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FLOOR DEBATE

April 2, 2001 LB 277

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good morning. Welcome to the George W. Norris Legislative Chamber for the fifty-seventh day of the Ninety-Seventh Legislature, First Session. Our chaplain of the day is Reverend Scott Evans of the United Methodist Church of Christ in Wisner, in Senator Connealy's district. Joining Reverend Scott is his son Luke. Reverend Evans.

REVEREND EVANS: (Prayer offered.)

PRESIDENT MAURSTAD: Thank you Luke, and Reverend Evans. Members, we'll call the Legislature to op...to session. Please record your presence.

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

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, two reports received in my office; one from the minutes of the Board of Public Roads Classifications and Standards; and the second report from the Nebraska Health and Human Services System. Both will be on file in the Clerk's Office, available for member review. That's all that I have, Mr. President.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. General File. Mr. Clerk, LB 277.

CLERK: Mr. President, LB 277. (Read title.) The bill was introduced on January 5 of this year. Referred to the Revenue Committee for public hearing, advanced to General File. I do have committee amendments pending. (AM1120, Legislative Journal page 1244.)

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PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Redfield, you're recognized to open.

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor, members of the body. Nebraska is one of a very few states in the country where marriage penalties still exist in the income tax system. As in the federal income tax system, the amount of income tax paid by two single earners in the state of Nebraska is less than when those same two individuals combine their salaries upon marriage. This results in a penalization of the secondary income. The purpose of LB 277 is to eliminate Nebraska's marriage penalty by allowing couples their choice of method for filing state income taxes. This bill establishes the option for spouses to file separate returns on one form, allowing dual income couples separate calculations of their tax liabilities, the sum of the two becoming the couple's joint liability. I have passed out a packet to you, and if you notice, we have a very graphic illustration of what happens in the state of Nebraska. Two single people earning a certain amount of money, when they marry, just because they have that license from the state of Nebraska, with the same job, the same income, will pay an increased income tax in the state of Nebraska. LB 277 is an attempt to fix that. The reason it is there is because we have a progressive income tax system in the state of Nebraska. That is not true for all states. Some states have flat taxes, some states have no income taxes, some states have gone to a dual filer form, like we are proposing here. In fact, 32 states in the nation do not have a penalty for marriage. The federal Congress is looking at this issue right now. It has passed the House, but it has not yet passed the Senate. People have asked me; does that mean that we don't need to pass this bill in Nebraska? No. Because our income tax schedule is entirely separate from the state...or from the federal. At one time we were tied in, and while we use the federal gross income line on the federal return, from that point on, we establish our own schedule in the state of Nebraska. So even though Congress might choose to eliminate it, and there's some question as to whether they will, it would not eliminate the injustice in Nebraska. On the second page, I have showed you what the current brackets are for singles and for married filing jointly. And you notice that the factor and primary rate

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come out starting at a 2.5 percent income tax in the state of Nebraska, up to almost 7 percent. It's that jump that causes the marriage penalty, when people combine their incomes together. The closer their incomes are to the same, the more the penalty hits them. I've also given you a chart showing you the number of married couples in the state of Nebraska that are impacted by the marriage penalty. And I think it's very interesting, if you looked out at Nebraska in the three Congressional Districts, that actually the Third District has even a few more people than the other two districts do. So we are talking about 175,000 couples in the state of Nebraska; 350,000 people who are adversely affected by the marriage penalty in Nebraska. I've also given you a chart showing the federal tax impact, not because it applies to LB 277, but because they've done a study that shows you that the penalty hits closer to home the more your incomes are alike. Couples have similar incomes in more frequency rates at lower incomes. When you have couples at lower income rates, you will see them more similarly situated when they marry and pay the penalty. In fact, it tells you that working women are especially hit by the marriage tax penalty, because they're often taxed at much higher marginal rates. It tells us that black families suffer disproportionately because of the marriage tax penalty, since more black women work full-time, and provide more of their families' earnings. In the state of Nebraska, we are a leader in the number of women in the work force, three-fourths of our women are working. So we're talking about a penalty that hits the home in Nebraska. Graph B shows you what is intended to happen with LB 277. The green copy of the bill does not change the tax actually on singles, but it does reduce the rate that marrieds pay, to make it identical to the amount that singles are paying. We do have another chart that's going around, and on it you can see, in the first column on the left, you can see those numbers and you can see the difference. It is not as sizable as the federal tax, because our income tax rates are not as sizable as the income tax at the federal level. But it is still an inequity. The same people, earning the same income at the same job, should pay the same tax. With that, I will go on and let you look at the form that my office prepared. I think it's a fantastic form. When you look at the fiscal note and you see what the Department of Revenue was offering to charge us for

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preparing a form, and the...all the software to do this, I thought that this was a great attempt to show you how two...two singles, when they are married, could actually file taxpayer A, taxpayer A column, taxpayer B, and taxpayer B column. At the bottom they join their liability together. That's how it would work. It is very, very simple. There is a committee amendment, and Senator Wickersham, I believe, will be introducing that. And I will stop at this time then, because the committee amendment does change the bill significantly. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Redfield. Senator Wickersham, you're recognized to open on the committee amendment to LB 277.

SENATOR WICKERSHAM: Okay. Thank you, Mr. President. The committee amendments, even though they result in a white copy of the bill, I think simply built on the ideas that Senator Redfield brought to the committee. The idea of having the schedule that the married individuals can prepare, and to calculate their income separately, calculate income tax liabilities separately, and then add the liabilities to obtain their joint responsibility, I think was an idea that we had not examined before. And it allowed us to make a recommendation to you for resolution of this issue. Now, the resolution that the committee proposes, in its committee amendments, will cause some shifting in tax liabilities between classes of taxpayers as they are currently constituted. And it will cause a modest reduction in overall income tax receipts, based on current projections and analysis. And I'll describe all of that as we go along. Now the committee amendments, as I've indicated, would cause some increases in income tax liability. They do that in two different ways. If you look at the statement for the committee amendments that is on your machine, you'll see that we're adjusting the bracket for single taxpayers. That's the levels at which you pay differing percentages of the taxable income. Those are being adjusted downward slightly. For example, the twenty...there's a cutoff at \$2,400. We're moving that cutoff down to \$2,000. There's currently a cutoff at \$17,000, we're moving that down to \$16,000. So in that instance it means that \$1,000 more income for a single individual is subject to a higher tax rate than before the committee

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amendment. We're moving the bracket from \$26,500 to \$24,800. Meaning that \$1,700 worth of income at that top bracket is subject to a higher tax rate. Now, we're also proposing to decrease the standard deduction for single filers, from \$4,550 to \$4,000. So again, there's going to be \$550 come into taxable status that would have been previously in a nontaxed status. The committee amendments also make some clarifications regarding personal exemptions and standard deductions when they're phased out, if they're electing separate calculations of tax liability. And it makes clear that we're still going to consider joint incomes, for purposes of the alternative minimum tax. Now, the fiscal note, and I'm sorry, Senator Redfield, I don't know if you mentioned it in your opening, but if you look on your machines, you'll see a fiscal note. If the committee amendment is adopted, that fiscal note will change. And what it will show is that for the fiscal year 2001-02; that would be the first year of the next biennium, that it would have a reduction in revenues of roughly \$2.7 million; a reduction in revenues in the second year of the biennium of about \$6.6 million; and then a reduction in revenues in the third year of the quadrennium of about \$7 million. And then we would expect that to be an ongoing reduction. Now while we have that overall reduction in income tax receipts, as I've indicated, we do have a shifting of tax liabilities amongst taxpayers. For the year 2002 we'd expect a reduction of bas...rough...around \$21 million for married taxpayers, and increase for single individuals of about \$14.6 million. For the tax year 2003, a reduction for marrieds of about \$22,000...or \$22,400,000, and an increase in singles of about \$15.5 million. Year 2004. a continuation of those kinds of changes. The net differences, of course, are the projected reductions in revenue. It would have been possible to construct a proposal that was statistically revenue-neutral. It would have resulted in even slightly higher taxes for single individuals under this proposal. However, I think you can make an argument that the reductions that we're showing are statistically insignificant. We're not saying that they won't occur, but the probabilities that they will occur are based simply on the number of individuals who would...or the married couples who would take the opportunity to avail them pro...themselves of the provisions in the bill. And that...and there are some unknowns in that regard. So it might or might

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not reach exactly the target numbers that are described, or will be described in the fiscal note, if the committee amendment is adopted. But for our purposes, we will certainly have to use those numbers for preparation and adoption of the budget in this biennium. So we will, over the biennium, if the committee amendments are adopted, show revenue reductions of about 9.2, almost \$9.3 million, so you may want to consider that as we go forward. I think that the manner in which Senator Redfield has brought this issue to us, and the manner in which we propose the committee amendments, is a reasonable resolution to what many have seen as an inequity in our tax structure. That inequity, of course, exists at the federal level as well as the state level, and has been the subject of considerable discussion over time. I am reminded, by Senator Chambers, that we...that this body was discussing that in 1997. I might note that prior to Senator Redfield's attention to this issue, that I had introduced bills to examine this issue. Senator Raikes introduced bills to address this issue. And now as Senator Chambers reminds us, he had even introduced an amendment, I think in 1997, to address the issue that is brought to you by Senator Redfield. With that, Mr. President, I'm sure...or I hope that we would have a discussion of this issue, and the resolution proposed in the committee amendments in Senator Redfield's bill.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Senator Redfield on the committee amendments to LB 277.

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor. First I want to very much thank the members of the Revenue Committee for their patience in working on this issue. We had a number of amendment proposals that we looked at and examined, and this was the one that in fact the majority agreed would be the fairest all around. I think that there was a great deal of compromise. There was certainly intense study of the issues, we ran a number of fiscal notes. We talked about a proposal that I show you as Graph C in your handout. And basically in order to make fairness an issue or equity; one of the solutions quite honestly, could have been raising the singles to make them pay as much as the couples would when they married. But obviously none of us wanted to support that type of solution. So what the

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committee has done with Graph D, is they have met in the middle with a tax decrease, the original fiscal note of a \$35 million loss to the state of income taxes, by raising it somewhat on the singles, and lowering it on the married, so that we pay the identical amount of tax. The same person, the same job, the same salary, the same tax. And I have attached the revised fiscal note on the very last page, for you to look at. Now the question always is, how much does this really mean? You know, we can talk in the abstract, and we can know that this is right and good to do. But the question is, when we start talking about any kind of increase on someone else, how much and is that a fair amount to look at? I think that Senator Wickersham has very adequately expressed the fact that we don't know for sure that everyone will take advantage of this dual system of filing. And that in fact the tax laws may or may not be what we see in the fiscal note. But we feel that it's a fair proposal to put into our budget, and to look at. And if you look at this separate handout that I gave you, you'll see what the tax increase would be for singles. For a single person who earns \$10,000 in taxable income, there is a \$2.40 increase. For someone earning \$15,000, the increase is \$3. Three dollars for the year. The top rate is on the second page, for a single at the top income, it's \$46. The reason there's a top rate is because, on our bracket system, you earn the top rate for singles right now, at \$26,500. That means if you earned \$26,500 in taxable income in the state of Nebraska, and you are single, you pay the same rate for every dollar you earn after that, as Warren Buffett. So \$46 is the top increase for singles. The top decrease for marrieds would be \$248. And I hope that you examine that. That you have lots of questions to clarify this. If anyone is confused by all of these numbers and charts, please, we would like to address them. And I want to thank Senator Wickersham especially, for his help in trying to explain this. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Redfield. Senator Chambers on the committee amendments to LB 277.

SENATOR CHAMBERS: Mr. President, members of the Legislature. Senator Wickersham paid his devcior to virtue by acknowledging that I brought an amendment to try to do this four years ago.

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And as usual, when I bring an idea people oppose it, even though it's a good idea. At that time they said they didn't know what the fiscal impact would be, but I felt then, as I feel now, that the issue was so crucial then, it is now, because it goes to what the attitude toward families and marriage is, or are, in this society. I'm not married, and I'll never be married again...you knock on wood...and I feel very good about it. And if you read that transcript I sent to you, you'll see why...where I put that you can appreciate freedom as "88 Keys" Senator Cudaback can, because he's never been shackled or yoked. But he cannot appreciate it like one who has been yoked, then gets unyoked. You then appreciate freedom as you never did before. But my argument then, and it continues to be, that with all the talk about family values, and trying to encourage people to marry before they start families, the tax code penalizes people who get married. If two individuals shack up, even if they produce children while not married, the tax code does not penalize them in any way. They can still claim as individuals and get double what one person could claim. Yet as soon as they decide to tie the knot, and become yoked, Senator Cudaback, the tax code comes in. And the taxman says, now you're going to pay through the nose. You're going to be penalized. And I just have a passage that I cannot resist reading. If you want to be better off economically in Nebraska, live in sin. Sin does pay. The wages of sin is not death. The wages of sin in Nebraska is a bigger income tax deduction. Get married, come clean, take those vows, and automatically you're going to pay more taxes. There's a heavy marriage tax in this state, and that's what that difference is. That's why I call it a penalty. And they're other very good comments that I'm tempted to read this morning, but I won't. We were here late one night, tussling and struggling over a bill that was going to benefit some of the big shots, the fat pockets, the deep pockets, and I wanted to do something for ordinary people, as is my wont w-o-n-t -- for the transcribers. And as usual, I was kicked in the teeth. But I don't give up. Because I know if an idea is right, regardless of who first brought it, or how much opposition there was to a person, even if you slay the messenger, if the message is valid that idea will live beyond the one who brought it, or any other individual. And eventually it is going to prevail. I applaud Senator Redfield for being able to bring this idea as far as she

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has. I'm going to support it. I think Senator Wickersham is probably supporting it. The fact that the committee sent it out of here...I meant out of there, to here, the Grinch committee, the mean, tightfisted, skinflint, gripping, grasping committee sent it out here, it probably has a chance to be enacted into law.

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: The only one who I think may vote against it, based on an attitude he evinced earlier, is Senator Adrian Smith. Now if he thinks people, because of their sexual orientation, should be denied the right to live in a house, then he probably thinks married people should not get this benefit. But I'm going to watch that hardhearted person, see how he votes. I'm sure he paid no attention to what I said earlier, so I want to tell Senator Adrian Smith that in the same way that young Senator Bruning lead me into the path of righteousness, I'm going to follow Senator Adrian Smith's lead this morning, and he had better vote the right way. That's all that I have, Mr. President. Thank you again, Senator Redfield, for what you've done.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. (Visitors introduced.) Further debate on the committee amendments to LB 277, Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. I wonder if Senator Redfield would yield to a question or two?

PRESIDENT MAURSTAD: Senator Redfield?

SENATOR REDFIELD: Certainly.

SENATOR BOURNE: Thank you. Senator Redfield, I've...we've heard about this for years, about the marriage penalty tax, but I was wondering if we could flush this out a little bit, so I can see, you know, determine exactly what this is. Say for example, that there's a couple that makes say \$30,000 a year. What would their tax burden be, their joint tax burden be on that...that kind of income. And then could you compare that to

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a single individual making \$30,000 a year?

SENATOR REDFIELD: The chart that we handed out separately to you will actually address that. Did you want a married couple earning \$30,000 together, or \$30,000 each?

SENATOR BOURNE: No. Together, because...so we can compare...

SENATOR REDFIELD: Together, all right.

SENATOR BOURNE: ...we can compare a family making \$30,000 and a family being two people. And then a family making \$30,000 that's just a single individual.

SENATOR REDFIELD: Okay. On the chart here, they would be the second one down there, two singles making \$15,000. Now that's relative, they might be a 60/40 split, they might be a 70/30 split, but we gave you an even split on here to show you what it would be. Currently they would each pay \$410 in taxes. Together, if they were two singles, they would be paying \$820. But if they got married, they'd pay \$829. Under the committee amendment, the tax for singles would increase by \$3, and the tax on the couple would decrease by \$3. Now that's just because of where the bracket cutoff is. There is nothing that is systematically a mathematical progression about the bracket amounts. I wish I could tell you it was, it's not at the federal level either. And so where you found those bracket amounts can mean there's a more...a greater savings, or a greater penalty.

SENATOR BOURNE: So on your chart here, on the first page, it says LB 277 under current taxes.

SENATOR REDFIELD: Yes.

SENATOR BOURNE: So you're saying that a single individual that makes \$10,000...or \$20,000 a year pays \$472, whereas a married couple that makes \$20,000 a year pays \$480.

SENATOR REDFIELD: Are...you're saying \$20,000 now? Or are you back at the \$15,000?

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SENATOR BOURNE: Well, I'm trying to follow your chart.

SENATOR REDFIELD: Okay. The second section where the two singles are at \$15,000...

SENATOR BOURNE: Right.

SENATOR REDFIELD: A single would pay \$410 now. Two of them together would pay \$820. If we passed just the green copy of the bill, that would be the same for them whether they were single or married...

SENATOR BOURNE: Well...

SENATOR REDFIELD: ...at \$820.

SENATOR BOURNE: Well, that...I don't know that we're comparing the same thing.

SENATOR REDFIELD: Okay.

SENATOR BOURNE: What about a single individual that made \$30,000 and then a married couple that made \$30,000 together, whether it be the wife working and the husband staying at home...

SENATOR REDFIELD: Oh...

SENATOR BOURNE: ...or the husband working and the wife staying at home, or a combination of incomes.

SENATOR REDFIELD: I see where you're coming from.

SENATOR BOURNE: Do you see...

SENATOR REDFIELD: Actually there is a...there is a marriage bonus when there is one wage earner. We only penalize you in marriage when you have two wage earners. Now that is true at the federal level, and that is true at the state level. There's actually a little bonus for you if...in the packet that we

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handed out, on that second chart, you can see that at the rate that they would pay for \$30,000 married couple filing jointly at \$30,000, their top rate is 3.5 percent. Whereas for a single, they'd be already up to the top rate. So there is a discrepancy for one wage earner. What we're talking about here are two wage earner families.

SENATOR BOURNE: So if it's a...okay, I'm still trying to figure this out. You have your chart here, the second chart says it has two singles listed with \$15,000...

SENATOR REDFIELD: Yes.

SENATOR BOURNE: ...and their tax burden is \$820.

SENATOR REDFIELD: Yes.

SENATOR BOURNE: And then you compare that with a married couple, whether one works or both works, and their tax burden is \$829. So again, what I'm trying to compare is, is equal numbers, you know, if a single...if...what we're doing is we're reducing the taxes on a couple, and we're going to increase the tax burden on a single individual, as I see it. And so what I would like to know is, is when we have an individual who maintains his or her own household, that makes \$30,000 and compare that to a couple that makes \$30,000, because to me those are similar entities, and that's where the comparison should be done. And the tax burdens on those two entities.

SENATOR REDFIELD: All right. First of all let me explain that if you're a single person with children, you'd file on a different schedule called Head of Household.

SENATOR BOURNE: Right.

SENATOR REDFIELD: Which is different, and it compares more favorably to the married filing jointly today where there is a bonus for married couples with only one wage earner. And the way you could compare that on this chart, if you looked at the married couple in...

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PRESIDENT MAURSTAD: Time.

SENATOR REDFIELD: ...on the first page.

PRESIDENT MAURSTAD: Senator Redfield, Senator Bourne; Senator Quandahl on the committee amendments.

SENATOR QUANDAHL: Thank you, Mr. President. I just have a kind of a basic question, and I guess I'd...after I get done with that, I'd grant the rest of my time to Senator Redfield to finish answering Senator Bourne's question also. But just as a, as kind of a general proposition, I understand what we're trying to do is to make it equitable for basically everybody in the state. But the committee amendment, as I understand it, actually raises the taxes on single people at the same time lowering it somewhat on the married couples in this state. But my...I guess my question is, is what is the overall fiscal impact on the state of Nebraska? I do look and I see the original fiscal note that's on our screen right now, says \$39 million to \$51 million. But as I understand it, the committee amendment may actually even make it, it looks to me like almost fiscally-neutral. Is that...is that correct? And I'd grant the rest of my time to Senator Redfield.

PRESIDENT MAURSTAD: Senator Redfield.

SENATOR REDFIELD: Thank you. Senator Quandahl, on the very last page of the handout that we gave you, the packet, there is a revised fiscal note. What it shows you in the year 2002, because the tax year in fiscal years do not coincide, that the cost to the state in loss of revenue is \$2.692 million. And in fiscal year 2003 the loss to the state would be \$6.636 million dollars. Does that answer your question?

SENATOR QUANDAHL: Yes. And Senator Wickersham is here explaining what the chart means also. Thank you.

SENATOR REDFIELD: And I'm sure he can do a better job of explaining that. But I would like to finish Senator Bourne's question. Senator Bourne, on the first page of the chart, you see what a married couple earning \$30,000, on this one, a

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married couple earning \$30,000 currently pays \$829 in taxes. And you are right, that if you are a single person in the state of Nebraska, currently you pay \$1,190. That's a single... a pure single, not a married... or a married filing jointly, not a head of the household. This is just a single.

SENATOR BOURNE: So a single individual making the same as a married couple actually pays about \$300 more a year in taxes?

SENATOR REDFIELD: They do, yes. When there's one wage earner in a marriage, they do pay less tax, because they have two people getting the deductions off of that.

SENATOR BOURNE: Okay, on your chart here you have two single individuals, each making \$15,000?

SENATOR REDFIELD: Right.

SENATOR BOURNE: Is that a married couple filing as filing separately? Or two single individuals cohabitating? Or what...

SENATOR REDFIELD: Two...

SENATOR BOURNE: ...is the example?

SENATOR REDFIELD: ...single individuals who are not married living on their own or living together, but they are both wage earners, and they both make \$15,000. That's why the marriage penalty tends to hit lower income people harder.

SENATOR BOURNE: Okay, I'm still not quite clear about what the marriage penalty is then. Because what we've done is, is you've indicated that a single individual making \$30,000 pays about \$1,100 a year, whereas a married couple, whether they both work or one works, earning \$30,000 a year, pays about \$829. So I'm not following where exactly the penalty comes in.

SENATOR REDFIELD: There is no penalty when there's one wage earner in a marriage. There is a penalty when there are two wage earners in a marriage. Now back in the days of Donna Reed, we had marriages where more likely than not, there was only one

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wage earner. But in today's Nebraska, three-fourths of our marriages do have two incomes. So in fact, this would be the picture you would see typically in Nebraska today. That the most common marriages that you have that, would have only one wage earner, generally are higher age brackets tending to be retired.

SENATOR BOURNE: Okay. Could you kind of explain that out just a little bit then. You...

PRESIDENT MAURSTAD: One minute.

SENATOR BOURNE: ...mention that if two individuals pool their money, they're...no pun intended. If there were, if they're married, and they put their money together and file a tax return, where is it in the tax return that they pay more? Because it seems to me you just add the two gross incomes from the W-2, and then carry on through your tax form. So I don't understand where the penalty is if two individuals make \$30,000 between them, or if one individual in the family, one married individual makes the \$30,000?

SENATOR REDFIELD: It's on the second page of your packet, where it shows you the individual income tax bracket. It shows you the first column is single individuals and the brackets that are there, and the married filing jointly, where, because there are two people involved with the deductions there, you see that, in fact, there's a difference in the brackets. That's why you see it. If you were to have two singles...

PRESIDENT MAURSTAD: Time.

SENATOR REDFIELD: ...filing...

PRESIDENT MAURSTAD: Thank you, Senator Redfield. (Doctor of the day introduced.) Continued debate on the committee amendments to LB 277. Senator Wickersham followed by Senators Landis, Cudaback, Redfield, Feley, and Raikes. Senator Wickersham.

SENATOR WICKERSHAM: Mr. President, a couple of things. One, I

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don't want Senator Chambers to lead you to believe that he was the first member of the Legislature, or probably the last member of the Legislature that will be concerned with this issue. Before 1997, I'd actually introduced, I think three bills in one session, none of which went anywhere in that greedy, grasping, hard to get along with, irascible, unreasonable committee that I have been required by you all to serve on since 1993. But at any rate, well, the discussion about this issue has gone on for a considerable period of time. Most persons recognizing that we do have an inequity in the current system as opposed for those persons who marry and have two incomes. Senator Redfield's bill allows us an opportunity to rectify that, at least in the Nebraska tax code. I would suggest to you that I'm...we're also aware that this issue is being discussed at the federal level. And that under some of the proposals, under scrutiny at the federal level, that they could affect Nebraska, so we may have an amendment on Select File, if we can figure out how to do it, that would protect Nebraska's tax code from effects at the federal level. But that would...that would come in at Select File, because I don't think Senator Redfield would intend to have us jerked around by the federal government even more than any of you would wish to have us jerked around by the federal government if that's the proper terminology in this instance. I would suggest to you that there are two central...or three central issues that you need to consider as you decide how to vote on the committee amendments, and then Senator Redfield...and then the bill in the main. And I hope you support the issue on all three counts. One, this is an opportunity to mitigate the inequities that we have in the current system. Secondly, you will be shifting tax burdens between classes of taxpayers. I think you need to be comfortable with that, as most of the members of the committee were and are. And you will be causing about a \$9.3 million reduction in revenues that will show up on the green sheet the first time we see the green sheet. So balance all those things out, and again, I hope you support the committee amendments and Senator Redfield's bill.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. (Visitors introduced.) Senator Landis, on the committee amendments.

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SENATOR LANDIS: Thank you, Mr. Speaker. Members of the Legislature, I appear as a person who has qualms with the bill and your committee statement, having voted against it, and I thought I'd explain that. Because Senator Wickersham's last comments highlight that, this bill is a \$9 million tax cut. It reduces our revenues by \$9 million. I understand that. I understand, by the way, one of the underlying assumptions, which is that there is a marriage penalty in some circumstances. And what we've done, is we've done...we've come about it from this angle: There is an inequity for two wage earner married couples filing jointly. And our answer will be to cut their taxes. I start from a slightly different premise, and that is that; if there is a penalty that's being received by one party, then there is a bonus being received by somebody else. If somebody's being penalized, then somebody is getting the benefit of that penalty, because they are not paying, out of the total amount of taxes, the taxes they should pay. Senator Redfield sees this somewhat differently. She sees that the marriage penalty exists in isolation, and nobody is...there isn't any subsidy or transfer when that happens. If they're penalized because they're paying too much, there's nobody who's paying not enough. In fact, we should simply reduce taxes by that amount, and that's what I'm uncomfortable doing here. I'm uncomfortable saying that we're raising an inappropriate amount of money in our tax system here, as opposed to getting to the root problem as I see it, which is; we ask too much from some people, which means in my estimation, we must not be asking enough of others. And that's what's been cutoff in the discussion; that we are asking too little of others. What we said is, we're asking too much of some, and we'll reduce taxes accordingly. I on the other hand would redu...would do this by redoing and reallocating tax responsibilities. It seems to me that the tax system should be neutral in what it achieves, and then move the whole amount that we ask from everybody up or down as we think appropriate, as opposed to making a tax cut for some, as we're doing in this case, by simply reducing, you know, the amount of money that we get into the state budget, and that we have available to meet other social needs. I told Senator Redfield that I would...I would pay to end the marriage penalty, but I wouldn't pay \$9 million. I'd pay maybe \$2 million, or a little bit less than \$2 million. I might pay to end the marriage

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penalty, because I think it is a penalty, and I think we should do away with it. On the other hand, if these people are penalized, then somebody else is paying less than they should. And there is no attempt, or little attempt it seems to me, in the Redfield amendment to this point, to make that shift equal. What we're doing is we're going to pay for the end to the penalty by reducing the amount of taxes that we levy and get into the budget. And I would as soon readjust from people that are getting benefits, at the same time as we are trying to end the penalty. Because it seems to me you can't...you can't have a loser, as Senator Redfield posits, without there being a winner someplace else. And in my estimation, we're getting rid of the loser factor, by reducing the whole amount of taxes that we use, rather than asking more from some, so that we can end...

PRESIDENT MAURSTAD: One minute.

SENATOR LANDIS: ...the penalty for others. I currently...at the current time I'm uncomfortable with the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Senator Cudaback on committee amendments.

SENATOR CUDABACK: Mr. President and members. I'd like to ask Senator Chambers a question, please.

PRESIDENT MAURSTAD: Senator Chambers, would you respond?

SENATOR CUDABACK: If it's worth his time.

SENATOR CHAMBERS: Yes, my child.

SENATOR CUDABACK: Senator Chambers, with the remarks that you made about marriage and so on, I was just wondering, we all have to justify our votes for some reason, I just wondered; you think this is a bill that would make it worthwhile for an old bachelor to get married? Or...

SENATOR CHAMBERS: Senator, you've almost rendered me speechless. But as I regroup, the answer is no.

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SENATOR CUDABACK: Well, well, I'll take that under consideration, you made me stutter there for a while, under consideration. Thank you.

SENATOR CHAMBERS: Okay.

PRESIDENT MAURSTAD: Thank you, Senator Cudaback. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor, members of the body. Senator Landis is exactly right. Many, many times we have issues that come to the floor, sometimes it's school formulas, it's other groups, and we have a tendency here to solve the problem by spending more money, so that we can hold a group harmless. Now the committee amendment does not hold singles harmless. I wish that it did. The green copy of the bill does. And that was my original proposal. But I did support the committee amendment, because I think it's a fair proposal. It is not a total elimination of the bonus that singles now receive. But it does still leave some there, and I'm willing to fund more of that, and hold them a little less harmless than Senator Landis. But I think the interesting thing is, in the discussions that I've had with Senator Landis, we started out...and I preached equity, and I talked about fairness, and obviously he's gotten it down the point where, let's make those other guys pay, so that it is truly, truly equal here. So I haven't wanted to go quite as far, and the majority of the committee did not go that far, in eliminating the bonus that singles receive currently, to that degree. And I think that it's a fair proposal, it's a compromise proposal. I think that equity is worth the cost. I think fairness is worth the cost. And I certainly hope that if anyone else has some discomfort with the bill, they will speak up. But I think it's a fair proposal. And you're right, the Revenue Committee is a tough committee. And if this bill comes out, I'd say that they probably think it's the best deal you can get, and that it's worth the price. That it isn't overspending by a dime. At least I haven't known them to throw any dimes away in there. Thank you.

PRESIDENT MAURSTAD: Senator Redfield. Senator Foley.

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SENATOR FOLEY: Thank you, Mr. President and members of the body. I wonder if Senator Redfield would yield to a couple more questions?

PRESIDENT MAURSTAD: Senator Redfield.

SENATOR FOLEY: Senator Redfield, there are any number of tax scenarios that one could concoct, you know; one spouse maybe on social security, the other one has earned income; or another scenario where one spouse has all of his or her income from unearned sources, like dividends and interest, and the other spouse may not be working at all. I'm wondering how many of these different scenarios we might have worked through in your analysis, and specifically I'm curious; is there any scenario that you would have come across where the married couple could actually be worse off under the bill? Or under the amended version of the bill?

SENATOR REDFIELD: Senator Foley, may I answer?

SENATOR FOLEY: Yes, please.

SENATOR REDFIELD: The bill does not make anyone worse off, because in fact it's a choice. They could continue to file on the married filing jointly form that they do now, or they could choose to use the dual column form. So no one would be worse off. You asked how we would divide up the income? The bill very specifically says that the income would go under the taxpayer who accrues that income, no matter what the source. It also...we've also talked about itemizing the deductions, and they would have to be split equally between the two partners.

SENATOR FOLEY: So if they split, in effect what they're doing is filing as two single persons,...

SENATOR REDFIELD: Exactly.

SENATOR FOLEY: ...if they...and under the bill, this bill does have some increased taxes for single persons. So when...under that case, wouldn't they be paying more in tax?

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SENATOR REDFIELD: No, Senator Foley. Because singles have paid so much less than the marrieds have in this bracket before, that in fact even though the singles are paying a little more, the marrieds are still paying less. They would be paying exactly the same as they would if they were single.

SENATOR FOLEY: So again, just to confirm, there's no scenario that you can come up with, under which the married couple would be worse off under the bill?

SENATOR REDFIELD: No sir.

SENATOR FOLEY: Okay. Again, I want to thank...I want to thank Senator Landis for his comments. I think they were right on track that there is a shifting of tax burden here, and it's unfortunate that we have to do it. But I agree with Senator Redfield that this is a fair balancing of interests here. It's unfortunate that we couldn't make this thing a win-win for everybody. But there is a significant penalty in the tax code, and I applaud Senator Redfield for bringing this bill forward to fix that. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Foley. Further debate on the committee amendments. Senator Raikes.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor and members. By the way, Senators Wickersham and Chambers were talking about who first came up with the idea, and I'm sure that at least an hour or two before either one of those introduced the bill or an amendment, I was thinking about this. So...but at any rate, I was one of those...one of those people on the Revenue Committee who did not support this. I did support the amendment, but I did not support the bill, and I wanted to talk a little bit about it, and tell you why. Let me just point out that the main reason why is not that I disagree with addressing the issue of marriage penalty, but rather that I don't think it's prudent at this time for the state to cut its revenue base. And this bill, as it's proposed, would cut the revenue base. And I would just tell you that...that I also voted for a bill that came out of Revenue...was advanced from Revenue Committee that increased the

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sales tax a quarter percent, and I probably am not happy with the combination of cutting income tax rates, and increasing sales tax rates. So that is the main reason that I wanted to mention. But I think there's been several good points brought up. Senator Bourne asked several questions about how...how couples would be affected in particular situations, and I think that answer has come out. And that is that any...for any particular income level, in the current schedule or in this proposed one, there is both a marriage bonus and a marriage penalty. The difference depends entirely on how the income is split between the two earners. If you have two earners, one of them has zero earnings, and the other one all the earnings, there is a marriage bonus. If they are split 50/50 under the current schedule, there is a marriage penalty. Somewhere in between zero and 50/50 it evens out, it's neutral. That's even under the current proposal. So that is the sort of phenomena we're dealing with. Senator Redfield's proposal goes about it in a different way than what proposals I have offered before go about it. What she does is; you calculate your income tax two different ways, and which ever is the cheaper, that's what you pay. The proposals I have suggested in the past have, instead, reconstructed the income tax schedule, so that there's only one way that you calculate your income tax, but that way results in no marriage penalty. And you do that by changing such things as the ends of the brackets, and also the progressivity of the tax structure. There are advantages, obviously, both ways. This way certainly, Senator Redfield's way that is, certainly has a, in my view at least, a disadvantage in computational complexity. You are in effect adding another computational burden to taxpayers. You calculate it one way, you calculate it the other way, and then you see which is lower. Now I don't think it's an overwhelming burden, but it is a burden. The other thing is that...I would cite as a disadvantage is, there are some other problems with our income tax structure...

PRESIDENT MAURSTAD: One minute.

SENATOR RAIKES: ...which are not addressed by this sort of a proposal. For example, there is a hump in the marginal income tax rate. People, at a certain rate, actually pay a higher income tax, a marginal income tax, than do those who make even

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more money than they do. This I think is clearly an inequity, ought to be corrected. Instead this...it is...it is...it remains in this sort of a schedule. I won't go on further. I think there are some advantages to this proposal, but again I think they're outweighed, in my view, by the possibility of the state cutting its revenue base at this particular time. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Senator Preister, on the committee amendments to LB 277.

SENATOR PREISTER: Thank you, Honorable President. Members of the body, when I saw all of the charts and formulas, I thought this was Senator Raikes' bill and amendment. However, Senator Redfield, you said if anybody's uncomfortable with this, you hope that they would say it, and thus I pressed my light, because I am uncomfortable with this. Senator Wickersham said that there were essentially three concepts in the committee amendment. One of those concepts is to adjust what most people consider some unfairness or inequity in the system, between single people and married taxpayers. And I support creating a system of fairness that you had talked about and sought to address. A second component is one that Senator Raikes was talking about, and that's the reduction of approximately \$9 million from the overall budget. I'm not sure where that's going to fit in with the whole process, as we're looking at trying to enhance teacher's salaries, which I for one think is an important component. So the overall picture of where we're going to be with the budget at this point is a concern to me. The third component, as Senator Wickersham identified, was that this...and we need to be clear on this, this is a shift, and that single people, and I am one of those, proud to be; single people are going to be dis...or are going to be affected disproportionately by this change. And that's the part that I'm concerned with. I don't mind if we're going to create fairness to being fair for married folks. But I don't think in the process of attempting to do that, we should burden single people. There are a lot of single people who, like myself, have no children in school, who are paying a lot of property tax and other taxes to support a lot of systems, and I don't begrudge that. I think our school systems are wonderful and I don't mind

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paying for the schools, or all of the services that we get. But in this instance, when we're going to ask single people, and many of them, although it isn't real severe for the lower income single people, but single people are going to pick up more of this shift, and they're going to be paying as a result of the committee amendment. That's the area that I'm concerned with. If we're going to do this, and if it fits in the overall budget, and at this point Senator Wehrbein can probably better address that, I don't know how this is going to impact and what other decisions and what other choices we're going to be forced to make as a result of this. Senator Raikes' comments about looking at that bigger picture, I think, are certainly appropriate. At this point, I'm not comfortable with the committee amendment. I would like to do something to address what we have come to label as a marriage penalty, but I don't want that penalty to then be shifted and become a burden for single people. If somebody can help me to understand that component, and...I would be open to it. I understand the complexity of the Revenue Committee trying to come up with a reasonable solution, however I do note that there isn't one single person on the Revenue Committee. And that it is an issue that I think is important, particularly some of the elderly and the single people, many of whom are...

PRESIDENT MAURSTAD: One minute.

SENATOR PREISTER: ...on fixed incomes in my district, that I think it's important to also represent. Senator Bourne, I think was attempting to get at that aspect, and I'm not sure how we do that. Senator Redfield, I don't have much time left after making my comments, but if you care to respond with what little time is left, I would certainly be open to listening to your comments.

PRESIDENT MAURSTAD: Thirty seconds.

SENATOR REDFIELD: Thank you, Senator Preister. Senator Wickersham and I were just over here discussing the \$9 million note that he's talking about is a combination of the years 2002 and 2003, it's a biennial. And we were talking about whether perhaps we might need to introduce an amendment to delay

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implementation, for budgeting purposes, or whether we might want to look at some other amendment for Select File. I don't know. We don't have our final budget predictions out yet, and we may have to make some adjustment. But to me...

PRESIDENT MAURSTAD: Time.

SENATOR REDFIELD: ...the equity issue, I think, is important...

PRESIDENT MAURSTAD: Time.

SENATOR REDFIELD: Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Redfield, Senator Preister. Senator Brown, followed by Senators Tyson, Smith, and Redfield.

SENATOR BROWN: Mr. President, members of the Legislature, I think that the issue that I intended to speak to has been addressed a little bit, because when I listened to Senator Landis, I felt like we were arguing about two different things, and when Senator Raikes spoke, I think that he made it really clear that...that maintaining the tax revenue base was his primary consideration. And that is not what this bill is about. This bill is about dealing with the equity and fairness issues. And for me, it's simply looking at whether we intended, when we constructed our tax code, to penalize couples, whether we intended to penalize people for being married. And if we did not, then we need to correct that. And so I see that as what we are doing. Now, if we are...if we agree that we want to correct it, there would seem to be only two ways to do that. Either reduce the revenue, or shift it onto someone else. And, so...I don't think, on this particular issue, that you can say; yes I believe in fairness, I believe in equity, I think that there's a problem, but I don't want to shift it and I don't want to reduce the tax revenue base. And I'm supporting Senator Redfield's bill. I am supporting this amendment, because I believe that the inequity that we have is the issue, and that we can't ignore that inequity. We did not intentionally build it into the system, and I am willing to accept that we will have a reduced tax revenue base as a...in our responding to something that we

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never intended to have in place in the first place. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Brown. Senator Tyson.

SENATOR TYSON: Thank you, Mr. Lieutenant Governor, members of the body. I note that all the arguments here, except for a brief reference by Senator Brown, are against reducing expenditures by the amount that we reduce the revenue. They're predicated on the same revenue regardless of where it may come from, or where it has to be shifted to. The money that we're talking about is not our money. It is money that belonged to the taxpayers of Nebraska. We're supposed to, in theory, not in practice, God, I want to apologize for suggesting for even a moment that in practice we should be chary of levying taxes on the taxpayers of this state. We are supposed to be here to levy the minimum necessary to fulfill the vital functions of the state, and not to fund our wildest dreams. Nine million dollars. There will be occasions between now and the end of May for us to spill that much, and we will spill it. The economies are what we should be striving for. One way to force economies is not to levy the taxation. Let us spend less, not look to lavish the taxpayer's money on our dreams. I would offer the balance of my time to Senator Redfield. Thank you.

PRESIDENT MAURSTAD: Senator Redfield.

SENATOR REDFIELD: Thank you very much, Senator Tyson. Senator Brown was exactly right. This bill is about equity. It's about the same person in the same job paying the same amount of taxes. And, Senator Preister, I know there is a concern, and I was extremely concerned about putting any kind of burden on the singles, which is why we don't see a revenue-neutral bill here. But I think that we often spend money on lots of other things, and they're worthy projects. And sometimes, they even cost millions of dollars. But even though the cost may be high, they affect a very small number of people. This is a bill that affects 350,000 Nebraskans; when I look at it this way, it doesn't seem like the fiscal note is that big. Because in comparison to things that we sometimes spend, the per capita cost is very, very low. I think that you're hearing from the skinflints of the Revenue Committee, and it's kind of

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interesting, you see how difficult now, why, it is to get a bill out of the Revenue Committee. Senator Landis and Senator Raikes are absolutely right, the bill is not revenue-neutral, had it been they would have voted for it. Senator Landis was even generous enough to say he would support about \$2 million in loss. Senator Raikes had an even far more complicated chart, believe me, with his bill. And in fact, we did talk about that between us, in trying to work the two bills together. But he declined, I think he was a little preoccupied with all the things going on in the Education Committee. So this is the proposal that we do have before us this year. I'm hoping that you'll support the committee amendment, I intend to. I think they've been very fair. And it's hard to say that the singles have been getting a bonus, as Senator Landis would indicate, because I'm sure if you ask them, they wouldn't think that they've been paying too little in taxes in the state of Nebraska. I don't think anyone you ask, in the state of Nebraska, if they're paying too little, would say they are. So I understand that there is a cost, but \$2.80 a year, or \$3 a year; I guess I can live with that for the cost of equity.

PRESIDENT MAURSTAD: One minute.

SENATOR REDFIELD: Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Redfield. Senator Smith, on the committee amendments.

SENATOR SMITH: Thank you, Mr. President, members. I rise...I am a single person, but actually this cannot be a conflict of interest, because I don't make enough money for it to matter. But I look at the handouts, and I rise with hesitation on the committee amendments. And I...I'm a realist, I know that it would be hard to just take a \$50 million hit to the General Fund, but I look at the handout that has 2000 tax year at the top, and it outlines what singles would pay, as compared to married couples. And perhaps I don't have the numbers right, but I see where there are cases of married couples benefiting...benefiting to a greater degree than the singles filing jointly...or separately, in many cases. So let's take for example, \$25,000 each for two singles. Each single would

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receive a 21 percent...or a \$21 increase, but the...so that times two would be \$42, but the married couple would receive the \$81 decrease. That one is not as different as others. But there are various situations there that I hesitate, but I want to look at the whole thing. I wish that we could come up with something that would be more of an increment, to work towards a goal over a several year period. I appreciate Senator Landis' remarks in explaining what the picture looks like. But I think that we can come up with something that I hope will be more equitable. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Smith. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor, members of the body. Senator Smith was referring to the second page of the chart, where he's talking about singles making \$25,000, that, in fact, the taxes for them per year would increase \$21, but the marriage penalty would be decreased by \$81. And, in fact, that's exactly why there is a fiscal note here, why there's a loss of income, because we didn't choose to saddle the singles with an increase of \$40.50. That would have been the other way to go on that issue. We could have made them pay half the cost, but we didn't choose to do that with the committee amendment. We're asking the singles to pay less than the full cost, to lose less than the full bonus that they now receive in their income tax rates. So, Senator Smith, I think that perhaps when you look at that, you may realize that in fact we haven't taken as much away from the singles as some might have proposed to do. So I don't think this is bad. I think that it would be better if we were living in a surplus year, and we could just write off the \$36 million, and give the marrieds that lower tax level equal with the singles now. I'd love to do that, but I'm a realist, and I know we don't have the dollars to do that. But I also know that when I give \$100 tax decrease to someone that, in fact, it's like giving them a raise of \$200. Because many times, by the time the teacher, or the nurse, or whoever paid the Social Security, or other retirement plans, the federal income tax, and the state income taxes on the salary, they lose almost half of the benefit of the raise that they're given. So this is a way, in a sense, to give a raise to the married

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couples that are being penalized by this. And we're only talking about lower income, middle income married couples. We're not talking about the rich folks here, because they don't pay it, they're already at the top rate, and they're going to continue to be at the top rate. So this is a way to bring equity. The singles and the marrieds will pay exactly the same, but the state will underwrite part of the cost so we don't have to raise it even more on the singles. I would prefer not to put any more burden on the singles. Thank you.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Jones, on the committee amendments to LB 277.

SENATOR JONES: Mr. President, members of the body, I've been sitting here listening to this, and I think I'm going to support the committee amendments. Could I ask Senator Redfield a question please?

SENATOR CUDABACK: Would you respond, Senator Redfield?

SENATOR REDFIELD: Yes.

SENATOR JONES: Yes, Senator Redfield, on the...on this chart on the second page, and you kind of just got explaining done to Senator Smith about it. Where it's \$21 for the increase for singles, and \$81 increase...decrease for the marrieds,...

SENATOR REDFIELD: Yes.

SENATOR JONES: ...that...that is...that's why the amount of dollars is cut down for the state then?

SENATOR REDFIELD: Exactly.

SENATOR JONES: To 9 million in place of the 21 million, what you started out with on the...

SENATOR REDFIELD: Right, if we were to have accepted an amendment that we had offered in the committee, or that we

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brought to the committee and discussed, we could have made this revenue-neutral. But then, in fact, we would have had to raise those singles, so that they were probably paying, you know, quite a bit more, maybe double or at least 50 percent more than this in an increase, in order to make it revenue-neutral. We chose not to do that.

SENATOR JONES: Did you have that figure in mind, how much it would take to increase on the singles to do that? Would it be \$40 or \$42 in place of the \$21?

SENATOR REDFIELD: Actually, when we looked at the different amendments, we just ran different scenarios. And the one thing that I paid a lot of attention to in proposing amendments to the committee, I was looking at the brackets. And I wanted to make sure that at the lower brackets, we weren't seeing the biggest difference. This is on your last sheet, where you have the bracket list.

SENATOR JONES: Yes, I've got...

SENATOR REDFIELD: And if you notice, it drops down at that middle bracket from \$17,000 to \$16,000, so you're adding 1.5 percent on \$1,000 of income, and that's all. You hit...take a bigger hit when you get to the top of the bracket there. And that was the way I felt it would be fairer, so that it didn't hit the low income people.

SENATOR JONES: Okay, well, thank you. I've been talking across my district on this, and there have been a lot of people saying something about it a long time, because it's really unfair when two people are making the same amount of money, and they decide to get married, and then are penalized for doing that. And I don't think that's a good precedent to set. And I think Senator Tyson kind of hit it too, because he said that is their money, and we're just not collecting it here. And I realize we're going to have a deduction in the revenue for the state, but I still think that that would, that's the way we should do. So I'm going to support the committee amendments, and also the bill. Thank you.

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SENATOR CUDABACK: Thank you, Senator Jones. Senator Kruse, followed by Senator Smith, on the committee amendments.

SENATOR KRUSE: Mr. President, and members, I will support the amendment, but it doesn't go far enough. Unless something else happens, I'll not support the bill. We're talking about peanuts in adjustments here, and they're appropriate. But what about the bonus. The marriage bonus is huge. We're not talking about that to be a fairly simple matter to make this revenue-neutral. We're doing a 50 percent increase for singles at the same rate as marrieds. And it seems to me that there could be an adjustment there.

SENATOR CUDABACK: Thank you, Senator Kruse. Senator Smith.

SENATOR SMITH: Thank you. If Senator Redfield would yield?

SENATOR CUDABACK: Senator Redfield, would you yield to questions?

SENATOR REDFIELD: Yes.

SENATOR SMITH: On your handout, let's go to the second page, bottom section, two singles making \$40,000 apiece. The decrease for the married couple would be \$248, right?

SENATOR REDFIELD: That's correct.

SENATOR SMITH: And the increase for each single would be \$46.

SENATOR REDFIELD: That's correct.

SENATOR SMITH: So \$46 times two, that would be a \$92 increase if they filed separately, but if they file jointly, it would be a \$248 decrease.

SENATOR REDFIELD: Yes, if they were married.

SENATOR SMITH: Right. And why does the married amount have to be that amount? Why can't it be even across the board there?

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SENATOR REDFIELD: The married amount is exactly double. If you look at the single burden at \$40,000 is \$1,904, and you double that for two singles, and it's \$3,808. That's exactly double. So that was the way we made it exactly equal to what they would pay if they were single.

SENATOR SMITH: But the effect is a greater benefit for the married couple than the extra expense to the two single.

SENATOR REDFIELD: Because what you're pointing out is just how drastic the penalty has been. That's how much we have been taxing married couples at that income level to a greater degree than we would have if they were not married. That's the amount of the penalty that is there. In fact, if you look on the left-hand column under singles, you'll see that, in fact, two singles now, without any changes passed in LB 277, they pay \$1,858 each, which is \$3,716; but married couples pay \$4,056, it's a difference of \$340. That's the penalty that the same two incomes, the same job, the same people are paying just by being married. Three hundred and forty dollars. So we've reduced what we're going to decrease for them, in making them the same as the tax burden on the single.

SENATOR SMITH: Okay, thank you, Senator Redfield. I believe that I will support the bill at this point. I'm still thinking about the committee amendments. But I think that we can arrive at something throughout this process that I think will have a little smaller hit to the single members of our citizenry. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Tyson, on the committee amendments to LB 277. Senator Tyson, that won't be necessary, because you're light is last. There are no further lights. Chairman Wickersham, is he in to close on the committee amendments? There he is, excuse me. Did you wish to close, Senator?

SENATOR WICKERSHAM: Mr. President, I'll be brief. I apologize, the Assistant Clerk and I were discussing another issue. The committee amendments, I hope you will support. I'm encouraged by the discussion that we have had this morning. I don't think

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this will be one of those instances where we'll have to back up and say we weren't quite sure of what we voted for. And I hope that you will vote for the committee amendments, because they bring us much, much closer than we have ever been to resolving a difficult issue in our tax structure. And even though it shifts some tax liabilities between taxpayers, I'm prepared to say that that is fair. And as I've indicated, we'll have other opportunities to examine the bill as it goes along. But I think we should act, and I hope that we receive your support for the committee amendments on General File.

SENATOR CUDABACK: Thank you, Senator Wickersham. The question before the body is adoption of the committee amendments to LB 277. All in favor of that motion vote aye, opposed nay. We're voting on the committee amendments to LB 277. Have you all voted, who care to? Record please, Mr. Clerk.

CLERK: 31 ayes, 3 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: Committee amendments are adopted. We're now open for discussion on advancement of LB 277 to E & R Initial. Senator Raikes.

SENATOR RAIKES: Thank you, Senator Cudaback and members. As I say, I did vote for the committee amendments, but I will not support the bill. And my main reason is the revenue base, but I also have concerns with this approach of addressing the marriage penalty. I...my preference would be to simplify the structure rather than what I think is a slight complication, and also address some other equity issues at the same time. But that's, again, not my main reason. There's been some comment about the marriage bonus in the structure we now have. And keep in mind, I would just mention that there's always been that sort of a prescription in our policy; that if you have, two people are married, and one elects to stay home, to stay out of the workforce, to be in the home for whatever reason, there's always been a prescription, I guess, in our policy to reward that with a tax break. That is the source of the marriage bonus. And I would mention again, that in our current tax structure, there is a marriage bonus, and a marriage penalty, at every income level.

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It simply depends upon what the split is between the wage earners, ranging from zero to 50/50. I'll mention one other fact that I think has been...or one other item that has been at least touched on by Senator Wickersham. And currently, at the federal level, there is a proposal, which is making progress, that it would eliminate the...or reduce at least, the marriage penalty in the federal income tax code. That would have an impact on Nebraska, as I think Senator Wickersham mentioned. One of the proposals or one of the parts of that proposal would be to double the standard deduction to twice the...the standard deduction for married couples to twice that of singles. Currently, we adopt, at the state level, those standard deductions. So if that gets doubled at the federal level, then it's doubled at the state level. Now as he mentioned, it is possible, I suppose, that we could offer an amendment that...so that Nebraska would not use the federal standard deduction, but rather would use it's own standard deduction. But again, that's an additional complication. If you didn't do that though, the cost is, as I can gather from a Revenue Department estimate, would be about an additional \$18 to \$20 million reduction in the revenue base of Nebraska. So again, I think horizontal equity, if that's what you want to call it, in the tax structure, is a reasonable goal. I'm not convinced that this is the best way. I think this way is too expensive, and perhaps this may not be the right time to do it. So I will not support the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Wehrbein followed by Senator Tyson, on the advancement of LB 277.

SENATOR WEHRBEIN: Mr. President, members of the body, obviously I've been listening to the discussion, and I know and lots of interest in how this can impact the budget. I can't tell you exactly how this can impact the budget to the degree that we're not quite through, and we have...probably going to have to make some more difficult decisions next week, and perhaps even cutting back where we're at, depending on the revenue sources and so forth. I'm going to support this, at least one time. Be that as it may, Senator Raikes may have some points if there's a more favorable way to have the Revenue Committee look at this, or make it fair, that's not my issue. My issue is really going

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to be to put this in the balance with all the other things that we're going to want to do in this body. And I think each of us will have to make that decision. Whether some imbalance within our tax code for married versus singles is the issue for you, or whether it's going to be additional juvenile court judge, immunization registration; it's going to be brain injury registry, Department of Corrections and medical services, county jail reimbursement for parole revocation, enterprise zone credits, Nebraska Venture Capital Forum, school consolidation incentives. There's room for many of these things, but there's not room for all obviously. So it's a matter of prioritization. When we decide to make those prioritizations, and what we leave for the Governor to do, I'm not sure. If this is an issue that's been around for quite a while. In my mind this issue is an...it is unfair, and probably should be considered. But each of us is going to have to make our decision as to what is a more priority; having the money to spend, or to have a fair tax code. So I'm not really going to have...I really don't have an answer. I just want to remind that there's many, many issues that are going to be here, and they're going to have to take their place with others. We made a decision on Senator Stuhr's bill last week, that we're not going to spend that money for career development. These are all going to have to be made as we go along. But it's also true that if you don't...if you kill it now, it's not going to be there in May when you want to do it. So each of us has to decide that. By the way we have LB 801, which is legislative employee bill that's in the Retirement this morning, we're going to make a decision on. That has a significant amount of cost. And it will be a General Fund hit. But it is a fairness issue for those employees that work for us, for example. So we have several issues ahead. And I think it's whether you want to winnow them out now or winnow them out later. But if you winnow them out now, they're not available later; but if you have...if you're going to really hold the line on spending, then there's going to be room for, maybe in this case, \$2.6 million of revenue loss. I don't intend to help you on these answers, I'm just probably discussing out loud where we're at. That's the first issue; the second issue is Senator Raikes', if this is the right committee amendment. I'm not sure. Perhaps there can be further compromise, as we go along, to reduce the impact on this revenue loss. Maybe that ought to

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be looked at. But I just want to remind that a lot of the things that we want to do won't be doable if...when we get to late May. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. (Visitors introduced.) Senator Tyson, on the advancement of LB 277.

SENATOR TYSON: Thank you, Senator Cudaback. I want to comment on just two things. One, touching on where...on what Senator Wehrbein was speaking of, I do not know how they come to the sum of the fiscal note. I do know that if we fail to tax this money, it will result in an immediate loss of revenue to the state of Nebraska; big crocodile tears now flow. What will happen to that money though, because it will be...it will remain with the taxpayers, is the taxpayers are going to do something with it, probably spend it; hopefully save it. If they spend it, they're going to be taxed on that. And when you take the velocity of money, and what the true velocity of money in the state of Nebraska is I don't know, I have heard 3.3 times, we are going to be taxing those dollars again and again, possibly 3.3 times. So that the net loss to the state of Nebraska, unless that's calculated in the fiscal note, and I'm not sure that it is, we could be generating more tax revenue this way than spending it through the state. I want to comment on something else, and that is something that Senator Kruse and Senator Raikes have both mentioned, and that is the marriage bonus. I spent the last years of my working life in sales, and I'm...I try to be as attuned as I can to selling methods, and selling phrases, and we were test driving a car. My wife was at the wheel. The salesman said, "Mrs. Tyson, do you work outside the home?" And I hadn't heard it expressed quite that way but the phrase stuck with me because how it stated a truism. The assumption in that phase is that the woman is working, and the question was, was it inside the home or outside the home, but she was working and she was working inside the...if she was working inside the home, this is something that we should try and reward even more because if she's working inside the home, she's taking care of the children, everything else, and that is what marriage and a family is for. We shouldn't quail at putting a bonus on that type of activity, we should be rewarding it even more. I don't know how much time I have left, Senator

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Cudaback, but I would give it to Senator Redfield.

SENATOR CUDABACK: Senator Redfield, about a minute and a half. Thank you, Senator Tyson.

SENATOR REDFIELD: Thank you very much. Members of the body, I am sincerely hoping that you will support this bill. I think that if we're going to look at our tax code and we're going to look at the needs of the government in the state of Nebraska, it is extremely important that we start from a base that is fair and equitable. If there needs to be more money raised in the state of Nebraska, it should be raised from a base that is fair and equitable. We know currently that we are not starting on that base. I don't think any of us here agree that we should be there. It's hard to give up the money. But Senator Erdman just reminded me that if it's...

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: ...the right thing to do, it's always the right time.

SENATOR CUDABACK: Thank you, Senator Redfield. There are no further lights on. Senator Redfield, did you wish to close on the advancement of LB 277?

SENATOR REDFIELD: Thank you, Senator Cudaback. I would just ask that everyone please think very carefully that if they keep this bill and forward it, that in fact we do have some leeway to make some minor adjustments to it. But I think whatever adjustments we make have to always have an end result of equitability, the same person, the same job, the same salary, the same tax. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. The question before the body is, shall LB 277 be advanced to E & R Initial? All in favor vote aye, opposed nay. We are voting on advancement of LB 277. Have you all voted who care to? Have you all voted? Record, please, Mr. Clerk.

CLERK: 26 ayes, 4 nays, Mr. President, on the advancement of

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LB 277.

SENATOR CUDABACK: LB 277 does advance. Mr. Clerk, items for the record?

CLERK: Mr. President, there will be a Retirement Committee Executive Session at 11 o'clock underneath the south balcony. New A bills, LB 593A by Senator Connealy. (Read title.) Senator Chambers, LB 754A. (Read title.) Senator Baker would move to reconsider the vote to indefinitely postpone LB 486. That will be laid over, Mr. President. That's all that I have at this time. (Legislative Journal page 1306.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk, next agenda item?

CLERK: Mr. President, LB 398, a bill introduced by Senator Suttle. (Read title.) The bill was introduced on January 8 of this year, referred to the Health and Human Services Committee for a public hearing, advanced to General File. I do have committee amendments, Mr. President. (AM0975, Legislative Journal page 1229.)

SENATOR CUDABACK: Senator Suttle, you're recognized to open on LB 398.

SENATOR SUTTLE: Thank you, Mr. President and members of the Legislature. The committee amendments on this are 143 pages, and it...that is down considerably from the original bill. I know all of you have read all of it but just to recap, I will tell you a little bit about what is in the intent of this bill. I...I introduced LB 398 at the request of the Nebraska Pharmacists Association. This bill represents the effort of a task force of pharmacists interested in modernizing and updating the provisions of law which affect the practice of pharmacy. The legislation before you today makes changes in three primary areas: The Uniform Licensing Law, the Uniform Controlled Substances Act and the Pharmacy Practice Act. The change to the Uniform Licensing Law adopts the recommendations from the Nebraska Credentialing Reform for the Year 2000, Professionals, NCR 2000, which pertains to pharmacists. Specifically a new

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definition of dependents will clarify that professionals can be assisted by the LAP, or Licensee Assistance Program for all forms of dependence, not just substance abuse. Specific revisions to the Uniform Controlled Substances Act include the following: One, penalties for professionals practicing in a state of intoxication are increased from a Class III misdemeanor to a Class IV felony. Two, the records retention requirements for pharmacists will be reduced from seven to five years in all cases, and changes are contained which will make it easier for pharmacists to comply with the inventory requirements which penalties increase for noncompliance. Three, expiration of all prescriptions for controlled substances will be established at a six-month period. And, four, pharmacists and other practitioners will be provided with greater flexibility in utilizing the multiple federal options for the destruction of controlled substances, a change which should decrease the expense and time required for the destruction of controlled substances and should also free up time for pharmacy inspectors to perform professional tasks requiring greater expertise than disposing of controlled substances tablets. The final revision in LB 398 relate to the Pharmacy Practice Act. In general, these changes make corrections to the Poison Control Act and remove outdated language. It also authorizes delegated dispensing agreements which...under which dispensing without a pharmacist present will be allowed for other pract...practitioners, when a pharmacist has agreed under certain specific conditions to delegate dispensing authority for this purpose. The concept of delegated dispensing is not new, as public health clinics and dialysis drugs or device distributors have operated under drug dispensing permits for many years. Authorization of the transfer of original prescription information for Schedule III, IV and V controlled substances between pharmacies for the purpose of refill dispensing and establishes the parameters within which such a transfer may take place, and allow pharmacy technicians under the pharmacist's supervision to train other pharmacy technicians. Delegated dispensing agreements will be used in emergency rooms to allow nurses to dispense drugs to emergency room patients and by medical gas distributors to dispense oxygen. These provisions are of great interest to the oxygen dealers because federal law classifies medical gas as a

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prescription drug. Currently, dealers in medical gases would need to obtain a pharmacy permit and the services of a pharmacist to legally dispense oxygen. Allowing for the implementation of a delegated dispensing agreement will assist them to continue to provide quality service without the expense and requirement of a pharmacy permit and a staff pharmacist. An Attorney General's Opinion issued last fall confirms that individuals dispensing medical gas are engaged in the practice of pharmacy and, as a result, the extension of drug-dispensing permits to those who dispense medical gas is needed. The bill also contains a modified version of LB 285 which provides an exemption from the offense of possession, delivery or manufacture of drug paraphernalia for pharmacists who sell hypodermic needles or syringes for the prevention of the spread of infectious disease. That's it in a nutshell. I'll be glad to try to answer any questions after Senator Jensen opens on the committee amendments.

SENATOR CUDABACK: Thank you, Senator Suttle. You've heard the opening on LB 398. Senator Jensen, to open on the committee amendments to LB 398.

SENATOR JENSEN: Thank you, Senator Cudaback, members of the Legislature. The committee amendment to LB 398 does become the bill. It includes provisions from LB 398, Senator Suttle's bill, LB 511, which is a bill that I introduced which was similar, and LB 285 which is a bill that Senator Janssen introduced and I'll address that in a moment. The amendment makes several technical changes but I'd like to briefly highlight some of the more substantive parts of the amendment. The amendment deals primarily with changes to the Uniform Control Substances Act and the statutes relating to the practice of pharmacy referred to as the Pharmacy Practice Act. The amendment changes and adds definitions under both acts in Sections 1 and 26. Section 20...or Section 3 of the amendment enhances the penalty for prescribing and administering drugs while intoxicated from a Class III misdemeanor to a Class IV felony. You can certainly understand the reason for that. Section 8 changes and adds provisions related to the inventory and storage of controlled substances. Section 12 eliminates (sic) the validity of a medical order to six months

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from the date of issuance and changes and adds provisions to the destruction of controlled substances. Section 18 adds provisions from LB 285, which was introduced by Senator Janssen, and allows pharmacists to sell hypodermic syringes or needles to prevent the spread of infectious diseases without violating current drug paraphernalia laws. The amendment clarifies the distinction between the license of pharmacists and pharmacies required by the passage of LB 819 in the year 2000. One or more important parts of the amendment deals with expansion of the current authority of pharmacists to enter into delegated dispensing agreements. This authority for pharmacists is especially important for home health agencies that distribute medical gases or oxygen. An Attorney General's Opinion, as Senator Suttle mentioned, last year confirmed that the federal government's decision to designate medical gases as prescription drugs, the committee amendment allows medical gas distributors to lawfully dispense under a delegated dispensing agreement with a pharmacist. Delegated dispensing is addressed also in Section 47-49 of the amendment. Section 47 permits a pharmacist to delegate dispensing tasks and functions under specific conditions and limitations by entering into a delegated dispensing agreement as a basis of issuance of a delegated dispensing permit. Required contents of a delegated dispensing agreement are provided. Section 48 of the amendment provides anyone who has entered into a delegated dispensing agreement to apply to the Department of Regulation and Licensure for a delegated dispensing permit. A hospital with a pharmacy license is not required to pay the prescription, or excuse me, the prescribed fee for a delegated dispensing permit. A permit must be issued by the Department when the application and a delegated dispensing agreement complies with the law and when public health and welfare is protected and public convenience and necessity are promoted by the issuance of a permit, and the applicant has complied with applicable inspection requirements. Public convenience and necessity are presumed if the applicant is a hospital, public health clinic, dialysis drug or device distributor or a medical gas distributor. Section 49 relates to required inspections of delegated dispensing sites and requires an inspection fee for such inspections. Section 56 requires that the Director of Regulation and Licensure to approve formularies as used by individuals dispensing permit to a

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delegated dispensing agreement. The Board of Pharmacy may determine that the approval of a formulary isn't necessary in certain cases. The amendment outright repeals several sections and has also an emergency clause. That will conclude my opening, Mr. President. The committee statement on LB 398 contains a more thorough description of other provisions of the amendment. I would simply urge the adoption of the committee amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the opening on the committee amendment by Chairman Jensen. Open for discussion on those amendments. Senator Hilgert, followed by Senator Janssen.

SENATOR HILGERT: Thank you, Mr. President and members. If I could ask the chairman regarding the committee amendments, I have a couple of questions.

SENATOR CUDABACK: Senator...Senator Jensen, would you yield?

SENATOR HILGERT: On page 11, on line 11-16, reading this with all the changes in place, "It is unlawful for any practitioner or other person, while in a state of intoxication, to prescribe or administer any poison, drug, or medicine to another person which endangers the life of such person. A violation of this section is a Class VI felony". My question for you is, so they have to be...it's not under the influence, but you have to have intoxication, and if you have to have intoxication, what's the percentage amount that you're using for the...for intoxication under this felony provision?

SENATOR JENSEN: You want to know what percentage?

SENATOR HILGERT: Yeah. Do you need a .08, is it .10, is it a .16? I mean, are we talking about impaired? Right...in the language here, it has to be intoxicated, so it's okay if you're under the influence. It's okay if you have been drinking, but you just can't be intoxicated. And since you've chosen to have that nuance in the law, I was wondering how do you define that?

SENATOR JENSEN: Senator Hilgert, that is a very good question.

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I would like to study that a little bit myself and get back to you with that...

SENATOR HILGERT: That certainly sounds like a Select File issue, Senator Jensen.

SENATOR JENSEN: (Laugh) I understand.

SENATOR HILGERT: And thank you very much for responding. It is...and that is a concern of mine when we have...one thing I learned and was beat into me, unfortunately at the expense of several of my bills in Judiciary, they must be clear and you must have an idea of what the law says if you're going to be violating it. And frankly, this is a little vague on...at least in my opinion. And I'm wondering why we shouldn't have "under the influence" added as well as intoxication. And also I have a question about what does "endanger" mean. Endanger is normally...means you're putting someone at risk. Well, if you're just simply putting them at risk, then damage doesn't need to occur. So under this law, right now we don't know what intoxication exactly is but you have to be intoxicated, then you have to prescribe or administer the drug, and then it has to endanger the life. And whether that's just putting them at risk or whether there has to be damage, I think is vague as well. So I think that there needs to be probably a little bit of clarifying language and I'm not saying that this will be very difficult to do, but I do believe that this is something we need to address on Select File if we're going to make this a Class IV felony. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Hilgert. Senator Janssen, on the committee amendments.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. I'd like to thank the Health and Human Services Committee, Senator Suttle, Senator Jensen, for allowing the...one of the amendments that was a bill of mine, LB 285. I've had that bill for the last couple of years and finally it looks like it's going to find a home. Under the current...I'd like to explain that to you just a little bit. Under the current law, if a practicing...practitioner sells a clean

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hypodermic syringe or needle to a person and the practitioner is reasonably...should know that that needle or syringe will be used to inject a controlled substance, then the practitioner can be found guilty of a Class II misdemeanor for distributing drug paraphernalia. Now that...that sounds kind of ridiculous but that's the way the statutes are at this time. By making this change, we would allow a pharmacist and other practitioners to get both clean supplies and effective advice on Class IV drug users and steroid abusers to prevent the spread of infectious diseases without violating the statutes. And another thing, if the practitioner is allowed to ask the person's plans to use the syringe for an illicit purpose and then was able to offer some safety advice in that situation as well as rehabilitation options, our community would be helped in a way that would not otherwise be possible. And unless an abuser seeks help from his or her own initiative, a pharmacist is often the only healthcare professional that...that they would ever have an opportunity to offer any help. And that's just the way it is, folks, and I think this is...this new section is very important for a public policy in the state of Nebraska and I believe that it is a public health bill and that we would get...it would get help to those who need it the most while reducing the spread of disease in our society. With that, I thank you, Senator Jensen and Senator Suttle, and I would support the committee amendments wholeheartedly.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Jensen, you're recognized on the committee amendments.

SENATOR JENSEN: Thank you, Mr. President. I just wanted to comment and we will investigate this language a little more, Senator Hilgert. However, that...that is the language that's in the current law. The only thing we're changing is from physician to practitioner. We're just changing a definition. But in light of what we've done with our driving laws, it should be looked into and we'll do that before Select File. With that, thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Jensen, there are no further lights on for discussion. Did you wish to close on the committee amendments?

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SENATOR JENSEN: Thank you, Mr. President. I would just ask for the adoption of the committee amendments, and we will check into this, and if there needs to be some changes, we'll do that on Select File. Thank you.

SENATOR CUDABACK: Thank you. You've heard the closing on the committee amendments to LB 398. The question is, shall those committee amendments be adopted? All in favor vote aye, opposed nay. We're voting on the adoption of the committee amendments to LB 398. Have you all voted who wish to? Have you all voted? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: The committee amendments are adopted. We are now open for discussion on advancement of LB 398 to E & R Initial. Those wishing to speak, Senator Chambers, on advancement.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I listened to a mentee a few minutes ago, meaning Senator John Hilgert who used to be a member of the Judiciary Committee, bring into play some instruction that, to use his language by paraphrase, was beaten and drilled into him during committee hearings and sometimes during discussion on the floor. I must ask Senator Jensen a question, and as he comes to his mike, I want to remind people that there was place where King David, in one of the Psalms said, "I am wiser than my teachers". Senator Hilgert, in this case, is wiser than his teachers. Senator Jensen, are you on page 11 of the committee amendment, or can you find it?

SENATOR JENSEN: Yes,...

SENATOR CUDABACK: Would you yield, Senator Jensen.

SENATOR JENSEN: ...I am.

SENATOR CHAMBERS: This is the language. "It is unlawful for

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any practitioner or other person, while in a state of intoxication, to prescribe or administer any poison, drug, or medicine to another person which endangers the life of such person". Does this mean that if a person is not intoxicated, it is lawful to prescribe or administer poison, drug or medicine which endangers the life of another?

SENATOR JENSEN: That is the way it would read, the way it is printed there. Yes.

SENATOR CHAMBERS: I would like to see something done about that and I'm willing to work with you and it...

SENATOR JENSEN: Great.

SENATOR CHAMBERS: ...struck me as Senator Hilgert was speaking. I don't think it ought to be lawful and I do not believe that is the intent of anybody who dealt with the original law or those who are bringing these amendments to say that it is lawful for a person who is not intoxicated to prescribe or administer poison, drug or medicine which endangers the life of such person. And although it might seem to be something that will elicit a smile, the law is the law, and if an exception is carved out in the law whereby it is lawful to administer a poison or endanger a person's life, an individual who does such a thing could refer to this section of the law and say it is a specific provision and it overrides the general law against doing such things. I'm not going to ask Senator...well, I'm not going to give any names and I'll bear no blame, but that's all that I have at this point. Thank you.

SENATOR JENSEN: Thank you.

SENATOR CHAMBERS: And I do intend to support the bill.

SENATOR CUDABACK: Thank you, Senator Chambers. Open for discussion on advancement of LB 398? There are no other lights on, Senator Suttle. Did you wish to close on advancement?

SENATOR SUTTLE: Thank you, Mr. President and members of the Legislature. I...I do appreciate the diligence of Senator

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Hilgert, and will work with Senator Chambers and Senator Hilgert in making this language clearer. I certainly don't want to do the opposite and have it lawful to provide poison or something that will hurt another individual. That's the furthest thing the...from my intent. So with that, I will ask that you pass this onto Select File and we will have a Select File amendment ready when the...at...in the appropriate time. Thank you.

SENATOR CUDABACK: Thank you, Senator Suttle. You've heard the closing on advancement of LB 398. The question before the body is, shall LB 398 be advanced to E & R Initial? All in favor of that motion vote aye, opposed nay. We are voting on advancement of LB 398. Have you all voted who care to? Have you all voted? Record, please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 398.

SENATOR CUDABACK: Thank you, Mr. Clerk. The bill does advance. Mr. Clerk, items for the record?

CLERK: Mr. President, new A bill, LB 277A by Senator Redfield. (Read title.) Enrollment and Review reports LB 83A as correctly engrossed. And your Committee on Enrollment and Review reports LB 215, LB 444, LB 808, LB 772, LB 664, LB 678, LB 671, LB 671A, LB 668A, and LB 772A to Select File; some of those having Enrollment and Review amendments attached. That's all that I have, Mr. President. (Legislative Journal pages 1307-1308.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, next agenda item?

CLERK: Mr. President, LB 740, a bill by Senator Landis. (Read title.) The bill was introduced on January 17 of this year, referred to the Education Committee for a public hearing. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President.

SENATOR CUDABACK: Senator Landis, you're recognized to open on LB 740.

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SENATOR LANDIS: Mr. Speaker, members of the Legislature, this is the act on school violence and its prevention that I have designated my priority bill for the year. It's been reported out of the Education Committee. Essentially, the bill is a body of money for demonstration grants. That body of money is \$250,000 a year for five years. The demonstration grants would be applied for either by a school district or an ESU. They are to be evaluated by the State Department of Education which is to choose among the potential applicants the ones that would receive the grants. The attributes that they would be looking for would be that it was well designed, that it was comprehensive, that it was districtwide as opposed to a single school inside a district, but the district...district-wide, rather, and sustainable over time. In the event that it was an ESU that applied, the ESU would have to have at least three of its school districts that it represented and it would also be in collaboration with a mediation center. And in the event a school district applied, it would be documentation that would demonstrate collaboration with a local ESU or a mediation center and that the applicants would provide that to the Department of Education. There's a provision in for data collection as well. It also says that 50 percent of the money appropriated in any single year can be used by grantees for preimplementation activities, and that means consulting with school safety and security committees, developing assessment and evaluation instruments. It means providing in-service training for teachers or staff who might be having a responsibility under the program, assisting in preparing and implementing a conflict management program, providing parent education or training, providing education sessions for school board members, community organizations, as we got ready to implement a school violence prevention program. Understand that although this would be in collaboration with ESUs and mediation centers or schools and mediation centers, there is no obligation to contract with the mediation center to provide any particular services. There are organizations that would assist. There are existing programs that one could contract with and there's no obligation to do that with a mediation center. By the way, you'll find that I am on my feet a rather good deal of the time on conflict resolution issues, and on occasion I'm asked what my own personal interest is. I am not a mediator for hire, I'm not an arbitrator for

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hire, I've never made any money doing that. I have on occasion mediated and it's always been gratis, and it's never been with respect to a mediation center so in that sense, when asked, I have no relationship to this area other than a personal interest, and it's one that I teach but not practicing. The amount of money, as I said, is \$250,000 for the next five years, and therefore demonstration grants that districts or ESUs bring to the Department of Education and they are evaluated along with criteria that I suggested. Now what about what this might mean and what potential effect it might have? There are a number of programs that influence possibly the prevention of school violence. They include peer mediation. They include peaceable classroom programs. They include antibullying programs. They include anger management programs for students. There is a relatively broad range of possible programs that a school could turn to. What we don't know is that there's one right answer or one situation that always works. What we know is that there is a rather large amount of material out there for a school to use. What we don't know is which pieces fit best with which. What we don't know is what's right for a rural, small school system in the central part of the state as opposed to an urban school district like Lincoln or Omaha. What we don't know is the right mix, and we can't from the top down. What we say is, let's do this from the bottom up. Let's do this from districts who want to invest their time and effort in making a program work. Now, there are states that have tried this and there is a record of success. The one of the first beginnings in this whole field was the U.S. Justice Department who reached out to states in a publication called, "Conflict Resolution Education", suggesting that schools were implementing programs and that we needed to think systemically about that, and they said to schools and school districts, look, here are some things that people are doing well. They pointed to the peer mediation program in Illinois, they pointed to the peaceable school approach that had been used in various states, and they recommended that schools and school districts and state departments look at these programs. One of the first was Ohio. In 1994-95, Ohio did rather like what I'm suggesting here. They created a set of small grants that schools could use to build conflict resolution programs. Those programs varied along the same spectrum that I've just told you about. In 1996, however, schools who are

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using the grants were asked to report their outcomes. And in 1996, the Ohio Commission on Dispute Resolution and Conflict Management, in reporting on about 50 grants, said that almost 90 percent of the teachers surveyed said that the school was safer, to some degree, as a result of the implementation of a conflict management program. More than 80 percent said that the degree of physical fighting had decreased in their schools to some degree since the start of the conflict management program. Seventy percent of the teachers surveyed said that the program had reduced the amount of time that they spent resolving student disputes. Eighty-seven percent of the teachers in classrooms with schools who had gotten grants said that they had used conflict management techniques for dealing with classroom management and discipline problems in some way and that 87 percent saw an increase in students' willingness to cooperate, that they...that 87 percent thought that students had begun to use skills that were being taught, that almost 90 percent thought that the negotiation skills to deal with interpersonal programs had begun to have some application to students and that students had taken...begun to take some responsibility for their own problems. Further, when you step back away from the teachers in the classroom and you look at the districts, 61 percent noted a decrease in student fights, 59 percent reported a decrease in office referrals. What had Ohio done? What Ohio had done and said, look, here's some grants to districts, implement a conflict management program, collect data, and report back. And they used it in a wide variety of ways. They used it in some cases about student fighting, in some cases about the curriculum in the classroom. In other cases, they had to do with...they analyzed the days of suspension and they found that schools that had adopted a grant had wound up reducing the days of suspension for the entire student body rather dramatically. In one case, the Bassett Elementary School had gone from 25 down to three. One of the reasons is that these programs suggest that students, rather than fight, talk. And if they can't talk to the person who is creating the problem, that they talk to the school or they talk to the teacher, and that you bring in mechanisms to resolve conflicts other than punching each other out in a school yard fight.

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SENATOR CUDABACK: One minute.

SENATOR LANDIS: Lessons that are taught to students, depending on the program, include using eye messages, using act of listening, stating one's own interests or asking for action. And those can be taught to school yard...I'm sorry, elementary school children. Other programs involve infusing conflict management into the classroom curriculum so that as part of what we teach in school we would teach conflict and its origins and where it comes from and how it can be dealt with. In other cases, it may be teaching students to become peer mediators themselves so that the students who are in...experience difficulty can go to peer mediators. As a sidebar, let me tell you that among the most successful peer mediators are students who themselves have some history of being in trouble with the school, that when they are brought into the peer mediation program, they have credibility that the stereotypically student, council-perfect student doesn't have, and in fact,...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...one of the spin-offs is that peer mediation students themselves start to improve as students. My light's on. I'll come back to the topic as soon as I can.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on LB 740. Open for discussion. The following lights that are on, Senators Suttle, Chambers, Landis, Raikes. Senator Suttle, you're recognized.

SENATOR SUTTLE: Thank you, Mr. President and members of the Legislature. I...I rise to reluctantly oppose this bill only because, first of all, it costs \$250,000 for the next two years, and it's...and it's telling, even though it is enabling and voluntary, it's also telling school districts that they must do something else, that they are...they may already have some kind of mediation in...in place. There are many things that schools have to do, and I am bas...it's very hard for me, I'm in a terrible position because I basically support the idea of mediation. I think it's a good idea. I don't know that we should put another burden on the schools, we're already doing so

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much with the schools, and am making them do so many things, and not providing any assistance. This would...this would provide some assistance but I don't know whether we want to spend a quarter of a million dollars a year on this. I understand where Senator Landis is coming from, and I understand that he...he wants to do something to help with the violence that is in schools. It's a dangerous thing that kids are now...have the ability, more than half in the latest statistics, are saying that they could access a gun any time they wanted to. That's a rather frightening statistic and I heard that this morning. There has to be a way that this could be helped, but a quarter of a million dollars seems a bit much, and for that reason, I can't support this bill at this time. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Suttle. Senator Chambers, on advancement of LB 740.

SENATOR CHAMBERS: Mr. President and members of the Legislature, knowing Senator Landis' unwillingness to answer questions, I'm just going to go after this bill without any questions but declarations. I'm opposed to it. We killed off Senator Stuhr's bill because in the minds of a lot of us it was money for something that the schools ought to be doing anyway. I am adamantly opposed to all of these bills coming in here which are excusing schools from doing what their job is and then telling them if you don't do your job, which you're being paid to do, we're going to come up with a special state program to give you some money. I heard Senator Landis say he's not involved in mediation where he would get money or something, but if you look on page 4, you'll see that the ESU is required to document that they're working with a mediation center. This is a job creation bill for mediation centers. If you look on page 4 in lines 1 and 2, that service unit shall include documentation which demonstrates collaboration with a mediation center. Then if you come down to line 11 in (3) where we're talking about the school districts, they also are required to show that they're dealing with a mediation center. Now why are we going to mandate as a state business for these mediation centers, especially when what is being done is what the schools ought to do anyway. If you look further at the makeup or layout of the bill itself, you will see that school districts and ESUs are not treated equally.

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The school districts are required, if they receive grants, to collect data and these other things, then revise the district conflict management program plan accordingly. The ESUs are not required to do anything. They don't have to do the same things that the school districts are required to do, so I think this is a fluff bill which touches on a very serious problem, but sometimes the severity of a problem will be the basis for a Legislature to unthinkingly and unwisely throw money at that problem. This bill does not go directly to any of the underlying problems of conflict that exists in the schools. I would much rather, if the Legislature is going to send a message as we're always talking about the Legislature doing, emphasizing that teachers, counselors, principals, vice principals, other administrators, are to have an awareness of this notion of conflict. It's not defined in the bill, and maybe you can't define it. Whenever such a situation arises, in the classroom, in the hallway, in the principal or counselor's office, the adult in charge should have some knowledge of how to spike that particular situation. If a person has a gun, this kind of bill is not going to do anything in that kind of a situation. I don't think I heard Senator Landis allege that it would. In situations and circumstances short of that, teachers ought to know how to deal with these students. I think this is a waste of money. They're talking, in the bill, about the State Department of Education spreading out these grants. And again, they're supposed to be distributed all over the state.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: So I do not think there is enough money to successfully carry out a program if the program has any substance. If the program does not have much substance, and people are going to sit around and talk to each other or go to these mediation centers or bring their people into the schools just to chat, then it's too much money for that. I believe the school districts ought to look at the problem of conflict in the schools, and if the school district deems that problem to be sufficiently severe, have some in-house or in-service training of teachers. But I am adamantly opposed to this bill and similar types of bills. There are requirements, in my mind, of what the schools ought to be doing, and everything mentioned in

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this bill is what the schools should be doing anyway.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Landis, on advancement of LB 740, followed by Raikes and Chambers. Senator Landis, are you waiving? Senator Raikes, your light is next.

SENATOR RAIKES: Okay, thank you, Senator Cudaback and members. I would like to ask Senator Landis a few questions about...about this proposal. First, I'm going to try to capture, for my own information, what I think this is, and in a sense this would be a state-funded research initiative conducted in local schools around mediation and conflict management. Would that be a fair description of what...what's in your mind on this, Senator Landis?

SENATOR CUDABACK: Would you respond, Senator Landis?

SENATOR LANDIS: I'd make a few...I'd make a few alterations to that. There is a research and data collection component, but there is the desire to get programs in place so that there's a service delivery component to that I didn't hear to the point of recognition. And you also said mediation and conflict management. I would just say mediation or conflict management because there are a variety of tools that schools could use and I'm not saying that it has to be peer mediation, let's say for example, but it can be any of the programs that are out there, antibullying, for example, that might not have a mediation as a piece. That would be conflict management but not mediation. So I just put an "or" in that list that you had.

SENATOR RAIKES: Okay. So as I understand, it could be...well, I didn't...you mentioned that there was a research component, so I'm going...I'm going to leave that, involving mediation or conflict management, but it also would involve service delivery, so that there would be some delivery of service to students in the school resulting from this...from this effort. Well, but then now let me switch to I think what you were saying is it is not. This would not be a part of a teacher training program. There would be nothing in this that would suggest that we would do training of teachers differently so as to include either

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mediation skills or conflict management skills. Is that correct?

SENATOR LANDIS: I think the answer as to how you phrase the question is that's correct. However, let me put it this way. This is not to put a burden, an affirmative burden on teachers. It's not to make an alteration of what they must do in the classroom. In the event a district asked for some start-up costs in that some teachers receive some in-service training as part of, that would be acceptable. But it is not a mandated teacher training program, if that's the way you're phrasing the question.

SENATOR RAIKES: So the...

SENATOR LANDIS: Could teacher in-service occur, and the answer is yes, it could occur, depending on what the district was asking for in its demonstration grant.

SENATOR RAIKES: So the...so that the training part would come as staff development type training rather than as part of a certified teacher training program.

SENATOR LANDIS: Yes, exactly.

SENATOR RAIKES: Okay. Now as I understand it, we...this would not involve adding a staff member at the school to address mediation or a conflict or violence issues. Is that right?

SENATOR LANDIS: There is nothing in this that specifically adds staff. You'll find...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...that the activities which could be funded by the grant are listed on pages 4 and 5, and they constitute a series of activities, if you will. But...

SENATOR RAIKES: But one of those, for example, is preimplementation activities which, at least to me, could include lots of things, couldn't it?

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SENATOR LANDIS: Yes, it could. You could have some work in which you...in fact, if there were some teachers or students who wanted to be trained in, let's say, peer mediation, that you could do the implementation of getting that training for them and doing that work so that even before the...the program was in place in the school, you had done some planning and then some training to start the program. So preimplementation, I think, would include that kind of...those kinds of aspects.

SENATOR RAIKES: Okay. I...I will continue on another...

SENATOR CUDABACK: Time.

SENATOR RAIKES: ...light. Thank you, Senator.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Chambers, followed by Senator Landis and Senator Raikes. Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I'm looking at again the drafting of the bill. I see a contradiction. On the one hand, Senator Landis tells us in line...starting at line 1 on page 3, "The expertise exists within the State Department of Education, educational service units, and mediation centers to assist school districts with the assessment, evaluation and training necessary to establish and maintain comprehensive, districtwide conflict management programs". If that is the case, I don't know why we would mandate that the educational service units collaborate with the mediation center. On the one hand, we assert that the educational service units have this expertise. Then when we go to page 4 in line 2, we mandate that the ESUs collaborate with a mediation center. Either they have the expertise or they don't. I still see this as a make-work bill for mediation centers. Contrary to what some people think, mediation is not going to resolve every conflict. It is not going to solve every problem. When people deal in an academic or a theoretical area and they try to apply that to the real world, and they themselves may not have sense enough to know when or how to come in out of the rain, they're going to be laughed at, mocked and wind up pouring gasoline on a fire. A molehill will be transformed into a

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mountain in order that this training, whatever it consists of, can be brought into play. I don't think that this is a well-considered bill. I definitely do not believe that the Legislature should adopt it. I go back again to Senator Stuhr's bill where she was talking about vocational education. She made an argument that such education is good. It's something, if it is good, which the schools ought to provide. This bill which Senator Landis is offering suggests that people in the public schools don't know anything about the situations addressed in this bill. Why is the bill in front of us? Because in a few schools in a few states some students have come to school and shot at and shot classmates. There has always been conflict in the schools. The school bully is something that you find in the lore of public school education. So to jump on the bandwagon of a notion which is, in reality, terrifying a lot of people may seem to be a good way to get a bill passed, but I think what we need to do is to take a bill such as this, look at it, go away from the bill and consider what may be its origin. When we look at the heated rhetoric that we find in newspapers,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...I don't listen to talk radio, but I imagine they talk about this like everything else. And as one of the so-called founding fathers said, pour that overheated rhetoric on the saucer of legislative deliberation to allow it to cool. Then we ought to look at this in a dispassionate manner, realize that it's money being thrown at a problem in a way that is not going to address it. And it also excuses those who are paid to do a job from actually doing it. I'm opposed to the bill.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Landis, on LB 740.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. I confess that my critics have fair points to make. If...if there was a system that we were comfortable with and that people were already doing their job and that if school boards were resentful of this intrusion or wanting the money for some other purpose, if teachers were telling us that the

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classroom is manageable and that they're well trained already and there aren't problems, I...I would feel differently but, in fact, I think this responds to something that's legitimate and out there. With respect to Senator Suttle's argument, this does not require that any district step forward to do this. It is not another burden without assistance; in fact, it's exactly assistance and without a burden. It's only if a district wishes to make use of it that, in fact, that this would be available. But I think her argument was it was too much money but at the same time sort of a burden, that she was tired of situations in which there was a burden with no assistance, and in this case there isn't a burden and there is assistance. Senator Chambers pointed out that this is a make-work bill for mediation centers because it does require mediation centers being done in collaboration with the schools and the districts. Understand there's a specific statement that says, look, if they're going to contract with somebody, they can do that with somebody else's. They don't have to contract with a mediation center, they can contract with somebody else. But they do have collaborate, that's true. Senator Chambers points out that there is a statement that says expertise exists within the State Department of Education, educational service use...units and mediation centers to assist school districts, meaning that not...they don't exist, it's not "or", it's an "and" which, as Senator Chambers would know, is a conjunction and brings all three of them together, which means that the mediation center is there to collaborate because they are experienced in the world of conflict resolution. Many of us think that we are because we've experienced conflict, but to do those behaviors which are best at unlocking conflict and finding resolution does take some training, does take some learning. That's one of the things that, for example, this curriculum which is available for teachers to use in developing a classroom module is there for. It's to teach students how to handle conflict. Now I recall a certain piece of advice as far as bullying that was a very part of that legend and lore is, and that is stand up to the bully, bloody them in the nose and you'll never hear from him again. People who deal with school yard bullies know that that piece of lore is inadequate as a description of what happens in the bullying situation, and is a happy bromide that might be true for movies, but isn't necessarily true in the schoolyard. So

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the collaboration is there for the purposes of ESUs and districts coming into contact and dealing with people who are well educated and well practiced in resolving conflict, for the purpose of sharing that information, not for the purpose of necessarily contracting or getting a piece of the action. On the other hand, I would expect them to be a legitimate place where schools could go for, in fact, to contract with services and I would admit that to Senator Chambers. Schools ought to be doing this. I think Senator Chambers' argument that schools ought to be doing this, I agree, that sounds good to me. Fair enough, schools ought to be doing this. There are some things schools are good at, some things that schools aren't quite so good at. And going through all of the potential curriculums and all of the potential programs to pick one that's good for them...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...may not be there level of expertise. They may want help. In fact, it might be a great deal of assistance to them to deal with people who are familiar with all of the range of options that are out there and to help them critique what to do. Schools ought to be doing this. Judging by the fact that the School Board Association is in support of the bill, it makes me think that there are schools that are not doing this. And I'll renew my light here after a couple of more speakers so I can talk about the issue of teachers. And Senator Chambers' argument that what we should do is have some more in-service for teachers, and let teachers solve students' problems which I think is a faulty assumption. The assumption is that the disciplinarian at the front of the room should be able to resolve all conflicts, like Solomon, and at least part of the responsibility should fall on the students themselves and giving them tools and skills as well as options besides simply running to the teacher and hoping that they've got an in-service program that has taught them how to discipline and serve as the hierarchy...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...to have the right answer as to how to solve

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problems.

SENATOR CUDABACK: Thank you, Senator Landis. Mr. Clerk, motion on the desk?

CLERK: Senator Chambers would move to amend. (FA150, Legislative Journal page 1308.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on your amendment to LB 740.

SENATOR CHAMBERS: Mr. President. Mr. President and members of the Legislature, my amendment would go to page 4. In line 2, I am striking all of (a) which would be "collaboration with a mediation center". Then I'd drop down to lines 10 and 11 to strike all of (b) which is "collaboration with a mediation center". The first striking would take away from the ESUs the mandate that they collaborate with one of these centers. The second takes the mandate away from the school district. Senator Landis has talked about some things and made comments with which I agree. I agree with him that often a person in front of the classroom is not going to be able to resolve all of these problems. I am...have something more basic than that which concerns me about the schools in my area. That is, that the one in front of the classroom cannot even teach. They bring in people who don't know anything about the children, our culture, our heritage, anything else about us. It's an easy job. They don't have any requirements placed on them in terms of what they must achieve. There is no accountability. All they have to do is say I can't manage those kids. I don't understand them, they won't listen to me. Then get that person out of the classroom. But that buys a person who comes into our schools an easy living and the children suffer. But even if I concede what Senator Landis said about not always having a child run to the teacher when there's a problem and expecting the teacher to resolve it, that by itself does not justify this bill. He acknowledged that schools ought to be doing these things but they're not. My position is that any number of problems can be brought to us which underscore that the schools are not doing the job they were created to do. Teachers are not carrying out the functions they are paid to carry out. So Senator Landis and Senator Stuhr

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have suggested that the state ought to step in and fill in the gaps that are created by the schools through their own failure to carry out their responsibilities. I say that is not the state's responsibility. We know that there's much talk about local control of education. Yet when the schools are not doing their job, when problems crop up due to the bad decisions made by the schools themselves, they're very quick to run to the state and say, bail us out, give us some money, set up a program where there is free money and we can come and ask for it, and then all we have to do is make some kind of report and say, well, we had 30 conflicts, 30 of them ended in fights, 30 kids were expelled. I'm not in favor of that. Senator Landis is correct in saying that it may not always be the best way to handle a bully by having the one who is bullied pop the bully in the nose, but it brings to an end at that point the bullying.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: When I was in school, Senator Landis, I was a very easy-going, meek-appearing child, and people are quick to mistake appearing to be meek for being weak. And when one of them would get hold of me, he would find out that he had made a mistake and he had gotten hold of something he rather would not have gotten hold of, just as an unexperienced lion cub may swat a porcupine who is in a defensive posture. I don't think this bill ought to be taken but all I'm doing with this amendment is striking the mandated collaboration with one of these media (sic) centers.

SENATOR CUDABACK: I'm sorry, Senator Chambers, but you have five minutes left. I'm sorry. That's my...that's my mistake.

SENATOR CHAMBERS: Thank you. I felt it would be collect...caught. And I have to correct a word that I said. These are not media centers, they are mediation centers. What will happen if this bill is not passed? Nothing. What will happen if it is passed? There might be a flurry of activity, some twitching here, jerking there, a spasmodic move by an ESU, but nothing of substance is going to result from this. I believe I heard Senator Landis say that some of these kinds of programs, or a program of this kind, is available for teachers

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now. They can look it over, they can talk to each other, they can consult with counselors and people who should have specialized training. What is the difference between a counselor and a teacher? There is training of a formal kind for guidance counselors. These people are not classroom teachers. They might sometimes be pressed into service as classroom teachers, but they receive a type of training which the person who simply is going to teach does not routinely receive. What is the function and role of the counselor? Apparently none. When are we going to stop bringing the state into a posture of encouraging local schools to fall down on their job, then come to the state and say, give us some money out of the treasury? I don't think there has been a demonstration that the state ought to take on these kinds of projects. If anybody has a question of me relative to why I want to take away the mandate that these schools and ESUs collaborate with a mediation center, I will answer the questions. If you have a question of me relative to any view I may have on this bill, I will answer the question. As we have heard mentioned this morning on another bill by the head of the Appropriations Committee, I think the bill had something to do with a marriage tax, that there is going to be a lot of competition for money by the time we get toward the end of the session, and we all know it. This is not a bill that should have a high priority. The high priority should be the Legislature giving, in no uncertain terms, a message to these local school districts and school boards that we demand from them accountability, we want them to stop coming here asking us for money, extra money, to pay them to do what they are supposed to do. When I was younger, I used to work on construction. I used to mix mortar, I carried bricks, I carried blocks, those 12-inch and 18-inch blocks. I carried the slabs. I used a chisel and a bricklayer's hammer to cut those decorative stones that are used on the faces of fireplaces that run up the outside of the wall and above the roof to form a chimney. But I didn't get paid extra when I cut a stone properly. I was paid to do those things and I did them. We should require the same of these teachers and these schools always. People say children must be taught to assume responsibility for their actions, then we are going to turn around and let the...

SENATOR CUDABACK: Now it's one minute.

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SENATOR CHAMBERS: ...teachers, the school districts and the administrators avoid responsibility for discharging the things they are paid to do. Everybody zeros in on the children. That's why you will hear me say periodically I won't join in the wars against our children. We're quick to jump on them and heap punishment and restrictions on them, but then we come to adults who have advanced degrees and we do not require them to do the job they are paid to do. That does not pass muster with me and I will oppose all such bills as this one.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the Chambers amendment to LB 740. (Visitors introduced.) There were several lights on before the Chambers amendment. There...if you wish to pass over and speak on the bill, just let me know. Senator Raikes.

SENATOR RAIKES: Thank you, Senator Cudaback, members. Senator Chambers, I would like to ask you a question if I could, and let me preface it with this. I'm trying to understand what Senator Landis envisions with this, and I'm also trying to understand what it is you envision it. And then I understand that you don't agree with Senator Landis' vision if you know what Senator Landis' vision is. So with that, let me ask you this. If this bill didn't have any money, if for example...I'm reading, and I apologize, I'm not specifically on your amendment, but I think...

SENATOR CHAMBERS: Sure.

SENATOR RAIKES: ...we'll get to that. If this said a school district, for example, may apply for assistance from the Department of Education to establish a school violence prevention program, would that have any appeal to you?

SENATOR CUDABACK: Would you respond, Senator Chambers?

SENATOR CHAMBERS: Yes. Senator Raikes, if we would first say that first of all, who would they apply to for this assistance? To whom would they apply?

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SENATOR RAIKES: Let's say the Department of Education.

SENATOR CHAMBERS: Then we should first require the Department of Education to formulate a program so that if we suggest that schools go to them, there is something waiting for them.

SENATOR RAIKES: Okay. So let's pursue that if we might. And let's say that, well, okay, the topic here is violence prevention. How...what would be a way or should...should it happen that the Department would establish a program for schools who came and requested such?

SENATOR CHAMBERS: The first thing I'd say is that they shouldn't talk to Senator Tyson because he'd say the way to resolve all of this is with concealed carry. But we're fine-tuning it a little better than that. What I see as the problem, Senator Raikes, is that the schools apparently have thrown their hands up and are not going to address the problem at all. I do not think this is the kind of issue which the schools cannot find the wherewithal to deal with. If they don't know of agencies, institutions, and maybe even information available from the U.S. Justice Department, I will look into some of those things and make suggestions as to where they can get information about conflict in the classroom, on the school grounds and what steps a school can take to address such problems. But I don't think the state needs to pass any kind of bill of this sort.

SENATOR RAIKES: Okay. Again, I appreciate that response. Do you think then that there should be an effort in the State Department of Education, for example, to have a program, and I can't think of a better way to describe it, a program available or a set of procedures or something available to offer to school systems who come to them with this issue?

SENATOR CHAMBERS: Senator Raikes, I may sound hardhearted and cold-blooded but I just believe that people to whom we are entrusting our children, school boards who are entrusted with running the school district, can address this problem, and we should not take away from them that responsibility. If they just tried to do it, they'll find that they can get this

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information and put together a means to address the problem. Whatever we do as the state simply removes from them the obligation or responsibility. If they get something from the State Department of Education and it doesn't work, then again the burden...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and the blame is on the state.

SENATOR RAIKES: Okay. I thank you, Senator Chambers. I appreciate that, and then I have a little time left and, Senator Landis, if you've been listening, I wonder if you would respond to that; the argument that any effort for the state to deal with this issue is simply going to "disincent" school systems from dealing with it on their own, or taking the responsibility on their own.

SENATOR CUDABACK: Would you respond, Senator Landis? You have 30 seconds left.

SENATOR LANDIS: I think I probably have to acknowledge that there is fundamentally a local responsibility here. That seems true to me. I do think that districts cannot know where to turn. They can be overcome with the variety of alternatives that are out there. This may not fit into their preexisting expertise.

SENATOR CUDABACK: Time

SENATOR LANDIS: They may need help in selecting the best approach.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Thompson, followed by Senator Chambers and Senator Landis. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I would just have a few questions of Senator Landis on this, just so I'm clear because it will help me understand a little more of where Senator Chambers is going.

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SENATOR CUDABACK: Would you respond, Senator Landis?

SENATOR LANDIS: Well, gosh, I would think Senator Chambers would be able to tell you where Senator Chambers is going...

SENATOR THOMPSON: Well, I just want to...

SENATOR LANDIS: ...far better than I can.

SENATOR THOMPSON: Okay. Well, his amendment would take away the responsibility to school districts to have to deal with a...to collaborate with the mediation centers. And so that kind of goes to the heart of your bill, and that's why I'm asking you the question. Okay? The impetus for this bill came from where? Was it...I'm just curious. I'm trying...

SENATOR LANDIS: Sure.

SENATOR THOMPSON: ...to figure this out because...

SENATOR LANDIS: Paul Olson's wife died and it left him with a desire to further the work that she had done with the Nebraskans for Peace.

SENATOR THOMPSON: Okay.

SENATOR LANDIS: And he was looking for a contemporary issue that he felt personal connection with. He had been a lifelong university professor and...and very concerned about kids in schools, and as an outcome of that, I would think of all the places where the...this...the impetus came from.

SENATOR THOMPSON: That would be it.

SENATOR LANDIS: It is his desire to further his wife's legacy as somebody who had been in the Nebraskans for Peace for years.

SENATOR THOMPSON: Okay. Then my second question is, how does this impact the school districts that may already have a similar program in place? If they wanted to apply for money to expand

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or continue what they've done under a grant program, they would have to alter their program or get approval of it from a mediation center?

SENATOR LANDIS: No. No. The...

SENATOR THOMPSON: Okay, so they don't have to...

SENATOR LANDIS: ...approval...approval comes from the Department of...

SENATOR THOMPSON: Oh, excuse me.

SENATOR LANDIS: ...the State Department. Yeah.

SENATOR THOMPSON: But they must collaborate with the mediation center, the way the bill is currently constructed, unless Senator Chambers is successful with his amendment?

SENATOR LANDIS: Yes and, by the way, I haven't had any difficulty with schools...

SENATOR THOMPSON: Uh-huh.

SENATOR LANDIS: ...being reluctant to collaborate with mediation centers in developing plans, so far. To my knowledge, I have had no school say, gosh, I wouldn't want to do that, that's a mistake, don't make me do that,...

SENATOR THOMPSON: Uh-huh

SENATOR LANDIS: ...stop, go back.

SENATOR THOMPSON: So do you see this as different from, for example, the AmeriCorps volunteers in Nebraska, in several school districts that was their role. Some places they did environment, some places they did mediation, so they've put into place some peer-to-peer mediation, some other things like that. So your bill would be an enhancement to that with another program or I guess I'll...I'll just say where I'm coming from.

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SENATOR LANDIS: Well, that's a very good thing to do.

SENATOR THOMPSON: That would be a good idea.

SENATOR LANDIS: Let's do it. Wouldn't it be helpful?

SENATOR THOMPSON: School districts for many years have been looking at these kinds of programs. They've applied for national grants, they've gone to trainings, at least my school district I know as late as probably six, seven, eight years ago sent people to training. Teacher training institutions are looking at classroom management techniques and training and so forth, so there are...we're not without some things that have already been underway. I'm trying to figure out how this fits into what's already happening and whether we're saying you have to look a little different now to be able to attract this money. So my support for Senator Chambers' bill would be because he's taking away the mandates of how...who you have to collaborate with...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...to establish a program because in some people's point of view who may be very well trained and read in the research would then say, well, this is the way it should look. Or, can they go on the path that they are already on to either backfill or enhance the program that they already have? And so if...if I wanted them to have more flexibility and to go in the direction that they may have already headed, whether that's training their teachers in new classroom management techniques, whether that's the peer-to-peer mediation that's been fairly successful in a lot of school districts, or whether that's some new animal, in which case I would say we should make the money more general and let them have it for what they would like to, rather than a program that's already been kind of thought through. So that was why I wanted to know. I know where Senator Chambers is going, I'm just not sure how that would impact what you want to do.

SENATOR CUDABACK: Time.

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SENATOR THOMPSON: Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Mr. Clerk, motion on the desk?

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

SENATOR CUDABACK: Motion by Senator Kristensen to recess until 1:30. All in favor of the motion say aye. Nay? We are recessed.

RECESS

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good afternoon. Welcome to the George Norris Legislative Chamber. We will call the Legislature to session. Members, please return to the Chamber and record your presence.

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

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Mr. Clerk, do you have items for the record?

CLERK: I do, Mr. President. Your committee on Enrollment and Review reports LB 92, LB 92A, LB 461, LB 706 (sic) as correctly engrossed. Senator Stuhr, an amendment to LB 273 to be printed. That's all that I have, Mr. President. (Legislative Journal pages 1309-1311.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Members, we will continue discussion of FA150 to LB 740. (Legislative Journal page 1308.) Further discussion on FA150, Senator Wickersham.

SENATOR WICKERSHAM: Oh. (Laugh) Well, Mr. President, I think

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we're in a bit of an awkward position here because, as I understand it, this is Senator Chambers' amendment and, while we do not know where Senator Chambers is, it's my belief, from talking to Senator Landis, that he had agreed to accept the amendment, if that is accurate, and perhaps if we can... Senator Landis, can you advise us what your views are where we are on FA150?

SENATOR LANDIS: Yes, since Senator Chambers is out of the room, I suggest we pass... (Laughter)

PRESIDENT MAURSTAD: Senator Wickersham, did you yield time to Senator Landis?

SENATOR WICKERSHAM: Yes, I will.

PRESIDENT MAURSTAD: Okay. Senator Landis.

SENATOR LANDIS: I think that we ought to adopt the Chambers amendment, then advance the bill in his absence.

PRESIDENT MAURSTAD: Senator Wickersham, do you want the balance of your time?

SENATOR WICKERSHAM: No, I will... (Laughter)

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Senator Landis, your light is on next.

SENATOR LANDIS: I will seriously address the question. Look, Senator Chambers I think has raised the question is, is this somehow an idea to make sure that there's work for mediation centers or money flowing into mediation centers, and it's not. He's stricken the requirement to collaborate, and the truth of the matter is I expect districts to talk to professionals in the area and these are widely available experts around the state. On the other hand, maybe there are others who could provide the kind of assistance that's necessary here. I would accept the Chambers amendment.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Senator

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Chambers, you're recognized to close.

SENATOR CHAMBERS: Mr. President, members of the Legislature, that was one of the best defenses I have heard of an amendment and I'm not going to mess it up. I just ask that you go along with what Senator Landis suggested. And thank you, Senator Landis.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Question is the adoption of the Chambers amendment to LB 740. Those in favor vote aye; those opposed vote nay. Please record.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment.

PRESIDENT MAURSTAD: The amendment is agreed to. Debate on the advancement of LB 740. Excuse me, Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone the bill. Senator Landis, you would have the option to lay the bill over.

PRESIDENT MAURSTAD: Senator Chambers, you're recognized to open on your motion to indefinitely postpone LB 740.

SENATOR CHAMBERS: Mr. President and members of the Legislature, rather than tussle and tug and worry this bill to death, I'm offering this motion. In order that I not seem totally ungrateful to Senator Landis, this motion was facilitated by what he just did and I'm offering the motion pursuant to what he and I had talked about before we retired from the Chamber over the noonhour so that we could see just what is to happen to this bill, what is to become of it. I don't believe that the money ought to be spent for this purpose, so that's a big hurdle. My underlying objection is what I have said several times on this bill, what I said on Senator Stuhr's bill, and what I will say on her bill again when Senator Baker's motion to reconsider our kill motion comes before us. What happens when we don't dispatch these types of notions is that they continue to come back. Nothing is wrong with a person trying again and again and again to persuade the body to accept a proposition. I have done

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that for going on three decades with reference to the death penalty. But one time the Legislature did rise to the occasion and did vote to kill or abolish the death penalty. A Governor was in office then, similar to the one who is in office now, and he vetoed that bill. But I bring it back again and again, and I will continue to bring it until the death penalty croaks or until I croak, one way or the other, literally or figuratively. The reason I think we should dispatch these types of bills in an unequivocal manner is to make a principle clear to our colleagues and to those outside the Chamber, especially those in the education establishment. We are going to see that they discharge the duties and responsibilities that they have as educators. Nobody would ever attempt to make a definitive list, another word for that is an exhaustive list, of everything that an educator or a public school is to accomplish. Times change. Society changes. Needs and challenges may not change, but they take a higher profile and, whereas they may have seemed unremarkable at one time, they seem very, very riveting at present. But, as is said in the legal profession, hard cases make bad law. You decide those cases one at a time as they arise, and you never try to establish a principle of jurisprudence on the basis of one hard case. It may be an aberration, but if it's not, you wait until there has been a series of such cases so that a principle will begin to formulate itself. The principle I would like to see us send out there unequivocally is that we are not going to be the fall person. We are not going to be the easy touch. We are going to require that schools do the job that educational facilities and institutions ought to do by their very nature. That means when we talk about having an orderly, respectful environment in which learning can take place, provided you have a teacher who is capable of imparting knowledge and instruction, we cannot let those schools think that the state is going to step in and do what the schools ought to do to create that set of circumstances. Not one grant that would be given, pursuant to Senator Landis' bill, is going to resolve any conflict or the underlying problems. There are many preliminary things that have to be addressed before you get to the point where two individuals or seven...several individuals have reached that flash point and what we call a conflict breaks out. Maybe somebody comes to school hungry. Maybe somebody has been abused

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at home. Maybe somebody has to watch younger siblings and is just tired, cranky, and out of sorts when he or she reports to school. Well, if a person is going to use these theories and these notions that are reached for out of the air and take a gossamer construct and try to wrap up a volatile situation and capture it, that is not going to happen. You'd have a better chance of finding a literal pot of gold at the end of a rainbow. So my motion is designed to let us make a clean cut and send this bill where it deserves to be. On the other hand, if you choose not to kill it, we're going to have more of these types of attempts to get the state to do what these local school districts and what ought to happen in these local school buildings. Now, what will happen if the kill motion is unsuccessful? If attempts to alter the bill by removing the money fail and the bill is advanced, we'll have another discussion on Select File, I don't know how extensive; maybe some additional discussion on Final Reading. If the Legislature decides that this is the best expenditure of this amount of money, it will be sent to the Governor. I don't know what he will do, but I have to remind us of something. Senator Raikes and his co-conspirators have presented the body with a bill to raise the sales tax. Now, that's something that I will go to the mat on. Be prepared for an eight-hour ride on that one. And what is it for? To send money to the schools by way of increasing the pay for teachers. Why, on the one hand, are you going to say give the teachers more money; then you're going to ask the state to pay for a special program to equip teachers to do what they ought to do anyway? What are we paying them for, pray tell? You're bribing them to stay in Nebraska. If the best and brightest are already gone, you've got the dullest and the dumbest left. What choice do they have? They going to go out and become woodcutters? They going to get a job on construction? They get tired quickly. No, "Senator Pandora", that bill that was killed would not equip people to do what I'm talking about. The reason some people who have been in classrooms and other soft jobs don't want to do the work I'm talking about, you get calluses, and if you don't know what a callus is, I'll let you see my hands. And some people don't realize that a callus is spelled c-a-l-l-u-s, and if you mean it as an adjective it's c-a-l-l-o-u-s. Just thought I'd throw that in. We're talking about education. If this bill winds up with

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the others competing for money, which of you is going to lay aside something that is important to you for a bill...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...like this? I'm not. Since I'm not going to support it, I'm not going to do like some of my colleagues tend to do and say, well, to be collegial, I'm going to let it go a little further. By prolonging the agony or the final hours or minutes of a bill is not an act of mercy. It is an act, in my opinion, of legislative irresponsibility. Thank you, Mr. President, and the only reason I don't yield time back, I found out the President does have a little bag up there that he puts all this yield time back into and at some point he's going to reach into it and give me some of it when I need it.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Senator Landis.

SENATOR LANDIS: What a shock. Senator Chambers, I just want to say that you said that in the death penalty either you would croak or the death penalty would croak. I think that's the basis for a trade right there and I bet there's a lot of people in the state who'd just straight up make that trade. I, personally, of course, wouldn't. Think that would be a big mistake. Senator Chambers pointed out that this is a bill that tells schools what they ought to do already and it's really unnecessary. In 1991, Senator Chambers and I introduced jointly a bill that he was the chief sponsor of that declared multicultural education (inaudible) be done in this state and, in fact, mandated it; told schools what they ought to be doing; in fact, passed a bill on this floor to declare what their curriculum was going to be and was happy to tell schools what they ought to do from the big school board in Lincoln. I am not trying to tell them what they have to do. I am trying to "incent" them to do this in ways that would be most successful, that is districtwide, comprehensively, and "sustainably". Now, in that flash point that Senator Chambers talked about and said that no program could help us with, that flash point of anger in which things that had come to a boil might break into a violent exchange between students; that there was nothing they could do.

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And, frankly, I think there is. Number one, you can teach students skills to avoid that occurrence or at that moment on how to deal with the situation in a way that might provoke a nonviolent response. You can sensitize students, generally, to the situation of being picked on and teased and bullied. You can also create a clear line of authority that students who are being bullied can go to. You can bring in parents and talk to them about these situations. You can develop a curriculum that makes conflict management part of the curriculum of the students. There are any number of things you can do. Now, I think Senator Chambers might argue that they are inherently flawed and unsuccessful, and here's where we part company significantly. Because the bill comes to you not because of some headline, and I hope that you've noticed I haven't used any headline or any cheap attempt to tie on to what might well be idiosyncratic episodic examples that I am not promising will never occur if I pass this bill or we could stop with this bill. I'm not sure that could happen. You know what happens day to day? The classroom gets harder and harder to manage, the regular classroom. Not the exceptions, the regular classroom gets harder and harder to manage. It gets more difficult as discipline in the classroom becomes more difficult to maintain. So I'm not here explaining this bill in terms of the lone gunman kind of analysis, and that's to my...that's the only time I'll use that expression and it's the only time I'll try to make any reference, and it's for the purpose of saying I'm not trying to justify the bill on that basis. I'm trying to justify it on the basis that you and I know when we talk to teachers and they tell us it's hard to maintain order in the classroom; that there are times spent in dealing with student conflicts, there are times spent in the classroom management. And here Senator Chambers and I differ because when Ohio went out and systemically tried to affect the classroom it found some success with some grant programs that occurred in 1994 to 1995. A number of schools later studied their work and they found, from teachers: 78 percent said that they had seen improvement in classroom management; 65 percent said that they spent less time dealing with student conflicts; 61 percent said they noticed a decrease in student fights; and 59 percent said they had a decrease in sending students to the office.

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PRESIDENT MAURSTAD: One minute.

SENATOR LANDIS: Was that "one minute"? Thank you very much. My point here being that there is at least a body of evidence that tells us you can affect the classroom. Now, what works in Nebraska? I'm not sure. None of us really are at this point. This bill says, let's spend \$250,000 in a year on five...you know, however many demonstration grants that can be; let's test them; study them; report on them; let's find out what works in Nebraska. Perhaps what works in rural Nebraska isn't the same thing in an urban city, and vice versa. Perhaps an antibullying program might be successful in one context and maybe not another. Maybe the cost or impact of a conflict management curriculum change is too burdensome for a school and it's a dead end, and other classes in other schools shouldn't go down that dead end. That will be valuable information even as we struggle to do better. What I want to talk about in this kill...

PRESIDENT MAURSTAD: Time.

SENATOR LANDIS: ...motion is the regular classroom.

PRESIDENT MAURSTAD: Thank you, Senator Landis. (Visitors introduced.) Further debate on the motion to indefinitely postpone LB 740, Senator Stuhr, followed by Senator Tyson, Chambers, and Landis.

SENATOR STUHR: Thank you, Mr. President and members of the body. I'm sorry that we had an Exec Session this morning and so I was unable to hear the opening on Senator Landis' bill, but I am saying right up front I am supporting the motion to IPF this bill, and I have visited with Senator Landis about my feelings in regard to this. I did not vote in committee to support the bill and I did want to just share with you, to begin my remarks, an e-mail that I did receive that I think is very appropriate concerning what we are talking about--school violence, discipline problems. I think it started when Madalyn Murray O'Hair complained she didn't want any prayer in our schools; and we said okay. Dr. Benjamin Spock said we shouldn't spank our children when they misbehave because their little personalities would be warped and we might damage their self-esteem; and we

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said okay. Then someone said teachers and principals better not discipline our children when they misbehave, and the school administrator said, no faculty member in this school better touch a student when they misbehave because we don't want any bad publicity and we surely don't want to be sued; and we said okay. Then some of our top elected officials said it doesn't matter what we do in private as long as we do our jobs, and the entertainment industry said let's make TV shows and movies that promote profanity, violence, and illicit sex, and let's record music that encourages rape, drugs, murder, suicide, and satanic themes; and we said, well, it's just entertainment, it's okay, it really doesn't matter. Now we're asking ourselves why our children have no conscience, why they don't know right from wrong, and why it doesn't bother them to kill strangers, their classmates and themselves. Maybe if we think about it long and hard enough we can figure it out, which just I think points to the whole issue of responsibility, respect and where does this begin. It certainly begins with parents, begins at home, and it's something that we really can't legislate. I know that I did catch a few remarks that Senator Chambers made this morning likening this bill to LB 486, and I do not see that resemblance at all. LB 486 is a new proposal to create a framework for curriculum, a new curriculum for career and technical education in Nebraska. It is looking at a feasibility to improve programs and really help students. LB 740 is proposing, actually, a new program, another program for our schools to try to adopt. I feel that many of our schools already have policies in this area and would not actually be looking at these additional funds that they might be able to use. I feel very much that it is a local policy issue and that it isn't an issue that we need to deal with on the state level. Senator Landis just said...talked...

PRESIDENT MAURSTAD: One minute.

SENATOR STUHR: ...a little bit about teaching skills. I know that there are many areas in schools that already teach teamwork, leadership, family relations, and I think that these are some of the curriculum that most, I think, quality teachers are already incorporating all of these kind of aspects in their classrooms beginning with kindergarten. And I think, again, it goes back to responsibility and I believe that these funds could

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be accessed, since it is a new program, could certainly be accessed through the Education Innovative (sic--Innovation) Funds offered through the lottery because it would be considered a new program. With that, I turn the rest of my time back to the Chair. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Stuhr. Senator Tyson.

SENATOR TYSON: Thank you, Mr. Lieutenant Governor. Members of the body, I rise in support of Senator Chambers' IPP motion and I have to say I'm developing some hostility toward Senator Landis, for whose abilities and skills I have often declared my unbounded admiration. It is no longer "un". It's still there, it's still vast, but it's no longer unbounded. This is feel good legislation. What are we doing about violence in the schools? Well, we...we passed this program for a grant and we're going to funnel more money into the schools for doing, as Senator Chambers rightly pointed out, what they should be doing anywhere...anyway. Every meaningless catchword and catch phrase has been carefully bound into this legislation. We spend money. We have grants. We have reconciliation centers. We didn't have...we don't have a moment of silence in there, but that's...that could be corrected on General File or on Select. And at the conclusion of it we have another report to file and we file that in the section of "other unread reports". This bill does nothing except funnel some of the money that we were talking about this morning, money that can be turned back to the taxpayers in Senator Redfield's bill. I urge you to support this motion and I turn the balance of my...oh, one last thing. The Romans knew how to do this. They had a phrase--vis pacem parabellum. It's, for the transcribers, v-i-s and p-a-c-e-m. And I turn the balance of my time to Senator Chambers.

PRESIDENT MAURSTAD: Senator Chambers, three minutes.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Tyson, and thank you, Senator Stuhr, for being on the right side of this issue. And we do take them one at the time, and I wish that my colleagues would consider what will become of this bill if we don't kill it. Do you genuinely believe that expending several hundred thousands of dollars is going to really be

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beneficial to the educational system? Is it an appropriate expenditure for the state to make? I don't believe that it is. Since there are a lot of my colleagues who are not participating in the discussion, I don't know whether they feel this bill is so good that it need not be given oral support by them, or that the kill motion is so appropriate that the same applies to that motion as applies to the bill and they need not say anything. But, in any case, when a bill is before us that I am not going to support I see no reason, no justification, for voting to keep it in existence. Certainly I see no reason to vote to advance it. I can imagine some of my colleagues, as we get deeper into the session, moaning and groaning about not enough time for this or not enough time for that. There was some poet, David... Senator Landis probably knows which one he was, who said something about maidens make good use of your time, or something like that. Are we making a good expenditure of time by staying on this bill?

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: Will it be a good expenditure of money? I say, no. I doubt that in the final crunch this bill will pass carrying the A bill that it has with it, so I will have to see what my colleagues are going to do, but I definitely think we ought to end the thing right here this afternoon.

PRESIDENT MAURSTAD: Senator Chambers, your light is on next if you wish to... Senator Landis. Senator Landis, Senator Chambers waives.

SENATOR LANDIS: I think what's entirely possible is going to happen here, is that in a relatively quiet chance to talk I'm going to have my last say and Ernie will probably do a call of the house and have a ringing final speech. But I won't use the call of the house mechanism here. I'm just going to make some comments and maybe we'll be ready to vote. Three years ago I went out to Northeast High School. I met with some teachers. They were concerned about the classroom and they wanted to strengthen the teacher's hand in classroom management so that they could expel students or to have students leave the classroom and not come back that day, as was commonly happening.

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Now, that's a side issue, but what the teachers told me that day was this--one of the most disheartening parts of my job is that I spend so much of my time on classroom management what I don't get to do is teach the subject I know and love because I have outbreaks, because I'm attending to the most troublesome students, because the classroom on occasion is in an uproar and, in fact, on occasion I have to part students who need somebody in between them. And what they told me was that I love the idea of teaching, I want to teach, and I want a classroom in which I can teach. And that surprised me and I've been spending time since then thinking about what one could do and, actually, LB 740 has to do with that. It has to do with the culture of a school in which people would be more respectful of each other in the classroom, in the hallway in dealing with each other. And when things are difficult, when students are being excluded or teased or bullied, that there would be some way of trying to make this not bubble over into a tense, angry or disruption-filled classroom. Of course, you could try the stick approach, but I don't want to try the stick approach. I want to try this approach to see if there's a way to build skills in students, in teachers and in staff so that we can have a peaceable and appropriate classroom. Now, it is...it is an object of faith here as to whether or not we'll get anything. However, the indications are that there's something to be had on the other side of this. These ideas have been tried elsewhere and they've found to mean less student fights, less suspension time and improvement in classroom management. Studies from Ohio tell us this much. What we will get at the end of LB 740's period of time will be working programs in place, sustainable, districtwide, comprehensive programs in place; not a report; real programs. Secondly, we will also have some indication of what works in Nebraska and what doesn't work so we will have models for those who want to go out and do some more. So we'll have working programs in place, it will be sustainable, judging by what we know from the past some of them will be successful, perhaps some of them won't be, and we will know where the future lies in making the classroom more manageable, the classroom less disruptive, the hallway less the property of the bully, and hopefully teachers being able to keep students in the classroom attentive and the classroom managed. That is worth an investment. That is worth trying out. If I am wrong you'll

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have spent some money to find out that I'm wrong, but if I'm right...

PRESIDENT MAURSTAD: One minute.

SENATOR LANDIS: ...we will have something very, very valuable. Should schools do this on their own? Yes, perhaps they should. Some of the things, some of the temptations are how to do dribs and drabs, little bits, little interventions. This bill says, look, there is a pot of money here but you need to do it districtwide, you need to do it comprehensively, and you need to do it "sustainably", and those are the hallmarks of successful programs, not dribs and drabs, but something that is sustainable and comprehensive. If I'm right, we will have something of tremendous value when we're done with this process. We'll have programs in place that will be making a difference. And if I'm wrong, we will have spent some money, and the classroom is worth that investment.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Senator Chambers, your light is on last. You may close or use the time.

SENATOR CHAMBERS: Speak. To speak.

PRESIDENT MAURSTAD: Senator Chambers, to...

SENATOR CHAMBERS: Mr. President, members of the Legislature, I must speak again because I'm not sure that I will get said on my closing everything I have in mind, but Senator Landis' last comments kind of provoked some thoughts in my brain. Senator Landis said we spend this money to see if he is right. What I would rather have Senator Landis give his time to is persuading the leaders in the education establishment that this is a worthwhile undertaking in the schools. If he cannot persuade them, and they are the ones who are going to have to carry it out, the only reason they will carry it out if we pass this bill is because they'll get some extra money. They'll get some extra money for a program they don't even believe in. That is the point at which Senator Landis' skills as a persuasive speaker should come into play. Dealing with these teachers who say they're having such a hard time, why don't they get together and

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talk to their principal about some program or other along the lines of what this bill is talking about? If there are principals who think things are getting out of hand, let them combine and go out and talk to the superintendent of schools or appear before the school board and make their case for what Senator Landis is asking us to pay for, taking it as a pig in a poke? Senator Landis, you may not want to answer this question, so I'll pose it and then you can decide. I was not paying attention earlier when you gave a reason...when you gave the origin of this bill or why it's before us. Does it have something to do with a person's wife having died who worked with Nebraskans for Peace and this is in the nature of a type of memorial or respectful gesture of some kind or other? If you'd clarify that.

PRESIDENT MAURSTAD: Senator Landis, would you yield?

SENATOR LANDIS: That's pretty close, Senator Chambers. The energy in his retirement has come into programs that he wants...that he wants to invest his time and energy in consistent with what he thought was as the life of his wife.

SENATOR CHAMBERS: Who? Who?

SENATOR LANDIS: Oh, Paul Olson.

SENATOR CHAMBERS: Oh.

SENATOR LANDIS: And the deceased woman is Betty Olson.

SENATOR CHAMBERS: Okay. Thank you, Senator Landis. Members of the Legislature, in years past I worked with Paul Olson in a program called Triple T and I traveled all around the country. I went to some of the most prestigious schools, I believe Carnegie Mellon is deemed to be a prestigious school, before I was ever in the Legislature. Before being in the Legislature was a glint in my eye or anybody else's, I was going around helping to assess and evaluate various programs in these types of universities and I wrote extensive evaluations and detailed evaluations, not a lot of fluff. I'm familiar with the educational power structure, the educational combines, so I

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don't come to this issue as a total novice or a tyro. With all due to respect to Paul Olson and his late spouse, the purpose...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...of the Legislature is not to enact legislation in honor of somebody's life work. It would be better to get the Legislature to make a declaration of condolence or acknowledgement of the value of that work done. But to put a program in place to show respect for somebody is not, in my mind, a good reason for the Legislature. It might be good for a legislator or some legislators, but it is not a sound basis for the Legislature acting as an institution.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. On the motion to indefinitely postpone LB 740, Senator Landis.

SENATOR LANDIS: I would proceed to closing. I feel sucker-punched here. Senator Thompson asked me the origin of this bill; I answered. I answered a second time. I have made no attempt to suggest to this body that the rationale should be anything other than legitimate policy questions and only interjected a notion of personality when asked a question. I do not ask that this body use this as a rationale. That is not my purpose. I asked a question...answered, and now I think the Legislature is being told, gosh, it's a mistake to let that be one of the rationales; you shouldn't do this and Mr. Olson should know better. That's not a fair characterization in my perspective, it isn't an argument I've made, and it's only because I responded and I do not like the fact that this has been dragged on to the floor and used as a mechanism to argue the merits or demerits of LB 740.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Senator Chambers, you're recognized to close on your motion to indefinitely postpone LB 740.

SENATOR CHAMBERS: Mr. President, members of the Legislature, if any member feels that the reason that a bill is brought should be concealed, conceal it, but once it's out here it's a part of the discussion. If those reasons led partially to the bill

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being before us, it's a legitimate part of the discussion and I'm not going to be deterred from my opposition to the bill by Senator Landis' last comments. I think it's best probably for me not to ask him any questions. I didn't know he was so sensitive, and I don't say that disparagingly or pejoratively. But I don't really need to ask him any questions on any of his bills and I won't. I will just say about them what I think. Sometimes I ask a question because perhaps the introducer can clarify something. I'll tell you something else that I had mentioned to Senator Landis. This is a bill dealing with education and they use "peacefully" in the bill when they ought to use the word "peaceably". It doesn't matter to anybody? We're talking about education and we don't even use the proper terminology that we ought to use? There are other factors in this bill that make it unworthy, but rather than get into those types of things I tried to keep the discussion at the level of the principles involved in what we're trying to do, what we're being asked to do by a bill of this kind. I'm going to drag in teacher's salary every time we come with a bill that is trying to funnel money away from the state General Fund into some notion based on the idea that schools should not be accountable insofar as doing what they are required to do. I believe that this bill ought to die here. If you don't kill it, we'll just deal with it again on Select File, which I'm prepared to do, and it may be better for my ultimate purposes if the bill does hang around. Since it's a priority bill, it will come up for debate again. It will be later in the session. We will be evaluating things in terms of the money we're going to spend a little more attentively at that point. However, since we're all men and women of the world and we should be able to look down the line 60 calendar days or so, we can predict right now what the chances of a bill of this kind would be in terms of taking money from other programs. You're going to ask us to raise teacher salaries and you're going to give money to programs of this kind? I say perish the thought, and we should let this bill perish. For whatever reasons a person would have for voting in favor of the motion to indefinitely postpone, I accept those reasons. I don't have to know what they are. I just want more green votes than red votes on the board. Thank you, Mr. President.

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PRESIDENT MAURSTAD: Thank you, Senator Chambers. Senator Landis.

SENATOR LANDIS: Mr. Speaker, I would respectfully and peaceably request a call of the house and a roll call vote in regular order.

PRESIDENT MAURSTAD: Thank you, Senator Landis. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Please record.

CLERK: 30 ayes, 0 nays 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, record your presence. The house is under call. A roll call vote in regular order has been requested by Senator Landis. Senator. Senator Kristensen, the house is under call. Senator Cunningham, the house is under call. Senator Hartnett, the house is under call. Senator Wickersham, the house is under call. The house is under call. Senator Wickersham, the house is under call. The motion before the Legislature is to indefinitely postpone LB 740. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal page 1312.) 20 ayes, 12 nays to indefinitely postpone the bill.

PRESIDENT MAURSTAD: The motion is agreed to. The call is raised. Mr. Clerk.

CLERK: Mr. President, the next bill, LB 335, by Senator Kristensen. (Read title.) Bill was introduced on January 8, referred to the Judiciary Committee. The bill was advanced to General File. I have committee amendments. (AM0260, Legislative Journal page 778.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Speaker Kristensen, you're recognized to open on LB 335.

SPEAKER KRISTENSEN: Thank you, Mr. President, members of the Legislature. LB 335 deals with the Nebraska Commission on

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Public Advocacy. If you will remember, historically, in the mid-nineties, we had a problem with indigent defense. We had...Senator Vrtiska's district, for example, had several very difficult, expensive, long criminal prosecutions; things that they could never have planned upon; things that they couldn't financially do. We also had several other capital cases at that point in time that were around the state, and they were primarily in smaller counties. What had been happening was that you could not budget for those; you couldn't afford to do the defense for those. And this Legislature saw fit to establish a Nebraska Commission on Public Advocacy and the purpose for that was basically for property tax relief. What we would do is we had a unit that was created that went out and, in these capital cases, in these most serious of cases, they provided the expertise. And if you'll remember the expertise was necessary because these are complicated cases. You're talking primarily of first degree murder cases. These involve more than just the routine come in and defend a criminal defendant. These are cases that are literally life and death cases. These are cases that have automatic appeals. These are cases that are litigated and at any one point in time, if there is a mistake made, certainly not intentionally but a mistake that was made, because of inexperience or because they don't do these cases that often, you would get a reversal, a retrial, or a dismissal. People were very uncomfortable with that. People were looking for a better system and they were also looking for some way to manage the cost and, thus, the Public Advocacy Commission came forward. They are now well into their fifth year. They have been successful. Many of the counties have found that they can appoint this unit to come out and defend these cases. They have found that, in all reality, the cases are either settled quicker because they understand the problems that are there or they're able to evaluate the situation, or the cases are tried, and if they are tried, obviously they are tried with someone who...that has more experience, there's less likely to have procedural mistakes and, quite often, saved total money. And what we did was the cost and at least a good share of those costs then were shared and were brought back and the state paid for the cost of that, thus, avoiding a property tax bill in huge amounts. We decided to let the commission run for a few years to see what could be done, what should be done, and what tune-ups needed to

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be done. There's been great strides actually made in this area. Now, some people are going to get uncomfortable and say, oh, my goodness, why do we want to give money for defense? Well, one is that constitutionally we have to. For those people who cannot afford their own defense, we do not get a choice. We constitutionally must defend them. And who is "we"? Well, obviously, the state, but the way our system works it's the local county. They are the ones that are charged with the expense of doing these. Senator Vrtiska could tell you long stories about the cost of trying the cases in his area. What brought this bill forward was the desire to improve not only the quality of those people out there doing criminal defense but to take a look at the entire indigent defense system; realize that we have more than just capital cases out there. Counties have really three options in which to take care of indigent defense. They can hire a full-time public defender, and there are several counties that do that. I'm looking for that number. I think that's approximately 24 counties right now have elected public defenders. But realize that those public defenders are paid to cover a lot of area. They're not allowed to have great expensive offices at all. All of them work on a shoestring. There are some very professional elected public defenders' offices. The most notable, obviously, are Lancaster and Douglas. They've been very, just as the county attorneys' offices in those counties, they have been very, very good to go out and share their expertise and to share their resources with some of the smaller counties, and that's, quite frankly, what's made the criminal system in the state work. The other is a contract public defender and that's used by roughly 17 of the counties around the state. That's where they contract. If you...if we need a public defender, you come in for a set sum of money and defend them. Almost all of those contracts will have exceptions, however, for large cases. If you're a part time public defender, you cannot afford...you will financially go under if you have a major murder case that takes place that you have to take care of, or, quite frankly, even some of the more complicated felonies. The other is by assigned counsel, and that's roughly half the state, in fact a little more than half the state. About 52 counties have a system where they assign counsel. The judge will appoint an individual to come in and do it. They have an hourly rate, and there's a variety of cases

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that these appointed attorneys do. They can be all the way from a juvenile case; they can be all the way to a homicide case. Most of the times they're felonies...most of the times they're misdemeanors, I would say, that where the contract comes in and they are assigned on a per cases basis. What LB 335 tries to do is to tie all this together and it allows that the commission would be able to establish some standards for a county indigent defense system. In other words, not just major cases, but all these cases put together. This would provide a pretty good level of property tax relief. It's going to improve the quality of those legal defense systems and it would allow for the adoption of some standards to operate a criminal defense, indigent defense system. Now, again, we're not talking about everybody. We're talking about those people who cannot afford their own defense who have been charged with crimes. The standards would relate to who's eligible to represent those people, caseloads, what a conflict of interest would be. Those can be very difficult decisions to make about conflicts and, quite frankly, if you don't determine them ahead of time and you get part way through the case and a conflict arises, or you wait until after the conviction occurs and someone reviews that case and finds a conflict of interest, the conviction goes out the window. And so it's economically wise. It's expedient to find those out ahead of time. This system that we propose is in addition to the Commission on Public Advocacy. What they would do is come in, if you want to participate. You do not have to participate. Only if a county wants to participate would they come in. They would then enter into an agreement and, in return, they would get 50 percent reimbursement for all their costs if they were a case involving first degree murder. That means half their money would be paid for; the county would have the other half. And then 40 percent of all their other cases, and that's all the way through the misdemeanors, through paternity, enforcement, all those sorts of things, the state would reimburse for the property tax portion and the county, in return, would have to have the commission or would allow the commission to set some standards. These standards would be the salaries that people are paid, so they can control and try to get quality people. They would also be to try and find some training and continuing education. It would be similar to building a road, and what that road would do. Can you imagine

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not having some standards and some overall plan if you were going to build a road without having a plan in place ahead of time and to have some standards? That's what this does. This would allow for improved enforcement of locally adopted minimum standards. It raises the general level of the people who are doing the work.

PRESIDENT MAURSTAD: One minute.

SPEAKER KRISTENSEN: There is an amendment that I am sure the Judiciary Committee will be very happy to explain to you, but, in general terms, I'll put my light back on as we discuss this, what this bill does is allow the Commission on Public Advocacy to provide an option for counties, who choose to participate, a higher quality of indigent defense and would allow them to save the property tax or at least share part of that burden for the property tax in their overall indigent defense cases. I'd be happy to answer any questions that might come forward and I would yield my remainder of my time to the Chair.

PRESIDENT MAURSTAD: Thank you, Mr. Speaker. Senator Brashear, on the Judiciary Committee amendments.

SENATOR BRASHEAR: Mr. President, members of the body, we should first take note of the fact that the amendment was brought to the committee by Senator Kristensen and endorsed by the committee, and the committee advanced LB 335 with all seven of the members present voting in favor. The committee amendments create the Indigent Defense Standards Advisory Council. The council would be made up of seven members and specifically would include the elected public defenders of Douglas County and Lancaster County, as well as the chief counsel of the Commission on Public Advocacy, and four members at large. The members would be...the qualification to be a member at large would be that you have substantial experience in providing indigent defense services; that you be nominated by the Nebraska Criminal Defense Attorneys Association and appointed by the Commission on Public Advocacy; and that you serve for a term of four years. Members of the council under the amendment would be...would serve without compensation, but they would be entitled to reimbursement of their expenses only. The council would be

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responsible for developing and recommending guidelines and standards for county indigent defense systems for the commission. I think it's important to articulate briefly what those standards would relate to. We are talking about standards governing reimbursement of counties for indigent defense, attorney qualifications for court appointments, salaried public defender assigned counsel and appointed counsel compensation rates, overall funding of the indigent defense system, the definition and delineation of maximum caseloads, matters dealing with system administration, conflicts of interest and continuing legal education for those involved in this important work. That would constitute the explanation of the committee's amendments. I would urge the adoption of the amendments and the advancement of the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Brashear. Senator Kristensen, on the committee amendments.

SPEAKER KRISTENSEN: Thank you, Mr. President. Members of the Legislature, I support the committee amendment. I appreciate the work that the Judiciary Committee did in this area. One of the things that our good Chair didn't have an opportunity to talk about but they were very good this last summer and had an interim study looking into indigent defense and I think part of those recommendations flow from that study. Realize that there's going to be a natural tendency here for people to say, well, what do we do about the county attorneys? That's a fair, legitimate question. We have done that over the years. We've created special units in the county...or in the Attorney General's Office to go out and assist, for example, in major cases. Sexual abuse cases, there's a special wing for them who go out and do that. We've had standards for them for some time for continuing education and this would mirror, the committee amendment mirrors, what we've done in the past for the county attorneys in terms of setting up a standards board and they would be able to look at this. The Commission on Public Advocacy has found over the last couple of years that they've had very good efficiency in trying to also regulate caseload. They've been able to get some federal grants and move this program along. By doing that, they've been able to unburden people so they don't have five or six major cases all at once

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under their wing, and that's when you start to make mistakes. It would be like carrying five or six major priority bills at once and not having the time to devote to each one of them, all having some pressure, and the ability or the opportunity rather to make a mistake becomes larger as you lose your time to think and to deal with these cases. There are several states who have standards. Those states have witnessed an increase in the quality of people doing this. This is difficult work. It's an area that you have to almost specialize as you get into the more serious cases. It is not an area where you can just walk in off the street after doing a few wills, some probates, some real estate work, and representing a few drunk drivers. These are cases that are very difficult to do. Oftentimes, they're not adequately compensated and so it's much easier just to walk in and try to negotiate out a plea or not do a particularly good job with someone's rights. The Commission on Public Advocacy understands and I think we understand as well that we've got to be able to protect those constitutional rights of those people because, in the long run, it saves us money, it makes us more efficient and, at this point in time, if the counties can have some of this cost shared it will be in their best interest and they're more likely to go out and do the work that needs to be done to represent these individual people. Particularly, we're not talking about telling people how to defend a case. These are standards in terms of who should do it, what sort of caseloads they should have, but it's not going to be micromanaged to say in all cases you should file thousands of motions or lots of discovery, or you should never do this, or you should never do that. The individual people representing those defendants will still have management over how the case is defended, how it progresses, because each case is different. I would suggest to you that, over all, this is another move towards continuing legal education. I think that's a good move. I think that it's important for particularly people representing defendants in this area that they understand that the law is ever-evolving, ever-changing. This may not be a case where you're going to go out and be able to raise millions of dollars...

PRESIDENT MAURSTAD: One minute.

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SPEAKER KRISTENSEN: ...but it's an area where we're going to have to make some investment or it's going to come back to haunt us, just as it came back to haunt Senator Vrtiska's district. I would suggest to you that there are some options. If I was going to look at this bill I would say, well, I like the concept, let's go on the concept, but I want to make sure when we get down to the end, Senator Wehrbein, where does this all fit in? And that's a legitimate question. There are some options out here but, at this point in time, what I want to bring to the body is the concept and the need. Senator Bourne prioritized this bill. I appreciate him doing that. And that if you have some questions about what these standards are or the overall scope of the process, I'd be happy to answer those at this point in time. Thank you.

PRESIDENT MAURSTAD: Thank you, Mr. Speaker. Senator Brashear, you're recognized to close on the committee amendments.

SENATOR BRASHEAR: Mr. President, members of the body, you've heard Senator Kristensen speak to this in greater detail than I can or would. I urge the adoption of the committee amendments and the advancement of the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Brashear. The question is the adoption of the committee amendments to LB 335. Those in favor vote aye; those opposed vote nay. Please record.

CLERK: 33 ayes, 0 nays on adoption of committee amendments.

PRESIDENT MAURSTAD: Committee amendments are adopted. Debate on the advancement of LB 335, Senator Kristensen, followed by Senators Raikes and Vrtiska.

SPEAKER KRISTENSEN: Thank you, Mr. President. Members of the Legislature, I, with these other two lights on, I'll spend less time at this point in time and let them get their questions out and try to answer them the best that I can, but I do want to remind you that this is...this is a system which we've just scratched the surface on a few years ago and has been very, very successful, and it's been successful in not making mistakes. It's been successful in providing counties with security that

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they can protect defendants' rights and still not break the county budget. And so, with that, I see there were a couple of other lights on, at this point, Mr. Chair, I'd like to get their observations and views.

PRESIDENT MAURSTAD: Thank you, Mr. Speaker. Senator Raikes, on advancement of LB 335.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor and members. Senator Kristensen, if I could ask you a question or two and...

PRESIDENT MAURSTAD: Senator Kristensen.

SENATOR RAIKES: ...you'll quickly...

SPEAKER KRISTENSEN: Yes.

SENATOR RAIKES: ...learn, if I don't admit it, that I'm approaching from ignorance here. There is a Commission on Public Advocacy in place now. Is that correct?

SPEAKER KRISTENSEN: Yes.

SENATOR RAIKES: And this commission has never gone about the job of setting guidelines for indigent defense?

SPEAKER KRISTENSEN: That...that was not part of their statutory charge.

SENATOR RAIKES: What...what have they been doing?

SPEAKER KRISTENSEN: Their job is to be very active in the area of representing and being appointed by the various district judges to represent defendants in first degree cases, first degree murder cases and other serious felonies, but primarily the murder cases are where they get involved.

SENATOR RAIKES: Okay. So is that job done now?

SPEAKER KRISTENSEN: No, there are still murders being committed on a regular basis and they're (inaudible)...

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SENATOR RAIKES: Their job renews every time a murder is committed?

SPEAKER KRISTENSEN: Not every time. There's an option by the district judge. Obviously, there's a full-time professional staff in Douglas and Lancaster County so they're not going to use them on a regular basis, but you've got a lot of, you know, from those counties down there's a pretty active work load.

SENATOR RAIKES: Okay. And this...this would require, in order for them to address the issue of county indigent defense, this would require an expansion of their staff or an expansion of their work load some way or another.

SPEAKER KRISTENSEN: Well, it will require the commission to take on establishing the standards. The actual work in those counties will still be done by either the contract public defenders, the elected public defenders, or by the lawyers who are appointed by the court to represent indigent defendants. You're really not going to be sending them because we just don't have enough people to send out for all these cases.

SENATOR RAIKES: Okay, I under...I think I understand that. My question is, are there not, currently when you go to law school or the things you do, don't you learn standards for proper defense of a person? And is there...is there something that is...needs to be created here that isn't available? I...I realize I'm not very clued in.

SPEAKER KRISTENSEN: Well, certainly, Senator Raikes, if you were charged with a felony charge, I doubt that you would want a lawyer fresh out of law school, and the reasons would be experience, experience, experience, and...

SENATOR RAIKES: So part of the...

SPEAKER KRISTENSEN: ...experience.

SENATOR RAIKES: ...standards that these...that this commission would develop would be how much experience is required on the

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part of an attorney to represent an indigent in certain situations?

SPEAKER KRISTENSEN: Exactly, and the law does evolve. It's a quickly evolving area and, quite frankly, it's not a lucrative area so there aren't as many people who practice in that area.

SENATOR RAIKES: Okay. So...so the issues they would advise on would not be so much a matter of what's in the statute or constitution or anything like that, but what sort of a practical norm for providing defense in certain situations?

SPEAKER KRISTENSEN: That's correct, and the standards would also be for the county, what sort of caseloads should they have per...per lawyer doing that representation; what about the assigned counsel rates, how much should that be; how much training should those people have on a regular basis.

SENATOR RAIKES: Okay. Well, one other area of questioning, I noticed the fiscal note, this money would flow to a county regardless of that county's ability to...to fund the operation itself. Is that true?

PRESIDENT MAURSTAD: One minute.

SENATOR RAIKES: There would be no demonstration of need or anything along those lines?

SPEAKER KRISTENSEN: What they would do is they would have to have an approved plan for county indigent defense. Once that plan was approved then they would be eligible. That's correct.

SENATOR RAIKES: So you could have a county that was levying, say, at half its levy lid, would receive the funding just the same as one that was at its levy lid.

SPEAKER KRISTENSEN: That's correct.

SENATOR RAIKES: Okay. And did you consider any sort of need based funding?

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SPEAKER KRISTENSEN: We have done that in other areas. Senator Vrtiska, for example, passed a bill the other year talking about extraordinary circumstances and that's primarily a safety valve for those counties who were in dire financial need.

SENATOR RAIKES: Okay. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Senator Vrtiska, on the advancement of LB 335.

SENATOR VRTISKA: Thank you Lieutenant Governor Maurstad. Members of the body, I would like to...I guess I got up to speak mainly because my name is mentioned and my county many times, my district I should say, many times in this conversation and I just wanted to engage in a short bit of conversation with Senator Kristensen, if I could.

PRESIDENT MAURSTAD: Senator Kristensen.

SPEAKER KRISTENSEN: Sure.

SENATOR VRTISKA: Senator Kristensen, I was listening to your discussion with Senator Raikes and it's true that this is not limited to a county that..that necessarily does not have any funds at all but is actually to...as I understand it, it's just those counties that don't feel that maybe they have anybody in their county who has the expertise to, for example, prosecute a major crime?

SPEAKER KRISTENSEN: I was just listening under the balcony because I can hear you better over there than I can from my microphone. I'm sorry, it wasn't inattention. Senator, it's designed to broaden and expand the skills and ability of counties to represent indigents, so you're correct. But realize that this is going to, in return to getting reimbursement, what they're going to do is the county is going to say you decide how much continuing education those lawyers ought to do. You're going to decide what those rates are and you're going to decide what the caseloads are. So they're going to...the county will turn over many of those standards to the commission in return for either a 40 or 50 percent reimbursement.

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SENATOR VRTISKA: Thank you. I...I...I, of course, obviously support this legislation because of the problems that happened down in my district and I guess I just wanted to remind the body that, although you mentioned my district because of the...we were able to take advantage of some legislation that was passed, we're not...it isn't...it isn't unique. I don't think all the criminals in southeast Nebraska and any county can experience the kind of situation that happened there, and I guess the point I wanted to make, and certainly no disrespect to any attorney, but attorneys who don't regularly prosecute major crimes sometimes have difficulty in carrying out a good prosecution...prosecutorial, whatever the...whatever I want to say,...

SPEAKER KRISTENSEN: Well,...

SENATOR VRTISKA: ...in fact in prosecuting criminals because they don't have the expertise in the field and that is really the purpose of the bill. Correct?

SPEAKER KRISTENSEN: Well, I just want to make...it's easy to use the terms a little differently. This is talking about the defense side and not the prosecution side.

SENATOR VRTISKA: Yeah, well, I'm sorry.

SPEAKER KRISTENSEN: Right.

SENATOR VRTISKA: I said prosecution.

SPEAKER KRISTENSEN: Yeah.

SENATOR VRTISKA: I mean to defend, right.

SPEAKER KRISTENSEN: Exactly. You're exactly right and that's the point.

SENATOR VRTISKA: I appreciate that and I support it because I think it can affect anybody at any time. Nobody knows who or when, but this in fact will...and I think the important thing is

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that when the...when the defense is such that it doesn't have to be done over and over, it's going to end up saving everybody money. That's...that's the way I look at it. With that, Mr. Lieutenant Governor, I return the rest of my time back and urge the support of this piece of legislation to move forward. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Vrtiska. Senator Wickersham.

SENATOR WICKERSHAM: If Senator Kristensen would yield, I have just a couple of questions.

PRESIDENT MAURSTAD: Senator Kristensen.

SPEAKER KRISTENSEN: Yes.

SENATOR WICKERSHAM: Senator Kristensen, the monies that would be distributed through the fund, they look like a form of state aid. Many forms of state aid come into counties as restricted funds. Is there some reason that the distributions that are made under this program should not be considered restricted funds?

SPEAKER KRISTENSEN: Well, there is because of the un...if they're due because of an unusual case then the definition of restricted funds probably would not be a fair one. There should be some relief. If this is an overtaking of a regular county function, such as they're going to turn over their indigent entire system to the state, then those probably should be more in the form of a restricted fund. In other words, if it's...if they're going to basically hand over the public defender's office to the commission to set standards and do those sorts of things and they're going to regular reimburse most of that, then in effect that if those were regularly expended monies they would be restricted funds and they should be here as well.

SENATOR WICKERSHAM: Okay. So then I don't know whether we'll move the bill today, but if we did then on Select File, if we have an amendment that takes care of that particular circumstance, that might be appropriate.

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SPEAKER KRISTENSEN: It would be, but I think I'd also look at the definition of restricted funds, because I think it will catch these under that definition.

SENATOR WICKERSHAM: The definition of restricted funds refers to a series of specific statutory distributions and so...but...but...

SPEAKER KRISTENSEN: Well, we can look.

SENATOR WICKERSHAM: ...I'd be more than willing to check, but I...I think this raises that particular issue. Any time we create one of these aid funds I think we need to be cognizant of whether the distribution is going to be subject to restricted funds. Otherwise, we just wind up providing state dollars and no compensating reduction.

SPEAKER KRISTENSEN: Exactly, and that's the reason if they're going to take over an ongoing program and such that should be a restricted fund.

SENATOR WICKERSHAM: Okay. And I...and I apologize for not raising these questions with you earlier. I, frankly, hadn't taken time to focus on the bill. Now, I'm assuming that due to the language in Section 4, sub (5), that you don't...that you'd expect that in a year in which the appropriated amount did not meet the amount of requests that were approved that the following year there would be simply a deficit request and that we wouldn't have any mechanism to really control the amount of money in this fund or utilized for this purposes, because as I...as I read the language you're not contemplating a fixed dollar appropriation that is then prorated out if it's insufficient.

SPEAKER KRISTENSEN: That's correct.

SENATOR WICKERSHAM: Okay.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Senator Jensen, on the motion to advance.

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SENATOR JENSEN: Thank you, Mr. Lieutenant Governor. Members of the Legislature, I'd like to also follow up with some questions to Senator Kristensen, if he would yield.

PRESIDENT MAURSTAD: Senator Kristensen.

SPEAKER KRISTENSEN: Yes.

SENATOR JENSEN: What is the financial responsibility of the counties then when they would go under this advocacy program?

SPEAKER KRISTENSEN: They would still have their same constitutional requirement. In other words, it's their obligation to ultimately pay. They would be reimbursed, however, if they entered into these agreements and had these approved plans. If it was a first degree murder case they would get 50 percent reimbursed, otherwise it would be 40 percent for everything else.

SENATOR JENSEN: Well, then why wouldn't Douglas and Lancaster and Sarpy County, your larger counties, also fall into this same program?

SPEAKER KRISTENSEN: It...it would...it would be difficult for them to do it wholesale. They like the independence of doing that. This would primarily be more attractive to the smaller counties; however, there is the potential for that to occur. But they generally have liked to have their independence and run their own office and shop and not have anyone else, in terms of standards and control.

SENATOR JENSEN: Well, and then, getting back to Senator Wickersham's question, I would really think that the majority of the counties would come under this because, number one, it does affect those levy lids that the counties have and I would think that they would turn over all cases other than maybe perhaps the smaller ones, traffic offenses, whatever they might be, the minor items, and turn the rest over to this agency.

SPEAKER KRISTENSEN: They could except the counterbalance to

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that is, is that some of the counties may not want to invest any more money in the system either. If you're going to improve the rate of pay, if you're going to improve and say, look, if you're going to have these, you've got to have more people to do these cases, because you're not...you're not living up to the standards, that might increase the total cost. And the counties, see, would lose a little control to do that. And so they may be hesitant to do that. Even though they're going to get reimbursed, they may be hesitant to do so.

SENATOR JENSEN: Would this be similar to what we set up with the county assessors and allowing the state then to take over those duties? Would we, pretty soon, have a...a very expensive thing before us that would continue to grow year by year?

SPEAKER KRISTENSEN: Probably not, because what happens with this one is, and the assessors, excuse me, it's all, it just all comes over; they get to wash their hands completely. They're still ultimately on the hook here and they're still going to pay 60 percent of the cost and they're going to lose a little bit of the control over what those standards are. So it isn't...it won't be the wholesale change.

SENATOR JENSEN: I...I suppose that if we...the bill that we passed a few years ago allowing the states to support the counties on these capital cases, that this would follow in line, I can understand that. In the same token I can say, why don't we set up the southern counties compact (laugh) and allow counties to join together and to come up with some dollars then that they could then defend cases such as this? I would see nothing wrong with that, and that would allow the counties more say-so, perhaps, than going through the effort of a bill like this.

SPEAKER KRISTENSEN: They, in fact, they've had the opportunity and it's not occurred. They could always enter into those interlocal agreements. The trouble is who splits the money, what's the share load, who gets to do it.

SENATOR JENSEN: And it should be done ahead of time rather than (inaudible).

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SPEAKER KRISTENSEN: Right. Right. Yeah.

SENATOR JENSEN: Thank you. I'll return the rest of the time back to the Chair.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. Senator Wehrbein, on the advancement of LB 335.

SENATOR WEHRBEIN: Mr. Speaker and members of the body, I guess I'd like to have Senator Kristensen's response to some comments. It's a lot of money in this and I...I have serious concerns about the amount of money that we're adding in here and it's a permanent basis, if you will. But do we have any problems at this point in our defense system across the state? In other words, are we getting too many overturns? Are we getting ineffective counsel on behalf of defendants, those kinds of things, that we need to get beyond where we're at today with our Commission on Public Advocacy or...?

PRESIDENT MAURSTAD: Speaker Kristensen.

SPEAKER KRISTENSEN: Thank you. Yeah, what we're finding out is that there is probably a lack of expertise for people to do the work. It's getting harder and harder to find people who will go out and defend these cases. And so I know it isn't difficult in Omaha and Lincoln because you've got a lot of...you've got a lot of base for lawyers, quite frankly, but you get outside of that area and it's very difficult to find people who will take those appointments, who will (inaudible) for it and to do it, and so consequently you're paying people to travel great distances to go do it and you're finding that they're going to enter more pleas. I mean it isn't...you know, it's easier to say, ah, you're guilty, plead to this, and go on than it is to...to actually defend those rights. Now, can you quantify that? That's real hard, Senator Wehrbein, to go out and quantify and say we've had a 10 percent increase in the last two years on an ineffective assistance to counsel cases. The purpose here is to generally raise the quality of those and...and generally be able to find more people to do them, because we're having real troubles in recruiting people to do it.

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SENATOR WEHRBEIN: Pardon? I didn't hear the last...

SPEAKER KRISTENSEN: We're having real trouble recruiting people who will actually go out and do those defense things and so you bring somebody from Omaha and Lincoln, you pay them to come out and travel two, three hundred miles, try these cases for several weeks. That's...gets to be a pretty expensive proposition.

SENATOR WEHRBEIN: Okay. Well, I'm going to have difficulty with this and many others as we get down to the bottom line, I assume. We're going to have to make those decisions and I will probably go along at this point. We'll have to stack up, and I assume that's your intention too,...

SPEAKER KRISTENSEN: Exactly.

SENATOR WEHRBEIN: ...that come May 25th, why, we'll make some of these decisions. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Wehrbein. Senator Kristensen, you're recognized to close on the advancement of LB 335.

SPEAKER KRISTENSEN: Thank you, Mr. President, members of the Legislature. Senator Wehrbein, I appreciate your candor and, as I said, I think it's difficult at this point to say here's the...here's the total commitment of dollars we're going to make on this vote. What I would tell you is between now and probably Select File, why don't I do this, I will present you with some options that we have in the body and we can try to make some choices. Obviously, we have a problem if we don't try to address this, because we're finding more and more major cases that aren't getting the proper attention. We're finding counties who are spending low rates, and because of low rates they can't find anybody who will do defense work. And because of that, then you have to drag other people in, they come greater distances. We generally see a lower quality of defense being done, and in the long run that's going to be costly, not only to the counties but to the state as a whole. Again, what this bill does is allow the Commission on Public Advocacy to set

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up a system of standards in return for a county electing to do that having an approved plan. Those counties then will be eligible for reimbursement, if they turn to the system and allow the commission to do the various things that we set out in these standards. This is not telling lawyers how to practice, it's rather setting up a system and a playing field for the counties to participate in, in return it raises the level of competency and efficiency in the defense system. I would urge the advancement and pledge to you, between now and Select File, we'll come up with some of those options. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Speaker Kristensen. The question is the advancement of LB 335 to E & R Initial. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB 335.

PRESIDENT MAURSTAD: The bill advances. Mr. Clerk, LB 335A.

CLERK: LB 335A, by Senator Kristensen. (Read title.)

PRESIDENT MAURSTAD: Mr. Speaker, you're recognized to open on LB 335A.

SPEAKER KRISTENSEN: This just merely advances with the accompanying bill to carry out the terms of LB 335. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Kristensen. Debate on the advancement of LB 335A? Senator Kristensen, you're recognized to close. Senator Kristensen waives closing. The question is the advancement of LB 335A to E & R Initial. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 335A.

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

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for the record?

CLERK: Mr. President, a series of amendments to be printed: Senator Brown, to LB 142; Senator Chambers, to LB 75; Senator Robak, to LB 75; and Senator Beutler, to LB 671. That's all that I have, Mr. President. (Legislative Journal pages 1313-1318.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Members, according to the agenda, we will go to Select File, 2001 senator priority bills. LB 827, Mr. Clerk.

CLERK: Mr. President, LB 827 has been discussed on Select File. The Enrollment and Review amendments were considered and adopted, as were two amendments by Senator Bromm to the bill. Senator Beutler has the first motion. Senator Beutler had moved to indefinitely postpone the bill. That laid the bill over on March 30, Mr. President.

PRESIDENT MAURSTAD: Senator Beutler, recognized on your motion to indefinitely postpone LB 827.

SENATOR BEUTLER: Mr. Lieutenant Governor, I would withdraw that motion.

PRESIDENT MAURSTAD: Without objection, the motion is withdrawn. Mr. Clerk.

CLERK: Mr. President, the next motion, Senator Chambers, FA148.

SENATOR CHAMBERS: (Inaudible remark.)

PRESIDENT MAURSTAD: Without objection, the amendment is withdrawn at the request of Senator Chambers.

CLERK: Senator Chambers, FA149.

PRESIDENT MAURSTAD: Senator Chambers, recognized to open on FA149.

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

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that first one hurt my heart; this one breaks my heart, but I withdraw this one also.

PRESIDENT MAURSTAD: Without objection, it is withdrawn.
Mr. Clerk.

CLERK: Senator Kristensen, AM1006.

PRESIDENT MAURSTAD: Mr. Speaker, you're recognized to open on AM1006.

SPEAKER KRISTENSEN: Thank you. I would request to withdraw this and file it at the end of the amendments today.

PRESIDENT MAURSTAD: Amendment is withdrawn and refiled.
Mr. Clerk.

CLERK: Senator Kristensen, AM1231.

SPEAKER KRISTENSEN: Would withdraw. Ask...request to withdraw that particular amendment, not to be refiled, just withdraw.

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

CLERK: Senator Bromm, AM1303; it's the one you gave me today, Senator. (AM1303, Legislative Journal page 1318.)

PRESIDENT MAURSTAD: Senator Bromm, you're recognized to open on AM1303 to LB 827.

SENATOR BROMM: Thank you very much, Mr. President. When we left this bill last week, there were some significant questions about a couple of the areas of the bill. Several senators agreed to participate in trying to work on that and I acknowledge and appreciate their work. And I'd especially like to thank the Speaker and Senator Landis, Senator Beutler, Senator Tyson, and, of course, Senator Chambers is, I think, facilitating us to get to this amendment, so I recognize and appreciate that as well. The points of discussion, if you will, that were being discussed at that time were that the bill allowed the public entity that would lease fiber to recover only

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an incremental cost. If they had installed three fibers and were going to lease one, the way the bill was interpreted by most and probably by most of the discussion that occurred on the floor, they would only be able to recover that incremental cost of installing that third fiber as opposed to a proportionate share of the cost. In other words, if it costs \$100 to install three fibers, including the trenching and the dirt work and the right-of-way, as well as the cost of the fiber, if they were going to lease one of the three fibers out, the language that's in the bill now would suggest that they would be able to recover \$33.33, or a proportionate share of the cost of the selling that fiber. That would put their ratepayers back in nearly a whole position with respect to having the term "overbuilt" their capacity, which at the time might not have been viewed as being overbuilt, but as it turns out perhaps it is, and so they can recover a proportionate share of the cost. This fixes that in the manner I've just described. The second issue, there has been considerable discussion about the fairness of the entities that have the fiber to lease having to place 100 percent of the margin over and above the cost into the Enhancement Fund. Senator Beutler in particular, and Senator Landis, and I think Senator Raikes also, and I should acknowledge Senator Raikes' participation in some of these discussions as well, were concerned that...about this going, this margin going entirely to the Enhancement Fund. This amendment provides that 50 percent of that margin will go to the Enhancement Fund for grants to emphasize on rural or less populated areas. But the other half can be retained by the leasing entity, the public entity, and they can use it as they see fit. There aren't any strings attached to the portion that they retain. The third significant item that we had a lot of discussion about was the pricing or the cost mechanism for the leasing. And there were senators, some of whom I've already mentioned, who were concerned that this particular method of pricing that was in the bill was noncompetitive and would...would more or less allow the incumbent, if they had been inefficient in the cost of installing fiber, would allow them to hold that price up as the standard, so to speak, whereas it perhaps could have been done by someone else more efficiently, and that they should be able to at least take advantage of the efficiency, if it's there, of a lesser price. This amendment would provide that in addition

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to the commission considering the...the unbundled network element cost of the incumbent, that they could also look at the market rate for a...any other private entity that is leasing fiber in the area or any other similar territory where they might be leasing such fiber. So, for example, my objection when we began that discussion was that it wasn't appropriate to compare if you were in Kimball, Nebraska and you were looking at the cost, it maybe wasn't appropriate to look at the cost of that same fiber in Omaha, or in Lincoln, or necessarily in Grand Island. So the...the proponents of making a change said, well, okay, that may be correct but why can't we look at the price in...in...in a similar situation. Maybe Kimball is in many respects similar to Valentine or Gordon or Hemingford or O'Neill, and perhaps we can then get some comparable costs there. That seems reasonable to me and so we agreed, yes, we will certainly agree that that could be considered by the commission and so the amendment does that. The fourth item wasn't discussed on the floor that much but was brought to us by Senator Tyson. And his concern was that, if there is a sale or a lease by a public entity, that it would be appropriate for them to consider the maintenance of the dark fiber. Many times, most times this dark fiber will be situated with other fiber that continues to be used or owned by the public entity. An example presented to me was that public entity may way...may not want everyone delving into their cable structure to maintain the cable. It could interfere with their own operations. They don't want other entities crawling up their poles, getting into problems or messing up the service that they are providing. So this provides that the maintenance shall be continued to be provided by the public entity and that they're entitled to recover on a pro-rata basis a proportion of that maintenance cost from the lessee or the buyer. And I should say that it is my intent, in discussing this item, that the public entity should be able to attribute just as we do the other component costs of an operation like this, a component cost to maintenance of that fiber and the buyer would then be responsible for a pro-rata portion of that component cost. I would not expect the public entity to include in those costs many other costs that are associated with providing their electrical service, or their management fees and those kinds of things, but rather the identifiable component cost associated with maintaining that

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dark fiber optic cable. So that is provided for and that, as I say, was an idea brought by Senator Tyson that we felt was probably in the public interest to include that concept. Lastly, this has nothing to do with prior amendments or discussions to any great extent. I have apprised everybody that signed onto this amendment of this but, as we did before, we included a reference to statutes to exclude any complications with the University of Nebraska and them providing services on campus, state colleges and community colleges who may be doing the same. We received a call while we were discussing this bill, as a matter of fact, about noon today, from the educational TV folks. And they said we've been carefully reading our statutes with regard to our opportunity to provide satellite services, the NETV satellite services,...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR BROMM: ...and we just want to be sure that we're not becoming involved in something, even though this is...refers to dark fiber. So the very last part of the amendment we reference the statute 79-1319. And the intent of that is to exclude any involvement of the NETV network and their satellite operations. And so that's why that reference is in there. I do appreciate Senator Landis, and Beutler, and Tyson, and Kristensen signing onto this amendment. And there have been a number of hours of negotiations and discussion and everyone has been very, very good to work with. And so I hope that there may be...I understand there may be questions, and I've had senators come to me who are supporting the bill and indicate, well gosh, they hoped we weren't changing the bill in its entirety or something.

SENATOR CUDABACK: Time.

SENATOR BROMM: And I can assure you that we haven't changed the cornerstones of the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. You've heard the opening on AM1303 to LB 827. Open for discussion. Senator Beutler.

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SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this has been a very difficult bill to deal with, I'm sure, for all of us in a number of different ways. It's broad prohibitions with regard to lighted fiber is one aspect of the bill that probably won't be discussed any further today, but that broad prohibition is the reason that I, for myself, will not be voting for this bill in the end. Having said that though, I am cognizant of and appreciative of the compromise reached on a narrower focus of the bill which is that part of the bill that deals with the leasing of dark fiber. Although it is a narrower part of the bill for my constituency, it was nonetheless a very important part of the bill. And the compromise places the matter in such a position that the city of Lincoln, Lincoln Electric System believes that they will be able to do that which is perceived to be to the greatest benefit of our community in terms of leasing dark fiber around the city. They believe that they will be able to do that on a basis that makes sense for the community. So, I, too, am grateful for the compromise. I think the compromise has been pretty much described for you by Senator Bromm. I wanted to be sure that it is understood that the addition of the words "or similar territory" allows us to look at places like the city of Omaha and Grand Island and those kinds of places and make some comparisons that in the end may be more favorable from the perspective of the city of Lincoln. The actual language indicates that it will be the market rate, is the price associated with similar unbundled network elements that may be available from an incumbent local exchange carrier, and then it adds the alternative language and indicates that there is an alternative available. So, I think at the moment that that's probably all that I want to say about this particular amendment. Senator Landis is not here at the moment. He was involved and we appreciate his help, and Senator Kristensen's involvement. And with that, I would simply recommend to you the adoption of the compromise amendment.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Kristensen, followed by Senator Raikes, on AM1303.

SPEAKER KRISTENSEN: Thank you, Mr. President. Members of the

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Legislature, I do believe that there has been a considerable amount of coming together and this bill has changed drastically from what occurred in January of this year. If you'll remember that there were bills all over the place dealing with dark fiber. One of the bills included a provision where there would be dark fiber only, providing that there were separate subdivisions, and that you had to have separate companies, separate board of directors, separate monies, all of those. Yes, that would have been very expensive and cumbersome, but it would have protected ratepayers. I still think the ratepayers at this point are protected through this process, so our mission is accomplished in trying to stop the proliferation of these things to the detriment of the companies whose job it is to provide service. There is an amendment that follows this one that I am very serious about which basically says no one can do any more, can't lay fiber unless you go to the Public Service Commission and basically show it's in the public's good. If this amendment, if this compromise amendment is adopted, I will take that amendment out and withdraw it. But I do think that the bill, as it stands with this proposed amendment, represents a good resolution for dark fiber. The fund, I think Senator Beutler was modest, Senator Chambers was modest in the last time they spoke about who gets the money and under what circumstances. In years to come we're going to have to visit that fund because there is not going to be a tremendous amount of money in there. When there is a need to put money into that fund or when there are such monies generated, we're going to have to take a closer look at those sorts of things. I'm sure that we'll do it because quite frankly it's going to need additional legislation to fully implement it. So at this point in time I appreciate the work of the committee and those people who have been opposing the bill and would urge your adoption of this particular amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Kristensen. Senator Raikes, on the amendment.

SENATOR RAIKES: Thank you, Senator Cudaback and members. I have not been supportive of this bill up to this point, but with this amendment I certainly would be. I want to thank Senator Bromm and whoever...all the others who were involved. I think

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this is a great improvement and I will happily support the amendment and, if that's successful, I will support the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. We are on AM1303, the Bromm amendment to LB 827. Senator Robak, on that amendment.

SENATOR ROBAK: Senator Bromm, could I ask you a question, please?

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

SENATOR BROMM: Yes.

SENATOR ROBAK: On your...on this compromise amendment, could you tell me if the public power companies now are excluded from competing with the telephone companies for broadbands, or Internet, or providing service?

SENATOR BROMM: Senator Robak, I think I would have to answer that by saying the bill actually sets up a structure whereby they, the power company, could provide dark fiber, which could be leased to someone other than the telephone company incumbent, and that could provide competition.

SENATOR ROBAK: It could?

SENATOR BROMM: Yes.

SENATOR ROBAK: They could lease it or sell it, if they chose to, public power could?

SENATOR BROMM: Yes, yes.

SENATOR ROBAK: But they can't...they are not allowed to compete with the telephone companies right now.

SENATOR BROMM: They're not...they're not allowed to operate a telecommunications business or company within their structure, but they can lease or sell the fiber to a company that does.

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SENATOR ROBAK: Okay. What would be their benefit from doing that then as opposed to doing it themselves?

SENATOR BROMM: Well, they're, number one in my opinion anyway, they're not statutorily authorized to enter into it themselves; and, secondly, it would involve an investment in technology that I think would be significant, and it's...this way they can realize some benefit out of this resource, which has been built and paid for by them and which is sitting there in an unused capacity. It may allow it to become used. They can recover the cost that they expended in building the fiber and, if there is a margin above that, they can keep half the money. So I think it gives them some possible advantages that they do not have now. Because right now I don't think they can do anything with it, really.

SENATOR ROBAK: With the bill as written previously as...before your amendment.

SENATOR BROMM: Well, before this legislation.

SENATOR ROBAK: Before this legislation. Okay, thank you, Senator Bromm. I think it's a weak compromise at best, but I don't think I'll vote for the...the bill. I don't know how I'll vote on the amendment at this time, but thank you for your explanation. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Robak. We're open for discussion on AM1303, the Bromm amendment to LB 827. Further discussion? Seeing none, Senator Bromm, do you wish to close?

SENATOR BROMM: Well, very, very briefly, Senator Cudaback. I...I know that this represents a policy change and a clarification. I think it's absolutely needed. Been a lot of...a lot of discussion, a lot of work, and hopefully...I know that...that this will not be the last time we revisit the area of telecommunications. Things are happening so fast. And in a year or two I'm sure we're going to be seeing an expansion of wireless and satellite alternatives that may or may not cause us to be back here. But I...I just hope that this in some way

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provides availability of using more telecommunications resources around the state. And certainly the emphasis and discussion we've had is good in itself because it creates an awareness that there is a need and an interest. And I think if this doesn't do it, I'll be there with you to try and do something more. So, thank you, appreciate your support.

SENATOR CUDABACK: Thank you, Senator Bromm. You've heard the closing on AM1303 to LB 827. The question before the body is, shall that amendment be adopted to LB 827? All in favor vote aye, opposed nay. We're voting on adoption of AM1303 to LB 827. Have you all voted who care to? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: The amendment is adopted. Mr. Clerk, next item to the bill?

CLERK: Senator Kristensen, AM1006.

SENATOR CUDABACK: Senator Kristensen.

SPEAKER KRISTENSEN: Mr. President, with the adoption of the last amendment, I withdraw this amendment.

SENATOR CUDABACK: It is withdrawn.

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

SENATOR CUDABACK: We are now open for discussion on advancement of LB 827. Open for discussion. Seeing no lights on, Senator Bromm, would you...Senator Kristensen. Senator, did you wish to close? Nobody wishes to close? The question before the body is the advancement of LB 827 to E & R Initial. All in favor of the advancement vote aye, opposed nay. I'm sorry, we're on Select File. I'm sorry. All in favor say aye. Opposed nay. It is advanced. Madam Clerk...Mr. Clerk.

CLERK: Mr. President, back to General File agenda, LB 75, a bill originally introduced by Senator Connealy. (Read title.)

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The bill was introduced on January 4 of this year, referred to the Natural Resources Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0445, Legislative Journal page 620.)

SENATOR CUDABACK: Senator Connealy, you're recognized to open on LB 75.

SENATOR CONNEALY: Thank you, Mr. President and members. I'm pleased to open on LB 75. It's an ethanol promotion bill. First of all, maybe I should give you a little background on my involvement on the issue so that especially the new members would know where I'm coming from. I've been involved in ethanol promotion research and plant development for, oh, many years, maybe since the 1980s. I've had the opportunity to serve on the Corn Board and the original Ethanol Authority. I was, at least part of the time, chair of both those boards. I'm a farmer and my farm sells corn to at least two ethanol plants, MCP and to Cargill, and Cargill is in my district. With that said, I want to explain a few points about LB 75. LB 75 is exactly like the amendment that we offered at the end of the session last year on LB 1234. That bill would have required ethanol to be in all blends of gasoline sold in the state. This is not LB 1234. This is not a mandate. LB 75 would simply require every retailer to offer ethanol-blended fuel at the lowest octane rating at their stations. You know, I call this as a consumer's choice bill because currently 38 percent of the gas stations in the state don't offer ethanol. There are large areas of the state where consumers cannot buy ethanol, and I believe that's wrong. Ethanol is a cleaner burning, environmentally-friendly fuel that, with its usage, creates jobs in this state. Many of the smaller stations not offering ethanol-blended fuel are in rural areas, subsequently not allowing agricultural producers to even buy their own product. There have been lots of arguments about this bill being a mandate, and that ethanol should be able to stand on its own merits. I understand those concerns, and I'd like to address the mandated aspect of fuel. Currently there are eight different requirements or mandated parts that were...of gasoline sold in the state. Straight hydrocarbon gasoline has many requirements or mandates, if you will. LB 75 will simply be an attempt to help us grow our own Nebraska

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economy. It will not be a mandate for the use of ethanol fuel by any motorist. Seven ethanol plants currently create demand for nearly 200 million bushels of corn a year in the ethanol industry here in Nebraska, and we employ 800 people in the state. In November, the last available data shows that Nebraska motorists use approximately 7.5 percent of the ethanol that we produce, whereas Iowa uses 17.8 percent of their production. I think we can do better. We can expand the use of ethanol in our state, and I know that LB 75 which requires stations to simply offer ethanol at the lowest octane grade will help increase the numbers of usage here in the state. And that will replace foreign oil. Twenty-four gallons of ethanol replaces 42 gallons of...or one barrel of foreign oil. There was an article in the Lincoln Journal Star newspaper this weekend saying that we can expect another summer of high gas prices due to OPEC's decision not to export as much oil. When are we going to catch on? We must use our own product. We have to quit our reliance on OPEC and the oil industry and start using a product that's cleaner burning, fuel efficient. And the way this bill is written, providing ethanol at the lowest octane rating, that product will also be cheaper. It's a product that we make ourselves. Let's support Nebraska's own economy. It's the consumer's choice. This session we'll talk about luring businesses to Omaha from other states, with the Invest Nebraska bill. We have already talked about improving our major cities by using cigarette tax revenues. While the economy is not quite as vibrant in our...in our metropolitan areas as it has been, it's still quite robust. Our rural economy is still in a downturn. We'll have shirked our responsibility if we don't do some real economic development for rural Nebraska. One of the bright spots of our rural economy is the corn milling industry. Adding value jobs in rural Nebraska is what LB 75 supports. I've heard criticism about the bill, that's it's not about fuel, it's about farmers. It's not about jobs, it's about self-reliance. It's not about clean air, it's about building a Nebraska industry. Well, it's about all that. LB 75 supports rural economies by helping build jobs, using farm products that are in excess. It replaces foreign oil and cleans the air. I'd urge your consideration of this bill.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator

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Schrock, as Chairman of the Natural Resources Committee, you're recognized to open on the committee amendments to LB 75. Mr. Clerk. Senator Schrock, were you going to handle the committee amendments?

SENATOR SCHROCK: Hang on a minute, Mr. Chairmen or Mr. President.

SENATOR CUDABACK: I'm sorry. Senator Schrock.

SENATOR SCHROCK: Members of the Legislature, the committee amendments is a date change on page 3, line 8. It strikes October 1, 2001 and inserts January 1, 2002. That shouldn't be a big problem and we would urge your adoption of the committee amendments, and then the debate can begin.

SENATOR CUDABACK: Open for discussion on adoption of the committee amendments to LB 75. There were several lights on...or two lights on. Senator Chambers, did you wish to address...

SENATOR CHAMBERS: Mr. President, I certainly do. I wish to address everything about this bill and some things not about this bill. We're going to stay on this one and I expect my tank to be...my verbal tank to be fueled for at least eight hours by this bill. I have offered an amendment or two to elucidate certain points and to sharpen the discussion. But on this committee amendment, it's not quite as innocuous as it may seem, and I think it requires some additional manipulating. But before I get into that, I would like to ask Senator Schrock a question.

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

SENATOR SCHROCK: Yes.

SENATOR CHAMBERS: Senator Schrock, why was the year 2002 selected?

SENATOR SCHROCK: It just felt like we had...needed more time to

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implement the bill, the legislation.

SENATOR CHAMBERS: Would you be opposed to making the effective date 2005?

SENATOR SCHROCK: I would vote red on that, Senator Chambers.

SENATOR CHAMBERS: May I ask why?

SENATOR SCHROCK: Well, I don't...I think what we're asking is for a reasonable amount of time. It gives our petroleum marketers plenty of time to get...to get geared up for the change, which I don't think should be a problem. But I think if you go to 2005, you're essentially taking away any immediate impact this bill may have on the ethanol industry in this state.

SENATOR CHAMBERS: So then this bill does relate to the ethanol industry.

SENATOR SCHROCK: Yes, it does.

SENATOR CHAMBERS: And to farmers.

SENATOR SCHROCK: Yes, it does.

SENATOR CHAMBERS: Just like that dairy compact was designed to help farmers.

SENATOR SCHROCK: Well, this is considerably different, Senator Chambers, but the purpose may be the same.

SENATOR CHAMBERS: Isn't the purpose of this bill to require every station that dispenses gasoline to the public to have an ethanol pump, at least one ethanol pump?

SENATOR SCHROCK: That is correct, Senator Chambers.

SENATOR CHAMBERS: Then how can we say this is not a mandate?

SENATOR SCHROCK: It's a mandate from the standpoint that it requires an ethanol blend to be sold at all stations.

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SENATOR CHAMBERS: Well, Senator Connealy said it is not a mandate.

SENATOR SCHROCK: Well, you know, we deal with mandates all the time and you can call...you can call it what you want. I prefer to call it a requirement to burn a Nebraska home-grown product. Or do you...

SENATOR CHAMBERS: Well, why should I burn the product you want me to burn, just to put money in your pocket and the pockets of those you represent? Why should I do that if I don't want to?

SENATOR SCHROCK: I don't know how to answer that question, Senator Chambers, but I think we all want to do what's best for the state of Nebraska, and most of us in this room want to do what's best for agriculture.

SENATOR CHAMBERS: But if what the state of Nebraska wants is contrary to my best interests, why should I submerge my best interests into that of the state? And when we say state, we're not talking about the entire state, but farmers and those who produce ethanol and those who invest in ethanol plants. Isn't that the group we're talking about?

SENATOR SCHROCK: Senator Chambers, I would argue that there's a lot of people in Douglas County, probably even in your legislative district, that benefit from the ethanol industry in this state.

SENATOR CHAMBERS: And how do they benefit from it?

SENATOR SCHROCK: Well, there's a lot of union workers helped construct that plant at Blair, and I think there's probably a lot of people in Douglas County that work at that plant in Blair. I know the past manager of that plant made his residence in Douglas County. I...somebody said it might have been in Senator Suttle's district but I don't know that to be true or not. It's the old economic theory that what benefits one person in the state of Nebraska benefits everybody.

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SENATOR CHAMBERS: Thank you, Senator Schrock. I won't interrogate you any further, but I will say this. It's a long stretch to say that a person who runs an ethanol company has moved into Senator Suttle's district and maybe suggest that's a reason why people in Douglas County ought to support this bill. This bill does not help the...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...housing industry in Douglas County. This is aimed strictly at an identified group of investors and purveyors of ethanol and producers. That's what this bill is for. Now those who want the public to accept it have not been able to get the public to accept it so they want the Legislature to step in and help them. I'm not in favor of that, and I have an amendment up there on the committee amendment.

SENATOR CUDABACK: Thank you, Senator Chambers. Mr. Clerk, motion on the desk?

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments. (FA152, Legislative Journal page 1319.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on your amendment to the committee amendment to LB 75.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, my amendment is simple. It would strike the date 2002 and substitute the date 2005. It falls to me to defend the public, to defend consumers, and in a way today I'm defending those people who operate gas stations and may not have the required number of pumps under this bill to do what the bill requires. I'd like to ask Senator Connealy a question, though.

SENATOR CUDABACK: Would you respond, Senator Connealy?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Senator Connealy, if a station attendant, a station owner, a station manager, does not put in a pump that sells ethanol, what happens to that person?

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SENATOR CONNEALY: They're required by law but there's no penalty in the bill.

SENATOR CHAMBERS: So if a person did not comply with this bill, there is no punishment?

SENATOR CONNEALY: Not that I...no, I know there is none.

SENATOR CHAMBERS: Would you be willing to suggest...accept the punishment that I might offer in an amendment?

SENATOR CONNEALY: We could...we could explore that.

SENATOR CHAMBERS: Okay. That's all I'll ask you at this point. Members of the Legislature, I'm not going to offer a kill motion on this bill right now. We need to work this a while. We need to plow this ground. We need to chew this cud. We need to liquify this carcass. And I think in order to do all of those things, it's going to take a little bit of time. There are senators here who were not privileged to enjoy the discussion we had last year on bill, LB 1234. It started out as a mandate and it became more rational and reasonable as it went through the process, and it was finally enacted in a way that prohibited the use of MTBE in gasoline. And I think it called for a study or something along those lines, but it was very benign in what it did. It did not attempt to put the Legislature in the business of enhancing the profits of a particular group of investors and producers. I had stated, when we were talking about that milk compact bill, that the price of milk to the consumer was going to be increased, and I thought that was improper, especially when it results from trying to put the money into a special group's pockets. This bill is aimed in the same way at a particular sector of the entrepreneurs in this state. Farmers plant and harvest a whole lot of corn. They don't get a high price for their corn, so they produce more corn, because if they get a dime a bushel, then they got to produce a lot more bushels so they get a lot of dimes. But because at some level market forces of supply and demand come into play, when more bushels are produced, that gives us a greater supply. When the supply tremendously outstrips the demand, the price goes down, so those

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unwise producers who thought that they could get a whole lot of dimes by producing a whole lot of bushels suddenly woke up to realize that now the bushel does not bring a dime. The bushel brings 8 cents. So next year they say I got to produce twice as much corn to get more 8 cents since I don't get the dime. Then what to their wondering eye should appear but the notation that a bushel of corn will now bring 6 cents. And it's hard to figure. I'm working hard, I am the backbone of agriculture and people ought to appreciate what I'm doing, but the harder I work and the more I produce, the lesser is the amount that I receive for what I produce. So now it's getting ridiculous. I'm going to have to triple my output. So now instead of 6 cents, it's 4 cents a bushel. And then there comes a dawning. I cannot stay in this line of work anymore so I'm going to ask the federal government to give me some money. Farmers made a greater income last year than they had in times past. Why? Because the federal government gave them more money. The federal government supports many farmers. Without those supports, those subsidies from the federal government, a lot of people in farming would be out of business, so they are subsidized by the taxpayers already. Now they want to skew the market, and they will say the market is already skewed because you have to carry it all the way back to how much it costs them to produce something and they get less when they sell it. That's not the public's fault. I'm going to resist these efforts to force the public to accept something the public does not want. I hear all kind of talk about capitalism, bringing businesses to Nebraska. And if when they come, they are going to lead to us managing the economy and cutting off alternatives and options that the consumer will have, I have to be opposed to that. I cannot call this greed necessarily. There's a worse word which I'm not going to use at this point, but as we proceed I might be prevailed on to use it. I want to change the deadline to 2005. Members of the Legislature, if you were operating a service station, and Nebraska comes to you and says, you must put in another pump, and you say, I'm not going to have enough business to justify another pump, and you're told, well, put it anyway. And then you ask, what will you do if I don't put it in, and they say, nothing. Why should we pass a bill like that? Who are we fooling? What is really up the sleeve of those who are pushing the bill? If there is going to be no

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enforcement mechanism, what difference does it make if the date is 2002, 2005, 2020 or 3001? I'm going to listen to this debate and maybe my education will be improved. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the open on the Chambers amendment to the committee amendments to LB 875...or LB 75. Open for discussion, Senator Schrock.

SENATOR SCHROCK: Mr. President and members of the Legislature, Senator Chambers, isn't it amazing how bad dreams keep returning? I think Senator Connealy has a nice bill here, and if it has a familiar ring, it is little different than last year, but it would serve to do the same benefits as the bill we had last year. I passed out a little...by the way, for the record, I'm opposed to your amendment. I passed out a little...a little page here from the April Soybean Digest. You know, I know you don't like to talk about Minnesota, Senator Chambers, but they're probably a more metropolitan/urban area state than Nebraska is, and it's amazing how they've come together to support renewable fuels. They have had an ethanol mandate, that terrible word, mandate, in that state for some time now, and it looks like they have a good chance of going to that on their diesel fuel. And the nice thing about it is it's so environmentally friendly, it helps everyone. It helps farmers, it helps the environment and it helps the economy of the state of Minnesota. With this, with the biodiesel, it will be lower sulphur content. But we're not talking about diesel fuel here, we're talking about gasoline. But if we get the gasoline passed, then we can work on diesel fuel next year. It looks like the ethanol industry has really changed. I remember a year ago on LB 1234, we had the people from Standard Oil/Amoco come in and they told us all this cost, this increase in the cost of gasoline is just a little blip. It will go down next summer. Well, you know what the price of gasoline did last summer, and you know what the price of energy has done this winter. Certainly if we had not had the ethanol industry and if we were not producing as much ethanol as we are in this country, the price of gasoline would have been higher. So I would argue that the price of ethanol has already made a significant contribution to cheapening the price of fuels to those of us who

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are consuming gasoline in this nation. But Senator Connealy has a proposal here that I think its time is going to come sooner or later. I think we just as well do it sooner. Ethanol certainly is beneficial to the state of Nebraska from the standpoint it consumes corn, it employs people. The interesting thing about it was about a year ago, or maybe 15 months ago, the price of ethanol, the raw product that is ready to blend with gasoline was about 80 cents a gallon. This winter, because of the clean air requirements in cities around us, it actually went up to over \$1.70 a gallon. It actually more than doubled. I understand right now it's about \$1.40 a gallon and so what you saw this winter was the price of ethanol at the pump costing more than the regular unleaded, and at one time it was probably three cents higher at the wholesale level. I checked with my supplier Friday and the price of ethanol-blended gasoline is now about a half a cent cheaper at the wholesale level. So if you pull into a gas station now and you find that the ethanol blends are higher priced, it's not costing them more. They're just gouging you. I think one...those of us in the ethanol industry have always objected to the...to a certain number of stations in this state that have done a little price gouging on this issue, not...most of them haven't but there are some, and then I've always objected to the service stations that don't offer it. I can pull into a service station on the south side of Interstate 80 in York, Nebraska, on my way home if I need to buy gasoline. They offer three...three grades of gasoline there and none of them are ethanol blended, and they have an ethanol plant in town. They don't have enough local and civic pride to even offer the...offer the fuel in their own hometown. I would hope...you'd thank the local people there in York, Nebraska, would rise up in arms and do something about that, but...

SENATOR CUDABACK: One minute.

SENATOR SCHROCK: ...I guess there's been no pressure put on those people. So we're going to try the top end down, and at least you're smiling this year. I'm not sure you were smiling last year, Senator Chambers. This bill did advance out of committee. I don't remember the vote but I think it was...it was unanimous, but I think we had one member absent at the time. So Senator Connealy has a good idea. I...I'm opposed to your

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date change. it certainly renders the bill useless to us for a period of about four and a half years, maybe I...maybe I should say three and a half years.

SENATOR CUDABACK: Are you through, Senator Schrock?

SENATOR SCHROCK: Okay. That's all right. That's just a minor detail. I'm through, yes.

SENATOR CUDABACK: Senator Chambers, your light is next.

SENATOR CHAMBERS: Mr. President, members of the Legislature, the people in York and other communities where ethanol is not sold don't see it as a problem. Why should they rise up in arms to help some investors, producers and purveyors of ethanol? They have other things to think about. If they wanted ethanol they would make it clear, but they're not going to run out there and go to their station masters and tell them Senator Schrock can't get gasoline of the kind he wants in York so you all tell this man to put some gasoline with ethanol in it in his station. And they're not going to do it. There is less acceptance of ethanol among rural and farm community people because they know it and understand it. They're not buying it. I hear some sad commercials on public radio, and every time they come on I switch stations, about why a person ought to burn ethanol. At least an effort is being put forth to run advertisements and try to entice the public to use ethanol, but the product is going to ultimately have to stand on its own merit. Ethanol, in all these years, has not been able to win over the motoring public in Nebraska, so you have people in this Legislature saying to the public, I know what's best for you; I know better than you do what you ought to be putting in your car and, since I'm in the Legislature, I'm going to create a situation where you've got to put in your car what I know is best for your car whether you like it or not because, by God, this is America and I speak for democracy, and under a democracy the Legislature can take away people's options and their choices. That's what democracy is about. That's what the constitution says--life, liberty and investors shall run everything. And that's the attitude of people that bring these kind of bills--dictators. Aren't they the same ones, brothers and sisters, who talk about unfunded

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mandates from Washington? Let the government stay out of people's business. Let these small towns put more arsenic in their water because they don't like the federal government telling them what to do. It's similar to people in Israel, who came from Nazi Germany, now doing worse things to the Palestinians than on some occasions had been done to them by the Nazis in Germany--helicopter gunships shooting people on the ground because the Palestinians have no helicopter gunships or airplanes. And the Israelis, of all people, should understand the terrible oppressiveness of a government that seeks to embark on a path of genocide and they become worse and they are worse. Now we have these people in Nebraska who follow the same line. They say the federal government should not tell them what to do. They will have people in their counties and cities say that the state should not dictate to them what to do. Then here come these same people in the Legislature, flexing their muscles, enjoying the posture of the dictator...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and saying they will try to compel people to use a fuel that the public does not want to use. One of the reasons there, supposedly, is freedom of speech in this country is because and in order that a notion can try to win its position in the marketplace of ideas, but we don't believe in that when it comes to the public being dictated to about what kind of fuel to put in their vehicles. Well, I speak for the public and I have a little different view of democracy than some of my colleagues.

SENATOR CUDABACK: Thank you, Senator Chambers. We are on the Chambers amendment to the committee amendments to LB 75. Senator Connealy, followed by Schrock and Chambers. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. I, too, rise in opposition to the amendment, and thank Senator Schrock for his comments, but this is not a mandate. This would not require you to put ethanol in your vehicles. This would not require that your gas station only offer ethanol-blended fuels. This would require that they at least offer it. If there's a market for

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the other fuel that doesn't have ethanol in it, they'll...they will be allowed to have that. There are very, very few stations in the state of Nebraska that only have one tank and I have put an amendment up that would exempt those out for a time. But I don't think there are hardly any in the state that would...that it would be a hardship on. Because of the fact that 38 percent of the stations don't offer it, then there's areas in the state that don't have the ability to get ethanol-blended fuels to the customer. If you want to use a Nebraska product that's less environmentally damaging, that will be cleaner on the air, then you don't have the option to do it in that area. Senator Chambers said that mostly in rural areas is where you can't get ethanol, and that's not the case. The stations that do not offer ethanol are spread all across the metropolitan areas to rural areas. But, because of the fact that in some areas you only have one station in the rural areas, if that station doesn't offer it then those areas cannot get ethanol. Most likely, if it's in an urban area and that station doesn't...doesn't offer ethanol, then across the street you'll be able to get it. So the availability is more of a problem in rural areas, but the lack of offering it is spread across the whole metropolitan area and rural areas of the state. So, once again, I would be in opposition to extending the date out farther. I don't think that this is going to be a hardship on service stations that they'll have to offer it or have to build tanks. It will...most stations have dual tanks now. It will provide so that we'll have a product in the state of Nebraska that's not here now. Currently, we do not get 85 octane into the state of Nebraska except for in the extreme western edge of the state. We don't have that base gas so that we can make a regular grade gas with ethanol. Thus, we're spending a couple cents more for gasoline than we should have to. It should lower the cost of gasoline for the consumers in the state and also drive production...drive consumption of a Nebraska-generated product. It won't drive up the demand too much in the state of Nebraska. As I stated in the opening, we're only using 7.5 percent of our current production now. But we need to build more plants. We need to continue this...this really uptick of our rural economy through corn milling and by putting an underlying demand all across the state of Nebraska, I think, that supports that industry. And, once again, I am in

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opposition to this amendment.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Schrock, on the Chambers amendment.

SENATOR SCHROCK: Mr. Chairman, members of the Legislature, Senator Chambers, I'll ask a question. If you want to respond, you can. You talk about mandates and what the motoring public will be forced or forced not to do, I would guess that if this bill passes we're talking about every station you stop at would still have the option of selling you the product you're used to putting in your vehicle now. Shouldn't be a problem. But you did talk about mandates, so let's bring that up. The federal government has mandated we take the lead out of gasoline, and that did cause some furor. I heard farmers say their old tractors wouldn't run if they didn't have lead in their gasoline. Would you be in favor of the government putting lead back in gasoline?

SENATOR CHAMBERS: No.

SENATOR CUDABACK: Senator Chambers.

SENATOR SCHROCK: And tell me, would you mind telling me why?

SENATOR CHAMBERS: Because it's unhealthful.

SENATOR SCHROCK: Well, I would tell you that this ethanol product is more healthful than the product you're apparently using in your vehicle. What is your response to that?

SENATOR CHAMBERS: My vehicle runs on faith. (Laughter)

SENATOR SCHROCK: Well, I'll give you credit, you get a lot of miles on a vehicle before you change to...before you...before you trade your vehicle off. So I think your argument is a little shallow. This bill that Senator Connealy has bought (sic) us would allow every station to sell two or three grades of gasoline; only one grade would have to be ethanol blend. Gasoline has come a long ways. The ethanol industry has come a long ways. It's probably the product we're blending it with

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makes it a lot more acceptable to the motoring public now. It's a good product and, from that standpoint, I think your amendment is...is not productive to the bill at this time, as I see it. That way I would...that's the reason I will be opposing your amendment.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Chambers, this will be your third time, Senator.

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

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

SENATOR CHAMBERS: Senator Schrock, I have to ask you this question because of some of the things you said earlier. In the green copy...oh, that's all we have, when we talk about what gas will be required, I believe in line 13 we can start: "Each retailer of motor fuel shall offer for sale, at the lowest octane rating sold by the retailer", the lowest octane rating. Now, you're saying that the lowest octane rating must be ethanol. Isn't that true?

SENATOR SCHROCK: That is correct, Senator Chambers.

SENATOR CHAMBERS: So, if a person does not want the octane rate...let me ask you another question. Right now is there another form of gasoline that has a lower octane rating than ethanol blend?

SENATOR SCHROCK: Senator Chambers, whenever you add ethanol to gasoline it increases the octane. I believe ethanol by itself is 113 octane and so it increases the octane content of gasoline whenever you put a 10 percent blend in it about 2 to 3 points higher than it was before you blend the ethanol with it.

SENATOR CHAMBERS: But here...here is my question. Is there currently a gasoline devoid of ethanol right now which has a lower octane rating than the gasoline would have with an ethanol blend?

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SENATOR SCHROCK: Senator Chambers, we've had certainly good testimony in committee about...from Williams Pipe Line that says the...the gasoline industry can bring a "suboctane" gasoline to the state of Nebraska. It's certainly what they use in Minnesota, your favorite state,...

SENATOR CHAMBERS: You're...you're still evading me.

SENATOR SCHROCK: ...but if they bring the lower octane gasoline in they can blend ethanol with it and get an 87 octane, the same as what you're buying, and then the station, under this bill, would be allowed to sell two 87 octane gasoline blends.

SENATOR CHAMBERS: Senator Schrock, right now is there available at the pump a gasoline without ethanol which has a lower octane rating than would be the case of gasoline with ethanol in it?

SENATOR SCHROCK: If I answer "yes" or "no", will you give me 30 seconds to explain, and I'll punch my light on so you can have more time?

SENATOR CHAMBERS: No, because you're going to evade. Thank you. I will proceed. Members of the Legislature, regular gasoline is a lower octane rated gasoline than ethanol. By saying that the lowest octane rating...the lowest octane rated gasoline must be ethanol, you've bumped regular out of the picture. That's what they are doing and that's why they're doing it. They talk about this "suboctane" gasoline and we went all through all of that last year. There were even statements that they didn't know whether that could be supplied to Nebraska or not; there were tie-ups in other parts of the country. Minnesota was producing certain types of gasoline that Nebraska is not producing, will not produce, and would have to count on somebody bringing in here. To simplify the whole situation, right now you can buy regular gasoline. There are stations that offer regular, ethanol, and premium. Ethanol has a higher octane rating than regular. What this bill would do...

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: ...is flop it and kick regular out of the pump by saying the lowest rating has to be ethanol. Well, ethanol blend is a higher octane rating than regular so you cannot sell regular. Regular would have a lower octane rating than ethanol. This bill mandates that the lowest rated gasoline be ethanol, so if you have to use at the lowest rated level ethanol, any gasoline with a lower octane rating cannot be stocked, cannot be sold. We're not talking about price now. We're talking about the octane rating or what the composition of the gasoline is. This bill would prohibit a gas station from stocking regular gasoline because the octane rating of regular is lower than ethanol...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...and this bill says that ethanol must be the lowest rating.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Baker, on the Chambers amendment, followed by Senator Connealy. Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback and members. I can answer some of the questions. We've been doing research on this for a long time, I guess. Senator Chambers is absolutely right. Our lowest grade octane rating right now is 87 octane, so if we're going to maintain that we've got to blend this ethanol with 85 octane and I think, as Senator Connealy said, the only place it's available in the state right now is in Sidney terminal, and it's uniformly been a nickel a gallon higher, that 85 octane. The 13th of March I had a president of one of the state organizations in my office asking me about LB 75. We called the supplier. Eighty-seven octane that day in North Platte, no lead, Texaco was \$1.34.27 cents a gallon; 85 octane, no lead, unbranded, subgrade in Sidney was \$1.39.17, 4.9 cents a gallon higher. Friday it was over 5 cents a gallon higher, same, North Platte and Sidney. Point being, if you're going to take 85 octane no lead, it's going to cost you a nickel a gallon more to begin with, and blend it with ethanol, who just Friday the price of ethanol finally matched the price of 87 octane no lead, so we're talking matching apples and apples there. But

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you're still going to have the nickel a gallon higher priced 85 octane, and when you get done you're going to, granted, have an 87 octane no lead at whatever the retail price is, and an 87 octane ethanol at a nickel higher. Tell me how many people are going to buy that when it's a nickel a gallon higher? That's the cost to the retailer. What he does with his price spread is up to him. We're not talking about dictating prices here. And so the realistic part of this is you can force people to carry it but they still aren't going to buy it. And unless you have the price cheap, cheaper than 87 octane, they are not going to buy this. We've demonstrated time and again, I think two years ago when I was first down here we ran an experiment there at our retail outlet. You could drop it a penny a gallon less than than 87 octane and you sold more of it than you did 87 octane no lead. It's strictly price driven. And if we're going to do that, this is not the answer to increasing ethanol production, because we would stifle it completely. You'd automatically price it a nickel a gallon higher right now. And you say, well, we can get 85 octane in here and they can, but those Williams Brothers and Kaneb are going to have to add some facilities, and they don't say what price it's going to be. I think, sure, we can get it in here for you and we know you have to have it; we'll sell it to you. But it may be a dime a gallon higher at that point in time than it is right now in Sidney. Only reason they have it in Sidney is because of the higher altitude, they can get by with the lower octane in the Rocky Mountain area. So there's no demand for it. Minnesota does have two refineries, I believe, operating in the state, so they don't have the same situations we do where we import all our refined fuel. I'd be glad to answer any other questions. I...I...the problem being out in my area is a lot of the small retailers do only have two tanks. They're selling no lead and diesel fuel and, folks, that's it. That's the reality out in my country. They have two products and whether they would switch over to an 87 octane ethanol blend I don't know. I've had a couple of them call me and say, we'd just close our doors. They went through the tank upgrading requirements here a few years ago and they just never recovered those costs. Rather than go through another tank upgrade and add tanks, I really do believe, I don't think they're just making that an idle threat, I think they'd close, so...and in one case it's the only retailer in the town of 550

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people. So, for that reason, I don't...I guess I would support the Chambers amendment. I don't think that's the answer to the problem, but we need to be cognizant of the fact that requiring this is not going to guarantee selling it, especially...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...especially when the base product, the 85 octane fuel, is going to cost us a minimum of a nickel a gallon more than the 87 octane. It's just...it's not going to be there. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Connealy, on the Chambers amendment to the committee amendments to LB 75.

SENATOR CONNEALY: Once again, I'm in opposition to the amendment. The cost of gasoline goes up with the octane. Eighty-five octane subgrade gasoline is not more expensive than 87 octane gasoline. It's not the five-cent difference. It could be at Sidney, but as you look at the Purvin & Gertz study that you all got in your office earlier in the session, and I'll pass out probably tomorrow, you'll see that there's a two-cent difference if you lower the gasoline from the 87 to the 85. It's available. We looked at that over the interim, between last year and this year. As you look at how you deliver gasoline to Nebraska, the majority of gasoline comes in on pipelines. Pipelines can carry any grade of gasoline, heating oil, diesel fuel, water, and then a buffer and then the next batch will come through. We can get 85 octane from our suppliers. The majority of our gasoline comes from other states anyway. We can buy a subgrade gasoline at 85 octane which will be cheaper than the 87 octane because octane has value, and then you add the ethanol to it and on a five-year average ethanol has been cheaper than gasoline, even though you may not have seen that at your local retailer. You add ethanol to a two-cent cheaper gasoline and you'll get a cheaper product for the consumer here in Nebraska. So, once again, I am in opposition to the amendment.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Chambers, there are no further lights on. Did you wish to close

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on your amendment to the committee amendments?

SENATOR CHAMBERS: Yes, I do. Members of the Legislature, you're going to hear a lot of repetition during this debate. There are few real issues that have to be discussed, but they have to be discussed over and over and over again. Senator Connealy and Senator Schrock talk about ethanol not being available in certain parts of the state. There are certain types of bread that you can buy in western Nebraska that I don't buy in Omaha. There are probably certain cuts of meat that I don't get in Omaha. So should the Legislature mandate that if a supermarket is going to sell meat it must sell certain cuts of a certain degree of freshness, meaning by that from the time that the animal is slaughtered to the time that it winds up in the meat case? If a store sells bread, it's got to sell all these breads. This kind of thing would not be done with reference to any other product, but we have some people who are looking at dollar signs and money does drive people to do things. That's what is driving this effort to get this Legislature to deprive the motoring public of a gasoline the motoring public has shown it prefers. If this is a capitalistic society, if the market is to determine how well a product does, then let that determination be made. Pepsi-Cola and Coca-Cola argue back and forth about which has the better product and they get various individuals with high profile names to endorse their product. I'm not aware of a single one, even down in Atlanta, Georgia, where they have their headquarters, getting the Legislature to say that you must sell Coca-Cola in any vending machine that sells pop; any soda fountain that sells any cola must sell Coca-Cola also. Nobody would accept that and, fortunately, those in the soft drink industry, even though they may wish something like that would happen, have sense enough not to do it. But since there is not sense enough to avoid doing it in Nebraska, I have to do it. I have to show that this is not good and do everything I can to stop it. I do believe in democracy, brothers and sisters, and I'm so keenly aware of what democracy can be because I am denied it. So democracy is always something out there floating in front of me that I can never quite get my hands on, and maybe that's why I have a greater respect for what democracy is supposed to be than those who enjoy it. Those who enjoy it take it for granted and have everything the way they

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want it, so they now want to be in a position where not only do they have what they want, they want to be able to dictate and order other people to do what they want those people to do; to come in and use the lawmaking power of the state to deprive people of a choice of fuel they want to burn in their car. So many people drive cars. Cars are such an essential part of this society that taking away choice in that area is a very consequential act that the Legislature is being asked to perform. In effect,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...this bill is designed to make regular gasoline unavailable to the motoring public. If that were not the intent, we wouldn't even have this bill. They would be saying, well, let people use ethanol, see that it's better and it will win; it will win the contest of which fuel to burn because it has something better to offer. If I drink Coke, it's because I like the taste better than I do Pepsi. If I burn regular it's because I like regular and the way it operates in my car better than I like ethanol. So they want to make me burn ethanol because it puts money in their pocket or the pocket of people in their small area, or in the pocket of some producers and some purveyors with whom they want to be on good terms. My amendment, and I assure you this is not the last you will hear of me, it is not the last you will hear from me on this bill...

SENATOR CUDABACK: Time. Thank you, Senator Chambers.

SENATOR CHAMBERS: I'll ask for a call of the house.

SENATOR CUDABACK: Been a request for the house to go under call. All in favor of the house going under call vote aye, opposed nay. Record, please, Mr. Clerk.

CLERK: 18 ayes, 0 nays to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. Senator Bourne, Senator Bromm, the house is under call. Senator Quandahl, please report

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to the Chamber. Senator Dierks and Senator Hartnett, the house is under call. Please report to the Chamber. Senator Hudkins and Senator Kremer. The house is under call. Will unexcused senators please report. Senator Wickersham, will you please check in? Thank you. Senator Coordsen, Senator Dierks, and Senator Hudkins. Senator Hudkins and Senator Dierks, the house is under call. Please check in. All members present or accounted for, the question before the body is, shall the Chambers amendment be adopted to the committee amendments to LB 75? All in favor vote aye, opposed nay. We are voting on the Chambers amendment to the committee amendments. Have you all voted who care to? Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 1 aye, 27 nays on the amendment, Mr. President.

SENATOR CUDABACK: The amendment is not adopted. I do raise the call. Mr. Clerk.

CLERK: Senator Chambers would move to amend the committee amendments. (FA154, Legislative Journal page 1319.)

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

SENATOR CHAMBERS: Mr. President and members of the Legislature, before I open on my amendment, I would like that last vote to be a message to those who say I have so much power in this Legislature. (Laughter) That certainly tells you something, doesn't it? Who is afraid of Chambers? Nobody. Twenty-seven against. Poor, poor pitiful me. But, if it doesn't kill me, it will only make me stronger. Members of the Legislature, this little amendment is beating me back from my former position which may have been a bit extreme for you, a little rich for your blood. This bill...this amendment would strike the date 2002 and substitute it with the date 2003. That gives even more time. But what I want you to consider, if we are a deliberative body, and based on the way we are described that's what we are, why enact a bill ordering people to do something but they don't have to do it if they don't want to? Why don't we just do away with all sham? And I'd like to ask Senator Connealy a question on that score. Senator Connealy,...

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SENATOR CUDABACK: Would you yield, Senator Connealy?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: ...this bill is more or less the expression of a hope that station owners will put in a pump with ethanol as the lowest octane fuel since it does not carry a penalty for not doing it. Isn't that true? Here's the question. This bill is just really an expression of a hope, isn't that true?

SENATOR CONNEALY: I'm always in hope that people follow the law, yes.

SENATOR CHAMBERS: Why would not we change the "shall" to "may", or say that the state encourages people to do this instead of saying they "shall" do it?

SENATOR CONNEALY: Because I want it to be the law that we have offered at every station ethanol at the lowest octane.

SENATOR CHAMBERS: And a law is a mandate, a directive which must be obeyed. Isn't that true?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: So another word for "mandate" or "directive" is "dictate", Senator Connealy.

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Isn't that right? So you want the state to dictate to every station owner what the lowest octane gasoline must be under the law of Nebraska.

SENATOR CONNEALY: Just as we dictate other...other components of gasoline. There are different grades that we...and different components of the mixture of the 280 different things that make up gasoline. This would be another one of those mandates for what the quality of gas is, but not a mandate for the consumer to buy.

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SENATOR CHAMBERS: Senator Connealy, what element in gasoline is mandated by the state of Nebraska?

SENATOR CONNEALY: We've got eight different stipulations and I've got those and I'll get those to you. I don't have them in front of me now.

SENATOR CHAMBERS: If Nebraska did not mandate these elements are you telling me they would not be in gasoline?

SENATOR CONNEALY: That it would not be specifically in those quantities; that we have a grade of...we have...accept a standard and we require that gasoline fit these standards and they are set on a national basis but we can set gasoline standards different in Nebraska than in other states.

SENATOR CHAMBERS: Aha! The elements are determined at the national level. Then you have a little wiggle room in terms of the percentage or quantity of these elements?

SENATOR CONNEALY: No, some places they allow MTBE; we do not now. There's other...there are other components of gasoline. Some states have cleaner gasoline than this will allow. California, in particular, has a higher grade gasoline in every gallon than in...in environmental quality than these stipulations would be and higher than most states.

SENATOR CHAMBERS: But, Senator Connealy, MTBE has been prohibited from being used in gasoline, so that's not an element mandated by the state to be in gasoline.

SENATOR CONNEALY: Correct. Correct.

SENATOR CHAMBERS: Which elements does Nebraska mandate be in gasoline, and if Nebraska did not mandate it these things would not be in gasoline? Are there elements such as that?

SENATOR CONNEALY: As I said, I have the fuel standards and I'll get them to you.

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SENATOR CHAMBERS: Thank you. Members of the Legislature, the answer to my question is, no. If we are going to tell the truth the only reason this bill is here is to help investors, producers and purveyors of ethanol. That's why this bill is here. If they're so concerned about the environment why do we have so many pesticides and fertilizers still being applied and used? Why does Senator Schrock have to find some kind of way to get money to clean up the water that is bothered by pesticides and fertilizer? You know why we're not going to do anything about fertilizer and pesticides? Because the same farmers are using the pesticides and fertilizers who want to get us to compel people to use ethanol. It's a one-way street going in the same direction to benefit the same sector. All this talk about the environment and clean burning, those things mean nothing. They are the little shams to make the shell game work, but they don't work on me because I see through it all. I know who I'm dealing with; I know what I'm dealing with and I want the record to be as clear as I can make it as to whom we are dealing with and what we are dealing with. I'm going to say again how this bill works. Let's say, without using 87, 85, 89 or any number like that, let me make it as simple as I can so that we see the principle. Regular gasoline will be given the number two to designate regular. Ethanol blend is given the number three. Premium is anything above three, from three to a million. The only concern here is with two and three. What this bill says is that you cannot sell at a pump any gasoline which has the number two. You must begin your counting at the number three so anything less than three is off the table, out of the pump, cannot be sold in Nebraska. Now, to get away from the numbers, ethanol being three is the lowest grade that can be sold. So any grade below that can no longer be sold. The only grade below that is regular. This bill is designed to get regular gasoline out of the pumps. That has got to happen because, whenever you mix ethanol to this lower grade of gasoline that I call regular, it's going to raise the octane. Once you raise the octane by putting ethanol in it, regular can no longer be sold because regular is a lower grade than the mixture or the blend that has ethanol. This bill is designed to prohibit the availability of regular gasoline. If the availability is erased, if regular gasoline cannot be sold, then the public is being dictated to in terms of what they must burn

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in their car. You cannot sell regular. You cannot sell it. The lowest grade to be sold must be ethanol. Do you think these stations are going to put regular gasoline in their tanks when they cannot sell it? You go into a filling station if this bill is in place and say, I want some regular gasoline. You cannot...

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...buy it. You've got to get ethanol or premium. That's what this bill does. And I don't care how they do the Fred Astaire and tap-dance around it and try to change the meaning of words and misrepresent what this bill does. The bill clearly, in its language, tells us what it does, and I want to delay that on the chance the bill may be enacted. But I expect by the time we get through people are going to realize this is not a bill to invest that much time in. Nevertheless, I must bludgeon awhile longer. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. On the Chambers amendment to the committee amendments, Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. I rise in opposition to this amendment also and I want to make sure we understand this is not a bill to get rid of 87 octane, "nonethanol" gas. As I stated before, you can run different products through pipelines. We had testimony to that extent in the Natural Resources Committee. You can run up 87 octane up and that can be your base for your premium gasoline also, and I think that that will happen; that we're apt to have two grades of 87 octane. We'll have an 85 base gas come in and an 87 base gas coming in. In some markets you'll have a premium with ethanol and a 87 octane without ethanol and a 87 octane with ethanol. This really I do not think will limit choices. It could limit the mid-grade gasoline in some areas if there's not a demand for it, but if there's a demand for it then retailers will supply that. Right not, because of price differential, we're not selling as much ethanol-blended gasoline in Nebraska

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as I think that the market would stand. The market is not working. It's not delivering an 85 octane gasoline into Nebraska. We hope to do that with this bill. It's not our purpose to get rid of an 87 octane base gasoline. We've talked about that with LB 1234 last year. We...personally, I would just as soon go that way and mandate, as they have in Minnesota, but I understand the political reality and I understand the driving public wanting to at least have the option of having an 87 octane without ethanol. I...this bill will allow that. I believe that in almost every station in the state we'll have an 87 octane with ethanol and an 87 octane without. We won't be overbuying octane, as we're doing now. I buy mid-grade gasoline, I have for the last 20 years, and I've bought more octane every time I file up than I need. Every vehicle that I've had did not need an 90 octane or an 89 octane fuel, but I went ahead and bought it because I like using a Nebraska product, I like the performance of it. But I didn't necessarily need that octane. I would still get the high quality, the cleaner burning and clean fuel systems that the ethanol blend would give me at an 87 blend level. That, I think, is what's going to happen across the whole state. We're going to increase the use of the Nebraska product by offering it, not mandating it.

PRESIDENT MAURSTAD: Thank you, Senator Connealy. On the Chambers amendment, Senator Dierks.

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, something that I haven't heard a lot of yet, and Senator Chambers seems to continue to allude to the fact that the ethanol industry is somewhat of a bunch of crooks. I wonder what he thinks the petroleum industry is. You know, we've...we've talked last year a little bit about the MTBE problem. That's one of the reasons we developed ethanol, was to provide for a clean-burning fuel and do away with the carcinogens that are available with those non-clean-burning fuels that have...or the clean-burning fuels the petroleum industry is giving us that have MTBE in them. This...this is, to me, it's a health-related issue. We're going to...we're going to continue with the MTBE product, Senator Chambers, and let it continue to contaminate our soil and our water supply and

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cause...it's a carcinogen that causes cancer. This is our answer to that. Ethanol does a great job of cleaning up this fuel and I'm, you know, I guess I'm surprised that you're taking the side of the petroleum industry. They've been usually on your...on your list of the other way. Ethanol production does many things. It does many things for corn...for those people that sell corn. It does many things for the health of our...the air we breathe. It helps us to...to provide a profit for some of our farmers, not much but a little, and I think it's important that we continue to do that. I won't support your amendment either, Senator Chambers, but I will support Senator Connealy's bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Dierks. Mr. Clerk, do you have any items for the record?

CLERK: I do, Mr. President: an amendment to LB 75...to be printed to LB 75 by Senator Connealy; Senator Aguilar would like to add his name to LB 740, Senator Quandahl to LB 277.

Mr. President, I have a priority motion. Senator Dwite Pedersen would move to adjourn until nine o'clock tomorrow morning.

PRESIDENT MAURSTAD: The motion is, shall the Legislature adjourn? Those in favor say aye. Those opposed nay. The ayes have it. Legislature is adjourned.

Proofed by: LaVera Benischek