problem. Let me just give you an extreme example, but it is a very real example. There are two NRDs in the western part of our state, one is the South Platte NRD, and that is the area in the southern...in the southern portion of the Panhandle. And another NRD immediately to its east is the Twin Platte NRD. The South Platte NRD has had a management area, that is an area that they've established to assert further controls in the east...in

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the very eastern most portion of their district. And that particular board has accepted responsibility using, in part, State Enhancement Funds, and they're all the way to what they call a Level III effort to control the increasing pollution of their ground water by fertilizers, but part of their problem is across the eastern border the NRD in the Twin Platte NRD. Now that particular NRD, historically, has had a great antipathy to property taxes. And, if you look on the chart I passed out to you, you will see they have the lowest property tax levy and that's pretty much historically true for them. The Twin Platte recently took the only action they've ever taken with respect to meaningful, in my opinion, quality control. And what they did was to start to monitor the area that is adjacent to the South Platte district, to the west, to see if they had a problem. Now, remember, this is years after the South Platte district started to investigate and knew there was an areawide problem in this area. And in fact it's said that they are even helping some of the farmers in the Twin Platte area. But the South...but the Twin Platte district finally agreed to some monitoring in that area if they could get state funds, the Enhancement Funds to do it. And they got those funds and they did the monitoring. If they had not got those funds, they may still have not done the monitoring. And consider the kind of inequities out there that you're creating for farmers and ranchers. Here those farmers and ranchers in the South Platte area had been called upon to consider a third level of control, and those who are in the same dis...problem district, problem area in the South Platte area have not even got a management area set up much less started to use any property tax money at all to deal with the problem. Now you may say, well, that's just one local board and they don't like property taxes. But everything that experience has told us with regard to the Natural Resources Committee, I think, and I think your experience tells you that property taxes are hated, they are not going to be used to solve the water quality problem. And it's misleading, I think, and...and...and detrimental to our ability to get a handle on this problem to suggest that this mechanism of allowing them to jack up their property tax budgets to take care of this problem just is not going to happen. I've passed out to you a chart that may be of interest to you. If you look at what it takes to replace the state funds by full replacement

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or property taxes, that's column six, you'll see the huge increases that are required in the different districts, the huge property tax increases that are required in order to make this change. Is the Lower Niobrara NRD going to increase property taxes by 61 percent to take care of this problem, 43 percent, 43 percent, 41 percent, 40 percent, and on down the line? Folks, it's not going to happen, it's clearly not going to happen. And then consider whether it's even fair, because this ability is a one-year...a one-year ability to adjust your property tax levy. And the Enhancement Funds, the state funds that you are using at a particular point in time may have been less than you normally would, may have not given you an opportunity to set up a ground water management area, in other words, it may not even be fair...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...as among the districts. So, beyond that problem, with respect again to this aspect of the bill, beyond that problem, of course, there's the problem of the levy limits. The levy limits for NRDs are 4.5 percent. If you look again at this chart you will see that the Upper Republican, which is in the most dire need of these funds, simply can't do it, they can't even come close. If you look down the list, this is column seven, you will see three other districts that are at or over 4.5 percent and several that are getting closer.

SENATOR CUDABACK: Time.

SENATOR BEUTLER: But it's not just a matter...

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Wickersham, as introducer of LB 329, you may speak first.

SENATOR WICKERSHAM: Mr. President, Senator Beutler has handed out a worksheet that indicates to him anyway what percentage increases in property taxes might be required to fund water quality projects and indicates to you what effect there might be on levy limits. I'm not sure, and Senator Beutler, the next time he speaks, may be able to respond. I don't wish you to respond now, but I'm not sure that Senator Beutler grew the

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property tax base. I don't think...it isn't clear to me that he said you're going to have more value in your district, so that would affect your ability to raise money within the levy limits. As you get more valuation you're going to be able to raise more dollars at a given rate, and I'm not sure he grew the tax base, which makes things look a little bit worse than what they will be in actuality. The issue about whether or not you'd have to have large increases in property taxes may look a little bit stunning when you have it as a percentage, but in terms of actual dollars, it probably doesn't amount to much. For example, we did a calculation, if you had four center pivots...four center pivot quarters in Chase County, four center pivot quarters in Chase County and you had to increase taxes for the NRD by 64 percent, you had to increase property taxes for the NRD by 64 percent, how much would the taxes on those four quarters, a full section, go up? Well, the answer is \$58, \$58. Now, does that impose a substantial burden on any of the homeowners? You have a house with \$100,000 worth of value, you have the same increase, the tax is \$10. I don't know that that creates a burden that a local board wouldn't vote to impose, particularly if they saw the need and the viability and the appropriateness of the expenditure. Now, Senator Beutler suggests that, if we do what is in this bill, that water quality programs will go away because the NRDs won't fund them. I think his fundamental argument is that we have to fund them out of state resources or they won't get done. Well, the old funding, as I've indicated before, was from the fertilizer fee. There are a variety of proposals in this Legislature to fund the water quality programs, I think a couple of them are pending, one or more is pending in Natural Resources. I think Senator Beutler has introduced a bill that would cause General Fund dollars to be used for this purpose. Well, if you defeat this bill, you have removed one of the potential funding sources, unless you take an additional step and say NRDs are willing to cut other programs to fund water quality programs with local property tax dollars.

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: If you defeat this proposal, then you are driven to one of the other proposals if you believe, as I do,

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that water quality expenditures are important to the state of Nebraska and important to our future. Clean water is very important to the future of this state, the issue is how it's going...how you're going to fund the programs that tell you whether or not you have clean water, whether the clean water that you have is deteriorating in quality and why, and provide a structure for regulation if you do have a problem. Senator Beutler is implicitly suggesting that that has to be funding by the state, at least that's the way I understand his proposal. He's saying funding has to be by the state. I'm suggesting that funding can be done locally because that's where the problems lie and that's where they can be managed...

SENATOR CUDABACK: Time.

SENATOR WICKERSHAM: ...under our current structure. (Microphone malfunction) ...the opportunity for local funding for local initiatives.

SENATOR CUDABACK: Thank you, Senator Wickersham. We're discussing the motion to indefinitely postpone LB 329. Those wishing to speak on the issue are Senators Bourne, Coordsen, Wickersham, Schrock, Beutler, Landis, and Brashear. Senator Bourne, did you wish to speak to the motion to postpone?

SENATOR BOURNE: Thank you, Mr. President. Members, I always kind of get a kick when we talk about these tax measures (laugh), just kind of goes silent and people drift off. But I have some concerns with this bill, and I don't know if I'm going to support Senator Beutler's indefinite postpone measure, but I want some more information. When I read the bill, like most others I'm not really a tax expert and I thought, well, I better get informed. So I went to my dictionary and looked up what an occupation tax was, and that's a tax imposed upon an occupation or the prosecution of a business trade or profession, not a tax on property. So it seems to me if we're limiting, and I'm going to ask Senator Wickersham a few questions here in a minute, but it seems to me if we're limiting the amount of tax that a municipality or a city can raise through an occupation tax then it's going to shift over to property tax. And maybe I'm not quite understanding this, but that's my sense of it. And so I

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want to ask Senator Wickersham a couple questions, if he would yield.

SENATOR CUDABACK: Senator Wickersham, would you yield?

SENATOR WICKERSHAM: Yes.

SENATOR BOURNE: To start with, you had mentioned in your opening you'd talked about the...you had mentioned a phrase called gross-up,...

SENATOR WICKERSHAM: Um-hum.

SENATOR BOURNE: ...a municipality or city is able to gross-up.

SENATOR WICKERSHAM: Right.

SENATOR BOURNE: Could you further explain that a little bit so as to justify with this.

SENATOR WICKERSHAM: Okay. What a municipality would be able to do is to increase their budget by the amount of funds that they had budgeted to receive from the occupation tax in the prior year, meaning that the effect of that is that they could then spend whatever they would receive in the next budget year from occupation taxes. The bill does not restrict the amount of monies that could be received from occupation tax, it does not do that.

SENATOR BOURNE: Well, but doesn't it place it under the cap where they can only raise 2.5 percent of that budget?

SENATOR WICKERSHAM: That's the spending limitation, and they can raise 2.5 percent or 3.5 percent with an additional board vote. So in that...within that limitation, if you had, for example, a quarter of your dollars currently coming from occupation tax, 50 percent of...50 percent of your dollars coming from property taxes, and 25 percent coming from sales tax, for example, you got a 25, 25, 50 division, and occupation taxes grew so that they were 35 percent of your municipal revenues, you would have to reduce revenues either from sales

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tax, because you could cut the rate, or you would have to cut your revenues from property taxes because it's constrained within the general limitation for all the revenues that you would need to support your budgeted expenditures.

SENATOR BOURNE: So what you're saying is that the occupation tax would go in under the...into the whole budget and then...

SENATOR WICKERSHAM: That's correct.

SENATOR BOURNE: ...the whole budget would then be under the restricted funds and it could increase by 2.5 percent a year, basically?

SENATOR WICKERSHAM: The...the revenues are not restricted, they could...the revenues could still increase at whatever rate they increase. The municipality could change the rate, they...

SENATOR BOURNE: But if the revenues increase, but it's under the restricted funds, it's...it's not spendable money, it's not...

SENATOR WICKERSHAM: It's...it's not extra spending.

SENATOR BOURNE: Okay.

SENATOR WICKERSHAM: It is not extra...it is not extra spending, that's correct.

SENATOR BOURNE: Well, sorry, so if...so if we don't know what cities, or municipalities or villages use this occupation taxes for. So if we impose a limit on this, put it under restricted funds, unless they cut services or something of some nature, they've got to raise the money elsewhere. Is that correct?

SENATOR WICKERSHAM: No, because they're...again, they're allowed to gross-up whatever they're spending that...whatever they're...whatever they have budgeted to expend that dollars for now will go back into their budget base and they'll be able to continue. It will not require them to cut anything that we can think of. They will be allowed to gross-up their budgets as

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though...

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: ...as though the occupation taxes had been within their levy limitations or their spending limitations they will not be affected.

SENATOR BOURNE: Well, I...I guess I don't quite understand how they wouldn't be affected, because I've received letters from both the city of Omaha and I've heard...

SENATOR WICKERSHAM: Okay.

SENATOR BOURNE: ...discussions from the city of Lincoln that both of them are very concerned the impact that this bill have on them. And I would assume, if other cities, municipalities and villages were aware of this, that we'd hear from them, as well. So, how is it that they're concerned and yet you say that they won't be impacted whatsoever?

SENATOR WICKERSHAM: They will be impacted in the sense that they currently have a revenue source that is completely unrestricted and in some cases it has been growing rapidly. And, if the bill is passed, that future growth will cause other tax sources to go down.

SENATOR BOURNE: Okay.

SENATOR WICKERSHAM: That's the way they'd be impacted.

SENATOR BOURNE: You...you keep mentioning these funds are unrestricted. Well, who says...

SENATOR CUDABACK: Time. Thank you, Senator Bourne. (Visitors introduced.) Senator Coordsen, on the motion to indefinitely postpone LB 329.

SENATOR COORDSEN: Thank you, Mr. President. Members of the body, of course, I rise to support the bill and oppose the motion to indefinitely postpone on both of the issues contained

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within the bill and to speak to those separately, I think. First of all, it was an interesting presentation relative to the property tax/fertilizer tax impact. There are a number of us here on the floor of the Legislature who are in fact impacted on both sides of that equation, whether it's a fertilizer tax or whether it's a property tax. The fertilizer tax, of course, would fall totally upon those who are in the business of raising food for the nation; the property tax allows the burden of quality water to be spread more evenly and equitably upon all of the property within a...a natural resource district. You can run but you can't hide from the cost of taking care of whatever environmental problems there might be. One source of...of...and I happen to be a supporter of natural resource districts, by the way, in case there's some misunderstanding. But one of the other sources of income within a budget is the rest of the things that a budget is being spent on, whether that's the state of Nebraska, or whether that's a local natural resource district. The fertilizer tax money is a relatively new addition as a funding source to natural resource districts. It may have resulted in some lesser demand on property tax. Most probably it resulted in funding programs that may not have been funded at the time, perhaps should have been...should have been programs of individual NRDs but weren't. It's an interesting thing because water quality tends to migrate down to only one issue, and that is, is there...are there nitrates in the water or is there some sort of infamous pesticide of some type? You will note on the bottom end of one of the charts that Senator Beutler was kind enough to hand out the Lower Platte South and the Papio-Missouri. Now, fertilizer tax is not much of their budget, but they have a substantial budget in both of those districts, and I rather suspect that a good portion of both of those districts' expenditures are in fact for surface water quality problems because of the tremendous amount of construction that is...that is ongoing and the sheet erosion and all of the other types of contamination of surface water that occurs in areas of a lot of dirt moving and heavy construction. So you can see there that whether or not the fertilizer tax was imposed and credited to them, it doesn't amount to almost anything, and yet they still have water quality projects of some significance. I think that it's...a better way of funding is the way we're going...we're proposing in LB 329 to do it. Bear

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in mind that everyone who has any property does pay a portion of the property tax requirements.

SENATOR CUDABACK: One minute.

SENATOR COORDSEN: It was only in the case of fertilizer tax that those in production agriculture pay for the water quality efforts that are ongoing. And the other question of the grossing up, it simply is a fact that all of the taxpayers in a district, whether they have an occupation tax or not, occupation taxes are passed through to the customer, they're not a function of the business. So it's just a matter of making those accountable rather than someone getting a free ride or someone not having to account for the resources. But the customer does pay occupation taxes.

SENATOR CUDABACK: Thank you, Senator Coordsen. Those wishing to speak to the bracket...or to the indefinite postpone are Senator Wickersham, Schrock, Beutler, Brashear and Bourne. Senator Wickersham. Senator Wickersham waives off. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, this kind of puts me in a dilemma. I'm not quite sure what to do. I think it would be helpful maybe if we review this a little bit. The fertilizer tax, which expired, dedicated \$1 of a ton for clean water programs; 60 percent of it was kept in the district that the tax was generated, 20 percent was distributed equally statewide to the natural resource districts, and 20 percent was dedicated to special projects. Now, it's interesting that the ag groups really got united against the fertilizer tax, and I have to confess that I supported the continuation of that program and took a little heat from it back home. But I don't see anybody from the ag groups coming in and opposing a tax on property, which I thought was a number one concern for the agriculture community in this state. The problem I have with this is my perception is we should be spending money on clean water programs, and this allows the natural resource districts to spend money on clean water programs, but it doesn't require them to. And, Senator Beutler, am I correct in that statement? You can just nod your head yes.

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It doesn't require them to spend any money in this area.

SENATOR CUDABACK: Is that a question, Senator Schrock?

SENATOR SCHROCK: No, I got my answer. It doesn't require them to spend any money in this area. And I also have the same problem Senator Beutler has with this bill. But in the absence of anything else, I guess you have to support this, but I don't think it's the solution. You may remember last year we passed a bill that appropriated funds from the General Fund and it got vetoed and the override wasn't there. And we said, well we can limp along with a loan, or we can address this next year. So I guess I'm disappointed we aren't doing something more positive. But I'm at a dilemma here because I'm afraid if we don't support this and nothing else happens, then we've really boxed our NRDs in. But I think Senator Beutler is absolutely correct, this won't require some NRDs to spend money on clean water programs that probably should be. So I wish we had a different solution. Now maybe there's some way we can require them to spend more money on these programs, and maybe that solution would be for an amendment on General File, should this bill move forward. And I would take a look at that and work with somebody to that end. But just allowing them to spend money on clean water programs doesn't necessarily mean they will when there is a need out there. And I think that's a statewide interest and clean water doesn't stop at the boundaries of a natural resource district, it goes to the next natural resource district. I think we have the South Platte and then we have the Twin Platte, and then we have the Central Platte, and we have the Upper...the Upper Platte and the Lower Platte, and then we have the Missouri River. Well, what happens clear out there in the South Platte affects everybody downstream. And, if they're going to ignore clean water programs, I don't think that NRD has, it creates problems on down the line. So I've rattled on long enough, but it is a dilemma; this isn't the solution I prefer but, for lack of something else, I guess it's better than nothing. But I don't think it...I would look for an amendment somewhere along the line on Select File and will work with somebody that would require some appropriations on property taxes for some of these programs. It's interesting that the Association of Natural Resource Districts came in, in a neutral position on this bill.

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I do have a couple of bills that are going to be heard this week that would address the problem but, unlike most bills that I introduce into Revenue Committee, it's hard to get a bill out of Revenue Committee when you're talking about clean water programs. That concludes my remarks.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Beutler, on your motion to indefinitely postpone LB 329.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, maybe it's time to look again and examine why we have this budget lid altogether. I mean it was my understanding that the fundamental reason for this budget lid on municipalities was to keep property taxes down. And we also have now the levy limitation on property taxes. So we have two different kinds of limitations. But what does the occupation tax have to do with keeping property taxes down? If I am a municipality and I have an occupation tax, and let's say I have some room or authority to increase property taxes, but at the same time I have an occupation tax, if you allow me the latitude to proceed with the occupation tax, increasing that or enjoying expanded revenue simply from increased usage of it, then it precludes me from needing to raise my property taxes. This...this...this bill is having the opposite effect. If you're at the very top of your property tax limitation, under all this budget control stuff, then you're not going to be able to increase your property taxes, but then the municipality may not have the revenues that it needs to fulfill its local function. Why are we taking away local control completely? Is it necessary? I mean, generally we start out with the view that local control is the guiding principle. And we've moved way, far away from that. And the reason that we've done that is our sensitivity to property taxes. But does that rationale and reason pertain here where a municipality can still...still has controls on its property tax but has the alternative, under current law, to have an occupation tax and to increase occupation tax for the purpose of keeping property taxes down. Now if you want to say that the purpose...that the necessary purpose here is to both keep property taxes down and to keep local government from having local control and spending what they feel that they need, then you should say, yes, Senator Wickersham's bill is what we need.

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But what's wrong with a little flexibility for the municipalities, especially for those small ones that are going to be feeling increased pressure? And I know Omaha and Lincoln are going to be feeling in need...in...increased pressure under the levy lid and the budget lids. Well, I say that it's better policy to let the occupation tax be outside of the limitation and use that as a tool of flexibility for local government. Why do we need to be so harsh? It's not protecting property taxes. Why do we need to be so harsh? Maybe it's time to go back just a little bit to the idea of local control. Let me move back over to the NRD question. This amendment allows a local district to put into its budget an increased amount of property taxes. Again, this is antiproperty tax stuff we're...this...this is against everything we're doing here. But it allows...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...them to put more money on the property tax side of their budget. And the reason that it does that is because it wants to allow them to spend additional money on water quality. But, and I think this is what Senator Schrock is pointing out, there's nothing in this amendment, nothing at all that requires them to spend the money for water quality. They could turn around and spend it to buy new trees, or to do any recreation purposes, any number of things that NRDs do. They don't even have to use it on water quality, and yet you're allowing them to put it in the budget on the theory that they will use it for water quality. So it's poorly constructed in that regard, even if you believed in the philosophy of what's being done. But I want to...to...to argue most strenuously that the history...

SENATOR CUDABACK: Time. Thank you, Senator Beutler. Senator Brashear.

SENATOR BRASHEAR: Mr. Chair, members of the body, this is an interesting bill. We...you hear talk about fertilizer, then you hear talk about occupation tax, and so you decide that it's urban-rural or rural-urban, and we start with Senator Beutler's indefinitely postpone motion, which is sort of summary justice

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to let's shoot somebody before we hear the argument. I'm not inclined to support the motion to indefinitely postpone at this time. But speaking to the occupation tax and the limit...limiting it within the spending limit makes no sense to me, and I do think it's overkill, and I do think it's micromanaging. I'm persuaded by Senator Wickersham's guidance that we ought to have, if we're going to exercise general governance over all things, which seems to be our mode, then we ought to have some general governance over occupation taxes also, which to me would say we ought to have some authority and control over how the...where the rates are and how they can be raised. But to me it is micromanaging and it's contrary to the best interests of all involved to let the rate be wherever the rate is, but to say you have to do it, you have to do it within the spending limit. You are in effect then saying to people we don't care what the rate is, but we're not going to let you spend the money, even if it's a confiscatory rate, or if it's a pathetically low rate, or if it's no rate at all. I think that's too broad a scatter gun approach. And as this debate goes on and as this discussion ensues, I'm going to look to see if we can't have something that is more refined and targeted. For instances, it occurs to me as I'm trying to think about what we call compromises that limiting the rate, and I understand all municipalities and others do not have the same rate, all right, so why don't we pick the municipality that I can guess has the highest rate, and why don't we limit it and max it there? And why don't we let them spend all that that raises in the future because they are growing and their particular service or activity is expanding? That's the part of a healthy economy, why would we want to limit that? I understand that we probably ought to stand as the guardian at the gate so the rate doesn't become confiscatory or abusive because it's outside the parameters of our governance, but I think we can do something that is less than this overkill and is helpful to the process, that discharges our duty but doesn't constitute, you know, a triple set of handcuffs just for the good of the order. And so I'm not...I'm not going to vote to indefinitely postpone, but I'm not necessarily supporting this the way it is for three rounds of debate. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Bourne,

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followed by Senators Wickersham, Schrock and Beutler. Senator Bourne.

SENATOR BOURNE: Thank you...thank you, Mr. President. Members, I appreciate Senator Brashear's comments. And I just want to point out that when I was discussing this before I was talking strictly to the license and occupation tax being put into the restricted funds. And I haven't even gotten to the point yet of the natural resources districts, even though if you look at the committee statement, Senator Wickersham indicates that this is for the natural resources districts, and yet they testified in a neutral capacity, and I don't quite understand that either. But I want you to be very clear of what we're doing here. This occupation tax applies to, as I see it, all cities of the metropolitan class, primary class, second class and villages. So this is...this is not just an Omaha-Lincoln issue, this is, as I read the bill, this is every city, village, municipality, everything in the entire...in the entire state. I have some real concerns about tweaking with the Tax Code, as we do, and I'll tell you why. Two years ago, my first year in the Legislature, there was a bill that was put forth by the Revenue Committee and it changed how, if I remember right, and I'll get the bill number a little later, I don't recall it right now, but it changed how motor vehicle tax was allocated. And because of how it was allocated, the Metro Area Transit Authority up there in Omaha, the public buses, lost a significant amount of money. And subsequently to that, just this last year, we had to raise, or excuse me, Metro Area Transit had to raise the bus fares significantly. And so sometimes we tweak these tax codes, and we don't really understand the impact. And the impact two years ago was that we changed the way motor vehicle taxes were allocated, and people who have to ride the bus, because they have no other means of transportation, had to pay an inordinately high amount. Those rates just...those rate increases just went into effect. So I think we need to approach this cautiously because we don't know what the impact is. Senator Wickersham, could I ask you a couple more questions?

SENATOR CUDABACK: Mr. Wickersham, will you yield to a question, please?

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SENATOR WICKERSHAM: Yes.

SENATOR BOURNE: You...you had mentioned earlier, and you tried to explain this to me, why this wouldn't necessarily cause property taxes to rise. And I still don't understand. It seems to me that we're shifting it from an occupation tax, if a local municipality, city, what have you, needs additional funds, it seems to me they have to raise them from somewhere, if they can't do it from occupation taxes. But, I guess, what I had wanted to ask you is you had mentioned that occupation taxes are unlimited. Well, who sets occupation taxes in a city, municipality, a village, whatever?

SENATOR WICKERSHAM: They're set by the governing body.

SENATOR BOURNE: So the city council or the board would set these taxes?

SENATOR WICKERSHAM: Excuse me? Yes.

SENATOR BOURNE: Okay. Well, so in a sense, I mean, what do you think would happen if, in your city of Harrison, if the city county or the city council, I don't know if you call it the city council in Harrison, but what would happen if they raise the occupation tax? And again, occupation tax is a tax on a business, just for everybody else's information. What would happen if they raise that tax on the...say the hotel tax by 100 percent or 50 percent because they had say an unaccountable or an un...high insurance costs or things of that nature?

SENATOR WICKERSHAM: Well, well, Senator Bourne, you're asking a serious question, but the specific response for the village of Harrison is nothing, because (laughter) they don't...I'm sorry, Senator, they just don't have that tax. But you're postulating an example where they did have a tax. I think they would...

SENATOR BOURNE: Well, you...

SENATOR WICKERSHAM: I think they would catch some flack.

SENATOR BOURNE: Well, that's that point. So it's really...

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SENATOR WICKERSHAM: Yeah.

SENATOR BOURNE: ...not unrestricted. I can tell you in my city, if they...if they increase the occupation tax an unfair rate, the public would go up in arms. These are elected officials and this is what Senator Brashear and Senator Beutler have talked about, local control. I mean, just as if we raise the property taxes, the public would cry bloody murder, just as if...as if a city council did the same thing. Is that not accurate?

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: Yes.

SENATOR BOURNE: There is control is the point.

SENATOR WICKERSHAM: Yes.

SENATOR BOURNE: City councils, we've given them the authority to do this and now we're trying to take it away.

SENATOR WICKERSHAM: No.

SENATOR BOURNE: They don't have the authority to raise occupation taxes now?

SENATOR WICKERSHAM: They do, but this doesn't limit their authority to do that.

SENATOR BOURNE: But, if you put it under the restricted funds, it does limit the amount that their entire budget could raise.

SENATOR WICKERSHAM: It limits the amount...this doesn't affect that their budget can increase, it simply says that, if occupation taxes increase as a portion of their revenues, they're going to have to reduce revenues from other sources within their gross budget.

SENATOR BOURNE: Well, what happens if a city has...say the cost

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of health insurance for a particular city goes up 30 percent, as it has, say that sales taxes decrease, I mean it seems to me that we're taking away an element of flexibility for these local cities, municipalities. What happens if they have these costs and they can't raise revenue...

SENATOR CUDABACK: Time.

SENATOR BOURNE: ...through the occupation tax?

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Wickersham, your light is next; you may proceed.

SENATOR WICKERSHAM: Okay. Well, first, (laugh) as sometimes happens, debate on the bills takes unusual turns. And you hear people actually speaking out of both sides of their mouth. On one hand they argue for local control, on the other hand they say that the locals won't do something, so it should be outside the purview of local responsibility or local funding. Well, I don't know which one it is. I suppose in a given set of circumstances it's one, and in another given set of circumstances it's another. And I don't object to that; that's the way life is. We make choices all the time of that nature and it wouldn't be unusual to have that discussion in this context. But still it always does kind of jangle the ear a little bit when you hear it so close together, and you never quite know whether you're in favor of local control or you're not in favor of local control when you hear those arguments. And this bill presents those issues in a little bit different context, within the context of the NRDs it is expressly designed to give them the local resources to deal with a problem in their district. Now whether you characterize that as local control or something else doesn't seem to make much difference, but that's what it does, gives them the authority...gives them the ability to raise local resources, property taxes, to fund a specific program. If you don't want to do that, fine, but then we're going to hear from somebody else that that's still a critical program and has to be funded somehow, so then you better be prepared for somehow, because that will come along later. And you'll probably be asked to vote to increase some other tax or to cut some other state program in order to fund that one. And

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you're going to be confronted with kind of a hard choice. And then you may remember the General File debate where you were given another option and you want to go back to that option, but, guess what, you won't be able to do it because we'll be beyond that debate. And I think we ought to keep our options open. Now the argument with regard to the municipalities is a little bit confusing. The bill does not limit the amount of money that can be raised from occupation taxes, does not limit in any way the amount of money that can be raised from occupation taxes. A municipality could impose an occupation tax at any rate it chose. Under current law and even if LB 329 passed, a municipality could impose an occupation tax at any rate it chose and raise as much money as it sought. The only difference in the municipal occupation tax that occurs by reason of LB 329 is that if a municipalities occupation taxes grow for either reasons of rate, base, that is what it's applied to, or just natural growth, if it...if those dollars rise faster than the budget limitations that are applicable to that municipality, then the municipality is going to have to lower other...

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: ...taxes because of that increase in the occupation taxes. Occupation taxes look like sales taxes. They are generally imposed just like a sales tax. The major differences between occupation taxes and sales taxes are that sales taxes are limited by rate and, guess what, sales taxes are also inside the budget limitation, something that looks like a sales tax, smells like a sales tax, but is completely unlimited under current law. I don't see why we should continue to have that kind of a disparity in our tax policy. And I understand that there are folks who want to have access, unlimited access to those dollars...

SENATOR CUDABACK: Time.

SENATOR WICKERSHAM: ...so that they can raise them and spend them.

SENATOR CUDABACK: Thank you, Senator Wickersham. Senator Schrock, on the motion to indefinitely postpone.

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SENATOR SCHROCK: Mr. President, members of the Legislature, I'll try to be brief. Most NRDs already have some levy authority left under their limit and probably could administer this program without this bill, although this helps that situation out. But as far as replacement for the fertilizer tax, this is not going to do what Senator Wickersham wants it to do. And I kind of feel like the general in the Second World War, in the Battle of the Bulge, who was surrounded by the Germans and they sent somebody in to ask if he would surrender, and his answer was "nuts". And that's kind of the way I feel on this one; I'm not very happy with this solution and I think we can do a better job in this. We can go back to the drawing board and do something better, therefore I'm going to vote to indefinitely postpone. Thank you.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Beutler, on your motion to indefinitely postpone.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I don't want to talk about the terms of the bill for the moment, but I just want to remind you about the overall water quality problem in the state and the fact that to solve the problem with regard to fertilizer pollution, nonpoint source solution, you're not only going to have to spend the \$2.5 million that was in the state Enhancement Fund, but you're going to have to spend considerably more money than that. You're probably, in the end, going to have to spend two or three times that amount of money. All of the years in the eighties and the nineties that we've put in to trying to get the NRDs to move forward with voluntary local control, education incentive programs in the area of water quality has not turned around yet the state situation. The water quality, with respect to nitrate pollution, continues to deteriorate in many areas of the state, including Senator Wickersham's district. The Central Platte maybe is beginning to get a handle on it, but look at their levy and their expenditures. And they're going to have to do more. The question is still out, even there where they're doing the best. So you're in a situation where you're suggesting, with LB 329, that all we have to do is, selectively among some of these districts, go ahead and increase the property tax a little bit

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and all is well. And that's my main objection to this provision is that I think at its heart, because I've seen no other evidence of good will on the part of a broad cross-section of individuals in this Legislature, and in particular the Revenue Committee, to deal with the problem. They're not dealing with the problem, in my opinion. And then they put out here on the floor this little piece, which is designed and will have the effect, I believe, of simply delaying further action on water quality, a delay that we most definitely do not need at this point in time in our history. Why, when you're dealing with the most important environmental question, and a clearly relevant one to this state, would you suggest that an increase in property taxes is the way to deal with it? Many other programs that we've set up at the state level--the Water Development Fund, Soil Conservation Fund, a whole number of programs that are designed to assist farmers and ranchers in keeping the environment good, keeping the soil good, keeping the soil from washing away, they're set up at the state level, and I tell you I believe the history of the thing is that it's done this way because it doesn't get done in other ways the way it should. Property taxes are just too disgusting to people, they don't want them for any purpose. And so you can ignore that whole history and say, yep, we're going back to the property tax and that's going to be the answer, but that isn't going to be the answer, and I'm just trying to encourage this body to deal up-front and forward with the problem and provide some source of funding, probably from the state level, one kind or another, that works, that works. We need...we need to solve the problem. And that's why this portion of the bill that deals with NRDs is so pernicious to me. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Wickersham, on the motion to indefinitely postpone. This will be your third time, Senator.

SENATOR WICKERSHAM: All right, thank you. I think Senator Schrock expressed some frustration with this issue, and the issue that I'm talking about here is the issue of the water enhancement or the water quality programs. Well, I think everybody is a little frustrated, but I don't see why you'd be frustrated enough to take off the table one of the options for

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taking care of this issue. Now, let me express my own little bit of frustration in that regard. A year ago I had a bill that Senator Beutler also didn't like and that would have changed the funding calculations for NRDs, kept all of them except two harmless, and would have done what he's suggesting we do this year, and that's use General Funds to make up for the loss of the fertilizer fee. Well, that was last year, this is this year. Maybe things have changed; maybe we could change the funding formula for NRDs, maybe we could use some extra General Fund dollars and make sure that they are applied to water quality. Maybe we could do those things this year. We couldn't do those things last year, but maybe we could do those things this year, that would be fine. Let me tell you that over the summer I had a meeting with an NRD manager and we actually sat down and looked at this issue in what I thought was a logical fashion and suggested that it was a solution to funding the water quality issues, and the NRDs didn't like it. Here was the proposal--use grant applications to the Lottery Funds to fund the drilling of wells and the placement of the pumps and other equipment on he wells as necessary, infrastructure costs. We know how much that's going to cost over time; each well is a little over \$20,000. You get some equipment on it; we know how many wells we need around the state to propose a good water quality monitoring program. That leaves you with the ongoing testing and education in the NRDs. We could either share that or cause that to be funded locally. The third phase is the regulatory phase, that's when you've found a problem. The proposal that I thought made sense was that at that point the NRD should have the authority to levy a special assessment. After all, if you have a problem and it's inside the control area, then you would be taxing the people who had the problem for the control effort. Seemed rational to me. Well, nobody wanted to do that either. And, Senator Beutler, I'm going to suggest to you by rejecting all notions, rejecting all notions as they come up, for one reason or another, that you will indeed find yourself and we will indeed find ourselves in a situation that we do not want, and that is that we will not be funding water quality because you will have denied the locals the resource, you'll have not found state resources, you will have not found a way to properly distribute any state resources so they achieve your objective, and we will have achieved nothing, and in fact we will have gone

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backwards toward the objective that you and others think is important and I think is important. I cannot understand why you argue so strongly to remove an option from the table when the objective is important. Why remove an opportunity to fund those programs when you might still be able to obtain state funding, if you want to have state funding distributed on whatever basis you would, and then the local authority does not have to be used. Why? Why deprive us of the opportunity to fund these programs locally at this juncture? I do not...

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: ...understand.

SENATOR CUDABACK: Thank you, Senator Wickersham. Senator Beutler, there are no further lights on. Did you wish to close on your amendment...on your motion to indefinitely postpone LB 329?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, with respect to the NRD and the water problem, I have been in favor of a number of solutions, but nothing has ever been put forward to the floor of this Legislature, in years in fact, that would even purport to begin to solve the problem, other than the measure that simply did away with the fertilizer tax. Compromise is certainly in order at all times. But this bill purports to solve the problem by increasing property taxes, and it's not going to happen. The Twin Platte NRD example is an example that can be multiplied many times in different areas of the state, and it's rang true for year, after year, after year. The boards of the NRDs for a regulatory program, do not want to spend property tax money on it. And many of them are moving far too slowly to get a handle on the problem, even with the Enhancement Funds that do not come from property taxes. So this solution gives the message, this solution, without anything further, and nothing further has come to the floor of this Legislature, this gives the word out there that this isn't important, that this isn't worth doing because the Legislature thinks you can do it by increasing property taxes. That's why I think this is a path to failure. And with regard to the municipalities, I do not understand why we want to draw the

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noose so tight? Is it a bad thing to have flexibility with respect to that particular occupation tax? I don't see why it is, especially in light of the fact that we now certainly have property taxes curtailed. We haven't fixed the problem entirely but, if anything, by allowing an increase in the franchise tax, I think you could keep the pressure off the property tax. It would seem to me that it would work to that end in a number of different kinds of cases and situations. I don't see what's wrong with a little bit of flexibility in the system and a little more local control. So, with that, I would put the motion to you for your judgment. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. The question before the body is the motion to indefinitely postpone LB 329. And this is a simple majority. All those in favor of the motion vote aye, opposed nay. Senator Beutler.

SENATOR BEUTLER: (Microphone malfunction) ...call of the house and roll call vote.

SENATOR CUDABACK: The question before the body is, shall the house go under call? All in favor vote aye; opposed nay. Record, please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unexcused personnel, please leave the floor. All unexcused senators please report in. The house is under call. Senators, please check in; the house is under call. Senator Pedersen, would you check in, please. Senator Pedersen, would you check in, please. Senator Chambers, Senator Foley, Senator Jim Jones. Senator Jones, would you check in, please. Senator Foley and Senator Chambers, would you please check in; the house is under call. Thank you. Mr. Clerk, all present or accounted for; please call the roll.

CLERK: (Roll call vote taken, Legislative Journal page 710.) 16 ayes, 26 nays, Mr. President.

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SENATOR CUDABACK: The motion is not agreed to. Mr. Clerk, items for the record? I do raise the call.

CLERK: Mr. President, your Committee on Revenue reports LB 123 to General File; LB 57, General File with amendments; and LB 45, LB 59, LB 390, LB 424, LB 430, LB 464, LB 495, LB 537, LB 606, indefinitely postponed. Transportation Committee reports LB 95 to General File with amendments; LB 283, General File with amendments; LB 470, General File with amendments; LB 585, LB 661 to General File with amendments. Judiciary reports LB 92 to General File; LB 357, General File; LB 752, General File; LB 99, General File with amendments; LB 161, General File with amendments; LB 188, LB 466, LB 489, LB 598 to General File with amendments; LB 236, LB 256, LB 717, indefinitely postponed. Revenue reports LB 20 to General File with amendments. Transportation, LB 827 to General File with amendments. And General Affairs, LB 545 to General File with amendments. Priority bill designation: LB 671 by General Affairs Committee. New resolution, LR 31, by Senator Hilgert; that will be laid over. LB 186A, by Senator Stuhr. (Read by title for the first time.) Amendments to be printed: Senator Chambers to LB 186, LB 128, LB 300, LB 358, LB 432, LB 299. Senator Bromm, amendment to LB 283; Senator Raikes, to LB 433; Senator Chambers, to LB 360. Notice of hearing from the Education Committee. Motion from Senator Connealy with respect to introduction of the state claims bills. And Senator Hilgert would move to place LB 476 on General File. Senator Dw. Pedersen would like to add his name to LB 357. That's all that I have, Mr. President. (Legislative Journal pages 711-721.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Speaker Kristensen, for...

SPEAKER KRISTENSEN: I move we adjourn until tomorrow morning, 9:00 a.m.

SENATOR CUDABACK: The motion is to adjourn until Wednesday morning, February 21, at 9:00 a.m. All in favor say aye. Opposed nay. We are adjourned.

Proofed by: Kathleen Higley