

APRIL 4, 2001

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FLOOR DEBATE

April 4, 2001 LB 438

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good morning. Welcome to the George W. Norris Legislative Chamber for the fifty-ninth day of the Ninety-Seventh Legislature, First Session. Our chaplain of the day is Senator Foley from the 29th Legislative District. Senator Foley.

SENATOR FOLEY: (Prayer offered.)

PRESIDENT MAURSTAD: Thank you, Senator Foley. Call the Legislature to order. Members, please record your presence. Mr. Clerk, please record.

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

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

CLERK: No corrections, Mr. President.

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

CLERK: Mr. President, I have neither messages, reports nor announcements this morning.

PRESIDENT MAURSTAD: Mr. Clerk, General File, appropriation bill.

CLERK: Mr. President, LB 277A is a bill by Senator Redfield. (Read title.)

PRESIDENT MAURSTAD: Mr. Clerk, we will move to Select File, 2001 committee priority bills.

CLERK: Mr. President, LB 438 on Select File. Senator Erdman, I do have Enrollment and Review amendments pending, Senator. (AM7083, Legislative Journal page 1249.)

PRESIDENT MAURSTAD: Senator Erdman.

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SENATOR ERDMAN: Thank you, Mr. President and members. I move the adoption of the E & R amendments to LB 438.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments to LB 438. Senator Dierks, you are recognized on the E & R amendments.

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, on General File, Senator Raikes has some questions about the authority of the Department of Agriculture and also on the...something on the testing costs, and I thought that I should talk to you a little bit about that and give him the opportunity to answer. We didn't develop an amendment. I think that we felt that we had this pretty well worked out between us and I want to make sure that that is still so. The...there is two points I think I want to talk about. One is on the livestock emergency response system and there is nothing in the new language that would alter the department's obligation to respond to these foreign animal disease entries into the state. The department is obligated and the power is already under 54-701 to protect the health of livestock in the state and to employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, infectious, contagious, and otherwise transmissible diseases among livestock. The department has specific powers in statutes for dealing with these program diseases but the department would respond to a foreign animal disease by way of help from the U.S. Department of Agriculture and the Animal Plant Health Inspection Service especially, and they are the ones that came in and took care of the problem with the sheep in Vermont and the North Carolina hog situation to determine about the foot and mouth disease. So it's...we think that the power is there in the current language to take care of the difficulties that Senator Raikes had. And then on the problem with testing and the cost, why the livestock...Section 11 of the bill and E & R amendments reads as follows: The livestock producers who choose to participate in the voluntary livestock certification program shall pay the primary costs of the program, including all on-farm testing costs. The department may use funds appropriated by the Legislature, when available, to offset the

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costs of disease research and laboratory testing when done in conjunction with a voluntary livestock certification program. So we think that we've covered all those tracks and I'd like to give Senator Raikes a chance to respond or ask further questions if he'd like to.

PRESIDENT MAURSTAD: Senator Raikes.

SENATOR RAIKES: Thank you, Senator Dierks. I will just sort of maybe restate some of my concerns that I expressed earlier and then give you, if you need, the time back to respond. Again my concern was that the language in the bill suggested that in dealing with an emergency livestock disease outbreak would not necessarily be a top priority of the Bureau of Animal Industry. That's a concern to me because I think, as we expressed last time or we discussed last time, there is...that is something that, number one, livestock producers and the other citizens in the state expect to be the responsibility of the Department of Agriculture and, in fact, there is not a good way for individual, an individual producer, or producer groups to deal with that on their own. So my concern was that that be highlighted as the main responsibility of the Department of Agriculture in this regard. Now I have to tell you that I'm also concerned, if you go back a year ago, it appeared that there were no more serious disease outbreaks on the horizon. The pseudorabies seemed to be under control, as well as some other diseases that I've indicated, so the question then is, well, all right, if we have personnel in the department that are available, there is not really a role for these folks given the disease incidents we now have, should we adopt other programs which certainly have merit, and the voluntary certification is a program that has merit. On the other hand then, if the emergency disease problems reemerge, then all of a sudden we need to fill the staff in order to take care of what was really our original goal...

PRESIDENT MAURSTAD: Members, if we can have your attention, please, we do have debate going on. Senator Raikes.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor. We then may find ourselves in a position where we have to fill the staff

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in order to take care of what is the primary goal simply because we have taken on some auxiliary roles which we now need to support. So that's certainly one of my concerns or was one of my concerns, remains I guess. The other one is and I think you...

PRESIDENT MAURSTAD: Time.

SENATOR RAIKES: Thank you.

PRESIDENT MAURSTAD: Thank you, and, members, we are on the adoption of the E & R amendments, and then we can discuss the bill so is this, I would just ask if it's...is this on the E & R amendments? You have concern on the E & R amendments?

SENATOR DIERKS: I just...I wanted, my concern is I wanted to visit about the issue before it passed on to Select...General File.

PRESIDENT MAURSTAD: You will have that opportunity when we adopt the E & R amendments. Those in favor of the E & R amendments say aye. Opposed nay. The E & R amendments are agreed to. Senator Dierks, on the advancement of LB 438.

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. Senator Raikes, would you go ahead and continue the questions you are asking. I would like to be able to answer them for you.

PRESIDENT MAURSTAD: Senator Raikes.

SENATOR RAIKES: Okay, thank you, Senator Dierks. I think I covered one of my concerns, which was the role of the...or the primary role of the department and use of departmental personnel to handle that role. The second issue I think you've already addressed and that was that the voluntary herd certification I think, as I understand it, is part public purpose and part private purpose. The part...the part of it that's private purpose should be funded or paid for by private producers, such as myself, and there should be, and I assume it's provided for, some sort of a cash fund or so on for the department if they are

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going to venture into this area to collect dues from people who participate and use that...use those monies then to support the voluntary certification program. So I'll stop there, and if you'd like to respond, I would...I would appreciate it.

SENATOR DIERKS: Okay. Well, regarding the first part of your questions and the ability of the department to be in a response mode, that hasn't changed and it won't change. They still do that and, of course, one of the things we were talking about is utilizing the current staff to take care of the problems as they become...as they become a problem and also to take care of those things that...finish those problems that we had. And two things have happened since we started on this legislation. One of them is the...the resurgence of pseudorabies in the state. We've had a peddler out here in the middle part of the state that sold some pigs from...to a marketplace, that they were contaminated anyway, and they've got pseudorabies now in about three different counties out there I believe. And then so they've had to take these staffers and go back out there to work with them. They haven't reduced their staff and the reason they haven't is because they are still doing this sort of thing. They also found tuberculosis in a couple of steers over in southern Nebraska in a feedlot, and so they...they've got these two little things that came up that are keeping them pretty busy, but they are there to respond and they respond immediately on these things. Now the foreign animal diseases we're talking about, when that...if that comes to this country, we will not only be in a response mode, we will also have some help at the federal level. And the dollars, as far as the testing requirements in a herd certification requirements, the department has always been there for us. They've been able to provide us with some help when it needs to be, and they still have that authority. But the private certification is still...is on your hands and my hands as producers to stimu...to initiate that and to...that we'd like...I'm referring, of course, back to the brucellosis program and I think somewhat to the pseudorabies program. In order to become certified, we had to follow certain steps. We had to do some testing and we had to eliminate certain stages of disease and most of these are...are in a staged process. You do one stage and then another and get to, finally to a free status, but through all

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these stages, why there is...there is various amounts of help available from the State Veterinarian's Office. At one point in brucellosis eradication, they were paying for the vaccine. Actually, that was done by the federal government but as cooperative with the state government, and in some cases they were paying for the testing of cows. And then later on when we got the thing pretty well cleared up, they were paying for herd...

PRESIDENT MAURSTAD: One minute.

SENATOR DIERKS: ...when the herd is destroyed or sold, depopulation. And so the program is there and I don't think there is any problem that we're...and this bill doesn't change any of that. It just provides them with impetus and the ability to go ahead and work on the new emerging diseases, I guess you want to call them. They are not really new but they are the ones we haven't seen much of in this country and could. So with that, I'd just urge your support to pass the bill on to Select File.

PRESIDENT MAURSTAD: Thank you, Senator Dierks. Senator Raikes, on the advancement of LB 438 to E & R for engrossing.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor and members. Senator Dierks, I'll...I'll continue with a couple of questions. You're...you're helping cure my ignorance I think a little bit on this subject. I was under the impression, I didn't really know about the Department of Agriculture involvement in herd certification or elimination type programs. I was aware of certain private breed associations doing this sort of thing. For example, it used to be that SPF, maybe that's specific pathogen free or something like that, in hogs, and as I understand it, this was more a breed association or a commercial type activity rather than the Department of Agriculture. And as I understand it, there are certain diseases or disease conditions that you can deal with that really are not epidemics. They are...they are problems or they are diseases that cause economic losses. Something that comes to mind is shipping fever in cattle. There are private, I think, programs where producers can guarantee that they've gone through a certain sequence of

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steps, or whatever, and the net result of that is that their product becomes more valuable to a particular buyer. It really doesn't have too much to do with any public disease epidemic. So, you know, I'll ask you to comment on that and...but before I turn it over to you, let me mention one other thing. Now with herd certification, suppose if the Department of Agriculture is involved in herd certification and I have my herd certified by the department as being free of a particular disease, so you buy an animal from me, maybe a breeding animal or whatever, it turns out that that animal does have the disease that I have a certification from the department that says it didn't have, now who are you going to come after? Are you going to come after me or are you going to come after the state Department of Agriculture? With that, I will allow you to respond.

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: Thank you. You talked about a lot of different things, Senator Raikes, and one of them you talked about the respiratory problems that shipping fever is brought about by. And those types of diseases are not...are not program diseases that people are...the programs are set up on to try to eradicate diseases that have, especially that have difficulty that could be transmitted to man. We don't...we don't have program diseases that we work with, for instance, with red nose or BVD or some of the respiratory viruses and the bacteria that causes respiratory problems. Those don't become program diseases. Brucellosis did because it was a ma...it was a disease that affected man. Pseudorabies did because it was a disease that was wiping out the swine industry and there was a way to control it. So when...when a herd is certified free of a certain disease and the state certifies, makes that certification, I think that you still, if you bought a bull from a man that, you know, had a certified herd, you're re...your recourse is back to the man that you bought the bull from rather than the state department. They provide the method for doing the certification. They provide the forms or the actual certified certificate, but this is still incumbent on the owner of the animal to...

PRESIDENT MAURSTAD: One minute.

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SENATOR DIERKS: ...to fulfill the responsibilities of the certification process. What, essentially, is being authorized in the amendments, in the committee amendments is intensified planning process to determine in advance how best to react to disease outbreaks. This is an activity the department is undertaking regardless of whether LB 438 is passed or not. The purpose of putting it into statute is to give Legislature...give legislative emphasis and priority to this activity. The department will devote...Senator Raikes, I have my light on again, so if we run out of time, why we can...we can continue this. The department will devote resources to emergency disease response as the resources are freed up from the completion of existing disease eradication projects. So...

PRESIDENT MAURSTAD: Senator Dierks, you're recognized to continue.

SENATOR DIERKS: Thank you. This is an activity the department will continue, and I think that our conversations with the department suggest that the department would like to reassign a full-time equivalent to an emergency response position whose primary duty will be to develop a response system to coordinate the department's response. This is a two-step legislative process really although the department is not...does have some quarantine authority that could apply to disease outbreaks, the department intends that one of the goals of the planning process is to identify additional authorities that may be needed. And so we are kind of in a work in progress. Did I get through all the questions you had, Senator Raikes?

PRESIDENT MAURSTAD: Senator Raikes.

SENATOR RAIKES: Well, thank you, Senator Dierks. Let me just, I think you did, but let me just reemphasize a couple of points I want to make. One is that you don't foresee a situation in which the department would need to say, look, we have an epidemic, a disease epidemic outbreak that, of a program disease, for example, that we really can't deal with without more personnel because our current personnel are busy doing voluntary herd certification? You don't see that situation

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arising?

SENATOR DIERKS: Well, I don't...I don't know how you could really...I don't know how you could say that it couldn't happen because I think it possibly could. If something came in here, was an overwhelming disease that was just...you know, I'm sure that we would be hurting for pec...

SENATOR RAIKES: I guess what I'm after, Senator, is...is a distinct enough priority that if we have a epidemic of a program disease that all personnel we have get devoted to that situation, and that we would...we would put on hold or suspend our voluntary herd certification program.

SENATOR DIERKS: That's probably a fair statement,...

SENATOR RAIKES: Okay, thank you.

SENATOR DIERKS: ...in a...

SENATOR RAIKES: Then the second one was you said you didn't think the department would...or the state government, for that matter, with this herd certification program, would be making itself vulnerable to some sort of a liability claim from someone who ended up or claimed to end up with a diseased animal from a herd that was supposedly certified by the state as being free of that disease?

SENATOR DIERKS: You know, I...that's right, I don't believe they are. I think that certification is for the herd owner and enables him to sell products in the marketplace, and it's his responsibility, and he would have the responsibility as far as living up to the certification process.

SENATOR RAIKES: Okay, thank you. And one other question would be, is there an A bill associated with this? Is any more money needed or can the department operate on the funds currently available?

SENATOR DIERKS: I think that they are going to be able to get along on the current funds. No, there is no A bill.

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SENATOR RAIKES: Okay, thank you, Senator Dierks. I appreciate your help.

SENATOR DIERKS: Thank you. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Dierks. Further debate on the advancement of LB 438? Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 438 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 438 to E & R. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 671, I do have E & R amendments, Senator. (AM7090, Legislative Journal page 1308.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the adoption of the E & R amendments to LB 671.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments to LB 671. Those in favor say aye. Those opposed nay. The amendments are adopted.

CLERK: Senator Beutler would move to amend, AM1269. (Legislative Journal page 1317.)

PRESIDENT MAURSTAD: Senator Beutler, you are recognized to open on your amendment to LB 671.

SENATOR BEUTLER: Mr. Lieutenant Governor, members of the Legislature, this a consent calendar type bill, LB 814, which is being hopefully added to Senator Janssen's bill with his permission. This particular bill deals with a section of statutes that has to do with alcoholic beverages or liquor being sold within particular distances from universities and state colleges and community colleges. And what has happened in

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recent times is that community colleges and state colleges and even the university, they're developing what they call satellite campuses. That is, basically, in many cases they are just a classroom of students in a downtown location. We have them here in Lincoln now with Peru State. We have them with Southeast Community College, and this is happening in Omaha and around the state, these little satellite classrooms are developing. And so that's causing a conflict in terms of distances from places where alcoholic liquors are sold. So what this bill says is that the general 300-foot rule that is currently in law that applies to a campus or a college, that with respect to a satellite location that rule would not apply. And it describes what a satellite location is. It means a location at which a university, state college, or community college provides educational services for students which is not adjacent to the main campus, and which serves not more than 25 percent of the students enrolled in the university, state college, or community college. So what I would consider some very arcane and outdated rules relating to distances from schools or college campuses are modified slightly to deal with satellite campuses of the different schools. That's essentially what the...what the amendment does. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Byars (sic). For debate on the Beutler...Beutler, excuse me, debate on the Beutler amendment, Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I would like to ask Senator Beutler a question, and it might lead to one or two others.

PRESIDENT MAURSTAD: Senator Beutler, would you yield?

SENATOR BEUTLER: Yes.

SENATOR CHAMBERS: Senator Beutler, what do you think was the rationale behind that distance rule relative to the location of these liquor selling establishments and universities?

SENATOR BEUTLER: Senator, I can...I can guess at the rationale, although I don't think it was probably a very good rationale,

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but I assume that it applied maybe in times when students didn't have cars or means of transportation, and somehow existence of a certain distance, there'd be fewer of them that would walk that distance to get to a liquor establishment, I guess.

SENATOR CHAMBERS: Senator Beutler, why don't you just do away with the distance requirement altogether for colleges, universities, and these other educational institutions?

SENATOR BEUTLER: For institutions at that level, Senator, that would make sense to me but I don't...the body, I'm not sure the body is ready for that. I didn't want to make a bigger issue out of it than...than the immediate need to deal with the satellite operations.

SENATOR CHAMBERS: Senator Beutler, how is a satellite, other than location, different from the institution itself in terms of the makeup of the student body, agewise?

SENATOR BEUTLER: In terms of the makeup of the student body, there is probably no difference. I think maybe there is some difference in the situation in that a cam...on a real campus oftentimes a great many students live there, whereas with a satellite campus they don't even live there. They just...it's just a classroom.

SENATOR CHAMBERS: Senator Beutler, in applying the law, does it operate in such a way that if a satellite of a university or whatever other institutions we're talking about were to move into an area that an already established license holder could no longer sell liquor or could that satellite not locate there? How would that play out?

SENATOR BEUTLER: Are you speaking, Senator, let me be clear, with regard to the amendment proposed to you?

SENATOR CHAMBERS: Yes.

SENATOR BEUTLER: With regard to the amend...to the amendment proposed, there would be no distance requirement.

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SENATOR CHAMBERS: Okay, well, let's do it without the amendment because that's what I want to get at.

SENATOR BEUTLER: Okay.

SENATOR CHAMBERS: If one of these satellites were to be put in place now, liquor could not be sold within what distance of that satellite?

SENATOR BEUTLER: Within 300 feet.

SENATOR CHAMBERS: So if there were a liquor establishment already in place and a satellite moved within 300 feet, would the liquor establishment then become prohibited from selling liquor?

SENATOR BEUTLER: Senator, the way the statute is structured, I am not sure about that. I think they would have difficulty as a matter of process and protection under the law, and under the normal constitutional provisions, they would have a problem taking away a liquor license that already existed there.

SENATOR CHAMBERS: So what we're really looking at is a situation where a satellite would be established and somebody would want to get a liquor license within a certain distance of that satellite?

SENATOR BEUTLER: That, I think...well, I think that would be most often the case, yes.

SENATOR CHAMBERS: And the very presence of this ta...this market might encourage a liquor person, a liquor seller to try to get a license near that location in order to have a ready-made clientele?

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: Is that possible?

SENATOR BEUTLER: Senator, if you frame the question in terms of possibility, yes, that's possible, although these are...these

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are generally small units but not necessarily so.

SENATOR CHAMBERS: I've got my light on again and I ask the questions just to kind of lay a groundwork...

SENATOR BEUTLER: Right.

SENATOR CHAMBERS: ...for some comments I'm going to make then, I'm sure that...on your time because I probably won't have much to offer you, then you can respond to the things I say, but I wanted to give you an idea of the direction that I'm moving.

SENATOR BEUTLER: Okay.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. (Doctor of the day introduced.) On the Beutler amendment to LB 671, Senator Vrtiska.

SENATOR VRTISKA: Thank you, Mr. President, members of the body. I have a difficulty in not opposing this amendment. I'm trying to determine whether education is more valuable than alcohol, and whether, in fact, it's necessary to move alcohol establishments that close to prevailing institutions, and so I'd like to ask Senator Beutler a question.

PRESIDENT MAURSTAD: Senator Beutler, would you respond?

SENATOR VRTISKA: Senator Beutler, is there a particular situation that you're alluding to in this situation, or is it just the idea that if this...if satellites develop, that you want to make sure that they are not prohibited from establishing a liquor establishment within that prevailing distance under this...under the current statute.

SENATOR BEUTLER: Senator, there was a specific situation in Lincoln and, frankly, I don't remember what it was because the specific situation wasn't important to me as the general principle. I mean I accepted and took the bill on the general principle that the law was somewhat archaic. In fact, I think it's a lot more archaic than what I am trying to do but...so if you're interested in the specific situation, I will let you know

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in just a minute, though.

SENATOR VRTISKA: Well, when you say it's archaic, I guess I interpret that to mean that in your opinion then we should probably remove all restrictions and let them build...develop liquor establishments wherever they want to and without regard to the...without regard to the college or university, is that what you're saying when you talk about archaic?

SENATOR BEUTLER: I really am, Senator. I don't think the law has any...I've lived in this town a long time, and I've never noticed that anybody has had any problem getting to liquor establishments in town.

SENATOR VRTISKA: Well, I think that's probably part of my disagreement with you. I think they are always able to provide a place. I...I just don't see the real necessity to make it more readily, and I agree with Senator Chambers it would give certainly an opportunity for people to rush to the...to a...to a ready market for the purpose of distributing or selling their product, and I'm just not a great fan of that. So I'm going to rise in opposition to your amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Vrtiska. Senator Chambers, further debate on the Beutler amendment.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this amendment allows what would be called a satellite to cater to up to 25 percent of the student body of an institution, and I don't think we ought to do some things in dribbles and drabbles. We ought to either do it or not do it. If there is a rationale for not having liquor establishments within 300 feet of an educational institution, the same rationale would obtain for one of these satellites. When you are talking about up to 25 percent of the student population, you are talking about a substantial element or percentage of the institution. I don't drink. I hope it's clear, if I haven't made it clear, that I wish nobody would drink. But by the same token, I've never offered a bill to prohibit anybody from drinking. But I've listened to too many arguments on this floor about punishments we ought to heap upon young people, those under 21, and these

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satellites, just as with the institutions themselves, cater to many, many people who are below the age of 21 years. On the one hand, liquor is deemed such an evil when it comes to our young people consuming any amount because with the passage of LB 114, which I did vote against, consuming any amount of liquor can lead to jail time and a fine for a young person. Now there would be an opportunity to put a satellite or have a liquor establishment come into being near one of these satellite locations where we have these young people. So I want to see some consistency by this Legislature. I want to see a principle of some kind established which will give us a guide by which to determine the conduct we are going to either criminalize or approve of by law. This amendment that Senator Beutler is offering is not what I would call a consent calendar amendment. It goes to a basic principle, and maybe I would wind up ultimately agreeing with him that you shouldn't have any rule with reference to distance, but there is not the opportunity to really discuss that issue since his amendment is being offered to another bill. But I think it needs to be thoroughly discussed. So I cannot support the amendment, and if it is attached to the bill, I will not support the bill. There just is not a chance to thoroughly discuss it and I'm not going to offer amendments to Senator Beutler's amendment just to create the chance to discuss it. But I want it to be clear as to why I'm going to vote against the amendment. Senator Beutler very well may have a point that the existing law is archaic, that changes in circumstances have nullified the effectiveness of the existing law. But then people such as Senator Vrtiska and myself, being old as we are, may see that there is a reason for it, and the very arguments Senator Beutler makes about...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...the ready availability of liquor at existing establishments could be the very argument that would take away the need for his amendment. Some areas may should be buffered despite the fact that the buffer is not going to prevent people from going outside that area seeking what it is the buffer is designed to protect a given location from. So I'm just in a position where I cannot support the amendment at this time and I will speak one more time, which will be my last time.

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PRESIDENT MAURSTAD: Senator Janssen, thank you, Senator Chambers. Senator Janssen, on the Beutler amendment.

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. I remember a few years ago when I was on the General Affairs Committee, we had a...we had a bill, I think Senator Robinson brought it at that time, there was a church that was started within so many feet of a...of a liquor store, and there was a question whether that liquor store could remain open or not when this church had moved within the...inside of those limits. And I believe that that was left up to the Liquor Control Commission could grant variances there, and so there was really no need for that...for that legislation at that time. Now I don't...I don't know whether in this situation that whether the commission could do that. I don't believe they could and that's probably the reason that the bill is here today. The university, they have satellites quite a few different places throughout especially in Lincoln, and now whether they could move one of those in close to an establishment, I am not sure. Maybe Senator Chambers is right. Maybe this whole thing should be addressed once and for all. If this is the way our society is today and as mobile as they are, I can see where 100 years ago, they had...you know, kids probably didn't...didn't walk that far to...you know, they had to walk most everywhere they went. So the times have changed and accessibility to...well, look at the East Campus, used to be quite a ways away. Now they are all connected together and, as far as I can see with Senator Beutler's bill, you know if it is within a certain distance of a...I guess it really doesn't make much difference, but it should be clarified once from...once and for all. With that, I...I have no objections to Senator Beutler's bill, although I do not want to see the General Affairs Committee's bill, priority bill, slip by the wayside. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Janssen. Senator Beutler.

SENATOR BEUTLER: Members of the Legislature, let me give you two additional pieces of information, if it helps you one way or

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another. First of all, let me say that I appreciate Senator Chambers' point of view but I simply don't know on such short order how to make order out of the chaos of the statute and the whole regulatory structure in this particular case. But I think two things, first of all with regard to satellite campus locations, I think everybody would agree that that movement has been a good thing for students in the sense that the whole purpose of the satellite campus idea is to try to bring schools closer to where students work, to where they live, and make education more accessible. Well, you're, in the case of Lincoln, for example, the satellite campus has been brought right to the middle of downtown Lincoln. If...if it's going...if this 300 foot rule is going to pertain, you may find that the whole movement towards satellite campuses will be discouraged because you are not going to want to put into a business area a campus that will then have a detrimental effect on other developments in the area. In Lincoln, the specific situation, Senator Vrtiska, that brought...that brought this to light as a problem, existed when the community college created a satellite campus, a classroom in what we call the Centrum Building, downtown Lincoln, a principal middle-of-the-downtown half-a-block building. It was just recently constructed a few years ago. So the campus is there now. On the block right next to it, the city of Lincoln is contemplating the total redevelopment of that entire block in what they call the Megaplex. It will consist of a number of different types of shops including, hopefully, liquor establishments. The existence of that satellite campus across the street on a different block, but in the downtown area, will have a prohibitive effect, a limiting effect on development in the new Megaplex. And the question is, whether you think that sort of thing is justified? And I would argue that given the archaic nature of the rule, generally, you certainly don't want it interfering with development in your downtown area, especially when there is not much point to it. I mean when a satel...when the satellite comes into downtown Lincoln, there are liquor establishments all around it that can continue to be liquor establishments. So it's not like you are protecting the students. All you're doing is inhibiting by a bad rule the variety of economic development that you might have in a...in a conceived project like the Megaplex, in the middle of your

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downtown. So if there is no...it doesn't protect students, it inhibits economic development, there just seems to be, to me, no point to the rule. Thank you.

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have quoted on other occasions the axiom from the law: bad hard cases make bad law. When a specific incident arises which creates a problem and it's an aberration or something out of the ordinary, to construct a principle of law around that case, to enact a statute based on that case especially without adequate deliberation is not wise. I do not want to legislate based on one incident facing the University of Nebraska in Lincoln. When we enact a statute, it must be what's known as a general statute. It has to apply every place in the state or touch every category of person or item or interest which is addressed by the statute. And that is why statutes have to be open-ended and cannot create a closed class. If it creates a closed class, it is special legislation prohibited by the constitution. So when we enact a general statute of the kind Senator Beutler is talking about, it doesn't just apply to the Centrum Building or the Megaplex, which will be in downtown Lincoln. It applies to every rural town, hamlet, village, every area within the city of Omaha, in other words, any place where a satellite classroom or entity may exist and a liquor license holder or would be license holder would like to set up shop. I don't necessarily think that putting liquor establishments close to educational facilities is a good idea, but then I don't think it's a good idea that every group, practically speaking, which invites the Legislature, the legislators, to social functions must include the obligatory alcohol. Now I know we have many versions of "Captain Hungry" in this Legislature. "Captain Hungry" is the title I apply to senators who are always eating, mooching and sponging off the lobbyists, always at the lobbyists' trough. That's where you find "Captain Hungry", and you will find "Captain Hungry's" formal title to be Nebraska State Senator. So my views are somewhat finicky, which is a term somebody applied to me the other day about my eating habits. I may be somewhat finicky in this area but, aside from that, we're

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looking at part of a regulatory scheme related to alcohol. We're being asked to amend a bill on Select File, which has been done before, that would deal with what I consider to be a substantive aspect of that regulatory scheme. I do not think we ought to do it at this time, and I do not think we ought to do it under these circumstances. There are other substantive amendments that not only have I supported but I have offered on bills which were as far along as Final Reading. Sometimes the amendments would be adopted,...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...sometimes not. This is one I think requires much more deliberation than has been given it this morning, than can be given it this morning, than will be given it this morning. Now I don't know how important LB 670 is, LB 671 is to anybody, but if this amendment is attached, because I think it's a bad policy, then I am going to do what I can to see that LB 671 is not acted on this session. I will not move to kill it. I will move to bracket until next year. Then there will be time to consider it, and if the bracket motion is defeated, then I will have to undertake different action on the bill.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Further debate, Senator Janssen.

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. I know there are several, several situations that where...that are typical and look a lot like this situation here. We've got this...this learning establishment I believe is a community college, and that is...that is the satellite we're talking about. And it's not the University of Nebraska, although we have the Lied Center, which I understand is right across the street from a liquor establishment. So somehow or another that has been exempted out or they call it not a part of the university. I don't know what, it seems to me that it is. I don't know what kind of configuration happened when that was built. Of course, that was a lot of dollars I guess. Maybe that makes a difference. Here you've got the city of Lincoln wanting to do something with their downtown area and it's

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unfortunate that liquor has to be a part of that, but that's the way our society is. I don't believe that the people that are going into Southeast Community College would be...most of them will probably be taking night classes there, zooming in and out, and that's not...those people that take advantage of that type of education are there for a specific reason rather than consuming alcohol. They are trying to get an education the best way they can while working probably 8 to 12 hours a day at their jobs. So we're talking about a little different situation, although I will agree with Senator Chambers, you are setting a precedent here for every thing else. The bill that we heard before the committee, I could understand why the city wanted to allow this exemption. I think that LB 671, though, is something that this state needs to do. We've talked about its merits on General File. We all like to spend money. This is one way of regrouping money from out-of-state liquor people, very important piece of legislation this year, closes up some loopholes that other states have taken advantage of and here we are right on the tail end of it. But getting back to the amendment, that to me it makes sense. If it doesn't to Senator Chambers, that's fine. That's his prerogative but LB 671 is something that this state needs to get taken care of and needs to get taken care of this year. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Janssen. (Visitors introduced.) On the Beutler amendment to LB 671, Senator Vrtiska.

SENATOR VRTISKA: Thank you, Mr. President. Just one short quick question to Senator Beutler.

PRESIDENT MAURSTAD: Senator Beutler.

SENATOR VRTISKA: How many cigarette tax dollars are you going to want for this project when you do this Megaplex? You don't have to answer. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Vrtiska. Senator Beutler, on the Beutler amendment. Your light is the last light if you'd like to close.

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SENATOR BEUTLER: No, I...Mr. Lieutenant Governor, I need to withdraw the amendment. I can't jeopardize Senator Janssen's bill, so I do withdraw it.

PRESIDENT MAURSTAD: The amendment is withdrawn.

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

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President, I move the advancement of LB 671 to E & R for engrossing.

PRESIDENT MAURSTAD: You turned your light off, Senator Hilgert, so I thought you didn't want to speak. You can turn it back on. Senator Hilgert.

SENATOR HILGERT: Must have a...anyway, thank you, Mr. President. I appreciate your courtesy. Members, I do have a question for Senator Janssen. I got a call yesterday in my office by an individual who is concerned about the high cost on page 9 on line 25, the \$500 from out-of-state sellers, that there is some producers in this country that have such a small volume that the \$500 fee would be cost prohibitive from that producer doing business with certain people in Nebraska. If you have a net income or a gross income that is so marginal and so small that \$500 might be too high, is there...was there any consideration of making the fee somehow different compared to, for example, if you are a producer that has a huge volume and a huge profit, perhaps a sliding scale fee or something like that? And if we could talk for a few minutes on that, Senator Janssen, I'd appreciate it.

PRESIDENT MAURSTAD: Do you yield, Senator Janssen?

SENATOR JANSSEN: Yes, Senator Hilgert, we advertised and had an interim hearing last fall...

SENATOR HILGERT: Oh.

SENATOR JANSSEN: ...on this bill and I think that if there was

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anyone that had a big problem with it, they should have been there. That's what interim hearings are for. Now when legislation is before us to take care of a situation that is...that has become a big burden to this state as far as...and to the...and to the wholesalers in this state, they've been treated differently for so long, I think that this constituent of yours probably had the opportunity to come to those...to those public hearings and state his case. If there are such situations around, we'll certainly take a look at that next year.

SENATOR HILGERT: Yes, thank you, Senator Janssen, and so you would look at this issue next year?

SENATOR JANSSEN: Absolutely.

SENATOR HILGERT: You did have an interim study over last fall and the bill was introduced in January, and I understand that it is a late date and I just saw our good friend, Senator Beutler, withdraw his amendment because that would impair the bill, but I do have some sort of a commitment to work with your office and your very competent staff to hopefully look at this issue to try to address it. But you're saying it is too late this session...

SENATOR JANSSEN: That's right.

SENATOR HILGERT: ...and you would not be supportive?

SENATOR JANSSEN: That's right

SENATOR HILGERT: Thank you, Senator Janssen.

PRESIDENT MAURSTAD: Thank you, Senator Hilgert. Further debate on the advancement of LB 671? The motion is, those in favor of the advancement of LB 671 to E & R say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 671A, Senator Erdman, I have no amendments to the bill, Senator.

PRESIDENT MAURSTAD: Senator Erdman.

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SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 671A to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 671A to E & R. Those in favor say aye. Opposed nay. The bill is advanced. Mr. Clerk, General File, appropriation bill.

CLERK: Mr. President, LB 277A by Senator Redfield. (Read title.)

PRESIDENT MAURSTAD: Senator Redfield, you're recognized to open on the advancement of LB 277A.

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor and members of the body. My apologies for not being here earlier. I came in from exec session and went downstairs to get my files and you had already begun, so my thank you to the Clerk for bringing this back up. This is the A bill that accompanies LB 277 that we passed yesterday and advanced to Select File. It was commonly called the marriage penalty. This is the A bill that would fund the changes for the forms which the Department of Revenue would have to do. It involves the software changes for electronic filing as well as paper file. The figure for fiscal year 2001-02 is \$28,992...or excuse me, \$267,585, and for 2002-03 it would be \$28,992. I would ask you to support this please.

PRESIDENT MAURSTAD: Thank you, Senator Redfield. Senator Chambers, on the advancement of LB 277A.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I'm not going to do anything on this A bill but I want to take the first opportunity I can to share with the body what I told Senator Redfield yesterday. I told her her original bill I supported. When the committee amendment was offered I didn't support it but I didn't speak against it, I didn't vote against it because the bill, in my opinion, needed the opportunity to have some movement, one way or the other. Since the bill did move and it has the committee amendment and the effect is to raise the taxes of one group to benefit another group, I cannot

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support the bill in that form. I did let Senator Redfield know, and some of you may have received calls too, but I got an inordinate number of calls for me on this bill from older people and some who are not older but who are single, who are objecting on principle, it must be, to shifting a tax burden in the way that the committee amendments would do. So without taking a long time this morning because the bill, itself, is not before us, I just want to make it clear that I cannot be counted as a vote in favor of LB 277.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Senator Redfield, you're recognized to close. Senator Redfield waives closing. The question is the advancement of LB 277A. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB 277A.

PRESIDENT MAURSTAD: The bill is advanced. (Visitors introduced.) Mr. Clerk, General File.

CLERK: Mr. President, LB 242 is a bill introduced by Senator Wickersham. (Read title.) Bill was introduced on January 5, referred to the Government, Military and Veterans Affairs Committee, advanced to General File. I have no committee amendments, Mr. President.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Wickersham, you are recognized to open on LB 242.

SENATOR WICKERSHAM: Mr. President, members of the body, this is a bill that, for the most part, I have introduced...I think this is the fourth time. So, to give you all encouragement in case you have bills that you have to introduce more than once so that people begin to understand them, this is an example of that kind of a bill. I'm happy, obviously, that it is out of the Government Committee this year without amendments and that we have an opportunity to take it up this morning. There will be a couple of amendments. I think Senator Raikes has filed an amendment that deals with a subject matter that came up in a

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bill from the Education Committee. Senator Quandahl has come to me, in fact I think he's filing a floor amendment at the moment on a provision that I've agreed to amend that is something that we'll talk about a little bit later on. As you read the bill, I hope you do not believe that we are making overwhelming changes in the accountability and disclosure laws, because we're not. The bill would make some changes in substantive law and I hope we're able to discuss those but, in part, even the changes are simply clarifications of existing law or rulings from the Accountability and Disclosure Commission and, in part, we are changing the statutes so that persons who want to know if they're affected by the law will be able to clearly find, in one place, a set of rules that is applicable to them. An example of that area in the bill are the rules that deal with conflicts of interest. Now, conflicts of interest have lately come to your attention, as members of the Legislature. We've had a variety of members of the Legislature filing conflict of interest statements with the Clerk's Office. We've even had some discussion about some of those conflicts of interest statements. The rule that we file our conflict of interest statement and continue to participate in discussion of an issue remains the same. All we're doing in this bill is separating that rule out and stating it clearly from rules that apply to the executive branch and from rules that apply to local elected officials. All three categories have always had their rules, but they've been kind of muddled up together and if you wanted to try to find your rule it was always a little bit hard to do. The bill simply separates them out. The rule for the Legislature is clearly stated, but unchanged. The rule for the executive branch is clearly stated, but unchanged. The rule for local elected officials remains the same and is clearly stated. So that if, again, if you're interested in what applies to you, you can go find it without having to wander around in the provisions that are applicable to some other elected official, some other member of government. Now, there is also...there are also provisions in the bill that concern what we would usually characterize as nepotism. Now, nepotism is where you have employed or you are supervising a member of your family or your immediate family. Again, we've always had rules about that. We have a rule for executive branch employees and we have a rule for members of boards for elected political subdivisions.

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Again, we're separating those rules out so that they are clearly stated for the persons who might be involved and in some...and we're adding new requirements in that area, particularly for a requirement for elected officials, in that if they have to employ an immediate family member...of course, they can only do that if they meet two tests: one, under current law, that they have a reasonable solicitation; and that they hire somebody who is qualified to do the work. We're adding a requirement in that area that they may not hire their family member for an unreasonably high salary and that they actually have to require that the person who is hired perform the duties of the position. Now, if that sounds to you to be incredible, I can tell you that there are examples that I don't wish to recite where persons were simply hired. I would characterize them as placeholders, and that's not appropriate. That...and I don't...I don't think I need...if you wish me to, I'll describe specific situations to you, but obviously adding a requirement to the law that somebody actually perform duties I think is rather sensible. It's what you'd expect. It's kind of a sorry state of affairs that we would have to make that a condition, but it...but it has occurred. Now, there is...and that provision is added and that provision is added for elected officials who might have to hire a member of their immediate family. We are adding provisions that clarify existing rulings from the Accountability and Disclosure Commission. You would find those in Section 10 of the bill, and this is an area in which Senator Quandahl will offer an amendment. Current law, current law does not allow public officials or public employees to use property, personnel, resources or funds under their supervision and care for campaigning or for or against the elections of candidates or for ballot questions. That is the state of existing law. It is also the state of existing law through rules and regulations, rulings of the Accountability and Disclosure Commission, that there are exceptions to that general broad prohibition with which I think we would all agree. The broad prohibition is codified and then we're suggesting that exceptions be codified as well. One of the exceptions is that if you have something like a candidate forum and you'll see this in subsection (2) of Section 10, if you have a candidate forum can you have a candidate forum in a high school gymnasium? Existing law would suggest to you that you cannot, but it's done all the time. Can

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you have a forum where you discuss a ballot issue in the courthouse? Existing law would suggest that you cannot, but obviously rules and regulations from..or rulings from the Accountability and Disclosure Commission say that it's permissible. Oftentimes in our communities those are the only places where you can legitimately hold that kind of a forum. The...there is another exception in subsection (3) in that a governing body may discuss and vote upon resolutions supporting or opposing ballot questions. Governing bodies are asked to do that all the time and, in fact, sometimes they are the ones who put ballot questions on the...on the ballot. Obviously, they've had to have a resolution. Putting the issue on the ballot, arguably, that is a resolution in support. They've got to be able to do that in order to carry out their functions. I think that's a sensible exception. Subsection (4), no public official would be prohibited from responding to the press or the public expressing their opinion regarding a valid question. How often has somebody come up to you and said, what is your opinion, or, an extension of that, do you have any information about this particular issue? Have you ever refused to give anyone information? Have you ever refused to give...

PRESIDENT MAURSTAD: One minute.

SENATOR WICKERSHAM: ...anyone your opinion because you said the law prohibits me from giving you an opinion? Subsection (5), it says that members of the Legislature can express their opinions on ballot questions, and then Senator Quandahl wants to strike the last part of that so that we would be prohibited from communicating that opinion to our constituents. I think the concern is that we would use mail and those kind of things to distribute our opinions. But certainly if we're...we should not...constitutionally, I don't think we could be prohibited from expressing an opinion. The issue is how we communicate that to constituents. And then there is, in subsection (6), again, an allowance for employees to work on political issues off...off their govern...off their employment time. I think that also meets federal constitutional requirements. There is a provision in the bill that deals with how you address conflicts of interest when there are contracts that come before boards for discussion. Currently, there are two rules that are applicable.

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One of them...

PRESIDENT MAURSTAD: Time.

SENATOR WICKERSHAM: ...is very broad in their application; one more narrow in their application. There is a provision in the bill that coordinates those provisions.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Mr. Clerk.

CLERK: Mr. President, Senator Raikes would move to amend. Senator, AM1076. (Legislative Journal page 1352.)

PRESIDENT MAURSTAD: Senator Raikes, you're recognized to open on your amendment to LB 242.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor. Members, the amendment that we're talking about, you do have a little flier around which has a brief couple of bullet points on the first page and then a copy of the amendment on the second. That's the...says on top of it "AM1076 to LB 242". Currently, school or teachers are prohibited by law from serving on a school board of the district in which they teach except for Class V school systems. Other...other employees of a school are allowed to serve on the board, nonteaching employees. We had a bill introduced in the Education Committee that would have changed that and...it was LB 594, introduced by Senator Erdman, and perhaps he'll tell you about that, but let me...let me tell you about what this amendment would do to LB 242. It would include the prohibition of a teacher serving on a school board which is...which employs that teacher to include Class V districts. So no teacher would be allowed to school...serve on a school board. They would all be treated equally. Now, let me amend that by...by stating that if...if a teacher in one district serves on the school board in another district, a district which does not employ that person, then I think that...that is consistent with the law. What this would do is add school board...any school board member, employee or not, to the list of those that must file a disclosure of interest statement that...that LB 242 deals with. So the idea is really a couple things, I think it's mentioned in the...in the front

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part, is to expand the exclusion of teachers to include district (sic--Class) V, and then to require that all school board members, those who may be nonteaching employees as well as others, to file a disclosure of interest statement. So, if there are any questions, I'd be happy to respond. I would urge your support. Thank you.

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

SENATOR ERDMAN: Thank you, Mr. President and members. As Senator Raikes alluded to, this was an amendment that was brought on a piece of legislation to the Education Committee that I had introduced and one of the things that...that I observed in looking at who was eligible to run on school boards and be elected to school boards was that teachers in Omaha weren't...weren't consistent with the rest of the state of Nebraska, and that's where the expansion comes in for teachers. But I was also noticing that there was no prohibition for other employees for...for a school district to serve, and it brought to a question of mine of may be potential conflict of interest and I wanted to make sure that we were consistent in the state of Nebraska with other legislative bodies that members who were employed by that body couldn't serve and receive their paycheck and make decisions based on that as a member of the governing body. I know that's been an issue that, over the past couple years, was even brought up here at the Legislature with members who had ran, who are employees of state colleges in the state of Nebraska, who are asked to either decline their membership to the Legislature or resign their position as a state college employee to be able to be eligible to serve here for...to remove themselves from potential of conflict of interest. And I'm contemplating on whether to reintroduce...or to introduce an amendment to Senator Raikes' bill to strike the words "as a teacher" on page 3, line 1, and what that would say was that if you were employed by a school district you could not serve on that school board as a board member. And that was what essentially the intent of my bill was, in addition to clarifying the language that was in the original bill, and saying that we're going to make sure that there is no conflict of interest, and that would also remove the need for the accountability and

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disclosure filing for additional school board members. So I will probably file that amendment. If the body would like to shoot that down we'll take that up, but...but I'll file that amendment and we will proceed.

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

SENATOR WICKERSHAM: Mr. President, I'll be brief. I support the Raikes amendment. It does address an issue that I find somewhat anomalous that we would treat school boards differently than other political subdivisions. I think, in general, the same considerations ought to apply. And this is...the Raikes amendment is the product of a bill brought by Senator Erdman, so just, again, express support for the Raikes amendment.

PRESIDENT MAURSTAD: Mr. Clerk, item on the desk.

CLERK: Mr. President, Senator Erdman would move to amend Senator Raikes' amendment. (FA160, Legislative Journal page 1353.)

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

SENATOR ERDMAN: Thank you, Mr. President. Members, I've already explained essentially what the amendment will do and I will go through and show you exactly, if you'll follow along. On page...on page 2, we're going to strike the responsibility for members of a school board to file with the Accountability and Disclosure, because what we will be doing on page 3, line 1, will be striking the language "as a teacher". And so, in other words, if you are an employee of the school districts you will not be eligible and that essentially is where the conflict of interest will come into. If you're not an employee of the school district I don't see the need for filing a conflict of interest, so that would remove that responsibility for individuals who are not employed by the school district. So, essentially, we're going to strike line 14 of page 2 of the Raikes amendment which says "member of a school board", and strike the lines "as a teacher" on page 3, line 1, so that the existing statute in the law will say: "No member of a school

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board shall be employed by the school district which he or she serves as a board member." And I would welcome any questions that you might have.

PRESIDENT MAURSTAD: Thank you, Senator Erdman. On the Erdman amendment, Senator Wickersham.

SENATOR WICKERSHAM: Mr. President, I rise in opposition to Senator Erdman's amendment. If you...as I understood him, he is proposing to strike out of the Raikes amendment a provision that would bring school boards into conformity with other political subdivisions when issues of conflict of interest arise. Now, quite frankly, if I had been aware the school boards weren't included, they would have been included in the principal bill. I don't see any reason not to subject them to the same rules. Now, the issue of whether or not teachers should ever be able to serve on a school board is separate, but it...Senator Erdman is both going too far and going where he should not in his amendment. There is no reason that I can discern, and maybe Senator Erdman can articulate one, why school boards should not be subject to the same general rules as other political subdivisions, because it isn't only teachers or...under which a conflict of interest might arise. What if you're a member of a school board and your spouse is going to be employed in some capacity, a noncertified capacity? What are you going to do? What if you're a school board member and you're...well, let's use something that seems noncontroversial. Let's say you're an electrician. What do you do? And the school needs to have electrical work done. What do you do? You're the only electrician in town. What are the rules? How do they apply to you? Shouldn't school board members be subject to the same kinds of rules as other folks? I don't know why they're left out, but they're left out of this list. And part of the problem we have in this area of the law is we have all these lists and some of the lists are different, and you really have a terrible time finding out which list you're in occasionally, but this is one list that I don't see why we wouldn't have members of school boards in. Now, if you want to make a hard and fast rule that teachers shouldn't be members of school boards, that's another issue, but I'm going to suggest that you're going to have a real hard time distinguishing between teachers and other folks who

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might be employed in a political subdivision. Let's use another example. Let's say that you are the member of the board of directors. I...Dean Edson is probably out there, he'll have a heart attack. Why don't you imagine that you're a member of an NRD board. Let's say you're a farmer and you're a member of an NRD board, and the NRD board votes to support a tree planting program and, guess what, you just happen to have a tree planter. How do we treat those folks? They file their conflict of interest statement and they go forward. The essential piece of information is that the public is aware of your potential conflict and it is up to the public to decide whether your potential conflict of interest is so severe that you should not serve on a board. But to automatically disqualify someone because they may or may not be employed seems to me to be overreacting to what I think is essentially a local decision. If people know that someone is employed by a political subdivision, whether a teacher or not, and they still elect him to a board, what have they said? They have essentially said we think that person can bring some knowledge or judgment to this position and we believe that they can handle the conflict of...

PRESIDENT MAURSTAD: One minute.

SENATOR WICKERSHAM: ...interest. That's if they're elected up-front. Let's say that somebody is serving on a board and then they're hired. What is their future on the board? Is the next election going to determine whether or not their constituents, not us, their constituents are able to determine whether they have handled any conflict of interest appropriately and whether or not they are still bringing some valuable expertise or judgment to that particular board? I think that is a judgment that is best left to the electorate, not to us.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Further debate on the Erdman amendment to the Raikes amendment to LB 242. Senator Raikes.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor and members. I also oppose the Erdman amendment. I think the committee carefully gleaned from the proposal brought to us by Senator Erdman was the important and needed parts of that, and I think

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that is incorporated in AM1076. Again, it would make it uniform across the state, as he has mentioned, that teachers could not serve on the school board for which they teach, but anyone else who is on the school board would need to file a disclosure statement. I would also mention that I believe that Senator Erdman's amendment to AM1076 would make this...would make that amendment, essentially, similar to his bill which I...and his bill has been killed. I think that would require 30 votes for this amendment to be adopted. So, again, I oppose Senator Erdman's amendment. I think AM1076 handles the situation properly for the reasons Senator Wickersham has outlined. Thank you.

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

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor. Members of the body, I do have some questions for Senator Erdman, if he would yield.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Yes.

SENATOR REDFIELD: The bill or your amendment does have two portions and I have questions on one particular portion and that is the report. School board members sometimes own businesses that may do contracting with school districts and they may not be technically employees of the district but would not be covered, and I do believe that Senator Wickersham is raising that issue here. And I'm asking if you had thought about that and if you feel that the amendment, taking that out, would leave a loophole there that would not be accountable to the public.

SENATOR ERDMAN: Yes, Senator Redfield. After I had discussed this with Senator Raikes and had talked about what my original intent was in restoring the original language in the section relating to eligibility of school boards, we had just thought, well, then I guess there's no need for the requirement of the filing, and I would be more than willing to put that back into the bill. I think that's essential that we have those people

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file. That was...that was an oversight on my part and I would be more than happy to put that back in the bill to address the concerns of Senator Wickersham and yourself.

SENATOR REDFIELD: Thank you very much.

PRESIDENT MAURSTAD: Thank you, Senator Redfield. Senator Burling, on the Erdman amendment.

SENATOR BURLING: Thank you, Mr. President and members of the body. I rose to support the Erdman amendment and now I'm wondering exactly what it is. I think it's unfair to single teachers out and say they can't be on the school boards but other employees of the district can, and so I support that part. And on the requirement that school board members file a report, school board members are, in most cases, not paid. They serve without compensation. And we have many small districts in the state where school board members are known by everyone in the district, and I'm just wondering if it's really that necessary to require them to do that much more reporting, at least for the smaller school districts. So I'll listen to the discussion and see where this goes and decide how to vote. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator. Mr. Clerk.

CLERK: Mr. President. Senator Erdman, I understand you want to withdraw the amendment that is pending.

PRESIDENT MAURSTAD: The amendment is withdrawn.

CLERK: Mr. President, Senator Erdman would move to amend on page 3, line 1, of Senator Raikes' amendment. Strike the words "as a teacher". (FA161, Legislative Journal page 1354.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Erdman, you're recognized to open on your amendment to the Raikes amendment to LB 242.

SENATOR ERDMAN: Thank you, Mr. President and members. My apologies for the confusion. What we are essentially going to do is make a decision on whether we believe that...we're going

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to reinstate the accountability requirement for the members of a school board, no matter who they are employed by, and they will be filing a statement of interest similar to the one that we've had to file here recently. And essentially what we will be doing is making a decision on if we believe that all employees should be treated the same underneath this legislation as teachers are, or if we should just allow this to be as is drafted. And that...that's essentially what it will do. So on page 3, it just strikes the words "as a teacher". The bill will say, "No member of a school board shall be employed by the school district which he or she serves as a school board member". And that's essentially what the amendment does. Now, my apologies once again for the confusion with Senator Wickersham's concerns as far as the filing of a school board member. This is smaller in scope and only affects the eligibility of those who would be eligible to serve on the school board. I understand that when we do things like that, people have concerns about people willing to run or having the number of available candidates to run for school board. And being from a rural district, generally it's not those...the problem is not in those who are willing to run, it's that they don't want to run against somebody, and there's a number of individuals who would be willing to run, so we're not necessarily creating another problem with this amendment. And if the body sees fit to vote no, that's fine, but I would encourage the adoption of it.

PRESIDENT MAURSTAD: Thank you, Senator Erdman. Senator Wickersham, on the Erdman amendment.

SENATOR WICKERSHAM: Mr. President, I rise in opposition to Senator Erdman's amendment, and I will reiterate the comments that I made earlier. I see no reason to distinguish between teachers and other employees of any other political subdivision who might also be serving on the board. I was visiting with another member. They said, well, how is this different than a county board member who is also a county employee? I agree. Current law allows a county employee to serve as a member of a county board. What's the difference? We have never been able to bring ourselves to say, nor do I think it's appropriate for us to say, as a hard and fast principle that because someone is

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employed by a political subdivision, that they cannot run for the board. There are circumstances in all of our communities in which constituents make that decision the other way, that they find someone in their jurisdiction that they believe should serve on the board and can manage the conflict of interest that may develop. Or they have someone who is serving on a board and becomes an employee. And they may elect them or they may reject them for election at a subsequent election. I don't...I don't quite understand why we should, in this instance, try to specifically eliminate teachers as a class of people who are ineligible to serve on a particular board. They...because of the other conflict of interest provisions that pertain, they should abstain from voting, they have to file conflicts of interest for anything that directly affects them. I think we have procedures that allow the public to be fully aware of any potential conflict of interest that might arise in this particular situation, as it might arise in other situations, and that it is better left to the discretion of the constituents of the political subdivisions in question.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. (Visitors introduced.) Further debate on the Erdman amendment. Senator Raikes.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor and members. I think this amendment, too, is a bad idea. Some of you have mentioned that you don't like to see teachers excluded from serving on a board. This amendment addresses that by adding some other people who can't serve on a board. If...and it's...perhaps you should look at it as a one step at a time deal. With...with AM1076, the amendment without Senator Erdman's amendment, teachers in any class in the state would not be allowed to serve on a school board. Other employees would be allowed to serve as long as they filled out the disclosure form. If you want to exempt all employees, then where do you stop? Senator Wickersham mentioned the electrician who may do a wiring contract with a school system, and you can certainly imagine the situation in which that person would have a greater financial interest in what goes on in the school board than would a...than would a nonteaching employee. So again, I'm not going to belabor it but I think AM1076, the way it was, is the best way

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to address this, so I would urge the defeat of the Urban...Erdman, excuse me, Senator Erdman, the Erdman amendment and support of AM1076. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. Senator Raikes, I've been called a lot worse other than being mutilated in my last name, so I accept your apology. To be honest with you, I mean, my amendment and its intent, as well written is that I'm not changing the fact that teachers are excluded. They are already excluded. That was done by this institution years before I arrived here. What the Raikes amendment would do would actually hold the consistency of all teachers in the state of Nebraska would be similar in all classes. So in other words, no teachers could serve. What I am asking is saying that if you are an employee, then you would not be eligible to serve. Now as I alluded to earlier in my prior comments, if...if an employee of a state college can't serve in the Legislature, or if there has been other conflicts ruled upon in the past about similar situations, I see a similarity between what we are trying to accomplish by keeping the integrity and the consistency of this body, we're doing the same thing with our local school boards. So once again, if this is not a step that the body is going to take, I accept that. I wanted to make sure that...that we had the discussion on it. I wanted to make sure that the issue was out here to bring light to the fact that there was a discrepancy in the original statute that exempt Class V schools, but I also wanted to bring the idea that if...that if it is an employee as in the teacher, that we shouldn't segregate out teachers only and let other employees, so that there is not a conflict there between the...between the individuals. So that is the intent, is to remove the specific language referring to a teacher to say that it is an employee. Once again, I am not doing anything different as far as relation to the teachers other than bringing in consistency with the rest of the state as far as the teachers goes, and then taking the step to make the question to the body on, are we willing to say that then we should have consistency with other employees since a certain group of employees are excluded. Now I know that the committee had an intention of doing the opposite of what...or some members did, had the

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intention of doing the opposite of this. But once again, this was existing statute that I was correcting, not necessarily a new idea that I was bringing forth to the body. And I would once again welcome any questions if there may be any.

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

SENATOR ERDMAN: Thank you, Mr. President. Once again, just let me reiterate I would appreciate your support for my amendment to Senator Raikes' amendment. I think it is something that brings consistency to the electorate of our school boards and it brings consistency for the state of Nebraska as far as who is eligible to serve, and I would encourage you to vote green on this amendment.

PRESIDENT MAURSTAD: Thank you. Senator Raikes, you're recognized with a point.

SENATOR RAIKES: Yes, a point of order, please. I believe, Mr. Lieutenant Governor, that this amendment would, in effect, make LB...or excuse me, AM1076 similar to LB 594 which was indefinitely postponed by the Education Committee. So I would like the vote to be taken in accordance with Rule 6, 3(h).

PRESIDENT MAURSTAD: Thank you, Senator Raikes. The chair rules that this would make substantially the same as the previously...the previous bill that has been previously...indefinitely postponed. It will require 30 votes for adoption. The question is the adoption of the Erdman amendment to AM1076 to LB 242? Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 18 ayes, 11 nays, Mr. President, on the amendment.

PRESIDENT MAURSTAD: The amendment is not adopted. Further debate on the Raikes amendment? Mr. Clerk.

CLERK: Mr. President.

PRESIDENT MAURSTAD: Item on the desk?

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CLERK: Thank you, Mr. President. Senator Baker would move to amend Senator Raikes' amendment.

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

SENATOR BAKER: Thank you, Mr. Lieutenant Governor and members of the body. My amendment strikes on page 2, I don't know whether it's up on the machines yet here, but on page 2, it strikes line 14 that the requirement of a member of the school board file the accountability and disclosure statement. We are having a very difficult time getting anyone to serve on the boards in these rural areas out there, school boards. I know that we've had to appoint members. There simply hasn't been people enough to run for the vacancies, and we've had to appoint school board members in many cases in rural Nebraska. And I'm afraid we'd be...end up with appointed boards all too often at the way it is, but we'd increase that frequency right now if we passed this amendment with that in there. I'm willing to discuss classes, school...you know, districts, but I just...for rural areas, it's tough enough to get people to serve and I...I think you'll hear some other people say the same thing that if I had to go file a disclosure statement to even run for this, I don't...I just wouldn't do it. And as I said, we're filling board vacancies now with appointments because we don't have enough people to run for those vacancies, and if you want specific school boards, I can get several, I'm sure. I'd have to go check and see who was appointed what the last election, but there just aren't enough people running now and this would just make it all that tougher to get people to file, and I...and also even to appointed members then. I, you know, you'd have to go even if they're going to be appointed, you're going to have to file this. So I, for one, oppose that line 14 on page 3, and my amendment would strike that, and would hope that you would vote for my amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Baker. Debate on the Baker amendment, Senator Wickersham, followed by Senators Cunningham and Burling.

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SENATOR WICKERSHAM: Mr. President, I'm sensitive to the issue that Senator Baker is raising and maybe it's appropriate to make some distinction between classes of school districts. However, let's think about what we're talking about here. It is the provision that Senator Baker wants to strike out that brings school board members within the other rules and lists that we're talking about. How do you handle conflicts of interest? How do you handle issues of nepotism? Now, you can make an argument that school board members ought to be treated differently perhaps in those instances because we're having trouble finding people to serve on school boards. But how large are the budgets of schools? What are the responsibilities of individual members of school boards? Can we distinguish between school board members and county board members? Can we distinguish between school board members and persons who are elected officials on a land use planning commission? Can we distinguish between those folks and members of the...well, you can see the list. Can we or should we find some way to distinguish between school board members and those other folks? Isn't there a point, and maybe the point that you're making, Senator Baker, is we need to examine the classes that we're applicable to. Your amendment doesn't happen to do that. But at some point, school districts are very large organizations in terms of the budgets. They're very large organizations in terms of number of persons that they employ. They're very large organizations in terms of the responsibilities of the members of the board. And at some point, they do look like these other folks, and we need to bring them in...I would suggest in all seriousness that we need to bring them into line because they do look like these other kinds of organizations where we require information. And I think it is appropriate that they be subject to the same rules for nepotism, conflicts of interests, those kinds of things, and we make sure that that's the case. If Senator Baker...I don't think Senator Baker, your amendment quite does the things that we're talking about. I'd be happy to try to work that out with you so we could deal with that issue on Select File if you were willing to do that. And I think that would be a better way to handle it. I'm...I'm glad that we're having the discussion on these issues this morning. I think that they are important in terms of public confidence in our elected officials. Do they have conflicts of interest? Do they have things that we should

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know about that might affect the way they handle our business? So I think that's...that's an underlying concern and an important concept that we need to keep in mind as we exclude or include people in the rules that cause those kinds of pieces of information to be known by constituencies.

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

SENATOR CUNNINGHAM: Thank you, Mr. Lieutenant Governor and members of the body. I, too, rise up in support of Senator Baker's amendment. We do have a terrible time getting people to run for some of the school boards out in our area, so I'd hate to do anything that could hurt that any further. The one thing I would make a difference between school board members and county boards is county boards get paid, and at least out in my area, school boards don't get paid. So I think that I would prefer to leave that up local control, and I would urge support of the Baker amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Cunningham. Senator Burling.

SENATOR BURLING: Thank you, Mr. President and members of the body. I spoke to this a little bit ago but now I want to stand again since the Baker amendment has been introduced, and stand in support of that amendment. I agree with what Senator Baker said in his introduction, and the same applies to my district, where it's very difficult to find people to serve on schools boards in these small communities. And as Senator Cunningham said, they are not compensated for their work, and I hate to put another load on them. I served on a K-12 board of education for ten years, and during those ten years, a conflict of interest arose many times. And we dealt with it on a local basis for whenever it arose and, to my knowledge, every time we dealt with it, we...it would...did it in a satisfactory way and the community was pleased with the situation each time. And so I think that can be dealt with locally, and let's not put more responsibility on these small school boards than we already have. Thank you.

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PRESIDENT MAURSTAD: Senator Baker, for what purpose do you rise?

SENATOR BAKER: Mr. Lieutenant Governor, I wish to withdraw this amendment at this time and we will work this out on...between now and Select File.

PRESIDENT MAURSTAD: The amendment is withdrawn. Further debate on the Raikes amendment? Senator Raikes, you're recognized to close.

SENATOR RAIKES: Thank you, Mr. Lieutenant Governor and members. I do urge your support of AM1076. Given...I appreciate the discussion because I think it's been worthwhile. I would suggest that this amendment is middle ground between Senator Erdman and Senator Baker. Senator Erdman's amendment would not have allowed nonteaching employees to serve on the school board at all. Senator Baker's amendment would not have...would not only have allowed nonteaching employees to serve but would have, in fact, not subjected them to the burden of filling out a financial disclosure statement. This is a middle ground amendment, one that was discussed and approved in the Education Committee, although I shouldn't blame them for it, it's my amendment. But I think it's a good one and I urge your support. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Senator Schimek, did you wish to be recognized before we took a vote? Okay. The question is the adoption of the Raikes amendment to LB 242? Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 20...or excuse me, 31 ayes, 1 nay, Mr. President, on the adoption of Senator Raikes' amendment.

PRESIDENT MAURSTAD: The amendment is adopted.

CLERK: Senator Quandahl would move to amend, AM1358. (Legislative Journal page 1354.)

PRESIDENT MAURSTAD: Senator Quandahl, you're recognized to

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open.

SENATOR QUANDAHL: Thank you, Mr. President and members of the body. Before we get too far into this, I just want to let everyone know that I plan on withdrawing this particular amendment and then probably filing something for Select File later on. But just to give you an idea of where the genesis of this amendment actually originated was is that if you...if you do turn to page 12 of your green copy of subsection 5, there is language in there that this section does not prohibit a member of the Legislature from expressing his or her opinion regarding a ballot question. And then it goes on to say, or from communicating that opinion to his or her constituents. And so what I...I guess the balance that I was trying to strike with this amendment, and granted, the amendment was perhaps not specifically drawn enough, was that I want to protect our First Amendment rights to express our opinion or respond to questions, but at the same token, did not want to let the inference out there or grant the power of utilizing government resources or our offices here as state senators from, I guess, getting out of control. And so, granted it's a fine balance and that is the question or the issue that I will be working with. And I did discuss this with Senator Wickersham. I don't think that he has any big concerns with the overall concept, but just the way that this particular amendment came out drafted was a bit overbroad. The second part of my amendment also went on and dealt with subsection 6, and it went on to include members of the Legislature. It says "This section would not prohibit", and I would add "a member of the Legislature or public employee from engaging in campaign activity except during his or her government work time or when otherwise engaged in his or her official duties". Well, one of the reasons why this amendment needs to be withdrawn, which I will do shortly, is that Senator Wickersham said, and very rightly so, is when are we not engaged in our official duties? We take phone calls at all times, and so I believe that would be a bit overbroad. But I just wanted to bring it to the body's attention the reason for this amendment, and that something will be coming back on Select File to address those concerns. And so I would withdraw this amendment at this time.

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PRESIDENT MAURSTAD: The amendment is withdrawn. Debate on the advancement of LB 242? Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I will be brief. I am a cosigner on this bill. This bill has been in Government Committee I think four different times. It's gotten out on occasion but it's never gone anywhere. I think this bill is homeless, I think it needs a place to live, I think it should be part of our statutes, and I hope that you will all be supportive in advancing this to Select File. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to amend the bill. (FA165, Legislative Journal page 1354.)

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

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, what I am amending is the Raikes amendment which is now a part of the bill, in order to help call your attention to where you should look. Senator Raikes handed out a copy of his amendment, and if you turn to page 2 of that amendment, in line 14, after the word "board", after the semicolon, I would insert "University of Nebraska at Lincoln Head Football Coach". Don't laugh, because I have a reason for this. I have been concerned for decades literally about what I call the exploitation of football players. They're called student athletes. The words are in the wrong order. They are athletes who are put in the role of students but, in reality, they are unpaid employees of the university. They are like serfs; they are like indentured servants. The so-called athletic scholarship they're given has nothing to do with ath...with scholarship. They are at that university primarily as athletes. The National Collegiate Asso...Athletic Association spends the bulk of its time trying to rein in universities which are committing violations of MCAA rules. Now, the rule book of the NCAA is thicker than the Bible and more complex than the Internal Revenue Code because they know how tricky coaches, school administrators, athletic directors are at finding a way

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to give what are called inappropriate benefits to athletes. What is an inappropriate benefit, a biscuit and a chicken wing? And the athlete can lose what they call eligibility. What the schools are concerned about with athletes is eligibility, not scholarship. You have some first class students who are required to travel coach. Then you may have a second rate coach who travels first class. These coaches are paid an exorbitant salary, especially when you compare it to what is paid to teachers. Well, they call them something else at the university, professors, assistant and associate professors, and whatnot. You know how that disparity is justified? You ask this question, who will pay such and such an amount to watch a football game? Who will pay such and such an amount to watch a professor teach a course? And thereby you justify paying the coach all of this money. They get a salary. They get fringe benefits which probably include housing, a vehicle, insurance coverage. They have any number of money-making enterprises and opportunities such as television programs, radio programs. They endorse products. They endorse enterprises. And the coach can make an obscene amount of money and obscene amounts of money are swirling around these young athletes, and they watch everybody getting money. The president of the university, the chancellor, all of the coaches of every athletic pursuit at the university. And do you know where the money comes from that supports the athletic establishment at UNL? It comes from the labors, the arduous, dangerous labors of athletes. They pay the coach's salary. They provide the money for all of these other athletic pursuits. In the past, I have brought legislation to give these young men a stipend, and people say, no, you shouldn't pay them, they're there as athletes and you shouldn't compensate them, but, brothers and sisters, they are compensated now under NCAA rules. Do you know how they are compensated? They are given what's called a scholarship which has a dollar value. They are given room and board when they are recruited from someplace else, which has a dollar value. They are given books which have a dollar value. Their fees are paid which have a dollar value. They are allowed to eat at the training table which has a dollar value. So what we're saying is that they can be compensated but only to the extent that the exploitive NCAA and the universities say they can in order that they don't cut into the actual hard revenue that they generate for the university. The coach is a

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politician as much as any of these other individuals, and the university has what I would call, pardon the expression, brothers and sisters, but this word is often used in church. The athletes are put in a hellish position. Everybody makes money. Ministers make money and it's not evil. When the preacher gets money, it's not evil. Inmates are paid for their labor in Nebraska, and they are criminals, but they get paid because it's thought that a person should be compensated for labor rendered. The Bible even says the workman is worthy of his hire. And for those who may not understand that, muzzle not the ox that treaded the corn. If the ox is treading the corn, let the ox not wear a muzzle but let it eat some of what it needs to give it the strength to tread out the corn. I have tried to find ways to help these athletes. The Legislature one year passed a bill that said when a majority of the schools that make up the athletic conference of which Nebraska is a part, when their Legislatures have passed a similar bill granting a stipend to the athlete, Nebraska's athletes would get that stipend. This kept Nebraska from standing alone and it also would bring pressure to bear on the NCAA showing that those of us who represent all residents of this state recognize athletes as residents, too, not indentured servants, not a class to be set aside and treated in a way no other students are. We wouldn't dream of saying that a student who is taking journalism could not be paid by the Lincoln Journal or the World-Herald to write and do reporting work for them while a student. We wouldn't think of saying that a student majoring history...in history could not be paid for doing research for a professor for the historical society or anybody else. We would not say that if a student who is taking physics and transfers to another school cannot take physics the first year there. But all of those things are done by way of restricting athletes. If you are an athlete at the the university, not only can you not accept money in exchange for work, you cannot even accept a gift that somebody wants to give you if it's not a member of your family. But here's what you can do as an athlete. If you are an athlete on scholarship in football, you can be a professional baseball player and not lose your eligibility in football because they don't want to drive you away from the university altogether. They want to keep you there to exploit you, and that's all it's about. I shouldn't have to have done this, but

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I had to get a bill passed and the Legislature agreed that any athlete who is injured cannot lose that scholarship based on that injury. And the university was over here opposing that bill saying it's not necessary, we wouldn't do it. And shortly after its passage, I had to get on the Attorney General and the school because two female gymnasts had their scholarships snatched because they were injured.

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: That's the kind of work I've had to do with reference to these athletes. Had to get a bill passed that said they must provide insurance the equivalent of worker's comp for any athlete at any university who is injured while participating in the athletic program, and they must even cover catastrophic injuries. Some people didn't know that was necessary. But a young man named Budge Porter became a quadriplegic, I believe, and there was no coverage for him, and they took him off the football field, they laid him on a door and put him in the back of a station wagon and took him to the hospital. That's how the university cares about its athletes.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Pursuant to the agenda this morning, we will leave LB 242. Mr. Clerk, items for the record.

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read re: LB 52, LB 55, LB 101, LB 114, LB 170, LB 170A, LB 759.) I have an amendment to LB 152 to be printed, Mr. President. That's all the items that I have at this time. (Legislative Journal pages 1354-1360.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk.

CLERK: Mr. President, Senator Dwite Pedersen would move to place LB 462 on General File, pursuant to Rule 3, Section 20.

PRESIDENT MAURSTAD: Senator Dwite Pedersen, you're recognized to open on your motion.

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SENATOR Dw. PEDERSEN: Thank you, Mr. Lieutenant Governor and colleagues. The state of Nebraska has had a longstanding public policy of protecting unborn life whenever possible, allowing for the use of human fetal tissue for research at our public university creates an entanglement between the state and abortion providers due to the need to develop relationships for a supply of human fetal tissue. It also makes the state dependent on the existence of future induced abortions to supply human fetal tissue for this purpose. LB 462 is intended to create a wall of separation between the state of Nebraska and the fetal tissue business. It will prohibit the use of human fetal tissue from an induced abortion by public employees of state or local government, the use of public facilities and public equipment, and the use of public funds. It differs from last year's bill in that it only applies to public personnel, public facilities, and public funds. Several state laws that impose general bans on the use of fetal tissue have been struck down as unconstitutional in our courts. This bill was based upon United States Supreme Court decisions that provide that a state may adopt public policy that favors child birth over abortion, and may allocate public facilities, funds and resources accordingly. The bill also contains a state version of the federal law that bans buying and selling of federal tissue and solicitation of an abortion for the purpose of obtaining tissue. LB 462 has been drafted so as not to restrict the use of vaccines or other substances derived from human fetal tissue obtained from abortions induced prior to the effective date of that act. Although the bill does not impose criminal penalties except for buying or selling tissue or soliciting abortion for the purposes of obtaining tissue, it does allow for the Attorney General to seek an injunction preventing future use of such tissue. That's the official description to the bill for the record. Now I want to share with you my reasons for introducing LB 462. First of all, let me assure you that I am not against the research they are doing at the University of Nebraska Medical Center. In fact, I am in awe of it. I personally toured the research facilities last summer right after we adjourned and was most impressed with the research that is being done there. I was impressed with the work that the doctors are doing and can very much see the human element that everyone brings to this vital research. I certainly do not want

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to jeopardize that research. On the other hand, I feel very strongly that the university should not be utilizing human fetal tissue from induced abortions for this research. I was very encouraged last year when the university administration said they would look for alternatives, and I have been very pleased with the efforts thus far. However, I've had some question lately with that talk of what they are doing with the two...the president and two chancellors signing a letter of intent for further study in this area. While we can continue to encourage these efforts to find alternatives to tissue from induced abortions, LB 462 provides a tool to hold their feet to the fire, so to speak, to ensure that the effort that has been shown thus far will continue. There are exciting alternatives to the use of aborted fetal tissue, including...and obtaining needed stem cells from rapid autopsies, adult stem cells, and umbilical cords. If the perfect solution has not yet been found, we must continue to pursue other options. My ultimate goal is to stop the use of aborted tissue and force the discovery of a viable alternative to continue this vital research. I believe that LB 462 will accomplish this goal. I do want to emphasize, however, that it is not my intention to start a war on this issue but a discussion. There are reasonable people who disagree on the fetal...on the use of fetal tissue. Recent polls indicate that Nebraskans are about evenly divided. I believe that LB 462 is a rational approach to at least getting the state out of the abortion business, and the fetal tissue...use of fetal tissue from elective abortions. While I personally feel very strongly about the moral issues involved, I will not be chastising those who do not agree with me. I will not be putting down those who strongly support research, as I am also one of them. It is my hope that we can bring this issue to a vote and the vote will come out in favor of LB 462, but I pray that the debate will remain civil and not degenerate into name calling and nastiness. I will do my best to ensure that outcome. With that, I ask that you support this motion to bring LB 462 to the floor, notwithstanding committee action, and I would turn the rest of my time over to Senator Brashear.

PRESIDENT MAURSTAD: Senator Brashear, slightly more than four minutes.

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SENATOR BRASHEAR: Mr. President, members of the body, thank you, Senator Pedersen. We are at this juncture again, as we were last session, and I'd like to take a moment, because this is about process and procedure, I'd like to take a moment to thank personally the...each and every member of the Judiciary Committee for the manner in which the committee has approached this bill this session. We heard the bill. We had a good hearing. There has been a great deal of individual dialogue. Everyone has been willing to discuss and consider. Points of view have been exchanged, including research and argumentation in written form. Scheduling an opportunity for discussion and for vote was not at all difficult. Everybody was extremely cooperative, and I think that should be noted. This...these are difficult issues and difficult moments for all of us. It is what we're elected to do and we do it. But I think when we come to a juncture like this, where the people of the state of Nebraska are, as Senator Pedersen indicated, divided where an important matter is for consideration, I think it reflects well upon the body when the Judiciary Committee, unable to reconcile its two competing points of view and divided 4-4 comports itself as it has, and I'm pleased to have served there and appreciative of the professionalism and collegiality that was demonstrated. Having said that, we're at another step in our process, and we're about process. Our rules provide clearly for proponents to have this opportunity to come to the majority and to say what is your will. The committee did not decide it. The majority here will decide it and this is the time. All is in order. For my part, I believe that the bill is correctly drafted. I would suggest to you, when we get to, if it be the will of the majority, when we get to the substantive debate and, yes, with or without pending motions there's opportunity for substantive debate in my opinion, but when we get to that substantive debate I think we'll have an examination of the bill in all its particularities that will allow us to decide if it is, in fact, the bill that the body would have be the law of the state of Nebraska. That's a debate I expect and a debate will take place. This is not the kind of bill that has attempted to look back into...

PRESIDENT MAURSTAD: One minute.

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SENATOR BRASHEAR: ...bar all...did you say one minute,
Mr. President?

PRESIDENT MAURSTAD: One minute.

SENATOR BRASHEAR: Thank you. And to be overreaching. It has,
in my judgment, I submit to you, it has a rationale, it has
limits, it has reasons, and those are the things that the body
will consider as it deliberates. I urge the affirmative action
by the majority on the motion. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Brashear. Members,
there are over 25 lights on. I'll read the first handful so
you'll know the speaking order: Senator Dierks, followed by
Senator Brown, Bromm, Bruning, Foley, Engel, Landis, Brashear,
and Smith. Senator Dierks, you're recognized on Senator
Pedersen's motion.

SENATOR DIERKS: Thank you, Mr. President. Members of the
Legislature, I am supporting, of course, the motion to bring it
out of committee. I think those of you who have been here long
as I have or at least part of the time know my opinion on this
issue. There can be no question, as far as I'm concerned, about
the sanctity of human life, and I think it starts at conception;
always have, always will. I think so many times of what's
happened in our countryside in rural Nebraska, the decimation of
our farms and ranches and the decimation of our cities and the
recent decline in population and what's happened to some of
those counties for people. I think so many times what could
have been and how we could have kept that population up with all
those babies that have been aborted just in Nebraska; how
important it would be for them to be there today to help provide
taxes for us, to help provide farm labor for us, to help provide
a social structure that we're so...we're starting to miss and
starting to lack. I can't do anything but support this piece of
legislation. It just wouldn't be right. Senator...Senator
Pedersen, I think, has done an outstanding job of presenting it
to you and I appreciate his...his words of trying to keep the
tone from being cross or...or at cross purposes with people, and
I'd like for that to happen too. I just think that it's so
essential that we, as a people, live up to our own God-given

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rights and protect the rights of those unborn, and this is a way we can start that. Thank you very much.

PRESIDENT MAURSTAD: Thank you, Senator Dierks. Senator Brown, on the Pedersen motion.

SENATOR BROWN: Mr. President, members of the Legislature, I rise to oppose the motion and it is with great ambivalence that I do that, because I believe so strongly that the only way that we can reconcile deeply held divisions about ethical issues is to have public discourse about that. But I also believe that we have made it clear on this bill, even though there have been statements today to...opposite of that, we have made it clear that we don't intend to have a discussion. It's been said, both publicly and procedurally, that we don't intend to have a discussion; that with this bill it is take it or leave it. And so we are not going to struggle with those differences that we may have and we are not going to try to find ways to come together to figure out if there is some way that we can develop public policy in this state that protects people's deeply held moral positions without infringing on others' deeply held positions, without pulling the state back to a place that I don't think we want to be. And if I really believed that we could honestly do that then I would be in a different position as far as pulling this bill out of committee, but I don't think that's what we're going to do. I think what we're going to do is, unfortunately, make campaign statements and put people on record about things that...that they are struggling with, and it's not that clear. But I do think that it is clear that there is good that's being done in the research and that we don't want that to stop, and I think that LB 462 is going to stop that. And so, because of those things, I will be opposing the motion to pull. Thank you.

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

SENATOR BROMM: Thank you very much, Mr. President and colleagues, and it would be very, very easy for me not to stand up here and speak but I think I need to tell you a couple of things. I don't normally try to duck issues, and I certainly haven't ducked this one when it's been presented to me. I do

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have a very dear family members, who happens to be my youngest son, who is involved in something in his senior year in college at about 2:30 today. It's about 2 hours and 45 minutes away and his mother and I are going to be there and surprise him, and that is important to me. So, unless we vote by about 11:40, I'm not going to be able to participate in this vote, and I'm sorry for that. And if I thought my vote was going to be the deciding vote I probably would even sacrifice that and stay here to do that. I...I have watched this issue last year and this year, and it is one of the more difficult ones that I've had to try to deal with and reconcile. I haven't ever knowingly cast a vote in this body that wasn't, quote, unquote, pro-life, and yet I find myself really struggling with this issue. I support life from conception to death, and a lot of the people that have expressed their concerns about this bill have expressed to me concerns about how this will impact lives and have...have struggled with how this...how this research, in any way, causes...causes any abortions to occur, questioning whether it does. So there are legitimate concerns on both sides of this issue. I am very troubled by the motions that are filed to cease debate, allow no amendment or discussion at not only the General File level, the Select File level, but the Final Reading level. I've never seen that since I've been here and if any bill needed to have open discourse and honest debate it probably is this one. But there are many people that think that we can't have that or that we shouldn't have that, unlike...I mean I can remember being here and going eight hours plus on the welfare reform bill and getting the job done. I can remember being here on several other major pieces of legislation and eventually getting the job done. I do appreciate the work of the committee and how they've struggled with it and, believe me, I...I respect them and I respect both sides of the committee that have tried to deal with this bill as best they could. I'm encouraged by the fact that I believe that the situation is different than it was a year ago in terms of progress. I, too, have been down there, like Senator Dwite Pedersen. I have talked with the researchers, I have looked at what they're doing, I have heard them explain their positions and how they feel about it, and I believe we've made good progress on purchasing a significant amount of equipment to begin to use rapid autopsies and other means of obtaining the necessary cell that is very difficult to

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get without using fetal tissue to obtain that cell. I can't say enough about the promise that this research holds and the hope that it gives to people who are in a helpless situation. Those people are important too. They're no less important than the poor fetus that this happens to. People that are helplessly in a situation, who have had the good fortune of being born,...

PRESIDENT MAURSTAD: One minute.

SENATOR BROMM: ...deserve our help also. In summing up, I would have to say that were I here when the vote were taken, under the conditions as we face them today, unless something is said differently than I've heard, I would not be able to support the motion to pull the bill. I would like to see some evidence of willingness to compromise to find solutions and then I'd be able to support the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Senator Bruning, on the Dwite Pedersen motion.

SENATOR BRUNING: Mr. President, members of the Legislature, I rise to support Senator Pedersen's motion to place LB 462 on General File, but I think, in terms of the magnitude of this issue and its import to the entire state of Nebraska, this is one of those rare issues that absolutely must be debated in the public forum here on the floor of the Legislature. We have a committee system and certainly that committee system is intended to keep bills that are not ready to be passed in committee. I would argue this bill is not one of those. It rises above that; it rises to a level where it must be debated by the whole body. Obviously, I'm in favor of LB 462 and the reason I am is because I believe abortion is morally unacceptable, and as I tried to clarify my thoughts for today I want to give credit to Dr. Stephen Doran, who wrote an editorial for the Omaha World-Herald yesterday that was very well reasoned and helped me clarify my thoughts, and one of the things that I think we need to ask ourselves is can you distinguish abortion from research? Opponents of the bill will argue that using fetal remains doesn't result in more abortions. Using fetal remains doesn't result in more abortions. I disagree with that. And the principle that Dr. Doran talked about, that I recall from my

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philosophy class days here at the university, is moral complicity. There is a necessary tie between the abortionists and the abortion and the research. It has to be prepared properly; there has to be forms signed; there are things that the woman does, that the doctor does, the abortionist, that make the research complicit with the abortion. And that's where the problem is for me. Moral complicity is where I draw the line. I do not want to be morally complicit with abortion and I don't want anything that the state touches or funds to be morally complicit either. Then you talk about consent. Well, this woman can consent to the abortion. Again, I disagree. I don't believe a woman has the ability or the right, the moral right, to consent to the death of her own child. At that point, and Dr. Doran did a beautiful job of arguing this point, at that point she no longer has the ability to be the guardian for that child when she's decided to terminate that child's life. Brings me back to a book, and I had Holly, in my office, look up a book I remember reading in philosophy class back in...10-15 years ago, called "The Ones Who Walk Away From Omelas", and the story, the general story, is there's this town and it's a utopian town and everybody is so happy that everything is perfect, they don't fight, they don't get sick, they don't have wars, they have all these wonderful things, but the reason is because there's one small child that's kept in captivity, kept chained up, hardly fed. And so the whole town, once they start to discover the secret the only way they can be utopian is because they have this one small child that has to suffer. I see that the same way here. There is a greater good or at least a good that can come, certainly, from the research, but the question is, do you want to be morally complicit with the abortion to get there? I don't. I don't and I can't, and that's why I rise in support of the motion and in support of the bill. With that, I'd yield the balance of my time to Senator Engel.

PRESIDENT MAURSTAD: Senator Engel.

SENATOR ENGEL: How much time do I have left?

PRESIDENT MAURSTAD: Minute twenty.

SENATOR ENGEL: Okay. Thank you. I also support bringing this

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bill out of committee to the floor. Of course, this was discussed last year and last year I talked quite a bit about it as far as the situation of the university, how they went about it as far as keeping it secret, using Dr. Carhart as their source, and now I think they might be getting a little bite from that, from...

PRESIDENT MAURSTAD: One minute.

SENATOR ENGEL: One minute. Thank you very much. So...but the thing is I, too, am pro-life. I believe life begins at conception. I have in front of me here an article from Dr. Jude T. Cook of Omaha, M.D. I don't know the man, but this was in the Omaha paper some time ago. I must correct Ms. Faith Snyder (phonetic), whoever she is. July 28th Pulse made certain claims based on fetal cell development about when life begins, and he says, at conception a new human individual cell called a "bilosphere" (sic--blastomere) is formed. This cell contains a genetic code that is distinct from his mother. We learned from the O.J. trial that individuals all have a distinct genetic code. This fetal cell immediately continues to divide and mature to the point of developing a beating human heart at 25 days. If we are going to discuss medical facts, we should do our homework first. Human individual life begins at conception.

PRESIDENT MAURSTAD: Time.

SENATOR ENGEL: I am not a medical person, but...

PRESIDENT MAURSTAD: Time.

SENATOR ENGEL: Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Engel. Senator Foley.

SENATOR FOLEY: Thank you, Mr. Lieutenant Governor and members of the body. Before I begin my own remarks, if Senator Engel would like another minute or so of time, he's welcome to it. Otherwise, I'll just plow into my own remarks.

PRESIDENT MAURSTAD: Senator Engel.

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SENATOR ENGEL: Mr. Lieutenant Governor, again, I have...I...just one short letter I want to read to you, and this is from a 13-year-old girl who was doing a project for her school and her parents said, well, could we help you with this project. She said, no, I want to do it on my own. I want to give my own thoughts. And this will take me about a minute and a half to read and then will return your time back to Senator Foley. And she said in her report: Respect the life you are given. Don't ever take it for granted. Have you ever sat down and thought about what your life would be like if your parents had aborted you? Well, you wouldn't have a life and all of the accomplishments that you have made in your life, whether they be big like Tiger Woods, she's a golf enthusiast, and all of...all of the tournaments he has won, or it may even be when you helped out a friend, if you or Tiger Woods had been aborted none of these would have happened. In my essay I will talk about abortion, how it affects the rest of the nation. Many babies have been aborted. How do we know that those babies weren't going to be our future government officials or the best basketball player? We don't know. Only God knows what would happen when...with the babies' lives had they not been aborted. We were given the chance to live, the chance to help others and be a friend to everyone. Each one of us has been giving (sic) a great gift, such as being athletic or really smart, like the folks here in this Chamber, but none of those gifts can even come close to our first and best gift--the gift of life. I have been a baby-sitter for about three years and if I have learned anything it's that kids are the funniest, the most enjoyable little people. They say the funniest things and they're always so energetic. They are full of laughter and when they smile it's just about the cutest thing ever seen. I just do not understand why someone would want...not want a child to live. In my opinion, the main reason abortion is still legal today is that women want the right to choose for themselves instead of the government choosing for them. Well, I think that women should be able to choose for themselves, but when you're going to have an abortion you're not choosing for yourself. You are choosing whether or not another life is brought into the world, whether or not another baby has a chance to laugh, cry, or even say their first word. When a woman chooses abortion, no matter

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how far into the pregnancy she is...she is, no matter how small the baby may...the baby may be, the baby is still alive. If a mother does not want her baby then she can give it up for adoption. There are many people who would love a child. Why choose abortion? It may not sound like a bad idea, but now...but later you'll regret it. I think the people who choose abortion are just looking for an easy way out. I think that it would be anything but that. In conclusion, always cherish, love and respect life; never take it for granted what you have been given. Shelly McLaughlin (phonetic). Thank you. I (inaudible).

PRESIDENT MAURSTAD: Senator Foley.

SENATOR FOLEY: Thank you, Senator Erdman (sic--Engel). I rise today in support of the motion to pull LB 462 from the committee to our General File, and I want to begin by thanking Senators Pedersen, Erdman and Brashear for the roles that they have played in introducing, prioritizing, and shepherding this important bill to this stage. I can well imagine the criticism, if not vilification, that some will seek to pile on them for the leadership that they have shown, and I want them to know that I appreciate their courage. In my view, the crux of the issue before us is whether or not it is appropriate for our state university to be in direct complicity with the abortion industry. Many of us can easily recall the days when there was a raging debate on university campuses across this country as to whether or not it was proper for university endowment funds to be invested in corporations doing business in South Africa. And as each university went through this painful, yet critical, debate and ultimately divested such investment, another ray of hope was sent to the oppressed people of those nations. Requiring the university to divest itself...

PRESIDENT MAURSTAD: One minute.

SENATOR FOLEY: ...from the abortion industry is appropriate. It's my view that essential public support for the university will only continue to erode so long as university officials cling to a research agenda founded on a complicity with the abortion industry. Again, I want to thank my colleagues,

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Senators Pedersen, Brashear and Erdman, and I yield back the balance of my time. Thank you.

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

SENATOR LANDIS: Thank you, Mr. Speaker. Members of the Legislature, there's only one side of this case that affects human misery and that's the side that, in fact, has a chance to end terminal illnesses and do research. All of our research tells us there's nothing that affects the number or opportunity for abortion. I think the argument has now devolved to some kind of moral complicity. The truth of the matter is, the net effect will be to allow terminal diseases to continue unchecked because the research is stopped. This stops research, but it doesn't stop abortions, and that means the only moral imperative here as far as human suffering is the suffering by those people who are sick and in looking for all of our assistance in trying to bring diseases to an end. I rise to object to this motion, in part because of what is clearly, on its face, the coming strategy that includes three motions to...no, I'm sorry, to vote on the bill without amendment and without debate, one for General File, one for Select File, one for Final Reading. We have the chance upon the passage of this motion to have a bill passed with no debate in the Legislature. Senator Pedersen said he welcomed the discussion, which means to me he cannot also mean then that he would vote for any of the Brashear motions. Senator Bruning said he welcomed the debate, which means I think either he's either telling the truth, which he means he will not vote for any of the Brashear amendments, or he will vote for the Brashear amendments and do exactly the opposite of what he tells us we need to do. A good day for this body was in April 21, 1999. We were debating the death penalty and the moratorium, and one of our colleagues said what I thought was just some terrific information: These are difficult issues and the public doesn't always understand and I want to suggest to you that the fault lies here when the public doesn't understand. Sometimes we don't engage in the kind and type of debate that gets reported so that people can understand. And if the public doesn't understand, it's because I'm not certain anybody ever sits around and spreads out to the public record all of the information that the public ought to have in order to

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understand, and when I next rise we'll go back to try to promote public understanding. One of the things that I think is a thrill and a privilege about serving in this great body is that it is our duty to inform ourselves and to share that which we learn with the people. We are here to serve them and when next I rise I'm going to continue informing the public. When Senator Brashear said that in the middle of the death penalty moratorium debate, I thought he was on the absolute moral high ground, and now we have the first motion which, following this motion, takes us to a motion to suspend the rules and to vote without further debate or amendment the advancement of this bill, not just on General File, but Select File and Final Reading. There is nothing in the history of this state that would serve as a precedent to this set of behaviors--this motion followed by those three motions. I oppose this motion because I certainly oppose that style of "nondeliberative" action by this body. It is not our job. It is not democratic. It's not appropriate, and it is...it is a strategy that makes me fight being more vitriolic in my rhetoric. This is be...this is beneath us. That's the best I can say and still try to keep a sense of restraint. It is beneath us that we would not vote, that we would not debate and vote on General, Select, and Final Reading for a bill, and such a strategy is beneath us.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Further debate on the Pedersen motion? Senator Brashear.

SENATOR BRASHEAR: Mr. President, members of the body, in the interest of balance to our deliberations, I would yield my time to Senator Beutler.

PRESIDENT MAURSTAD: Senator Beutler, you are recognized.

SENATOR BEUTLER: I assume that means we're going to have an abbreviated debate here shortly, which I'm sad to see. This is a difficult question for everybody, I'm sure, but the difficulty for me in supporting raising the motion is simply the fact that I cannot, in the end, see fetal research as an abortion issue. All of the benefits of fetal research have been laid out on one side, and on the negative side we say that fetal research is an abortion issue. And, yet, there is a complete void and gap, no

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causal link, between doing fetal research and causing any increase in abortions in any way. There is no basis in fact, is what I'm saying, for the assertion that fetal tissue research actually encourages elective abortions. And if there is in some remote way some connection, there have been other bills offered that would sever completely any known possible connection, causal connection, between abortions and fetal research, and we can pass those laws and I would be in favor of that. But as I watch what's developing let me ask you this. Could it be that what's happening is that proponents of the ban, and I don't mean senators in this room, are interested in creating a symbol--the fetal research issue--that can be used as a litmus test for loyalty even though the symbol itself has no causal link to the cause? And I would remind you that this is an historical thing that does occur from time to time, many times. I think you've all heard the story of the medieval astronomer who was forced in the end to say that the earth was the center of the universe, and it wasn't, and he asked, why now, what's the cause, what's the scientific basis, what's the basis in fact here? And it didn't matter because that belief was a litmus test as to his mortal moral rectitude. But can you...can you take a fiction, a connection between abortion and fetal research, can you take a fiction and elevate it to a truth or something that suddenly becomes relevant even though it's a complete fiction? When we do that what do we do to ourselves? The whole basis of our society, the whole basis for our legal system, is looking for whether there's a basis in fact. We don't convict somebody unless there's a basis in fact. This great nation, this society, is ahead of others in part because we...we're pragmatic and we look for a basis in fact. We don't elevate fictions. And so it seems to me...

PRESIDENT MAURSTAD: One minute.

SENATOR BEUTLER: ...that the best course for us now is to do what Americans do best and look practically and realistically and in fact as to whether there's a connection between abortions and fetal tissue research. That is the key link, and there is no link, and the whole construct breaks down, especially in light of the enormous benefits that are potentially there from the research. Thank you.

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PRESIDENT MAURSTAD: Thank you, Senator Beutler. Further debate, Senator Cudaback.

SENATOR CUDABACK: Mr. Speaker, members, I know we all want to get our name out in the open here and for the record, as we always say, and justify our...our vote, I guess. But, if nothing else, what this motion does and what it says to us here, the number of lights that were punched on to speak, I think, what was said, 20 or 25? This is a rare occasion for this body. I mean it shows us what's important. It's life. It's life is what is important here and I think this may be a good lesson for us. But what causes us to vote in one manner or the other manner? What causes us to push the red button or the green button? Is it experience? I don't know what it is, but I do know one thing. I have spoken to many, many, many groups. I spoke to a group of democrats Friday night and I brought this very issue up and...and...one wife, the wife of a...how do I say this, the lady of the family voted this way and the man voted this way on the issue, both good people, both great people. And I said to myself, what causes this? Is it experience? Is it an emotion? Is...what is it? I can't answer this. It's like this body here--all great people. I love everybody in here and they're good people, but one person will vote this way or one person will say this and say that. What causes it? I don't know. I really don't know. I'd like to know. Know we get kind of emotional when we talk on this issue and that's good, because what's more important than life? And I guess we just have to vote our conscience on this issue. What else is there? We all love life and you have a reason for voting the other way, for the research that's going to be done. It's great research. We all are experienced by that also. It's touching. I have a sister-in-law that has the...has the illness that's been alluded to here. It's terrible. It's terrible, terrible. I guess we vote our conscience and go from there, but whatever it is that drives us, you know, it's important. Those number of lights on, I want to reiterate that, what's more important than this issue here? I think it does deserve probably to be discussed. I'll give the rest of my time, if I have any, to Senator Kruse. Thank you for listening.

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PRESIDENT MAURSTAD: Senator Kruse.

SENATOR KRUSE: Thank you, Senator Cudaback. Mr. President and colleagues, this bill is based solely on religious doctrine. I strongly object to putting religious doctrine into statute and will abstain from voting. I've been trained in evaluating and defending religious doctrine so I recognize that when it comes it's generally tied with an ethical system that has a construct of hierarchy of values, and I welcome this hierarchy of values. It's a good one and we should be debating it some place, but evidently we're not going to here. This place kind of looks like my seminary and that's where we debated these things. The hallway out here is a duplicate with the courtyard out there, and you all kind of look like my seminarians. I think there we had half women and one-third minority. A little ways to go on that, but we...and we'd argue into the night about a hierarchy of values, but we never voted. That is arrogance. We religious people have a penchant for declaring when God agrees with us with our opinion and then forcing that on to other persons. This bill would establish a religious conviction as a statute and ignore my religious conviction, indeed, stomp on it, unless I have the most votes. Then I get a chance to stomp on somebody else's religious conviction. I object just as much. It gets worse. We are considering voting on who is moral and who is immoral in this body, in this community, in our university.

PRESIDENT MAURSTAD: One minute.

SENATOR KRUSE: How dare we! It gets worse. We are preparing to vote that a basic religious conviction of the entire Jewish community of faith is defective and immoral. For those of you that don't know Jews very well, they're sort of like Baptists. Three of them have five different opinions. They are freethinkers, but they have this, and on this they are united. And we say, well, they've been silenced before; let's do it again. I strongly object to our trying to silence anybody. I appreciate all of the religious convictions. I welcome them. I'm grateful for them. But I will abstain and I'll invite others to abstain in order that we can enjoy each other's religious convictions and discuss them in a proper place. This is not the place.

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PRESIDENT MAURSTAD: Thank you, Senator Kruse. Senator Beutler.

SENATOR BEUTLER: I'd waive.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. Members, interesting the bills you pick as your priority bill, and this is one that obviously didn't come easy for me as well. Is an issue that I would like this body to take a position on. If we, as a state of Nebraska, if we, as the Legislature, are going to allow the state of Nebraska and our university system to be entwined with practices that are not consistent with our current statutes, or to use public tax dollars for purposes that many members of the state of Nebraska, although many do support, do not support. And we have these debates on the floor and, as I have said repeatedly, and Senator Pedersen has said repeatedly, we will have debate. But here is the issue and I think it is something that strikes me it's not a...it's not one that I lightly flee from and is my convictions, and I believe at the heart of this issue is the sanctity of life. As Senator Pedersen has said today, I in no way, and nobody that I know of who is sponsoring this piece of legislation, who has cosponsored this piece of legislation, who has said they will support this piece of legislation, wants to do anything to inhibit the ability to find the cures ethically to the societal problems that we have, health wise or otherwise. There has to be a moral justification for what we do in our lives and in the state of Nebraska, in the United States and in the world, so we need to make sure that we hold true to those truths. We hold true to what we believe in our convictions. And I know that many of you have difficulties with this issue. We're not asking you to sacrifice your beliefs. We're not asking you to sacrifice what your convictions are. We're asking you to vote what you think is in the best interests of the state of Nebraska. Obviously, I wouldn't have prioritized this piece of legislation if I didn't think that it was in the best interests of what I view the focus of the state of Nebraska to be. We are trying to set that moral standard. We're trying to make sure that in the state of Nebraska we are consistent; we hold true to the idea that we are

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here to make difficult decisions. They're not always accepted. They are not always right in all eyes, but that's why they pay us, quote, the big bucks. There are vast alternatives and, as we have seen here in the body, we place rules, we do things, and we need to make sure that in the process of relating to something as essential as human life that we seek out and we find alternatives first and foremost before we turn to something or we turn to a source where we can say, well, it's just tissue. It is not tissue to me, friends. It is life. We had the honor of attending a meeting last night, a mini-symposium, at the University of Nebraska-Lincoln, and it was not disputed by any member who was there either for or against fetal research, embryonic stem cell research, that a zygote, as is prescribed by the University of Nebraska-Lincoln and the Medical Center is life. That was not disputed, so we're talking about life. We're talking about the life of innocent people and its subject to those in authority. And we must be careful on who we subject our authority to as far as what we subject their innocent life to. So we're asking the university to hold true on their promise that they will find alternatives. LB 462 doesn't just say we believe you, but it says we want to make sure that we can trust you. And that is essentially what we're trying to say here. It does not prevent the research from happening in the state of Nebraska as LB 1405 did from last session. What it says is, in the state of Nebraska, where all these alternatives are available, not only here but otherwise, that we will seek those alternatives, we will make sure that we make those our progress and our process in research. We have seen the ability to reprogram and deprogram...

PRESIDENT MAURSTAD: One minute.

SENATOR ERDMAN: ...cells to be able to use for research. It is encouraging to me that we have this opportunity. It is encouraging to me to know that, as a young member of this great state of Nebraska, that we can bring legislation before us to weigh in as a state. I think it is important for the state of Nebraska that we do take a position. If you're opposed to motions, if you oppose to the process, that is obviously going to debate it at a later time. Today we are voting to bring this bill out so that we, as the state of Nebraska and as a

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Legislature, can state what we believe in our best opinion and our knowledge and in the fact of law should be the policy of the state of Nebraska in regards to research, in regards to the quality of life. I would urge you, I would implore you, to vote to bring LB 462 to the floor and we will address your concerns for motions or whatever at a later date, but today is the time that we must make the decision...

PRESIDENT MAURSTAD: Time.

SENATOR ERDMAN: ...that we will allow this to come to the floor. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Erdman. Senator Kremer.

SENATOR KREMER: Mr. Lieutenant Governor, I'd like to call the question.

PRESIDENT MAURSTAD: Do I see five hands? I see five hands. The question is, shall the...shall debate cease? Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 28 ayes, 9 nays, Mr. President, to cease debate.

PRESIDENT MAURSTAD: Debate ends. Senator Pedersen, you are recognized to close on your motion to place LB 462 on General File.

SENATOR DW. PEDERSEN: Thank you, Mr. Lieutenant Governor and colleagues. Thank you, Senator Erdman, for your eloquent words in talking about life. This bill is not just about abortion. It is about life. What is life? Lady wrote me the letter the other day and said this isn't an issue of research and the use of fetal tissue; rather, it's an issue of research and the use of rubbish. And my answer to that lady is this. How long will it be before any one of us, our loved ones of ours or anybody, Mongoloid children or whatnot, will be considered rubbish because you've got some part that will save somebody else's life? This is life. I think it's time that we bring this to the floor of the Legislature. It is time that we take the matter to a vote and that we and the citizens of Nebraska know

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where we stand on this issue. I urge you to support my motion to bring LB 462 to the floor, and I would give the rest of my closing to Senator Brashear, who's also been very, very helpful in this bill. Thank you, Senator Brashear.

PRESIDENT MAURSTAD: Senator Brashear.

SENATOR DW. PEDERSEN: If you'd like the rest of my time.

SENATOR BRASHEAR: Thank you, Mr. President, members of the body. Thank you, Senator Pedersen. I simply rise to urge the adoption and approval of the motion. We have strived to have balanced debate. Maybe it was somewhat structured. There are deliberative bodies in the world that have structured debate but, nevertheless, those are issues. I, Senator Landis, cited my principles and I stand by them and will deal with them as it relates to our deliberations here. We'll deal with those at a future point in time, but I would urge the favor...your favorable action on the motion to pull. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Brashear. The question is, shall LB 462 be placed on General File? Those in favor vote aye; those opposed vote nay. Record vote has been requested. Mr. Clerk, please record.

CLERK: (Record vote read, Legislative Journal page 1360.) 31 ayes, 13 nays, Mr. President, on the motion.

PRESIDENT MAURSTAD: The motion is agreed to. (Visitors introduced.) Senator Erdman, entertain a motion to recess.

SENATOR ERDMAN: Mr. President, I move we recess until 1:30 this afternoon.

PRESIDENT MAURSTAD: Question is, shall the Legislature recess? Those in favor say aye. Those opposed nay. Legislature is in recess.

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon and welcome to the George W. Norris Legislative Chamber, the fifty-ninth day. Senators, the Legislature is about to reconvene. Please check in.

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

SENATOR CUDABACK: Mr. Clerk, first agenda item.

CLERK: Mr. President, LB 75 on General File, a bill by Senator Connealy. (Read title.) The bill has been discussed, Mr. President. Committee amendments offered. A series of amendments to the committee amendments offered. The first motion I have this morning or this afternoon, I should say, is a motion by Senator Chambers to amend the committee amendment. (FA164, Legislative Journal page 1561.)

SENATOR CUDABACK: Senator Connealy, did you want to take about 30 seconds just to update us on the bill.

SENATOR CONNEALY: Thank you, Mr. President. Once again, this is the ethanol promotion bill, a bill that would require the offering of ethanol at every station in the state at the lowest grade of octane. This isn't...wouldn't require it to be in every grade of gasoline in the state. It is not a mandated bill. It is requiring that it is offered everywhere in the state. Currently there are 38 percent of the stations don't...do not offer ethanol blended gasoline and we are on the committee amendments which would change the date.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Chambers, on your motion.

SENATOR CHAMBERS: Mr. President, members of the Legislature, the purpose of my amendment is to change Senator Connealy's amendment, and I'm going to take care of the mystery in just a second. What I'm going to do, Mr. President, and members of the

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Legislature, is to continue to discuss this bill and we still are on the committee amendment, and the committee amendment is one of the briefest ones we've had before us in this Legislature during my career here but it shows that there can be a lot of substance in a few words. So what I am intending to do is to seek some symmetry. The way the committee amendment reads is that this bill would take effect on January 1 of the year 2002. The original provision that they are changing would have said October of an earlier year, 2001. In the interest of symmetry, I want to amend the committee amendment to also say October of 2002, and we simply extend that time to a full year. Senator Connealy told me that there was no magic about that date of October, but since they decided to use it, I want to maintain it because, brothers and sisters, as hard as it may have seemed in the past that I am on this bill, I'm really trying to be collegial. So by offering this amendment, I'm acknowledging that if you must put in a month, we ought to use the month that those who drafted this committee amendment had thought was the appropriate one. And there is a lot of significance and consequence attached to the month that is designated for any particular occurrence. Over here in the culture corner we were discussing, or I was anyway, some peculiarities about the month of October. We know that "o-c-t-o" designates eight, but October is not the eighth month, it's the tenth month. Now it doesn't happen like this only when we are dealing with the month of October. An octopus is a creature that has eight arms, so it seems that it is properly named; octopus for eight arms. But in the same way that October, which would designate it seems the eighth month, is really the tenth month, we have a similar situation when we get to the octopus. Although the octopus has eight arms, those little suckers on the arms are referred to as tentacles. So October is the tenth month, although its name would suggest it ought to be the eighth month. We've referred to an octopus by the number of arms, which would be eight, but the suckers are referred to as tentacles. So we have a problem with this eight and this ten. But without trying to resolve all of those profound mysteries, I want my amendment simply to acknowledge the wisdom of Senator Connealy and the brainy people on the committee which sent this bill out here to us, which would be the Natural Resources Committee. If October was good enough for them, by the eternal, as Andrew Jackson might say,

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October is good enough for me. I'd like to ask Senator Connealy a question.

SENATOR CUDABACK: Senator Connealy, will you respond please?

SENATOR CONNEALY: Yes, Mr. President.

SENATOR CHAMBERS: Senator Connealy, are you partial to the month of January for any particular reason?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Why are you partial to the month of January (interruption).

SENATOR CONNEALY: My daughter was born in January.

SENATOR CHAMBERS: And so you want to take a bill of this kind and sully the month in which your beloved daughter was born, is that what I'm to understand?

SENATOR CONNEALY: No, absolutely not. I think it would be a good tribute.

SENATOR CHAMBERS: To whom, your daughter or ethanol? Oh, you don't want to answer that, huh, Senator Connealy?

SENATOR CONNEALY: I...on...the date has to do with just how quick we can get the bill into motion so I agreed with the committee that changing the date from October to January was a reasonable thing to do, so I'm probably going to oppose that change.

SENATOR CHAMBERS: But you would not take it personally if the body would decide to stick with October as I'm offering it?

SENATOR CONNEALY: No, I would not.

SENATOR CHAMBERS: Thank you, Senator Connealy. Members of the Legislature, the reason Senator Connealy gave for using the month of January is a reason that I cannot really attack because

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I love children, and for that reason I can understand why Senator Connealy said what he said, but I will bet you \$10 to a donut that that is not why he wanted January in this bill. And we know that January is named after Janus, the god that had a face on the front and a face on the back so that he could see things coming and going. He could see the future and he could see the past. Now I don't know if there is some significance in that that would explain to us why Senator Connealy is attached to and wed to January. Now having discussed what the amendment does, I want to touch on this bill, but first I want to let you all know that every Tuesday night I do a cable television program, and I got a call from a guy who was watching us and me talking about the gasoline. He was so pleased at what I'm doing. He doesn't want ethanol in his car, and he couldn't believe that the Legislature was going to create a situation where regular gasoline would not be available. There are other people in this state who feel the same way. I read an article where 95 percent or high up on the percentage scale, maybe it's 85 percent, of the gasoline used as motor fuel in this state is regular. Senator Connealy and his band cannot accept the notion that ethanol is not accepted by the public. I found out by reading the paper why Senator Schrock is so upset. He has got two alcohol...two ethanol plants in his district. So now I'll just discount every thing he says. I know where the pressure comes from on him. I thought he had looked at this issue and figured it out, but he's got people who are producing ethanol, so that's why he wants this bill. But the reason I'm against it is that the purveyors of ethanol, the producers of ethanol, those in whose district ethanol plants are located know that ethanol cannot compete in the marketplace. It cannot stand like every other commodity which the public is asked to purchase, and the public be persuaded on the merits that ethanol is what they want. So they want to wipe out the competition and leave nothing but an inferior gasoline, otherwise known as ethanol. But, fortunately for me, I don't live too far from the Iowa border and I can just drive to Council Bluffs and get regular gasoline. They cannot compel me to put that in my car. As I've said before, corn is for eating: corn on the cob, corn in the can, cornbread, corn pone. There is some cornflakes. In the same way that some farmers, not the farmers, really, but some of the big people in agriculture want to genetically engineer

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cornflakes and Wheaties, they want to do the same thing with gasoline. They want to put corn alcohol, sugarcane alcohol,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...sorghum alcohol in my gasoline and tell me to put it in my tank. I think that is sacrilege for those of us who believe in the al...in the automobile. And so we're going to have to discuss this bill for a good long time to come, and then we'll find out if Senator Connealy can get 32 other senators to agree with him that we need to continue discussing this bill on and on which, by the way, I am having a lot of fun doing, and also I'm earning points from the public because I'm the one who they didn't know would stand up for the public in the way that I'm doing. That just shows they haven't paid attention but it is better late than never. I hope you will adopt my amendment.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA164, which is an amendment to the committee amendments to LB 75. On with discussion, Senators Connealy, followed by Senators Baker, Schrock, Stuhr, Cunningham, and Chambers. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. Once again, I agree with the committee that we ought to move this back till January to implement the bill, to give a few more months to allow stations to acquire the 85 octane gasoline that's a subgrade for mixing and keeping the lowest grade gasoline with ethanol now. The October date could probably be met but I agreed with the committee that the January date would be a more logical date to do. Once again I want to thank the Legislature for giving us the time to discuss this important legislation, and I'd oppose the Chambers amendment.

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

SENATOR BAKER: Thank you, Senator Cudaback, and members. It's my duty, at this tandem here of Senator Chambers and I, I guess, to get the technical part of this, and where we are and what

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this would do to us, and the possibility of even getting this material into Nebraska. I am going to start from the beginning again. What we're doing now is selling 89 octane blended fuel; taking 87 octane and blending 10 percent ethanol with it, and ending up with a good superior product of 89 octane fuel right now which is priced the same, at least the marketers out in our area, I checked this morning, it's priced the same as 87 octane. It's 89 octane. There is a big campaign advertising E 10 ethanol. Sales are going up, I am surprised to say, and we hope that it will be actually priced lower. That's assuming that the price of raw ethanol will continue to decline at least a little bit more so that we can give the 89 octane, the premium product actually of the two, a price break of a penny or two a gallon and thereby increase sales some more. That's where we are. If we pass this bill, we're going to eliminate 89 octane blend. It's not going to be offered any more. The bill says it will be the lowest...lower...lowest octane that the retailer sells shall be blended. So that's going to be 87 octane. We are going to lower the quality of the fuel containing ethanol with blending it with a subgrade and everybody admits to calling it a subgrade. That's just what it is. It's subgrade fuel. Nobody considers that a usable fuel by itself. It's subgrade. You can't burn it in your cars. Nobody can market it. So that's where we would be if we pass this bill. To the technical part of it now, I checked with the nearest refinery to Nebraska this morning, and the manager of it, his name is Mel, it's NCRA, Nebraska or National Cooperative Refining Association. It's in McPherson, Kansas. That's where a lot of the fuel that comes in Nebraska originates. They have a terminal in Council Bluffs and serve, of course, the eastern end of the state and western Iowa. I asked Mel, I said, how much 85 octane fuel do you currently refine out of that refinery? He said, none. There is no market for it. It's none, zero. He says we haven't refined any, we're not going to, and I said, well, that answers my next question. Would you? And he said, no, it's not enough of a market in Nebraska that we'd ever convert anything over to refine 85 octane. Besides that he says, it costs more to do it. It disrupts our practice and nearly everything they sell out of McPherson, that refinery, is 87 octane. We've just eliminated our nearest supplier. They are not the least bit interested.

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If the debate goes on, I will go ahead and call the Farmland Industries refinery in Coffeyville and check with Frontier Refinery there in El Dorado, Kansas. Those would be the next two closest to us. But we do receive a lot of our refined fuels out of the NCRA refinery in McPherson, Kansas, through their terminal over here in Omaha-Council Bluffs, and they just flat...the manager said, no, we're not going to refine this. They had estimated Nebraska would use 5,000 barrels a day, and I think that refinery down there is a 75,000 barrel a day refinery at operating capacity right now, so we don't have a supplier there. And as I said, if this debate goes on, I will go ahead and continue with some more refineries, just call one of them at a time and see what their plans are. And I can't remember what we're even talking about here on this amendment, but I asked him if they did have to refine this and provide it to Nebraska, if somebody...anybody would, how long would it take them to upgrade their facilities and put in a tank? And he said maybe two years they could get a tank in. He wasn't sure. He said they'd have to put it in their capital construction budgets. In the first place, before they did it, they'd want to see if it's economical feasible.

SENATOR CUDABACK: One minute.

SENATOR BAKER: And redo their racks, what they call the racks where it takes the fuel from the storage tank out to the loading facility. He said I don't anticipate anybody would want to do it for the market Nebraska would be. So I'll go ahead and call some more refineries if this thing drags on, and I'd be willing to give anyone his name and telephone number if you want to verify this. I talked to him this morning about eight-thirty. He was adamant, he said, you know we're not going to do this, and I believe him. I don't have any reason not to believe him. Then I did get a call from a constituent asking me about the bill. Why is a rural senator opposing this? And I explained it to him, and he says, boy, you're right, why would we want this bill. And he said I am going to call my Agland Co-op manager over in Edison, a large cooperative, and visit with him. And I said, well, I will call him too. So I called him and he said we don't want to handle this 85 octane. He says, it'd require them another tank. What are they going to do with their bulk fuel

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deliveries?

SENATOR CUDABACK: Time.

SENATOR BAKER: Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Schrock, followed by Senator Stuhr, Cunningham, and Chambers. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, one fact we should establish here. We had expert testimony in the Natural Resources Committee that said that every time you add octane in the refining process, it costs money. So, the higher the octane you process, the more it's going to cost you. Now, of course, if you are not processing 85 octane gasoline and somebody wants a special load, it may cost more. But a general rule of thumb, the more octane you refine in gasoline, the more it's going to cost you. That's why ethanol is quite valuable because it increases the octane of gasoline. Senator Chambers, would you ask me a question? Would you ask me a question?

SENATOR CUDABACK: Senator Chambers, would you respond to that kind of a question.

SENATOR CHAMBERS: Did you ask me would I ask you a question?

SENATOR SCHROCK: Yes, yes.

SENATOR CHAMBERS: What would you like me to ask you?

SENATOR SCHROCK: Ask me how many ethanol plants I have in my legislative district.

SENATOR CHAMBERS: Senator Schrock, would you yield to a question?

SENATOR SCHROCK: I would.

SENATOR CHAMBERS: Senator Schrock, how many ethanol plants are there in your district?

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SENATOR SCHROCK: I have zero ethanol plants in my district and I have zero ethanol plants proposed in my district. And would you ask me another question?

SENATOR CHAMBERS: Senator Schrock, I would yield to a question from you. What question would you like me to ask you?

SENATOR SCHROCK: Ask me how many bushels of corn I've sold to ethanol plants in my lifetime?

SENATOR CHAMBERS: Senator Schrock, first of all, do you raise corn?

SENATOR SCHROCK: I do raise corn.

SENATOR CHAMBERS: And do you sell corn?

SENATOR SCHROCK: I do sell corn.

SENATOR CHAMBERS: To whom do you generally sell your corn?

SENATOR SCHROCK: I generally sell my corn to feedlots that process that into beef, and I do sell corn to the Frito-Lay plant in Gothenburg that sells it for human consumption.

SENATOR CHAMBERS: And that just about exhausts the corn that you have for sale?

SENATOR SCHROCK: That about exhausts. But the important thing, Senator Cha...

SENATOR CHAMBERS: Then, well, let me ask the question now.

SENATOR SCHROCK: Okay, we're on my time but go ahead. We've got lots of time.

SENATOR CHAMBERS: Senator Schrock, how many bushels of corn have you sold to ethanol plants?

SENATOR SCHROCK: I have not sold any corn to ethanol plants.

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SENATOR CHAMBERS: Okay. Thank you.

SENATOR SCHROCK: But one may be in the proximity. It might be in Senator Kristensen's district which is close, but I still probably would not sell much corn to that because my local market is feedlots. But the important thing is about 20 percent of the corn raised in Nebraska is sold to ethanol plants. And, Senator Chambers, I understand there is a matinee downtown this afternoon, a pretty good show. If I'm buying, would you go with me? I'd even buy the popcorn and the coke. Well, with that, thank you for your time. I give the rest of my time back to the Chair.

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

SENATOR STUHR: Thank you, Mr. President, and members of the body. I do want to stand in support of the committee amendments and the bill and will be opposing Senator Chambers' amendment. I think, as a committee, we looked at that date and wanted to extend it, from when the date would be passed and giving...looking at January first, that would be the most appropriate. Senator Chambers' amendment would really delay that ten more months. I, too, believe that consumers should have a choice at the marketplace, and I believe it was pointed out that today we have 38 percent of our stations that do not offer ethanol. And why is this? I think some of that is probably due to past perceptions. Something that Senator Chambers was just saying is that, well, I don't support this fuel. I have always been a supporter of ethanol. I believe that it is good for your cars, for your vehicles. In fact, we have driven several of our vehicles over 200,000 miles having used nothing but ethanol. So I think there is some past perceptions that it is not...it is not good for your vehicles and I really think that we can say that there have been a lot of changes and that's no longer true. Also some of it is due to consumers. I think we have to admit that, and I would put farmers also in that category, that they haven't been demanding that their stations in their local communities will offer this fuel, and I think that as an industry, we are going to have to

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get behind this effort and encourage that. I believe that if you support ethanol, you will be supporting this bill. Anything that we can do to improve the usage of this bill, I believe in turn will support and have a rippling effect in the economy of our state. It's been mentioned that we use over 250 million bushels of grain. That's a considerable amount. We produce over 370 (sic) gallons of ethanol in the state. We're one of the third largest producers. Those are things that we can be very proud of. We employ over 1,000 people in this industry. The capital investment of our industry has been over \$1 billion. So I believe, as it's been stated before, that we need to support this initiative, that ethanol is really good for our environment. It's good for our economy, and it will help us to be energy independent, and that's why I think, really, the choice is very simple and I would hope that we would all get behind this effort. With that, again, I do oppose the Chambers amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. (Visitors introduced.) On with the discussion, Senator Cunningham on the Chambers amendment.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members of the body. You know I've been trying to express the last two days why I am so strongly in favor of ethanol, and I not only think it's great for the farmers and rural economy, but I've been trying to express how I think it's great for Nebraska and our nation, as a whole, and I am just going to read you some figures. We have a high trade imbalance from dependence on foreign oil and it also leaves our economy vulnerable to price hikes from supply disruptions. Developing a stronger market for biofuels in the United States will be accompanied by tremendous economic benefits including trade deficit reduction and job creation. The ethanol industry is responsible for approximately 200,000 jobs. From 1996 to 2002, the ethanol industry will add \$51 billion to the U.S. economy. Petroleum imports account for almost one-half of American current trade deficit. In 1990, that figure doubled to \$43.7 billion. One billion dollars in trade deficit costs United States 27,000 jobs. It also estimates that more than 30,000 new jobs would be created with ethanol production and deployment of 53 billion liters per year.

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And this is probably the most important part. Maintaining the uninterrupted flow of oil from the gulf region is high, as much as \$57 billion per year. The U.S. General Accounting Office estimated that the cost of U.S. military and foreign aid programs in the gulf area from 1980 to 1990 was as high as \$365 billion. When military and energy security factors are taken into consideration, the true cost of oil is as high as \$100 per barrel or \$5 per gallon. Today, oil field discovery and oil production is on the decline. This suggests that within 10 years we may see the end of cheap oil forever, and that could have a very negative impact on our economy. Continued investment in biofuels technology and commercialization will ensure when oil supplies decline and severe price increases occur, our country will have transportation fuel options and will not be so vulnerable. So for me, that is another one, that's a huge reason; our country is very, very vulnerable with our dependence on foreign oil, and we have the opportunity now with the elimination of the use of MTBE in California and many other states, now is the time to really promote this industry and we have the chance in Nebraska to be a big part of that. Thank you.

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

SENATOR CHAMBERS: Mr. President and members of the Legislature, I would like to ask young Senator Cunningham a question, if I may.

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

SENATOR CUNNINGHAM: Is there a young Senator Cunningham?
(Laughter)

SENATOR CHAMBERS: Well, as this old minister used to say, the first hen that cackled laid the egg, so I can only go by the fact that somebody stood up in response to that description. Senator Cunningham, are you desirous of having an ethanol plant be opened in your district?

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SENATOR CUNNINGHAM: Yes, I am.

SENATOR CHAMBERS: No further questions? Thank you, Senator Cunningham. Members of the Legislature, whenever I see somebody pop up on this floor and all of a sudden they have these glowing statements about a subject that they haven't shown a great amount of interest in, there is a hook in it. There is something for them, and that's why they are speaking. I am speaking on behalf of the public. I'm speaking on behalf of the principle that the public comprised of people in America have the right of choice. No state should invoke its power to take away a choice that people have. No people in a state should have the power of the state used to foist on them a product they don't want. They've shown they don't want it. You know why, Senator Stuhr, these farmers are not going to demand that the stations in their area carry ethanol? Because they don't want ethanol. That's the answer. If they wanted it, they would say it. You want to compel people to buy a shoddy, shabby, worthless product. And you know why I use those terms to describe it? Because those who support this bill say the only way you can make people buy ethanol is to take away from them what they want and use the power of the state to force station owners and managers to sell this shoddy product. I'd like to ask a question of Senator Schrock, if he is in the room.

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

SENATOR CHAMBERS: Senator Schrock, did you read an article, it may have been in this morning's paper, I don't remember whether it was the World-Herald or the Lincoln Journal Star that said there are two ethanol plants in your district? Did you read...

SENATOR SCHROCK: I didn't read that article.

SENATOR CHAMBERS: ...that account? You did?

SENATOR SCHROCK: I did not.

SENATOR CHAMBERS: Okay, well, check it out, and if you don't find it, I will give you a copy of the article I read.

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SENATOR SCHROCK: Okay.

SENATOR CHAMBERS: Are you expecting an ethanol plant to be opened in your district if a certain giveaway program is enacted into law this session?

SENATOR SCHROCK: Senator Chambers, that ethanol plant that you're talking about is in Senator Kristensen's district which borders mine.

SENATOR CHAMBERS: Now, I would like to let you know that I take very seriously invitations that you make, and where as I cannot leave the floor to attend that matinee with you, "Baron" Tyson told me to let you know that he would be willing to go. (Laughter) And if he does go, and you're willing to go, I will pay for both of you and buy the popcorn and some soda water, too. Thank you, Senator Schrock, that's all I have because I don't want to misstate what is going on in any member's district. But as Will Rogers said, on those subjects, all I know is what I read in the paper, but I can be corrected on the floor. I'm going to emphasize a point that Senator Baker has been bringing, that I have talked about, so that when these other people bringing up these fanciful scenarios stand on the floor, you'll know that they should be disregarded. This subgrade, this suboctane gasoline that Senator Con...Connealy tells us is going to be available, which Senator Bruning tells us will come flooding into the state has not been promised by any refiner. No refinery has indicated that such will be the case. Senator Bruning talked to a pipeline company and they said their pipes will carry 85 octane gasoline into Nebraska. That pipeline will carry anything that you pour into it anywhere that the pipeline is going. If you watered down molasses enough and poured them into that pipeline, they would flow to wherever the pipeline is going to take it. The question is, will there be a buyer at the other end? If there is a buyer at the other end who is compelled by law to buy, then...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the price is going to be high. That's

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what all of my colleagues on the floor who represent farm producers have said over and over and over. As you reduce competition, you raise the price because you have people in control. They can fix the market, they can fix the prices, and they are never going to fix the prices low, they are going to fix them high to maximize profits. When you pass a law that requires 85 octane gasoline to be used in this state, you're going to pay a high price, but that's not what will happen. That's not what will happen. They are not going to bring in 85 octane and add ethanol to enhance it to 87 octane. They are going to put ethanol in 87 octane, bring it to 89 where it is now, and the only fuel that can be sold in this state...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...will be ethanol.

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

SENATOR BAKER: Thank you, Senator Cudaback. And I may repeat some things that have been said because I have been out in the lobby there explaining this bill to some people or why it won't work. And I do intend to go ahead and continue to call some refiners here. This, I think Senator Connealy mentioned that we're targeting this bill to the 30 percent of the retailers who are not offering ethanol at this time, and I have a printout here from the Department of Revenue and the bottom 30 percent of the distributors, this says, market .93 percent of 1 percent of all the gas sold. The first one under that .70 figure is Belvidere, Nebraska. It goes on down from there. So if that's what we're targeting, we're looking at the bottom 30 percent of the distributors selling less than 1 percent of the fuel. To me it doesn't make much sense to upset the whole system to target people who are selling less than 1 percent of the total volume in the state. It's been pointed out in this report, the Purvin and Gertz report, that the cost of ethanol blended gasoline depends on both the price of the suboctane blend stock and the ethanol blended with it. I may have to yield my time back to the Chair because I'm losing my voice. No, I don't want to give my time to Senator Landis. I'll keep whispering. I'll do

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something. I'll send up signs here. I've lost my train of thought, I wonder why. In this Gurvin...Purvin and Gertz report, I'm little bit surprised that the corn growers would use this as support, because after you look at it and analyze it, it could make a case against doing this bill. It says here, in Minneapolis and Des Moines adjusted for state and federal tax treatment of ethanol blend had generally fallen one to two cents below the regular price since early 1999 averaging .5 of a percent over the mid-1998 to the mid-2000 period. That's a two-year period that after all this is said and done, and its suboctane blending, and so on and et cetera goes, and thank you for the water, the price averaged, and this is in this report, I'm not making this up, this is on page 15, I guess, it says averages a half a cent over a two-year period less than standard no-lead. Is this all worth fighting about over this half a cent a gallon? You can read it. It's here on page 15, the Gurbin or Purvin-Gertz report. It further says the Des Moines relationships have shown a similar pattern as Minneapolis, only in Iowa it has averaged 1.1 cents below regular over the same period, this two-year period. So we've got one state up there, Minnesota, is half a cent less over a two-year period, and we've got Iowa, next door to us, that's 1.1 cents below and I, for one, don't think that's worth the debate, and that's with refineries in Minnesota who are, obviously, producing some portion of that 85 octane fuel. We would...well, I don't know where we're going to get our fuel, as I was told out in the lobby there that the 85 octane that's going into Minnesota is coming out of Cof...or southern Kansas, so it's got to be Coffeyville or El Dorado. I'll go see if that's the case and what it costs, what they would put a tank and rack...a rack piping in in a Nebraska at a terminal, that would probably be at the Beatrice terminal, at the Williams...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...Brothers, I would think, but I'll check on that and see. The point being that if there is 85 octane going through the state to Minnesota that they still have to upgrade their facilities there. And as NCRA said, they wouldn't do it, not for the volume we're talking about here. So with that, thank you.

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

SENATOR CONNEALY: Thank you, Mr. President. Senator Baker has taken a snapshot and he is also just picking parts of the Purvin and Gertz study. The paragraph right before the one that he...that he quoted from said: The price relationships in these markets indicate that suboctane gasoline could generally be expected to be priced slightly below regular gasoline. It's not all a tremendous amount. He said a half cent and that's correct. If that was all this bill would do was lower the gasoline in the state of Nebraska a half a cent, that would be a laudable goal, but that is not all it will do. It will drive ethanol sales up in the state. It will build demand for the current ethanol plants and future ethanol plants. It will set a pattern of usage up across the nation I believe. We are currently increasing demand and ethanol is going to be st...ethanol demand is going to be strong no matter what we do, but if rural Midwestern states, like Nebraska, who are leaders in ethanol production, don't encourage usage, don't show their leadership in this...in this area, why how are we going to drive that in the western states, in the Californias that are trying to get waivers from octane...I mean from oxygen use waivers? I don't think they will. This Purvin and Gertz study, which is a two, as Senator Baker says, was a two-year study showed that ethanol blended fuels, that with 85 octane are going to be available or are going to be cheaper than the current least supplied fuels. This is a...this system is going to work. Don't just take a snapshot look at long term studies that we have. Thank you, Mr. President.

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

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I am an urban senator, I represent an urban district. I live in a state that's agriculturally oriented even though the vast number of our workers and the vast number of our lives are not directly on the farm, but many of them are affected by the farm, and I'm concerned about rural Nebraska. Rural Nebraska has not

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participated in the upswing of the last six or seven years. They haven't had the returns that the rest of the state has had. They are not into the stock market and they didn't see their values bloom and blossom like those of us who had money in 401(k)s or stock options or deferred compensation programs. In fact, I believe the story that rural Nebraska is having a tough time. I believe that. And I'll tell you it's a hard thing to figure out what to do about it because so many of the levers that influence rural Nebraska are not before us. I got to tell you I don't think I want to lower the percentage that the break that we are giving now on property tax valuation because I think it will distort the school aid formula. I consider Senator Coordsen's bill on moving to an income stream of valuing agricultural land but there is some constitutional difficulties, and if it does work like an income stream would, it will get us to the same values we have now and it won't be much of a benefit. I'm left with trying to find what to do about rural Nebraska, and I gave a vote today. I voted this morning in the rural, I am sorry, in the Revenue Committee for an ethanol bill. It's \$21 million over seven years. It's to help on the supply side, not the demand side. I got to tell you I do that with not a great deal of hope that it's going to have a huge impact. I wish it would have more. Frankly, I'm doubtful that it'll have a big impact but it does open a market, and I think markets are a significant problem in agricultural Nebraska. In fact, I think there is one and only one thing that works and that's commodity prices and we can't do a darn thing about commodity prices. So now I've got LB 75. I want to do something for rural Nebraska. Do I want to do this? And I come out with the answer, no, I don't. I voted against Senator Thompson's bill on smoking and nonsmoking in restaurants, and my rationale was, look, there are thousands of restaurants, there are hundreds of them that choose to be nonsmoking. There's a very big marketplace out there and there are very strong consumers that are capable of defending themselves and effectuating change in the marketplace. If there are multiple players, both as sellers and buyers, the marketplace is its own regulating mechanism, which is why I didn't vote for that because I thought the marketplace could work. Nonsmokers can get their smoke-free atmospheres if they let the restaurateurs know that their dollars will flow appropriately. Here we're interjecting

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ourselves into the marketplace and we're telling retailers what they can't do, what they can't do. That's different than suppl...making it easier to get ethanol and to get the stuff produced. But now we're going to tell retailers what they can and can't do, which means we're telling buyers what their choices will be as well. And there are literally thousands of tanks, thousands of retailers, and thousands of consumers. It's the kind of place that Adam Smith would say, this is a market.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: This is a functioning, realistic, competition-driven market, in which case it's best to let the market work. Now I, as somebody who this body would regard as a liberal, am surprised to be standing up and reminding what is essentially a conservative body, a thorough-going free enterprise Republican, generally, that the market is a value, a competitive value when you can make it work. Every now and then we make really stupid decisions. We deregulated telephones but, in fact, they were a monopoly. That was a stupid, craven political act on our part and it was a way...it was a big mistake. Here, on the other hand, we have thousands of buyers and thousands of retailers, and we do not need to limit their freedom in the marketplace. Let the market...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...govern and do something for rural Nebraska in another place, namely, I think LB 563.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Vrtiska, followed by Senators Chambers, Bruning, Baker, Connealy, and Schrock. Senator Vrtiska.

SENATOR VRTISKA: Thank you, Senator Cudaback. I...I am not going to oppose Senator Chambers' bill. I am just not going to vote for it. I wanted to talk with Senator Chambers but he is pretty tied up right now.

SENATOR CUDABACK: Senator Chambers.

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SENATOR VRTISKA: Senator Chambers, I've watched you on this floor, even before I came to the Legislature, and you acknowledge yourself as a defender of the downtrodden and one who does not particularly have much gratitude for big corporations and those kind of things, who sort of control the money in this country. I guess my interest, as I listened to you talk awhile ago, is who...who do you think has moved ahead in profits in this country as far as the profits for this past year ahead of General Motors?

SENATOR CHAMBERS: You're asking me for the name of a company?

SENATOR VRTISKA: Yeah.

SENATOR CHAMBERS: I know what you want me to say and somebody is even giving me coaching, but I...I don't...I don't really know of my own personal knowledge.

SENATOR VRTISKA: Well, wasn't there an oil company?

SENATOR CHAMBERS: Which one?

SENATOR VRTISKA: Mobil Oil.

SENATOR CHAMBERS: I wasn't aware of that, but if you say it, I accept that.

SENATOR VRTISKA: Well, I don't know if that's true or not. I just see what I read in the papers and, you know, that's an old...

SENATOR CHAMBERS: But I...if they did, I wouldn't even challenge you on that, but here's...here's what it would demonstr...

SENATOR VRTISKA: Well, but the point of it is...okay, go ahead.

SENATOR CHAMBERS: Oh, I was just going to say, first of all, I'm not against every corporation, and I'm not against all corporations making money, and there will be occasions when a corporation and I will be going the same direction on a

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particular piece of legislation, as in this case.

SENATOR VRTISKA: Well, I understand that but I...I'm sort of teasing you. I'd only brought that up because I know that you have, in some cases you have a distinct dislike for some of the corporations, not the corporation but the way they manage their affairs. And I understand that, and I don't disagree with you, but I thought it was interesting that one of the oil companies has now moved in ahead of automobile companies as far as their profits are concerned, and those are the people that we're buying our oil from. That's where our oil is coming from and I guess, at the same time, most of us acknowledge, and I don't have any personal knowledge, but I've heard it said over and over that some of the...some of the richest people in the country are over in the oil country, over in the oil part of the world, and that's where we get most of our oil. Isn't that right?

SENATOR CHAMBERS: Well, yes, and you have a president now who is very beholden to the oil interests so it shows the power that they have; they purchased a president, so they do have money.

SENATOR VRTISKA: Well, I'm...I'm not going to get in the political arena on this because it's been going on before he became president. We've been buying oil from the Arabian countries and the oil rich part of the world for years and years and years, and they've made a lot of money off of us while they're...some of their people that live there probably are poorer than you and I are. Maybe poorer than me but I don't know about you, but...

SENATOR CHAMBERS: Yes, and just like your president was making money on oil before he became president, and there were many people in his state much poorer than you or I. I mean poorer than I am, I don't know about you.

SENATOR VRTISKA: (Laughing) Well, I appreciate...I appreciate visiting with you and I thought that...those thoughts just came to me as you were talking awhile ago about the fact that we do depend on the oil countries, the oil parts of the world to supply our oil, and they do make a lot of money. There is no

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question. But whether that company that I named is the richest or makes the most money or not, but they do make a lot of money and I think we both...we can both acknowledge that. Thank you for the time. I'd like to ask Senator Schrock a question.

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

SENATOR VRTISKA: Senator Schrock, do you know how many ethanol plants are planned on being built in Nebraska?

SENATOR SCHROCK: In addition to what we have, there's two of them that have been talked about considerably. One of them is in Senator Cunningham's district and one of them in Senator Kristensen's district.

SENATOR VRTISKA: Well, now is there any chance that you could...

SENATOR CUDABACK: One minute.

SENATOR VRTISKA: ...work on getting one down in my district? We...I raise corn, too, and I don't see any being built down there.

SENATOR SCHROCK: Can I explain to you how the one...the one in Kristensen's district came about?

SENATOR VRTISKA: Yeah, I'm not criticizing.

SENATOR SCHROCK: Well,...

SENATOR VRTISKA: I'm just asking you if there is...you know, how do you...maybe you could help me?

SENATOR SCHROCK: Well, what happened there is a very...a group of very aggressive people in the Kearney area, which has a board which is made up of area farmers called KAAPA, Kearney Area Ag Producers Association, has always wanted to have an ethanol plant, and they finally got an alliance with Delta-T, which builds ethanol plants, and now they are out trying to sell stock

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into that plant to area farmers, and if a farmer buys a stock, then he's obligated to deliver so many bushels of corn to that plant, and...

SENATOR VRTISKA: Okay, so you don't use up all my time, I was just curious about where is all the ethanol going to go if we build more plants and we don't find a way to use it in Nebraska? It's going to go to...

SENATOR CUDABACK: Time.

SENATOR VRTISKA: ...California, going to go to New York, going to go to other states. what are we going to do with it?

SENATOR CUDABACK: Thank you, Senator Vrtiska. Senator Chambers, on the Chambers amendment, and this will be your third time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I understand what Senator Vrtiska was saying, and I understand his point, and it is a valid point in several regards. There are many things that numerous corporations do that cause me to be displeased with them, and if there is anything I can do to hinder what they're doing, I do it. There are corporations that gang up on and misuse small producers in this state, and I was instrumental, not only in helping to craft legislation, but in attacking the Attorney General when one of those big outfits asked him for an Attorney General's opinion, and I stepped in, because it seemed like he was thinking about doing it, to point out that his job is not to be a lawyer for private interests. So he acknowledged that he is not to give Attorney General opinions to those people. So I don't just say things, I act on what I believe. One of the reasons that perhaps General Motors has fallen behind not only Mobil, if that's the oil company, but perhaps others and will continue to do so is because they make a product that doesn't meet in quality other products made by automakers. But the gasoline remains I guess at a standard quality so that people continue to buy it. But what is being said in this bill is that ethanol is no good. The public having been given an opportunity to buy it and use it has chosen to reject it. In the areas where ethanol

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is sold it has not outstripped regular. That's why these people are coming in here trying to compel the state to say, get rid of regular. They're praising this product. If I had something that was so good, I would just say, give it a look, give it a try. If you don't like it, double your money back. But here's what they are saying about ethanol: We want the state to subsidize it to 20 cents a gallon, it's so good. We want to get rid of the competition by statute, it is so good. We want to bring in a subgrade of gasoline and enhance it with alcohol and that is going to make a good quality gasoline, when that could be done right now. And if it is going to be done cheaper by bringing in 85 octane, why don't the purveyors of ethanol do it right now and produce an 87 octane ethanol? Because they know that that's not what they have in mind. They want to gouge the consumer and they want to do it by getting rid of the competition. And they are not going to help the price that farmers get for their corn, I guarantee that now, and it shows that I know more about agriculture, I know more about the market than anybody on this floor because I'm the only one who is aware of that. People have been in agriculture all their life. They groan about it costing more to produce than they can realize when they sell, but they don't have any awareness or understanding of how the market works. They don't have any awareness of the disconnect between the producer, what it costs the producer, and what the producer realizes, and what the ultimate consumer pays. They have no understanding of how that happens. They say, well, they scratch their head, take that hayseed out of the mouth, and there are city slickers who use hayseeds, by the way, take that hayseed out of their heads and say, there must be a Rumpelstiltskin in there somewhere that is spinning this product that I make, which is just straw, and turning it into gold, when the ultimate seller dispenses it to the ultimate consumer, and can't figure it out. Can't figure it out. So they say, since the consumer is the one who has got the money, I'm going to take some money from the consumer. And since they don't want this product, I'm going to get the state to compel the consumer to buy it by getting off the market that which the consumer prefers. I'm going to make the consumer buy a rotten...

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: ...apple in place of a fresh, firm, delicious apple, because left to his own devices, the customer is not going to buy a rotten apple when the customer can purchase a fresh apple. The customer, left to his or her own devices, will not buy ethanol, has proved it down through the years. So what is to be done? Take regular, the competition, off the market. If that is the argument of the oil companies, they happen to be telling the truth. They happen to be seeing reality for what it is, but they are not in business to help the consumer. They are in business also to make a profit. But let them all scramble in the marketplace to gain the public's consent to the product that they are selling.

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

SENATOR BRUNING: Mr. President, and members of the Legislature, I rise in opposition to the Chambers amendment, and I wanted to discuss some of the points that were made yesterday by the opposition to this bill, particularly my friends, "Texaco" Tom Baker, and "Exxon" Ernie Chambers. And one of the things that was hit on yesterday was the fact that if we go to an ethanol requirement at the lowest octane at the pumps, we will not be able to get this 85 ethanol or this 85 octane gasoline into Nebraska. Senator Connealy has done a great job of describing this, but let me repeat it for the record. This stuff is coming through the state now. Senator Chambers talked about Minnesota, they are refining their own, he asked me, are they refining their own? Do you know that, Senator Bruning, do they have their own refineries? And I said, yes, they do. Do you know what I found out last night when I looked into it? They have their own refineries and they make up 20 percent of their use in Minnesota, 20 percent, so they are importing 80 percent. This 85 octane gasoline is coming right through Nebraska now. It is zipping right through. I'm told there are terminals in Doniphan, Lincoln, Omaha. This stuff is zipping right through, they just don't let the train off the track in Nebraska. It goes right on through up to Minnesota. It's coming from Oklahoma, Kansas, the Gulf Coast, but it is coming through here now. Minnesota is importing 80 percent and they are not having

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any problem getting it. They are not being gouged on the price. We were told yesterday by opponents that we're going to get gouged on the price, there is only one place to get it. Minnesota makes it themselves, that's why they don't get gouged on the price. That is not accurate. Minnesota makes 20 percent of their own and they import 80 and they are not getting gouged on the price. This stuff is flowing through Nebraska now. It will be flowing through Nebraska tomorrow, and we can get it if we need it. That was inaccurate information yesterday and I wanted to make sure the record was corrected. Essentially, what this bill is going to do, this is not a mandate. This is different from last year. This is radically different from last year. This only allows that the lowest octane gasoline at the pump will be an ethanol blend. There could be all...there could be two lows. There could be an 87 octane ethanol blend along with an 87 octane regular unleaded. They could both be there, and go look in your car manual. Every single car made anywhere says ethanol is fine. Bring in a car manual that says it is not. Ethanol blends are fine; 87 ethanol blend is fine. Your car is going...your car manual is going to say that, I don't care what you drive. Bring it in, car manufacturers know that ethanol works. The other thing that was talked about yesterday by my friend, "Texaco" Tom Baker, was the difference in price between ethanol blend and regular unleaded. We are talking about apples and oranges comparisons, when we're talking about the price in Sidney and the price in eastern Nebraska. These are different places served by different refineries, and the transportation cost between the two means they are not running gas from Denver into Sidney and then on down to Lincoln. It just doesn't come that way. Ours is coming here in Lincoln and the eastern half of the state, like I said, from Oklahoma, Kansas and the Gulf Coast. Out in Sidney, to the west, it's coming from Denver, Memphis, the middle...the middle eastern states. That's why the price differential is there. There is always going to be a price differential there. They are using 85 octane in western Nebraska right now, by the way, because of the altitude out there. It works. Here it would probably be a subgrade if we didn't blend it with ethanol to make it an 87 octane. But out west they are using it because of the altitude. The bottom line with this bill, and probably the most...

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SENATOR CUDABACK: One minute.

SENATOR BRUNING: ...compelling thing, we need to...we need to decrease our dependence on foreign oil. There is no way to refute the point that using ethanol blended gasolines decreases the need for foreign oil, for OPEC-priced oil. There is no way to refute that. Ethanol blends are using less foreign oil. That's a good thing. We don't want to be dependent on foreign countries. And what are we going to be more dependent on if we start using ethanol blends? Corn. Nebraska's gold--corn. In my opinion, that's the right thing to do. I oppose the amendment and support the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bruning. Senator Baker, on the Chambers amendment, and this one will be your third time, Senator.

SENATOR BAKER: Thank you, Senator Cudaback, members. Several things, we are working our way south into Oklahoma now in refineries, my staff is, trying to find somebody that's refining 85 octane fuel. I don't know where it is coming from, this that is going through Nebraska, but so far we haven't found a refinery refining it, and we're into Oklahoma, so we will keep going south. Senator Connealy brought up the fact that I was taking a snapshot of the big picture here. On page 15 of the Purvin-Gertz report, I'll back up since we have several hours of this yet to go, back up and start on page 9, Suboctane Gasoline Supply and Cost, and this is the last sentence in the first paragraph: The key elements to consider in analyzing the costs of supplying suboctane fuel are thus cost changes at refineries, that means they are going to have to change their cracking unit and all this stuff they have to do to change octanes, and changes in the distribution system. That's the pipeliners, actually the pipeline is not going to change but what's going to change is their facilities, their terminal equipment, being they are going to have to add a tank or tanks and rack piping. And as the refinery at McPherson told me this morning, they'd go ahead and put this in their capital, they'd analyze it to see if there was a need for it, first of all, and he told me they wouldn't there at McPherson, NCRA, they didn't have an interest

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in providing 85 octane, but if somebody did, then they'd have to go ahead and analyze it as to their cost return, their cost and economic return on this thing, and see if they wanted to revamp their terminal facility with another tank and rack piping. It's going to take quite a while to do that. This bill, I think, takes effect way before anybody would have that in place, and you'd say, well, it's coming through the state. That's fine. Williams...or the pipeline, the NCRA pipeline that comes into Omaha-Council Bluffs terminal, if that's where the fuel is going through, they are going to have to do the same thing, and he said they wouldn't do it. Now that was the NCRA terminal in Omaha-Council Bluffs. He just flat told me this morning, no, we wouldn't consider doing it. So I...you know you can talk the talk but somebody is going to have to put the tanks in and the rack piping and I, for one, haven't found anybody yet that said we'd do it for the limited market there would be in Nebraska. That's...that's part of what I wanted to say here on the Purvin and Gertz, can't remember whose name come what, Purvin and Gertz report. Back to Senator Connealy's statement, I took a snapshot of the big picture here, and he read you this sentence: The price relationships in these markets indicate that suboctane gasoline could generally be expected to be priced slightly below regular gasoline. Now what kind of a statement is that? It could be generally be expected to be priced slightly below regular gasoline. That was what I was pointing to. I saved you the trouble of reading that when I said here's the facts, Minneapolis has been a half a cent less than no-lead 87 octane and Des Moines, it said, has been fallen 1 to 2...no, I am sorry, yes, 1 to 2 cents in Iowa. I think the opposition here to me has poisoned my water or something. (Laughter) And they don't want to hear me talk. We're talking about facts here. This statement, I can't believe this, could generally be expected to be priced slightly below regular gasoline. How many loopholes do they want to leave themselves to crawl out of there in that statement? My prior time I spoke I was stating a fact that from mid...let's see, mid-'98 to mid-2000, Minneapolis blend averaged half a cent less than the conventional regular gasoline; Des Moines, adjusted for state and federal tax, averaged 1 to 2 cents below.

SENATOR CUDABACK: One minute.

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SENATOR BAKER: And one of the reasons they have that is because they have an incentive, a state tax incentive, on top of everything else of 1 cent a gallon at the pump for ethanol. So, basically, we're talking...we're splitting hairs here if you think it's going to save money. What really disturbs me is the price of ethanol is down to the same price as no lead this week, 87 octane no lead, and we will see the demand pick back up just as a matter of competition. I know out west most of the stations as I checked are priced the same today on 89 ethanol and 87 no lead. Why would we want to lower the quality of the gasoline we're selling, the ethanol, to 87 octane by blending it with this suboctane, 85 octane. I don't understand it. It doesn't make any...

SENATOR CUDABACK: Time.

SENATOR BAKER: ...sense economically. Did you say time?

SENATOR CUDABACK: Yes.

SENATOR BAKER: Thank you.

SENATOR CUDABACK: I did, Senator. Thank you. Thank you, Senator Baker. Senator Connealy, on the Chambers amendment and this will be your third time also, Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. I passed around the power point presentation that Williams did at the Natural Resources Committee hearing, mainly for the specific, the fourth page, and I really appreciate Senator Landis' comments about markets and about, you know, as a liberal talking about making sure that having some value in markets, and I take a lot of consideration for his comments, but the problem is the markets in the...the oil markets are not working. As you can see on page 4 there, we've had long-term lower price for ethanol blended fuels on the wholesale level delivered into Nebraska except for the last bar on the bar chart. We've had ethanol blended fuels less expensive for the retailers. The regular gasoline without ethanol has been more expensive, and as everyone of us know, you have not been able to buy that at a

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lower cost. The ethanol blended fuels has either been at the same price or higher for over that last...over the five-year period. The market isn't delivering your product. In the...in the initial conversations about this bill, Senator Chambers talked about, you know, making sure retailers would have to sell Coke even though most of the demand was for Pepsi, and us putting a law in place that would force them to sell Coke, and I thought that was a good ex...demonstration but it didn't really go to point. What the point is is if the Pepsi producers were the only ones selling pop, if the Pepsi producers were delivering all the soda, do you think that they would be pricing and would be selling the other products, the Coke products, at a competitive level? That's the situation we're in. The delivery system is driven by the oil retailers. They want to deliver and make as much money as they possibly can, and that's the way the markets work, but by keeping their products placed better, by keeping their products priced better, then they are able to drive the pool of all the gasolines that they sell to a higher level and it allows the industry to make more money but it doesn't deliver the best quality product at the highest level that we would like to see in the state. It's to our benefit to increase the amount of alcohol sold in fuel in Nebraska. It's to our benefit to have a cleaner burning fuel on a higher level. LB 75 will increase the amount of renewable content fuel sold in Nebraska, and so, once again, I'm in opposition to the Chambers amendment.

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

SENATOR JONES: Mr. President, and members of the body, I've been listening to this debate and I haven't stood up yet on it, but I kind of want to stand up and explain my vote in committee. I did not support this bill out of committee and I still had some questions on it that I didn't understand, but I tell you there is a lot of opposition of it out there and there's a lot of people in support of it. So you're kind of setting right halfway between, but as I went home this last weekend, well, I had a call, said, well, why aren't you supporting it and I explained what the bill actually did. And they said, oh, well, I understand now that it is a mandate, and they didn't

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understand that part of it. But, anyway, some other things that I wanted to bring out was that I didn't understand about it was I didn't know what would happen to small mom and pop stations that just has two pumps, one for diesel and one for gas. Does this mean that they can only carry ethanol and diesel, or does this mean they have to go to a bigger expense and put in another tank and pump? And the second question I had was what do we do about tank wagon delivery out in the country? And I've got one service station in Thedford that delivers fuel in a 200-mile radius, and he does not carry ethanol. So either they don't want it or he's convinced them that they shouldn't use it, I don't know which, but that's a lot of area to cover and you think, well, you know, he's only got...he's only one person but he owns a station in Thedford, Hyannis, and Stapleton, all three, so that does make a difference in the area that he can cover. My own station that I get my fuel at in Oconto has two pumps and a diesel pump, and one of theirs is 89 percent with octane, with the ethanol blend, and one without it, so it will not bother him one way or another on his pump. He still is in opposition to the bill simply because he says we don't want to be told what we have to do out here. So there is a lot of concerns on both sides of it, but 87 octane is a fuel that a lot of the ranchers have been using in their small airplanes, too, and they cannot use ethanol in their small airplanes. So if they go and take away this here low grade fuel, they'd have to haul it in from someplace that does have the low grade fuel where they've got an extra pump so that they can have both of them. So it's...I know if you leave Broken Bow and head west, well you very seldom ever be able to find ethanol in that area. So it's hard for me to say that I'm going to stand up here and support it, but I'm still going to listen to the debate. I haven't made up my mind yet on the issue and I'm really supporting LB 536, and that came out of committee this morning. So I hope we can get that on the floor and debate that because I think that's the right way to go, to generate more ethanol and we can sell it if we make it, then I think that will help the cattle producers and everything because the more plants you have the more by-products you have for the cattle industry and the corn steep has really good high protein for the feedlots and they are hauling a lot of it up in my area but they are hauling it clear from Columbus to get it there. But, anyway, that's the

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main reason that I voted against it out of committee and I'll continue to listen to the debate on it. Thank you.

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

SENATOR SCHROCK: Senator Landis, I wished you were on the floor, but I am going to make a point. You talked about the free marketplace. If you would look at the chart that Senator Connealy passed around, you would find at the wholesale level that ethanol is consistently priced cheaper, at the wholesale level, but the retail level, the retailers consistently charge more for it. Now tell me how the free marketplace works. It doesn't work because the retailers who are tied with the...with the oil producers, with the...would rather not sell our product for the most part. We want to level the playing field with LB 75. I hear senators say they want LB 536 but they won't support LB 75. I can say I've got an answer to that. If you don't...if you can't walk the walk don't talk the talk. They go hand in hand. Don't be a promoter of ethanol if you don't use it and if you don't try and have a consuming public have a chance to buy the product. A lot of places right now, they don't have the opportunity to buy the market. There's a few people like Senator Connealy and I that seek it out. I won't buy gasoline unless it is ethanol blended, but a lot of the motoring public just goes up and buys what is the cheapest. Well, the wholesale level on ethanol, with the exception of a few months this winter, has been cheaper. Senator Landis, did you hear what I said? The wholesale price on ethanol over the years has been consistently cheaper than regular unleaded gasoline but, for the most part, a good share of our service stations sell it for a higher price. Can you answer me how the free marketplace works in this case?

SENATOR CUDABACK: Was that a question, Senator Schrock?

SENATOR SCHROCK: You don't...you can answer but you don't have to if you don't want to, but go ahead if you want to. How do you explain that?

SENATOR LANDIS: I don't have an explanation for that. The

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purchaser generally goes out and finds the cheapest gas they can buy and they buy it. My guess is that if there is a break that somebody can give, somebody might start that, and if they get a whole lot of people beating down a path to their door, it will drive prices down. Could be wrong, but that's the way the market works.

SENATOR SCHROCK: But as a farmer and producer of corn, it does bother me when the retailer is making 20 cents on ethanol or 20 cents on ethanol, and he is making more on ethanol and selling it at a higher price. The markup on ethanol is considerably higher. That does both me, Senator Landis. And so that's the point I wanted to make. The free marketplace has not worked in the state of Nebraska because it's the petroleum people that are marketing the agricultural product. And so that's the point I want to make. I will give the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Chambers, there are no further lights. Did you wish to close on your amendment to the committee amendments to LB 75?

SENATOR CHAMBERS: Mr. President and members of the Legislature, I read a story called "Alice's Adventures in Wonderland" and also Alice goes through the looking glass or something. That's a very strange unreal world and I just felt like I was in that world while I was listening to Senator Schrock. He is talking about the amount of money, in terms of a markup, that a retailer will get I imagine. If he has bought a piece of jewelry, he has been really taken to the cleaners. Everybody makes a markup on any product they sell or they are in charity, not business. What Senator Schrock and Senator Connealy's band wants the rest of us to do is to make the public pay for bad decisions that some of Senator Schrock's constituents and Senator Connealy's band have made. Nobody made them go into ethanol. They thought they saw a good deal and they are going to invest some money and clean up, that's what they thought. And when they say that the people in these Midwestern states won't buy ethanol, so how are you going to sell it to somebody else, then you shouldn't sell it to anybody else if they are not going to buy it. But if they are not going to buy it, we don't have to worry about your

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selling it. They make these circular arguments that don't make sense however you look at it, and at whatever point you grab it and examine it. This is a bad bill with bad policy, and Senator Schrock and nobody else supporting this bill has been able to counteract what I say, that they want to get rid of the competition. They whine because they say the petroleum industry markets agricultural products. Everybody markets agricultural products. They make plastic out of agricultural products and I am sure farmers are not in the plastic-making business. Paper, all kinds of things, even ink pens, they even make ink out of agricultural products but not the farmer. And all of them write up, they mark up the price. They want to make profits. Senator Connealy, Senator Schrock and others act like we, as a Legislature, are in the guaranteeing a living business for these people who made bad investments. I want to ask Senator Landis a question, if he will answer it, about a bill he said he supported because I'm not sure that I understand it.

SENATOR CUDABACK: Will you respond, Senator Landis?

SENATOR LANDIS: Yes.

SENATOR CHAMBERS: Senator Landis, the bill that you mentioned that you would support on ethanol, did it have to do with underwriting the price or underwriting the building of ethanol plants?

SENATOR LANDIS: Not the price, the building of plants.

SENATOR CHAMBERS: And how many plants might be envisioned, just a ballpark number, more than one?

SENATOR LANDIS: I am looking for...I am looking for somebody...

SENATOR CHAMBERS: Oh,...

SENATOR LANDIS: ...to flash me the sign. Is it a curve ball? I believe the answer is three, Senator Chambers.

SENATOR CHAMBERS: Senator Landis, and this is not one of those interrogations you don't like, but...

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SENATOR LANDIS: That's true.

SENATOR CHAMBERS: ...you were asked about the market, so maybe you can answer this. If you had a product that is not selling, would you build more plants to produce that product?

SENATOR LANDIS: Well, let me put it this way. I think the stupidest, the stupidest company in the world was the last company that made buggy whips. They got to the top of the heap for a product nobody wanted, and no matter how good they were, they went out of business.

SENATOR CHAMBERS: Senator Landis, that was a good answer. Thank you. Now, Senator Schrock...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...wasn't listening. Senator Schrock, I want to ask you a question if you will answer.

SENATOR CUDABACK: Senator Schrock.

SENATOR SCHROCK: I'll answer.

SENATOR CHAMBERS: Senator Schrock, why would plants be built to sell a product that nobody will buy.

SENATOR SCHROCK: Senator Chambers, I would agree with you, you shouldn't build plants for a product that nobody will buy, but in the case of ethanol, that's not the case.

SENATOR CHAMBERS: So people are buying it?

SENATOR SCHROCK: Yes, they are.

SENATOR CHAMBERS: Then why are you in here complaining saying you want to compel people to buy it by taking regular off the market? I thought you said people out there in York and other places won't buy it.

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SENATOR SCHROCK: Well, first of all, there is stations out there that don't offer it, Senator Chambers, so you've taken away the option right there. And then when the wholesale price is cheaper, they'll price the ethanol higher and so you have taken a good share of the market away from us there. So we haven't played on a playing level field in the marketing of ethanol for 20 years.

SENATOR CHAMBERS: That's all I will ask now because the time is up.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. You heard the closing on the Chambers FA164 to the committee amendments. All in favor...there has been a request for a call of the house. All in favor of the house going under call vote aye, 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 Chamber. Unexcused senators, please report to the Chamber. The house is under call. Senators, please report to the Chamber. Senator Bourne, Senator Robak. Would you check in, please, Senator Brashear. Thank you. I am sorry, Senator, you are. May we go ahead, Senator Chambers? Thank you. The question before the body is should the Chambers FA164 be adopted to the committee amendments? All in favor vote aye, opposed nay. We are voting on FA164 to the committee amendments. Have you all voted who wish to? Record, please, Mr. Clerk. Record please.

CLERK: 7 ayes, 19 nays, Mr. President, on the amendment to the committee amendments.

SENATOR CUDABACK: The Chambers amendment is not adopted. I do raise the call. Mr. Clerk, next item for the bill.

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

SENATOR CUDABACK: Open for discussion on the committee amendments. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is an amendment that might seem to do nothing much of anything and that's true. It doesn't do too much of anything. The bill is sinister, and I need to take every opportunity I can to try to slow it down. I don't know how many days we've been on this bill, how many portions of days, but so far what we have been discussing for all of this time is the committee amendment which says the follow: On page 3, line 8, strike "October 1, 2001" and insert "January 1, 2002". If we can get this much discussion out of that, imagine what we're going to get when we start talking about the contents of the bill itself. Senator Connealy is going to have an amendment coming up if I decide not to offer another amendment to the committee amendment, and I think I am not going to offer another amendment to the committee amendment. I am going to let things take their course and we will see what we will see. The date doesn't make any difference if this bill goes nowhere, and it's my job to see that it goes nowhere. I don't know that it has gotten 33 votes either in the affirmative or the negative, 33 votes for anything offered to the bill or 33 votes against anything offered, but they had best be trying to round up 33 votes because a point is going to be reached where the only way we'll get off this bill is if they get 33 of you to support them. If they get 33 of you to support them, will that bother me in any way? No, because I am on a roll on this bill, and if I get a chance to go after it again on Select File, I just hit that little switch and get right back into the groove that I'm in now and I start all over again and replay what we've done up to that point, but I will cut some new territory just for variety sake. But the more we spend here in time, the less time we have to spend on some of these bills that are even worse perhaps than this one. What bill is worse? Off the top of my head, I won't give any but I'll say this, the bill that the Revenue Committee sent out here is going to have to undergo the Chambers treatment, too. This talk of building ethanol plants, if they are not going to convert this alcohol

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into a beverage, then it is downright crazy to build plants to produce a product that is not being bought, and if the product is being bought, we are being misled here today because we are told that you have to take regular off the market in order to make people buy this product, which is being sold in such great quantities that three more plants are needed to produce it. Young Senator Attorney General back there, Bruning, was talking about all this subgrade gasoline flowing through Nebraska. I want to ask him a question because I'm...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...not sure that I understood and I don't want to misrepresent what he said.

SENATOR CUDABACK: Senator Bruning, will you...

SENATOR CHAMBERS: Senator Bruning.

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

SENATOR BRUNING: Yes, I will.

SENATOR CHAMBERS: Since there is only one minute, I am not going to do it by asking a question now because you couldn't give a complete answer, and I don't want to phrase the question in such a way as though the question puts you in a box, so I will ask it when you have a better opportunity to respond.

SENATOR BRUNING: Okay.

SENATOR CHAMBERS: And, Mr. President, since I will have another opportunity to speak, I will stop at this point and then put my light on.

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

SENATOR BAKER: Thank you, Senator Cudaback and members. I am going to back to the discussion on the last amendment. There

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was some comment made about a 20 cent margin. I think Senator Schrock better invest in a fuel station, a retail fuel station. I can't remember there ever being a 20 cent margin on anything. Maybe groceries stores, no 20 cent margin on a gallon of gasoline, I will tell you right now. That's would be like we were in heaven. Died and gone to heaven, a 20 cent margin a gallon. That'd be easy money. It's more like three, four cents a gallon. That's typical. Somebody uses a credit card, and we'll talk about credit cards a minute or two, then you are losing money because they take 3 percent off the gross. So you're breaking even. You got to get them inside the store, so now you all know the secret of convenience stores. Senator Coordsen, if you want to go build one down there, I'd advise you a little bit on it. There is no 20 cent margin, though, I will tell you that right now. The competition is fierce out there in the convenience store, fuel supply market. It's fierce. There is no, just no 20 cent margin, never has been that I know of. I go back to my earlier statement also that we are taking a good...better quality, a superior quality product off the market at 89 octane and blending with it. Everybody calls it subgrade and it is subgrade. That's why it's called that. It's not worth a darn without mixing it with something. You are starting with a 90 percent base of subgrade fuel, bumping it up to 87 octane with ethanol when we were already offering 89 octane fuel, superior product, at the same price. So to me not good business sense at all. And Senator Schrock made the statement the oil companies determine the price of ethanol. Couldn't be more wrong, absolutely unequivocally wrong. When we get...put ethanol in our tanks, when we sell gasohol, what we call gasohol, the blend. We might order 20,000 gallons of no lead, 87 octane no lead, and order 1,000 gallons of ethanol out of the Chief Industries plant in Hastings. So we take...I'm sorry, we take this 19,000 gallons of no lead and we'd dump 10,000 gallons of that no lead into our 87 octane tank and we dumped the other 9,000, all the same price from all the same Texaco or Conoco or Amoco jobber, dumped that 9,000 gallons, the same product, same price, dump in the tank and we splash-blend another 1,000 gallons of ethanol in it, and that's where we end up with 10,000 gallons of gasohol. The major oil companies have nothing whatsoever to do with the price of ethanol unless they're going to own some part of the plant and I don't think any of them do

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other than Williams Brothers. So it's not the oil companies that determine the price of ethanol. What determines the price of ethanol is producers. Chief Industries or whomever in the state, they determine what the price of gasoline with ethanol is going to be because our base price is the same whether we're using 87 octane ethanol or 87 octane no lead or blending it with 10 percent. Same price. Major refiners or producers, they don't care what we do with it. If we want to blend fuel with it to make it gasohol, that's fine. It's all the same product, though. It comes out of the same tank, same truck, whole thing, just dumped into different tanks. So what producer...or what determines the price of ethanol is what it costs us at Chief Industries, and that's where ours comes from is Chief out there at Hastings, and it did get up to \$1.80 a gallon or a little better last winter. When you're blending \$1.80-a-gallon product with a product that costs \$1.40 a gallon, that's what causes the price of gasohol to go up. It's the ethanol you're putting in it. It's not the major oil company's base price of no lead, it's the ethanol producers. That's who prices this stuff out to where it's higher at the gas pumps than 87 octane. It's not the retailers, it's not the major oil companies providing the fuel, the base 87 octane, it's the ethanol producers that determine that. Why? As Senator Landis would like to say, it's the free market. They had a demand last winter to send all the production in the state of Nebraska that they could muster, that wasn't under contract...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...to the southwest part of the United States. And I don't blame them, if they could get \$1.80 a gallon for it, I would bypass the Nebraska market, too. I'd send it where I would get the most out of it, and they did. And that's why the price of gasohol went up last winter. They didn't care whether they supplied Nebraska or not. They're Nebraska companies, you can tell where their loyalty is. It's the bottom line, their pocketbook. They sent that stuff to Arizona by the tank car load. They didn't care whether we raised the price of gasohol in Nebraska or not, with...they, you know, send it where they can get the most per gallon out of it, and I don't blame them for that. That is capitalism. That's the economy at work,

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supply and demand. So don't...don't blame the price of gaschol going up onto oil companies because we're using the same exact product at 87...

SENATOR CUDABACK: Time.

SENATOR BAKER: ...and we're just blending it. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Connealy, on the committee amendments to LB 75. Senator Connealy, you're up. You're recognized.

SENATOR CONNEALY: Thank you, Mr. President. I'm sorry. Once again, this committee amendment would change the date from October to January. I support the committee amendments, and this is a bill that would hopefully drive the demand up for suboctane gasoline in the state and, thus, drive up the demand for ethanol in our state. We are...have a growing industry in ethanol. We're going to be producing more in the years ahead, no matter what we do here in the Legislature, but this will put an underlying demand that's going to be here for years, for those plants that are currently running, but also for those proposed plants that could be built through a bill that I'm also supporting, LB 536. As Senator Schrock said, one doesn't replace the other. I think that this bill is a true complement if we pass LB 536, which I hope that we will do. This bill is a statement from the state that will increase the demand for ethanol and do it without costing the state money. We want to be able to not only build plants but also have markets for those plants once they're being built. So once again, this committee amendment would change the date from October to January, and I urge your support of the committee amendments.

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

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

SENATOR CUDABACK: Senator Bruning, are you available?

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SENATOR CHAMBERS: ...if he's still in the Chamber.

SENATOR CUDABACK: Senator Bruning. Senator Bruning, are you available for a question, please, from Senator Chambers?

SENATOR CHAMBERS: And while he comes to his mike, I must say, as I look back there, he is dressing like an Attorney General. Senator Bruning, when you were speaking earlier, you stated that Minnesota is importing 80 percent of what? This low grade fuel, this subgrade fuel?

SENATOR BRUNING: That's correct.

SENATOR CHAMBERS: And not to challenge you, where did you get those figures?

SENATOR BRUNING: Representatives of the Nebraska Corn Board, representatives of Williams.

SENATOR CHAMBERS: And you say that Minnesota is, through their refineries, providing 20 percent of the low grade, or subgrade fuel that they need...

SENATOR BRUNING: I'm told that two...

SENATOR CHAMBERS: ...for purposes of being enhanced with ethanol?

SENATOR BRUNING: Yes, Senator. I'm told they have two very small refineries that produce at maximum 20 percent of Minnesota's need.

SENATOR CHAMBERS: Do you have any idea where else this low grade fuel is being used in the country? If you don't, I'm not going to hold you, you know, push you on that.

SENATOR BRUNING: No, I do not, Senator.

SENATOR CHAMBERS: Okay. So we'll just leave it...we'll stick to what you have talked about and others have. Does Nebraska refine any gasoline of any grade?

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SENATOR BRUNING: No, not to my knowledge.

SENATOR CHAMBERS: So this...which company provides the low grade fuel, if you know, that is going to Minnesota?

SENATOR BRUNING: Well, certainly the Williams folks are the pipeline.

SENATOR CHAMBERS: Right.

SENATOR BRUNING: I'm not sure if they refine it, as well. I don't believe they do. I think the refinery...their refineries are in the middle...

SENATOR CHAMBERS: So at this...

SENATOR BRUNING: ...eastern states.

SENATOR CHAMBERS: At this point, we don't know how much of this subgrade fuel is being refined for purposes throughout the country where it may be used.

SENATOR BRUNING: That's correct. I don't know that.

SENATOR CHAMBERS: Okay. Now you're saying that if this bill is passed, Williams has guaranteed that there is enough of this subgrade fuel, wherever it is being refined, to supply Minnesota, Nebraska and everywhere else they might be transporting it?

SENATOR BRUNING: Well...

SENATOR CHAMBERS: Is that what they told you?

SENATOR BRUNING: I'm told that essentially the market will produce whatever...for whatever demand is out there. If the demand is for 85 octane, that's what the market will produce. They can refine whatever it is that the market asks for.

SENATOR CHAMBERS: And the market that is going to produce

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it...instead of saying the term market, let's say the refineries will meet the market demand, just for ease of reference. Who owns the refineries that will meet the increased demand for subgrade fuel?

SENATOR BRUNING: Well, the large oil companies.

SENATOR CHAMBERS: Right. And as wicked as you think they are right now, you believe that they will...their wickedness will subside and they'll be fair to Nebraska when Nebraska is compelled to import this fuel? You think that "Big Oil" will become more sympathetic to Nebraska and not gouge Nebraska? Is that what you're telling me?

SENATOR BRUNING: Well, from what I'm told, Senator, essentially the refiner, "Big Oil", will save a penny and a half if they refine 85 octane instead of 87 octane, so I would expect that savings will be reflected at the pump.

SENATOR CHAMBERS: Why will they charge less to Nebraska than they can garner from Nebraska? It doesn't make any difference to the refinery what it costs the refinery to produce the product. They're interested in what they can make the purchaser pay for it, wouldn't you agree?

SENATOR BRUNING: I think it's a function of both, Senator. Their price is a function of their costs. Certainly it's a function of what they can make. I mean...

SENATOR CHAMBERS: Let's say that it costs three pennies to make an American dollar. What is the value on the market or in commerce of an American dollar? Is that determined by the cost of...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...making the paper, producing that dollar?

SENATOR BRUNING: No. But, Senator, I would argue that's not a commodity we're talking about.

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SENATOR CHAMBERS: But here's the point. Many times there is no relationship between the cost of the product and what it ultimately sells for, if there is no competition. Wouldn't you agree?

SENATOR BRUNING: If there is no competition. I think that's a big if, though, Senator.

SENATOR CHAMBERS: If...if regular is virtually off the market, there wouldn't be any competition for ethanol, would there?

SENATOR BRUNING: Again, Senator, I think that's an assumption that goes too far in this particular case.

SENATOR CHAMBERS: Why should there be 87 octane ethanol when they can have...I meant, 85 low grade then enhance it to 87 where regular is, when they could continue to sell 89 octane under this bill? They don't have to bring in low grade. They can sell it at 89 and push regular off the market.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: Why wouldn't they do that? You said, time?

SENATOR CUDABACK: I did, Senator. Thank you, Senator Chambers. Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback and members. We're tracking down that 85 octane fuel. We found NCRA won't...doesn't produce any of it at McPherson, zero. Farmland Industries, Coffeyville, 5 to 10 percent of their output, on an average, 5,000 barrels per day, of which a small part of it they said goes to Iowa. I don't know how many barrels, but they do trans...pipeline some of it to Iowa, none to Minnesota. That's Coffeyville. Conoco in Ponca City, they produce 50,000 barrels of 85 octane, that's 2 million gallons, it all went to Minnesota, so it did...it probably went through or close to Nebraska. That's not much, though. Two million gallons is less than one day's usage in Nebraska. I'm not quite sure yet, I haven't figured out where they're getting this. We're still checking. But that was out of Ponca City. Frontier does make

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some. They make 475,000 to 500,000 barrels per month. It all is obligated to the Rocky Mountain region, none goes up here, zero. So we've accumulated a few barrels to Iowa from Farmland, and a few barrels, 2 million gallons total to Minnesota from Conoco in Ponca City. I'm not quite sure where we're going to get this increased production that's going to supply Nebraska. I suspect there won't be any. And also they're stating that their capacity, that they're operating capacity at these refineries now. So I would wager to bet if they have to divert production out of somewhere else, if they could even do it, it's going to cost us some more dollars. And that's on top of the pipeliners. These are all calls that staff has made here this afternoon with exception of NCRA and I talked to that fellow myself, so...found an interesting article here. It was in the Lincoln Journal Star the first day of April. I don't think it's an April Fool's joke. It's "Proposed ethanol plant seeks \$18 million from investors". Interesting article, if you would care to listen up to this. "Management representative Larry Johnson said 118 producers put up \$1,000 each six weeks ago. Producers appeared eager to invest. No more did one get out of a chair and another sat down." That's a statement from coordinator John Love, Kearney area Ag Producers Alliance. "Johnson also told farmers ethanol production could raise the value of a bushel of corn from \$2 up to as much as \$4.17 per bushel. That figure assumes a yield of 2.73 gallons of denatured alcohol per bushel being sold at \$1.20 per gallon..." Today's price is \$1.41, I might add. That's my comment. "...plus sales to the feed by-product in wet and dry forms. Farmer-investors will be paid a guaranteed \$2 per bushel for their corn, plus consideration for such items as freight and storage. Under the investor contract..." This is to invest in this plant, ethanol plant west of Minden, there by Axtell. "Under the investor contract, the \$2 price is locked in for five years. Since the plant will be up...set up as a cooperative, dividends also are part of the pay-off equation. Johnson said that with \$2 corn and \$1.45 ethanol...", which is probably what the price was when this written the first of April, "profits at the plant could exceed \$1 per bushel of grain used." They're banking on the demand. It's there, they can probably sign new contracts for this new production now and, as I said a day or two ago on this bill, I may very well contact

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these people myself to see if we can get some stock bought in this thing because it doesn't look like they're too worried about...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...demand. They're ready to build it. "Producers appeared eager to invest. No more did one get out of a chair and another sat down", a statement from coordinator John Love, Kearney Area Ag Producers. So I'm not quite sure, well, we may be chasing our tail here. It looks to me like the people are going to build the plant. And a way more important bill, to me, than LB 75 is LB 536. I've been accused this morning again, and this afternoon even that I'm anti-ag. Not so, not at all. I'd like to see this plant built. We're going to need to pass LB 536 to do it. But my point being, there's obviously a lot of interest in building additional plants and that's...there we go back to the old free economy and capitalism. So with that kind of return on investment, I can see why people would want to invest...

SENATOR CUDABACK: Time, Senator Baker.

SENATOR BAKER: ...in a new ethanol plant. Did you say time?

SENATOR CUDABACK: Time, yes.

SENATOR BAKER: Thank you.

SENATOR CUDABACK: Senator Chambers, your light is next.

SENATOR CHAMBERS: Thank you, Mr. President. In honor to time, Senator Baker, and Senator Cudaback, keeping time, time, time, in a sort of runic rhyme. I'll go on with that later as we get further into the discussion, but we have not really begun to discuss this bill yet. We're just kind of tinkering around the edges. The point that I want to emphasize at this juncture is that our Attorney General-to-be, our Attorney General-want-to-be but probably won't be, is talking about a supply of a product which supply does not exist. There is no need for any refiner to produce this subgrade, no need. I'd like to ask Senator

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Bruning a question because he...I think he can help me here.

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

SENATOR CHAMBERS: Senator Bruning, which grade will bring the refiner more money, this subgrade that we've been talking about or 87 octane regular? Which will bring the refiner more money?

SENATOR BRUNING: Well, I would assume the 87, actually, Senator.

SENATOR CHAMBERS: We agree. Thank you, Senator Bruning. Now here's the next question. If you could produce a product that is going to bring you a high price and you could produce a product that would bring you a lower price, which of the two would you produce?

SENATOR BRUNING: I see your point, Senator. Very well argued.

SENATOR CHAMBERS: Thank you, Senator Bruning. And in case people didn't pick up on it, if I am the refiner and I can produce 85 octane and not make as much money selling that, and I can produce 87 octane and make more money, why should I start producing a product that I'm going to get less money for? I'll produce 87 octane regular. It will be brought into O...into Nebraska because these ethanol plans don't produce gasoline. They produce alcohol, alcohol that is put on top of gasoline. The gasoline that I as a refiner would rather send into Nebraska is 87 octane because it costs more money to the purchaser, and I want to make as much money as I can, so I send in the 87 octane, and I don't care what you do with it. Since under this bill the lowest grade must contain an alcohol blend, the ethanol will then be added to regular and raise it to 89 octane. Regular can no longer be sold in this state. But does that hurt the refiner? No, because regular will still have to be brought into the state to provide the vehicle for carrying ethanol. So there is no need, and there's no incentive for any refinery to send 85 octane fuel into this state when 87 octane will be the only gas that can be used for enhancement by ethanol. All this other stuff is nothing. I'll talk about anything they want to because

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it takes time...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...but I still want to periodically point out the flaw in what they're saying and show how ultimately the purpose of this bill is to get regular out of the market in Nebraska. Is this my third time, Mr. President?

SENATOR CUDABACK: It is, Senator Chambers.

SENATOR CHAMBERS: Then I'd better go out with a bang instead of a whimper, and I only know one way to do that, Mr. President. Do you know what that way is? Bang.

SENATOR CUDABACK: I heard it, Senator Chambers. Thank you. Senator Baker, your light is next.

SENATOR BAKER: Thank you, Senator Cudaback and members. My office just had an interesting phone call, and one of those...that phone call was dealing with the 54-cent-a-gallon federal tax credit on ethanol, and we haven't brought that up yet. Somebody is watching this debate out there. This call came from eastern Nebraska. There's no guarantees that's going to be extended, and we're talking about potentially raising the price of raw ethanol 5.4 cents a gallon. Interesting observation and one that I'd have to agree with. It's been heavily subsidized and there are people out there lobbying now to get this tax out of there. There's a market for ethanol. Stop that 54-cent-a-gallon tax credit, that's money that would have gone into the federal Highway Trust Fund monies that would, of course, eventually ends up in the state, most of it. Hadn't thought about that. We have no guarantees here. We're liable to muddy the water with this bill, end up with a product mandated at the state of Nebraska that's way overpriced compared to no lead. And I would almost guarantee, you will hear from constituents then if we're talking about mandating something that they...that's in the fuel pumps there that's going to cost them, who knows, at least 5, probably 8, 10 cents a gallon more than what they're used to paying for 87 octane no lead. So, another word of caution from...I don't know whose district this

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came from, but down here in eastern Nebraska. Since Senator Chambers and I have about used our three times here, I likewise am going to back up and reiterate some of what we said before. We are currently offering an 87 octane no lead in Nebraska, and 89 octane-blended, and most stations of major companies, 91 octane and that...that is typical. I know that we've negotiated with Amoco, Conoco, Texaco, Phillips and Total, one on one, and they all required the retailers to sell three grades of gasoline, that being 91, 89-blended and 87. And in our case, it's a eight...or a seven-year contract. So that was part of the deal. When you take on these major brands and fly their flag, those companies that we negotiated with all required three products be sold...be offered and, see, I think what we're pointed at here with LB 75 is what we talked about earlier is the bottom 30 percent of the marketers, and I should probably photocopy this off and put on each senator's desk, I probably should do that and I probably will, they have less than 1 percent of the total volume in the state of Nebraska. I'm not sure it's worth a shell shooting at them to say, okay, you're going to...you're going to offer ethanol, and when they sell less than 1 percent of the total volume, you appeal in the state in the state. That goes back to the graph we started with, and I've lost track of time on this bill, too, we've been on it parts of days now for, I think, three days. This original graph I passed out, there's 13.71 percent of the marketers in this state sell 74.83 percent of the fuel. And those, for the most part, obviously they're the high volume people, they're the major...major oil company representatives' dealerships, retailers, that do that, and they are, as I just mentioned, required to carry three grades of gasoline. So all I can see that this bill is going to do, if it should be passed in its present form, would be to put Nebraska in a real sorry situation requiring ethanol be offered at the lowest octane when the pipeliners have said they don't have the facilities. It's going to take them a couple of years to even run through the cost/benefit analysis and see whether it's something they want to do, add to their pipeline...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...terminal facilities. One minute?

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SENATOR CUDABACK: Yes, sir.

SENATOR BAKER: Okay. And whether they want to do that. We're hoping...pinning all sorts of hope on the refiners and we...we've run down four refiners here that supply fuel to the Midwest and they...a couple of them don't mess with 85 octane, or won't, and the others are obligated to other places with it, so you know if we mandate demand in Nebraska, the price is going to be higher. That's just market at its best. So we're pinning an awfully lot of hope on the refiners, an awfully lot of hope on the pipeliners to upgrade their facilities, add tanks, and then we're also going to put some small stores out of business because they're not going to upgrade their local facilities to add another tank and pump. So with that, thank you.

SENATOR CUDABACK: Thank you, Senator Baker. We're discussing the committee amendments to LB 75. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. Once again, this is the committee amendments that would change the date. I urge that you support the committee amendments. This is not a mandate. We've been talking about mandates, that it's going to mandate something for the consumer. It's not going to do that. It's going to require it to be offered. If ethanol prices are higher, then it will be offered but it won't be sold. But that's the problem. Right? For the last five years we've had ethanol prices below the cost of regular gasoline, but it's been priced at the same cost or higher. We haven't sold the product to the extent we should have in a time when ethanol prices have been low. We've had some sales but, really, if you look at the price differential, we've had lackluster sales. We are not mandating that anyone sell this, we're mandating that they offer. It's a totally different question. This will not make anyone buy ethanol fuels if they do not want to. This will allow the market to work, it will allow you to be able to get an ethanol-blended fuels at a lower octane than you would have had it without this bill. Currently, people are buying more octane than they have to. I've traditionally bought ethanol-blended fuels and had to buy them at a higher octane than any of my vehicles required. They performed very well. It's a clean

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burning, I have had no problems with my fuel injectors or my fuel systems, as you would expect with an ethanol-blended fuels, but I've had to pay for more octane than I needed. I've had to pay for more refinery, whether it's...whether it's the refiners in Texas or in Kansas or wherever. They've had to refine the fuels that I've used more than they would have had to because we didn't need that 87 octane base to put ethanol with to work in my cars. This bill would hopefully drive an 85 octane fuel into the state of Nebraska, blend with ethanol, bring it up to 87, and we'd have a regular gasoline with ethanol in it and we'd have a product that would work well, and not spend more money than we had to. I urge your voting for the committee amendments.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Schrock, as Chairman of Natural Resources Committee, you're recognized to close if you wish to. There are no more lights on.

SENATOR SCHROCK: Mr. President, Senator Chambers, I have to ask a question, you don't need to answer. But did you ever know some...a man who would preach the Bible and then go out and live a decadent life? We've all known those people. We're a state that produces a lot of ethanol, and yet we market it poorly, and it's because the petroleum marketing industry in this state, they either don't offer it or some of them who do offer it don't price it fairly. My hat is off to those who have. And Senator Connealy has a good bill here. I would urge you to adopt the committee amendments which just changes the implementation date from October 1 to January 1, 2002.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the closing on the committee amendments to LB 75. The question is, shall those committee amendments be adopted? All in favor vote aye, opposed nay. A call of the house has been requested. All in favor of the house going under call, vote aye, 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

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with just one storage tank. This is a compromise to allow, as we've had discussion, those one pump places that have one storage tank, that they are worried that this would be some hardship for those retailers out, specifically out in rural areas, as Senator Jones has discussed and the like. This would allow those storage tank facilities with only one storage tank to be exempt from this bill for a five-year period. We'd be able to look at that over the time...over time and evaluate whether it would be a hardship for them to switch to an ethanol-blended fuels. I would hope that they would go ahead and have ethanol-blended fuels in that one tank, but we are putting this amendment in to allow them out of the process for this, facilities with only one storage tank. And I urge your approval of this amendment.

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

CLERK: Mr. President, Senator Chambers would move to amend Senator Connealy's amendment. (FA162, Legislative Journal page 1379.)

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

SENATOR CHAMBERS: Mr. President and members of the Legislature, this is an amendment that Senator Connealy is familiar with, and others are going to be familiar with it pretty quickly. And I think mine is far more reasonable than Senator Connealy's. What he wants to do is say, one storage tank is what the person would have in order to be exempt. I say strike "one storage tank" and insert "two storage tanks". If a person has only one storage tank, the person might sell diesel only or the person might sell regular only. And if you're going to compel that person to sell ethanol, that person is out of business. So what sense does it make to say that you exempt the person with only one tank if you have a greater practical problem, once you established the principle, for the person with two tanks. I'd like to ask Senator Connealy a question, and as he wends his way to his mike, I'm going to phrase the question. Senator Connealy, the question I'm going to ask is whether you think there are stations with...if there are more stations in Nebraska with one

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storage tank or more stations with two storage tanks. That's the question I'll ask Senator Connealy if he will yield.

SENATOR CUDABACK: Would you respond, Senator Connealy?

SENATOR CONNEALY: I would have to give you my impression, not real hard data, but I would...my impression would be that there would be a tremendous amount more of tanks...of stations with two tanks than there are with one tank.

SENATOR CHAMBERS: Thank you. And members of the Legislature, we don't want to make a token gesture which is not really going to get at the underlying inequity found in this bill. I say that if you're going to start exempting stations, exempt those with two storage tanks. One might be regular, which is what Senator Connealy and his band expect will be the case. One very well may be diesel or it could be premium. But neither of them is going to be ethanol. The station owner wants to sell the product that the public is willing to buy. What Senator Connealy and his band want to do is compel anybody with two tanks to at least fill one of them with ethanol. Before Senator Connealy wanders too far away, I want to ask a question to make sure that I'm not misrepresenting.

SENATOR CUDABACK: Senator Connealy.

SENATOR CHAMBERS: Senator Connealy, under your bill if a station has two storage tanks, one of them would have to sell ethanol, is that true, under your bill?

SENATOR CONNEALY: If...if the stations are selling gasoline, then they would have to offer ethanol, yes.

SENATOR CHAMBERS: Even if they only have two tanks?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: And if one of the products being sold is diesel and the other is gasoline, that gasoline tank must contain ethanol, is that true?

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SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Thank you, Senator Connealy. You were very forthright, and that's all I have of you. And I want to congratulate Senator Schrock and Senator Connealy on their smashing victory. I think they showed great skill, they were great tacticians in achieving the adoption of the committee amendments. With Senator Connealy in front of me and Senator Schrock to the rear of me, I felt like a person, as I've said before, who is between a "Schrock" and a hard place, and I was really punished. I'm trying to recover from that. They got a committee amendment adopted that changed the date, and that is profound. That is the first step down this long trail which we are going to walk. But this is the point that I think is of even greater substance than that date. If a station owner, and I wish Senator Byars would listen because he tends to be a fair person, if a station owner has only two tanks and is selling diesel fuel and gasoline, that station owner can no longer sell gasoline. That station owner is compelled to stop selling gasoline and sell ethanol. This is destroying the choice, not only of the station owner, but of the public who in that area that is being served prefer regular gasoline. We keep being told by Senator Connealy and his band, and Senator Schrock who follows Senator Connealy and his band, that this bill is not a mandate, that it doesn't eliminate competition, that it only requires the offering of ethanol. If you require it, that is a mandate. If you are going to say you have two tanks and one of them must contain gasoline, even if the other contains diesel, you are taking regular off the market. You are taking away the station owner's right to choose to sell regular gasoline. That is unfair. That is un-American. Brothers and sisters, I believe if Joseph McCarthy was around here today, he would hail Senator Connealy before his Un-American Activities Committee and ask him, are you now or are you...have you ever been a communist? That's what he would ask Senator Connealy. And when Senator Connealy wanted to say, no, he would say then, how can you have such an un-American practice? Why, what you're doing, well, they pronounce it "cummunist", what you're doing is only what come "cummunist" would do. Up till now I've always thought of Senator Connealy as a person who believed in democracy. I thought he believed in democracy. I thought he believed in the

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free market. I thought he believed in competition, but it just goes to show we don't always understand those we think we do. Now Senator Connealy is able to speak for himself and he will show where, if he can, he will show where everything I've said is an incorrect characterization of him, but it is not an incorrect characterization. It is not an unfair characterization. He wants to take regular off the market because the investors, the producers and purveyors of ethanol know their product cannot stand up in a competitive environment. So this poor station owner, might have six or seven children he's trying to put through college, Senator Connealy, and the people in his area want to buy regular, not ethanol. And Senator Connealy makes that poor struggling man put ethanol in the gasoline storage tank and people drive up and they say...well, let's say his first name is Matt. "Matt, where's the regular?" And Matt says, "Them guys up there in the Legislature said I can't sell it any more." "What, in America?" And Matt says, "That's right, in America I can't sell regular at this pump any more." And the guy says, "Matt, I like you but I don't like what you're selling. I'm not going to buy any gas from you." And the word goes out, Matt doesn't sell regular. And you know how it is in small towns, Senator Connealy. Pretty soon nobody buys Senator Connealy's gas except Senator Schrock. Then he begins to catch on and it takes more gas to get to Senator Connealy's station than what he can put in his tank so on the way he has to buy some regular so he can get to Senator Connealy's station to buy some ethanol. Then back home he runs out of ethanol and has to buy regular to get back home. And they think that's what people are going to do. Why, this is going to bring down the republic faster than the Chinese or the "cummunists" in Russia, nor the former Soviet Union. Senator Connealy, when you mess with the pricing structure of a capitalist system, when you interfere with the free market, you're...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...destroying what America stands for. What do you think those boys were fighting for on Iwo Jima when they raised the flag? What do you think? Senator Bourne suggests that was corn and ethanol, but I don't think so, and I'm saying

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all these things because I want to hear Senator Connealy's objection to my amendment which would exempt those stations that have only two storage tanks. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the Chambers amendment, FA162 to FA153. Open for discussion. Senator Chambers, your light is next.

SENATOR CHAMBERS: Oh, I want to let others speak first, and then I'll...

SENATOR CUDABACK: Senator Connealy, your light is next, followed by Senator Baker.

SENATOR CONNEALY: I am open to this amendment if we would go ahead and adopt another amendment to it, so I'll speak in opposition to the amendment at this time. If you exempt two-tank stations, I'm afraid what it will do is drive most stations into abandoning the other tanks and just go into two different grades. And I think that we...what we will do is actually hurt and restrict choice. What we're trying to do with LB 75 is to allow more products to be sold in the state, allow an 85 octane fuel to be delivered to the state, blended with ethanol hopefully produced here in Nebraska, and expand the choice that re...that consumers have. I am aware of one station...one-tank stations and did craft an amendment to...that would exempt those. I have another amendment filed that would allow for two storage tanks if one was exclusively used for diesel, so I'm open to that. But at this time I am in opposition to allowing gasoline retailers who have two different gasoline tanks to be exempt from this bill. I think that we ought to use ethanol-blended fuels in our regular. It's been talked about how we're going to outlaw or restrict regular. That's not the case at all. Hopefully we will have two different grades of regular that most stations in the state, but we will always have a regular, and a regular will be at an 87 octane and, hopefully, when you buy your 87 octane regular gas that most vehicles use, that will have ethanol in it. So I'm rising now in opposition to Senator Chambers' amendment that would exempt all retailers that have two tanks from this bill.

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

SENATOR BAKER: Thank you, Senator Cudaback and members. I think this entire amendment and the amendment to the amendment creates way more mischief than enough, and I also get a kind of chuckle out of this not being a mandate, it's just a requirement. And I guess to chide Senator Connealy a little bit on this. I'm going to have to go look up the difference. I can't remember what it is. And Senator Chambers has already taken part of my five minutes here. But capitalism, whatever happened to good old capitalism in this case? Markets have always worked well, at least in my estimation they've worked well. The retailers see a demand. If there's a profit in it, they'll fill that void. If there isn't, they're not going to invest in additional equipment, tanks and so on. Whatever happened to that? We're going to force these people to offer this product. Unless you want to go the whole way and try and stipulate what they're going to price this for, you still don't have any guarantee they're going to price it at or below the cost of 87 octane. It just...you know, you could see retailers, as Senator Schrock continues to point out, now that's what they're doing. This bill isn't going to change that in the least, what they're doing now. And to be honest with you, there aren't very many people doing that anymore. I think this debate is focused on the issue that I've tried to focus on, that right now it's the same price and, doggone it, the retailers are out there charging more for 89 octane ethanol, have no reason to do that. It's priced the same. And if the continued drop in the ethanol market, then we will follow the market down, and we'll price 89 octane ethanol cheaper than we sell 87 octane no lead, and we'll sell more of it because it's a better product. That's good old capitalism, the free market is going again. Back to this amendment. As to the practical matter, the amendment says one tank, and I can tell you right now my local co-op put in a new tank, one tank, has two compartments in it. So I don't know, we're going to have to either define some things here or something or other. It's one tank. I watched them put it in, I'm a shareholder there, and they don't sell ethanol, by the way. They sell diesel fuel and 87 octane no lead. But the practical matter of this amendment is it's we got to put some

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definitions in here. It's going to create more mischief, way more mischief, there's been enough. You say one tank. Well, you don't define compartments or product, if it's a diesel product. Even with Senator Chambers' amendment to the amendment doesn't address the problems that this is going to cause. And it also...what about the retailer with bulk tanks sitting up there a mile or half a mile away from the retail, their gas pumps? I assume those bulk tanks in the case of the rural co-ops are going to...those are going to count as tanks, they're retailers, so we need to address something here with the bulk tanks. And what this does is continue to point out the shortcomings of this bill. We just...we're going to create way more mischief. We have no guarantee whatsoever that if we require these people, whether you call it a requirement or a mandate or whatever to sell this stuff, you still don't have any price control. And I don't think we want to go there, I don't think we can. So the amendment also is simply delaying...it stipulates that they can delay this one tank until 1-1-2006, so it's still a mandate. You might let them by for five years or four years or four years and some part of some months, but it still has to...they still have to adhere to this LB 75, even with one tank, after January 1, 2006. So it doesn't solve the problem, not at all. In fact, this amendment is going to create all sorts of mischief out there. You start defining a tank and no petitions...partitions. And I think Senator Cunningham is catching my whatever I have now, he can't talk either, sitting here coughing. We don't have any guidelines for bulk storage tanks in this amendment. We don't have a description of products, whether it's kerosene, diesel fuel or whatever. So with that, I will oppose the amendment and the amendment to the amendment. Thank you.

SENATOR CUDABACK: One minute. Thank you, Senator Baker. Senator Chambers, your light is next.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I put together the headline for tomorrow's story. "Connealy, the Closet 'Cummunist'. C-u-m-m-u-n-i-s-t. "Connealy, the Closet 'Cummunist' Cripples Capitalism by Cutting Off Competition!" He's got that coming, and he can stand it. And I'm looking at Senator Cunningham. His letter...his name starts with a hard C

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also, so we might have Connealy-Cunningham, a combine here. "The Connealy-Cunningham Combine of Closet 'Cummunists' Crippling Competition in Nebraska". Members of the Legislature, stop and think a minute, in all seriousness, about what we're being asked to do here. Your friends and neighbors are being mandated by this bill to perhaps go out of business to help a few investors, producers and purveyors of ethanol. Ethanol plays no substantial role in the economy of this state, and it certainly plays no substantial role in the amount of gasoline burned by motorists in this state. So we're cutting off one little area and giving it a special position. But I will have the opportunity to go into that in more detail as we get to some of my other substantive amendments. On this one, as Senator Baker pointed out, even if you adopt my amendment whereby you exempt people with two tanks, two storage tanks, the problem has not been solved. I am trying to nibble away at the injustice. Senator Connealy began to see that something was wrong with this bill. That's why he offered his version of the amendment. When the bill was drafted, it did not contain an exemption for a one storage tank station. If there had been deliberate and careful consideration given to crafting a bill, those who drafted the bill would have put in at least Senator Connealy's amendment. There are stations in this state which have only one storage tank. Senator Baker mentioned a situation where there is one tank with two compartments. There are all types of variations on the theme of how many storage tanks a station has available and which it uses to stock gasoline. I would like to ask Senator...I'm going to have to ask Senator Connealy a question.

SENATOR CUDABACK: Would you respond, Senator Connealy?

SENATOR CONNEALY: Yes, Mr. President.

SENATOR CHAMBERS: Senator Connealy, can ethanol be put in premium gasoline without rendering premium gasoline unusable as a fuel?

SENATOR CONNEALY: There's a lot of premium gasoline, I believe, has ethanol in it. Premium is a grade of octane. Regular is a grade of octane, so it doesn't really have it to do with the ethanol, it has to do with octane.

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SENATOR CHAMBERS: The gas grade known by the term, premium, on the pump can accommodate...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...ethanol? That's the question I'm asking. Is that true?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: This bill does not require that premium gasoline contain ethanol, does it?

SENATOR CONNEALY: No, it does not.

SENATOR CHAMBERS: Why does it not do that?

SENATOR CONNEALY: The original bill, LB 1234 last year, was more of a mandate that would mandate where gas...it had to be in every grade of gasoline. This bill would require to offer at the lowest octane we...for...because of the fact that we believe that we want octane buyers and price buyers to have this product available to them.

SENATOR CHAMBERS: Okay. Octane buyers and price buyers and ultimately Senator Byars buying this ethanol? True?

SENATOR CONNEALY: I...that will be good, too.

SENATOR CHAMBERS: Okay.

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

SENATOR SMITH: Thank you, Mr. President, members. I rise in support of this amendment because I believe that it's friendly to consumers by way of being considerate of the retail environment. And it's been interesting that the input that I have received from constituents and others, and basically, I rise in support of the free market. And it's interesting when this is being billed as a choice at the pump when it's a mandate

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at the pump. And I...it's hard for me to level with that fact when it's being billed as choice. Some input that I received, their primary concern was physical storage, and that's what this amendment relates to. And the fact is tanks are expensive to maintain and probably even more expensive to implement. So the problem is that I think the price will go up because of the considerations needed to give to this issue to supposedly create this choice that is being sold here. And I just have a big problem with it and that is why I rise in support of this amendment because it's a step toward free market and that is, I think, what we need to do. I support LB 536. I part ways with Senator Chambers on that I realize, but I believe that LB 536 is a way to promote a product that needs promoted because I think that there is a place for it, but the place is not in a mandate that will only force up the price of the least expensive gasoline. And let's even...and let's even assume that "Big Oil", as many will say, let's assume that "Big Oil" is mean and evil as they've been portrayed, then they'll just raise the price of everything to accomplish the supposed purposes that have been outlined earlier in this discussion. So that is why I believe that we need to support the free market and support this amendment, and I hope that this bill, LB 75 can be amended in a fashion that supports the free market and can advance based on those principles. Thank you , Mr. President.

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

SENATOR CHAMBERS: Mr. President...

SENATOR CUDABACK: This will be your last time outside of closing.

SENATOR CHAMBERS: On this particular amendment. Thank you. Mr. President and members of the Legislature, back to "Alice in Wonderland". Senator Connealy is going to restrict...he's going to expand choice by taking away choice. He's going to create more options by reducing the number of options. With me, that does compute. Here is what Senator Connealy's bill is going to do. Let me describe the way the situation appears to be. In many service stations, there are three grades of gasoline: regular, ethanol blend and premium. And some sell diesel. What

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Senator Connealy wants to do is reduce the number of gasoline blends...not blends, grades, to two. One would be the ethanol blend which is the lowest octane. The second would be premium. What happens to regular? It is no longer on the screen. I say again no refinery needs to be concerned about shipping subgrade gasoline into Nebraska because with this bill the refiner can send in 87 octane regular and that's the only gasoline that will be available to carry the ethanol. I'd like to ask Senator Schrock a question.

SENATOR CUDABACK: Senator Schrock, are you available? He is. Senator Schrock, will you respond to a question?

SENATOR CHAMBERS: Senator Schrock, if you were selling a product and there are two versions of it, one version brings you more money; Version A brings you more money than Version B. Which version would you market?

SENATOR SCHROCK: I would market the one that brought me the most money.

SENATOR CHAMBERS: I knew that, and that's the...thank you. I just wanted to get your attention because you probably wonder why I asked that question. If we have a refinery producing a fuel, and we're told that 85 octane is cheaper and will bring a lesser profit, why would a refiner produce and market 85 octane when to the same target market the refiner can sell 87 octane, which is regular, at a higher price? The refiner is going to ship into Nebraska 87 octane regular. It simply cannot be sold under the terms of this bill, but it will be the only fuel available to enhance with ethanol. So regular will come into the state, but it cannot be sold because it has no ethanol blend. When you blend in the ethanol, it raises the octane to 89. Since ethanol blend must be the lowest octane that regular that comes into the state at 87 octane cannot be sold. It cannot be sold. The only purpose that it can be used for is alcohol or ethanol enhancement, or you enhance it with ethanol so that you can then sell it. So no refiner that I can envision would be sending subgrade...

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: ...fuel into this state, which it would sell at a lower price, when it can send the 87 octane regular, which it refines, and sell it for a higher price. I want to hear Senator Connealy and Senator Schrock's brand of economics to explain why a refiner is going to sell a cheaper product...sell a product on which it will make less money when it can sell a product for which more money will be paid.

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

SENATOR BAKER: Thank you, Senator Cudaback and members. I can see how Senator Chambers continues to talk on issues. Our phones are ringing off the hook down there, people are calling. This time it's a constituent of Senator Price who has called. The one before that was one of Senator Coordsen's constituents called. No names. We kept them. But interesting. These people are watching us out there. That's great. I hope they understand sign language if I start losing my voice again. I guess I don't know sign language, but I'll hold up signs. This constituent of Senator Price has made it quite a point. In fact, we're to the point of drawing up an amendment. It's down the list a ways, though, I'm afraid. This amendment is going to require that all farmers generate more than 50 percent of their income from agricultural production, use biodiesel and 100 percent ethanol. Interesting concept from a constituent of Senator Price's here in Lincoln. It says, shoot the buses. That's not the word it sound like liked he used. The buses are using it here in Lincoln, biodiesel, why in the world aren't farmers required to use it? He makes a good point. We're going to force retailers to sell it, let's mandate it to the farmers, a requirement, or make it a requirement. We don't want to make it a mandate, we're just going to require them to use it. Interesting. I need to talk a little bit about this amendment, or amendment to the amendment, both. I can't support either one of them. I...we absolutely create a tremendous amount of mischief out there with no definition of tanks. We need some definitions of products in there, whether they offer one product of no lead or whether it's diesel fuel or whether that tank has compartments in it. We don't have anything in amendments dealing with bulk fuel in the case of rural cooperatives.

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That's not mentioned, so we need...I can't support either one of these amendments. And I don't want to take the time to redraw them. I'm sure we could but the point is they're not going to solve any problems whatsoever, either one of those amendments. They're going to create lots of mischief out there. Senator Smith raises an interesting point. Let the free market work. If a retailer is selling just one or two products and making a living, why are we going to try and put him out of business or change his retail operation? Why do we want to put this poor fellow or lady out of business? They're out there with a one- or two-product station, and we have those out there. We have the two-product stations in rural Nebraska. There are quite a lot of them, minding their own business, trying to make a living and here we come along and say, whoa, you can't do that anymore, Mr. Businessowner, you got to do this. And I know what my mail is going to be like and my phone calls from those people. And then the next thing, if they do go ahead and put in these tanks in the facilities, whether it's we're back to the pipeline discussion, if they put these extra tanks in and the rack piping in, they're going to recover their cost on this, folks. That's just the way you do business. They're going to recover their cost. Likewise with the retailer here on the local level. You force them to add a product, a tank, they're going to recover that cost. And those who don't want to put the tank in, you're going to eliminate that bit of competition. And what are the remaining retailers going to do when they don't have that competition ten miles down the road in my case? We've got a little bit more captive market there and we're going to raise the price to consumers. So you better think long and hard before you look at this as a consumer-friendly bill because ultimately it's going to put some small people out of business. That may not be more than 20, 40, 50 or 100 small operations but there's some in my area, I know, that have told me face to face if this bill was passed last year, they would simply just close their doors. They don't want to go through and revamp their containment facilities, add a tank, new piping, and so on. They're just not...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...going to do it. And so those that remained

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are going to have less competition and the price obviously is going to go up. We're talking about interfering with the whole free market enterprise here with a requirement that these people offer ethanol at the lowest grade of no lead. And folks, it's not good legislation. And as I said, I'm waiting for the next phone call. They seem to be getting a little more interesting each time we get one, and there are some good suggestions out there from the public. And if we get through this list of amendments, day after tomorrow or next week, whenever it is, I think there will be one toward the bottom requiring farmers to use ethanol and biodiesel. I don't see anything wrong with that, to be honest with you. I use ethanol now. I don't use biodiesel because I don't know what the availability of it is but the buses are running it here in Lincoln on it, according to Senator Price's constituent, and I think they are. I do believe you see signs like that so...

SENATOR CUDABACK: Time, Senator Baker.

SENATOR BAKER: ...it must be working. Thank you.

SENATOR CUDABACK: Senator Cunningham, on the Chambers amendment to the Connealy amendment to LB 75.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members of the body. I...it was stated earlier that ethanol production plays no major role in Nebraska right now, but I'd just like to tell you that right now Nebraska ethanol facilities have the capacity of about 350 million gallons of ethanol per year. To make this ethanol, they use about 200 million bushels of corn per year. Now at the current level, that's about 5 to 10 cents a bushel more for the corn that the farmer receives. Now the price of corn this last year was terribly low, as most of you know. Can you imagine what it would have been like if we would have taken another 5 to 10 cents per bushel off of that price. You know, right now I think we have the opportunity to do something for our farmers and for rural Nebraska and the state of Nebraska, and I think we need to do it. We can drastically, I think, help the corn price by passing some of these ethanol bills. Thank you.

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

SENATOR CONNEALY: I'd...

SENATOR CUDABACK: Mr. Clerk, priority motion on the desk?

CLERK: Well, Mr. President, may I read some items?

SENATOR CUDABACK: Yes, you may.

CLERK: Thank you, Mr. President. Senator Beutler has an amendment to LB 657, Senator Suttle to LB 398, Senator Kristensen to LB 620, Senator Chambers to LB 75. Revenue Committee reports LB 536 to General File with amendments and LB 765 indefinitely postponed. Mr. President, a series of adds: Senator Kristensen and Senator Coordsen to LB 621, Senator Bruning to LB 75. (Legislative Journal pages 1379-1381.)

Mr. President, I do have a priority motion. Senator Connealy would move to adjourn until Thursday morning, April 5, at 9:00 a.m.

SENATOR CUDABACK: The motion is to adjourn till Thursday morning, April 5, at 9:00 a.m. All in favor of that motion by Senator Connealy say aye. Opposed nay. We are adjourned.

Proofed by: Kathleen Higley