

APRIL 3, 2001

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April 3, 2001 LB 489

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber, fifty-eighth day. Our chaplain this morning is the Reverend Stan Hughes, the Chandler Acres Baptist Church in Bellevue. That is Senator Preister's district. Reverend.

REVEREND HUGHES: (Prayer offered.)

SENATOR CUDABACK: Thank you very much, Reverend Hughes, for being with us. We appreciate it. I call to order the fifty-eighth day, Ninety-Seventh Legislature, First Session. Senators, please check in.

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

SENATOR CUDABACK: Any corrections for the Journal?

CLERK: (Read correction, Legislative Journal page 1321.) That's my correction this morning, Mr. President.

SENATOR CUDABACK: Any messages, reports or announcements?

CLERK: I have no messages, reports or announcements this morning, Mr. President.

SENATOR CUDABACK: Mr. Clerk, first agenda item.

CLERK: Mr. President, LB 489 is the first bill on General File this morning. The bill was originally introduced by Senator Brashear. (Read title.) The bill was introduced on January 10 of this year, referred to the Judiciary Committee. The bill was advanced to General File. I do have committee amendments. (AM0547, Legislative Journal page 715.)

SENATOR CUDABACK: Senator Brashear, you are recognized to open on LB 489.

SENATOR BRASHEAR: Mr. President, thank you. Members of the body, LB 489 changes Nebraska law regarding the statute of

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

April 3, 2001

LB 489

repose for product liability actions. I know that will cause at least some people to sit up and take notice because this is an issue we deal with on an annual basis. Like to take a moment to give you some background on the statute of repose, if I might. The statute of repose limits potential liability by limiting the time during which a cause of action may arise. A statute of repose differs from a statute of limitations in that the statute of repose terminates a right of action after a specific period of time measured from the delivery of the product, regardless of the period of time within which a cause of action accrues. Under current Nebraska law, the statute of repose is ten years from and after the date when the product was first sold or leased in Nebraska for use or consumption. An example: Product is first marketed in Nebraska in 1985. The statute of repose would commence to run. The statute of repose would terminate in 1995, and if the product causes an injury, the plaintiffs, after the ten-year anniversary, would be barred from recovery. LB 489 would maintain that ten-year limitation for products that are manufactured in Nebraska, but would apply the statute of repose for products manufactured outside of Nebraska from the jurisdiction where the products were manufactured. Such a change allows for another state's statute of repose to be imported into Nebraska courts for the benefit of Nebraska litigants without any disadvantage whatsoever to Nebraska manufacturers. Over twenty states do not have a statute of repose for manufactured products. New York is an example of such a state. Under LB 489, if a Nebraska plaintiff were to bring an action against a New York manufacturer in a Nebraska court, then the statute of repose limitation would not bar that plaintiff from filing that action, irrespective of the period of time, provided that the individual litigant complied with the statute of limitations. This bill is logical. I think it's reasonable. I think it's good Nebraska wisdom. If other states do not care to extend to their manufacturers for the protection of those manufacturers a statute of repose and we do, then why should our Nebraska consumers not benefit from the application of this concept? Nebraska's manufacturers will not be harmed in the least. There is no detriment to them. But our consumers, injured plaintiffs, will have the benefit of a broader reach in the law. I urge the advancement of LB 489. Thank you.

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

April 3, 2001 LB 489

SENATOR CUDABACK: Thank you, Senator Brashear. As Chairman of the Judiciary Committee, Senator Brashear, you are recognized to open on committee amendments to LB 489.

SENATOR BRASHEAR: Mr. President, thank you. Members of the body, the committee amendment makes three changes to the bill, all of which continue to further the bill's intent. First, the amendment provides that the statute of repose for products manufactured outside of Nebraska shall be, at a minimum, ten years. A handful of states have statute of repose that are less than ten years and the amendment would ensure that any statute of repose that is imported to Nebraska is at least that which Nebraska itself provides. Second, the amendment clarifies that for products manufactured in states or countries that have no statute of repose, the only time limitation for a party commencing an action shall be the statute of limitations, as I mentioned in my opening. Third, the amendments contain a severability clause. The severability clause specifies that if any part of the subsection pertaining to the statute of repose is found to be unconstitutional or otherwise invalid, the law regarding the statute of repose as it presently exists in Nebraska shall be continued. In other words, we would revert to the now existing law, and that reversion would apply in cases in which a final order has not been entered. With that, Mr. President, I would urge the adoption of the committee amendments. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the opening on the committee amendments to LB 489. We are now open for discussion on those amendments. Seeing no lights on, Senator Brashear, did you wish to close on those amendments? There are no...

SENATOR BRASHEAR: Thank you, Mr. President. I'll waive closing.

SENATOR CUDABACK: Senator Brashear waives closing. The question before the body is, shall the committee amendments be adopted to LB 489? All in favor vote aye, opposed nay. We're voting on the committee amendments to LB 489. Have you all voted who care to? Record, please, Mr. Clerk.

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

April 3, 2001 LB 489, 845

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

SENATOR CUDABACK: The committee amendments are adopted. Mr. Clerk, next item to the bill.

CLERK: Mr. President, Senator Brashear would offer AM1213. (Legislative Journal page 1273.)

SENATOR CUDABACK: Senator Brashear, you're recognized to open on AM1213.

SENATOR BRASHEAR: Mr. President, thank you. Members of the body, this morning at this particular opportunity I offer this amendment. It relates to a number of issues in civil and court procedure and is a combination and compilation of four bills which all have been heard by and advanced by your Judiciary Committee. I'd like to stress that these four bills contained within this amendment are technical in nature, can be relatively efficiently presented to you, and relate to procedure. The first part of the amendment, Sections 2 and 3, was LB 845 and it addresses two civil procedure subjects. First, the amendment changes the procedure for a summary judgment proceeding and, second, the amendment creates a new statute that provides rules for subpoenas regarding discovery of records in possession of a nonparty. Current Nebraska procedure requires that any material used at a hearing for summary judgment be offered and received in evidence by the court if the judge is to consider it. However, the current statute, 25-1332, states that the material considered by a judge needs to be "on file". That statute has been somewhat misleading...has been somewhat misleading reading as many attorneys construe the terms "offer in evidence" and "on file" to be two different things. So, out of an abundance of caution, practitioners have typically chosen to offer in evidence all of the matters. The amendment removes the word "file" and states that the material must be submitted in evidence, clarifying the ambiguity in order that no one inadvertently be tripped up. The amendment also includes additional types of evidence that a court can consider in a summary judgment proceeding. Presently the court, by

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

April 3, 2001 LB 354, 489

specification, can consider depositions, admissions, and affidavits. The amendment would add answers to interrogatories, and stipulations to the types of evidence that a court can consider, all appropriately so. Further, the first portion of the amendment deals with current Nebraska law which allows the discovery of documents or records in the possession of a person or business who is not a party to a case to be obtained only by deposition. In instances of getting a nonparty to litigation to produce documents, it's necessary that a deposition be noticed and arranged and, in fact, the services of a court reporter paid for, and the subpoena duces tecum issued. That exercise is unduly complicated and expensive and inefficient when, in fact, in most practical experience people simply want to respond by providing the documentation. The amendment would create a statute that would authorize an attorney to issue a subpoena without a deposition to gain access to records and documents from nonparties. Such an approach is in use under the present rules, the present federal rules of civil procedure, and in twenty other jurisdictions, hardly something new and strange. The amendment clarifies that other statutes governing specific kinds of records, such as bank records, will not be affected by this amendment. The Supreme Court, using its general rule-making authority, will draft the specific details of the rules governing the process for the parties to issue subpoenas and other corollary rules as is standard process. While the court is able to amend its discovery rules without legislative action, the Legislature has the authority to promulgate rules regarding subpoenas. As such, this amendment provides the court with the enabling legislation to complete the discovery rule changes regarding subpoenas of nonparties for records. The second part of the amendment, Sections 4, 5, 6, and 7, was introduced to the body as LB 354 and changes the process for posting of cost bonds in civil actions. Current Nebraska law requires a plaintiff, who is a nonresident of a county in which such plaintiff files a civil action, to furnish a surety or bond for costs that are likely to accrue in that action. If a plaintiff fails to furnish such surety or bond, the defendant may move to dismiss the plaintiff's case. Nebraska and Ohio are, we believe, the only two states that require a cost bond for a nonresident of a county where an action is brought. Ohio adopted that cost bond requirement in 1831. Nebraska

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

April 3, 2001 LB 81, 489, 673

adopted...copied Ohio's cost bond requirement and adopted it in 1867. The world has changed. In our present society, residence in a county outside the county where a court action is pending is not as significant as it was in 1867. However, residence in the state of Nebraska is considered to be a significant factor because enforcing a judgment for cost may be easier if it can be done within the Nebraska court system and jurisdiction and would likely be more difficult if enforcement of a judgment would require the cooperation of courts of another state and, in fact, there'd have to be a registration under the Foreign Judgments Act. The amendment would change the law to allow a party to request that a court require a cost bond only when the claim is asserted by someone who is not a resident of the state of Nebraska. The bill broadens the cost bond requirement for any nonresident party who asserts a claim. Now for the third part of the amendment, which is located at Section 8 and was originally LB 21. We're changing the statutory provisions regarding the Nebraska District Court Judges Association. Under current law, the association is to convene from time to time and to hold institutes and seminars for all judges who sentence criminals or juveniles to discuss problems relating to those sentencings. The association is also required to conduct from time to time orientation programs for new judges to discuss sentencing alternatives. The amendment would require that the association shall participate in planning and presenting such institutes and seminars and to participate in planning and presenting such orientation programs for new judges. The amendment would also require that the association present seminars to all county employees who work in the judicial branch of our government. The members of the District Court Judges Association have agreed to require compulsory training and seminars for its members, a significant movement, we think. This amendment will support their efforts as such. Finally, the final part of the amendment is Section 9, which was LB 673. In 1999, under the able leadership of Senator Don Pederson, the Legislature provided a means by which estates with less than \$25,000 in real property could be distributed to successors by affidavit. Senator Pederson, because of Senator Pederson, such a change was made to promote an efficient system for liquidating assets without requiring a probate proceeding. The 1990 (sic) legislation is presently codified at Section 30-24,129. The

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

April 3, 2001 LB 489

amendment clarifies that a transfer of property by affidavit is pursuant to the 1999 legislation and is effective absent a declaration by the probate court having subject matter jurisdiction. The amendment also clarifies that an affidavit executed prior to the effective date of the 1999 legislation is valid to prove such a transfer. With that, Mr. President, I would conclude the explanation of the amendment and would urge its adoption. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the opening on AM1213 offered by Senator Brashear to LB 489. Now we open for discussion on that amendment. There are no lights on, Senator Brashear. Did you wish to close on your amendment?

SENATOR BRASHEAR: Mr. President, I wonder if I should go through it again. (Laughter) I will waive closing.

SENATOR CUDABACK: Thank you. The question before the body is adoption of AM1213 to LB 489. All in favor vote aye, opposed nay. We're voting on AM1213 to LB 489. Have you all voted who wish to? Record, please, Mr. Clerk.

CLERK: 28 ayes, 0 nays on adoption of Senator Brashear's amendment.

SENATOR CUDABACK: The amendment is adopted. We are now open for discussion on advancement of LB 489. Senator Wehrbein, on that advancement.

SENATOR WEHRBEIM: Mr. President, members of the body, I'd like to ask Senator Brashear some clarifying questions, if I may.

SENATOR CUDABACK: Would you yield, Senator Brashear?

SENATOR BRASHEAR: Yes, Mr. President.

SENATOR WEHRBEIN: Senator Brashear, would you explain in a little...give an example of the statute of repose? If I understand right, this is mostly concerning those manufacturers outside the state of Nebraska that sell here. Is that accurate?

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

April 3, 2001 LB 489

SENATOR BRASHEAR: Yes, Senator Wehrbein, with limitations.

SENATOR WEHRBEIN: But say someone sells, I don't know what to use, let's use some...

SENATOR BRASHEAR: Well, let's use a grain auger.

SENATOR WEHRBEIN: Okay. If that's manufactured in Wisconsin and this would apply...and they have ten years, if there is a defective auger, there'd be ten years?

SENATOR BRASHEAR: No, first of all, ten years won't apply. That's the beauty of, I think, I say that respectfully.

SENATOR WEHRBEIN: It goes...

SENATOR BRASHEAR: If it is manufactured in Wisconsin and a Nebraska farmer is injured in the eleventh year, if that auger had been manufactured in Nebraska, that farmer who lost a portion of his hand would not be able to recover because the ten-year statute of repose would bar the recovery. In this instance, I don't know...happen to know what Wisconsin's statute of repose, if any, is, but in this instance it's the Wisconsin statute of repose that will govern. So if Wisconsin is one of the twenty states that doesn't have a statute of repose and this happens in the eleventh year, the farmer would have four years under the Nebraska statute of limitations to commence the action. So from year 11 to 15, approximately, would be the period to begin the action.

SENATOR WEHRBEIN: Under present law, what is his recourse? I'm trying to get the change.

SENATOR BRASHEAR: In present...under present law, the individual would have to...well, we'd have a four year statute of limitations and you'd have to deal, under a conflicts of law question,...

SENATOR WEHRBEIN: Okay.

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

April 3, 2001 LB 489

SENATOR BRASHEAR: ...with the...with the Wisconsin statute of repose, if I'm understanding what you're saying.

SENATOR WEHRBEIN: I'm just trying to understand the mechanics of what we're doing, that's all I'm trying to understand, and using specifics helps me in this case.

SENATOR BRASHEAR: What we are doing is, the simplest way I can explain it is we are continuing to protect our manufacturers as we always or historically have for...

SENATOR WEHRBEIN: In Nebraska?

SENATOR BRASHEAR: ...a long time with a ten-year limitation, but in those states where there is not such a limitation, we are affording to our consumers, our citizens, the opportunity to pursue their claims.

SENATOR WEHRBEIN: Now, would that be in a Nebraska court?

SENATOR BRASHEAR: Yes.

SENATOR WEHRBEIN: Strictly in a Nebraska court?

SENATOR BRASHEAR: Yes.

SENATOR WEHRBEIN: Okay, that's all for now. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. On with discussion, Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I'm going to speak, but just a second. Members of the Legislature, I don't like statutes of repose whether they are by this state or any other state, and I know Senator Brashear explained that very clearly, as he always does. But I have to say a word or two on it to get to the point that I want to make. You cannot bring a cause of action until you're aware that you have one. So in Nebraska, when you buy a product the statute of repose kicks in. All that means is that any action that you're going to bring, based on that product, you would have to bring

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

April 3, 2001

LB 489

within ten years of the time that you bought it. Well, you don't suffer an injury until ten years and two days later. It's a piece of equipment that the advertiser might say is good for a lifetime, meaning not the lifetime of an ant or a cricket but of a goodly number of years. In other states where it is sold they may even emphasize that point to a greater extent, but when you get this piece of equipment that supposedly has a long life span, then you are injured one day beyond ten years, and the equipment is faulty but the problem didn't show up, you have no cause of action even though the injury has occurred. The injury did not occur within that ten-year period so you're out. A statute of limitations, on the other hand, says that the statute that would keep you from bringing a cause of action begins to run from the time of the injury or when you should have known of the injury. Then it runs for four years, and at the end of four years you're cut off absolutely. But at least you have four years when knowledge of your injury is in your possession. The statute of repose will generally run out before your cause of action even arises and you're out of the picture. What Senator Brashear's bill does is tell Nebraska manufacturers you can continue staying under this umbrella; you can make shoddy products; you can advertise them as being good for a certain period of time when you know that they are not, and if you make them last just ten years, you're safe. However, don't send them to another state because they have more respect for their citizens and they are not going to let this statute of limitations run until they have been injured and are aware of the injury or ought to be aware of it. So you keep those shoddy Nebraska products, the ones that are shoddy, you sell those in Nebraska because you're protected here. The Nebraska Legislature does not care about its citizens, so it's giving you carte blanche to damage, harm, injure Nebraska citizens. What Senator Brashear is saying is that if a manufacturer in another state sends a product here, then it becomes a different matter. They are treated in the way that I think Nebraska manufacturers ought to be treated. So I'm going to support the bill because it's a step in the right direction. And regardless of whose product hurts the consumer, I think the consumer ought to have a cause of action. Nebraska...

SENATOR CUDABACK: One minute.

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

April 3, 2001

LB 489

SENATOR CHAMBERS: ...manufacturers have been protected and shielded and are still going to be free to make shoddy products that damage Nebraska citizens just so long as they hold this product lasts for one day past ten years. It's not my bill. I don't have to answer everybody's questions but I just wanted to add that little bit in case it might make clear for some people what this bill does. It's dastardly toward Nebraska citizens because it does not change the statute of repose. It helps Nebraska citizens when it comes to equipment, machinery or products that come into Nebraska from another state. Senator Brashear knew that he could not get a change in the statute of repose for Nebraska citizens, so he is getting what he can. And some things must be done a step at the time and I'm going...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...to help him take this step.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Engel, on advancement of LB 489.

SENATOR ENGEL: Mr. Chairman, members of the body, I'd like to ask Senator Brashear a question, if I could.

SENATOR CUDABACK: Would you yield, Senator Brashear?

SENATOR BRASHEAR: Yes, Mr. President.

SENATOR ENGEL: Is...I think I fairly well understand the statute of repose, and I certainly approve of what we're doing here, except I'm a little confused. You said if Wisconsin did not have a statute of repose, so...and...and...

SENATOR CUDABACK: Would you speak into your mike, Senator Engel? We can't hear you. I'm sorry.

SENATOR ENGEL: You said that...I could probably turn around without the mike and talk to you.

SENATOR BRASHEAR: This will...this will be like it always is,

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

April 3, 2001

LB 489

me talking at the back of your head, Senator Engel.

SENATOR ENGEL: How...how...how am I doing this morning? Hair in place, is it? Anyhow, the question is, is in Wisconsin does not have a statute of repose and someone in Nebraska buys their product and in the eleventh year after they've purchased that product they are injured, then they would still have, you said, an additional four years to make claim under the...under the statute...under this law, bill, rather? Is that the way I understood it?

SENATOR BRASHEAR: Yes, but I mixed two...I think I failed to be clear and concise and I apologize. In the example that Senator Wehrbein and I were discussing, if we assume for the purpose of discussion Wisconsin has no statute of repose, I do not know that to be the case, but let's assume it, under present law if the grain auger came from Nebr...from Wisconsin to Nebraska, was sold to a Nebraska farmer and a Nebraska farmer were injured in the eleventh year following the sale, the Nebraska farmer could not recover against the Wisconsin manufacturer because our present statute provides a ten-year statute of repose for all manufacturers worldwide selling their products in Nebraska. This bill changes that so that only Nebraska manufacturers get the benefit of the ten-year statute of repose and the Wisconsin manufacturer then, who sold to a Nebraska farmer, the hand was injured in the eleventh year, the Wisconsin manufacturer having, for the purpose of discussion, we're assuming no statute of repose, now the farmer has from the eleventh to the fifteenth year because there is a four-year statute of limitations on that injury claim.

SENATOR ENGEL: So in effect we're giving them, actually, a fifteen-year statute of repose in Nebraska.

SENATOR BRASHEAR: No, the statute of limitations has always been there, but where they have no statute of repose we are allowing our citizen litigants to take full advantage of the statute of limitations.

SENATOR ENGEL: Well, now that I understand, I think that's very commendable. Thank you.

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

April 3, 2001 LB 489

SENATOR BRASHEAR: Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. On with discussion, Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President, members. Senator Brashear, that conversation then leads to the next question, and that is, how does it impact the state then that does have a statute of repose that is somewhat lengthier than ours?

SENATOR CUDABACK: Senator Brashear.

SENATOR BRASHEAR: Yes, Mr. President. And by the luck of the draw, we've provided for that also. If they have a shorter statute of repose than we do, then we move it to ten years. It's now ten years as it relates to their products sold in Nebraska for the purposes of our citizen litigants.

SENATOR SCHIMEK: Okay, but what if theirs is, for instance, well, I guess...I guess I know the answer to this, if they have a twenty-year statute of repose, then we...this, the consumer in Nebraska still has twenty years in their courts, right?

SENATOR BRASHEAR: That's right. If they can...if they can go there, get jurisdiction and do all the other legal things involved.

SENATOR SCHIMEK: Is that likely?

SENATOR BRASHEAR: No, why would we...I mean, no, not with this bill because now our litigants are going to want to stay here in their own court system and pursue their remedy.

SENATOR SCHIMEK: But only up to, like, the statute of limitations, right?

SENATOR BRASHEAR: Yes.

SENATOR SCHIMEK: I'm...I'm not sure. If it says...if it's

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 489

twenty years in Wisconsin, let's say, then does the person in Nebraska who wants to sue have twenty years to pursue that...

SENATOR BRASHEAR: Twenty...

SENATOR SCHIMEK: ...in our courts?

SENATOR BRASHEAR: Twenty years from the point of lease or sale in Nebraska in Nebraska courts, yes,...

SENATOR SCHIMEK: Thank you.

SENATOR BRASHEAR: ...but still four years, to show you how it wor...it's still four years from the injury. That's a different statute. That's the statute of limitations.

SENATOR SCHIMEK: Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Further discussion on advancement of LB 489? There are no lights on, Senator Brashear. Did you wish to close on your...on the advancement of LB 489?

SENATOR BRASHEAR: Thank you, Mr. President, members of the body. I...I hope that we've clarified all questions and certainly will continue to be willing to do so off the floor or on Select File. It's very important that everyone understand it. I...I note that there are no questions on the amendment and that's good. This, I think the simplest way to state this is this benefits, this in no way detriments, Nebraska manufacturers. It in no way detriments...detriments our citizens who are involved in litigation or who have claims. It changes nothing. It only enhances the possibility that if a foreign manufacturer in a jurisdiction that has not imposed a ten-year limitation, it allows our citizens to pursue their claims. I would urge the advancement of the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. The question before the body is the advancement of LB 489 to E & R Initial. All in favor vote aye, opposed nay. We're voting on the advancement of LB 489 to E & R Initial. Have you all voted who

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

April 3, 2001 LB 489, 797

wish to? Record, please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of
LB 489.

SENATOR CUDABACK: LB 489 does advance. Next agenda item.

CLERK: Mr. President, LB 797 was a bill introduced by the
Education Committee and signed by its members. (Read title.)
Bill was introduced on January 17 of this year, referred to the
Education Committee for public hearing, advanced to General
File. I do have committee amendments, Mr. President. (AM1043,
Legislative Journal page 1248.)

SENATOR CUDABACK: Senator Raikes, as Chairman of Education
Committee, you're recognized to open on LB 797.

SENATOR RAIKES: Thank you, Senator Cudaback and members.
LB 797 is the Education Committee's technical bill for 2001. Is
also a committee priority bill. It's 94 pages of some of the
finest reading you'll come across. If you haven't finished it
yet, why, I hope you will, but of course not right now. The
theme that holds this together is noncontroversial changes in
the educational statutes of the state. Some of them are at
least hopefully somewhat substantive, and I'll try to highlight
those for you, although I'm going to leave some of it for
your...for your perusal and, of course, will try to respond to
any questions that you have. I would call your attention to the
Committee Statement, which is a brief 11-page document, and also
the fiscal note. I think both of those you will find of
interest in following this discussion. So let me begin by...by
highlighting what I think are a few of the items that, although
you may not find exciting, maybe you should at least be aware of
that this...what's going on here. To begin with Section 2 of
the bill, there is a requirement for a public hearing to revise
a publicly or previously adopted budget statement, and a
requirement is added to include a copy of the...for the hearing
in the proposed revised budget. For school systems with
multiple districts, there's a requirement added to file a copy
of the hearing notice and proof of publication with the State
Auditor. I'll mention this one again because this one comes up

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

April 3, 2001 LB 302, 797

in the committee amendment. Section 5 would allow those who are members or candidates for a board of (sic--or) commissions...commission whose duties did not involve the exercise of executive power to be eligible for membership on the State Board of Education. Section 6 basically involves Senator Tyson's LB 302 and, again, that will be a part of the committee amendment. Section 8 deals with freeholding and clarifies, basically, that the average requirement for membership for freeholding is, in grades 9 to 12, less than 60 students for the 2 consecutive years immediately preceding the filing of the petition. That is primarily a clarifying provision. Section 13 is another one of those. The modification allows the warrants of a Class V school district to be drawn on the treasurer of the school district. Currently, the warrant can be drawn on the city treasurer, for example. Section 16, and I would call your attention to this one because this one is the first one mentioned in the fiscal note, this one excludes expenditures for retirement incentive plans from the calculation of the General Fund budget of expenditures. Now, this has an impact, a minor fiscal impact, which is discussed in the fiscal note, so you should be aware of that. Section 23 is: Beginning with the calculation of aid for the 2002-2003, receipts from the Temporary School Fund shall only include receipts pursuant to 79-1035. This change will exclude in lieu of tax...taxes the system received two years earlier; again, a change in the way that receipts amount is calculated. Section 27, the modifications authorize the Department of Education, rather than the State Board of Education, to approve, deny or modify projected increases in formula students. Section 28, the representative of the Department of Education would be appointed by the Commissioner of Education rather than the State Board of Education, and this is for the School Finance Review Committee. Section 29, and a couple of sections after that, make changes in the statutes to accommodate LB 271 which was passed a couple years ago which allows for the taxation of public property that is not used for public purposes. So Sections 29 and 30 both deal with that. Section 37 is another one I would call your attention to because it has to do with...is mentioned rather on the fiscal note. I forgot to mention that Section 20 is also included on the fiscal note, and this has to do with the calculation of cost for net option funding. That's calculated

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 302, 797

in a little different manner. You may be interested in that because it may change the distribution of state aid among school systems, particularly the allocated income tax monies. On to Section 37. This would allow Class I districts to be able to increase their budgets beyond October 15th. Previously, that was not allowed. It would not allow them to increase their tax request, but it would allow them to increase their budgets to deal with potentially unforeseen situations, for example, the arrival of additional students to the Class I district or the arrival to, a special ed student, for example, to the..to the Class I district. Moving on, Section 40 deals with the definition of "special education". Section 42 changes so that Department of Education, instead of the State Board of Education, will determine the pro rata distribution of special education funding. Section 43, Department of Education, instead of the State Board, will review and approve modifications for special education budgets, plans and budgets, for special education programs. Section 44, a current restriction disallowing reimbursement for expenses incurred more than 60 days prior to the filing of a petition is eliminated, and this has to do, again, with special education funding. Okay. Finally, there are some outright repealers toward the end. One of them is the repeal of the Reserve Teacher Program. There are no longer any eligible retired teachers for that program. Section 79-1022.01 provided for the recertification of state aid for the 1999-2000 school fiscal year, and Section 79-106 provided for Nonresident High School Tuition Fund. So those, again, is not, mercifully, a complete description of everything that's done in the bill, but hopefully some...some highlights. And if you have any questions I would be happy to try to address those. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. As Chairman of the committee, Senator Raikes, you're recognized to open on the committee amendments to LB 797.

SENATOR RAIKES: Thank you, Senator Cudaback and members. The committee amendment does about really four or five different things which I'll try to mention. One of them is that LB 302, which was introduced as a separate bill by Senator Tyson and has already been passed, is removed from this bill, LB 797. Second

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 654, 797

thing, the proposed requirement that I mentioned earlier for filing a copy of a hearing notice and proof of publication with the Auditor for Public Accounts on hearings for setting tax requests is eliminated, and that was at the request, by the way, of the Auditor of Public Accounts. Third item, a very, I think, technical item, the measurement of students for determining eligibility for freeholding is clarified to be based on school fiscal years rather than school years, and this is simply a clarification and this was contained in LB 654, a bill offered by Senator Kremer. There's clarification added that a reference to a federal provision refers to the federal provision as it existed on the effective date of the act, and this is a point that Senator Chambers has mentioned on...on several other bills. Finally, the term "board of education" is replaced with "school board" and this is an effort at harmonization. So, with that, I will...I will stop and try to address any questions you may have. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on the committee amendments. Open for discussion, Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President, members. Senator Raikes, I...I have a question and, while you were reading through the description of the bill, you got to Section 7 and it was about elections and so it, of course, caught my interest. And actually we already have provisions in state statute that say that if you are...if you are a member of a state board or a commission, if you're involved in the teaching profession, if you're a candidate for any state office or board, et cetera, you cannot serve on the State Board of Education. What all you've done in Section 5 is added the phrase "whose duties involve the exercise of executive power", and it's referring to the state board, boards or commissions. My question of you is, you know, where did this come from, and why? Don't most boards and commissions exercise executive power? And maybe there's a specific reason for this that I don't get.

SENATOR CUDABACK: Senator Raikes, would you respond, please?

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

April 3, 2001 LB 797

SENATOR RAIKES: Yes, I would. Senator, the specific origin of it is that there was a member of the State Board of Education who wanted to serve on an advisory commission and, without this change in statute, would not be allowed to do so.

SENATOR SCHIMEK: An advisory commission and...and that was what, Senator? A state advisory commission you mean?

SENATOR RAIKES: I think. I think it was a Governor's advisory commission dealing with early childhood.

SENATOR SCHIMEK: So...I'm not sure what the distinction is here. That person is already really prohibited, aren't they, from serving on a board or commission?

SENATOR RAIKES: Well, excuse me, Senator, which...?

SENATOR CUDABACK: Senator Schimek.

SENATOR RAIKES: Are you waiting from a response from me?

SENATOR SCHIMEK: Yes. Yes, I am. (Laugh)

SENATOR RAIKES: Would you repeat your question then please.

SENATOR SCHIMEK: Is it going to be forthcoming? (Laugh)

SENATOR RAIKES: Would you repeat your question then please.

SENATOR SCHIMEK: Oh, my question is don't...doesn't the language in statute already prohibit them from serving on that advisory commission?

SENATOR RAIKES: Well, that's in fact the problem; that this change would allow that person to serve on an advisory commission. So the...the...if I'm understanding your question, the intent here would be to allow someone to serve on an advisory commission and also serve on the State Board of Education so long as this commission did not involve the exercise of executive power.

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

April 3, 2001 LB 797

SENATOR SCHIMEK: So you're...if they're advisory they're not really exercising any power, is what you're saying.

SENATOR RAIKES: Right. The exer...the phrase is "whose duties involve the exercise of executive power".

SENATOR SCHIMEK: Okay. Thank you.

SENATOR RAIKES: Certainly.

SENATOR CUDABACK: Thank you, Senator Schimek. Those wishing to speak are Senators Janssen, Hartnett, and Senator Chambers. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Senator Raikes, could I have a little...a little conversation with you?

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

SENATOR RAIKES: You may, Senator.

SENATOR JANSSEN: Thank you. Senator Raikes, I noticed in Section 1 you made some clarification and some technical changes to the State Lottery Operation for the Trust Fund which goes in Excellence in Education. Those were...were basically just technical changes, moving a few words around, but have you...have you had any...any information on what those...how those trust funds...how they're doing? Do you see a drop in the amount of money that is going into that, especially into the Education Trust Fund? Are you aware of that?

SENATOR RAIKES: I don't have current data for you on that, Senator. In fact, you may have much...much more recent information than I do. My understanding is that at least gradually over time the total amount of funds available to be split between the education and environmental parts of it are...are trending downward.

SENATOR JANSSEN: Yes, they are. They are coming down, even

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

April 3, 2001 LB 797

though the percentage has stayed the same over the years, 49.5 percent, and 49 to the Education Innovation Fund, and 49.5 percent to the Environmental Trust, with 1 percent going to the Gamblers Fund. But those numbers are going down and hopefully we can address that yet this year. But I agree with any of the other changes you have made in the statutes. I...I think they're fine so I will be supporting that portion.

SENATOR RAIKES: Thank you, Senator.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Hartnett, on the committee amendments to LB 797. Senator Hartnett, yeah.

SENATOR HARTNETT: Mr. President, members of the body, Senator Raikes, I got the book.

SENATOR CUDABACK: Senator Raikes, would you respond?

SENATOR RAIKES: Oh, good. Yes.

SENATOR HARTNETT: On Section 2, when you talk about revised...the publication of revised budgets by school boards, is that a...is that a common occurrence? That was added...that was a section...it was added. It's on line...page 11, line 16 is the..."and a copy of the summary of the proposed revised budget." Does that occur often in school districts, Senator Raikes, where they publish a budget and then they come back? Is that a...

SENATOR RAIKES: I...

SENATOR HARTNETT: ...more of a clar...

SENATOR RAIKES: There...there is provision in law for them to do that and I understand that it is somewhat common for them to do it, Senator.

SENATOR HARTNETT: Oh, okay.

SENATOR RAIKES: Yeah.

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

April 3, 2001 LB 797

SENATOR HARTNETT: So it is a common practice for them to have a budget and then...

SENATOR RAIKES: Yeah.

SENATOR HARTNETT: ...revise it, is it?

SENATOR RAIKES: And...and, by the way...

SENATOR HARTNETT: What's the...what is the time limit for doing that? Do you know?

SENATOR RAIKES: The date...

SENATOR HARTNETT: You talk about five days there. Is there...

SENATOR RAIKES: Yeah, that's the publication notice. The date by which...October 15th, I think, is the...okay, apparently there is not a time limit on...on revising your budget. I stand corrected. Presumably, after the school year is over you could no longer revise it, but...

SENATOR HARTNETT: (Laugh) So there's no time, is that right?

SENATOR RAIKES: Till the end of the fiscal year, so I was close.

SENATOR HARTNETT: Okay.

SENATOR RAIKES: Okay. Thank you.

SENATOR HARTNETT: Thank you, Senator Raikes.

SENATOR CUDABACK: Thank you, Senator Hartnett. Senator Chambers, on the committee amendments to LB 797.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have to pursue with Senator Raikes the issue that Senator...

SENATOR RAIKES: Okay.

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

April 3, 2001 LB 797

SENATOR CHAMBERS: ...Schimek had raised. Senator Raikes, I'm on page 14 of the bill, starting in line 22, and I'm saying this for the record, when we talk about this commission, "whose duties involve the exercise of executive power". Are you with me in that part of the bill?

SENATOR RAIKES: I am, Senator, yes.

SENATOR CHAMBERS: Before I get to the "exercise of executive power", what commission is it that this person wants to be a part of, and that might help clarify the need for this language?

SENATOR RAIKES: I'll try to relate as...as carefully as I can to you the exact details of the one situation that, as I understand it, led to this proposed change, and that I believe was the Governor's Advisory Commission on Early Childhood.

SENATOR CHAMBERS: And what other kind of commission could this person not be on? I mean if we...

SENATOR RAIKES: For example, the...

SENATOR CHAMBERS: ...adopt...if...okay, go ahead.

SENATOR RAIKES: Excuse me. Well, I would suggest that the NITC, the Nebraska...pardon, what is the NITC?

SENATOR CHAMBERS: Interstate Technology Center or something?

SENATOR RAIKES: Something, yeah.

SENATOR CHAMBERS: (Laugh) I don't know what it is. But here...here, if we adopt this amendment, the only commission that would be involved is the one that you just mentioned, or are there others?

SENATOR RAIKES: My...my belief, Senator, that there would be others; that this...this phrase, "whose duties involve the exercise of executive power", would include more than one...

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

April 3, 2001

LB 797

SENATOR CHAMBERS: Well, if this commission...

SENATOR RAIKES: ...in one...or do not, I guess it would say.
Go ahead.

SENATOR CHAMBERS: If this Commission on Early Childhood is one that this person couldn't serve on, was that determination made because of an Attorney General's Opinion, or the person just concluded that?

SENATOR RAIKES: It was a...as I understand it, Senator, it was an AG's Opinion.

SENATOR CHAMBERS: It was an AG's Opinion?

SENATOR RAIKES: Yes.

SENATOR CHAMBERS: What did this advisory committee do that constituted the exercise of executive power?

SENATOR RAIKES: Well, I think I misled you, Senator. This...this committee or this commission did not involve the exercise of executive power and the intent here was to allow a person to serve on a commission that did not involve the exercise of executive power in addition to being able to serve on the State Board of Education.

SENATOR CHAMBERS: Oh.

SENATOR RAIKES: So the distinguishing character...characteristic here of that commission was that it did not involve the exercise of executive power.

SENATOR CHAMBERS: And even though...oh, and the reason that person couldn't serve is because the existing language in the statute would prohibit a person on the state board from serving on any state board or commission, regardless of what it did.

SENATOR RAIKES: Correct, Senator. You stated that much more clearly than I did, but you stated it correctly, yes.

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

April 3, 2001 LB 797

SENATOR CHAMBERS: No, you made it clear. I just missed it along the way. So now with this language the only kind of commission that a member of the State Board could serve on would be similar to the one we're talking about on the early childhood, where all they do is fulfill an advisory role. They don't make any decisions. They don't formulate any policies or do anything that is in the nature of the exercise of executive power.

SENATOR RAIKES: That...that's correct. The intent is that it would be a purely advisory commission.

SENATOR CHAMBERS: And we couldn't use the word "advisory"? I'm just curious.

SENATOR RAIKES: Um...well, I wouldn't rule that out, Senator.

SENATOR CUDABACK: One minute.

SENATOR RAIKES: That...that is not what we have now. We...

SENATOR CHAMBERS: Well, since we're on General File, I will not hold us at this moment, but this language kind of makes me wonder if it will not result in additional disputes as to what constitutes the exercise of executive power. The Attorney General varies in giving Opinions based on what the political climate is at the time or the individual involved, so I'm going to consider the possibility of the word "advisory", especially when the only reason it's here is because of one case involving one person. So that's as far as I'll take it at this time. Thank you.

SENATOR RAIKES: Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Jones, followed by Senators Erdman and Wehrbein.

SENATOR JONES: Mr. President and members of the body, I still want to continue my conversation with friend, Senator Raikes, please.

SENATOR CUDABACK: Senator Raikes, would you...

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

April 3, 2001 LB 654, 797

SENATOR RAIKES: Yes.

SENATOR CUDABACK: ...respond?

SENATOR JONES: Yeah, on the last page of the committee amendments, Section 52, and go down there where it says explanation of the committee...of the amendments, if any. You have that?

SENATOR RAIKES: Yes. Yes, I do.

SENATOR JONES: Okay, down on number three on the freeholding,...

SENATOR RAIKES: Yes.

SENATOR JONES: ...and you say that you got to clarify that; more clarification is contained in LB 654. Could you explain where we are on the freeholding right now.

SENATOR RAIKES: Okay, I can try, Senator. Currently, the...and, again, this is...this is...this is not substantive on...on freeholding. This is simply a clarification.

SENATOR JONES: Right.

SENATOR RAIKES: But...

SENATOR JONES: Right, I understand that, but does it change anything in the freeholding?

SENATOR RAIKES: The only thing it would change is to make it clear that the requirement for having sixty students for the two prior years, to two years prior to the override election, would involve two school fiscal years, not, as the current wording is, two school years. A school year could be interpreted as the time students are actually attending school. This...this makes it...the language refer to the entire year, the entire fiscal year for the school, which would be 1 September to 31 August.

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

April 3, 2001 LB 797

SENATOR JONES: It would be their fiscal year, not the calendar year then.

SENATOR RAIKES: Well, not...not the school year, not...not the...the part of the year that school...that students are actually attending; the ten months that the...or 9 or 10 months that students are attending, versus the 12-month school year.

SENATOR JONES: So that's the only changes it makes in the freeholding.

SENATOR RAIKES: That's correct, that's the only...that's the only change dealing with freeholding.

SENATOR JONES: Okay. Thank you.

SENATOR CUDABACK: Thank you, Senator Jones. Senator Erdman, on the committee amendments.

SENATOR ERDMAN: Mr. President, members, I just had one question for Senator Raikes, if he would yield.

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

SENATOR RAIKES: Yes.

SENATOR ERDMAN: First of all, I want to thank you for this fine novel. Section 29,...

SENATOR RAIKES: You're welcome.

SENATOR ERDMAN: ...as I understand it, would relate to the accountable receipts for school land for the past two years and the in lieu of tax. Is that correct?

SENATOR RAIKES: Section 29, yes, you are correct I believe.

SENATOR ERDMAN: And what that would do is that those will not be accounted against our schools for the upcoming state aid. Is that correct?

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

April 3, 2001

LB 797

SENATOR RAIKES: There has been a change in the way the in lieu of taxes are handled. Before LB 271, they...those lands were not subject to property taxation and with the passage of LB 271 school lands are...that are not used for public purposes...for a public purpose are subject to property tax, so the language is intended to reflect the changes needed for that.

SENATOR ERDMAN: And so, as I talked to your staff, and we're talking about the accountable receipts, like the years past, the in lieu of taxes, if she...if we remember that?

SENATOR RAIKES: Okay. Yeah, I...

SENATOR ERDMAN: My...well, my concern, I'll just tell you what my concern was, is that our administrators are concerned that the way that that structure is set up that over the past couple years that those accountable receipts will be counted against them. Is that not going to happen according to the way that Section 29 is written?

SENATOR RAIKES: You're talking about the lag effect, the fact that you're using receipts, well, what, the most recent date...data year available is the...is the year two years before the actual certification year, and I'm not exactly sure how that's going to be handled. Just one second, please. Okay, Senator, I think I can explain that to you; that there's...there's going to be an effort made to transition it in because the, as you know, property tax receipts are treated differently in the resource side of the formula as compared to accountable receipts, which is what school land funds have been up to now. So there's going to be a transition implemented that would not leave school systems hanging, if you will, being...being, in effect, charged in the resource side for receipts they don't actually receive.

SENATOR ERDMAN: Okay. Thank you very much. That was my question.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Wehrbein, on the committee amendments.

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

April 3, 2001

LB 797

SENATOR WEHRBEIN: Mr. Speaker and members of the body, I'd like to ask Senator Raikes a question about his novel.

SENATOR CUDABACK: Senator Raikes.

SENATOR RAIKES: Yes.

SENATOR WEHRBEIN: I was noticing that Section 37 allows Class I school districts to amend the General Fund budget of the expenditures after October 15th. In this area, I think this represents probably an expansion of power for Class I districts that are affiliated with high school districts. Would that be accurate?

SENATOR RAIKES: It is...

SENATOR WEHRBEIN: They can amend their budget after October 15th for, it says in the bill, expenditures that board deems essential that could not reasonably have been anticipated at the time the budget was adopted. What kind of expenditures...I'm sure you have the benefit of hearings, so I...what kind of expenditures were going to fall under that category? Because I'm wondering who's going to police this. So what if they go ahead and do it? Who...I'm sure the high school district is going to be upset. Taxpayers may be upset if those figures tend to get higher than can be anticipated. Can you stretch an emergency or unusual...can you just simply sandbag, if you will, till after October 15th and then add a teacher, those kinds of things?

SENATOR RAIKES: The...the examples that I think of, Senator, would be, for example, you have a Class I with five students, for example. A family moves in, in November, with...or two families move in with five students each, so all of a sudden your enrollment in the school district triples. Or if you would...you would have the arrival at the school of a high-needs student, a special ed student or something like that, that is the...that's the intent. Now, it also should be mentioned that there's no taxing authority. You can't...you can't adjust your tax request, but probably it's unrealistic in the situations that I have described to assume that there wouldn't be any

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

April 3, 2001 LB 797

additional budgetary needs. There no doubt would. And these may well have been things that a school could not anticipate. So the funding of it would be, for example, they could borrow money to...to fund it, but...and certainly, as you went, you know, another year, if in fact the enrollment continued, then...or the special needs students, for example, continued, then that could be reflected in the normal budgeting process. But...

SENATOR WEHRBEIN: Okay.

SENATOR RAIKES: ...it...it's meant to deal with those kinds of emergencies and deal with it in a fashion that allows reasonable accounting in the budget for those kinds of expenses, but it does not allow an adjustment of the tax request.

SENATOR WEHRBEIN: And funding. So they'd either have to have it in reserve or, as you said, I can see a special ed student might be one of those, although I don't know how many special ed students go to Class I districts anymore. But what I was kind of interested, there has been some tension about who approves budgets of Class I's versus the high school district, if you will, and I was wondering how this was going to interface, is what I was after.

SENATOR RAIKES: Well, it's a good question and really I think this provision would not change the way that...the way that is done now. It would...it would change only to the extent that it would allow for a...sort of an unforeseen or special circumstance to be accommodated after what is now the deadline.

SENATOR WEHRBEIN: Okay. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein. Senator Raikes, there are no further lights. Do you wish to close on the committee amendments to LB 797?

SENATOR RAIKES: I believe I'll waive closing, Senator.

SENATOR CUDABACK: Senator Raikes waives closing. The question before the body is, shall the committee amendments be adopted to

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

April 3, 2001 LB 516A, 797
 LR 55, 56

LB 797? All in favor vote aye, and opposed nay. We are voting on the committee amendments to LB 797. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. We're now open for discussion, the advancement of, E & R Initial. Any discussion? Seeing no lights on, Senator Raikes.

SENATOR RAIKES: Again, I would urge the adoption of...or the advancement, as a matter of fact, of LB 797. Thank you.

SENATOR CUDABACK: Is that your...that's your closing? You've heard the closing on advancement of LB 790...

SENATOR RAIKES: Are you complaining about my closing, Senator?

SENATOR CUDABACK: Excuse me. Senator Raikes. The question before the body is the advancement of LB 797 to E & R Initial. All in favor vote aye, opposed nay. We're voting on the advancement of LB 797. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 797.

SENATOR CUDABACK: LB 797 does advance. Mr. Clerk, items for the record.

CLERK: Thank you, Mr. President. LR 55, a resolution by Senator Aguilar, and LR 56 by...well, Senator Aguilar's resolution, that will be laid over. Senator Thompson offers LR 56; calls for an interim study. That will be referred to the Executive Board. New A bill, LB 516A by Senator Byars. (Read by title for the first time.) That's all that I had, Mr. President. (Legislative Journal pages 1322-1323.)

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

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

April 3, 2001 LB 75

CLERK: Mr. President, LB 75. It's a bill by Senator Connealy relating to motor fuel. (Read title.) Bill was introduced in January, referred to Natural Resources, advanced to General File. Offered yesterday, Mr. President. I believe the committee amendments were presented by Senator Schrock. I have pending an amendment to the committee amendments by Senator Chambers, FA154. (Legislative Journal page 1319.)

SENATOR CUDABACK: Senator Connealy, you like to take one minute, not to debate but just to fill us...just to update us a little bit on the bill, what it does?

SENATOR CONNEALY: Thank you, Mr. President. The bill is a requirement to offer ethanol at every station in the state at the lowest grade of octane. We had a bill last year that would have mandated ethanol in every grade of gasoline. This is not that bill. This is a requirement to offer. It would not exclude other grades of gasoline. We are on the committee amendments which would change the enacting date and that's where we are.

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, if I'm correct, I believe this amendment is the one that would change the date to 2003. Thank you, Mr. Clerk. Members of the Legislature, this is a bill that I do not like and I think I've made that clear. Yesterday, in the posterior portions of the day, our numbers were somewhat low, so those who were here will hear some repetition; those who were not will hear some things for the first time this year, but they heard these things last year; and all of you will hear considerable repetition because this bill must die in the same way that those horror movies would be titled "Dracula Must Die", "Frankenstein Must Die", "The Werewolf Must Die". If I had my choice of this bill or Dracula, Frankenstein and the Werewolf, all three would get a reprieve. This bill is worse than all of those monsters. Those monsters are acting in accord with their nature. This is a bill which is a perversion of the marketplace, a perversion of

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

April 3, 2001

LB 75

capitalism, a perversion of the right of people to make a choice about which product they are going to purchase. Senator Connealy and his band of followers have determined that Nebraskans should not be able to use regular gasoline in their vehicles. Before I go on, though, I want to ask Senator Connealy some questions about comments he made yesterday.

SENATOR CUDABACK: Senator Connealy, would you respond, please?

SENATOR CONNEALY: Yes, I will.

SENATOR CHAMBERS: Senator Connealy, without our going into technical matters at this early point, I just want us to speak in generalities. Regular is...can be the lowest octane grade of gasoline at a pump now, without giving the octane number right now. Is that true?

SENATOR CONNEALY: True.

SENATOR CHAMBERS: What you are...and then if we add ethanol, that would raise the octane level of regular no matter what its starting octane is, octane rating is. Would you agree with that?

SENATOR CONNEALY: True.

SENATOR CHAMBERS: Okay, and that's just to get that out of the way. What you suggested yesterday is that we can get a lower grade of what I want to call regular, for the sake of not confusing anybody, we can get a lower octane regular than what currently is being sold in Nebraska now and when ethanol is added to that lower grade it would bring it up to the level that regular holds in Nebraska right now. Is that true?

SENATOR CONNEALY: Well, you're using two different terms for different mean...you're using the same term for two different meanings. If you have a lower grade gasoline it would not be a regular. It would be a "suboctane". If you brought in an 85 "suboctane" gas, which is lower the octane than is allowed by law now to be sold, then that would not be a regular. Your regular gasoline, whether it has ethanol or not, is...in

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

April 3, 2001 LB 75

Nebraska is...in the eastern part of the state is 87 octane.

SENATOR CHAMBERS: So then let's not use the term "regular". I was trying to use a term which itself would not be confusing. You cannot sell this subgrade, subgrade octane fuel right now in Nebraska.

SENATOR CONNEALY: Correct.

SENATOR CHAMBERS: Is that true?

SENATOR CONNEALY: Not without adding octane to it, yes.

SENATOR CHAMBERS: Don't get ahead of me. Without adding octane, will this subgrade fuel burn in a vehicle and allow the vehicle to run?

SENATOR CONNEALY: It's not allowed to be sold by law. I think that most...a lot of vehicles could run it, but it's not a quality fuel. You have to have 87 octane to meet the minimum requirements for fuel in the eastern part of the state. When you get higher altitude, out in the western part...

SENATOR CHAMBERS: Don't run away from me.

SENATOR CONNEALY: ...it would be a lower...

SENATOR CHAMBERS: I want to stay on this. Now you are saying that this subgrade fuel is available to be shipped into Nebraska if LB 75 is enacted into law. Is that what you are telling us?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: This subgrade fuel is not currently being shipped into Nebraska. Is that true?

SENATOR CONNEALY: It's not being off-loaded at terminals. I think that we had testimony at the Natural Resources Committee that it actually passes through Nebraska to some extent. On its way to Minnesota and to Des Moines, it could. It's a commodity that can be piped into Nebraska but currently it's not at any of

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 75

the terminals in eastern Nebraska.

SENATOR CHAMBERS: Somebody has to...has a refinery that produces this fuel. Is that true?

SENATOR CONNEALY: True.

SENATOR CHAMBERS: If this bill is passed the only way that we could have regular gas sold in Nebraska is if this subgrade came into Nebraska, ethanol was added to bring it up to 87 octane. Is that true?

SENATOR CONNEALY: No.

SENATOR CHAMBERS: And then...

SENATOR CONNEALY: No.

SENATOR CHAMBERS: ...regular could continue to be sold.

SENATOR CONNEALY: No, that's not true.

SENATOR CHAMBERS: Okay.

SENATOR CONNEALY: You could have regular gasoline without ethanol shipped in, just as it's shipped in right now. Because pipelines don't have to exclusively have one product, they can run one product and then run another one after it, you could have the two different grades right at the same station and that's what I assume will happen. But you couldn't have 87 octane with ethanol without getting the subgrade gasoline.

SENATOR CHAMBERS: Suppose this subgrade gasoline is not available. There is a crunch and that subgrade cannot be brought into Nebraska. Then what?

SENATOR CONNEALY: It...well, you have problems with...

SENATOR CHAMBERS: Answer that question, if you will.

SENATOR CONNEALY: ...you have problems with fuel systems

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 75

always. I mean I think that that would not happen, but if...

SENATOR CHAMBERS: (Inaudible) don't know.

SENATOR CONNEALY: ...if something could happen like that, I think that you could put an ethanol with a higher octane. But the higher octane...

SENATOR CHAMBERS: (Inaudible.)

SENATOR CONNEALY: ...comes from refining. You wouldn't refine it that way.

SENATOR CHAMBERS: But it's my time, Senator Connealy. How much time do I have, Mr. President?

SENATOR CUDABACK: About four minutes.

SENATOR CHAMBERS: So here is the point that I'm going to make, rather than ask the evasive Senator Connealy questions. The only way that regular could be sold in this state is if you bring this subgrade in, add ethanol, and raise that subgrade to 87 octane, which is where regular is now. If you do not have that subgrade then you cannot sell regular gasoline because regular would be 87 octane and the lowest octane has to be ethanol. If you don't get the subgrade then you have to add ethanol to regular. When you add ethanol to regular, which is 87 octane, it raises the level above 87, which would be above regular. You could not then sell regular. If you take the farfetched scenario that Senator Connealy is giving us, you place Nebraskans at the mercy of whatever refinery is producing that subgrade and you will pay them whatever they charge you. Otherwise, you cannot sell gasoline in this state other than premium or regular enhanced with ethanol. In both cases, regular cannot be sold in Nebraska. There is no scenario that Senator Connealy and his band of followers can present that will not deprive the motoring public of a choice. The mandate under this bill is that the lowest octane fuel has to contain ethanol. Senator Connealy is trying to sell you a bill of goods by saying you can get a subgrade of gasoline, add ethanol, and bring it up to the level that regular is found now, which would be 87

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

April 3, 2001

LB 75

octane. I say that is not realistic and, when we were going through this same maneuvering last year it was clear that nobody could guarantee the necessary supply of this subgrade to Nebraska. Minnesota doesn't have to bring it in because they produce theirs there. They refine it there. Nebraska has no refineries...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...producing it here. So you want to leave Nebraskans at the mercy of the farmers, not really the farmers, the producers, the purveyors of ethanol and their investors, and I'm going to do all I can to prevent that terrible set of circumstances from coming to be in this state.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the Chambers amendment to the committee amendments to LB 75. Senator Baker, followed by Senators Connealy and Bruning and Chambers. Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback and members. I passed out a bar graph here that I really wish people would take a look at. It's pointing out...these are 1999 figures from the Department of Revenue. It points out that 13.71 percent of our retailers or marketers there sell approximately 75 percent of all the fuel in Nebraska. And the other, 86 percent of retailers sell only 25 percent as a total. These 13.71 percent of the marketers, for the most part, are selling ethanol. The major branded people, whether it's the Texaco, Sinclairs or Totals, whatever, they are selling that. The majors require that ethanol be sold. You have to offer three products. We're going to try and get this down to the level of Senator Price going down to the gas station here and buying gasoline, and right now she goes down to her Amoco or Sinclair or Texaco you're going to see three prices. There's going to be a premium 91 octane, an 89 octane ethanol blend, and an 87 octane regular; three different prices. That's the way it is now. If this bill would pass what you're going to see is still the 91 octane premium and you're going to see that 87 octane regular still there, but the 89 octane ethanol is going to be gone. It's not going to be on the board anymore. It's going to say 87 octane

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

April 3, 2001

LB 75

ethanol, not 89 octane ethanol, because the bill says we have to use ethanol, 10 percent blend, in the lowest grade regular, so that 89 octane option is gone. It's going to be 87 octane regular, 87 octane ethanol. That's the way it's going to be. The bill says the lowest grade regular we sell has to be 10 percent blend, so that's going to be the change on the price board and your availability...or the availability. The price is going to be higher for the 87 octane ethanol. Why? Because 85 octane subgrade is a nickel a gallon higher than 87 no lead. So what we're doing is we're taking that option away they have not selling 89 octane ethanol blend and forcing them, through the bill, mandating it, they shall sell the lowest grade of...of no lead shall be 10 percent ethanol. You're going to lower that 89 to 87 by blending it with this subgrade. Everybody, it's a subgrade. It's not good fuel. You can't just go buy it and burn it in your car. It won't run worth a darn. It will ping something terrible. You take this cheap subgrade stuff, I say "cheap", it's lower energy; blend it with 10 percent ethanol to get it back up to 87. I'm going to repeat myself. It seems like we have to do this six times before everyone understands this, and I'll do it five more if I need to. You're going to take that option away from these...these...these big...the high volume retailers are selling 75 percent of the fuel. They're offering that 91 premium, they're offering 89 ethanol blend, and 87 no lead. You're going to take that 89 octane ethanol out of the picture. It's going to be 87 octane ethanol blend now at a higher price than the 89 octane ethanol that's there now because 85 octane subgrade is higher priced. The refiners don't handle much of it. The pipeliners do not have storage at Beatrice, Doniphan, wherever. They're going to have to convert some tanks over to this. I've actually talked to the refiners in Wichita. They said, sure, we can get this up to you, and they're just licking their chops. They didn't say at what price. This 85...or 85 subgrade obviously is not popular. It's not used in the state right now. It's available at one terminal, at Sidney. They're licking their chops. If you'll look out in the lobby, there's something missing out there this year. The big oil people are not out there. The API people, American Petroleum Institute folks, aren't out there. I think they're back at their desk licking their chops, because if they see a mandate of using 85 ethanol or 85...

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 75

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...no lead subgrade gas in Nebraska I can show you page, after page, after page of weekly printouts on the cost of 85 octane subgrade as opposed to 87. It's higher, higher, higher. And it's not going to change just because we mandate it. It's probably going to go higher yet than 87 octane. So that forces the issue to raise the price of 87 ethanol whereas right now we should be the same price. There's some retailers, I'm sure, emptying out high-priced inventory, but as of last Friday ethanol and no lead were the same price per gallon. So your blended 89 octane should be priced at the same price as 87. We take that option away from those people that are already selling it. You're going to see 87 octane ethanol higher priced than 87 octane no lead. You're going to drive the market away from ethanol. What...am I about out of time? Okay. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. That's just it--we're going to drive 87 octane with ethanol into the state. Currently, we are selling a lot more octane than we actually need. If there is demand for a mid-grade gasoline with ethanol, we're going to have a base gas of 87 without ethanol delivered into the state that can be mixed with ethanol to make the mid-grade gasoline that we have now. This doesn't preclude that happening. The majority of the market for ethanol has been for clean burning, for good operation. It's not naturally been for the mid-grade octane by...from what we can determine. We believe that by allowing this less expensive "suboctane" gasoline into the state that we will have at least a one and a half cent cheaper product delivered to the retailers and to the consumers. The Purvin & Gertz study that was done by the corn growers last year, Purvin & Gertz is a firm out of Houston that studies the oil industry, showed that with the...without the costs of delivery it would be...the subgrade gasoline would most likely be around six cents cheaper than the 87 octane gasoline. When you factor in delivery costs, an extra tank at the...at the terminals and the like, that could bring it down to one and a half cents. This study showed that gasoline would be one and a

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

April 3, 2001

LB 75

half cents cheaper with 87 with ethanol, compared to 87 without ethanol. We believe that as you amortize those costs up-front it will actually get wider than that. So I believe that retailers will push this 87 octane with ethanol and allow a cleaner fuel and a less expensive fuel to consumers here in the state. Thank you.

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

SENATOR BRUNING: Mr. President and members of the Legislature, I rise in opposition to the Chambers amendment and its action of further delaying what this bill does. Last year, I had the pleasure of standing on this floor and pointing out that it was a rare moment, a rare day when we could see Senator Chambers and big oil walking hand in hand down the center aisle. Lucky for us, here we are again--Senator Chambers fighting for big oil while the rest of us fight for farmers, the corn markets. You know, if this state, if we were in West Virginia, South Carolina, and we were talking about tobacco, how to increase the markets for tobacco, there wouldn't even be a discussion. It would sail through that Legislature so fast, and measures have to help those markets. If we were in Hawaii talking about pineapples, you think we'd be worrying about the things we're worrying about today? I don't think so. This is Nebraska. We're a farm state. This is corn we're talking about here, our biggest crop, and we're trying to increase the markets for it. We need to get this bill moving as quickly as we can and, specifically, I think the arguments being made on the other side don't hold water. Williams has said that there will be plenty of 85 octane available to Nebraska the moment we want it, plenty of it available. It will come streaming through the pipe the moment we want it. Pair it with ethanol and you've got 87 as your lowest grade. Now that doesn't mean that has to be the only 87 octane grade at those stations. They can have 87 ethanol made with the 85 octane plus the ethanol to make an 87 grade, or they can have an 87...an 87 grade regular unleaded. They can have them both there. So there is no...Senator Chambers says that we will...this will be the end of regular unleaded at 87 octane. That's not true. Stations can offer both. If they have three pumps then they can offer a premium at

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

April 3, 2001

LB 75

91. If they have four, they can offer this mid-grade. But there's no real advantage to a mid-grade 89 over an ethanol blend at 87. There's no advantage to it. Senator Baker said that this subgrade, 85, when you mix it with ethanol to make 87, is going to be a lesser gasoline than the 89. Not really. There's no appreciable difference there. It's not going to hurt your vehicle to drive an eighty...to use 87 grade ethanol in it, an ethanol blend at 87. There's no appreciable difference. This mid-grade is not necessary. If you only have three pumps you don't have to carry the mid-grade. You can carry a premium, you can carry an 87 regular and an 87 ethanol blend. Those are your three. If you have two, you've got your 87 ethanol blend and then you've got to decide between premium and regular unleaded at 87. I don't think it's a hardship. Once we get to Senator Connealy's amendment we're going to exclude those handful of folks who have one pump, and it's a handful. That's it. We're not talking about thousands of stations here. We're talking about a handful. This bill is the right thing to do for Nebraska. It's the right thing to do. And big oil may not be standing behind the glass this year, but that's only because they were "villainized" last year. They're watching on their televisions and they are laughing. They're laughing about the fact that here in Nebraska it's difficult to get ethanol used. That is funny in a sad sort of way, that we're not using more ethanol blend than we are. It is funny in a sad sort of way. You know what I think is funny in a sad sort of way is how the price of ethanol blend and regular unleaded is about the same, right now, as we debate this. But you watch. This summer, if we don't pass it, or you take a look last summer, ethanol is more expensive. Why? Because they don't want to sell it.

SENATOR CUDABACK: One minute.

SENATOR BRUNING: And why don't the oil companies want to sell it? Think about this for a minute, because it's pretty obvious when you think about it. They want to sell more pure gasoline, more oil. The more they can sell of that, the less corn that's used, the more money they make. That's the idea. Now, right now we're talking about it and you'll go out to the gas station. They will be similarly priced and I don't think that's an accident. I think big oil is well aware of what's going on.

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

April 3, 2001

LB 75

When we debate this, the prices come together. When we don't debate it the price of ethanol goes up. Funny how that works. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bruning. Senator Burling, on the Chambers amendment to committee amendments, followed by Senators Hartnett, Baker, Chambers, Connealy, and Cunningham. Senator Burling.

SENATOR BURLING: Thank you, Mr. President and members of the body. I oppose delaying the implementation of LB 75 because I think it's time that we in Nebraska took a stand to increase consumption of ethanol. I think LB 75 increases consumer choice, and availability is directly tied to consumption and if we can make it more available we'll increase consumption of ethanol in this state. Regarding the regulations that we're putting on retail outlets, I've been in business all my life. I deal with regulations on a regular basis. Every year I try to respond to regulations because I believe they're good for society so, to the best of my ability, I try to comply by them, so I know about regulations in business. I'm fortunate to represent a district in this state that has two ethanol plants in Adams County and we know the direct benefit, economic benefit, of ethanol to the economy and we all know about the direct benefit of the use of ethanol to the environment. I think the supporters of ethanol have been very patient. Ethanol has been around for almost a quarter of a century. I've been using it for 20 years in my business and I think it's time for us to take a stand to promote the consumption, increased consumption, of ethanol in the state of Nebraska, where so much grain is produced. The energy requirements in the United States are not going to go down. We require more energy every year in this country. I think ethanol is one answer to that. Our reliance upon foreign countries for fossil fuels is not the way to go. Ethanol is annually renewable product, grown right here in Nebraska, and of all places we need to encourage the use of ethanol. Virtually all automakers have now endorsed the use of ethanol in their cars. I don't think that this bill mandates the...to any consumer that they must purchase ethanol. It just makes it available to those who would like to have it and it's the right thing for us to do here in Nebraska. Thank you.

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

April 3, 2001 LB 75

SENATOR CUDABACK: Thank you, Senator Burling. Senator Hartnett, on the Chambers amendment.

SENATOR HARTNETT: Mr. President, members of the body, Senator Baker.

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

SENATOR HARTNETT: Could I ask you a question? I'm looking at your handout of your sheet here. I would say...would...am I making an assumption of the 74 percent of the...your second chart there probably are ones in urban areas, would you say, or...

SENATOR BAKER: Yes, I would.

SENATOR HARTNETT: I, see, where I go get gas there's the premium and there's the ethanol and there's the regular unleaded, and that would be probably where these units are at, Senator Baker?

SENATOR BAKER: I think that's right, along the interstate. I think anybody that handles over...I don't know where they break that down to the...I can tell you, I guess, from (inaudible), I think it's a million a gallons a year more than he'd be in this top 13.71 percent of the marketers.

SENATOR HARTNETT: Yeah, and I...and I...you know, Senator Bruning they could put...said they could put four in. I don't see that ever happening as...because they seem to go in units of three, as by the...by the manufac...also, you said, I think, I believe this is correct, that lowering this ethanol would not be as good as fuel as before; that...

SENATOR BAKER: Well, right now we're selling 10 percent blend gasohol at 89 octane because we're taking that 87 no lead, blending it with ethanol, 89 octane. What this bill requires is to lower it to 87 octane and you have to understand an octane rating is the rating...that's a carbon, hydrocarbon, and the

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 75

lower the octane rating the less energy there is in the fuel. So we'd be selling 87 octane ethanol instead of the 89 that we are now.

SENATOR HARTNETT: From your experience, is the 89 with the ethanol and the 87 regular the same...you get the same...

SENATOR BAKER: No, there's more...

SENATOR HARTNETT: ...bang for buck or...

SENATOR BAKER: ...no, there's more energy in the 89 octane.

SENATOR HARTNETT: So would it hurt to lower the ethanol to 87 then?

SENATOR BAKER: It wouldn't hurt anything, but unless you believe what the big oil companies are saying, that they...and I can't believe it, that they're saying were going to sell this 85 octane fuel cheaper than 87, because, history, it's not been that way. You can go back through the years and 85 has always been priced higher than 87 octane.

SENATOR HARTNETT: Okay.

SENATOR BAKER: So what we'd be doing is selling 87 octane ethanol at a higher price than we're currently selling 89 octane ethanol.

SENATOR HARTNETT: And do dealers right now get a 2 percent break with ethanol as...

SENATOR BAKER: No, it's...it's a state subsidized, and federal tax subsidy, both, both cases, state and federal.

SENATOR HARTNETT: But I thought there was...that they got a 2 percent that...

SENATOR BAKER: No. We sell it. What we use to blend is the same 87 octane fuel out of the same truck and simply splash blended. You take the 87 octane and put it into your 87 octane

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

April 3, 2001

LB 75

tank, and you take the 87 octane and mix it with 10 percent ethanol and put it in your ethanol tank, same 87 octane grade fuel both cases.

SENATOR HARTNETT: Okay. Thank you. I'd give the rest of my time to Senator Chambers, if he so desires. I don't know how much is left.

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

SENATOR CHAMBERS: Thank you. Thank you, Mr. President. Thank you, Senator Hartnett. I believe that was a very worthwhile exchange between Senators Hartnett and Baker, and, whether the body is following or not, a record is being put together. I heard what Senator Burling said and he made clear what his interest is. He represents a district where there are two ethanol plants. I tried to follow what Senator Bruning was talking about but it didn't make sense, so I think he got in late on the discussion and does not know where we are. But in order that I might better understand and be fair to him, I'd like to ask him a question.

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

SENATOR CHAMBERS: Senator Bruning, did you mention a Williams...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Oh, I'm sorry. Did you mention a Williams Company that's going to send in this "suboctane" gasoline to Nebraska?

SENATOR BRUNING: Yes.

SENATOR CHAMBERS: Does this Williams Company operate its own refinery?

SENATOR BRUNING: I believe so, yes.

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

April 3, 2001 LB 75

SENATOR CHAMBERS: Where is their refinery located, if you know?

SENATOR BRUNING: I don't know.

SENATOR CHAMBERS: Do you know whether it's located in Texas, Oklahoma, or Kansas?

SENATOR BRUNING: I suspect they have them all over the country, Senator.

SENATOR CHAMBERS: Do you know whether it gets some of its supplies from Minnesota?

SENATOR BRUNING: I do not.

SENATOR CHAMBERS: Some of its fuel. Okay. Thank you. Members of the Legislature, the only reason I asked those questions, I want to find out who Williams is talking to, but since my time is up I will not try to pursue it at this time because I can't get anything done.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Hartnett. Senator Baker, followed by Senator Chambers, Connealy and Cunningham. Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback. Members, we're talking about Williams. Interesting point is this. Williams owns part of the plant...ethanol plant in Nebraska. They are actually producers of ethanol. They have a large plant in Illinois, so they have their fingers in both this. If you want to allow yourself with big oil, you're talking about Williams here, they have the transportation company, the Williams Pipe Lines, the terminals, and of course they have the tanks at their terminals. They have the ethanol production also and I think they do have an interest in a couple of refineries and I think they're in Corpus Christi, somewhere in Texas. I'm not sure where they are. I can't verify that, but they have a minor interest in refining. They're not a large refiner by any means. They're basically a transportation company and an ethanol producer, so. And, Senator Bruning, you want to say we...we're...Senator Chambers is aligning himself with big oil.

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

April 3, 2001

LB 75, 536

I have to disagree with that, and I'm a supporter of ethanol. I...LB 536, I'm a cosigner of that bill to promote the ethanol production. I think I'd like to see that bill amended into this one, be what I'd like to do, but it's not my bill. But if you're going to say that we're aligning ourselves with big oil, I think it's 180 degrees from there, in all honesty, Senator Bruning. Big oil will have us around the neck if we pass this bill. They have a market that they...it's mandated that we use...they provide us 85 octane and we're going to be at their mercy. This bill is designed on hope that they will produce 85 octane fuel at the refineries; the hope that the pipe line companies will transport it up here and not charge us too many cents a gallon more. Even Senator Connealy, I think in his last statement, said that it might be one to two cents a gallon less than 87 octane. We forgot to bring into this mix, this discussion, that another factor that enters in here is the price of the raw ethanol. Price of raw ethanol is simply...reflects demand, and last winter, all the way from last fall actually through February, the price of ethanol hovered around a dollar seventy-five to a dollar eighty cents a gallon for the raw ethanol, meaning hundred percent ethanol. So if you take that dollar eighty cents a gallon and blend that in with fuel that's costing a dollar forty cents a gallon, obviously you're going to raise the price of that blend four cents a gallon. That's just...it's been that way since last fall and, as I said, just last Friday it's finally gone down. The price of ethanol has come down to the price of 87 octane no lead, so that factor has not been mentioned. And I don't "begret" the alcohol...the ethanol producers from making that profit. The demand was there; they raised their price; they sold the product. That was free market operating at its best and I don't "begret" them for that. If they can get two dollars a gallon out of their ethanol, so be it. It's going to increase the price of ethanol-blend fuel in Nebraska, but they're going to be making a ton of money, these ethanol producers. I think if I have time the next time I speak, I will hand out a chart showing the price of ethanol and anybody who is a corn producer I think is going to have to admit the price of corn has not gone up to follow the price of ethanol. Why? There is a lot of corn. That's market factor, supply and demand. But the demand for ethanol went up so their price went up to a dollar and eighty cents a gallon,

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

April 3, 2001 LB 75

and it stayed there for quite some time. It's come back down now because a lot of the ethanol was going to the southwest part of the United States and their air quality requirements change in the spring so they don't have the demand. They lowered their price. I'm going to repeat myself. I...this is the second time. I think I have about four more to go. What we're doing now is selling...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...three grades of fuel at your major stations. What this bill is targeting is the small people, small retailers, who are not currently selling ethanol, and those typically are low-volume stations, not major, not affiliated with a major company, probably two products in the rural areas--diesel fuel and no lead gas. And if you look back at that graph, I'm talking about that right-hand bar graph, the people that sell 25 percent of the gallons are 86 percent of the raw...the retailers. Those are the small, low-volume people; can't afford to put in another pump, another tank. In my case, I've been contacted by a couple people there that simply say they'll just close their doors. They're not going to go ahead and make the investment. Where they're maybe selling, I don't know, a hundred or two hundred thousand gallons of fuel a year, they can't afford to put another pump and tank in. Once again, we're selling three grades. The majors, the retailers...

SENATOR CUDABACK: Time.

SENATOR BAKER: ...over there in the middle bar graph that are selling about 75 percent of the fuel, already offer ethanol at 89 percent...89 octane. What this would do is force...

SENATOR CUDABACK: Time, Senator Baker.

SENATOR BAKER: ...them to drop that; to go 87 octane ethanol. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. (Visitors introduced.) On with discussion, the Chambers amendment to the committee amendment, Senator Chambers. Senator Chambers, you're

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

April 3, 2001

LB 75

recognized.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Bruning a question or two, if he's still in the Chamber.

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

SENATOR CHAMBERS: Senator Bruning, are you now aware of the fact that if this bill passes the ones who would operate the refineries that would produce this "suboctane" fuel would be big oil? You're now aware of that, aren't you, that big oil is the one that would produce the "suboctane" fuel, which you were not aware of before?

SENATOR BRUNING: (Inaudible.)

SENATOR CHAMBERS: It's not going to be Williams producing this fuel. Are you...let me start there. Are you aware that Williams will not be refining the fuel, this "suboctane" fuel that will come flowing into Nebraska in the way that you said it would?

SENATOR BRUNING: Senator, I would agree they would be a beneficiary, but I would...I would argue that certainly the ethanol plants here in Nebraska would be a greater beneficiary.

SENATOR CHAMBERS: No, I'm not talking about who's the beneficiary now. I'm talking about who is going to be the refinery that produces the "suboctane" fuel. Are you aware that Williams is not the one that would produce that fuel?

SENATOR BRUNING: No, I guess I'm not aware of that, Senator, but I'll take your word for it.

SENATOR CHAMBERS: So it's still your belief that Williams has refineries all over the country and they will produce enough of this "suboctane" fuel to supply Nebraska's needs if this bill is enacted.

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

April 3, 2001

LB 75

SENATOR BRUNING: Senator,...

SENATOR CHAMBERS: Is that your belief?

SENATOR BRUNING: ...the Natural Resources Committee was told that, by Williams, to my recollection, that they could get the 85 octane here. Now, whether they were the group to refine it or whether they were the transport I'm not certain.

SENATOR CHAMBERS: But you were the one who brought up this idea of big oil and so I just want to pursue it since you brought it up. Are you aware that passage of this bill would put you and those who support this bill right under the control of big oil who will refine this "suboctane" fuel? Are you aware of that?

SENATOR BRUNING: Big oil may be lightly aligned on the side of passage of this bill, but they are heavily aligned on the side of derailing this bill.

SENATOR CHAMBERS: No, I'm talking about you and I, who are senators here, you and me. Do you realize you will be aligned with big oil because you will give them a corner on the market for this "suboctane" fuel? Ethanol...farmers are not going to have anything to do with producing this "suboctane" fuel. Let me ask you a different question. Are you aware that farmers are not going to get more for their corn based on the price of ethanol at the pump? Are you aware of that, or do you think that, as the price of ethanol rises at the pump, farmers who produce corn will get more for their corn?

SENATOR BRUNING: I think as you increase the market for corn the price for corn will go up.

SENATOR CHAMBERS: So you...here's what I'm asking you, because that's a general answer. In the context of our discussion, because you injected yourself and compared it to tobacco being produced down South, as the price of ethanol rises at the pump is it your belief that farmers are going to get more for their corn, the farmers who produce the corn? Are they going to get more for their corn?

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

April 3, 2001

LB 75

SENATOR BRUNING: My hope is that will be the case. I realize it's not always the case.

SENATOR CHAMBERS: So you feel that the price of corn will follow the price of ethanol.

SENATOR BRUNING: In some cases; not always.

SENATOR CHAMBERS: Thank you. Members of the Legislature, those of you-all who are in the ag sector, you can evaluate the lack of value...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...in what Senator Bruning is talking about. He is still campaigning for Attorney General and thinks that this is going to get him some votes from the ag sector, but he doesn't even know what he's talking about. He doesn't know what this bill is about. So, before he starts talking about people being aligned with big oil, he needs to know that big oil is the one that would produce the "suboctane" grade. And when you have a bill like this that mandates that this grade be utilized, that is going to raise the price because they are the only ones producing it and you've got to pay what they tell you they're going to charge. That's logical. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Connealy, followed by the Senators Cunningham, Smith, Schrock, Bruning, Baker, and Chambers. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. We're at the mercy of oil companies, that's true. We're going to be at the mercy of oil companies no matter what we do. Unless we change the fuel structure to hydrogen, to electric cars or to total ethanol burning fuels, we're going to be at the mercy of oil companies. What this bill would hopefully do is to put a higher renewable content in the whole mix of gasoline that we sell in Nebraska, thus, moving a little bit away from...a little...another step away from the reliance on foreign oil, on big oil, on imported oil into Nebraska from wherever. We don't produce refined gasoline in Nebraska so we're going to have imported refined

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

April 3, 2001

LB 75

gasoline coming into Nebraska no matter what we do with our gas system. This would allow an 85 octane gasoline into Nebraska and hopefully drive a product into the market that we don't have now. This would allow a high quality, cleaner burning regular gas in...everywhere in the state. Our intention is not to put people out of business. Our intention is not to make people have to buy tanks. By and large, across the state over the last few years we have replaced most of the tanks in Nebraska. This is a good time to do this. We don't have old tanks that have a lot of tar buildup or lacquer built up in the tanks because of the fact that, through the LUST Fund and through other mandates from the federal level, we've gone ahead and replaced almost all the tanks or cleaned up almost all the tank systems in the state of Nebraska. This is a good time to do this. This is a good time to put ethanol in those tanks that only...or have regular in them now without ethanol. So, once again, I'm in opposition to this amendment that would put off the date. Just on some information level, in December of this year 85 percent of the gasoline sold in Nebraska was the regular grade gasoline, only 9.4 percent was the mid-grade gasoline, and the balance of 6.6 percent or so was premium gasoline. We're talking about moving into that big market. Most of what is sold in the state is the regular gasoline. Most people buy octane and buy it by price and we're hoping to drive into that bigger market where it will give a better product at the lower grade.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Cunningham, on the Chambers amendment to committee amendment.

SENATOR CUNNINGHAM: Thank you, Mr. President and members of the body. I also rise in opposition to this amendment. We have a 60 percent reliance on foreign oil in this country right now and there is no reason we need to have that reliance on foreign oil because we can grow corn. I would say that I don't buy the argument that this bill, all it will do is put money in the hands of farmers. We can help our farmers with this bill, that's admitted, but it also helps our rural communities that when our farmers in rural communities are prosperous the whole state of Nebraska is prosperous with that. It brings more tax revenue into Lincoln. Senator Chambers talks about supply and demand. Yesterday he said we grow more corn and the price goes

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

April 3, 2001

LB 75

down. He says we need to cut production. This weekend I had the opportunity to attend...went to a farmer's house and they showed films of a trip they took to Brazil and in this trip there's vast expanses of land being opened up in Brazil. It's unbelievable the number of acres that are being planted now and are going to be planted in the future. So if we cut our production here I'm starting to believe that all that will happen is they will take up the slack. So what we need to do is create alternative markets for our crops and that's what ethanol does. You know, we...this isn't just for the farmers. As I said earlier, for our rural communities, for Nebraska and our nation as a whole, how much money do we spend defending our corn crops? Not much. How many billions of dollars do we spend defending our oil? A lot. So we're in a very, very vulnerable spot as a nation and I think this bill, first, will help our farmers, our rural communities, Nebraska and our nation in general, and now is the time to do it. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. Senator Smith, on the Chambers amendment.

SENATOR SMITH: Thank you, Mr. President, members. I've just trying...I've been trying to listen to the debate here and the various issues and I know there are some amendments coming up to dilute the bill somewhat, but I do have to rise and say that just as we don't mandate what other retailers carry on the shelves of their stores, I don't believe that we should mandate the carrying of a product at certain stations. I support incentives for development of ethanol and the promotion of ethanol. I think that we need to move in a direction of renewable resources so that we can have cleaner air, so that we can support the farmers and hopefully the modification of engines along the way will take place. But I'm a little confused when I hear that, especially with some coming amendments, that there will be little impact on retailers but huge benefits to be gained, and I hear both things and I'm getting a little confused as to which one is, indeed, the case. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Schrock, you're recognized on the Chambers amendment. Senator Schrock.

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

April 3, 2001 LB 75

Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, last time I checked, we had seven ethanol producing plants in the state of Nebraska. Last time I checked, we don't have any refineries. Last time I checked, about 20 percent of the corn and milo grown in the state is being refined into ethanol. It's an important part of the ag economy and it's going to become more important. Congressmen Tom Osborne has said we need to triple our production of ethanol in this state, and it's ludicrous that we have gas stations out there pumping two and three grades of gasoline that are not offering an ethanol blend. This only makes common sense. I...I restate again, I don't understand how Minnesota can be so actively supporting their ag community and the ethanol industry, and we can't even come part way. That does bother me. I'm not blaming any individual, but it just seems like it's such an easy thing to understand. We import 60 percent of our petroleum and it's just going to get worse. So it's...you take your choice--you can support OPEC or you can support agriculture. And OPEC is going to keep putting the squeeze on us, but if we can extend our gasoline supplies with a little corn alcohol that works for me and it's good for Nebraska, it's good for our farmers, and it's an industry we need to support. Now, if we ever get to the Connealy amendment, that would not mandate anything except it would require stations that offer two grades of gasoline that at least one of them would have to be an ethanol blend. The amendment doesn't say that it has to be a certain octane. And I think that would be an important first step for us to take and I don't think that would work a hardship on any service station in this state. It would not force any customer to buy the ethanol blend. Of course, I've heard enough bashing of ethanol in the 20...in my 20 years with the product that...that it really kind of disgusts me because these people usually don't know what they're talking about and formulation of the gasoline we have nowadays is different than what we used to blend with it. The cars are different. It's an excellent product. It makes our cars...it gives us a higher octane gasoline; it reduces the emissions. Certainly, if you want to trust the petroleum industry, go ahead, but they're the ones that gave us MTBE. MTBE has contaminated some groundwater in the state of Nebraska. We

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

April 3, 2001 LB 75

don't yet know the ramifications of that, but we do know that you don't have to worry about groundwater contamination if ethanol gets in your groundwater and we have certainly more...a more abundant supply of clean groundwater than probably any state in the nation, certainly in the midwest area. So those of you who object to LB 75, I think what we need to do is move on to the Connealy amendment, which I would hope wouldn't be objectionable to most of us in here. There's always a few diehards. To me, that's reasonable. Wouldn't require you to buy it. It would just say the stations that are offering two grades of gasoline, one of those grades has to be an ethanol blend with no octane requirements. I think that would be an important first step to take. It's compromise. That's what we're about in this legislative floor, is compromise, and when you can compromise on the side of helping agriculture in the state I would hope this 49-member body could do that. Thank you for your time.

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

SENATOR BRUNING: Mr. President, members of the Legislature, rise in opposition to this amendment, and I appreciate the fact we're talking about which side big oil is on in this debate. Think that's a winner for those of us who want to see this bill pass. It's true, there may be some benefit to some oil companies that ship in this 85 octane into Nebraska, but, by and large, it is obvious the major benefit to oil companies is when there is no or little ethanol sold anywhere. The more oil they sell, the less ethanol in gasoline, the more money they make. Why would they want to dilute gasoline with something that they're not selling? It's intuitive, it's obvious they don't want ethanol in the gas. That just only makes sense. That's a self-interested position you would expect them to take. So I do appreciate that side of the debate, and I do want to state for the record that I've been a supporter of ethanol from the first minute I walked into this Legislature and, in fact, beforehand, when I was elected in 1996, I staked out this position, and I'm a guy that looks down the road at my future like most of us but I, hey, I wasn't that forward thinking in 1996. So when my motives are questioned, I understand that. All is fair in love

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

April 3, 2001

LB 75

and war. But I've been an ethanol supporter for a long time and I'll continue to be. As long as I'm in or out of public service, I'm going to support ethanol. My grandpa has still got farm ground near Bruning. We're fifth generation farmers there. Was in the family from the 1880s and there's corn on that ground now, or there will be soon. There was corn on that ground last year and there was corn on that ground in 1900. So I...I appreciate the fact to be able to talk about that. My wife's family, they're farmers. I support farmers and I always will, and ethanol is a chance for us to increase the market for those farmers' corn. Any chance we've got to do that we need to take it. When we can give farmers a chance to sell their corn right here at home, to homegrown Nebraska tax-paying ethanol companies, why wouldn't we do it? This comes down, in my opinion, to supporting Nebraska farmers or supporting out-of-state oil companies. Which do you want to do? In my mind, it's clear. I support Nebraska farmers.

SENATOR CUDABACK: Thank you, Senator Bruning. Senator Baker, you're recognized, and this will be your third time, Senator.

SENATOR BAKER: Thank you, Senator Cudaback and members. We...I think we're getting away from what we need to discuss here. We've got big oil as the villain in here and I...I think big oil is going to benefit from this bill. We pass this bill they have a captive market for 85 octane fuel and we are at their mercy. There isn't much of it refined. We're saying here are a bunch of sheep; lead us to slaughter, we folks. I'm in favor of ethanol production; I'm in favor of ethanol use. Can't seem to get across to people this could be a death knell for ethanol in Nebraska use. If you price the product, ethanol, higher than a standard no lead at the same grade, people are not going to buy it. And we are saying, we trust you, big oil; we trust you; give us this 85 octane fuel; we have to take it; doesn't matter what the price is; we're at your mercy but we trust you. And you look back on the record and say, hmm, they have not priced 85 octane fuel cheaper than no lead, as far as I can go back, which I admit is only a few years, but it's always been higher priced. If they're going to change it for us now because we mandate it, I've got a bridge to sell you and a lot of blue sky. I think the big oil companies are going to say, look at what

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

April 3, 2001

LB 75, 536

they did to us, for us here. We're going to raise the price of 85 subgrade fuel 10 cents a gallon over 87. They don't have a choice. We're going to price ethanol right out of the market, Nebraska. I'm an ethanol user, a corn grower. I want to get LB 536 out here on the floor and get that thing passed. It provides incentives for plants, new production and so on. The demand is out there for ethanol now. That's why the price was so high for so long, is they could sell it at a higher price than we were paying for no lead fuel. I don't fault them for that one bit. We go back to the price structure. People were down to 9 percent, I think Senator Connealy said, of use of ethanol now in sales. I have the 1999 printout here. When ethanol got to be the same price or cheaper than no lead, sales went up from January in 1999 from 26 percent of the market, ethanol, up to 37.5 percent in December. That was a reflection of the price of ethanol, not of...not of the raw product no lead. Was a product price of ethanol. It went down below the price of 87 octane fuel, so it made it price competitive. When you blended cheaper ethanol in it, we sold more of it. I'm going to repeat myself one more time. This is my third time on this amendment. What you're going to do is take 89 octane fuel off the market. Those people that are selling the most of it, it's going to force them to drop that off the market and go to 87 octane ethanol, and if you had to do it today it would be at a higher price than 87 octane no lead. I can't believe that people are going to go out and buy 87 octane ethanol at a higher price than 87 octane no lead. It's not going to happen. Those are the conditions now. In the past, it would have been at least a nickel a gallon higher. I think this could be very detrimental to the ethanol industry. I support it and that's why I'm standing up here. I will be criticized for my stand by Senator Schrock and Senator Connealy and some farm groups on this. You've got to believe though that if we take 89 octane off the market, price it at 87 octane...as 87 octane fuel and raise the price, consumption is going to go down. We can't simply say, well, Williams Brothers...and I do have some information here, Williams Brothers, Senator Bruning, bought out MAPCO a few years ago. MAPCO was a transmission company...

SENATOR CUDABACK: One minute.

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

April 3, 2001

LB 75

SENATOR BAKER: ...a pipeline company. They bought it out and they had a small interest in a refinery in Memphis, Tennessee. So, as far as we can document, only refining interest Williams Brothers has in gasoline is in Memphis, Tennessee, and it's apparently a small percentage of the ownership of that refinery in Memphis. They do own a major stake in the ethanol plants in York and one back in Illinois. I don't know whether it's in Peoria or...it's back in Illinois. But they own a major stake in ethanol production; not much in refining. They're basically a pipeline company. Williams Brothers is out of Tulsa. I think it still is based in Tulsa. It's a pipeline company, fuel storage and so on; not in refining. Also big in ethanol production themselves so you can see why they have a stake in this. Once again, I'm repeating myself, but if you...this bill is based on hope, hope that the big oil companies, refiners, we're talking the Texacos, Mobils, Sinclairs, will refine 85 octane...

SENATOR CUDABACK: Time.

SENATOR BAKER: ...fuel. Hope that the pipeline companies won't charge us too much to add another tank and store this stuff. Hope the price of ethanol...

SENATOR CUDABACK: Time, Senator Baker.

SENATOR BAKER: ...will be lower than...than no lead. Why, then this bill is for you if you believe all that. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. A quick announcement. There has been a lone key found under the north balcony. It appears to be to an office. So if you have lost a key to your office, please contact the Clerk's Office. On with discussion, Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I am amused when I hear people like Senator Schrock and others who ought to know better stand on this floor and suggest that a bill like this is somehow going to help farmers. When I talk against this bill, I talk about the producers of ethanol because, in the same way that we heard from Senator Wehrbein and others on that

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

April 3, 2001

LB 75

milk bill, when the price of milk increases for the consumer the price for the milk received by the farmer does not go up. There are people between the farmer and the consumer who gain from increases in price. Now this is what I have gone through since I've been on the Ag Committee, and Senator Schrock knows that, so when he talks about being disgusted at people talking against ethanol, I'm disgusted at people who want to always gouge the consumer to help a narrow constituency. And I'm going to continue to disgust Senator Schrock and his ilk because I'm not going to let things go across this floor that gouge the consumer to help his producers of ethanol, his purveyors of ethanol, and his investors in ethanol. That's what I think is disgusting. I'm interested in the consumer. Consumers don't own refineries. Who owns refineries? Big oil, whatever that term means, and that's one of the stupidest things that's been brought up on this floor during all these discussions. The refineries are owned by big oil. "Suboctane" fuel is going to be refined by big oil, so it's stupid to talk about somebody on the side of big oil when you don't even understand what it is you're talking about. What happens in any sector of the economy when the market is cornered is an increase in price and a regulation of supply. If you diminish the supply, you can raise the price because the dearer a thing is the more value people ascribe to it. Why are these farmers always telling me don't let the family farm go out of business because you have these mergers, these consolidations, till you get a few big producers and they control the price? Why? Because they can control supplies. So when these people stand on this floor and give the impression that Nebraska is going to benefit when you place it totally at the mercy of those who refine this 85 octane subgrade fuel and you're going to say Nebraskans will benefit from that, I say that's downright silly and I say it's disingenuous. People, during the last summer, when fuel prices were high, said that the oil companies were gouging. They were deliberately holding back gasoline in certain centers throughout the country so that the price could skyrocket. The gasoline was there. Those who controlled it were holding it back. Now you're going to say all of a sudden that if Nebraska, through a law that in effect outlaws the use of regular grade gasoline, is going to suddenly be shown mercy by big oil, which is the only one that refines this...

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

April 3, 2001 LB 75

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ... "suboctane" fuel and they're going to sell it cheap to Nebraska when they can set the price wherever they want to because Nebraska has got to buy it from them, why that doesn't make sense even in a fourth grade class where you're talking about nickels and dimes and Crayolas. Kids understand that, but apparently some of my colleagues on the floor either don't understand it or they're going to misrepresent what it is that they actually know. But I'm going to stay on this issue and we're going to be on it for eight hours.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Janssen, on the Chambers amendment to the committee amendments.

SENATOR JANSSEN: Thank you, Senator Cudaback. Thank you, Senator Chambers, for your lively debate on this. Senator Chambers, some day, when you and I croak, there is not going to be any oil left in this world and we will be scrambling to distill alcohol from any plant that we can find. Right now, pretty easy to get it from sugarcane, it's pretty easy to get it from corn, but you can distill alcohol from any plant matter. Some day we won't have the fossil fuel. It's a long time down the road but it's going to be here. There are other countries that...that don't allow any fossil fuel to be sold for internal combustion. I think, why, there are South American countries right now that are planting rows and from as far as you can see they're planting corn and soybeans. They don't use any fossil fuel. You can't use it there. Here years ago we used to be in the stock car business. We had old '33 Plymouths and Fords that we'd run in these stock car races, and you could smell the alcohol down in there and it wasn't for human consumption. It was to be putting into those cars. Well, maybe a little of it went into human consumption, but (laughter) most of it went into the cars, and it was very much against the law at that time too. The racing official said, no, you can't use any alcohol in your cars because it makes them go...run too good. But those...that was back probably forty-some years ago. But you're going to see some day that we'll be...that's all we're going to have and we'll stand here on legislative floors all over the United

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

April 3, 2001

LB 75

States and argue this...this same subject up and down, but eventually, Senator Chambers, after you and I are gone, ethanol or alcohol will still be here and we'll be thankful we've got it. Until that time comes, until we use every drop of the...of the fossil fuel that is left and the old dinosaurs are all sucked dry, then we'll have the alcohol to use. Alcohol has probably been here longer than the dinosaurs. I'm sure they have. But I'm going to support the ethanol. I think it's the right way to go. I don't believe that anyone should have to...have to have that blend on their pres...if they got one pump, and I think there's an amendment that's going to take care of that. I don't know why you couldn't just have an old 55-gallon barrel with a gallon can sitting underneath it and you've got it there. It would work. At least you'd have it there. Fire marshal probably wouldn't like it very well. There would probably be some regulation against that, but years ago that's the only way you could get your fuel for your car. Used to have an old pump that you'd pump the...pump the gasoline up into the tank above it and then, if you wanted ten gallons, you pumped up ten gallons; if you wanted five gallons, you just pumped up five gallons; run it in your car and away you'd go. Was about 13 cents a gallon, something like that. Food for thought, folks, just food for thought. I'm going to be supporting the ethanol people as much as I can. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. On with discussion, Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. Once again, we will be at the mercy, per se, of the oil companies with this bill. We are at the mercy of the oil companies right now. We have all of our fuels refined somewhere else. We don't have a refining industry, per se, in Nebraska. We have a little bit of oil production, but our gasoline is refined somewhere else. We can't get away from that. So the argument that this bill will put us in the hands...at the mercy of oil refiners doesn't go to point because of the fact that we are at the...their mercy now. As we saw oil price spikes last year, we have the possibility of having oil supplies being restricted and prices going up. That's just part of the market. Unless we have publicly owned refiners some place, we're not going to get away from that.

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

April 3, 2001

LB 75

What this bill does, actually, is diversifies our fuel system. It...it will hopefully drive more renewable content into our fuel system in Nebraska. We will have a 85 octane fuel into the pipeline of Nebraska, whether it's Williams or other pipelines coming into Nebraska, and then blended with a Nebraska grown product, ethanol, and we'll have a more diversified, less dependent on oil supplies market. And I think that Senator Chambers' point that we are tied to the oil industry with this bill is correct, but we're tied to it without the bill. We're actually tied to it more without the bill than we are with the bill. As I stated before, the December figures for fuel sold in Nebraska were: 84 percent of the sold was the regular grade gas; just 9.5 percent of the fuel sold in Nebraska in December was the mid-grade gasoline; and 6.5 percent was the premium blend. I think that we'll still have the possibility of getting a mid-grade gasoline anywhere in the state because we'll have that low-grade regular gas still available, but the demand isn't very strong for that, in the first place. It's only selling under 10 percent right now. If there is a demand for it, I think that that will be supplied, but what we want is an 85 octane gasoline. So, once again, I'm in opposition to the extension of the date.

SENATOR CUDABACK: Thank you, Senator Connealy. (Visitors introduced.) Senator Wehrbein, on the Chambers amendment. Senator Wehrbein, did you waive off? Senator Chambers, Senator Wehrbein waives off and that is the last light on. Senator Chambers, did you wish to close on your amendment to the committee amendments to LB 75?

SENATOR CHAMBERS: Mr. President, members of the Legislature, this particular amendment would change the date from 2002 from 2003. Do I seriously expect this amendment to be adopted? No. Why then would I offer it? To give the opportunity to discuss this bill and I intend to discuss it, literally, to death. Every time one of these bad bills is brought I'm going to resist it. And I've been serving notice to some of my colleagues who sit back, who are from the city, and let me do all of this work on these bills that benefit the consumers. A point is going to be reached when they have a bill that is important to them and they're going to look for my help and I'm not going to be there.

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

April 3, 2001

LB 75

I'm going to watch them flounder. I'm going to watch and see if they can do what I do on a daily basis, day after day, week after week, month after month. Look at this Chamber. Where are the senators from the city? Some place sitting; maybe some place drinking coffee; maybe eating. Whatever they're doing is their business because they're senators and they're free to do that, but they're not the only ones who can do it. When I see these bills that are hurtful to consumers I will be here alone, fighting against them, if necessary. Fortunately, on this bill Senator Baker also has the interest of the public at heart. Now, when you look at the language of this bill you can disregard all of these fanciful scenarios that Senator Connealy is trying to present to you; you can totally dismiss what Senator Bruning has said, even some things that these misguided people who say they're supporting the farmers have said. Anybody who knows anything about the pricing of commodities is always going to say that the wicked people are corporate America and the middlemen. Those are the villains that are always identified. Some of you may have heard of Archer Daniels Midland. Some of you have heard of IBP. Some of you have heard of ConAgra. Some of you have heard of these other large multinational corporations who do a lot more in determining what a farmer is going to get for his or her products than what we talk about in a State Legislature. Farmers are going to continue going out of business. Anybody who looks at my amendments will see that I talk about the producers of ethanol and the purveyors. Farmers don't produce ethanol. Farmers grow corn. Farmers sell their corn for what they can get. And whatever happens with ethanol is not going to substantially affect the price that farmers get for their corn. In fact, they might get less for their corn while you see those who are involved in ethanol making more money. There is what some people call a disconnect. Is corn needed? This biomass, Senator Janssen was talking about sugarcane, will those things be produced? Yes, always by somebody. By the time...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...he croaks there may not be any more oil, but by the time I croak they probably won't even be using gasoline in vehicles, and the vehicles may not even be running

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

April 3, 2001 LB 75

on the ground. They may be suspended above the ground. A lot of changes can occur but, in the meantime, I am not going to be unresisting toward those things that will take a choice away from the public and compel them to buy something they have shown they are not interested in buying. I will ask for a call of the house, Mr. President.

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

CLERK: 13 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. The house is under call. All unexcused senators please report to the Chamber. Senators, please check in. Senators Beutler, Senator Landis, would you please check in. Thank you. Senators Bromm, Senator Preister, house is under call. Senator Hudkins, thank you. Senator Wickersham. Senator Quandahl, Senator Suttle. Senator Suttle, the house is under call. Please check in, please. Senator Preister. Senator Preister, the house is under call. Please check in. All members present or accounted for, the question before the body is, shall the Chambers amendment, FA154, be adopted to the committee amendments to LB 75? All in favor of that amendment vote aye, opposed nay. We are voting on FA154 to the committee amendments to LB 1...or 75. Have you all voted who care to? Record, please, Mr. Clerk. Record vote has been asked for. Mr. Clerk, roll call vote has been asked for. Call the roll, please.

CLERK: (Roll call vote taken, Legislative Journal pages 1323-1324.) 6 ayes, 28 nays, Mr. President, on the amendment.

SENATOR CUDABACK: Amendment is not agreed to. I do raise the call. Mr. Clerk, next item to the bill.

CLERK: I have nothing further to the committee amendments, Mr. President.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 75

SENATOR CUDABACK: Discussion on the committee amendments, Senator Baker, followed by Senator Chambers. Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback. I'm about like Senator Chambers. Now any chance I get to have five minutes up here I'm going to take it, I guess. I want to tell you why I'm against this bill. I'm trying to defend the ethanol industry here and I'm not for big oil. I think the supporters of this bill have got this turned around 180 degrees. Folks, we're going to put ourselves at the mercy of big oil if we pass this bill. We're saying we trust you to provide 85 octane fuel. We're trying to find what percentage of refining capacity is devoted to 85 octane fuel right now. I'll bet it's mighty small. We're going to try and get that figure for you during the debate here, but we're putting ourselves...we're supporting big oil in their monopoly over what...what they can provide us here with 85 octane fuel. Very little of it is produced. It's at a higher cost. There's no pipeline facilities in Nebraska, with exception of Sidney, that devotes tanks to this particular fuel right now, this octane. It's going to cost us more to store it. It's going to put a lot of small retailers out of business and, I tell you, I can't support this bill. I have a financial interest in this. If this bill passes I can see a bunch more money going into our business. It's going to put a couple small people east and west of me out of business. They have two-product stores. Even if they stay in there and produce or sell diesel fuel and 87 octane ethanol, it's going to be at a higher price than what we can sell 87 octane no lead to them. They're going to drive down the road and buy it from our place. We already are selling ethanol. We have the tanks. It's not going to put us at any inconvenience at all. The local co-op there has a tank that sells diesel fuel and no lead; only two products they sell. I don't know what they'll do, whether they'll go to ethanol blend and offer it at a higher price than we're selling no lead up the hill. I don't know. But I can see where it's not going to cause the people who are already selling ethanol much inconvenience, but it could cut the sale of ethanol because it's going to be higher priced than what we're selling 89 ethanol blend now. So I'm defending ethanol industry and certainly am opposed to big oil dictating to us what this 85

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

April 3, 2001

LB 75, 536

octane subgrade fuel is going to cost us. I think we've got this thing turned...this bill is turned around 180 degrees. I support LB 536. I'd love to have that amended into this bill and I'd be fighting for that. That's the bill, of course, that provides incentives for new production. The market is out there for ethanol now. We need to jump aboard, get those plants located in Nebraska or expand the ones we have so that we are in place to go with this 300 million gallon a year use that California is projecting. I don't think they're going to back off the air quality standards that are in place now. They're going to have to have, I believe it's, 300 million gallons of ethanol a year just in California. What do we produce in Nebraska? A hundred and fifty or sixty or something like that last year is all we produce. We could double our capacity and not satisfy California. We're in a position to go ahead and do that. We have the raw products. We have the basic infrastructure in place here with existing plants that could expand. Then we could build new ones, as they're talking about up at Plainview, I think it is, and Axtell. I may very well invest in one out west. I'd like to have it closer to home, but I think ethanol has a very bright future down the road. And I just can't vote for this bill. I, number one, as I said, I have a financial conflict. I can see it producing revenue for my business, because there's going to be people go out of business over this bill. And, regardless of what we price this fuel, people have to have gasoline to operate and, for that reason, I'm going to continue to oppose it and hopefully bring some people over to my side so we can, you know, continue the discussion that this bill is going to favor big oil and it could be a serious detriment to...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...ethanol sales in the state. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. (Visitors introduced.) Senator Chambers, on the committee amendments.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I'd like to ask Senator Bruning a question. I wanted to be sure he was in the Chamber. That's why I was looking around.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 75

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

SENATOR CHAMBERS: Senator Bruning, you are confident that this "suboctane" gasoline would come flowing into Nebraska. Is that what I understood you to say?

SENATOR BRUNING: Yes.

SENATOR CHAMBERS: Which company is going to produce and make available that "suboctane" gasoline, if you know?

SENATOR BRUNING: Senator, I'm not certain, but Minnesota seems to have no problem in getting it there.

SENATOR CHAMBERS: Does Minnesota refine its own "suboctane" gasoline?

SENATOR BRUNING: Yes, I believe in some cases it does.

SENATOR CHAMBERS: Does Nebraska refine any gasoline?

SENATOR BRUNING: No.

SENATOR CHAMBERS: So that would show a difference between the situation in Minnesota and Nebraska, would you agree?

SENATOR BRUNING: Yes.

SENATOR CHAMBERS: Here's what I'm getting to with this questioning of you. Let's say "Company A", don't even worry about a name, is the one that is going to be counted on to supply this "suboctane" fuel to Nebraska. Do you think that they will know they're the company that is supplying this "suboctane" gasoline to Nebraska pursuant to a law like this? Do you think they'll know that or they won't know it?

SENATOR BRUNING: Senator, I believe there will be more than one source for us.

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

April 3, 2001 LB 75

SENATOR CHAMBERS: Do you think that whoever supplies this "suboctane", presuming that it will be available, will be aware that there is a law in Nebraska like this mandating the use of ethanol? Do you think they'll be aware of that?

SENATOR BRUNING: Yes, certainly.

SENATOR CHAMBERS: And do you think that will have a bearing on the price they charge for what they bring or make available to Nebraska?

SENATOR BRUNING: Certainly, but I believe if they get out of hand with that price and we believe it's unfair we'll search for other providers.

SENATOR CHAMBERS: Can that be done with reference to gasoline?

SENATOR BRUNING: I admit that it's difficult.

SENATOR CHAMBERS: Thank you. That's all that I want to ask you. Members of the Legislature, I hear people stand on this floor...now I'm off Senator Bruning. People stand on this floor and talk like they really understand market forces, like they understand the economy, and they will make all kind of pleas for farmers. Then we come to a bill like this and suddenly they don't know anything. Everything goes out the window. My good friend Senator Connealy thinks that a bill like this, if it becomes law, that mandates the use of ethanol is not going to come with a price to consumers. For those from the city, you cannot burn alcohol alone in your tank. Ethanol is just a small portion of the gasoline that goes into your car. When ethanol is produced from corn or "sorg ham"...I want to throw in the "ham" emphasis for my farm sector senators...corn, "sorg ham", biomass, sugarcane, the farmers who till...

SENATOR COORDSEN PRESIDING

SENATOR COORDSEN: One minute.

SENATOR CHAMBERS: ...those crops are not going to benefit based on the price of the finished product. You hear these farmers

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

April 3, 2001

LB 75

talking about value added. They want to find a way to add more value to the crops that they produce. Why do you think Senator Wehrbein came in here with a bill to take money from consumers to give it to the dairy farmers? Because he and others told us that the milk processors are the ones who are making money at the expense of the consumer and the farmer. That's done by the processor increasing the price and the retailer increasing the price, the consumer paying it, but the farmer not sharing. We come to ethanol and, all of a sudden, that no longer is true. As the processors...

SENATOR COORDSEN: Time, Senator Chambers. Next speaker, Senator Connealy, please.

SENATOR CONNEALY: Thank you, Mr. President. You were...you had passed out to you the Purvin & Gertz study, and maybe I should go through that a little bit. The...this is an independent firm. It was hired by the corn growers last year, but it is an independent research firm that works in oil industry questions. On page 3, at the top, said combining both the refining and distribution costs associated with introducing "suboctane" gasoline into Nebraska results in a cost range savings of .6 cents per gallon on the low end, to .3 cents a gallon on the high end. We look like we're going to save money by putting this gasoline of a "suboctane" in the state. They were working with figures that the octane in the gasoline is of value, and all across the United States we have to have octane in gasoline. The more you refine it the higher amount of octane you have, so octane has a value to all these refiners. They're going to be able to refine gasoline a little bit less expensive at an 85 octane rather than a 87 octane. Thus, we're going to be able to get it into Nebraska at maybe one and a half, maybe half a cent cheaper; put the ethanol in with it. It's not going to be a major difference, but it's going to be cheaper than the regular gasoline now. That will, hopefully, drive this 87 octane into a broader use. We are at the, once again, at the mercy of the oil companies. We're at the mercy of the pipeline companies. We're not changing the structure of distribution with this. All we are is causing an 85 octane gasoline to be delivered into the state, thus, we'd have more of a choices. We'd have a choice of an 87 octane with ethanol, a choice of an 87 octane without

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

April 3, 2001 LB 75

ethanol, and, thus, we believe that we'd...able to have a higher renewable content in the whole pool of gasoline that we sell in Nebraska. I don't think that we're going to be more reliant on refiners with this bill. We're going to be, actually, a little bit less reliant. Octane is of value across the whole United States. Octane is a value for the refiners. If you have to refine the gasoline more, then it costs more to do that. We'll be able to buy a less-expensive 85 octane gas and put ethanol with it, a Nebraska product, a product that is cleaner burning, a product that replaces gasoline that may have some problems. In 2004 the Clean Air Act is going to cause all gasoline in the state of Nebraska and across the United States to have less sulphur. There's almost no sulphur in ethanol. Adding ethanol to gasoline will help refiners, will help the industry replace sulphur. Yesterday we talked about some of the mandates that are in fuel in Nebraska. There are at least four mandates in fuel, Nebraska, so this isn't a...a mandate but this is requiring something to be offered. Currently, we have the minimum read vapor pressure at 6.9 is set by our standards. Currently, we have a minimum octane set by...in law in our standards. This is not a new area. We require certain things in gasoline. We could require ethanol in every grade of gasoline, but we aren't doing that with this. All we are doing is requiring to offer. It's a much more moderate proposal.

SENATOR COORDSEN: One minute.

SENATOR CONNEALY: I urge the body to approve the committee amendments.

SENATOR COORDSEN: (Visitors introduced.) Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have listened to all of this talk about this 85 octane gasoline. I want to ask Senator Connealy a question or two, if he will respond.

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: I want to make it clear that I've got my eye on you because, now that you've taken your coat off and can move

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

April 3, 2001

LB 75

more rapidly, I'm more cautious. Senator Connealy, is it your belief that if this 85 octane comes in and ethanol is added there will be a cleaner burning fuel that results from that? Is that your belief?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Why is that not done right now?

SENATOR CONNEALY: Yesterday you talked about...

SENATOR CHAMBERS: No, no. Would you answer the question? If you don't want to answer it I won't hold you to it, but I'm asking you. Let me ask it a different way.

SENATOR CONNEALY: Sometimes it takes me more to answer a question than...

SENATOR CHAMBERS: Well, let me ask it this way. Is 85 octane gasoline available in the country right now that can be piped to Nebraska?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: So if what you're talking about is of value, that can be done without this bill, couldn't it? Eighty-five octane can be brought into Nebraska, ethanol can be added to it and the public can be persuaded to buy it. Isn't that true?

SENATOR CONNEALY: There's no restriction in law that would disallow it, that's correct.

SENATOR CHAMBERS: So if that's is available it's not being done because the public won't buy it on its own.

SENATOR CONNEALY: No.

SENATOR CHAMBERS: Isn't that true?

SENATOR CONNEALY: No.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 75

SENATOR CHAMBERS: Then why do we have to have a bill to restrict the availability of regular in order to get people to buy what you're talking about?

SENATOR CONNEALY: We...we do not have a bill that would restrict the availability of regular without ethanol. This would not restrict it. It would just make it that you'd also have to have the other available. This is not a mandate to restrict the regular gasoline without ethanol.

SENATOR CHAMBERS: Well, let me ask you this. Since you're putting a formula for the gasoline in this bill, are you willing to change this bill to say that the lowest ethanol blend must be no higher than 87 octane? Are you willing to say that?

SENATOR CONNEALY: That's my goal, but I don't think that it would be the only one because of the fact that you could take the 87 octane gasoline and make a mid-grade gasoline that is still...that is available now that Senator Baker says he's worried about getting rid of. So I don't want to have that the only grade available. I want to...

SENATOR CHAMBERS: No, here's what...

SENATOR CONNEALY: ...broaden the choice.

SENATOR CHAMBERS: No, here's what I'm saying. We're talking about a mandate and a floor in this bill. Are you willing to let the floor for this mandated ethanol mix be 87 octane; that that...that has to be the level of octane of the ethanol blend?

SENATOR CONNEALY: (Inaudible.)

SENATOR CHAMBERS: You can answer on your time. Members of the Legislature, here's what I'm getting at. I was saying this, and we don't have many people here. Right now, Nebraska can find this 85 octane gasoline, add the ethanol, bring it up to 87 octane at the level which regular is at now. They can do that, but they know the public will not buy it. If the public is not going to buy 89 octane ethanol you know it's not going to buy 87 octane. It's not going to buy...pay the same for less. So,

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 75, 657

with all this talk that Senator Connealy is giving us, based on this 85 octane or this subgrade gasoline, he knows that's not going to...

SENATOR COORDSEN: One minute.

SENATOR CHAMBERS: ...work. That is not even in the plan. That is a smoke screen to mislead. They can do that now, but ethanol cannot stand on its own bottom. It cannot compete in the marketplace and be sold. Did you say "time"? Did you say my time was up?

SENATOR COORDSEN: You have...

SENATOR CHAMBERS: Oh.

SENATOR COORDSEN: ...45 seconds.

SENATOR CHAMBERS: Thank you, and I'm going to use them to the best advantage. What I intend to do the next time I turn on my light is pursue this approach that I'm taking now to show that what is being offered by Senator Connealy, not in his bill, can be done now but he dare not put it in the bill because that's not what he has in mind.

SENATOR COORDSEN: Thank you. Items for the record, Mr. Clerk.

CLERK: Mr. President, thank you. Senator Wickersham, an amendment to LB 657 to be printed, and a meeting announcement, Mr. President, of the Revenue and Appropriations Committee. (Legislative Journal page 1324.)

Mr. President, I have a priority motion. Senator Byars would move to recess until 1:30 p.m.

SENATOR COORDSEN: The motion is to adjourn until 1:30. All in favor say aye. The motion is to recess until 1:30. All those in favor please say aye. Opposed nay. We are recessed.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 56, 113, 113A, 408, 692, 706
 LR 51

RECESS

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good afternoon. Welcome to the George W. Norris Legislative Chamber. We'll begin the afternoon business. Members, would you please record your presence.

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

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

CLERK: Mr. President, LR 51 is ready for your signature, and Enrollment and Review reports LB 56, LB 113, LB 113A, LB 408, LB 706 as correctly engrossed. That's all that I have, Mr. President. (Legislative Journal pages 1325-1326.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. (Visitors introduced.) While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 51. Mr. Clerk, Select File.

CLERK: Mr. President, the first bill, Select File, Senator Erdman, I have Enrollment and Review amendments on LB 692. (AM7071, Legislative Journal page 1103.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 692.

PRESIDENT MAURSTAD: Thank you, Senator. The question is the adoption of the E & R amendments to LB 692. Those in favor say aye. Those opposed nay. The amendments are agreed to.

CLERK: Senator Byars, Senator, I have AM0946, you had filed that with me some time ago, Senator.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

SENATOR BYARS: We wish to withdraw and substitute.

PRESIDENT MAURSTAD: The amendment is withdrawn, without objection. Senator Byars.

CLERK: Senator, what are we substituting? I'm sorry.

SENATOR BYARS: We're substituting the Jensen amendment, number AM1137.

CLERK: Yes, sir. (AM1137, Legislative Journal page 1326.)

PRESIDENT MAURSTAD: Senator Jensen, you're recognized to open on AM1137.

SENATOR JENSEN: Mr. Lieutenant Governor, members of the Legislature, AM1137 is really a cleanup of the bill, LB 692, as...after we finished on General File. I do want to certainly acknowledge the number of senators that we worked with to bring us to this point: of course, Senator Wehrbein and Senator Don Pederson, from the Appropriations Committee, Senator Byars. We've also spent time with Senator Curt Bromm and John Hilgert, Senator Robak, Senator Chambers, all bringing us to this point. And I believe at this point in time that we do have, first of all, a good clean-up amendment, and then this will be followed also with an amendment by Senator Byars which addresses the public health section. This primarily is in the mental health respite and those sections. I'll just...and all of you should have just a sheet on your desk at this point in time, and I'll just refer to that and tell you a little bit about some of the things that we have addressed through this amendment. And then, if you have any questions I'd be glad to answer those, or if you want to elaborate on...on a particular area, I'd be glad to do that, too. First of all, we did cover respite services with an additional rule and regulation requirement that's on page 1, lines 15 and 18. There was funding to the Nebraska Department of Justice to enforce provisions of a bill that we passed two years ago, LB 574, which really related to nonparticipating manufacturers to the tobacco master settlement agreement. There were about 16 states that have been challenged on their tobacco settlement because the state itself was not addressing the

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 372, 692

nonparticipating manufacturers. These are cigarettes that are sold by other than the participating manufacturers in those states. And so with this we will be addressing that issue. We also address some reporting requirements on page 2, lines 7 through 11. We added and put in statute a minority representation on the Nebraska Health Care Council. Presently we have that on the council, but this would just put it in statute so that if another administration came along they would still have to follow that minority representation, at least one, on the Nebraska Health Care Council. The fifth item on the list was behavior health rates, which are provider rates to hospitals. We took that out of LB 372, managed care contractor may negotiate different rates with different providers as necessary and appropriate. Six, we address the behavior health services, clarify a formula for distribution of funding to regional governing boards, clarify that services may be provided directly by a regional governing board only after competitive bidding and a determination by the board with HHS approval that the services can be more reasonably and beneficially provided by the board and require consultation with the state Mental Health Planning and Evaluation Council. Seven, we addressed emergency protective custody on page 3, in lines 13 and 19. On eight, developmental disabilities, clarified funding distribution based on length of time on the waiting list. And nine, we also added \$60,000 to respite funding. Actually, this was an error in the last...when we presented LB 692 we just left off the \$60,000, and this is putting it back in there. That's the way it was intended to be. With that, I will be glad to answer any questions, and thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. Debate on the adoption of AM1137? Senator Beutler.

SENATOR BEUTLER: Senator Jensen, if you would, could you just go over briefly how, under the amendment, the behavioral health funding formulas would work, and under emergency protective custody and developmental disabilities? Do they work on a per capita basis, or do they work on some other formula of distribution? And, if so, what...what formulas are those, or how...what...what is the basic principle involved?

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

SENATOR JENSEN: Just on...

PRESIDENT MAURSTAD: Senator Jensen.

SENATOR JENSEN: Excuse me. Thank you, Mr. President. One is based on...on the population and funding of that particular item. Which one first would you...

SENATOR BEUTLER: Well, starting with behavioral health rates, now that...that funding is...is going directly to the providers, is that...is that the case, to hospitals?

SENATOR JENSEN: That...that's the one that addresses the rates?

SENATOR BEUTLER: Well, the behavior health services is really the part that I was interested in. There is a...a formula for distribution to the regional governing boards, and that formula is changed in the committee amend...or in this amendment, apparently? And I just wanted to understand, in the end with this amendment, is the funding formula, is it based on per capita, or is it based upon some other formula or system?

SENATOR JENSEN: Senator Beutler, we really didn't change it, but...

SENATOR BEUTLER: Okay.

SENATOR JENSEN: ...it is based on other things, other than just population. It...it...

SENATOR BEUTLER: And...

SENATOR JENSEN: We did clarify that formula for the distribution of that funding, somewhat.

SENATOR BEUTLER: Is it the same as the formula that applied previously?

SENATOR JENSEN: Same as current.

SENATOR BEUTLER: Pardon me?

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

SENATOR JENSEN: Same as we currently have.

SENATOR BEUTLER: Same as we currently have? Is that...is that true also of the emergency protective custody funding distribution?

SENATOR JENSEN: Yes.

SENATOR BEUTLER: And is that true also for the developmental disabilities section?

SENATOR JENSEN: No, no, that's a special priority. And we did change the distribution, and it's based on length of time that you're on that waiting list.

SENATOR BEUTLER: I...is there more than one waiting list in the state?

SENATOR JENSEN: No.

SENATOR BEUTLER: There's just one waiting list? Okay, so it goes by individual, based upon how far...based upon who's first on the waiting list.

SENATOR JENSEN: How long they've been on, yes.

SENATOR BEUTLER: How long they've been on. Okay, thank you very much.

SENATOR JENSEN: And I want to acknowledge, Senator Beutler, we also spent some time with your office, and we appreciate your input into this issue also. Also, I didn't mention Senator Kristensen, who had a great deal of time into this amendment.

SENATOR BEUTLER: Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. Senator Jensen, you're recognized to close.

SENATOR JENSEN: Thank you. I will just ask that approval of

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

April 3, 2001 LB 692

the amendment, like I said, we do have a public health section that Senator Byars is carrying. And then we'll be able to answer, hopefully, any questions that you might have on LB 692. With that, I'd just ask for approval of the amendment.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. The question is the adoption of AM1137 to LB 692. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

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

CLERK: Mr. President, Senator Schimek and Wickersham would move to amend with AM1007. (Legislative Journal page 1090.)

PRESIDENT MAURSTAD: Senator Schimek, you're recognized to open on your amendment to LB 692.

SENATOR SCHIMEK: Yes, thank you, Mr. President, members. This is an issue that we discussed briefly on General File, and I decided that we needed further discussion on it. And I would really like to see us adopt this amendment. This amendment simply wipes out some of the language for distribution of funds and makes the distribution of funds incentive-based grants only. Now if you recall our discussion on General File, and incidentally the chart that I've passed out to you is a little bit updated and it has each portion for each of the years out. And you'll remember from our discussion that the first two years will be a \$10 million grant, second two years it will be \$12 million each, and then the fifth year is \$14 million. And the way that grant is to be distributed is that 40 percent of that grant goes to the institution. So 40 percent of \$10 million goes to those institutions automatically, to Creighton University, Boys Town, UNMC and UNL. Then the other 60 percent goes by incentive to all four of those institutions based on how much they actually got in grants from the NIH, so there is a rationale for that. I have some problem with the state expanding the numbers of research institutions that we are funding. But I am willing to overlook that if we can come to

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

some agreement about how this money should be distributed. If you'll notice, there's another handout that I...that I gave to you a little while ago, and it's about the Georgia Cancer Initiative that the Governor of that state has initiated. And if you'll read down through the article, you'll see that the Governor is recommending that the state use \$300 million to \$400 million in tobacco settlement funds for this cancer research. They are really targeting and they are really focusing in, in one particular arena. I'm not...I'm not saying this to talk us into doing something like that, although that certainly would be something to talk about. But I am saying it to indicate that there is a lot of money being focused in other states on research. And we want the University of Nebraska Medical Center and the UNL Research Center to be competitive in some of these arenas. And the more that we give away to other institutions, I'm suggesting the less will be available for our own state institutions. So, having said all that, I know the political reality of all of this is a lot of deals have already been put together. All four institutions have been included; I'm not going to try to fight that. But at the very least could we take all 100 percent of that money and divide it according to the way the NIH grants have been coming in, and that's...for this past year it was 29 or almost 50 percent...almost 30 percent and 70 percent respectively, so that...so that Creighton and Boys Town would share that 30 percent and the UNMC, UNL would share the 70 percent. I feel real strongly about this. Up until 1993, we did not give grant research monies to institutions, other than state institutions. Beginning in 1993, we passed LB 595, I think it was, and we included Creighton in the mix. And at that time I argued that we shouldn't do it. I lost the argument, but I think that time has come to prove that we really need to have a rationale for giving this money away. We ought not to just give it away; we ought to have it based on a solid rationale to make sure that we get the best use out of our money. And because these are NIH grants, the good thing about it is the Health Department doesn't have to oversee and audit these grants, and the other good thing about it is that we know that these grant programs will be well done. There are other options that we could take this with. We could omit Creighton and Boys Town entirely. We could change it so that Creighton and Boys Town are totally wiped out from the

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

April 3, 2001 LB 692

base but allowed to compete for the incentive grants, or we could simply make all the dollars incentive grants, which is what I am suggesting here today. So, with that, I would hope that we would have some discussion on this issue. I think it's an important issue, not only within the confines of this bill, but the larger issue perhaps of what we do with our state resources. With that, Mr. President, I would yield the rest of my time back to the Chair.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. On the Schimek amendment to LB 692, Senator Wickersham.

SENATOR WICKERSHAM: Mr. President, I rise in support of Senator Schimek's amendment. It was interesting that she recited some of the history that has preceded us in terms of efforts to provide state monies for a variety of research projects. One of the things that occurred after the passage of the bill, which she noted, where we simply directed monies to an institution was that we had trouble making sure that the monies had been properly expended. We actually had some problems in that regard, if that doesn't sound too incredible to you. But I think it points out one of the weaknesses of simply directing that somebody gets money without properly controlling why, or how, or for what they get the money. Now, I think that someone has advised me that the rationale for simply distributing these rather large funds in the...in the manner stated is to make sure that the institutions have enough funding to buy, as I understand it, capital equipment or basic infrastructure to conduct research and to then apply for the NIH grants, which are competitive, and then based on the NIH grants they would receive additional funds. Well, that may be all well and good, but I don't...and maybe others who are more familiar with the amendment can tell me where that's what the use of the monies are...is restricted to, or that we would have any accountability if they failed to do what we think they're supposed to do with the money. Now I think that if they are going to apply for NIH grants, maybe it is not inconceivable that they should have to make some significant effort within their institutions, if it requires that, to develop the infrastructure, to develop whatever equipment is necessary to apply and qualify for those NIH grants. Otherwise, it seems to me that the institutions may

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

April 3, 2001

LB 692

not have anything at stake and they may not have as much ownership in the project as what we would normally say institutions should have, if they're going to receive our money or, in fact, anybody else's money. We frequently require some effort by participating institutions or organizations. It isn't often that we just hand out money and say do whatever you want with it, which is what I kind of understand out of this amendment. But again, maybe somebody can disabuse that notion. The other idea that we would have commonly expressed in this area is that we will get the most bang for our buck if it is competitive in the nature...in a competitive award, that the stronger the institutions compete for the dollars, the more we will get. Well, this is clearly not competition. This is just handing them the money and, I guess, hoping that we (sic--they) do what they (sic--we) intend with it. Now I, to go against two principles that we have oftentimes expressed here, there ought to be some local match or some local effort, and third...or second, that we will get the most out of our money if we'll...if we cause them to compete for our dollars seems strange to me in this context. Why would we give up those two principles that we have applied so often and, frankly, quite often productively? Why would we give those up in this instance? And if we adopt Senator Schimek's amendment, we don't have to give up on those principles. I don't think we should give up on those principles.

PRESIDENT MAURSTAD: One minute.

SENATOR WICKERSHAM: I think that if anything is required of the local institutions, that shows their commitments and I think that they should have to compete. We will all, ultimately, get the greater benefit if they are...if they are made to compete for what are relatively scarce dollars. I don't think we should just hand out money and expect them to make a beneficial use out of it.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Further debate? Senator Kristensen.

SPEAKER KRISTENSEN: Thank you, Mr. President. Members of the Legislature, Senator Wickersham, of course I know that you

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

April 3, 2001

LB 692

remember the \$700 million of state aid that we send out of this room every year and we don't know tell them whether they can buy equipment or whether they can buy buildings with it. We basically give them \$700 million and say, use your best judgment. I'll probably put that money aside. I do think what's important here is that if you are going to have research, it needs to have stability. That's the reason that this is done with a number of years in mind. But it requires, in all three of these institutions, and the reason we're doing this is obviously because these are the major research institutions of this state. These are the three or four, I guess if you count UNL into this, these are the four institutions who do do the research in this state; there is no one else, and that's the reason it's tied to NIH funding on a percentage basis, so that you don't have Minden High School trying to come in for research dollars. The second portion of this is that they are done with so many combined projects that if you undertake to do this there will be a fluctuation because the percentage of funding is based on how many grants that they have. So in one year, if they have some grants that are coming due, and that particular year the next institution has a lot of grants that they apply to because they have more room to do so, their percentage goes up. The percentages will fluctuate, and with that wide fluctuation will, under this amendment, would also fluctuate the funding. Which means that if you have a hearing research project, you can't attract someone if you can't say, look, guaranteed to you for the next five years is X amount of dollars for this particular research grant. If that amount fluctuates every year and the funding fluctuates, you're unable to sustain or track or have a good project of research. I understand what Senator Schimek says, but the practical impact of that is, is that you will have wide swings that this...and if we want to have a restriction, they're not going to put any money into buildings; I don't have any problem with that restriction in the buildings, but it is equipment, and it is a matter of making some long-term commitment. Why would you buy an expensive laboratory equipped if the next year, because of these fund fluctuations, there's not sufficient monies to hire or have someone work in them? You've wasted the purchase of the money, that's the reason you need a consistent flow and a predictable flow, and that's the reason that this is done with basically all those institutions

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

April 3, 2001

LB 692

together. The lion's share of it does go to the university, but we also include those two other institutions because they all do specialties as well. Realize that if you look at Boys Town, for example, they're going to be very interested in the old and the young, and that is in hearing. Now that's not something that research has done in other areas or other institutions. People who have hearing at a very young age and those problems, that's very valuable research for kids; that's the reason the Boys Town Hospital is interested in doing that. But that research also carries over to the very old who, as they get a little older, lose their hearing. And so they have a particular niche. One institution does a different group of research, they have different technology needs.

PRESIDENT MAURSTAD: One minute.

SPEAKER KRISTENSEN: And so, although I understand Senator Schimek's position, as a practical matter, since these are all interrelated institutions, they are the only four that can do these things, the need for some predictability and a long-term basis to plan is crucial for these to be successful, that's the reason the amendment was written the way it was and came out of the Health Committee. So I would hope that we would keep that in mind. And I'd be happy to answer any other questions. I realize my time is running short, but I would oppose the Schimek amendment.

PRESIDENT MAURSTAD: Thank you, Senator Kristensen. (Visitors introduced.) Further debate on the Schimek amendment? Senator Jensen, followed by Senators Thompson, Vrtiska, Brown, Wickersham and Schimek. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, there is one thing that I really found evident as we worked through this bill and the tobacco settlement funds that I hadn't seen in my previous seven years in the Legislature and as a state policymaker, and that was a cooperation where we had two universities that used to, at one time perhaps, avoid one another and not work together, we had a spirit of cooperation that was very, very striking. And we have two universities that are doing different things, but yet they are

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

April 3, 2001

LB 692

coming together to work on issues together along with Boys Town, along with University of Nebraska, the four research facilities that we do have. Now, each one of these facilities are not...they're not sitting there, not doing anything, waiting for these dollars. They have been, all of them, ongoing in research for the entire state. And I...I...I look at it as...as the best of all worlds. First of all, we have private funds supporting each one of these institutions. Drive up to the Med Center in Omaha and look at the dollars that individuals have given to that facility for research. I could name some names of individuals, but I hate to start because I wouldn't be able to complete that. Creighton, the same thing, the number of individuals, both local and across the nation, who are contributing to the research and to their ongoing facility. So it isn't like that these are the only dollars that they're going to get, these are dollars that are also going to be matched with the NIH dollars and so we have public, we have private, we have private institutions and we have the university itself all part of this program. And in the health field we do have some competition, and they'll still be competing for different things, but we have a spirit of cooperation that didn't used to be there. And they're sharing technology, they're sharing information, and they're even sharing some facilities back and forth for researchers to work, and I like that. I just think that is the best of all worlds. I think that it...it...it was the two universities that sat down and brought this to us. We weren't forcing anything down their throats at all, it was their idea, they saw a way that they could work together for the betterment of research, technology, biomedicine. And I think we need to...we need to wrap our arms around that and say, yes, this is the way that we should proceed in the future. And so I would stand in opposition to the Schimek amendment and that we would...should go forward with the plans that have been laid out before you. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. Senator Thompson.

SENATOR THOMPSON: Mr. Lieutenant Governor, members of the body, Senator Jensen eloquently put a lot of what I was going to say, so I'm not going to repeat what he said, other than to say, as a

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

April 3, 2001

LB 692

member of the Health and Human Services Committee, I did have the opportunity, through several hearings and also some bills that came before the Legislature, to hear a lot of the issues that both of these research...well, all of these research institutions have been approaching; am impressed with their work and think we, as the Legislature, should support that. I also want to add that in this entire bill and the discussions that went on over the months, putting it together, one of the rare opportunities that we have as a Legislature with this funding is that we have an opportunity to enhance some wonderful things that are happening in many fields. And it's better not to encumber it with too much detail, because for once we actually have some money that we don't have to encumber with a lot of detail, allowing some flexibility and allowing all those institutions to come together and write the bill so that it works the best for them. And I think we need to respect the work that has gone on to create that flexibility so that we do get the best result that we can with this funding, and likewise in the other aspects of the bill, whether it's mental health services, or public health services, other than some general sorts of goals that we're going to hit, we're going to allow that flexibility, I hope. This is a great opportunity to let all of our institutions, whether they be research institutions, or public health organizations, or mental health organizations, be the best they can be and have that opportunity to be able to move forward with that flexibility. And, with that, I would oppose the Schimek amendment.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. Senator Vrtiska, on the Schimek amendment. Senator Vrtiska waives. Senator Brown.

SENATOR BROWN: Mr. President, members of the Legislature, I had...I heard the...Beverly Sills who, after being in an...an opera singer and opera star, went on to head the March of Dimes. I heard her talk one time about how the March of Dimes moved from...from an organization that concentrated on polio to a more general organization that looked at birth defects. And in that historical analysis, she talked about how the March of Dimes started out buying iron lungs for people who had had polio. Then they decided to put some of their money into research and

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

April 3, 2001 LB 692

some of their money into programs to prevent people from being in places where they would be more likely to get polio. And eventually the money that they put into research caused them to be able to quit having to buy iron lungs, and pretty soon polio was totally eradicated, and they moved on to looking at birth defects in general. So I do believe that investing money in research is a real...very...is...is something that we should be doing with our tobacco settlement. And I agree with Senator Jensen that it is...it's very encouraging when we have our research institutions cooperating so that we can make sure that we have as much federal money coming to the state for research as possible. But I think we also have some obligations in terms of accountability for...and it's not just accountability for our money, but accountability for the quality. And so I wondered if Senator Kristensen might be willing to...to respond to some questions about what is included in terms of...of mechanisms for us, who are lay people, to be able to know that that research that we're funding, not only is the money being used appropriately, but that...but it's...in the most effective manner. I understand that the percentages that relate to the NIH money, that that's how the tobacco settlement money is then allocated for the research purposes, so that that is somewhat of our accountability. But what...what is involved in terms of making sure that we have the quality of research that we hope for?

PRESIDENT MAURSTAD: Senator Kristensen.

SPEAKER KRISTENSEN: Thank you, Mr. President. Senator Brown, there's a couple of ways that this occurs, one of them is through when they go out to do the research grants, because a lot of this money will be used to leverage additional monies, they have to have reports. We're actually also requiring here that there is a report back, I believe it's every five years...I'm...Senator Jensen is agreeing, that that is our mechanism for a periodic review. Instead of just handing them the money and saying go forth and do whatever you want to, it will be that report back that is going to be so crucial. The other part is that for them to qualify for the funding, they have to do more reports, they have to do a qualification process that is a very, in terms of being efficient and effective, they

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

April 3, 2001

LB 692

have to lay all that out ahead of time. They're not going to let you waste a few years of that money to find out later that, oops, it doesn't work. So it's sort of tried and true methodology to begin with, and those are the protections that I'm aware of.

SENATOR BROWN: What is the role of peer review by peers who are within the health care field?

SPEAKER KRISTENSEN: That's part of that periodic review. It's done by a peer...a peer review system, so people who are in the...the business actually are doing it. You don't bring outsiders, who aren't familiar with research, in to do that. They obviously can ask tougher questions, but they also know when there's smoke and mirrors being used because they've probably seen it...

PRESIDENT MAURSTAD: One minute.

SPEAKER KRISTENSEN: ...in their institutions as well.

SENATOR BROWN: Thank you. I will...will be probably opposing the Schimek amendment in light of the answers to the questions that I have had in terms of us having some guarantee that, not only are we going to have accountability for...for the way that our money is used, but we...we will have accountability for the quality of the research that is being done. Thank you.

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

SENATOR WICKERSHAM: Mr. President, I have to comment on one remark that Senator Kristensen made about distributing a little over \$700 million. I'm sure he was referring to K-12...the monies that we distribute as aid to K-12 schools. That hardly goes out in an unrestricted fashion; it has to be used for K-12 education in those schools. There are extensive reporting requirements. We check very carefully to see how the monies are used, to make sure they're all used for K-12 education. Every one of them goes through an audit every year. We check the reasons that we gave them the money. If we find any error we

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

April 3, 2001

LB 692

ask for our money back. Sometimes we make substantial corrections. The State Department of Education, through the State Board of Education, enforces significant rules and regulations by which the institutions that receive the money have to abide. We are increasing every day our requirements in one fashion or another for them to perform. They are scrutinized heavily by their local boards. They all make a significant contribution, in fact a much larger contribution than we are asking any of the institutions to receive...that are going to receive these research dollars. All of our schools, in general, contribute about, well, we're getting close, that would be about 50 percent of the monies that are needed for their operation. So there's clearly a local interest. I think sometimes we state things a little "overbroadly". And if Senator Kristensen was thinking about some other \$700 million, I think that he will probably correct himself. But I think that in one respect it isn't inappropriate to think of schools in the context of the principles for public policy that I think this bill raises, because we do indeed require a contribution from the locals to support their schools; they do that in the form of property taxes, so there is indeed a local contribution. We do ask them to perform, we audit them, we scrutinize them, we prod them along, we make sure that the dollars are used appropriately. So I think those...that principle comes into play. The third principle and one that I had not mentioned in the earlier discussion is that we use public resources for public institutions. We do not, at least as I am aware, have...we have not yet made Boys Town, nor have we made Creighton University public institutions. To my understanding of things, they remain private institutions. So when others are speaking of our institutions, I'm not sure what they are talking about, except that there are two public institutions that conduct research activities in the state of Nebraska, and those are University of Nebraska at Lincoln, and UNMC. Those are indeed our institutions. They are supported by the state and supported by the persons who attend them and supported by competitive grants whenever they can receive one of those grants and a few other sources of revenue. But those are our institutions, those two public institutions. The other two institutions belong to someone else, they are not in any sense ours, even though I'm a graduate of one of them. I don't think

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

April 3, 2001 LB 692

it belongs to me and I don't think it belongs to you. I don't think in any sense that that institution is our institution, it is a private institution.

PRESIDENT MAURSTAD: One minute.

SENATOR WICKERSHAM: So there are...there are principle public policy principles that I think that we would be wise to pay attention to: again, that we have full accountability, make sure that the monies are spent in the manner that we intended them; secondly, that there be a contribution by others, if they are to receive our dollars, that there be some effort on their part; and, third, I really do generally believe, and this would not be an exception that I would accept, that public dollars are used for public purposes at our public institutions.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Senator Schimek, on the Schimek amendment to LB 692.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. Senator Kristensen talked quite a little bit about flexibility or fluctuation. I think Senator Thompson talked about flexibility, and I kind of grinned when I heard her say that (laugh), because I could probably shoot that same argument back to her on the city-county merger bill. But I don't know she'd think it was as good on that bill or not. But fluctuation is what Senator Kristensen, Speaker Kristensen talked about and about the need for long-term planning and the fact that your research grants might be up and down, and there might be wide swings in the amount that you get from year to year. But my...my first reaction to that would be, yes, but what...what's the institution's responsibility? I mean, don't they have any underwriting kind of responsibility here? Are we supposed to keep them up to a certain level? Does that become kind of an entitlement after awhile? We, as the state, as Senator Wickersham just stated, we're not really supposed to and we haven't been in the habit of underwriting private institutions. I'm also very appreciative of what Senator Janssen (sic--Jensen) said, because I think the Health Committee and the Appropriations Committee and everybody involved in this has worked very hard. It has been a cooperative effort and I don't

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

April 3, 2001

LB 692

want to do anything to upset the cooperative effort. I'm not trying to do that here. I'm just trying to take the amount of money, the total amount of money and base it on a different distribution idea. And, I guess, I'd like to go back and...and finally talk a little bit about the questions that Senator Brown was asking Senator Kristensen. As I understand it, and maybe I could ask somebody else, since he's not on the floor, but as I understand it this 60 percent that's distributed to the institutions is based on the prior year's research grant from the National Institute of Health. So that 60 percent is all based on how good the research grant proposals are. They are not going to get accepted by NIH if they're not good proposals. They're going to get reviewed every time they turn around. But it's the other 40 percent that I am...that I am really concerned about because that's not based on any of that, and it could go for...it could go for staffing, I'm assuming; it could go for buildings, I'm assuming, I don't know about that. But I'm not sure that we know that all that 40 percent will be used in a manner in which it is absolutely the optimum usage possible of state money. We're not talking about a large amount of money here totally overall. When you look at \$10 million and ultimately \$14 million, compared to \$300 million the state of Georgia is putting into just cancer research, it's kind of scary. How do we ever compete with that? We need to make sure that our dollars are maximized and that we're doing absolutely the best possible job. This should not cause any lack of cooperation between those four institutions, and in fact they are already...

PRESIDENT MAURSTAD: One minute.

SENATOR SCHIMEK: ...cooperating on research grants. I see no reason why that wouldn't continue. I would just ask you to very seriously consider this change in this bill. I know that it has been worked on very hard. I know that people are always reluctant to move even a teeny-weeny footstep once they've got something in place and moving along. But I think it's an important thing to do. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. Senator Suttle, on the Schimek amendment.

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

April 3, 2001 LB 692

SENATOR SUTTLE: Thank you, Mr. President. Members of the Legislature, I...I wanted to respond a little bit to Senator Wickersham's comments about his principles of public money. I think that we have lost sight that this is not public money, this is not tax money. This money was...is...is going to be given to the state of Nebraska from a lawsuit, and it is not public money. Nobody in Nebraska, except the smokers, added to the profits of the cigarette companies that lost this suit. So I...I don't know, I don't know that we have to follow the same principles that Senator Wickersham used in his argument for the Schimek amendment. And I would caution people that there has been a great deal of work done on this. And I know that Senator Schimek feels strongly about that and I respect that completely. I just don't agree with it. And would just tell you that this money was granted and to be used. Different states are doing different things with the money. At least we are using it for medical and health reasons and not for paving roads, where some are using that for infrastructure. So I...I...I guess that we can do this however we want. The cooperation between the Medical Center and Creighton and Boys Town Research Hospital has been worked out and they have a...an agreement, and I don't know where we should say how they should spend this money. And I can't believe that any of them would use this money in an irresponsible way. Senator Schimek says that she just wants to make sure that they...that they use this in the most efficient manner, and I believe that they will. This is not a finite (sic) amount of money; this is a set amount of money. And would encourage the body to reject the Schimek amendment. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Suttle. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, there's just a couple things I wanted to say and then I'll return the rest of the time back to the Chair. The private universities in Nebraska are so very important. First of all, they represent 20 percent of the students in this state, one-third, by the way, of the baccalaureate degree, and 50 percent of those students stay here. So it's a lesser brain drain than we have from our public institutions. But that's

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

April 3, 2001

LB 692

just...just but a part of the situation. I hope you all know that Dr. Lynch at Creighton University has been world renowned in his study of cancer, particularly through genealogy, particularly breast cancer and those type of issues, and so they've been in research for a long, long time. And it is...now we have the opportunity to collaborate between two research universities and to act as a...a catalyst to allow each university to attract even more research dollars, more researchers and to provide a situation where these researchers can come in, not for one grant, but can be there for a period of time to bring in more experts, to bring in more dollars into the state, along with the private dollars that will certainly follow that situation. We will receive here in the Legislature an annual report, and to the Governor, regarding the use of this funding. And then the Appropriations Committee and the Health and Human Services Committee of the Legislature shall conduct a review every five years after the effective date of this act, and every five years thereafter. So we have the annual report, then every five years both the Appropriations and the Health Committee shall review all of the appropriations to these institutions. So I think we have a good reporting mechanism. And at some future date, if you don't feel that this is...we're getting our dollar's worth, why we can change that. But certainly we have an opportunity here, a rare opportunity I think, to fund the research that's being done in this state, to allow them to take those dollars and even leverage them more. And so I would just encourage that we stay on course. I respect Senator Schimek in exactly what she's trying to do, but I would ask that we stay, in this case, on course with LB 692 funding of these research facilities. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Jensen. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President. Members, I rise in opposition to Senator Schimek's amendment, and largely based on a fact sheet that I have regarding Boys Town, which I understand is connected to Creighton. Boys Town is a national...the Boys Town National Research Hospital, it's nationally recognized for the help that it provides to basically kids that have hearing, vision, speech and language disorders. And this strikes me as...as a case of one of those that you pay now or

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

April 3, 2001

LB 692

you pay later, I guess, in terms of social costs. I mean if we can remedy some of these problems at childhood or infancy, I think the cost to the state on the whole, as these kids age, will be great...will be far less. So, I wanted to tell you also that Boys Town National Research Hospital is one of the largest, most experienced research and clinical centers in this field; serves about 35,000 kids from the 50 states, and about 25,000 of those kids are from across Nebraska. It's a not-for-profit hospital. It's gone a long way towards making up the gap, when we closed the Nebraska School for the Deaf, to those kids with hearing disorders. And one of the things that really impresses me the most is that the hospital provides more than \$2 million in charity care to needy families. So, you know, while we can make an argument, I guess, that we shouldn't provide this kind of money for private institutions, this is a nonprofit institution, they're helping kids right here in Nebraska, and I see no reason why we shouldn't direct some of this tobacco money to these kids. So, for that reason or those reasons, I oppose the Schimek amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bourne. Senator Schimek, on the Schimek amendment to LB 692.

SENATOR SCHIMEK: Yes. Thank you, Mr. President. Members, I very much appreciate the debate and I very much appreciate everybody's point of view on this. But, I guess, I have to reiterate what I'm saying because I don't know that I've made myself clear, and maybe I have (laugh), and maybe it doesn't make any difference. But I've got to try one more time. Sixty percent of this money that we're going to be giving to these four institutions, 60 percent of it is based on the prior year's NIH grants. That means it is past very, very strong public scrutiny, and it will be peer reviewed periodically. They are going to...I mean, the people doing the research are...know what this is like. You have to tow the line, you have to have results, et cetera. The other 40 percent is just a gimme. It is just a gimme. It is not, as far as I can tell, unless somebody wants to show me differently, it's not based on anything; you just get it because you're there. All my amendment would do is say the whole 100 percent ought to be based on the incentive portion of the grant, because then we

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

know that it's gone through tough scrutiny, that it's been and will be continued to be peer reviewed, and we're getting good quality for our money. I don't...I don't dispute that Boys Town is doing good research. I'm not coming in here and saying that we should take Boys Town out of this, even though they've never been in before. I'm not saying we should take Creighton out, I just...I'm just saying that we ought to make certain that this money is being spent in the best possible manner. We're talking about...how...well, how many millions of dollars here? We're talking about probably about \$50 million or more; I can't add it up in my head that fast, more actually, more than 60, probably almost \$70 million. It's our responsibility. It may not have come from the taxpayers, but it really belongs to the taxpayers because those tobacco settlements came back to the states; we are the...we are the institution that's supposed to see that these tax dollars are spent wisely. So that is enough of my soapbox. I wanted to make sure that I was making myself clear about what I was trying to do. If somebody can dissuade me that...that I've got it wrong here about what I'm trying to do, then I'll back off, but otherwise (laugh) let's go for a vote.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. Senator Raikes, on the Schimek amendment.

SENATOR RAIKES: Thank you, Lieutenant Governor and members. I rise to support the Schimek amendment and I will try to explain why. We've had some discussion about use of tax funds for public institutions and so on, which I think is all relevant. The basis for the distribution is NIH funds. Those are public funds. So, the institutions involved here have to demonstrate their worthiness, if you will, because they receive NIH funds and those are distributed on the basis of competitive grants, which is part of my point. I think what Senator Schimek is suggesting is that distribution of tobacco funds in the state be consistent with the distribution of NIH funds from the federal government. As I understand it, all of those funds are distributed on a competitive grant basis. Her amendment would make it so that the tobacco funds would be distributed in a similar fashion. It is not the case that...that certain institutions in the state would be left out. As long as they receive NIH funds, they would receive a share of...of...of the

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

tobacco fund money. I'll mention one other point. Senator Kristensen referred to school financing in the state. And I think part of his argument was that in supporting the...or opposing the amendment is that there's a certain amount of fixed funding that's required. We don't do that with schools. You are not entitled to, as Senator Schimek described it, a gimme if you're a school system. You...you have to compete, if you will, through the state aid formula for funding. This amendment, if adopted, would simply make the distribution of tobacco funds consistent with the way funds at the NIH are distributed and, in a sense, consistent with the way we distribute state aid funds to schools in the state. So, with that, I...I...I support the Schimek amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Senator Schimek, you're recognized to close.

SENATOR SCHIMEK: Thank you, Mr. President. Members of the body, I would...I should explain what I'm doing here. It's on page 14 and 15 of the bill, it's in the section dealing with biomedical research, and it eliminates the language that provides an automatic amount to each of the institutions, groups of institutions, and rather it retains the language and adds...that says: The funds shall be distributed to the University of Nebraska and for contracts with other postsecondary educational institutions having colleges of medicine in Nebraska and their affiliated research hospitals in Nebraska based on the percentage of all funds expended by such institutions from the National Institutes of Health of the United States Department of Health and Human Services in the prior year. That's all I'm trying to do. I think it's the right policy. I think that once you start down a road it is very difficult to undo a policy, because then it becomes like an entitlement. It's sort of like the cigarette tax money that we use for building funds, and that wasn't...I mean, that was supposed to do the Devaney Center, right, and then that was it, and then they'd go away and they'd go back to using them for health issues. Once you start down a road it's very difficult to undo that path. And here we're setting up a system where it's almost an entitlement with part of this money, and I don't think that we should do that and I hope that you will agree with

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

April 3, 2001 LB 692

me. Again I might tell you that before 1993 we didn't have any of this money that was going in, in terms of entitlement, at least to my knowledge. Before that, I believe that the research money, the cancer research money, was on a grant basis. In 1993, we passed LB 595 and we did start down that road, and we divided it at that time between UNMC Eppler and Creighton University, a direct split, even though, even though we knew that the grants that those two institutions were getting at that time weren't necessarily equitable. I would just ask for your serious consideration in the adoption of the amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. The question is the adoption of AM1007 to LB 692. Those in favor vote aye; those opposed vote nay. A record vote has been requested. Senator Foley, was that you who requested a record vote? Thank you, Senator. Mr. Clerk, please record.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1328-1329.) The vote is 6 ayes, 32 nays on the adoption of Senator Schimek's amendment, Mr. President.

PRESIDENT MAURSTAD: The amendment fails. Mr. Clerk.

ASSISTANT CLERK: Next amendment, Mr. President, is offered by Senators Byars and Jensen; this is AM1331. (Legislative Journal page 1329.)

PRESIDENT MAURSTAD: Senator Byars, you're recognized to open on AM1331 to LB 692.

SENATOR BYARS: Thank you, Mr. President and colleagues. I want to thank everyone for their patience and cooperation. This certainly is a subject that has a tremendous amount of depth, a lot of detail, and one that's vitally important to the citizens of the state of Nebraska. And we appreciate the cooperation of...of so many of you, our colleagues, and your staff who have put in enumerable hours, days of negotiations, of working toward finding a...a work product, a finished product that is going to accomplish what our...our goals have been, and that is to take advantage of this great opportunity to create a statewide local

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

April 3, 2001

LB 692

public health system and to allocate the dollars from the tobacco settlement toward strong, chronic public health needs. As I explained to you, the AM1331 to LB 692, understand that we're in the process of working some changes to this language; it's being done by Bill Drafters as we speak. We will go through the details and get into any questions, any kind of explanations that need to be done, and we will have a new draft that will be coming down shortly. Let me talk to you first about what we're doing with this amendment in creating a statewide local public health system. Many individuals don't...I don't think completely recognize what public health is in the state of Nebraska, or nationally, as far as that's concerned. It's more than medical services to low income individuals and immunizations to children. Public health is an organized process that promotes and protects physical and mental health, prevents disease, injury, disability, premature death. Public health services are services that are population-based, and public health is there to improve the health status of the entire population of the state as opposed to the treatment of individuals. Nebraska currently has 18 official health departments serving 24 counties. Nebraska has several what we call turning point projects, which are grant funded, through the Robert Wood Johnson Foundation, and administered by the Department of Health and Human Services. This grant has helped to do an assessment; it doesn't accomplish core functions. Many counties in the state of Nebraska have little, if no, access to public health services. DHHS has done the best that they can to fill the gaps, but our citizens need more and they certainly deserve better than we've been giving them in public health. This amendment is the first time that our state will aggressively fund a public health system. It allows for a locally created, locally administered public health department. It provides dollars for collaboration for interlocal agreements. It provides dollars for infrastructure, and it provides dollars based on a county's population. This proposal is incentive driven, encouraging counties to develop their health departments. What does the proposal do? Going through it section-by-section to try to help you to understand, understanding the basic pieces that I'm going to talk about have agreement; we have other agreements worked out that need to be initiated into the bill. The first section is the core function

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

for public health. Section 2 is the clean-up language, Section 3 the intent language. Section 4 gets into the meat of the application process in LB 692. In the application process there's \$5,000 available for each county that seeks to develop an interlocal agreement for the creation of a public health department. This is a one-time only application and it's only available for this coming fiscal year. A county can receive that \$5,000 to develop a health department if it serves a population of 50,000 people or over, or at least 3 contiguous counties are involved and serve at least 30,000 people. We have brought the public health...the existing public health sector, we have put together as many heads as we possibly can to try to find a way to enable a structure to be developed across the entire state making it nonpunitive but encouraging counties to participate. And we think that we've come with this language and we feel it's very good. If after the first year a county has not joined the health department, it can still be in the process to enter into an interlocal agreement or it might petition into an existing interlocal agreement. So it will not be frozen out, but it will not receive the \$5,000 incentive money that those counties who applied in the first year will receive. Section 6 lists the essential elements that a public health office must have carried out. These are essential elements that are given to us by the Center for Disease Control and which every public health agency across the United States uses for their essential elements. Section 7 requires that each local health department is required to prepare and submit an annual report to provide accountability, which is extremely important. We have to learn from this process as we go along. And the reporting factor is absolutely necessary for us to have these funds accountable and for us to continue to develop expertise in this area. Section 9 deals with the offices of minority health in each congressional district. It will establish three offices, one which is already in existence in Lincoln, one in Omaha, and another in the 3rd Congressional District in western Nebraska. It sets out the minority health initiatives, what need to be targeted, what is the priorities in minority health. We have worked very closely with Senator Chambers and with the minority health community to draft language that's going to be meaningful and make certain that dollars get appropriately where they need to be to target the

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

needs of our minority community in the state of Nebraska. A congressional district, excuse me, dollars are prorated by...on the minority population within each county. It is a requirement that for a county to qualify for minority health dollars, they must have at least a 5 percent minority health population. A congressional district, we have in the handout that we gave to you, with over 100,000 minority population shall dedicate 70 percent of the prorated funds. This is the language that is going to be changed. I have submitted an amendment that will change this language. We're having it come down in a total redraft of the amendment. That will be changed to...from 100,000 to 75,000. This makes it more reasonable with the minority numbers that we have to work with, and that number will be changed from 100 to 75. The dollars that are dedicated will be dedicated to federally qualified health clinics, federally qualified health clinic look-alikes. This is federal language that is used presently to...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...identify these types of necessities. Section 10, the Nebraska Public Health Fund is created. It creates...it allocates \$100,000 for two new staff in Department of Health and Human Services. It also creates the Public Health Office tiers for receipt of funds once the infrastructure...to do the infrastructure, which includes management and operation of each office. And it breaks down the tiers on how these offices will serve a population and what that population will be, and the financial amounts that will be served. My light is on so I can finish up, Mr...Senator Cudaback.

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

CLERK: Mr. President, Senator Byars would move to amend. Senator, did you...based on your comments, did you want to take this up now? Okay. (FA155, Legislative Journal page 1329.)

SENATOR CUDABACK: Senator Byars, to open on your amendment to AM1331.

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

April 3, 2001

LB 692

SENATOR BYARS: Thank you, Senator Cudaback and colleagues. I'll use a moment of this time to finish talking about the allocation of the...of the dollars. Offices serving a population of 30 to 50 thousand people and 3 contiguous counties would receive \$100,000. Those counties, offices serving a population of 50,001 to 100,000 people would receive \$125,000; over 100,000 to receive \$150,000. The remaining funds will be allocated to each county on a per capita basis. The counties that don't have a public health department shall have their portion held in the fund the remainder of the fiscal year and can be disbursed when the county meets the requirements of the section. The amendment...the amendment in front of you, it's amendment...is that the FA155, Mr. Clerk?

SENATOR CUDABACK: One fifty...

SENATOR BYARS: This is the amendment that I talked to you about in the opening on the bill that, on page 6, line 21, strikes the...the minority population over 100,000 and inserts the population of 75,000. I would ask that amendment be adopted.

SENATOR CUDABACK: Open for discussion on the amendment to the amendment to LB 692. Open for discussion. Senator Jensen, your light was on. Did you want to address this particular amendment?

SENATOR JENSEN: Thank you, Senator Cudaback and members of the Legislature. Yes, I'll just make a few comments. First of all, this is an area that Nebraska was absolutely bottom of the list of all states in addressing, in public health. We have come up, or Senator Byars and his staff person, Janet, along with my staff, Jeff, have worked many hours and have contacted many of you on this particular area. And we can, through this amendment, address all 93 counties, all 93, and it is so important that...that we do this. We haven't had this before, and it will allow us to address the public health issues that, really, these are issues that you don't hear about. They're not headline grabbers, but they are the ones that really address the entire health of the state immunization along with clean water, along with clean air, and all of those many areas that we in

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

Nebraska have taken for granted and not...and have not addressed. And now we have an opportunity to do that. Also, it gives us an opportunity to address the minorities in this state that have not been addressed in the past. They make a very large segment of our society and they have some special areas that need to be addressed. And you can see in this amendment we are putting substantial dollars into this area, recognizing that blacks are high in infant mortality rate, that there are some areas that the Hispanic people of our state have, the Native Americans with diabetes. And so it gives us an opportunity to address all those areas through putting some dollars into the minority health area. But we have the opportunity now to...with one minority health office in all three of the districts, first, second or third district; it also allows us to have an office within every single county. Every county can partner up with their adjoining counties and come up with a good public health office to address that. Senator Dierks had a bill that they were talking about, some of the diseases in our very important livestock industry, both cattle, hogs, sheep. And I would hope that we can also address the individuals that are citizens with that equal opportunity here to address the health needs of all Nebraskans. With that, I'll return the rest of my time back to the Chair, only to urge you to adopt the amendment to AM1331 and then AM1331. Thank you, Mr. Chairman.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Byars, your light is next. Did you wish to speak?

SENATOR BYARS: Yes, thank you, Mister...Senator Cudaback. In case the body hasn't noticed, we are stalling just a little bit, to be quite honest with you. We're waiting for an amendment to come down which I will request to be substituted for AM1331. It's my intention to withdraw the amendment that I have before you at this point when that time comes, ask for your leave to substitute the amendment with this language and several other changes that have been worked out which will replace AM1331. So I ask your patience. I think we'll have a little dialogue here, so possibly there are a few questions that or things that might need some discussion, and I would yield my time to Senator Chambers.

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

April 3, 2001

LB 692

SENATOR CUDABACK: Senator Chambers, you have about four minutes left.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I have been doing quite a bit of scurrying around the floor on this particular bill. There is an element of the bill that relates to money that will go to minority health. And since the amendment that will ultimately be offered is going to deal with that subject, I may as well explain some of it now. What I had to do was wrench my eyes away from all of this money that's going to the Medical Center, to Creighton, to Boys Town, to UNL, and look at the meager \$2.5 million that is going to be earmarked for minority health. What is going to happen with that money is that a million of it will go into the Omaha area, \$1.5 million will go to the rest of the state, and we're going to have to make sure that it's targeted to the minority groups. There will be no concentrations as large, in any part of the state, as in Omaha. So of that \$1 million, \$700,000 will go to their two federally recognized clinics. There are certain criteria that have to be met. One by name is the Charles Drew Medical Center or Clinic, the other is the Chicano Awareness Center, whatever the formal name may be, that's the last name I knew for it, Indian-Chicano Center. Seventy million...I wish, \$700,000 will go to such a clinic that serves a primarily African-American constituency; \$300,000 will go to a clinic that serves a primarily Spanish-speaking Native American constituency. That will show where that money is to go. The 100...I meant the \$1,500,000 will go to the rest of the state. Many counties have no health delivery system, so what is also going to be done is to take \$300,000 to set up an office of minority health in the Omaha area, one in the Lincoln area, then one in the western part of the state, in an area that I'm sure has probably been designated. So that will be a total of \$2.8 million out of this huge cache, c-a-c-h-e of cash, c-a-s-h. There will be, from a grant program, \$700,000...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...earmarked from that grant program for minority health, to ensure that some money from that grant program will go there. There is another amount set aside for

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

research in the millions. Seven hundred thousand dollars from that money will be earmarked for research on minority health problems. Since my time is just about up that was granted to me by Senator Byars, I will stop at this point.

SENATOR CUDABACK: Thank you, Senator Byars and Senator Chambers. Senator Hartnett.

SENATOR HARTNETT: Senator Byars, Mr. President, members of the body, Senator Byars,...

SENATOR CUDABACK: Senator Byars.

SENATOR HARTNETT: ...I'm looking, in Section 10, is that...I think...did you say over the counties? Will that be changed by Senator...I'm looking at over 100,000 people that were going to get a public health office. I think...did you change that below, 100...100,000 people? Did I hear 70,000, something like that, Senator Byars?

SENATOR BYARS: Senator Hartnett, no. This...the over 100,000 people you see in Section 10 is in the...the overall Public Health Fund. This 175,000 we talked about is in Section 9, which deals with the minority health funding. So...

SENATOR HARTNETT: Okay.

SENATOR BYARS: ...this number remains the same.

SENATOR HARTNETT: Okay. Mr. President, thank you, Senator Byars. Senator Chambers, if you'd like some...the rest of my time, you may have it.

SENATOR CUDABACK: Senator Chambers, you have a little less than four minutes.

SENATOR CHAMBERS: Thank you, Mr. President. And thank you, Senator Hartnett. To return to the subject that I was discussing, which is found in Section 9, by the way, on page 6 of an amendment that is numbered AM1331, that's the one before us now, each office...

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

SENATOR CUDABACK: Senator Chambers, there's an amendment to that amendment.

SENATOR CHAMBERS: Yes, but I meant I'm showing the page number in AM1331 that I am referring to and discussing that will be the subject of an amendment.

SENATOR CUDABACK: Pardon me.

SENATOR CHAMBERS: And by doing it now, I may not have to do as much when that amendment arrives. This portion of the law will establish some of the areas that are to be targeted when we're talking about minority health concerns. There will be, in line 14, striking the word "may" and inserting "shall", so that we know that these items shall be addressed, but there will be no attempt to limit consideration to these items. They will be: infant mortality, adolescent and preadolescent abstinence-only pregnancy prevention...brothers and sisters, that's a mouthful and that probably will be as successful as some other things that have been attempted with mixed success...cardiovascular disease, obesity, diabetes, and asthma. There are other problems, such as prostate cancer, glaucoma, and any number of other maladies. But rather than give a laundry list of what shall be considered, I want to see put in the bill certain pressing problems that cannot be ignored, and leave it open-ended so that these others can be included. I haven't heard the Chair say my one minute benchmark has been reached yet, so I will continue. That language is to be used to guide each one of these three minority offices. They are called satellite offices, and I say again, one in Omaha, one in Lincoln, one in the western part of the state. I do not think enough money is being set aside for minority health concerns. I am trying to work...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...with people who are indicating that all that we're doing is being done in good faith. When we get to the research component, I'm going to have somebody try to mitigate my concerns about suggesting that they're going to be

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

funded in perpetuity from this tobacco money. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Chambers, your light is next, so you may continue, if you wish to.

SENATOR CHAMBERS: Thank you. I'm continuing because I think I have to. Mr. President and members of the Legislature, this whole exercise that we're engaged in can raise questions in the mind of anybody who is paying attention to it and who is serious about the question of money being given to these states by the tobacco industry because of the wrongfulness of conduct engaged in, knowingly and intentionally, by the tobacco industry which harmed the public health; conduct which resulted in deaths numbering around 140 million...or thousand a year. Now, that kind of wrongful conduct would ordinarily result in somebody going to jail. But when you are big enough, you're powerful enough, you donate enough money to the campaigns of important politicians, you don't go to jail; nothing happens to you. You buy a ticket that allows you to continue engaging in that kind of conduct. People will continue to die from the use of tobacco products. Corporations will continue to make hundreds of millions of dollars and even billions ultimately in this country and in other countries. There will be attempts to tax tobacco products, ostensibly to discourage people from smoking. But when you look at the usages made of that tax money, there is no relationship between the expressed purpose and the use of the money. It goes for buildings. Some will go for a river front project in Omaha, an Antelope Park project in Lincoln. So many things are associated with the utilization of tobacco. Many problems of a health nature will continue to crop up all over the country. Different constituencies are going to be targeted by the tobacco industry. As soon as those scoundrels become aware that one particular targeted group is having its brain cells stimulated so that thought occurs and the instinct for self-preservation asserts itself and a substantial percentage of that group ceases to use the tobacco products, those wily rascals have already targeted another group because they must sell their product. The fact that people die is inconsequential. I saw one of the best April Fools

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 398, 461A, 516, 657, 692

presentations on television Sunday. This old white gentleman, dressed like they dress a typical corporate person, looked to me like his teeth has been ground down in front from chewing tobacco...chewing cigars, and he probably called them "ce-gars" when he goes down south, "cigars" when he goes other places, and he looked right in the camera and he said words to this effect...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ..."I represent the tobacco industry. Because we believe truth in advertising," or something like that, "we are not going to sell any more products that harm the public. The public's confidence and welfare mean more to us than anything else. April Fool." I thought that was so witty and so clever and so in keeping with the tactics of the tobacco industry. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Mr. Clerk, items for the record?

CLERK: Mr. President, Senator Hilgert, an amendment to LB 398; Senator Wickersham to LB 657; Senator Beutler to LB 516. A new A bill, Mr. President, LB 461A by Senator Bromm. (Read by title for the first time.) That's all that I have, Mr. President. (Legislative Journal pages 1329-1333.)

CLERK: Thank you, Mr. Clerk. Back with amendment to AM1331 to LB 692. Senator Jensen, followed by Senators Byars, Kristensen and Chambers. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, this last year I served on an infant mortality task force and we met several times to look at why, as the nation was seeing a decline in infant mortality from about 1997 on, Nebraska not only saw an incline but we were number one in the nation per capita with infant mortality. And we started to look at that and we also saw that the black population was much higher. I happened to get just today from the March of Dimes a data book for policymakers, and there's a couple of things that really stand out in there. First of all, African-American

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

April 3, 2001

LB 692

infants are more than twice as likely as white infants to die in the first year of their life. This gives us an opportunity through this public health area to look at that. In 1998, infant mortality rate for babies born to black mothers was 13.8 per thousand compared to 6.0 for whites; 9.3 for Native Americans; 5.5 for Asian/Pacific Islanders. And then on top of that, in 1998 African Americans were more than three times as likely as whites to die from pregnancy complications and childbirth. Half of the maternal deaths in this county could be prevented through early diagnosis and appropriate medical care of pregnancy complications. Again, that is one thing that the public health area can do, and that's through education, through programs, through even going out on the streets to direct mothers, pregnant, to get adequate care. It's so important in that prenatal care of your diet, also to restrict smoking, to restrict alcohol, and once presented with the facts, I think you will find that we can save lives here in Nebraska. We can reduce that infant mortality of blacks and other minorities because of this. It is an area that we've long overlooked and I think that we do have the opportunity now through this amendment and this bill to address those issues. I would again just ask for support to the Byars amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Byars.

SENATOR BYARS: Thank you, Senator Cudaback and colleagues. And once again, I thank you for your patience. We're just a few more minutes away from the amendment coming down so I think we can explain it to you fairly briefly and clearly so that everyone will understand and find a high degree of comfort and support. I want to just take a couple of minutes, while we have the time, to emphasize what public health is and how important public health is in all of our lives. I don't think a lot of us think about it. Those who have lived in an urban area have had more opportunity to be exposed to good sound public health policy. Those of us who have lived in semi-rural areas, exposed a little bit, depending on whether we had a local hospital. Every county is required to have a public health officer in statute, and a lot of us didn't realize that. Typically, that public health officer is there in title only. But we did recognize some time ago, obviously, that this was important to

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

April 3, 2001

LB 692

our citizenry, and even though we did no more than create a public health officer, it was at least a beginning of recognition that something needed to be done. You know, I don't think a lot of us realize when you pick up the paper on a Wednesday morning or you turn on the television or turn on the radio and you hear about instances such possible E. coli outbreak, a result of some sort of improper food handling out of a public facility, these are the type of public health issues that we're talking about dealing with. And up till this point, many communities that have had these types of circumstances have had no way to deal with them, so what they have done is reached in the Department of Health and Human Services or into the larger metropolitan areas, and fortunately those areas have been willing to provide advice and help in dealing with these circumstances. In the circumstance where it would be a Lincoln or an Omaha crisis, there is already a system set up to prevent it. And part of that begins, as I said earlier, with prevention, proper food handling, something that is extremely important, things that we take for granted. But through a proper inspection process and appropriate monitoring with realistic rules and regulations, we as a public can be protected, and that's what good public health is about. Environment, when you start talking about the environment, and on this floor we're all very cognizant, very aware of what happens with clean air, clean water, but we don't think about who it is that regulates it, who it is that has those responsibilities. These are part of the elements of a good, strong public health department, and they're designed to beneficially benefit an entire population and not just individuals. There are so many preventive things that can be done in good public health. And let's not forget, the reason that we're here today, the reason that so many of us have spent hours, days, weeks trying to come up with good public health policy in the state, is because we've basically had none. We have rated last in the entire United States in our public health infrastructure. We have made a few stops and starts in order to deal with it, we talked some about the turning point grants...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...that we've gotten from Robert Woods

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

(sic--Wood) Johnson and where we've started moving in the right direction. But now this is an opportunity, a golden opportunity, for us to take public health funds, funds that come to us because of the tobacco settlement, that should be used for the protection of the citizens of this state, and we can take advantage of that golden opportunity to build a strong infrastructure that's going to deal not with just one individual, not with just a few, but with all of the citizens of the state of Nebraska. And thank you for your indulgence a few more minutes, please.

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

SPEAKER KRISTENSEN: Thank you, Mr. President and members of the Legislature. Senator Chambers outlined to you part of the agreement and the designation of monies and where it was going to go as it related to public health. There is another piece that goes to this that he should be acknowledged for and as well as the other people who are supporting this bill. That is going to be the designation of additional monies. There will be new grant monies coming in under this bill in the sum of \$5 million. Of that \$5 million grant money, \$700,000 every year will be directed towards doing minority health grants, and these will be varieties of grants. Obviously they're eligible to do the other \$4.3 million, and they can compete for those so they can get additional ones if they want to, but at a minimum there will be \$700,000 of those grants included every year. The third portion would be the research portion. There are certainly diseases, illnesses that are unique, and there are higher incidences of those in the minority population. There would be \$700,000 of the research money every year put over to do ethnic and minority research. And I want to make sure that the record is clear that those are to go to those specific areas that have higher incidence of illness or disease where the research would have meaningful impact, the research that could be done. Obviously this is not a maximum amount that could be spent for minority research, rather it is a minimum that will have to be done. Senator Schimek brought up some good points, Senator Brown did in terms of review and peer review, but there also is going to be some periodic reporting back here to us on what they've done

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

April 3, 2001

LB 692

with those research dollars, the progress they're making, and what it actually went to. And so the real test is going to be when those reports and those things come back to us in the Legislature, were they doing what we intended to do? They will look at today's debate and will make some judgments at that point in time. But it certainly has been a total package that you have to look at for putting those additional minority health issues into play. When I go back home, people in my own community don't realize that they're impacted by minority health because they have a lot of those issues as well in our community. And so the public health communities that are going to be established, certainly Omaha is going to have the largest area that needs to be addressed, and I think we do that with this upcoming amendment, but there is certainly a need for those public health areas out around the state. There will be one established in the 3rd Congressional District, but the one that's particular unique to Omaha, I think there's another good portion. It provides an identifiable place for people to go. It provides a point of presence, it provides a resource where they will be able to coordinate; they'll also be able to access other dollars; they'll also be able to act as an advocate for getting additional dollars in programming. And we need to get that office established. I think we can do that through these funds, and I would hope that when the amendment comes, that we will do that. You'll find that there will be a Byars... I assume a Byars-Jensen amendment, and I think you'll see Senator Chambers and I amend that amendment with the additional dollar portion that will go in procedurally. So this will just mean that at that time I'll probably refer to this speech, saying these are the additional dollars that Senator Chambers and I spoke about earlier. I would hope that you would see this as an improvement in the bill. I think it is, and I think that the state will be well served by sending these dollars, but realize that there is some check. We want to make sure that we just don't say it today, but down the line there is some mechanism to make sure, to make sure those dollars are being spent where we except them to go...

SENATOR CUDABACK: One minute.

SPEAKER KRISTENSEN: ...and for the purposes we have them.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Kristensen. Senator Chambers, your light is next.

SENATOR CHAMBERS: Mr. President and members of the Legislature, there has been a lot of work on this bill by groups and individuals. Nothing gives me so much enjoyment as to turn around and see the noses of the important people, the big shots and the representatives of the big shots, see their little runny noses pressed against the window pane on the outside looking in, having the fate of themselves and those who hire them in the hands of others, as the poor so often are on the outside with their runny noses pressed against the window pane, hunger showing in their eyes, rejection, always being on the outside. When they're present, they're discussed by others as though they're not present. But compared to what the poor suffer and endure on a daily basis, those persons out in the Rotunda are somewhat on a vacation. They know that their money is secure. They know that things are going to go their way, and they will exemplify what Jesus, who, by the way, as I pointed out to my colleagues of the Caucasian persuasion, looks more like me than thee, more like me, but what he said: to those that have shall be given; from those that have not shall be taken even that which they seem to have. Bringing it into the high-tech age, we say the rich get richer; the poor get poorer. There's a cynical song that says, "The rich get richer; the poor get children". I wish there were some way to make those people who are out there looking in today feel, if just for five seconds, what the truly poor and impoverished people feel in this society on a daily basis, genuinely not knowing where a next meal will come from, knowing the pangs of hunger, not simply the discomfort of an intellectual nature because you know you ate breakfast at 9:00 and at noon you're supposed to eat again. I mean hunger because you haven't put anything of nutritional value into your stomach for well over 12, 16, 24, 48 hours, and you don't know where the next bit of food is coming from. You might walk into a store and wind up in jail because you stole some food, and Jesus authorized theft and said it is not theft because one Sabbath day he and his disciples went through a man's cornfield and they took that corn without asking for it and without paying for it.

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

April 3, 2001

LB 692

And in those days that was allowed. Those who had a tremendous amount did not put big electrified fences to keep out the hungry. They didn't have big, savage, trained guard dogs to maim those who were hungry or their children who were coming on the property to get some food. In the richest, most wasteful country in the world, those people don't get any thought...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...or consideration. So when I make a few comments about the big shots and those who work for big shots out in the Rotunda, don't feel sorry for them. They're better off than practically everybody in this Chamber. Let them earn their money, and if the worst thing they have to do is listen to something like this, their life is easy indeed, but they will get their money. This bill is going to guarantee them their money. And it's hard for me to show restraint and go along with what we've worked out with reference to money for minority health concerns. I would like to reverse it and give you all \$2.8 million plus that for those minority health offices and I get the rest. Then we're starting to approach equity.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Byars, there are no...Senator Chambers, your light came on.

SENATOR CHAMBERS: Mr. President, members of the Legislature, my speaking at this time is a part of a plan. The plan is to continue our discussion until some amendments which are being drafted will be completed. It would probably be easier for everybody if we stood at ease, sat at ease or walked at ease. I'm sitting here, I'm standing here, looking in front of me downward into the eyes, the innocent-appearing eyes of my colleague, Senator "Conally"...Connealy. I actually couldn't get it right. And sometimes I consider the fact that he and I are so often on the same side of issues, the kinds of things that we often discuss on this floor, and although I don't mention it frequently, probably others of us could come together under the right circumstances and find that there are points of commonality, issues that we feel very similarly about if we don't agree on them 100 percent. One thing is certain, that any minute now those amendments are going to be coming to the desk

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 664, 692, 833

and we can terminate what it is that I'm doing. When I am fighting against something, I have no trouble because I'd be trying to find ways to torpedo a bill. When I'm trying to keep something afloat it's just a little bit different, especially when it's not a bill of my creating. I'd like to ask Senator Byars a question.

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: I will yield.

SENATOR CHAMBERS: Senator Byars, is the amendment available?

SENATOR BYARS: The amendment is available, Senator Chambers.

SENATOR CHAMBERS: Has it been delivered?

SENATOR BYARS: It has been delivered.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Byars.

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

CLERK: Mr. President, if I may before we proceed, with your permission, Senator, a series of amendments to LB 664 to be printed, by Senator Bourne. And the Education Committee reports LB 833 to General File with committee amendments attached. (Legislative Journal pages 1333-1340.)

Senator Byars, am I to assume, Senator, you'd like to withdraw your amendment to the amendment as well as AM1331 at this time?

SENATOR BYARS: That is correct.

SENATOR CUDABACK: So ordered, no objection.

CLERK: And, Senator, having done that, I now...I assume you'd like to take up the amendment that was just delivered.

SENATOR BYARS: That is correct.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

CLERK: Mr. President, Senator Byars would move to amend with AM1344. (Legislative Journal page 1341.)

SENATOR CUDABACK: Senator Byars, to open on your AM1344.

SENATOR BYARS: Thank you, Senator Cudaback and members. And once again, I thank you for your patience. There will be several small but substantial changes to what you had been given in AM1331, which is now AM1344. There will also be the financial...the dollar piece that I will go over briefly. And Senator Kristensen and Senator Chambers will move to amend LB (sic--AM1344) to include the distribution of those funds. The first change you'll find on page 6 of the amendment, line 14, which changes the language from a "may" to a "shall", "a minority health initiative which shall target," and then insert language, "but not be limited to infant mortality". On line 21 of the same page, page 6, is where we are changing the minority population that I...we had just had the discussion on in the earlier floor amendment. We changed the "Any congressional district which has minority population over 100,000" to "a minority population over 75,000". Then we go to the allocation of the dollars on page 9, and beginning with line 12...okay, excuse me. Bill Drafters did some changing on...go to page 6, lines 22, 23, 25, which makes a division from...to divide between the \$1 million to federally-qualified health care centers, that to be divided 70 percent to the Charles Drew Center which serves primarily a black population, and 30 percent to a center that serves Hispanic and Native American individuals. On...then further, it goes down further in the...in line, I think it's still line 18. There is language changed in this section which changes the way the department distributes the funds. They shall be administered by the state minority health offices in the 1st and 3rd Congressional District. Those are the basic changes, and I appreciate your patience in waiting. There will be an amendment to the amendment that will technically deal with the transfer of funds. Sen...that will be offered by Senator Kristensen and Senator Chambers.

SENATOR CUDABACK: You've heard the opening on AM1344 to LB 692.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

Senator Byars, did you want to...your light was next if you wanted it on. Senator Kristensen, your light is next if you wish to.

SPEAKER KRISTENSEN: Thank you, Mr. President and members of the Legislature. Could I have a Page please go to the printer and pick up this amendment that's being printed? Thank you. This amendment, we're going to probably want to spend a little bit of time making sure we...it just does what we want it to do. Everybody has talked about the specifics of what changes we were done, and I think Senator Chambers and I, Senator Jensen, Senator Byars have outlined those particular changes. What is important is that it's going to come in two spots. One of them is going to be the change in basically the procedure, and the other is going to be the increase of money. So you have a choice, you get to make a choice here. The increase in money is going to be an amendment to this amendment, so you can make that policy choice. But the underlying where the money goes, not the amount but where the money goes, is what the Byars amendment is all about. And so at this point in time, Senator Byars, as I look through here, the major changes that you made that I have an interest in is that on page 6, is that correct? I'd like Senator Byars to respond, please, if he would.

SENATOR BYARS: Yes, I will respond. Yes, that's correct, Senator Kristensen.

SPEAKER KRISTENSEN: Okay. And in Section 9, this is where you set up the minority health portions of the public health piece that you're going to put forward?

SENATOR BYARS: That is correct, Senator.

SPEAKER KRISTENSEN: Okay. So in the first part of Section 9, we're just going to walk through this, is we're going to establish a satellite office that you've described in each of the congressional districts. That's not a problem. They're going to institute or implement a public health...or a minority health initiative that shall target, that is a change from before. Before we had "may". This is they "shall" target and then that...

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

SENATOR BYARS: That is correct.

SPEAKER KRISTENSEN: ...we go through infant mortality, pregnancy prevention programs, cardiovascular disease, all those sorts of things. The next portion is those offices are to assist each county with their respective district, and I assume that makes reference to a congressional district. And then, the minority population equal or exceeding 5 percent tells them basically where to go and how to identify what a minority area is. Is that correct?

SENATOR BYARS: That is correct, Senator.

SPEAKER KRISTENSEN: Okay. If the congressional district has a minority population over 75,000 inhabitants, which I assume... I don't know how many of those there are in this state, but I assume that there's probably only one that can do that, then the money that we're going to give to them is going to go to 70 percent of them as primarily an African American federally-qualified health clinic, and the other 30 percent is going to go to a federally-qualified health clinic or look-alike, which primarily serves Spanish-speaking persons or Native Americans. That's the other major change from what we had described earlier.

SENATOR BYARS: That is correct.

SPEAKER KRISTENSEN: And then there will also be a report each year. Now I thought at one point, it was my understanding, there was going to be a sum of dollars put into this that was going to go to the congressional district that had 75,000 inhabitants. And, Senator Chambers, I don't know if you are listening to this or not, I thought there was to be a million dollars. Is that placed somewhere else? If it is, I'll stand corrected. I just didn't see it in this piece or portion. Senator Byars, could you help me out with that, please?

SENATOR BYARS: Yes, I sure can. And Section 21 on page 9...

SENATOR CUDABACK: One minute.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

SENATOR BYARS: ...lays this out, Senator. You'll see in Section (sic--subsection) (b)...

SPEAKER KRISTENSEN: Okay. Now just...just because I'm not very smart some days, why is it back in that section and not up in this other one? Is it just a mechanical drafting or is there a substantive difference?

SENATOR BYARS: It's my understanding it's a drafting issue, Senator.

SPEAKER KRISTENSEN: Okay. So in that section, that \$1 million is going to be allocated to those two types of facilities that was described earlier, the African American and the primarily Spanish-speaking and Native Americans. That \$1 million is going to be divided up on roughly a 70/30 percentage, is that correct?

SENATOR CUDABACK: Time.

SPEAKER KRISTENSEN: Thank you.

SENATOR BYARS: Thank you.

SENATOR CUDABACK: Thank you, Senator Kristensen. Mr. Clerk, item on the desk?

CLERK: Senator Beutler would move to amend Senator Byars' amendment. (FA156, Legislative Journal page 1346.)

SENATOR CUDABACK: Senator Beutler, to open on FA156.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this is a purely technical amendment. Whereas in a particular subdivision, one section of the bill was referenced that related to the funding of it, this amendment simply sticks in a technical reference to a second section that has to be included, and I think Senator Byars is okay with this. Right? I'd leave the rest of my time to Senator Byars.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Byars,

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

did you wish to address this? Your light isn't on.

SENATOR BYARS: Thank you, Senator Cudaback, and thank you, Senator Beutler. Appreciate you bringing this amendment to us. We have no objection. It is a technical amendment truly, and we would support this amendment.

SENATOR CUDABACK: Thank you, Senator Byars. Senator Beutler, there are no further lights on. Senator Beutler waives closing. The question before the body is the Beutler amendment to AM1344 to LB 692. All in favor of that motion vote aye, opposed nay. We're voting on the Beutler amendment to AM1344 to LB692. Have you all voted who wish to? Record, please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment to Senator Byars' amendment.

SENATOR CUDABACK: The Beutler amendment is adopted. Mr. Clerk, item on the desk?

CLERK: Senator Kristensen would move to amend Senator Byars' amendment. (AM1343, Legislative Journal page 1346.)

SENATOR CUDABACK: Senator Kristensen, to open on AM1343.

SPEAKER KRISTENSEN: Thank you, Mr. President and members of the Legislature. This amendment is the one we had spoken about earlier. This is the policy choice. You will see that the amendment is basically divided into three distinct things that it does. The first part is in the public health area. We are allocating another \$300,000 away from other projects in the public health area. I think they need to acknowledge that they are assisting to make sure this bill goes and that everybody is balanced. I mean, this is...those people need to be recognized that they are increasing from 200...2 million...I got to make sure that I'm absolutely correct. You're striking...you're going to \$2.5 to \$2.8 million, but to do that, you have to strike the word "two" and insert "five" to get to that because there's other monies elsewhere in the amendment. The second thing that it does is that it allocates \$700,000 of the fund and this is the grant funds. This is where people compete and come

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

in for grant monies. If you remember that other chart, we had allocated monies there. That was \$5 million. They're not going to get to use all that \$5 million. Seven hundred thousand of that is going to be basically designated to go to minority health grants, for racial and ethnic minority health. The same concept is true in the research portion. They're not going to get to have unbridled discretion; they're going to have to use at least \$700,000 each year for the improvement of racial and ethnic minority health. That means research specifically geared, targeted for those areas. And we will refer those that are trying to follow this to the previous speeches that were made on the amendment that Senator Byars had withdrawn. So this basically adds \$1.7 million and puts that over into the minority health issues, and this is the total increase in funding. Senator Byars' piece puts together the procedure, this adds the money, and I would urge its adoption. Thank you.

SENATOR CUDABACK: Thank you, Senator Kristensen. You've heard the opening on the Kristensen AM1343 to AM1344 to LB 692. Any discussion? Seeing none, Senator Kristensen, did you wish to close?

SPEAKER KRISTENSEN: I appreciate the body's patience, and would move the amendment.

SENATOR CUDABACK: The question before the body is adoption of the Kristensen AM1343 to AM1344. All in favor of that amendment vote aye, opposed nay. We're voting on the Kristensen AM1343 to the Byars amendment. Have you all voted who wish to? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: The amendment is adopted. We're back on the Byars amendment. Senator Byars, there are no lights on. Do you wish to close? There are no lights on, do you want to close, Senator Byars?

SENATOR BYARS: Yes, thank you very much, Senator Cudaback. There is another amendment that has been filed to the bill. It

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

will be explained by Senator Bromm and Senator Jensen, or one or the other, that I have agreed to. I again just want to thank everyone for their cooperation. I don't think I did personally thank Senator Beutler also. He had a significant input into the construction of the funding mechanism for the infrastructure, and I'm not sure I took the time to give him that credit. I want to thank everyone that's been involved from the public health sector. They have been absolutely wonderful, many of them who are employed by a government agency but who took their own personal vacation time to come in to work with us to draft language. Public health is so important to these individuals that they have given both day and night of their time, and I want to personally tell them how appreciative we are. I think the...I think the discussion has been good. It's been thorough. It's been informative, and I really don't see any need for any further discussion. I would move the amendment, Senator Cudaback.

SENATOR CUDABACK: You've heard the closing on AM1344 to LB 692. The question is should AM1344 be adopted to LB 692? All in favor vote aye, opposed nay. We're voting on AM1344 to LB 692. Have you all voted who wish to? Record, please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Byars amendment.

SENATOR CUDABACK: The Byars amendment is adopted. Mr. Clerk, next motion on the desk?

CLERK: Mr. President, Senator Byars, AM1317. That was the amendment you had filed earlier, Senator.

SENATOR BYARS: I would withdraw.

SENATOR CUDABACK: It is withdrawn.

CLERK: Senator Bromm, AM1345. (Legislative Journal page 1347.)

SENATOR CUDABACK: Senator Bromm, you're recognized to open on AM1345 to LB 692.

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

April 3, 2001

LB 692

SENATOR BROMM: Thank you, Mr. President. I think this amendment will be brief, but it's an attempt to put an exclamation point in the bill, on page 11, line 17, and again on page 12, line 10 where we deal with providing services through community-based mental health and substance abuse needs and services. And it adds in, on page 11, line 17, after the word "subdivision", it provides that the Director of Finance and Support shall ensure that funds appropriated under this subsection are allocated and distributed solely for such purposes. And those purposes, again, refer to the lines above that which speak about community-based mental health and substance abuse and intermediate level residential mental health services. We just...our intent is, and I thank Senator Byars and Senator Vrtiska and Stuhr and Senator Jensen for being interested in this and working with us on it, but it's to really send a message that we want to be sure that this money, which is a significant amount of money, makes its way actually to the point of providing services and not being used for administrative costs or capital expenditures or any other purposes that would be other than what are specified in this section of the bill. Secondly, the amendment I think emphasizes, on page 12, line 10, that the regional governing boards shall ensure that such services are equitably provided in all counties within the region, based on need. We would not want to see this money flow into the region and be used to build up a centralized program that would not be accessible or available throughout the region. These services, if they're going to be effective and be provided equitably, must be provided throughout the region based on need. And so this, again, to add just simply it isn't changing any of the intent of the bill, in speaking with the sponsor, chief sponsor, but it is an attempt to emphasize that the regional boards have this responsibility. It is not something that can be taken lightly. It is not a situation where if you have an area where they can't pay for the services, that you don't provide the services. Now the services must be provided and that's what we're giving them money for, and no area should be slighted, or it should not be more difficult for one area to obtain these services than it is another, within the region. So that is very clearly my intent in being involved with this amendment. The other portion of the amendment, on page 3, striking a part of lines 21 and 22, is

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

April 3, 2001 LB 692

just a clean-up provision I think Senator Byars or Senator Jensen had that if they...if they wish to speak to that, they can. That...I didn't author that portion of the amendment. I don't think it is significant. With that, I will cease my opening, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bromm. You've heard the opening on AM1345 to LB 692. Those wishing to speak are Senators Stuhr, Vrtiska, Hilgert, Beutler and Byars. Senator Stuhr, your light is on first.

SENATOR STUHR: Thank you, Mr. President and members of the body. I just rise in support of this amendment. I believe that Senator Bromm did explain the reasoning for it, but there are needs in our local areas. And sometimes those need...people come that do not have the resources but their needs need to be fulfilled. So I believe that this amendment will speak to that. It will emphasize that the money needs to go to local providers, and that income should not be a factor in providing those services in our local area, income of those individual people, but their needs need to be met. So with that, I support the amendment and would ask for your support also. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Vrtiska, on the Bromm amendment.

SENATOR VRTISKA: Thank you, Senator Cudaback, members of the body. I rise in support of the Bromm amendment. I echo the words of Senator Stuhr. This is not something that's for a particular part of the state or a particular area. It's for any of the areas that have these particular services that we will make sure that they're provided equally and fairly, and I think that's what we intended to do, and certainly I think that Senator Byars would agree that the intent was to provide those services on an equal basis, no matter the circumstances. And so I think...I think it's well-thought-out, and I appreciate Senator Bromm bringing this. I was going to speak on this bill earlier but I had to leave for a little while, but I've been keeping track of it, and I'm very interested in what Senator Byars is attempting to do and I think this only adds to it. And with that, I would urge your support of the amendment and

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

April 3, 2001

LB 692

certainly advancement of the bill. Thank you.

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

SENATOR HILGERT: Thank you, Mr. President, members. If I could ask Senator Bromm a question, if he would?

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

SENATOR BROMM: Yes, Senator Hilgert.

SENATOR HILGERT: I just want to flush out just so that we're clear. You said "based on need". Can you define that just for the record here?

SENATOR BROMM: Sure. If you have a particular area in your region where you have a number of cases that need to be served, whether they have necessarily the money to pay for those services, you should devote the necessary services to that portion of your region, to meet those needs...

SENATOR HILGERT: Okay.

SENATOR BROMM: ...as best you can, realizing that it may be impossible to meet 100 percent of the needs everywhere, but it should...the effort should be made, and not based on the ability to pay.

SENATOR HILGERT: The...this...how does this influence, or does it influence, the whole sliding scale approach that many regional providers have? In mean, that...it doesn't really affect that at all. It just says, if there's a need for the service, you should try to do that and satisfy that need without consideration to what extent some area may be on that sliding scale...

SENATOR BROMM: That's...

SENATOR HILGERT: ...if they're...okay.

SENATOR BROMM: That's correct, Senator Hilgert.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 692

SENATOR HILGERT: Well, thank you very much, Senator Bromm. And Senator Vrtiska and Senator Stuhr, I think that this is a wonderful amendment and, frankly, this is something I think our Legislature should look at very closely and monitor, to make sure that our regions are working properly. I know Senator Vrtiska, being an old county official, is bringing his expertise to the floor as well on this, and I appreciate that. I just ask the body to support this amendment, and thank you, Senators, for bringing this forward.

SENATOR CUDABACK: Thank you, Senator Hilgert. Senator Byars, on the Bromm amendment.

SENATOR BYARS: Thank you, Senator Cudaback. Just so there aren't any questions, that part of the amendment that starts with line 10 and 11 is a change in...we had original language on how the waiting list of developmental disability money was to be distributed. It was not as clear as we wanted, and so we have changed that language just very slightly to make sure the money would be distributed as we wished originally. Just so there are no questions. Thank you, Senator.

SENATOR CUDABACK: Thank you, Senator Byars. Senator Robak.

SENATOR ROBAK: Thank you, Mr. President and members of the body. As one who has carried mental health bills for the past 11 years, I do have a keen interest in this bill. I did have a bill that was heard at the same time this bill was being compiled. It was one to enable mental health facilities' programs and services to be able to apply for grants from the Nebraska Health Care Cash Fund. Well, that bill was killed in committee, and rightfully so, because as Senator Jensen and his staff had assured me, that the bill now does give money, \$7 million and some, to behavioral health services to community-based services. And I do support that. I thank everybody that's worked on this bill, particularly Senator Byars who is carrying the bill, all the amendments that make this a great, wonderful piece of legislation for our state and our handicapped individuals. And Senator Jensen I'd like to thank personally for understanding and learning about mental health.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 692

That's a plus and I commend you and your staff so much for all the work you've put into this bill, and the times I called your office and always were willing to answer my questions and help me guide you through this process. Thank you very, very much. That's all I have to say, Mr. Chairman. Thank you.

SENATOR CUDABACK: Thank you, Senator Robak. There are no further lights on. Senator Bromm, did you wish to close on your amendment to LB 692?

SENATOR BROMM: Very, very briefly, Mr. President. Just begin to reedify that the amendment simply is to direct the Health and Human Services to make sure that the money spent on community-based mental health and substance abuse services is indeed used, allocated and distributed for that purpose; and then secondly, to ensure that the regional governing boards will equitably provide services throughout the various counties in the region based on need. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. You've heard the closing on AM1345 offered by Senator Bromm to LB 692. All in favor of that motion vote aye, opposed nay. We're voting on the Bromm amendment. Have you all voted who wish to? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: The Bromm amendment is adopted.

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

SENATOR CUDABACK: Seeing no lights on, Senator Erdman, for a motion.

SENATOR ERDMAN: Thank you, Mr. President. Members, I move the advancement of LB 692 to E & R for engrossing.

SENATOR CUDABACK: The motion is advance LB 692 to E & R for engrossing. All in favor say aye. Opposed nay. It is advanced. Mr. Clerk, next agenda item.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 668, 692A

CLERK: LB 692A. Senator, I have Enrollment and Review amendments pending. (AM7074, Legislative Journal page 1157.)

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Excuse me, Mr. Clerk, you do have amendments?

CLERK: I do have amendments, yes, sir.

SENATOR ERDMAN: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 692A.

SENATOR CUDABACK: Motion is to adopt the E & R amendments. All in favor say aye. Opposed nay. They are adopted.

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

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 692A to E & R for engrossing.

SENATOR CUDABACK: Motion is to advance it for E & R for engrossing. All in favor say aye. Nay. It is advanced. Mr. Clerk, next agenda...

CLERK: Mr. President, LB 668. Senator Erdman, E & R amendments, first of all, Senator. (AM7082, Legislative Journal page 1253.)

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Mr. President, I move the adoption of the E & R amendments to LB 668.

SENATOR CUDABACK: Motion is to adopt the E & R amendments to LB 668. All in favor say aye. Opposed nay. They are adopted.

CLERK: Senator Hilgert would move to amend with AM1182. (Legislative Journal page 1233.)

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 230, 668

SENATOR CUDABACK: Senator Hilgert, you are recognized to open on your amendment, AM1182, to LB 668.

SENATOR HILGERT: Thank you, Mr. President, members. This is the amendment that I had told you about on General File regarding LB 668. This re...is regarding the lead remediation certificate costs. This came out...this is essentially LB 230, if you want to look on the gadgets. It's a very simple bill. There was no opponents, there was no neutral, only proponents. It was advanced out of committee unanimously. And all that it does is it changes the fee charged by the Department of Health and Human Services Regulation and Licensure under the Residential Lead-Based Professional Certification Act. Right now the fees are \$2,000 to \$5,000. The reason that those...that range was picked is because when we passed LB 863, back in 1999, we basically left the asbestos language and used it for lead; turns out that they don't need to be that high, it doesn't need to be \$2,000 to \$5,000, and this bill would lower it to \$200 to \$500. Now the reason we want to...and again, there was no opposition; the department didn't oppose it as well. The reason that I brought this before you and the reason why I want to lower the fee is because the city of Omaha has a \$2 million grant from the federal Department of Housing and Urban Development, and it was discovered that one of the requirements of the grant were specifications that the city utilize small, independent contractors in abatement projects. Well, when the licensure fee is \$5,000, there's not going to be a lot of small providers that are going to avail themselves of this, and consequently the city of Omaha has this \$2 million grant sitting out there and with no one...providers, remediators, independent contractors willing to participate in it because the fees are too high. So we're just trying to make government work here. I handed out a letter from Councilman Frank Brown of the city of Omaha of support for the...for the bill, as well as Paul Koneck. These two council members are from east Omaha, represent east Omaha. They have a special interest in the bill. Again, this is what I talked about on General File that I was going to attempt to do. No one had contacted me in the meantime so, if anyone has any questions at this point, I would be happy to try to answer them. With that, I would just encourage the adoption

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 668

of the amendment. Thank you, Mr. President.

SENATOR CUDABACK: You've heard the opening on AM1182. Open for discussion. Senator Vrtiska.

SENATOR VRTISKA: Thank you, Senator Cudaback. Senator Hilgert, could I ask you a question?

SENATOR CUDABACK: Senator Hilgert.

SENATOR VRTISKA: Just...just out of curiosity, you...I think you indicated, but I didn't quite catch it, there was (laugh) so much noise over here. Did...is...is this going to be enough money for them to carry out the program? I mean, are we going to...this encourage them, I think that you said, if I heard you right.

SENATOR HILGERT: Yeah.

SENATOR VRTISKA: But is this enough money to move ahead?

SENATOR HILGERT: Yes, it is. In fact, the department had unilaterally went to the lowest number in that range, five to two thousand dollars, and that still wasn't low enough. They say that this is fine; they don't anticipate a whole lot of people doing this; this should cover it. Again, we had the hearing, in fact, I've been in contact...my office has been in contact with Health and Human Services since, frankly, summer. I was hoping to do this by regulation and not by statute. So, no indication of any problems whatsoever.

SENATOR VRTISKA: Okay, okay. I...I just wanted to hear what I thought you...what you said. (Laughter) Thank you.

SENATOR HILGERT: Thank you for your diligence, Senator Vrtiska.

SENATOR VRTISKA: Thank you, I turn the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Vrtiska. Further discussion on the Hilgert amendment to LB 668? Seeing none,

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 668, 668A, 750

Senator Hilgert, did you wish to close on your amendment?

SENATOR HILGERT: I don't think that there is any need to close. Thank you.

SENATOR CUDABACK: Senator Hilgert waives closing. The question before the body is adoption of the Hilgert amendment, AM1182, to LB 668. All in favor vote aye, opposed nay. We're voting on the Hilgert amendment. Have you all voted who care to? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: The Hilgert amendment is adopted.

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

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 668 to E & R for engrossing.

SENATOR CUDABACK: Motion is to advance LB 668 to E & R for engrossing. All in favor say aye. Opposed nay. It is advanced. Mr. Clerk.

CLERK: Senator, I have, with respect to LB 668A, I have no amendments to that bill.

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 668A to E & R for engrossing.

SENATOR CUDABACK: Motion is to advance LB 668A to E & R for engrossing. All in favor say aye. Opposed nay. It is advanced. Mr. Clerk, next agenda item.

CLERK: LB 750. No E & R. Senator Pederson, Don Pederson, would move to amend, Mr. President. (AM1187, Legislative

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 750

Journal page 1268.)

SENATOR CUDABACK: Senator Don Pederson, to open on your amendment to LB 750.

SENATOR D. PEDERSON: Senator Cudaback, members of the Legislature, you'll recall this bill, called the College Savings Plan. And by LB 750 we have stricken language regarding the minimum contribution and the age limitations of that plan in order to strengthen and enhance the affordability and accessibility of higher education by offering a convenient and tax-advantage means of saving for the college costs. Because there are individuals and students who may be precluded from utilizing the Nebraska plan without these changes, I am requesting your support in adding an emergency clause to the bill. There are people that I have spoken with that are anxious to get into this program; they'd like to get into it in a...in a manner of taking from their paychecks and investing in this plan, and this will give them the earlier opportunity to take advantage of that. So I...I ask your advancement of this...of this proposal.

SENATOR CUDABACK: Thank you, Senator Pederson. Open for discussion on the Pederson amendment to LB 750. Seeing none, Senator Pederson, did you wish to close? Senator Pederson waives closing. The question before the body is adoption of the Pederson amendment to LB 750. All in favor vote aye, opposed nay. We are voting on the Pederson amendment to LB 750. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Pederson's amendment.

SENATOR CUDABACK: The amendment is agreed to. Mr. Clerk.

CLERK: Senator Chambers would move to amend. (AM1197, Legislative Journal page 1289.)

SENATOR CUDABACK: Senator Chambers,...

CLERK: It's an effective date (inaudible)...

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 750

SENATOR CUDABACK: ...you're recognized on your amendment, AM1197, to LB 750.

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. This is the Chambers amendment. Senator Pederson and I have discussed it and he agrees to it, so I'm asking that you adopt it.

SENATOR CUDABACK: Thank you, Senator Chambers. Open for discussion. Senator Don Pederson.

SENATOR D. PEDERSON: Senator Cudaback, members of the Legislature, Senator Chambers has brought forth this amendment. And I remember two years ago, Senator Chambers, when you had a...a bill and I found something that was a little different than what we'd been talking about. I filed this, and you looked over at me and said, Senator Don Pederson, I salute you. Well, Senator Ernie Chambers, I salute you. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson. Any further discussion? Seeing none, Senator Chambers. The question before the body is the Chambers amendment, AM1197, to LB 750. All in favor of that amendment vote aye, and opposed nay. Voting on the Chambers amendment, AM1197, to LB 750. Have you all voted who care to? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: The amendment is adopted.

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

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 750 to E & R for engrossing.

SENATOR CUDABACK: The motion is to advance LB 750 to E & R for engrossing. All in favor say aye. Opposed nay. It

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 215, 750, 768

is advanced. Mr. Clerk.

CLERK: LB 768. Senator, I do have E & R amendments. (AM7084, Legislative Journal page 1259.)

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 768.

SENATOR CUDABACK: Motion is to adopt the E & R amendments to LB 768. All in favor say aye. Opposed nay. They are adopted.

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

SENATOR CUDABACK: Senator Erdman, for a motion.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 768 to E & R for engrossing.

SENATOR CUDABACK: Motion is to advance LB 768 to E & R for engrossing. All in favor say aye. Opposed nay. It is advanced. Mr. Clerk.

CLERK: LB 215. Senator, I have Enrollment and Review amendments, first of all. (AM7086, Legislative Journal page 1307.)

SENATOR CUDABACK: Senator Erdman, for a motion, please.

SENATOR ERDMAN: I move the adopt, excuse me, I move the adoption of the E & R amendments to LB 215.

SENATOR CUDABACK: Motion is to adopt the E & R amendments to LB 215. All in favor say aye. Opposed nay. They are adopted.

CLERK: Senator Beutler would move to amend with AM1324.

SENATOR CUDABACK: Senator Beutler, to open on your amendment, AM1324, to LB 215.

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 215

SENATOR BEUTLER: Mr. Clerk, I'd withdraw that amendment.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

CLERK: Senator Bromm, AM1333. (Legislative Journal page 1348.)

SENATOR CUDABACK: Senator Bromm, you're recognized to open on your amendment, AM1333.

SENATOR BROMM: Thank you, Mr. President. This amendment is to attempt to clarify, as best I can figure out how, the definition of residential real property which is required...in which case it is required to provide this property disclosure statement before the buyer enters into a purchase agreement as set forth in 76-2,120, and the definition that is in that area says that residential real property shall mean real property on which no fewer than one or more than four dwelling units are located. This amendment would insert the following words: Residential real property shall mean real property, and these are the words we are inserting, which is being used primarily for residential purposes, on which no fewer than one or more four dwelling...more than four dwelling units are located. I asked or raised the issue on General File in response to a Nebraska Supreme Court case, Miller v. Harrington, which is a September 29, 2000, case, in which the court, in that case, found that a bar which had been sold and had an apartment dwelling on top of the bar, a one unit apartment, after the sale had occurred the buyer came back and argued that he should have been given a real estate disclosure statement because there was an apartment on top of the bar, and the primary purpose and use of the building was for a bar. And the realtor involved, the seller, no one thought about this being residential property. It was zoned commercial, used commercially, and so on and so forth. So the purpose of this is to attempt to say that the property must be used primarily for residential purposes and there is no fewer than one or more than four dwelling units. And it is my intent in offering this amendment to exempt those properties that might have an apartment that is incidental to or that is simply a convenience or happens to be in appurtenance to the primary purpose of the building, which might be a grocery store, a bar, those kinds of commercial properties that often

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 215

contain an ancillary small portion which might be used as an apartment. It is to exempt those from the real estate disclosure statement because I think it is...it is a trap for the unwary that many could fall into. And in this particular case that I quoted you, it did not...for other reasons, the court did not assess damages with respect to the seller but it was...it very well could have and would in many cases I think should you require a disclosure statement in this fact situation that I've described to you. So I simply ask for that consideration, and I have provided the amendment to Senator Landis who I think has provided it to Senator Smith, and if there is any questions, I would be glad to try to answer.

SENATOR CUDABACK: Thank you, Senator Bromm. You've heard the opening on AM1333 to LB 215, offered by Senator Bromm. Open for discussion, Senator Smith.

SENATOR SMITH: Thank you, Mr. President, members. I rise in support of this amendment. I think it provides a level of specificity that I think is complimentary to the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion? Senator Bromm, seeing no lights on, did you wish to close? Senator Bromm waives closing. The question before the body is adoption of AM1333 to LB 215. All in favor vote aye, opposed nay. We are voting on the Bromm amendment, AM1333. We are voting on the Bromm amendment, AM1333, to LB 215. Have you all voted? Have you all voted who wish to? Have you all voted? Record, please.

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

SENATOR CUDABACK: The amendment is adopted.

CLERK: Mr. President, before I proceed with the next amendment, Education Committee will have an Executive Session at 4:15 in Room 2022. Senator Beutler would move to amend with FA157. (Legislative Journal page 1348.)

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Transcriber's Office
FLOOR DEBATE

April 3, 2001 LB 215

SENATOR CUDABACK: Senator Beutler, recognized to open on FA157.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this amendment goes to subsection (10) of AM7086, which is on page 6, which has the effect of limiting the duties of the buyers' agents in certain circumstances with respect to the disclosure statement, and what may amendment does is to try to confine that limitation to the subsection, so that certain other requirements on the buyer's agent, such as those contained in current language in subsection (9) of the same statute and other obligations in a related statute, still would pertain to the buyers' agents, and I think that this particular clarification does no damage to what Senator Smith intends nor to what any of the parties to the bill intends, and simply makes it work for everybody. Thank you.

SENATOR CUDABACK: Thank you Senator Beutler. You've heard the opening on the Beutler amendment, FA157. Open for discussion. There are no lights on Senator Beutler. Did you wish to close? Senator Beutler waives closing. The question before the body is the Beutler amendment, FA157, to LB 215. All in favor of that motion vote aye, opposed nay. We are voting on the Beutler amendment. Voting on the Beutler amendment to LB 215. Have you all voted who wish to? Record, please, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment.

SENATOR CUDABACK: The Beutler amendment is agreed to. Mr. Clerk, next item to the bill.

CLERK: Senator Chambers would move to amend. (FA158, Legislative Journal page 1348.)

SENATOR CUDABACK: Senator Chambers, to open on FA158 to LB 215.

SENATOR CHAMBERS: Mr. President, members of the Legislature, in view of the collegial environment this afternoon, I think this little two-word amendment of mine should be adopted also. However, I don't want to offer an amendment of substance without calling the body's attention to what the amendment does, so I am

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 215

going to come clean. If you look on your gadget, you will see the following: On page 27, line 17, after "origin" insert "sexual orientation"; on page 31, line 24, after "origin" insert "sexual orientation". Now this is not X-rated, so nobody needs to go running out of here. Members of the Legislature, for too long in Nebraska too many people have had their noses in other people's crotches. They are concerned about what consenting adults do behind closed doors and I have no concern with that. I have concerns about human beings. I believe that anything born of a man and a woman, born I emphasize, is a human being. I know some of my colleagues push human "beinghood" backward from birth. If they can be so concerned about that which is not in the world, I know they should show concern for those who are in this world. When I was growing up, people who were gay were not known by that term; not even always by the term "homosexual". There were always pejorative, insulting, demeaning terms. They were called the "f" words: faggot, fruit, fairy, funny, but there was no humor in it. It was always designed to characterize people as being something less than human. I didn't always feel about gay men and lesbian women and their rights the way I feel now. When I was growing up, I didn't even know what being gay meant. In churches they preached about people who were funny or homosexual, and that's what they were, but I wouldn't have known one if I saw one. Then as you grow a little older, they tell you, well, it's a man who carries a limp wrist. It's a woman who cuts their hair short and wears pants. And when I would see pictures of these women working at the bomber plant, they had on pants and most of them had their hair short, so all of them were homosexuals. You have to be careful about the generalizations you give to children. So instead of these people being...those worked...there was a bomber plant outside of Omaha; instead of these people being those who were working in the war effort and doing great things, whatever being homosexual was, that's what they were and they couldn't be good. When I became aware of the hatred directed toward these people that would escalate to violence and even homicide, it became crystal-clear to me that a society owed a responsibility of protection to these people who are mistreated in this terrible way, not for anything that they have done but because of the way they were born. And I think that is shameful for a society to do. If any of you have

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

April 3, 2001

LB 215

listened from time to time, you will know that I went to Creighton University, graduated very easily, and learned a lot, heard a lot about social justice, human dignity and God created everybody and loves all people. All that has to be answered is the following question: is a gay man a human being; is a lesbian woman a human being? If the answer is yes, and it is for me, every right and privilege that any human being has in this country should be guaranteed to them and protected to the same extent it is to others, and when they are identified because of their sexual orientation and marked for discrimination and sometimes death, they should be a protected class. We create protection around classes. Because they, by virtue of being a member of that class, are subjected to wrongful treatment, violence, and even deprivation of life, and I cannot be comfortable with that while I'm a lawmaker. Those who are Catholics, those who are not Catholics, those who are religious and those who are not religious can look at simple principles of social justice and realize that every person should have the right in a democracy to obtain a place to live. Shelter is one of the basics and all that I am saying is that in a bill of this kind where we are protecting people from discrimination that would be directed against them because of their sex, their national origin, their ethnic makeup, their race, their religion, their marital status, we should not hide from the fact that people suffer an even more insidious and vicious discrimination because of their sexual orientation or their alleged sexual orientation. In this society, you can be punished, you can be discriminated against, you can be harassed on a job based on your sexual orientation or alleged sexual orientation. And the U.S. Supreme Court or a Federal District Court had ruled that federal anti-discrimination laws do not protect the homosexual person from harassment on the job, so they can be harassed. They can be fired. They can be denied the right to be promoted. They can be denied the right to even be hired, and it does not violate any federal law, does not violate the constitution, and they have no redress and no recourse, and in the year 2001 we, as civilized people, can be comfortable with that. I cannot. So what my amendment says is that these, indeed, are human beings, and if we believe that there is any human decency within ourselves, and if we believe that every human being is entitled to self-respect and to proper

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

April 3, 2001

LB 215

and fair treatment, we cannot knowingly allow people to be discriminated against because of their sexual orientation or alleged sexual orientation. In this society, it is enough to be accused and you can lose your job. If it's a man who "walks funny", if it's a woman who "looks"... "looks butch", no job. Let's say that everybody is intolerant and we lay out the principle, as we do in Nebraska's nondiscrimination laws, that every person who is able to work should be encouraged to work and the opportunity to work should be granted unless you are a homosexual. So nobody hires you. You don't have the right to work. People should have the right...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...to obtain shelter. You don't have the right to shelter. You don't have the right to anything. You don't have the right to live. Some of you who have not suffered discrimination because of what you are probably cannot relate to what I'm talking because it never happened to you. It won't happen to your children you hope, but when things happen to me that are wrong, I learn from that, and I don't want anybody to suffer what I've suffered. I don't want anybody to ever feel what I feel on a daily basis.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the Chambers amendment. Senator Smith.

SENATOR SMITH: Thank you, Mr. President, members. I simply rise, with all due respect, in opposition to this amendment. I think that it has some enforceability questions and a lot of issues that I think can be resolved in the marital status provisions that are already in the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Landis, on the Chambers amendment.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I rise to support the Chambers amendment. It is overdue. It's the appropriate thing to do. This amendment is germane to the bill. It is an issue that's been before the Judiciary Committee on a number of times. We can't argue that this isn't something

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

April 3, 2001

LB 215

that's been in the public eye, that the public has had a chance to argue about and discuss, and I, for one, will be voting green on the Chambers amendment.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Chambers, on your amendment.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I don't see how Senator Smith says this can be handled in the marital section because that constitutional amendment that was adopted says that people cannot...these people cannot marry whom they choose, so I don't understand what he is talking about. But polls were taken during the time that amendment was being pushed for passage, and people who said they were going to vote for that amendment said overwhelmingly, above 70 percent, that they think the civil rights of gay men and lesbian women ought to be protected. I often think of a movie that I saw called the "Elephant Man", and it was about a man named Merrick and he had these growths that would develop and disfigure him horribly. They were so powerful in their growth that they caused his skull to be misshapen and a sack was made to cover his face with an eyehole in it because of the way human beings will treat somebody like that. He was put on display in freak shows, sideshows, circuses, and people made money off his deformities, and he was called the elephant man. And there was a scene where he was in London, I believe, and he was trying to get away from these boys who were harassing him, and he had trouble walking like you or I walk because he was somewhat crippled. So he was moving as fast as he could, half shuffling, half stumbling. People were looking as he came by, then he bumped into this little girl, and people became infuriated. This mob began to chase him and he went down a flight of stairs, ran along a corridor, came to a metal gate which he could not open. So he turned around and confronted the people and they were all screaming at him and saying what terrible things ought to happen to him. And I seem to remember that somebody pulled the mask off and people fell back in horror. And what this man said, I am a human being, I am a human being. And the crowd stopped. What I am saying here is that these people are human beings. We have an obligation, as lawmakers, to protect them against unjust, unfair discrimination. Why can it be wrong to tell

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Transcriber's Office
FLOOR DEBATE

April 3, 2001

LB 215

somebody you cannot rent this dwelling because you're a Catholic, but it's all right to say you cannot rent it because I think you're homosexual or you are homosexual? I cannot tell you, without legal consequences, you cannot rent this apartment because you're Hispanic, because you're black, because you're married, but it's all right to discriminate against homosexual people. What I'm offering is what I told the Judiciary Committee.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: This is a plea for human decency and respect. When you go to church, when you listen to these prayers every morning, does none of that have any impact? Does none of it mean anything? Jesus often said, Senator Smith, if you do good to those who do good to you, what thanks are you entitled to? Even the worst people do that, but I'm bringing you a better way. That's what he said.

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

SENATOR KRUSE: Mr. President and members, I rise to strongly support this amendment. Senator Chambers' illustration is right on target. It's all about appearances. I've worked in this area for many years, and I've seen many a person turned away because of the way they looked. It's time for us to get over it.

SENATOR CUDABACK: Thank you, Senator Kruse. Senator Chambers, your light is next.

SENATOR CHAMBERS: Mr. President and members of the Legislature, the first senator to bring a bill to prohibit discrimination because of sexual orientation was former Senator Tim Hall. I knew then how people would react, and I applauded him for it, but I told him he could not be on that bill alone. Somebody else's name should be on it, and I cosponsored it with him every time he brought it and then continued to bring it alone. People should not be so fearful. They should not be so hateful. Whether you realize it or not, you may have members of your

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

April 3, 2001

LB 215

family who are homosexual but they cannot tell you because they may have heard some of the things you have said. Instead of being able to go to those who should mean the most to us, to whom we should mean the most, they cannot do that. So they are just out there. All that I'm asking for in this amendment is that we guarantee to people the right to have a place to live. I think something in this bill talks about money for the homeless, as long as they are not homosexual. I don't see where Jesus ever made those distinctions. And do you know why I'm invoking the name of Jesus today? Because that is what is done almost every morning when prayers are offered, and I would dare say, without attempting to boast, I probably come closer in my day-to-day life, the issues that I fight for, the people I try to help, I come closer to what Jesus talked about than some of my colleagues here. You don't have me saying give somebody the back of the hand because of what they look like, their political party, their religion, or any other thing. But I am not religious. I don't pretend to be a Christian. There are just some things that I think we all would believe and act on if our brains are working. There is a way we don't want our children to be mistreated. There is a way we wouldn't want our wife, if we have one, to be mistreated if we are a man, or I should say our spouse. We don't want our siblings mistreated, our parents. Suppose they happen to be homosexual and we know the terrible things that this society has not only said but will do to people who are homosexual. How do you think that makes family members feel? Why is it in America that people have to conceal what they are to avoid discrimination and then there are lawmakers who won't come to their aid? Why did we take an oath? I am not even religious but do you know why I put my hand up when they say take an oath, and you swear or affirm, and I say I affirm? Because it's a promise based on my sense of personal honor that I'm going to do all I can as a lawmaker to protect the rights of people who have no place to turn. We might be the last stop on the road to perdition. We might be the last one before somebody whose feet are stumbling will fall over a cliff, and the only one who can rescue them is us. And we say, rather than extend a hand to help, I will stand aside and let them topple over the cliff and, thank God, my child is not homosexual like that.

SENATOR CUDABACK: One minute.

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

April 3, 2001 LB 215

SENATOR CHAMBERS: I have serious difficulties often while I am in this Legislature. I can empathize with too many people but I'm unable to rescue all of those people. But when the opportunity comes to do something, I'm going to try, and that's what this amendment is an effort at doing.

SENATOR CUDABACK: Thank you, Senator, and that was your third time, Senator Chambers. Senator Smith, followed by Senator Schimek.

SENATOR SMITH: Thank you, Mr. President. Members, very briefly, I would like to elaborate on my prior statements of the enforceability, and I think that it would...this policy would bring about some confusion as to being able to identify something that is a little more ambiguous than someone's race, someone's faith, someone's marital status. And I think if someone is removed from a residential complex based on this assumption of their sexual orientation, as many will call it, that's an assumption based on their marital status. It's already illegal based on the marital status protection, and that someone cannot rent or sell property to someone who is single or married; it doesn't matter of their status. I would also point out that the wording, the term "orientation" from the nice library back here, in the Oxford Dictionary, orientation relates to adjustment or position or aspect...or aspect with respect to anything, determination of or true position in relation to circumstances and ideas. So this is hard to enforce. We can't be specific about it because of the many assumptions that are centered upon one's sexual orientation or, in many cases, the way this is worded in the definition of orientation. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Schimek, on the Chambers amendment to LB 215.

SENATOR SCHIMEK: Yes, thank you. Mr. President and members, I rise in support of the Chambers amendment. I am not certain that I think that Senator Chambers' strategy here is very good because it is late in the afternoon; there aren't many people in the Chamber. I don't know if he wants a vote on this or not but it is the right thing to do, and it has been with us for a long

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

April 3, 2001

LB 215

time. I remember when Tim Hall first brought it to the Legislature. At that time, it was going before the Business and Labor Committee, and it actually came out to the floor one year and, like this year again, it was not prioritized, so we did not deal with it and time ran out on it. All this amendment would do would give this person standing, as I understand it, to go before the NEOC, if that person felt that they were being excluded from renting a property because of their sexual orientation. I think...I think housing is a basic need of mankind and I think that everybody should have a right to rentals. I am sure that some of the same arguments, Senator Smith, were made when originally the NEOC, NEOC and OOE...EEOC were actually first formed, and probably...I don't know how long that took but I'm certain that the same kinds of objections were raised about religion, you know, and same about color and race and so forth. I think this is the right thing to do. I think it is long overdue, and I'm going to support it even though, as I said, Senator Chambers, I am not sure that your strategy is great. It's late in the afternoon and there aren't many people on the...on the floor. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Senator Chambers, there are no further lights on. Did you wish to close on your amendment?

SENATOR CHAMBERS: Mr. President, members of the Legislature, I would just tell Senator Schimek that the bill came up late in the afternoon. I wish it had come up at a different, more opportune time. I am going to ask for a call of the house, and then I will complete my close.

SENATOR CUDABACK: There has been a request for a call of the house. All those in favor of the house going under call vote aye, opposed nay. Record, please.

CLERK: 16 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. You know your time is running, Senator Chambers?

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

April 3, 2001 LB 215

SENATOR CHAMBERS: Yes, and that is why I will begin speaking, Mr. President. I would like to ask Senator Smith a question or two.

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

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, how do you tell by looking at somebody what their religion is?

SENATOR SMITH: You cannot.

SENATOR CHAMBERS: Isn't that vague and ambiguous?

SENATOR SMITH: No.

SENATOR CHAMBERS: What does the word "color" mean?

SENATOR SMITH: Color...

SENATOR CHAMBERS: How would you define "race"?

SENATOR SMITH: How would I define race?

SENATOR CHAMBERS: Isn't that an ambiguous term, or have these terms come to take on a meaning that the society, generally, understands in the context of antidiscrimination legislation?

SENATOR SMITH: Well, the whole issue is very broad in terms of what is identifiable and what isn't, and what can be proven and what cannot.

SENATOR CHAMBERS: Thank you, Senator Smith. Members of the Legislature, we know that these terms that are in the bill right now are as ambiguous, if that is the term you want to apply, as anything else that's in the law. The courts have no problem with this. The term "sexual orientation" is well known throughout the society. Senator Smith knew what it was when I first brought it up. People know. That's not the reason people

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

April 3, 2001

LB 215

will vote against this and it is not the reason people should vote against it. I don't think there is a legitimate reason to vote against it. All that this amendment is designed to do is extend the same protection to people who are homosexual that extends to these other protected groups when they are trying to find a place to live. Somebody might ask me would I want a homosexual to live next door to me? Maybe they have; maybe they are now. I just don't pry into other people's business. Maybe I have some colleagues who are homosexual and I don't know and I don't inquire. What difference does it make to me? I couldn't care less. The only reason this is an issue that is on my radar screen is because I have seen the mistreatment accorded these people, and the fact that there is no recourse under the law, and there ought to be. It is a pathetic law which knows that an identifiable group of its citizens is being mistreated in a way that others are not and that society will not fashion a remedy. We're constantly doing that. I would hope that in the year 2001 we could have overcome enough of these superstitions, these fears and dreads so that we could vote in favor of people having the right to rent a house, to buy a house, to obtain property for residential purposes on the same basis as any other person in this society. If Senator Smith were turned away from a house, he wouldn't like it but he doesn't mind others being turned away. Nobody on this floor would like it, and I say again, there are provisions in this bill that I'm trying to amend which will try to give some aid...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and relief to homeless people if they are not homosexual. If you are homosexual, you should be homeless. You should have no place to work. You should have no place you can lay your head and rest. There should be no piece of earth on which you could set your foot and find peace. As long as these injustices prevail, we have a responsibility and an obligation pursuant to our oath of office to do something to remedy the problems, and I hope that's the way you will vote this afternoon. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Hartnett, the house is under call. Did you wish to wait for

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

April 3, 2001 LB 215

Senator Hartnett, Senator Chambers? The house is under call, Senator Hartnett. Please report to the Chamber. He is on his way, I understand. All members present or accounted for. The question before the body is adoption of the Chambers amendment, FA158, to LB 215. All in favor vote aye, opposed nay. We are voting on the Chambers amendment, FA158, to LB 215. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 26 ayes, 8 nays, Mr. President, on the adoption of Senator Chambers' amendment.

SENATOR CUDABACK: The amendment is adopted. I do raise the call.

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

SENATOR CUDABACK: Senator Erdman for a motion.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 215 to E & R for engrossing.

SENATOR CUDABACK: The motion is to advance LB 215 to E & R for engrossing. All in favor say aye. Opposed nay. It is advanced. Mr. Clerk, items for the record.

CLERK: Mr. President, just one item. Committee on Revenue will meet in Executive Session tomorrow morning at 8:30 in Room 2022. Priority motion: Senator Kristensen would move to adjourn until Wednesday morning, April 4 at 9:00 a.m.

SENATOR CUDABACK: The motion is to adjourn until Wednesday morning at 9:00 a.m., April 4th. All in favor of that motion say aye. Opposed nay. We are adjourned.

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