

APRIL 23, 2001

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FLOOR DEBATE

April 23, 2001 LB 180, 536, 827A

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good morning, welcome to the George W. Norris Legislative Chamber for the sixty-ninth day of the Ninety-Seventh Legislature, First Session. Our chaplain of the day is Pastor Mark Cutler of St. John Lutheran Church in Seward, in Senator Stuhr's district. Pastor Cutler.

PASTOR CUTLER: (Prayer offered.)

PRESIDENT MAURSTAD: Thank you, Pastor Cutler. The Legislature is called 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: I have no corrections, Mr. President.

PRESIDENT MAURSTAD: Any messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports LB 180 and LB 827A to Select File. Those are the only items I have at this time, Mr. President. (Legislative Journal page 1615.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. First order of business?

CLERK: Mr. President, the first bill for consideration by the Legislature this morning is LB 536, it was a bill originally introduced by Senator Dierks. (Read title.) The bill was introduced on January 11, referred to the Revenue Committee for public hearing, the bill was advanced to General File. I do have committee amendments, Mr. President. (AM1356, Legislative Journal page 1380.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Dierks, you're recognized to open on LB 536.

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SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, LB 536 is an economic development bill for rural Nebraska. It puts funding into a fund we call the EPIC Fund. The EPIC Fund stands for the Ethanol Production Incentive Cash Fund. The dollars that go into that fund then are used for credits by way of the Department of Revenue to allow the construction...new construction of plants and also to provide for some funding for those plants that want some additions. This is...this is a fund that we've used for a number of years to help construct new plants. Other states do the same thing. It's a competitive thing; if we don't build these plants in Nebraska, they'll be built someplace else. It provides us with a great deal of economic development in rural Nebraska. It provides us with jobs, provides us with a market for corn, provides us with a by-product called distillers grain or gluten, corn gluten. The...the...it's a win-win situation as far as rural Nebraska is concerned because these plants are hiring in the neighborhood of 20 to 30 people. And that 20 to 30 people get paid a fair wage that will...and the trickle-down economy will provide for a great deal of other activity within those areas. Senator Cunningham, from Wausa, has selected this bill for his priority bill. And he has some interesting stories to tell about the economic development that took place in his town with some other business that came there this last summer and how it would...how it affects that district and how it would affect...the number would affect a town the size of Lincoln, for instance. So it's a very important thing for us. It provides us with, like I say, an additional market for corn, and when that happens, if you have one more plant that takes another large consignment of corn, that provides what we call a disappearance across the state, and that increases the corn market everywhere. And two plants just double it. And we saw that happen with the construction of the seven plants that are here. They've been very successful, they are doing quite well. I think that some of them are funded a little bit differently, some of them are corporate in nature. This...these plants that we're talking about in Nebraska today, they're going to...they're going to try to build from this more of a co-op situation. We have people from the district that have put money into it themselves and they're looking for this help from the state to provide their building...their ability to build these

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plants as we move down the road with them. The... Senator Chambers did an excellent (clears throat), pardon me. Senator Chambers did an excellent job the other day describing the DNA process. I thought that it's a difficult thing to describe, it's a difficult thing to understand. But he did an excellent job of outlining exactly what it did. And when the thing was over, when he was through with it, those of us who listened certainly had to have a better knowledge of what he was talking about. I'd like to do somewhat the same thing with the ethanol bill, because I think a lot of people just...they...we talk about ethanol and they say, oh yeah, that's that thing that they do to corn, but I think that I should talk to you a little bit about it and tell you some things about how we construct some of these...the bill is put together. I told you what the EPIC Fund was. The EPIC Fund, if you looked at the green copy of the bill, the green copy called for \$7 million a year for five years out of the General Fund to fund the state part of the...of the EPIC Fund. The big part of it comes from the corn growers, at a half a cent per bushel they would be spending...they would be providing about \$34 million to this fund. The General Funds at \$3 million a bushel, for seven years, would bring \$21 million to the General Fund, and then the tax on distillers grain would bring in about \$6.3 million. Put that with some interest that is accruing with the fund as it's sitting there before it's being used and we come up with...with about \$70 million when you add in the current dollars in the EPIC Fund. So, we're trying to keep the thing at somewhere, 50-50 as far as the amount of dollars that the corn growers are having to checkoff, plus the dollars that are coming to the fund from the state or from the interest or from the distillers grain tax. We've had several different attempts; we spent a lot of time in committee with this. And you will find when we get to the committee amendments that they changed the green copy quite a little bit. I told you some of that. I think with that I'm going to sit down and let the committee chairman take on the committee amendments for you. Thank you, Mr. Speaker, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Dierks. (Visitors introduced.) Senator Wickersham, you're recognized to open on the committee amendments.

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SENATOR WICKERSHAM: Mr. President, the committee amendments, if they are adopted, would become the bill. They strike all provisions in the bill. So if you have an interest in following the debate this morning, I hope that you would draw up on your machine the committee amendments and the explanation of the committee amendments, and hopefully they will help you keep track of the debate this morning. The committee amendments affect a variety of aspects of the program. As the bill was introduced it would have proposed to extend the 7.5 cent per gallon incentive to five years. The committee amendments reduce the period in which the 7.5 cent per gallon incentive could be obtained from that proposed five years to three years. The committee amendments also shorten the deadline under which plants would have to be in production to receive benefits to June 30, 2004. The green copy of the bill proposed that that window be left open until June 30th of the year 2009. So there is a much shorter period of time under which production incentives could be qualified for. The committee amendments also strike a provision in current law which provides for a pro-ration of benefits if the EPIC Fund runs short, that is if there are insufficient number...insufficient dollars in the fund to pay out all the production incentives that are due in any one year. Now there is also a provision that if at the end of the incentive period there is money left over that instead of that monies...instead of those funds going into the General Fund, where I believe they would go now, that they would go to the commodity marketing boards. The amendments lower and lengthen the incentive program. The benefits that were proposed were...we're really changing the way in which the cost gets spread out. Under the amendment the plants can receive credits for 18,750,000 gallons for seven years, under the green copy of the bill that proposal was 25 million for five years. If you do the math, you find...you wind out...you find out it turns out the same and that the total limitation, 25 million per plant, would remain the same. The revenue stream that goes through was lowered but extended in time. The amendment reduces the checkoff, this is the producers checkoff, from three-quarters of a cent to one-half a cent, as was per...three-quarters of a cent was proposed in the green copy, one-half cent is in the committee amendments. The General Fund contribution is reduced from \$7 million to \$5 million for five years, or \$35 million was

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a proposal in the green copy, \$21 million is in the committee amendments for those of you who are concerned about the fiscal impact of this proposal. And then finally, I think one of the perhaps more controversial recommendations from the committee, although nothing is ever uncontroversial with regard to ethanol, in my estimation, but one of the more controversial proposals by the committee is the proposal to impose an excess...excise tax of 50 cents per dry ton of distillers grain, or gluten feed generated from an ethanol plant receiving benefits under the act. Now the tax is imposed through December 31, 2007 for remission to the Ethanol Production Credit Incentive Cash Fund. The tax is one that the producers could either choose to absorb or they could choose to pass on. If the tax is passed on, it would be passed on to livestock feeders who typically use that product for livestock feed. That has made this proposal a little bit controversial. The producers seemingly do not want to absorb it and the cattle feeders do not wish to pay it. But it would certainly help to fund the program and, in the estimation of some, require a contribution either from...from someone who is benefitting from this program, whether that be the ethanol producers or the livestock producers, and that is the justification for that provision which might otherwise seem more controversial than what you would think. With that, Mr. President, there are, I believe, a series of amendments to the committee amendments, so perhaps we should begin debate on those issues. But if questions arise about the committee amendments and any of their specifics, be happy to try to respond as we go forward with the issue.

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

ASSISTANT CLERK: Mr. President, I do have a series of amendments to the committee amendments. Senator Dierks, the first one filed was AM1482, but I have a note you want to withdraw that one and proceed directly to AM1559? (Legislative Journal page 1533.)

PRESIDENT MAURSTAD: AM1482 is withdrawn. Senator Dierks, you're recognized to open on AM1559.

SENATOR DIERKS: Thank you, Mr. President. Members of the

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Legislature, these amendments were suggested to us by the Department of Revenue to cleanup some technical issues with the bill and the amendments to the committee bill. On page 3, line 8, we amend a new subsection that's added to the bill by establishing a beginning date of January 1, 2002 for the payment of ethanol credits to begin. Same page, same line, inserts additional qualifications that a new facility be one which does not operate under an existing, as distilled spirits permit, in order to qualify as a new plant for purposes of eligibility for production credits under the new 20 cent production incentive. This is suggested to prevent abuse whereby an existing plant builds a new production facility directly adjacent to its existing plant. Under federal regulations, the federal Bureau of Alcohol, Tobacco and Firearms would consider this an expansion of the existing distilled spirits license. The intent is to prevent what is essentially an expansion from qualifying as a new facility for the purposes of LB 536. Then on page 3, line 9, we add a clarifying statement that the 84-month eligibility period over which a facility may earn credits is 84 consecutive months, consecutive being the word, the added word. On page 3, line 23, we correct the date utilized to refer to existing facilities which may qualify for the new production credits in subsection (4). The committee amendment currently reads, "A facility existing on or before December 31, 2000 which has not received credits prior to June 30, 1999 and was eligible to receive credits under LB 605 may elect to receive credits under subsection (4) of this section", which is the new 20 cent incentive program. Sutherland is the only plant meeting this definition. When drafting LB 536 we intended to copy the same definition that was used in LB 605 to describe the Sutherland plant in order to make Sutherland eligible for LB 605. Sutherland had earned credits during the month of June 1999. The original bill inadvertently put in the date June 30, 1999, instead of June 1, 1999, and this mistake is carried over to the committee amendments. The committee makes this...this amendment makes the correction and makes the definition of the Sutherland plant consistent in existing subsection (3) and new subsection (5). On page 8, line 15, we correct the date for remitting any funds remaining in the EPIC Fund upon completion of the incentive program. Under the bill, credits in the EPIC Fund can be paid out through June 30th of 2011. The bill

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incorrectly states that the disbursement of any residual funds shall occur on June 30, 2010. The amendment to the committee amendment states that disbursements shall occur December 31, 1000...1011 (sic), six months after the termination of the new production credit. I misstated that. The bill incorrectly states that disbursement of any residual funds shall occur on June 30, 1010, not 2010, for the record. The change will appear in the amendment as follows: strike June 30, 1010, and it should say "on December 31, 2011 the State Treasurer shall transfer any remaining funds to the commodity boards". And this was at the request of some of the commodity people that when the fund is over, not being used any longer, why it would go back to the commodity boards. On page 9, line 10, change the termination of the half cent grain and sorghum ethanol checkoff from January 1, 2008 to October 1, 2008. The fiscal note assumes revenues from the checkoff for a full seven years. As written, the committee amendments only impose the excise tax for a period of six and a half...six and a fourth years. The amendment corrects the termination date. On page 13, line 15, we replace the existing Section 8 with the revised Section 8. Section 8 is the addition of the gluten tax. Current Section 8 of the committee amendments inserts the gluten tax provisions as written in the introduced version of LB 424. As written, the bill imposes a gluten tax of 50 cents per dry ton through December 31st of 2007, upon the gross tonnage of all sales in this state of the sellers grain or gluten feed generated by an ethanol facility that has received credits under the Ethanol Development Act. The tax is imposed upon the seller. The tax is collected by the Department of Revenue and remitted to the EPIC Fund. Collection of the tax is to be governed by the Nebraska Revenue Act of 1967. The amendment to the committee amendments revised the application and collection of the tax. The amendment provides that the excise tax is imposed upon all commercial feed generated by an ethanol facility that has received credits under the Ethanol Development Act. The tax is imposed at the time of the sale delivery. The amendment adopts the definition of Commercial Feed Act. This avoids confusion as to what feed by-products are taxable and which are not, as the tax will apply to the same products for which there is currently a 10 cent per ton excise tax. The department adopts, by rule and regulation, the official definition of feeds and feed ingredients of the

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official publication of the American Feed Control Official. This document lists and describes various feed products and includes those generated at ethanol facilities. The remainder establishes procedures for collecting the tax. It is to be collected by the Department of Agriculture in conjunction with the collection of the corn and grain sorghum ethanol checkoff which the department currently collects. Since ethanol facilities are also first purchases of corn and grain sorghum, responsible for collecting and paying the grain checkoff, it simplifies collection of the tax to add the department simply amend its form to include payment of the gluten tax also. The application of gluten tax to all distilled grains and gluten feed generated rather than sold in this state makes the gluten tax apply to all gluten and feed generated at an ethanol facility. The gluten tax will be applied to all feed generated rather than sold. This helped prevent disparate treatment based on whether the plant sells most of its feed by-product in Nebraska or whether it ships most of it out of state. A plant that exported all of its feed by-product would be effectively exempt from the tax under the original gluten tax. The amendment to the amendment then avoids applying the tax only where there is a sale transaction with tax situs in Nebraska. This makes the bill consistent with the fiscal note. Department of Revenue based the fiscal note on the basis that the gluten tax would be applied to all distilled grain by-products produced at Nebraska ethanol facilities. As originally written, this would not necessarily be the case. With the amendment this is correct. With that, I would close and ask for any comments. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Dierks. Senator Coordsen, on the Dierks amendment.

SENATOR COORDSEN: Actually, Mr. President, members of the body, I'm speaking on the whole issue of LB 536 rather than only the Dierks' amendment, or maybe the Dierks' amendment. I've been in...in another conference with respect to the hearing on legislative redistricting, so I haven't followed the floor debate very closely. But I certainly was present, as a member of the Revenue Committee, during the hearings and during the creation of the committee amendment that we are proposing to

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amend right now. And the one thing I wanted us to go into this discussion this morning understanding that LB 536 is an extension of a current program that has been quite successful in providing another market for Nebraska agricultural products that moves much of that product out into the national economy, bringing new money into the state. It's a bigger issue than just whether the corn price in Stanton County is whatever it might be. This is an issue that has to do with our states balance of trade, it provides us with the opportunity to realize new dollars into the state from the export of either ethanol alone or, if we're fortunate enough, the other by-products that can be configured by the various processes out of the grains that we raise. So I would hope, I would hope that we understand the difference between LB 536 and the previous bill that we debated at great length on the floor of the Legislature. LB 536 is a continuation, as least as I see it, a continuation of a program that has worked quite well in bringing new dollars into the state of Nebraska through the export of the various products and by-products that have been developed through this process from the grains in our state that we're so good at producing. We're probably going to break down someplace along the line and talk about other issues. But try to keep that in mind, folks, that this is more than anything else an economic development measure for the whole state of Nebraska just not the food producers who currently are in a surplus situation. It's important that we retain the (inaudible) of consumption so that if the time comes when all of the grand imported foods that we seem to think are part of our national security system that will never change, that we have the productive capacity remaining to produce food for this country. And one of the ways of doing that is to use those temporarily, whether that temporarily is a few years or decades, that land in production, utilizing the resources for uses other than food, because we are talking about converting food products into other uses because it is a, from the standpoint of national security, it is important that we maintain here in Nebraska, as well as in the rest of the...the United States, the ability to produce enough food to feed all of ourselves and this is also part of that effort. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Coordsen. Further

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debate on the Dierks amendment to the committee amendments to LB 536? Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I want to do as Senator Coordsen did, speak generally to the issue, because the amendment is somewhat technical and I will have questions on that as we go along. And, if it's adopted, I can ask them at the time it's part of the bill. But this is a little whimsical piece called "Ethanol Boondoggle, Legislative Bill 536". "Wow, Nebraskans sure are brilliant. Here is how you tell, revenue they squander on a product that won't sell. Ethanol in great abundance they have got on hand. Slick investors try to force an artificial demand. It won't sell at service stations nor convenience stores, so investors seek tax funds to manufacture more. That's like saying water sprayed on water makes it wetter. Having more of what won't sell will make it sell much better. Legislators must be saps, or saps they're deemed to be. With that characterization, if they do this, I agree. Just taxpayers money, grin some senators, no sweat; we'll help speculators cash in on their risky bet. Let the scramble then commence, it truly will be sad if senators dispatch good money after bad. When elected oath I gave and never shall I drop it; this egregious treasury raid, on my oath, I'll stop it." Members of the Legislature, you have to look, in my opinion, at more than one bill to get the picture of what's happening in this state with reference to ethanol. We have a bad bill perched on Select File, and I think it will go no further, which is trying to compel all retailers to stock and attempt to sell ethanol. I handed out an article to you this morning where a poor service station attendant said he will sell what the public demands, but the public is not demanding ethanol, so he doesn't want to stock it, but it appears the Legislature has a different point of view. They will compel this person to stock a product that is not selling. After having made a strong enough case to require all retailers to stock and try to sell this product that is not selling, a good enough case was made to persuade you all to vote cloture, to shut off Senator Baker and myself. Then you voted 29 to something to advance that bill. Now you're being asked to spend taxpayers money to subsidize these plants to make this product that we've already been told is not selling in Nebraska. The

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two things do not mesh. But in neither case are we interested in what's good for the public; we are trying to help some specific speculators. This whole area of ethanol production is speculative. I think half of the ethanol produced in this country is probably produced by ADM, Archer Daniel Midlands, and they've got criminals, convicted criminals at high levels in their company, not with just reference to ethanol. If all of the ethanol were to be used as fuel, there would be enough to provide fuel or energy...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...for a few homes for a year. The total production of ethanol has made no dent whatsoever in the imports of fuels from other countries, no dent whatsoever and it's being subsidized now to the tune of 54 cents per gallon by the federal government. The blenders are given 54 cents a gallon, whether the stuff sells or not. But there are other factors that come into play to determine whether or not it is more advantageous to take advantage of that 54 cents or to just sell other products where more money is coming in, and it depends on the price of corn also. If you can get a bit...I'll go into that later, because my time is about to run. But I'm opposed to this bill and I'm going to do everything I can to stop it. And I also want to discuss that terrible situation at Sutherland to show what a boondoggle this whole scam of ethanol really is.

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

SENATOR CUNNINGHAM Thank you, Mr. President. Members of the body, I do rise in support of LB 536 and these amendments and I would like to talk about all of them right now. As most of you know, Senator Dierks said earlier this is my priority bill. And as you've all heard before, I've said it on the floor, my number one issue in coming into the Legislature is trying to do everything I can to help make agriculture profitable in Nebraska. I truly believe we need to make agriculture profitable in order to keep our schools open and our businesses open on main street. So, after looking at all of the bills available this year and after having just gone through a

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campaign, I had two issues that I could pick from--property taxes, that was a very major issue for me, but also ethanol. Ethanol is big and we are going to, hopefully, build a new ethanol plant in my district, in Pierce County, located between Plainview and Osmond. So I felt this bill was the best bill for my district. But it's not just for my district, as Senator Coordsen said earlier, it's for the whole state of Nebraska and also our nation. We have a 60 percent reliance on foreign oil in this country right now, and we are very, very vulnerable. We've all heard the predictions of \$2 and \$3 a gallon gasoline this summer. And this is the time to promote ethanol. Ethanol production reduces the demand for imported oil by 90,000 barrels a day. As ethanol production increases, our dependence on foreign oil decreases. Currently, the market potential for E-10 ethanol is roughly three times what it is today. For every 23.8 gallons of domestically produced ethanol, we displace one barrel of imported oil. We have the opportunity to triple our ethanol production in this country, and I hope that Nebraska can be a part of that. Now we've been told by Senator Chambers that there is no demand for ethanol. But I believe the facts show that over 50 percent of our gasoline sold in Nebraska right now is ethanol, so there is a demand for it, and it is a good product, it's a clean-burning product. Ethanol plants purchase as much as 20 percent of Nebraskan's annual corn crop. National studies have shown that each 100 million bushels of demand increases corn prices by 12 to 16 cents per bushel. Demand from Nebraska's current plants is 200 million bushels annually. Studies have also shown the demand in an area around an ethanol plant will increase corn prices by another 4 to 7 cents per bushel. Now in Pierce County, of whom I represent, plans are underway, as I told you, to build one of the two new ethanol plants..plants in Nebraska. Farmers in Pierce County harvest approximately 20 million bushels of corn annually. If this plant becomes a reality and goes into production, it will mean an additional \$1 million per year in income from the sale of corn in Pierce County. But as we all know, \$1 million is spent many, many times over in the communities around that ethanol plant. You know another fact is, and I've talked about it many times, in Wausa, Nebraska, where we got the new child support center that created 30 jobs, that was equivalent to over 8,000 jobs in Lincoln, Nebraska.

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PRESIDENT MAURSTAD: One minute.

SENATOR CUNNINGHAM: Okay. Well anyway, the 30 new jobs is what is predicted to be...jobs predicted in these new ethanol plants...in each plant, yes. So I feel, I definitely feel this is a way to keep farmers profitable, kids in the school and businesses open on main street. But it not only helps rural Nebraska, it helps our nation because of the dependence on foreign oil. I realize this bill is going to take considerable time. There's going to be a cost to the General Fund, but I hope to be able to convince the rest of the body that the time and the money spent on this bill is absolutely critical to rural Nebraska and our nation. I'd also like to thank Senator Dierks, not only for bringing this bill to us, but I'd like to publicly thank him for his understanding of the problems of agriculture in rural Nebraska, and thank him for all of the years that he has spent fighting for us,...

PRESIDENT MAURSTAD: Time.

SENATOR CUNNINGHAM: ...and I want him to know we do appreciate it. Thank you.

PRESIDENT MAURSTAD: Senator Cunningham. Senator Smith, on the Dierks amendment.

SENATOR SMITH: Thank you, Mr. President, members. As I've stated in prior debate, LB 536 is a bill which I favor. And I do have some hesitation, though, about a certain part of it. And if Senator Dierks is available for questions, perhaps we could...

PRESIDENT MAURSTAD: Senator Dierks, Senator Smith would like to...

SENATOR SMITH: Thank you. I believe that Senator Cunningham mentioned some pertinent issues in terms of where we stand as a country and how Nebraska can be a player in relieving our state or our countries dependence on foreign oil. But I do hope that we can come up with some good, suitable policy for Nebraska.

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Specifically, Senator Dierks, I have a concern about the gluten tax. And did you allude earlier that it is not a...not really a new tax?

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: Currently, the state...the Department of Agriculture collects a tax on the gluten product for an inspection fee; that's currently being done. So it raises that tax, but it would be collected by the same department.

SENATOR SMITH: So it raises the existing fee.

SENATOR DIERKS: Yeah.

SENATOR SMITH: And do you know how much the existing fee has generated?

SENATOR DIERKS: I believe it's 10 cents a ton, I think that's regardless of wet or dry.

SENATOR SMITH: And was that...and 10 cents a ton, what was the gross revenue there?

SENATOR DIERKS: I don't know that I know that answer.

SENATOR SMITH: Okay. So we're looking at approximately \$900,000 of new inspection fee generation?

SENATOR DIERKS: This is the latest figure we got from the Ethanol Board. The 50 cents is on a dry ton basis that relates to about 16 or 17 cents on a wet ton, if you're buying the wet stuff then...and I think most of it goes that way.

SENATOR SMITH: Okay. So then we have the \$900,000 of new fees or...or generation of these inspection fees. And do you think that there will be \$900,000 worth of inspections taking place? Will there be an increased demand on the department?

SENATOR DIERKS: I don't believe so. This...this...they have nothing to do with this increase. They will still get their

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10 cents, that's part of their...part of their inspection fee, but they have nothing to do with the 50 cents.

SENATOR SMITH: Okay.

SENATOR DIERKS: The entire 50 cents or 50 cents on a dry ton basis would...would go into the EPIC Fund.

SENATOR SMITH: The...this tax or fee would be passed onto the purchasers of gluten, is that correct?

SENATOR DIERKS: The...the tax would be placed on the product as it leaves the plant, so the purchaser would pay.

SENATOR SMITH: Okay. I...I'm trying to determine, you know, the suitability of this fee structure, tax, whatever we want to call it. And I get a little hesitant about how this may position us in terms of competition with out-of-state products and available sources of protein that would not receive this type of fee. What do you think the effects of that might be?

SENATOR DIERKS: What did...I didn't hear your question.

SENATOR SMITH: The out-of-state products available without this extra fee, how would that play out in...in our market compared to others?

SENATOR DIERKS: Out-of-state products are not taxed, just those products that are processed in Nebraska.

SENATOR SMITH: Right. So if there's some...

PRESIDENT MAURSTAD: One minute.

SENATOR SMITH: ...cross state boundary, state line commerce do you think that it's large enough to matter?

SENATOR DIERKS: Well,...

SENATOR SMITH: Is it so small that it won't matter?

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SENATOR DIERKS: ...I...

SENATOR SMITH: I...I'm indeed trying to determine what the effects might be.

SENATOR DIERKS: It's small enough that it shouldn't matter, Senator Smith. The total cost for a feedlot operator to get a fat steer from the time he starts feeding this stuff till the time he sells it for slaughter, is 12 cents a head.

SENATOR SMITH: Okay. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Smith. (Visitors introduced.) Further debate on the Dierks' amendment? Senator Wickersham.

SENATOR WICKERSHAM: Mr. President, members, I rise in support of Senator Dierks' amendment. As I understand the amendment, it makes a number of desirable changes, some of them technical in nature, some of them bringing greater precision to the committee amendments. I don't think that's an unusual process in this area that we would find that the committee amendments needed to be adjusted a little bit. That seems to be the history of all these kinds of bills. These programs are exceedingly intricate and they become even more intricate as persons seek to protect or enhance their specific interests. But it seems to me that Senator Dierks has struck some areas here in his amendment that require, if not purely technical change, that they make desirable changes in terms of being able to implement the bill, if it should finally pass.

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

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, Senator Dierks, you had mentioned a dry milling process. Isn't it true that a bushel of corn produces about two and a half gallons of ethanol, and the remainder would be this distillers grain? Is that true? Could we have Senator Dierks put on the mike.

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PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: I think that's true, Senator Chambers.

SENATOR CHAMBERS: And there would be...from that corn gluten meal which is used as feed? Is that correct?

SENATOR DIERKS: Corn gluten meal is used as feed, yes.

SENATOR CHAMBERS: And this is sold...this...it's animal feed. Isn't it true that the vast majority of corn consumed in this country and around the world is consumed by animals; it's animal feed, not corn for human consumption?

SENATOR DIERKS: I think that's right. I know it's right in Nebraska.

SENATOR CHAMBERS: Right, and it is all over the country and throughout the world. Now when this gluten meal is sold as a feed, doesn't it compete with other field crops that are sold as feed?

SENATOR DIERKS: Yes, it would, but it provides...

SENATOR CHAMBERS: Well it...

SENATOR DIERKS: Well, you're right.

SENATOR CHAMBERS: Will it be sold cheaper?

SENATOR DIERKS: In most cases it has been.

SENATOR CHAMBERS: So, on the one hand we're talking about helping agriculture by paying cash subsidies to build these plants and make a product that doesn't sell, then a by-product is sold in competition to the products produced by other farmers, and it can be sold cheaper than what those other farmers are selling their field crops for, isn't that true?

SENATOR DIERKS: I think that's true, except that the other farmers don't have this same product to sell, it's a little bit

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different product. This has added protein and it's just not quite the same product.

SENATOR CHAMBERS: Is soybean meal sold as animal feed?

SENATOR DIERKS: It is.

SENATOR CHAMBERS: Would this gluten meal that results from...as a by-product of producing ethanol, be so cheaper than soybean meal?

SENATOR DIERKS: I don't know, but I think probably it could be. I just don't know what that answer is, Ernie.

SENATOR CHAMBERS: Okay. Thank you, Senator Dierks. Members of the Legislature, this is a complex issue, but we're trying to put money in the pockets of investors who are dealing with an activity that has failed repeatedly. There was a plant in Sutherland. Some fast-steppers had to try to take over that plant because Governor Orr had said, if she won re-election, it would be funded. When she didn't win, then that went out the window. So these hustlers got together and got the plant going. It failed. And I believe another group may have taken it over, which would be strike two. They failed and it went into bankruptcy. And I think some company that may have had a net value...an actual value of \$10 bought it from the federal government out of bankruptcy, and now we're being asked to give something that has failed repeatedly some more money so that it can run. And I want you all to listen to what those who speak for agriculture or purport to speak for agriculture are saying. I'm not challenging their motives, I'm challenging whether they've looked at the issue as much as this city slicker has looked at it. If you have the vast majority of farmers in this state who are producing field crops not selling their product for ethanol production, but the majority of it is going for animal feed, yet the by-product of ethanol...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...production, which tax money, including the farmers if they pay taxes, will subsidize, that by-product will

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undersell the other farmers. Don't we talk about, when we're dealing with bills like the dairy compact, the dairies making money off the farmers, not giving them a minimum price, guaranteeing it, supermarkets making money and the farmer getting nothing? Well, now we're being asked to subsidize a program in Nebraska which will undercut other farmers within Nebraska, not an outside evil corporation, but evil hustling investors in this state who are working a shell game. And as we go on, I'm going to try to emphasize this point more and more until the public picks up on it as they picked up on the wrongfulness of trying to compel every retailer to sell ethanol in markets where there is no demand for it.

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

CLERK: Thank you, Mr. President. Amendments by Senator Wehrbein to LB 543 and LB 541; Senator Dwite Pedersen, to LB 611. Mr. President, an announcement, the Redistricting Committee will meet today upon adjournment in Room 1507, Redistricting, upon adjournment in Room 1507. That's all that I have, Mr. President, thank you. (Legislative Journal pages 1616-1617.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Baker, on the Dierks amendment, followed by Senators Kremer, Beutler, Schrock, Vrtiska, Dierks, and Chambers. Senator Baker.

SENATOR BAKER: Thank you, Mr. Lieutenant Governor. Members of the Legislature, I also rise to support LB 536 and am going to speak just in general terms here. As a corn producer, I certainly support this bill. Sorghum producers also are stepping up to the plate and saying we'll contribute one-half cent per bushel. And I think people need to understand we grow one billion bushels of corn and sorghum in the state of Nebraska, that totals \$5 million we're willing to contribute to this program, that's out of our own pockets. It's that important to us that we step up to the plate, tax ourselves to the tune of \$5 million annually to support the ethanol production in the state of Nebraska. Why? Because it does create a new...a value-added market and also the by-products.

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I've had a cattle feeder out in my district say I really don't care for this gluten tax but, you know, if it will help keep Sutherland going and this and that, add value to agriculture, help the economy, I'm willing to do it for the availability of the gluten, the by-products that he gets. And Senator Price asked me a question, what is gluten? I think maybe we need to back up and define some of these terms. Gluten is a by-product of this ethanol production; it's the higher protein material that's left after you take the starch out of the kernel. And I think there's a flow chart here somewhere amongst the material Senator Dierks has handed out. But you take the starch out of this, leaves the gluten, and it's a higher protein material. And typically, I think what the cattle feeders are buying is about 65 percent water. Senator Dierks being the veterinarian and nutrition background maybe can help us on that. But I guess maybe it says 60 percent. No, it says dry matter 60 percent protein. But it's generally high water content. But this tax, we're willing to put on here at 50 cents per ton is on a dry ton basis. So this cattle feeder indicated to me it cost him somewhere less than 15 cents per head in order to obtain this gluten product, and he was willing to pay that. This is a pretty good size cattle feeder out in my district saying I will do that just for the availability of the gluten product. I'll tell you right now it's in demand. I tried to purchase some out there, and I can't get any. So I'd like to see another plant out there to open up the market to corn and also provide some by-products. I also, if I could get it, I'd get it and I'd be willing to pay that myself. Also on a handout here I think Senator Dierks...I know Senator Dierks has mentioned this, but the Sutherland plant, of course, qualified for incentives years ago and then was down...was not producing. Originally, they had qualified for more the amended bill now provides. It's lowered that, I think, by a third down to \$12 million over a period of years through 2006, I believe it is. I've got too many amendments here in front of me. But it's important that we continue to have Sutherland operating out there. It is providing a market and a number of jobs. It's obviously providing ethanol; there's a demand for the ethanol. There's one thing I might add to this discussion is the price of no lead fuel. And this goes back to the debate on LB 75, price of no lead fuel has gone up dramatically in the last couple weeks, and

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they're predicting it will go up dramatically yet this summer. My challenge to the ethanol producers is that they don't raise the price penny-per-penny with the no lead. If they could keep their ethanol product down below that, we will continue to sell more ethanol-blended fuel than we will straight no lead. Here's a chance for those ethanol producers to listen up and pay attention not to increase the price penny-per-penny with the price of no lead gasoline, but keep it priced a little lower and you'll see that reflected in the marketplace. Out in our area it's either priced the same as no lead or less than 87 octane no lead. And I can tell you from personal experience where it's priced less than the price of 87 octane, it's selling...has a bigger proportion of the market than standard no lead. So...

PRESIDENT MAURSTAD: One minute.

SENATOR BAKER: ...it's a great product; it's superior in...in quality to the 87 no lead, and if you can buy it cheaper than you can buy 87 no lead, they're going to buy that superior product. The ethanol producers tend to benefit from the increased priced of fuel, I understand that, but I would ask that they keep it mind that they price their ethanol above the price of no lead, they're not going to sell much of it. So I support the bill, I support the amendments. I commend Senator Dierks and his staff for getting this thing put together, it's been a lengthy, drawn out process. And as I said on the debate also on LB 75, I am supportive of ethanol and production and it's use and sale, so I will continue to support LB 536. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Baker. Senator Kremer on the Dierks amendment.

SENATOR KREMER: Thank you, Mr. Lieutenant Governor. I have a couple comments and then I'd like to ask Senator Dierks a question, in a minute. I am also supporting LB 536, but I would like to make a few comments on the...on the gluten feed tax, which I believe is not right. A dry milling plant produces three products--they produce the gluten feed, they produce a syrup which is sold for cattle feed also, and they produce ethanol. It just doesn't seem right that you would give an

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incentive for one of the products and tax the other incentive or the other product that they...that they...that they produce. It is a cattle feed. I don't know if you could say it's priced cheaper or not, it's priced whatever the market will stand, because there have been times we do feed this product, but there have been times when we've quit feeding because it's priced higher than what we could replace the corn with...replace the gluten feed with corn. So it's not always that it's cheaper. It is a good product, but it's just an input ingredient, just like corn, or alfalfa, or anything else that we feed to the cattle. Livestock producers right now are the biggest consumer of our feed grains. And it seems wrong that we would tax them some more. Senator Dierks, I'd like to ask you a couple questions.

PRESIDENT MAURSTAD: Senator Dierks, would you yield?

SENATOR DIERKS: Yes.

SENATOR KREMER: And this is maybe just a clarification for the record. On the amendment, on page 1 it talks about who is going to be...which plants...I guess, first of all, the plant, the ethanol plant is the one that is going to pay the excise tax on the distillers grain. Is that correct?

SENATOR DIERKS: They're going to collect the excise tax for distillers grain.

SENATOR KREMER: So, actually they would be paying that. Whether they pass it on or not would be up to them. Is that...is that correct?

SENATOR DIERKS: Well, I suppose, yeah.

SENATOR KREMER: It mentions here that those that would be taxed would be a facility that has received credits. What I guess I would like to know is the new plants that are proposed to be coming on-line, would they be imposed this same tax or is it...when it says "has", I kind of wondered if that meant just the...in the past that anybody has received it or they're new ones?

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SENATOR DIERKS: The intention is that they would collect the tax as soon as they start producing the product.

SENATOR KREMER: Okay, that's what I would like to have on the record. You know, it could maybe say has or is receiving credits. When it says "has", it looked to me like it might be passed. So if that's on the record that it would also include the new plants that would be paying this excise tax then. Thank you, Senator Dierks.

SENATOR DIERKS: You bet.

SENATOR KREMER: I guess, I will give the balance of my time back to the Chair. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Kremer. Senator Beutler, on the Dierks amendment to the committee amendments to LB 536.

SENATOR BEUTLER: Mr. Lieutenant Governor, members of the Legislature, I would like to speak in favor of the bill. And I guess one of the first things, from a person who's been around a while on this issue, one of the first things I...I take note of is the funding allocation for the bill. And Senator Dierks well knows in the past we have had some serious back and forth on the mix of General Funds and the mix of fees, and now we have a brand new element, this distillers tax. And it looks to me, if I'm understanding it correctly, Senator Dierks, that between the distillers tax and the fee on producers, both of which are in a sense be on producers, well one on the ethanol companies, and one on producers, between those two about two-thirds of the cost is being picked up by those two elements of the funding allocation, and General Funds represents about one-third of the cost of this program that we're...that is being suggested right now. Is that roughly accurate, Senator Dierks?

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: Oh, I think I could adjust that a little bit, but that's not too far off.

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SENATOR BEUTLER: Okay.

SENATOR DIERKS: The...the idea was that we were trying to keep the cost about...pretty...as close as we could to 50-50, between the corn producer and the state funding. And we're calling some of the state funding, of course, the excise tax on the gluten feed or distillers tax, we're calling some of that the interest that's raised on the EPIC Fund during those seven years. And if you can take your time and look at the flow chart, it will tell you kind of where we are on that issue.

SENATOR BEUTLER: Okay. Senator, I understand how you could characterize things in a couple of different ways. But just let me say that generally speaking I think this is the fairest allocation suggestion that has been made on one of these kinds of bills throughout the years. And I appreciate the fact that that kind of thought has been given to a fair sharing of the burden. I...I have supported ethanol, most of the bills, from time to time in the past. And obviously what we're doing represents a kind of tinkering with the free enterprise system. But I think before the day is over we'll talk about probably a half a dozen to a dozen good reasons why we should be tinkering a little bit with the free enterprise system in order to counteract, for one thing, the tinkering that's gone on with the free enterprise system both in this country and outside this country which has been adverse to the agricultural producer in this state. There are a number of things we can start talking about, but just to start with the basic fact of the oil cartel. You and I and all of us are well aware that in the Mideast all of the big producers of oil have gotten together and instituted a monopolistic practice that wouldn't stand in this country for two seconds. But because they are foreign countries, and because they're heads of state, and because they're in the Mideast and because of a variety of factors that make diplomacy and international pressure difficult in that area with these folks, we don't do anything about that monopolistic practice. And the result of that monopolistic practice affects all consumers...

PRESIDENT MAURSTAD: One minute.

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SENATOR BEUTLER: ...in the United States and it affects also the ag producer consumer in terms of the price of his inputs. Because that cartel exists, we need to be thinking of how you counter the effects of that monopoly. And there are two or three different things we can do, and we probably should be moving in all of these directions. One, of course, obviously is diplomatic and political pressure not to act as a cartel or to modify your practices at least. And we do that, of course, with our sometimes ally, Saudi Arabia. And note by the way the King of Saudi Arabia is now the third wealthiest person in the world, head of a state who uses the function of the state to create personal wealth...

PRESIDENT MAURSTAD: Time.

SENATOR BEUTLER: ...for himself. Let me go on, in my next speech.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. (Visitors introduced.) Further debate on the Dierks amendment? Senator Schrock.

SENATOR SCHROCK: Mr. Lieutenant Governor, members of the Legislature, I'd like to thank the Revenue Committee, Senator Dierks and Senator Cunningham for bringing this issue to us. You should note that other states also do what we are trying to do in this state. Kansas, a qualified ethanol producer there, is entitled to a production incentive of up to 20 cents per gallon. That law does sunset July 1, 2001. We don't know what their Legislature is doing, but there's a good chance that could be extended. South Dakota also provides for an ethanol production incentive payment of 20 cents per gallon, up to \$1 million per year, and not to exceed \$10 million received by any one producer. Missouri has a Qualified Fuel Ethanol Producer Incentive Fund providing for a grant equal to 20 cents per gallon for the first 12.5 million gallons of an ethanol producer of Missouri agriculture products, plus 5 cents per gallon for the next 12.5 million gallons. This sunsets December 31, 2007, so that program has a way to go. Iowa does not have an ethanol production payment program per se, however

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Iowa does have a number of different tax incentives which, when considered in the aggregate, meet or exceed those of Kansas, South Dakota, Missouri. These incentives include a value-added agriculture products Economic Development Program that applies to renewable fuels, Rural Enterprise Inducements, the Community Betterment Account, and the Economic Development Set Aside Program. South Dakota provides for a 2 cent incentive for ethanol-blended fuels at the pump, and Iowa provides for a 1 cent incentive for ethanol-blended fuels at the pump. Tax on gasoline is 20 cents per gallon, and tax on 10 percent ethanol-blend is 19 cents a gallon in Iowa. So you see, we're not an Iowa. Other states are doing what we're doing. They're attempting to produce more ethanol. I do have a study here estimating an energy balance of corn ethanol, I think it's one of the latest and most...and most recognizable ones. And as far as the efficiency of corn, producing corn ethanol, ethanol is energy-efficient, as indicated by an energy ratio of 1.24; that is for every BTU dedicated to producing ethanol, there's a 24 percent energy gain. More effort producing ethanol from domestic corn stocks achieves a net gain and a more desirable form of energy. Ethanol utilizes abundant energy supplies of coal and natural gas to convert corn in a premium liquid fuel that can expand petroleum imports by a factor of 7 to 1. So the production of ethanol does reduce our reliance on imported fuel. Senator Chambers, I would just like to comment a little bit about the gluten feed being competitive with other inputs that farmers have. I'm told that for every three truck loads of dry grain brought into an ethanol plant, one truck load of wet by-product goes out. So, yes, it does...it is a market that competes with other feed stocks. But certainly there is not near as much by-product going out as there is raw product coming in. And it is a desirable form to feed. We have a tremendous advantage in this state because we do have a lot of cattle feeding going on, and that by-product is valuable to those cattle feeders. Certainly the controversy on the by-product tax has been one that I've been involved in. I don't think it's too punitive when you consider the amount. You might keep in mind that the corn producers in this state through their checkoff have dedicated \$40 million of corn checkoff fund money to the ethanol programs in this state, up to date. And I do believe the livestock industry has received a considerable amount of

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benefit from that without having to pay anything in the past. So I think what we're asking them to do at this point in time is certainly a pittance compared to the benefits that they've received. But, of course, any time you impose a tax like this there is going to be some controversy. And I think it would behoove us to follow Senator Dierks...

PRESIDENT MAURSTAD: One minute.

SENATOR SCHROCK: ...and keep holding the line and stay together on this issue. That's the way you can get things done in this state. I have been told all my life we'll never be able to produce enough food for the people of this world. Well, I've quit believing that. We can produce more food than the world can ever consume, at least the paying portion of this world can consume. But I do believe the demand on energy is greater than what we can ever produce in the future. So this is a way for agriculture to get out from under the throes of the economic bad times we've had. It would let us keep producing and makes our future look brighter on the farm. I don't know what we'd do with that 20 percent of that grain that's going into the ethanol plants now, if we didn't have the ethanol plants we have now. I don't know where we would go with it, or if we could even produce it. Certainly, it would change the landscape as we see it today.

PRESIDENT MAURSTAD: Time.

SENATOR SCHROCK: Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Schrock. Senator Vrtiska, on the Dierks amendment.

SENATOR VRTISKA: Thank you, Mr. President, members of the body. I'd like to first of all indicate that I certainly support this piece of legislation because I think it's important to agriculture and to production agriculture, and something that we need to all take a good, hard look at because it's...it's...can be a big benefit. I would like to ask Senator Chambers a question, if I could.

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PRESIDENT MAURSTAD: Senator Chambers, would you respond?

SENATOR CHAMBERS: Happily.

SENATOR VRTISKA: Thank you, Senator Chambers. Senator Chambers, I've sat on the Agriculture Committee, with you, for a good many years, and I've noted your strong support for agriculture. And certainly we in production agriculture appreciate the things you've done for the benefit of agriculture. I'm a little puzzled now that you have taken such a strong opposition to something that you indicate is going to be anything but a benefit for agriculture. I'd just like to hear a few more of your comments regarding the fact that...and let me phrase it this way, you've indicated that it's not going to help production agriculture because of the difference in the prices and, in fact, I guess more specifically, the fact that a plant that was built a few years ago went broke a couple of times. And what really bothers me, some of these things happen when a business starts up that new...that doesn't seem to be popular; those things happen. But as we...as we look across the country and see the pollution that's developed and the attitude about the pollutants in the air, there seemed to be all across the country a clamor for some type of product that would cleanup the air. How would you...you know, you want to speak to that at all?

SENATOR CHAMBERS: Senator, I have talked about a number of things and you asked me a number of questions. So let me start by saying this, the amount of ethanol produced would constitute about 1 percent of the transportation fuels used in America, 1 percent. That would meet the demand for transportation fuels in America for five days, if the ethanol produced were to be used for transportation fuels. About 50 percent of the oil that comes...that is used in this country is imported. There were subsidies given to ethanol. When was the first one, around 1978, by the federal government? Well, the amount of oil imported has not changed since 1978, when these tax incentives were first given to produce ethanol. One of the reasons the federal government gave their subsidies is because ADM contributes heavily to both parties. And I misspoke when I said they produce 50 percent, they produce about a third of the

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ethanol. So we're not coming up with a fuel that has any substantial impact on the environment, because the only thing that's changed when you use ethanol is the amount of emissions produced by a petroleum product. Ethanol is not a fuel, it's a fuel extender, an octane enhancer. So if you put 10 percent ethanol, you reduce the petroleum emissions by 10 percent, which is insignificant.

SENATOR VRTISKA: Well,...

SENATOR CHAMBERS: If you put 20 percent ethanol, it won't serve as a transportation fuel. So a lot of the arguments given are based on fallacies.

SENATOR VRTISKA: Well, I appreciate your comments and I would ask you more questions, but I don't...

PRESIDENT MAURSTAD: One minute.

SENATOR VRTISKA: ...have much time left. I...I guess, I'm not completely in...in accord with some of the statements you've made as far as eventually the use of alcohol...or ethanol...increasing the usage because of less dependence on foreign oil. And that's one of the things that we're all interested in and I think we should be interested in. And the more we...the more we extend the use of ethanol in the production of...or in the creation of engines that will accommodate it to that degree, we're going to see less and less emissions. And when you talk about states like California, who are having a difficult time with the emission problem, I can't understand why we wouldn't press on forward with trying to produce a product that's homegrown and can continue to be produced and be a benefit to agriculture in the long-term. So I don't buy all of the things you're saying, Senator Chambers, but I agree that...

PRESIDENT MAURSTAD: Time.

SENATOR VRTISKA: Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Vrtiska. Senator

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Dierks, on the Dierks amendment, followed by Chambers, Cunningham, Beutler, Bromm, Janssen, Hilgert, Coordsen. Senator Dierks.

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, Senator Chambers, you had asked me a question a little earlier about the relative price between feeding corn and feeding the gluten material. The relative value of feeding distillers grains and replacement corn rations remains the same, regardless of the price of corn. If corn prices drop, distillers grain prices also drop so that the economic advantage of using...utilizing distillers grain remains. This is from Dr. Klopfenstein, the feeds and feeding specialist at the University of Nebraska. And I've passed out a letter that you can take a look at. And I've out...on the front page you can see where we've darkened an area that says the Ag Economics Department made an economic analysis of the savings and estimates them to be about \$43 million per year, about half the savings is going to cattle feeders, and one-half to the processors. The letter, and I asked...we called Dr. Klopfenstein and asked him to write this letter to us to circulate today. He has nothing but praise for the whole process. It's one of the...it's been a tremendous advantage to the cattle industry. He says the costs in not feeding this sort of grain or gluten ration would increase the cost of fattening cattle, the industry...it would cost the industry \$42 million; the gluten tax costs the industry about \$6 million. And I would give whatever time Senator Chambers would like to ask me questions or rebut that, Mr. President.

PRESIDENT MAURSTAD: Senator Chambers, I believe Senator Dierks has yielded you the balance of his time.

SENATOR CHAMBERS: Thank you, Senator Dierks. Thank you, Mr. President. Senator Dierks, as I read this letter from the...is it Klopfenstein, Professor Klopfenstein, is that the way you pronounce his name?

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: I will just say the UNL professor. In the

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third...in the second paragraph of his letter, he says, "The basic concept is that by feeding the by-products wet, the cost (both in money and energy) of drying is eliminated. We worked with both Minnesota Corn Processors and Cargill when they were planning their respective plants and they were convinced that they could market all of the product wet. This allowed them to construct plants without or at least with reduced drying facilities (Cargill removes some moisture)." Senator Dierks, is some of the research that this gentlemen does underwritten by Cargill and other multinational grain dealers?

SENATOR DIERKS: Not that I'm aware of.

SENATOR CHAMBERS: So, when he was working with Cargill, they were not paying him for anything, would be your conclusion?

SENATOR DIERKS: I'm not aware of that, Senator Chambers.

SENATOR CHAMBERS: Suppose he were, suppose he was getting some money from Cargill as a consultant or whatever. Might that have a bearing on his conclusions?

SENATOR DIERKS: I don't think so.

SENATOR CHAMBERS: Maybe it does and maybe it doesn't. Let me ask you this then, what, if you know, what is the total amount that these various plants have received by way of credits in Nebraska?

SENATOR DIERKS: Well, let me look that up and I'll get back to you. I've got that here someplace. I don't know the number off hand, but I've got it here someplace.

SENATOR CHAMBERS: Well, could I use the rest of your time to make some comments?

SENATOR DIERKS: You bet.

SENATOR CHAMBERS: Thank you. Members of the Legislature, do you know how much federal subsidy has gone to ethanol production since 1986? Ten billion dollars.

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PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: That is for one enterprise, that's not all of the farm subsidies, for ethanol subsidies \$10 billion, and they've extended this program of 54 cent subsidies, that's the amount right now per gallon, out until 2007. The loss to the federal road program will be an additional \$5.25 billion. If the federal road program has less money because of what's going into this ethanol boondoggle, when Nebraska seeks money for roads, there is less available for that. Senator Dierks now has an answer for me, so I'd like him to answer that question, if he will.

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: How much time do we have, Mr. President?

PRESIDENT MAURSTAD: Sixteen seconds.

SENATOR CHAMBERS: Oh, well, next time.

SENATOR DIERKS: Sixteen seconds? Thank you.

PRESIDENT MAURSTAD: (Visitors introduced.) Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I would like Senator Dierks now to read for us or provide that information that he has.

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: Thank you, Mr. President. Senator Chambers, you should have on your desk now, I think, a copy of what I just passed around that has that information on it. Got big black letters, says "Revised April 18". Oh, I think you're getting one now, Senator.

SENATOR CHAMBERS: All right.

SENATOR DIERKS: It shows you there the EPIC Funds that have

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been received to date, in the middle column, for each of the plants.

SENATOR CHAMBERS: Okay, now that's the total amount from the beginning of the granting of subsidies by the state.

SENATOR DIERKS: That's my...that's my ind...that's...to my knowledge that's right.

SENATOR CHAMBERS: Now, this...this tax forgiveness or subsidy at the pump has varied from time to time, hasn't it, in terms of how many pennies they would be subsidized at the pump?

SENATOR DIERKS: I think so, yeah.

SENATOR CHAMBERS: Is that subsidy included in the figures that we have here on this revised statement that you gave us, if you know?

SENATOR DIERKS: No, this is just the EPIC Fund spending, Ernie.

SENATOR CHAMBERS: So, the other subsidy could be considerable, if we totaled it all in to see how much ethanol is subsidized in the state of Nebraska.

SENATOR DIERKS: You're talking about the federal subsidy?

SENATOR CHAMBERS: And...yes.

SENATOR DIERKS: I think that...I think you're seeing the state subsidy right here.

SENATOR CHAMBERS: Is there any state subsidy, as far as the gasoline tax, that applies to ethanol?

SENATOR DIERKS: Well, you'll have to explain that to me a little bit.

SENATOR CHAMBERS: All right. When the state sets a tax that's going to be put on gasoline at the pump, and Nebraska has one of the highest in the country, is that amount of tax the same on

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ethanol as it is for other gasoline which does not contain ethanol?

SENATOR DIERKS: As near as I know it is.

SENATOR CHAMBERS: All right. Now, I have observed the fact that the price of gasoline is going up; it's seasonal, it happens this year, all the time, yet the price per gallon of oil has not changed. That's the Lundberg Report, it has not changed, it's holding steady, yet the price at the pump is rising. And ethanol prices are rising right with it. And the price of corn has not increased, so the producers of ethanol are not put to a greater extent...greater cost to produce ethanol. Why is the price of ethanol at the pump paralleling that rise in gasoline, if you know, petroleum-based gasoline?

SENATOR DIERKS: Well, I don't know, but I can tell you, I buy a lot of oil for my place, and it's gone up. Price of...

SENATOR CHAMBERS: Well, you might be talking about what you're paying for what you're buying, but the price per gallon of oil has not.

SENATOR DIERKS: You mean that...

SENATOR CHAMBERS: But here's the question that I would like to ask you,...

SENATOR DIERKS: You talking about the crude oil?

SENATOR CHAMBERS: Yes. Here's what...and do you use crude oil at your place?

SENATOR DIERKS: No, but I...I wondered what you were talking about...

SENATOR CHAMBERS: Oh.

SENATOR DIERKS: ...the price of oil hasn't gone up.

SENATOR CHAMBERS: Okay. Here's what I want to ask you, Senator

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Dierks, what kind of fuel is used to produce ethanol? Don't we use petroleum-based fuel primarily in the production of ethanol?

SENATOR DIERKS: Petroleum-based fuel?

SENATOR CHAMBERS: Yes.

SENATOR DIERKS: You mean the...the plant...

SENATOR CHAMBERS: Yes.

SENATOR DIERKS: ...the...the power at the plant...

SENATOR CHAMBERS: The plants that opera...

SENATOR DIERKS: ...that generates it?

SENATOR CHAMBERS: Yes.

SENATOR DIERKS: Yes, that's true.

SENATOR CHAMBERS: Would you be in favor of an amendment, which I'm offering, that says no plant can receive any credits under this bill, if they use a source of energy that does not contain 10 percent ethanol, except for electrical energy,...

SENATOR DIERKS: I'd have to...

SENATOR CHAMBERS: ...if they use any fuel?

SENATOR DIERKS: ...probably think about that a little bit, Senator Chambers. I'm not sure how that would work.

SENATOR CHAMBERS: Well, if ethanol is a good product,...

SENATOR DIERKS: At this point...at this...

SENATOR CHAMBERS: ...shouldn't it be as suitable for use as a petroleum-based fuel?

PRESIDENT MAURSTAD: One minute.

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SENATOR DIERKS: Well, I'm not...I'm not a manufacturer. I don't know how that would work.

SENATOR CHAMBERS: Do you think it might take more gallons of petroleum-based fuel to produce a gallon of ethanol? In other words, do you think it takes at least a gallon of petroleum-based fuel to produce a gallon of ethanol?

SENATOR DIERKS: I don't think it does.

SENATOR CHAMBERS: Are...petroleum-base fuels are fossil fuels. They're not renewable. Isn't that true?

SENATOR DIERKS: For the most part.

SENATOR CHAMBERS: So the ethanol industry is using large quantities of nonreplaceable fossil fuels to produce ethanol. Isn't that true?

SENATOR DIERKS: Well, you'd have to define large I guess.

SENATOR CHAMBERS: Thank you, Senator Dierks. Senator Dierks is large. I'm small. That might help people visually see what it is that I'm talking about. Members of the Legislature, we hear a lot of fluff statements made about ethanol and what it does.

PRESIDENT MAURSTAD: Time.

SENATOR CHAMBERS: Ethanol is...

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

SENATOR CUNNINGHAM: Thank you, Mr. President and members of the body. Senator Chambers, you earlier said that ethanol, the use of ethanol is not significant in this nation. You used the figures of 1 percent. But what I'd like to talk to you about is the potential use in the future with the banning of the MTBE in California and many other states, and the potential use of E-85 ethanol. I don't know how many of you are aware of E-85

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ethanol, but it is 85 percent ethanol and 15 percent gasoline. I'd like to read you just a little bit. E-85 is a fuel blend containing 85 percent ethanol and 15 percent gasoline. E-85 is considered an alternative fuel under federal and state laws designed to increase our domestic energy security and reduce vehicle emissions. It looks and fuels just like regular gasoline. However, ethanol does not contain many of the harmful carcinogens and other toxic chemicals found in gasoline. E-85 fuel has many benefits as a renewable energy source. It helps create a cleaner environment, healthier air, and a stronger U.S. economy while reducing overseas oil imports. E-85 has the highest oxygen content of any fuel available today making it burn cleaner than gasoline. Production and use of E-85 instead of gasoline results in a 35 percent reduction in greenhouse gas emissions. EPA studies have shown that high blend ethanol fuels can reduce harmful exhaust emissions by more than 50 percent. Flexible fuel vehicles are especially designed to run on any ethanol fuel blend up to 85 percent ethanol. Special on-board diagnostics read the fuel blend enabling drivers to fuel with E-85 or gasoline if E-85 is not available without worrying about what is in the tank. E-85 has superior performance characteristics because of its high octane rating. It has 110 octane compared to 89 in the average gasoline. Currently in Nebraska, we have 8,500 flexible fuel vehicles of which many of those are owned by the state of Nebraska. We have a growing number of vehicles that can operate on E-85. Ford Motor Company, General Motors, and Daimler Chrysler Corporation all offer E-85 vehicles for sale to the public. And I don't have the figures in front of me, but I believe it's the 2002 or 2003 models of Ford Explorers and Chevy Tahoes that are going to have E-85 motors in them. These automakers offer E-85 engines as standard equipment in their vehicles meaning that there is no additional cost. The vehicles are proven reliable and come with factory warranties. Now this is a possibility of what we have to come in the future. We have the possibility of selling a lot of ethanol fuel in this country and we need to take...step up to the plate and we need to provide our plants in Nebraska the opportunity to build and we need to do it now. I had something that was sent in from a friend of mine. He said ethanol is a fuel, not just an extender. Even Henry Ford saw the value of ethanol as a fuel as his Model T was designed to run on ethanol.

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So I believe it's been around for a long time. It's here to stay.

PRESIDENT MAURSTAD: One minute.

SENATOR CUNNINGHAM: And if Nebraska wants to take the forefront for the future, we need to step up to the plate again and promote ethanol. Thank you.

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

SENATOR BEUTLER: Call the question.

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

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate.

PRESIDENT MAURSTAD: Debate ends. Senator Dierks, you're recognized to close on AM1559.

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, I appreciate your conversation and attention this morning. I think the debate is healthy. We need all of us I think to learn more about this issue, and I appreciate the facts and the questions brought up by everybody this morning. I think we've talked about it enough. I would just urge your support of the amendment to the committee amendments. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Dierks. The question is the adoption of AM1559 to the committee amendments to LB 536. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of the amendment to the committee amendments.

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

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CLERK: Mr. President, Senator Dierks would move to amend with AM1560. (Legislative Journal page 1535.)

PRESIDENT MAURSTAD: Senator Dierks, you're recognized to open on AM1560.

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, LB 536 with this amendment to the committee amendments, would...it takes...what we do with this is talk about the Sutherland plant. It replaces the new subsection (4) and (5) of 66-1344, added by the committee amendments, with a new subsection (4) combining features of both subsections. The original subsection (4) of the committee amendments established a 20 cent production incentive credit for new plants in production before 2004. The original subsection (5) provided that existing plants that had not received credits prior to June 1, 2009, could also qualify for the 20 cent production credit. The effect of the amendment is to provide that the new 20 cent incentive program applies to the new ethanol facilities and defines a new facility to include plants not in production before the effective date of the bill and existing plants that have not received credits prior to June 1 of 1999. The primary substantive change is to provide that existing plants that qualify shall be eligible for credits under this section at 20 cents per gallon for only 48 consecutive months. Brand new plants will continue to receive credits for 84 consecutive months. What this does in effect is change the amount of dollars that were going to be slatted for Sutherland from \$18 million to \$12 million. And we are aware, of course, that this would apply only to the Sutherland plant, and we will enable them to receive five full years of credits which is what they still have if they're going to be treated as fairly as everybody else was. As drafted, LB 536 would have actually given Sutherland the better deal than they would have gotten under the previous program. This amendment brings the inclusion of Sutherland in line with what was intended when the bill was drafted. With that, I would request your support of that amendment.

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

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SENATOR BROMM: Thank you, Mr. President. Senator Dierks, I had my light on when we ceased debate on that last amendment so a couple of my questions might seem late. But before I ask those, if I understand this amendment, you said it would reduce the possible credits available to Sutherland to \$12 million?

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: Reduces it from 18. I think the flow chart shows \$18,850,000. It reduces it to...or a million. It reduces it to \$12 million, I believe.

SENATOR BROMM: And this would then represent about two-thirds of their capital investment of \$18 million?

SENATOR DIERKS: Roughly.

SENATOR BROMM: Okay. Will they also be eligible for the LB 620 credits if that bill passes with the Vrtiska amendment of \$10 million and 30 jobs I believe it was or something like that?

SENATOR DIERKS: You know, I haven't even...

SENATOR BROMM: Twenty-five jobs.

SENATOR DIERKS: I haven't even looked at that. It's possible, I really don't know that.

SENATOR BROMM: Okay. Is there any concern that this would give Sutherland, who has struggled for many years, a greater percentage of their investment in terms of EPIC Funds than any other plant that we've had in the state?

SENATOR DIERKS: I'm not...that has been expressed as a concern, but I'm not sure that's true, Senator Bromm.

SENATOR BROMM: Okay.

SENATOR DIERKS: I think that...

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SENATOR BROMM: You're not sure that it's true that it's a greater percentage or...

SENATOR DIERKS: Yeah.

SENATOR BROMM: So these figures that...on the handout where it says revised 4-18-01, where it gives a percentage in the right-hand column, you think that there's something that isn't...that's distorted here or why do you say that you think that may not be true?

SENATOR DIERKS: We're trying to provide them with the same amount of dollars that the other plants receive, Senator Bromm, on the same basis. They have not...one of the charts came around here before this one did showed that they had received 100 percent and that was not true.

SENATOR BROMM: Okay.

SENATOR DIERKS: And that's why I circulated this chart to show that they only received 11.8.

SENATOR BROMM: Well, thank you, Senator Dierks. I guess I would like to get a little more information on that. I don't think that...I certainly don't want to have 100 percent capital investment received in terms of EPIC Funds. I think that would be bad...that would be bad policy. The concern, some of the concerns, and I supported your amendment and I may support the bill but it's not without concerns. And let me try to articulate them quickly if I can. I would like to know, on these plants that are in existence, when and how they are...if they are profitable, whether they are showing promise of being profitable? At some point, they have to stand on their own two legs. I'm not sure when that is; but if I had profit-loss statements to show the last three or four years where they were at, I think I'd have a better idea of whether we're throwing good money after good money or good money after bad money. That's (laugh)...

PRESIDENT MAURSTAD: One minute.

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SENATOR BROMM: ...if you follow me. I would like to know whether the prospects are good that this is going to be a successful investment somehow. Secondly, I do have concerns about the pricing of ethanol as a component of gasoline. I have concerns. These plants need to try to make money and there's no question about that. But we would be well served if, when corn is \$1.80 and if ethanol production is competitive, if the price at the pump would somehow reflect the increasing price of oil and the low price of corn to some extent, at least to the tune of two or three or four cents a gallon would just make all the difference in the world in...

PRESIDENT MAURSTAD: Time.

SENATOR BROMM: ...terms of the sales in this state. And you wouldn't need LB 75 and things like that. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. On the Dierks amendment, Senator Janssen.

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. Senator Bromm, I listened to what you had to say and I agree with that. But I also look at the plants in this state, the two wet mill plants, I believe there's only two. If I'm wrong, would someone please correct me. The products that are turned out of those plants, sure alcohol is one of the products that comes out of there, all of the corn sweeteners, the cattle feed, the gluten, the plastic, it just keeps going and going and going. The products that can come out of that one little kernel of corn, it's just fascinating. It's fascinating. And I wonder what would happen if all of a sudden someone comes along and says there will be no more fossil fuel used in this world. What would we do? You can bet that anything that would ferment would be producing alcohol, and you can bet your sweet life that someone would come along with an internal combustion engine which they have now that would burn exclusively on alcohol. And it's no wonder that there is opposition when we start talking about the corn milling plants and so on and so forth. Certainly there will be. And you know who's providing that opposition, as plain as the nose on your face. If I was going to do a study that said that engines will blow up if you

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use all alcohol and that study was done by a consultant that was being paid by another source of energy, certainly they're going to come up with that conclusion. But some day, some day, colleagues, there will be no more fossil fuel. It probably is down the road a few generations, but some day that's going to happen, and we're going to have to rely on renewable energy, renewable energy right now we can use for power generation. I look at those windmills spinning away out here on the interstate north on 77, why aren't there more of them? Why aren't there more of them? Because we do not have enough clout to make sure that that happens. There are too many other large concerns that are controlling us. So I'm looking at...you look at South America at what's happening down there. Certainly they don't have as many cars as we have. I realize that. But they can't burn any fossil fuel there, and it's going to happen in this country. Senator Chambers, you and I will be long gone. We'll have croaked many, many generations probably, but it's going to happen. It's going to happen. It's inevitable. Mr. Speaker, how much time do I have left? Senator Cudaback, how much time do I have left?

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: You have about a minute and 20 seconds, Senator.

SENATOR JANSSEN: Senator Bromm, would you like to have the rest of my time? I don't think you got finished. I'd give you the last minute or so.

SENATOR BROMM: Thank you, Senator Janssen, and I appreciate that. No, I didn't quite get done. And I kind of left it hanging at a bad time, I believe. I was not suggesting at all that I'm opposed to ethanol production and the by-products. It's been a great thing in many ways and that cannot be...I don't think there's anyone can argue successfully with that. However, I don't want to give the impression that we don't have to require profitability at some point. At some point, the federal subsidies are going to be diminished, I believe. At some point the state taxpayers are going to say we're not going to go into the pump and pay anywhere from 2 to 4 cents more and

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subsidize it out of General Funds. I just...I think we're going to have problems with that. So I want to see some profitability...

SENATOR CUDABACK: Time.

SENATOR BROMM: ...possibilities presented to us. Thank you.

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

CLERK: Mr. President, I have a priority motion. Senator Chambers would move to bracket the bill until April 25, 2001.

SENATOR CUDABACK: Senator Chambers, you're recognized to open on your bracket motion.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I had mentioned earlier and I had mentioned the bill that I am going to tell you about when we were talking about it on General File, a bill designed to compel every retailer to stock and attempt to sell ethanol unless the station has only one tank. How can these two things be reconciled? And for Senator Bromm's information, Senator Bromm, as long as ADM and Cargill, the big shots, are donating campaign money, the federal subsidy may remain in place but pretty soon the construction industry is going to speak out because to the extent that ethanol is subsidized, money is taken from the federal roads program. Money is taken from the federal roads program. Ethanol has never produced a profit. Senator Bromm, if you want to go in with me and we go to the bookies in London where betting is legal, get them to make book on it in Las Vegas, we will put up a proposition that will make us rich if these ethanol investors, producers, and purveyors want to take us on. I would wager that without the federal and state subsidies ethanol production would cease entirely. There would be no production of ethanol period for use in a motor fuel without the federal and state subsidies. The reason ADM and the big bank rollers persuaded Congress to extend the federal subsidy until the year 2007 is because they know it is not going to be profitable and it cannot stand on its own merits. These companies are coming here saying pay us money, give us taxpayer money because we cannot make a profit,

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we're not expecting to make a profit so we want you to extend this subsidy out seven years, but now it's down to five. And I think the total amount may be what, \$35 million? Why should they give up that cash cow funded by the suckers in this Legislature and that's what we are. When you keep pouring money down a rat hole, you are a sucker. And the only justification is if you're like Senator Cunningham, you admit it helps your district somehow. That's his selfish, personal, political interest in supporting this bill. He admitted it. Why should I help Cargill? I'd like to ask Senator Dierks a question.

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

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: Senator Dierks, I see where Cargill is involved in Blair. Is that true?

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: And they have received so far \$25 million in state subsidies. Is that true?

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: And they will receive, they will be eligible for more under this bill. Is that true?

SENATOR DIERKS: If they do add-ons.

SENATOR CHAMBERS: Senator Dierks, haven't we had problems with Cargill and some of these other big outfits when it comes to the treatment of production agriculture?

SENATOR DIERKS: In my estimation we have.

SENATOR CHAMBERS: And yet we've subsidize them to the tune of 100...of \$25 million already and we're going to give them more. Do you really think that Cargill needs state subsidies so that on the one hand they can say we're producing ethanol which won't sell and on the other we're going to ball that hand into a fist

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and knock down producers in agriculture? Why should we subsidize Cargill?

SENATOR DIERKS: I think that because of the fairness of the issue, Senator Chambers, if we subsidize one, we should subsidize the other. If you'll look at the capital investment that Cargill has as well as MCP in Columbus, the relative amount of EPIC Funds they receive is quite a bit less than the other plants.

SENATOR CHAMBERS: That may be, but \$25 million is a considerable amount for the state to cough up, and I think we're going to find...that's all I'll ask you at this point. Thank you, Senator Dierks. That's...we're going to find that out when we get to crunch time this session. Twenty-five million dollars you'll give to Cargill; then this MCP in Columbus, \$36 million, that's a tasty bit of change. That's about \$61 million you've given to them, you've given to them. And you're going to continue to tell me that the state has benefited when all that it can do is continue to pour money into this industry that has never been able to stand on its own feet, which has told you it cannot stand on its own feet, and is demanding from the Legislature tax money. If this is so good for agriculture, if it's good for the corn growers, it's good for the cattle feeders, let them pay the cost because they're the ones who derive the benefits. Let them take 2 cents a bushel on the corn. I'd like to ask Senator Dierks a question.

SENATOR CUDABACK: Senator Dierks.

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: Senator Dierks, how much will the cattle feeders be expected to pay by way of a checkoff under this bill, if anything?

SENATOR DIERKS: The cattle feeders don't pay on the checkoff unless they sell corn or sorghum to the plant.

SENATOR CHAMBERS: But they could benefit by utilizing the by-products from ethanol production. Is that true?

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SENATOR DIERKS: I think that's true.

SENATOR CHAMBERS: Why shouldn't we have them ante up, since they're going to benefit from this activity?

SENATOR DIERKS: Well, we're asking them to ante up with the gluten tax and the distiller's grain tax.

SENATOR CHAMBERS: But that's not directly on them. That's on the product. Isn't that true?

SENATOR DIERKS: Well, but they have to pay for it, Senator.

SENATOR CHAMBERS: But my question hasn't been answered. There is no direct tax on the feeders and the cattle growers, is there, in this bill?

SENATOR DIERKS: Well, I'm not sure how you define that, but I think they are if they buy the products.

SENATOR CHAMBERS: Well, where you say if you got three cattle you give us 2 cents for each one of those cattle. That'd be a direct amount. Are we putting any direct amount on these feeders and growers of cattle or livestock period who might gain from this program?

SENATOR DIERKS: No, we're not.

SENATOR CHAMBERS: Thank you, Senator Dierks. And I knew that, but as we discuss this, I think we're going to lose people but I want the record to be clear and I want there to be issues we've discussed. My motion is to bracket this bill. We ought to see what we're going to do with LB 75 first. Because if you insist on mandating that every retailer sell ethanol or attempt to, you're acknowledging that ethanol will not sell on its own. And that's why I say you're sending good money after bad because you want to subsidize with taxpayer money the production of a product that will not sell. It will not sell on its own in Nebraska. Ethanol production has always been subsidized, always. If these big multinational corporations hadn't gotten

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their feet and fingers into the alcohol production, there probably wouldn't be the federal subsidies. Those federal subsidies don't come in place to help corn producers and growers in Nebraska. It's for the big companies that are going to do something with the corn after it has been grown. That's why the price of corn is so low and the cost at the pump of ethanol can be so high. There is no relationship between the amount charged at the pump and the cost of the corn per bushel from which ethanol is made. In addition to that, ethanol produces 40 percent of...40 percent of the ethanol produced goes into a reformulated gasoline; 60 percent goes right into regular gasoline to extend it and to raise the octane.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Forty percent is involved in reformulation of gasoline. And you reformulate gasoline by introducing oxygen carrying molecules. That's how you get this weight per...this oxygen weight per gallon. So when you reformulate, you use ethanol for the reformulation. That product with the ethanol should be no more than three to six cents higher as a result of the reformulation. But the amount will usually rise at the pump something like 17 cents. So even when you're talking about the reformulated product, the increase, the markup when ethanol is used is far greater than what is justified by the cost of the reformulating process.

SENATOR CUDABACK: Time. Thank you, Senator Chambers. (Visitors introduced.) There are a number of lights on. Those lights are Senators Hilgert, Coordsen, Wickersham, Chambers, Stuhr, Bruning, Beutler, Cunningham, and Dierks. If you didn't want to address the bracket motion, why let me know. Senator Hilgert, your light is next.

SENATOR HILGERT: Thank you, Mr. President, members. Senator Beutler rose to speak some time ago and I put my light on. Of course, on this issue there's many lights and you have to be quick, and talked about the kingdom of Saudi Arabia a little bit. And I'm not saying that Senator Beutler was critical, I didn't know where his comments were going actually at the time because he had to stop in mid thought. But let me tell you how

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many...do you know if there's sales tax on food in Saudi Arabia? Well, the answer is no. Is there sales tax on pharmaceuticals in the kingdom of Saudi Arabia? No. How about utilities? We tried to have a bill that would cut our tax and utilities. Is there a tax on utilities in the kingdom of Saudi Arabia? The answer is no. In fact, according to the Saudi desk in the United States State Department, there are no taxes in the kingdom of Saudi Arabia. Now albeit it's hard to figure out where the royal family begins and the government ends. I'll give that to you all the way. But at least in this country they have distributed the resources for the people that make up its citizenry. How many American allies where a small number of people own a large percent of their country distribute their wealth and resources to the same extent? The price of crude is flat and we've heard that time and time again. The problem with the price of gasoline is an American problem, the refineries. This is an American problem. And I'm not going to...this is probably my only time I'm going to speak on this bill, frankly, other than to say I wish this would have been substituted for LB 75 and we had just called it a day on LB 75. That being said, I did want to rise when...and the words jingoism, we talk about different words people bring out of their hat, well, jingoism is one of those terms that kind of downplays another country or another people because we're frustrated. We're frustrated that gasoline prices are going to be probably \$2 this summer and some even say to \$3. And when we're frustrated, my reason for saying this about the Saudis is not so much I'm a great fan of the kingdom of Saudi Arabia and I wish they'd go to democracy tomorrow. But what I do want to say is that when we're frustrated, sometimes we take it out on other people. And I grew up during the era of oil embargo and Arabs was the one that we took it out. Oh those Arabs, they have all the gas. Well, let me tell you, the Syrian Army fought on our left flank when I was in Desert Storm. The Egyptians were there. Afghanistan was there. Senegal was there. There were Middle East Islamic countries that were our allies. So when we talk about our frustrations with the price of oil, one, it's their oil. Two, it's an American problem. Three, if you don't want to buy it, you don't have to buy it. We are the ones that are addicted to the internal combustion engine in this country. We're the ones that says we need this oil fix. Okay? We could

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conserve more. We could have more efficient engines. We could have alternatives and this is one of the reasons why we need to put some money into alternatives like ethanol, again, not LB 75. And as the debate proceeds, and Senator Beutler certainly didn't finish his statement, I would just encourage the membership to be cognizant that there's Nebraskans...

SENATOR CUDABACK: One minute.

SENATOR HILGERT: ...that are listening of Arab descent, if you can say that, but there's a lot of different folks in the Middle East, but they're watching, too. And it's not very encouraging when sometimes with this frustration we tend to lay the blame elsewhere. This is an American problem. It's not a Middle East problem. And as far as cartels, I know people in my district that go down to Mexico to buy their pharmaceuticals that they can afford to buy in Mexico but they can't afford to buy in the United States of America. If you want to talk about cartels, we could get into the whole debate of strategic minerals. And it would be interesting for you to know which countries in the world have some of these strategic minerals we need to build our aircraft. So it's a big issue, it's a big question. Senator Beutler probably wasn't going there, but I just wanted to rise this one point to say one good word...

SENATOR CUDABACK: Time.

SENATOR HILGERT: ...for our friends in the Middle East and how they treat their people as they choose in that system. Again, I wish there would be democracies tomorrow...

SENATOR CUDABACK: Time, Senator Hilgert.

SENATOR HILGERT: ...but frankly, this is an American problem, not a Middle Eastern problem.

SENATOR CUDABACK: Thank you, Senator Hilgert. Senator Coordsen, on the motion to bracket LB 536. Senator Coordsen. Senator Coordsen waves. Senator Wickersham, your light is next.

SENATOR WICKERSHAM: Mr. President, I don't think I'm going to

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support the bracket, but I don't want to confuse you any more than is necessary. But eventually I won't support the bill. I've never agreed with ethanol as a proposition, voted against advancement of the bill in the committee, although I voted for the committee amendments and will continue to vote for the committee amendments here on the floor and support the committee amendments because I think they're an improvement over the bill. My concern about ethanol efforts are in part what I think I've heard from Senator Chambers, although I haven't heard all of the discussion this morning. I remember at a Revenue Committee hearing, not this year, that we asked representatives of the ethanol industry whether they would ever become profitable, whether they could ever stand on their own. And that response, that's a little over two years old now, but the answer was no; we don't know when we're going to become profitable. Well, gasoline may be \$2 a gallon by the end of summer, don't want to alarm all of you, but that's what some people are predicting. Corn prices are in the tank so the raw product that goes in isn't worth...doesn't cost very much. The product that comes out goes into a high-cost product. You might think that in that environment ethanol plants were going to be profitable. Maybe we ought to go back and ask them whether they're going to be profitable in that environment, but I'll bet the answer is still no. Now we can make a decision to perpetually subsidize an industry in the state of Nebraska if we want to. Gosh only knows we're subsidizing some other industries, too. And maybe that's the underlying principle. If you're going to start subsidizing businesses, you just don't know where to stop. But if you recall, I haven't been real warm about those other subsidies either. Now this subsidy is designed to promote what people would characterize as agricultural or rural interest. And I certainly have an interest in promoting agriculture. But quite frankly, I don't see how this does it. Most of the producers that you talk to say that what it does is give you a little bit of a price bump, but it's only due to transportation costs. If you don't have to haul corn 1,000 miles to market, you only have to haul it 100 miles to market, you get the differential in the shipping price. But that's about all it's done because there is still an enormous glut of corn on the market. And no matter how much ethanol we produce, it doesn't seem to really impact it in the way that promoters of the

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product have always said that it would. Now ethanol does burn cleaner, does have some environmental impacts, but those are reasons to do this in unsubsidized fashion it seems to me. I will express one other concern to you and that is that ethanol not only receives a state subsidy, it receives a rather large federal subsidy. And periodically, that federal subsidy comes up for discussion. If the federal subsidy would ever go away and if you look at a map of the United States, you see where the ethanol plants are, you'll probably be wondering how we've ever been able to maintain the federal subsidy. There aren't enough votes in the states that benefit by the federal subsidy for ethanol to maintain that in the long term, at least that's my estimate. Now if the federal subsidy ever goes away, the state will almost certainly be asked to pick it up because remember, these things aren't profitable. My recollection is that the federal subsidy is 54 cents a gallon.

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: I think that we ought to be prepared to wean the industry. Corn prices are cheap, gasoline prices are high or higher and are almost certain to be going higher. Frankly, I think it is time to wean the industry. But again, I won't support Senator Chambers' bracket. I think there are other things, other aspects of this bill that need to be discussed so that you have a better understanding of the industry as a whole before you make a final decision. But while I won't support the bracket motion, I will eventually not support the bill either.

SENATOR CUDABACK: Thank you, Senator Wickersham. Senator Chambers, on the motion to bracket LB 536.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I was talking about this reformulating process and that's where you get these oxygen bearing molecules into the mix. Now ethanol molecules consist of two carbon atoms, six hydrogen atoms, one oxygen atom. Now when you put these oxygen-bearing molecules into the mix, part of the combustion that results is produced by oxygen within the molecule. If you have a molecule without oxygen like methane, you get more bang for the buck

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because everything in the molecule can contribute to combustion. When you remove one of the combustible elements from the molecule and put oxygen, then the oxygen that replaced that combustible reduces the amount of combustion and therefore you get less mileage with ethanol or a reformulated gas than you do where there has not been the oxygenation. They don't talk about less mileage from ethanol. They talk about more energy. Maybe that means you can get a jack rabbit start because jack rabbits eat corn. So I'll let them explain that. It should be of great concern to us on the floor of the Legislature when on the one hand we're talking about helping the economy of the state and on the other spending taxpayers' money in gifts to an industry which acknowledges it can never survive on its own. Without the subsidies, ethanol production would cease. Where's Senator Baker? Is he around here someplace?

SENATOR CUDABACK: Senator Baker?

SENATOR CHAMBERS: I don't see him.

SENATOR CUDABACK: Are you available?

SENATOR CHAMBERS: I will ask...

SENATOR CUDABACK: I think he's coming, Senator Chambers.

SENATOR CHAMBERS: Oh, I hear the pitter-patter of little feet. Now I see Senator Baker. Senator Baker, right now...

SENATOR CUDABACK: Do you yield, Senator?

SENATOR CHAMBERS: ...ethanol is not a fuel itself. Isn't that true?

SENATOR BAKER: I think that's correct.

SENATOR CHAMBERS: Ethanol is not transported by pipeline. Isn't that true?

SENATOR BAKER: That's correct.

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SENATOR CHAMBERS: So how is ethanol moved?

SENATOR BAKER: By truck.

SENATOR CHAMBERS: It costs more to move something by truck than by pipeline, is that true?

SENATOR BAKER: That is correct.

SENATOR CHAMBERS: That's all that I want to ask you because if I had stated that ethanol, to use Senator Tyson's word is not fungible, meaning it cannot be transported by pipeline, you may not have accepted it. I have looked at this situation. I don't like giveaways. I don't like it when we give it to the railroad. I don't like it when we give it to Omaha. I don't like it when we give it to these speculators. We are not talking about helping the rural economy. We're talking about the locations of these speculators' speculative ventures. And I explained earlier why the federal subsidy stays in place. Senator Wickersham called your attention to the states where these plants are located. There's not enough political power there in terms of votes to justify it. But that's where the big companies that are doing the producing are located. Senator Wickersham, they contribute heavily to the campaigns of both political parties when it comes to the House and the Senate. They...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...buy the votes necessary to keep the 54 cents per gallon subsidy in place. You all are politicians, but you don't apply it where it really counts. If you cannot see any reason why something is happening, attribute it to politics. But at some point when the construction industry gets tired of having money stolen from the federal road program to subsidize ethanol, then you're going to have a clash of titans. And the federal subsidy for ethanol will at some point go away. And these sucker states like Nebraska, you all on this floor who cannot see what is happening will be left holding a bag and trying to explain things to your constituents. You're not helping the rural economy. You are helping speculators in a

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speculative industry...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...and you're underwriting plants that have failed several times already.

SENATOR CUDABACK: Thank you, Senator Stuhr, or I'm sorry, Senator Chambers. Senator Stuhr, your light is next. I apologize. I'm sorry about that. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. I stand in opposition to the bracket bill (sic, motion). Yes, I agree with someone that said this is an American problem. It isn't just a Nebraska problem. For one thing, I cannot understand why we in the United States don't strive to be energy independent. Senator Chambers repeatedly says the ethanol industry is highly subsidized. Well, let me tell you the petroleum industry is also highly subsidized. And I believe that ethanol is very good for the state of Nebraska. It's good for our economy. It's good for our environment. And we can strive to be energy independent. I have an article that I found in the Farm Journal, April 2001 edition that talks about the energy policy on the national level. Staggering energy prices have improved long-term prospects for home-grown fuel. Our president said, let me reiterate my commitment to value-added processing to making sure that ethanol is an integral part of the gasoline mixes in the United States. Senate democratic leader, Tom Daschle of South Dakota, and Senate Ag Committee Chairman, Richard Lugar, are backing a measure that would require a percentage of the total supply to be renewable fuel. Daschle says such a standard could triple demand for ethanol by 2010, and I think that that's what we're striving to do with LB 536 is make Nebraska ready. This is a rural economic development bill, and I really shouldn't say just rural, because it does a lot for the state of Nebraska. I'll just repeat some of those statistics that maybe were mentioned earlier that Nebraska's ethanol industry employs more than 1,000 people and another 4,700 jobs have been generated in the industry related service sector. The ethanol industry has made a capital investment of nearly \$1 billion in Nebraska. Right now we know

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that there are seven ethanol plants. We're looking at possibly a couple additional plants in the state and certainly this bill would be very valuable to them granting them some incentives. We've talked a little bit about the price of corn. The problem is we're just not using enough of the corn that we produce in Nebraska. We could be using more which could actually help then increase the price. Nationwide we only utilize about 7 percent of all of the corn produced in the United States for ethanol. In Nebraska, I'm happy to say that we near about 20 percent, I believe it's over 200 million bushels. People say, well, it doesn't do anything for the price of the corn, but I ask, what...where would we be if we didn't at least have the ethanol industry here in Nebraska? Senator Cunningham also spoke of a new vehicle that actually has been around for a number of years called the E-85. Again, why aren't we working to make our country energy independent? E-85 cars will operate on 85 percent ethanol, 15 percent gasoline.

SENATOR CUDABACK: One minute.

SENATOR STUHR: I think that this could certainly be one way that we all in Nebraska, yes, we talked about LB 75 trying to increase the usage of this fuel. And I think that as Nebraskans we need to strive and work very hard to increase not only the demand and I think through our education campaign that we've had in the last year or so we've taken a lot of things for granted, but we have increased that usage by nearly 11 percent. So I think we have a long way to go, but I'm certainly opposed to the bracket bill (sic, motion), stand in support of LB 536 as I think that this is certainly another tool that we could find...

SENATOR CUDABACK: Time.

SENATOR STUHR: ...very helpful to use. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Bruning, on the motion to bracket LB 536.

SENATOR BRUNING: Mr. President, members of the Legislature, I rise in opposition to the bracket motion. And before I talk a little bit, I want to say well done, Senator Stuhr. That was

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a...that was a fabulous speech, and I think she's exactly right. Ethanol is a uniquely Nebraska product. I mean there aren't a lot of states that are as...whose economies are as dependent upon corn and production of corn as this state. And this particular bill is an excellent way for us to support a critical part of our economy. There are thousands of jobs in this state. I think as opponents of this bill have talked about how it's going to go to these large conglomerates, Archer Daniels Midland, or other companies are going to be the only ones that profit, I think the thousands of people in Nebraska who work at these ethanol plants would beg to differ. I think the thousands of farmers who sell their corn to be processed at these plants would beg to differ. This is a Nebraska bill. This particular product, ethanol, is one that helps our economy, it helps the Nebraska economy. And not just the economy, think about the quality of water, the quality of air, all the things that ethanol does for the environment. This is a bill that we, as Nebraskans, need to get behind. And it always is fun for me, as we go into the ethanol debate, I took a look at the book that we have here that lists all the senators and our occupations and that sort of thing. My friend, Senator Chambers, is Defender of the Downtrodden, as his occupation. I'd like to have that revised, if the Clerk would, to the Defender of Big Oil and Oil Interests. Now I'm not sure I can make that request on behalf of another senator, but if I can, certainly Defender of Big Oil may be more appropriate here. The only reason in this state we wouldn't support ethanol is because we own oil wells or we're trying to...maybe we've got an interest over in the oil cartel in the Mideast. Ethanol is a Nebraska product that works well in vehicles. We've talked about that exhaustively. Last year we talked on and on and on about how this works in any vehicle made in the United States, made around the world. Every major manufacturer says that ethanol is a product that works well. There's no dispute that it's better for water and air. It just is strange to me that we would even consider not passing this bill, but the good news is the opposition that was there to Senator Connealy's bill and those of us who supported Senator Connealy's bill, it's probably not going to be here. This particular fight against LB 536, I think it's going to be much more lonely for the opponents. There's only a couple, three in the body who oppose it. Now I'm not saying they can't take it

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the full eight hours; they've demonstrated they can. But those of us in support, I think, are going to have a much easier time moving this bill, defeating this bracket motion and sending this bill to the Governor. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bruning. Senator Cunningham, on the motion to bracket.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members of the body. I, too, stand in opposition to the bracketing of this bill. You know, there's not much more that you can say. We've pretty much said it already. Senator Bruning and Senator Stuhr said some very good things. But I do believe we do need to continue these subsidies. I think we've clearly shown you the potential for the use of ethanol in the areas of banning of MTBE and the future use of E-85 vehicles. So I think there's a big, big future for ethanol and we can be a part of that. But right now we need to compete with our neighboring states for these ethanol plants and we have the opportunity to continue that and we need to do that. We don't need to rely so heavily on foreign oil. In the words of my good friend, Senator Bruning, this is a corn state. We can provide the fuel. It's also been said that subsidies are for big business only. Well, I'll tell you that we have two new plants being proposed in Nebraska right now. These plants are farmer and locally owned. These are people who recognize the chance to help their farms, their communities, their state, and their nation so, I guess, I disagree with that. Another thought I disagree with and Senator Stuhr brought it up also, it's got to do with ethanol production doesn't help the price of corn. But I guess what I would ask you is, what would the price of corn today be if we dumped another 200 million bushels into the market? I mean it surely would go down, so I guess the price of corn isn't where it needs to be, but we think we can definitely help that. We can increase the need for corn much, much more in the future so I would urge you to vote against the bracketing of this bill and hopefully vote for the final passage of LB 536. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. Senator Beutler, on the motion to bracket.

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SENATOR BEUTLER: Senator Cudaback, members of the Legislature, let me just continue with my earlier remarks. Senator Hilgert picked up on those remarks which related to the Mideast cartel, oil cartel, and I appreciate the nature of his comments because it is good to be reminded that this thing called jingoism isn't...and extreme nationalism isn't something to be encouraged. But, Senator Hilgert, whether it's in the Mideast or anywhere else in the world, what I'm talking about is the idea of a cartel, an economic cartel. And a cartel is a cartel is a cartel wherever it is. But what I was trying to get to is how it is that in my opinion at least government action by our government, whether it's our state government or our federal government, is entirely justified and subsidies are entirely justified when you're placed in this kind of competition where other governments are dictating to you in a sense the rules of the game. Where cartels determine the price of oil then you have basically three alternatives--you can diplomatically and/or militarily seek to destroy the underlying basis, the governments, that underlie the cartel, and that's totally unacceptable, at least I think and I hope for most people. The second alternative is to try to find enough alternative sources of oil that you can effectively destroy the percentage of market that they could control and by that means destroy the inflated price that they dictate to us. And we seek to do that. We're continuing exploration of reserves in the North Sea, in the South Pacific. And, of course, one of the major issues that will be facing us in the next year or two is brought about by this whole situation and that, of course, is the idea of exploring and producing oil in the Arctic refuge. The other thing that we need to do in conjunction with considering and exploring for additional resources of oil is the idea that we've all talked about in one form or another and that is to develop alternative sources of energy to replace and to use oil and to replace oil in the different kinds of technologies that we have that need an energy source. And so government subsidies to explore the use of solar energy, government subsidies to explore the use of nuclear energy, to explore the use of wind energy, and to explore the use of renewable energy that comes from the production of ethanol, all of those, in my opinion, in the practical context in which we are put, are legitimate reasons for government to provide subsidies. And we do that and we

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continue to provide subsidies for technology development. And in the area of renewable energy...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...ethanol production we've made tremendous strides in the last 20 years in getting...in refining those technologies so that the price of ethanol continues to come down. How much longer that will take to refine it further I don't know. But it is worthwhile in the process of developing the technology to also at the same time acclimate the population to the idea that this technology is possible and that when it does become a little cheaper it is in fact not only possible but it works. I think more and more Nebraskans, because we subsidize these plants, because we're encouraging the use of ethanol throughout the state, more and more Nebraskans every year find out that ethanol works just fine in the automobiles and in the pickups and in all of our vehicles now...

SENATOR CUDABACK: Time.

SENATOR BEUTLER: ...and that's an important aspect of the subsidy process. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. (Visitors introduced.) Thanks for being with us. Senator Dierks, on the bracket motion, followed by Senators Baker, Robak, Chambers and Hartnett. Senator Dierks.

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, I would, of course, oppose the bracket motion. I think we should go right ahead and deal with the issue. The...we've had an excellent discussion again, and I'm glad for the input from some of my colleagues. I think they've touched on some of the very important points that I have not. We need to consider one thing that we haven't talked a lot about and that is the fact that ethanol is the oxygen that you can use to cut down on the problems that gas producers face, petroleum producers face in their vehicle emissions. Now they've come up with a product called MTBE which does somewhat the same thing, but MTBE is a carcinogen, ethanol is not. Ethanol does not have

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any of those same properties that MTBE has. If ethanol is not produced and the petroleum industry has to continue to live under the federal mandates of providing oxygenated products, they have to go to something besides MTBE because we've outlawed it in Nebraska. But those products that they have available are every bit as bad as MTBE is, and I think there's a number of them that they can use. They'll do the same things that MTBE does. It will cause...they are "carcinogenic". They will cause cancer in people, and we have the safe products with ethanol, besides the fact that we are promoting an agricultural product, besides the fact that we are providing jobs in local communities. Besides all these pluses, we are also providing a product that is clean burning and takes care of many of the problems that we have with the current additives to gasoline...that petroleum producers add to their product. We haven't talked an awful lot about that, but I think we should. The costs that Senator Chambers talked about is about...I've lost the...I've got enough stuff over here for...the production of ethanol is energy efficient in that it yields nearly 25 percent more energy than is used in growing the corn, harvesting it, and distilling it into ethanol. It's 25 percent more efficient. And this is from a study done by some economists and U.S. Department of Energy. I've got 40 references here that wrote this thing and they conclude that the net energy value of corn ethanol is positive when fertilizers are produced by modern processing plants. Corn is converted to modern ethanol facilities, farmers achieve normal corn yields, and energy credits are allocated to coproducts. Corn ethanol is energy efficient as indicated by an energy ratio of 1.24, that is for every BTU dedicated to producing ethanol there is a 24 percent energy gain. Moreover, producing ethanol from domestic cornstalks achieves a net gain and a more desirable form of energy. Ethanol production utilizes abundant domestic energy supplies of coal and natural gas to convert corn into a premium liquid fuel that can extend petroleum imports by a factor of seven to one. Thank you.

SENATOR CUDABACK: Thank you, Senator Dierks. Senator Baker, on the motion to bracket LB 536.

SENATOR BAKER: Thank you, Senator Cudaback, members. I need to

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clarify an answer that I gave Senator Chambers a little bit ago. Ethanol is also, of course, transported by rail cars. That's another method other than trucking, but not pipeline, just rail cars, trucking is all I know of. This debate touches a great many facets of the issue. I'll tell you I was approached by a person a little bit ago saying, well, you've gone full circle now. You're supporting ethanol and a plant out in your...it's not in my district, out in my area, Sutherland and so on, et cetera, so I guess, yes, it has come full circle. In regard to some of the comments by Senator Hilgert and Beutler, the monopoly of the oil companies and so on, I tell you what we're in right now as far as the price of fuel going up. It's not the supply of crude oil that necessarily has the United States in a bind, it's the refining capacity. And in most cases, the refiners are not the same people that is producing the crude oil. They obviously go out and buy it from other companies, independents. Of course, a lot of it is imported, 60 percent of it is imported. But a problem is similar to California's in they lack the generating capacity for electricity out there. The whole country lacks the refining capacity. It's very difficult for OPEC to maintain their cartel. You know, they're constantly under threat of overproduction. And if you'll look at the markets in the last two to three weeks, you'll see that the price of crude oil has not gone up all that much. It hasn't changed much at all in fact, but the refined fuels market has gone up. Why? Because there's more demand there than we have capacity to refine the crude. So this discussion continues on. We'll try and educate people as best I can to my ability just what's going on in the market and how ethanol does fit into this market. The input costs have not gone up much meaning the corn and the energy they use to produce the ethanol, but the challenge is going to be to maintain that ethanol, raw ethanol at a price less than the no lead fuel that they're blending it with so that they remain competitive in order to sell it. Senator Bromm asked a question about the Sutherland plant, and I don't think he's on the floor right now; but from what I can recall and the material I have, that plant, of course, was built years ago, had many defective design components to it. It went into bankruptcy and a group of people bought it for very little money. I have to admit it was not much considering the price that they...the money that was expended to build it in the

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original state that it was. But they bought that through bankruptcy, went in there and tested the systems and so on and it was defective. They rebuilt basically the whole plant, whether it was fire suppression equipment or actual material to refine the corn, basically rebuilt it. And I've had people, owners out there tell me had they known what they were getting into, they'd have simply built a new plant. So I don't know exactly this capital investment sheet that was revised, sent out by Senator Dierks here, lists Delta-T as \$18 million capital investment. I assume that's in the ballpark. They didn't pay for that in the bankruptcy court that much, but they've certainly probably spent more than that I think in reconfiguring and rebuilding that plant to get it up to standard and operating. I don't know that they would qualify under LB 620 incentives. They're up and going, producing. And I do think that they probably qualify for LB 775 funds and some other incentives there, but I...it is up and going, running. They've had lots of problems with it getting there, and I'd hate to see it close down. Also along those lines, we're talking about price of gasoline. There hasn't been a new refinery built in the United States since approximately 1976. And the two closest refineries to us, one of them we did have a Nebraska refinery for a long time.

SENATOR CUDABACK: One minute.

SENATOR BAKER: It was out at Scottsbluff in Senator Smith's district. It was owned by Farmland there in Scottsbluff and it was closed. There seems to be some discussion here whether Senator Erdman was even born when it was closed, but back in the early eighties, maybe late seventies. The other refinery that was close to us was Phillipsburg, Kansas. It was an NCRA refinery, I believe, closed, I don't know, 15 or so years ago. So that points in the direction of refinery capacity has actually been reduced as far as the number of refineries, and the ones that are left are operating at capacity. So with that, I'll return any time I have left to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Robak, on the motion to bracket LB 536.

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SENATOR ROBAK: Thank you, Mr. President and Mr. Speaker. I am trying to...I really wanted to speak to the Dierks amendment, but we are facing a bracket motion now so I'm trying to formulate a reason why I would bracket this, a vote to bracket this bill. I do live in Columbus, Nebraska, and I have an ethanol plant southeast of Columbus. It's Minnesota Corn Processors and everybody here should be aware of that. It is a farmer-owned company and they employ over 300 people from the Columbus plant, and about 2,000 Nebraska farmers are shareholders. It grinds about 230 bushels of corn each day, that's every day it grinds about 230,000 bushels of corn. So the impact on our farm economy is tremendous. It has invested \$371 million in its plant and has received less than \$36 million in ethanol credits. It received \$36 million in ethanol credits which is less than 10 percent of their investment. Forty percent of its output is ethanol; 52 percent is corn fructose; 8 percent is starch. And I believe Senator Kremer is a member of MCP so, could I please ask Senator Kremer a question?

SENATOR CUDABACK: Did you say Senator Kremer, Senator Robak?

SENATOR ROBAK: Senator Kremer, yes.

SENATOR CUDABACK: Would you yield, Senator?

SENATOR KREMER: Yes, I will.

SENATOR ROBAK: Senator Kremer, are you a member of MCP?

SENATOR KREMER: Yes, very small.

SENATOR ROBAK: But, you are a member?

SENATOR KREMER: Yes.

SENATOR ROBAK: And has the Columbus facility reached profitability yet at this time?

SENATOR KREMER: It was very profitable years ago, but in the last four or five years it has not been very profitable at all.

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I think the last year it showed some profit.

SENATOR ROBAK: It showed a small profit?

SENATOR KREMER: Yes, they did last year.

SENATOR ROBAK: Okay. You don't know how much?

SENATOR KREMER: No, I don't.

SENATOR ROBAK: So, okay, if it has not received profitability yet, then do you think it's wise to add a new tax on them? I think this new tax would be about \$270,000 each year.

SENATOR KREMER: Are you talking about the tax on the distiller's grain?

SENATOR ROBAK: Yes.

SENATOR KREMER: You know that I don't think the distiller's grain should be taxed.

SENATOR ROBAK: I can't hear you.

SENATOR KREMER: You're right that I feel like the distiller's grain should not be taxed.

SENATOR ROBAK: Okay. I guess that answers my question. I have to ask Senator Dierks a question, though, to see if I want to bracket this bill or not.

SENATOR CUDABACK: Senator Dierks, would you yield?

SENATOR DIERKS: Yes.

SENATOR ROBAK: Senator Dierks, regarding the gluten tax, is the theory there that the ethanol producers which received state ethanol credits should have their ethanol by-products taxed to help Sutherland? Is that the theory here?

SENATOR DIERKS: No. The theory is to balance the funding for

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the entire process by allowing the livestock feeders to provide some of the dollars for the EPIC Fund.

SENATOR ROBAK: Okay, so that...your amendment would tax the by-products of starch production, sweeteners, and other by-products besides ethanol. Is that correct?

SENATOR DIERKS: Just those products that are manufactured from the ethanol, those by-products of ethanol production.

SENATOR ROBAK: Yes, the by-products...

SENATOR DIERKS: Yeah.

SENATOR ROBAK: ...will be taxed.

SENATOR DIERKS: Yes.

SENATOR ROBAK: Okay, that will be a new tax?

SENATOR DIERKS: Well, yes. It's a tax that hasn't been there before.

SENATOR ROBAK: I was under the assumption that the Governor was not supportive of any new taxes this year.

SENATOR DIERKS: I'm of that assumption, too. I hope I can change his mind.

SENATOR ROBAK: Okay. Would you be willing to accept an amendment which would limit the tax of the by-products of ethanol?

SENATOR DIERKS: I beg your pardon?

SENATOR ROBAK: Would you be willing to accept an amendment which would limit the tax to the by-products of ethanol?

SENATOR DIERKS: No, I'm going to oppose that, Senator Robak. There is an amendment on the...

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SENATOR ROBAK: Yeah, I'm aware of that, but I want to know what you would accept so I know how to vote on this bracket motion.

SENATOR DIERKS: Well, I will not accept the...

SENATOR ROBAK: You will not accept that, okay.

SENATOR DIERKS: No, I will not.

SENATOR ROBAK: So what you're really doing now is asking that those facilities which receive state funds, they receive them as an incentive...

SENATOR CUDABACK: One minute.

SENATOR ROBAK: ...to build an ethanol plant, now would start giving that money incentive back to give its money to the Sutherland plant.

SENATOR DIERKS: The Sutherland plant will qualify for the funds just like any other plant will. And any other plant that qualifies for the funds would be able to get the same dollars out of the EPIC Fund that Sutherland would if they all come from the gluten tax.

SENATOR ROBAK: But do you think that's fair?

SENATOR DIERKS: I don't see how it can be anything but fair.

SENATOR ROBAK: You consider then taxing the by-products of ethanol and asking that those facilities which receive state funds as an incentive to build their plant now would give them back to another facility so to speak.

SENATOR DIERKS: Well, they give them back to the EPIC Fund which they can use themselves.

SENATOR ROBAK: Which will go to another facility.

SENATOR DIERKS: Any facility that qualifies can use those dollars.

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SENATOR ROBAK: I guess that answers my question. I think that at this time I will support the bracket motion. Thank you.

SENATOR CUDABACK: Thank you, Senator Robak. Senator Chambers, on the bracket motion followed by Senators Hartnett, Beutler, and Dierks. Senator Chambers, and this will be your third time.

SENATOR CHAMBERS: Yes. Mr. President, members of the Legislature, I would like to ask my good friend, Senator Dierks, a question.

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

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: Senator Dierks, you know the revenue projections have been scaled back. The budget committee has already chopped off the Governor's property tax relief, money that would go to the colleges so that they can reduce their property tax. That will mean less money available for our spending. I'm sure you've talked to the Governor and he has agreed to sign this bill. Is that true?

SENATOR DIERKS: That is not true.

SENATOR CHAMBERS: Oh, thank you, Senator Dierks. Thank you. That's all that I have. That's kind of what I suspected, but I thought maybe they'd gotten some assurances as strongly as people are speaking for this bill. The Governor and I are seeing eye to eye on more things this session. But I still feel a need to fight this bill. I'd like to ask...I'd like to ask Senator Bruning a question because he knows a lot about oil matters.

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

SENATOR BRUNING: Yes.

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SENATOR CHAMBERS: Senator Bruning, 50 percent of the oil that America uses is imported. I will start you with that. What percentage of that imported oil is used to produce transportation fuels, if you know?

SENATOR BRUNING: I do not know, Senator.

SENATOR CHAMBERS: Senator Bruning, what percentage of ethanol is used as a fuel extender or an octane enhancer?

SENATOR BRUNING: Ten percent. Are you talking about the ethanol that's at the gas pumps is 10 percent (inaudible)?

SENATOR CHAMBERS: No, the ethanol itself. We have a big old tub of ethanol. What percentage of that ethanol is used as a fuel extender or an octane enhancer?

SENATOR BRUNING: I guess I'm not certain what you're asking, Senator, but enlighten me.

SENATOR CHAMBERS: Well, let me ask you a different question. What else is ethanol used...ethanol can produce the ethyl that is used in beverage alcohol. I'm not talking about that. What percentage...what else is ethanol used for other than as a fuel extender or an octane enhancer? What other use is made of ethanol, if you know?

SENATOR BRUNING: Senator, I don't pretend to be the expert on ethanol on this floor. I do support the bill because it provides jobs and it's good for the environment.

SENATOR CHAMBERS: Okay, thank you. I think you had been pretending to be some kind of expert when you accused me of supporting big oil when it's big oil that provides the fuel for making ethanol. Let me ask you this question. When the 54 cents federal subsidy comes into play, do you know where that 54 cents goes?

SENATOR BRUNING: Senator, I'm not sure where you're going with this.

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SENATOR CHAMBERS: I'm just asking you the question. Does the 54 cents goes to the fuel producers who blend ethanol? Is that where it goes, do you know?

SENATOR BRUNING: Well, I assume it goes to the ethanol plants and to the producers of ethanol. Archer Daniels Midland is (inaudible), I mean, (inaudible).

SENATOR CHAMBERS: What about the blenders? Don't they get some of that?

SENATOR BRUNING: I'm not aware of the exact breakdown, Senator.

SENATOR CHAMBERS: Thank you, Senator Bruning. Members of the Legislature, blenders of ethanol into gasoline get that subsidy. If the difference between the cost of gasoline wholesale and ethanol is...how much time do I have, Mr. President?

SENATOR CUDABACK: About a minute and 15 seconds, Senator Chambers.

SENATOR CHAMBERS: I will go into this this afternoon, into that formula. But there are a lot of people saying things on this floor and they really don't know what it is we're discussing. They're making political, off the top of the head comments that have no relationship whatsoever to the issues involved in ethanol production and whether or not it is a viable economic activity...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...for this state by them not realizing that without the federal subsidy, first of all, there would be no ethanol production anywhere in this country. I'm going to interrogate some of my colleagues so that they...and they can go out and find out what percentage of imported oil is converted into transportation fuel because you all need to know that if the ethanol produced were used as transportation fuel, it produces less than 1 percent of the American demand. And you're talking about that creating independence from petroleum products, less than 1 percent? And it would meet America's

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demand for fewer than five days.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: And there are 365 days in a year. Learn what you're talking about, use your brains.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Hartnett, on the motion to bracket LB 536.

SENATOR HARTNETT: Mr. President, members of the body, Senator Dierks, could I ask you...I think one of the things I did support the bill in the committee and probably will support it. But one of the things that's always bothered me with the bill is the Sutherland plant. I think it started, if I remember right, it was one late night about 4:30 or 5:00 and at that time the former Senator Bernard-Stevens got up and kind of put Sutherland plant into the, whatever the bill we were dealing with that and so forth. The history of that has been kind of shady or spotted or what would you...how would you describe the Sutherland plant? (Laugh)

SENATOR CUDABACK: Senator Dierks, will you yield?

SENATOR DIERKS: Yes. I wouldn't describe it as shady. I would describe it as having been a struggling procedure. They had some financial difficulties. I'm not sure if there was a bankruptcy involved, but I think there were some really severe financial problems and the thing has been...the plant has been purchased and they've been struggling to make ends meet. I think that they provide us with an excellent opportunity for the sale of corn and the production of ethanol in the western part of the state. Now as we develop this legislation, Senator Hartnett, Sutherland was always a part. We never considered not having...

SENATOR HARTNETT: Yeah.

SENATOR DIERKS: ...Sutherland as part of this process because...

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SENATOR HARTNETT: Yeah, yeah. I realize...will the...is the new plants that will come on-board, Senator Dierks, will they have more of a capital investment than the...where will their capital investment, maybe you've said that already, Senator Dierks, will they be around the \$18 million or where, the new plants that went up in Senator Cunningham's district?

SENATOR DIERKS: I think that the latest figures I saw were somewhere in the neighborhood of...I don't like to say things that I'm not sure of, Senator Hartnett, but...

SENATOR HARTNETT: Well, maybe you could find out, Senator Dierks.

SENATOR DIERKS: But I know they've put together \$400,000 at this point private placement stock, and I know that another \$12 million will be raised through the public offering of stock. I think the remaining 60 percent of equity, \$20 million, will be obtained from local lending institutions and also larger regional lending firms.

SENATOR HARTNETT: Um-hum.

SENATOR DIERKS: We have also collected nearly \$40,000 in donations to date which have been and will be utilized for that operating expense.

SENATOR HARTNETT: So, but you think it will be above the \$18 million of the Sutherland plant or not?

SENATOR DIERKS: I suspect that it will.

SENATOR HARTNETT: Okay. Thank you. If there's any time left, Mr. President, I would give it to Senator Chambers, if he so desires.

SENATOR CUDABACK: Senator Chambers, you have about two minutes, if you care to use them.

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. I would like to ask Senator Bruning an easier

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question, if he is still with us.

SENATOR CUDABACK: Senator Bruning, would you respond?

SENATOR BRUNING: I have not left the Chamber, Senator.

SENATOR CHAMBERS: Senator Bruning, have you ever seen these huge trucks come into service stations, take a large hose and put it into the ground and run gasoline out of their truck into the pumps in a service station?

SENATOR BRUNING: Yes.

SENATOR CHAMBERS: Now some of those trucks have gasoline that has been enhanced with ethanol.

SENATOR BRUNING: Yes.

SENATOR CHAMBERS: Are you aware of that?

SENATOR BRUNING: Yes, of course, Senator.

SENATOR CHAMBERS: The ethanol plants don't mix it, do they? Who mixes the ethanol into the gasoline and puts it in those big old trucks and bring it to the service stations?

SENATOR BRUNING: Well, I assume it's blended at the station there, in the tank at the station. I don't know, Senator. I'm not a...I don't distribute the stuff. I don't work around it. I've never worked so...

SENATOR CHAMBERS: Thank you. Members of the Legislature, knowledge is like money. You don't have to have any to talk about it.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: When people are making political points on an issue that I'm a part of, I want them to know something and I'm going to find out if they know so that they can improve my education because there are questions about what we're dealing

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with, the answers to which I don't have. And I want to be able to ask people who seem to have that knowledge. And when somebody bounces up and talks like they know everything, those are the people we ought to ask the questions to, so that's why I was asking my good friend, Senator...who is running for Attorney General, Senator Bruning, who says I should not consider myself defender of the downtrodden but big oil. I deal in principle and not like my political creatures, colleagues, who take a political position. If what big oil, as Senator Bruning calls it, is saying what I believe is right, that's what I say.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: I'm not so shallow that I would shift just because they're saying something that I agree with. Did you say time?

SENATOR CUDABACK: I said time, Senator.

SENATOR CHAMBERS: I'm sorry I went over, Mr. President.

SENATOR CUDABACK: Thank you, Senator Hartnett and Senator Chambers. (Visitors introduced.) Senator Beutler, on the motion to bracket.

SENATOR BEUTLER: I call the question.

SENATOR CUDABACK: Senator Beutler, there are no further lights, so I guess that won't be necessary. Thank you. Senator Chambers, you're recognized to close on the bracket motion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I move that we recess until 1:30.

SENATOR CUDABACK: Mr. Speaker, items for the record? Okay. The motion is to recess until 1:30. All in favor of the motion to recess say aye. Opposed nay. We are recessed until 1:30.

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RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon. Welcome to the George W. Norris Legislative Chamber. Senators, the afternoon session is about to reconvene. Please check in. Roll call. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: Mr. President, Enrollment and Review reports LB 242 to Select File with Enrollment and Review amendments attached, and that's all that I had, Mr. President. (Legislative Journal page 1618.)

SENATOR CUDABACK: Thank you, Mr. Clerk. When we recessed, we were on the motion to bracket LB 536. Was there anybody else wishing to speak to the bracket motion? Seeing none, Senator Chambers, did you wish to close on the bracket motion?

SENATOR CHAMBERS: Mr. President and members of the Legislature, if I were making wishes, my first wish would not be to close on this bill, but I accept the invitation in the spirit in which it was given. I offered my bracket motion in order to have the opportunity to discuss some of the issues that were cropping up. I had already spoken three times on whatever amendment was pending before us. The problems that I'm having with this bill is that it's a tangled, morass of incoherence. We need the opportunity to have each element of it discussed and I know that will happen because I'm going to do what I can to ensure that it happens, but I still won't be in favor of the bill. However, other bills have been before us with which I disagreed and, upon analyzing the bill's provisions, I was able to offer clarifying language or even corrective language. I do not want to improve this bill. It falls into that giveaway category, but it's even

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worse than the others. And to establish that, I need to ask Senator Dierks a question, maybe two, no more than three.

SENATOR CUDABACK: Senator Dierks, would you respond?

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: Senator Dierks, the way this subsidy is being put together, how much actual money will come from the state for the full life expectancy of this bill, which I think is five years, is that correct, with the committee amendment?

SENATOR DIERKS: Seven years.

SENATOR CHAMBERS: Does the...I thought the committee amendment would drop it to five.

SENATOR DIERKS: No, the committee amendment changes it to seven. It was five, but the committee (inaudible).

SENATOR CHAMBERS: Oh, they make it even...okay, and that would be at \$5 million a year?

SENATOR DIERKS: That's at \$3 million a year.

SENATOR CHAMBERS: So it's \$21 million.

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: Thank you. And that would be the direct subsidy from the state, independent of these other excise taxes or checkoffs or whatever else might come into play.

SENATOR DIERKS: Yep.

SENATOR CHAMBERS: Okay. Now here...here's the other question. This bill does not require any investment in terms of a dollar amount in order to qualify for these credits, does it?

SENATOR DIERKS: I don't think so. I think that you have to get your credit from the Department of Revenue based on the ability

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of the EPIC Fund to provide the dollars.

SENATOR CHAMBERS: And that...and you qualify by producing a certain number of gallons of ethanol. Isn't that true?

SENATOR DIERKS: That's true, although I think that all these plants that are struggling to build have...have gotten their own fund raising effort to establish their plants.

SENATOR CHAMBERS: And the final question I want to ask of you, there also is no requirement in the bill that a certain number of new employees be retained, is there?

SENATOR DIERKS: Retained or employed?

SENATOR CHAMBERS: Employed, new employees.

SENATOR DIERKS: Not that I'm aware of.

SENATOR CHAMBERS: Well, since you brought up the other or suggested it, there is nothing that talks about current employees that have to be retained, is there?

SENATOR DIERKS: I don't think so.

SENATOR CHAMBERS: Thank you, Senator Dierks. The only thing we're looking at, from the way I read the bill, primarily is the ability of the plant to produce ethanol, but whatever the basis is it's a bad policy. There is nothing in the bill, as written, that would redound to the benefit of the state and the taxpayers. It takes money out of the treasury. Somebody has to put it back in. I'm going to repeat over and over and over ethanol cannot be a viable basis of a viable industry without subsidies. If you take away the subsidies, ethanol is a thing of the past. Contrary to what has been suggested by people who have not paid much attention to what is going on in the real world, ethanol will never replace this country's...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...reliance on fossil fuels, never. Ethanol

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will never make a substantial dent in the amount of oil imported by this country, never. Ethanol doesn't play that role and when people stand on this floor and say it, it just shows they don't know what they're talking about. They're talking fluff. They're expressing wishes and hopes, but not really that even. If you express a wish or a hope, you're acknowledging that the situation does not exist now the way you want it to exist. These senators are standing on the floor making positive assertions as to what ethanol production is going to do toward creating independence from foreign oil by this country. That is never going to happen. Mr. President, I'm going to have to ask for a call of the house.

SENATOR CUDABACK: Thank you, Senator Chambers. The motion is to call the house. All in favor of the house going under call vote aye, opposed nay. Record, please, Mr. Clerk.

CLERK: 21 ayes, 0 nays to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators please report to the Chamber. The house is under call. The house is under call. All unexcused senators please report to the Chamber. The house is under call. Senators, please check in. Senator Brown, Senator Robak, the house is under call. Please check in. Senator Chambers.

SENATOR CHAMBERS: Mr. President, could I ask that we proceed but not to a vote? I want to withdraw that motion.

SENATOR CUDABACK: The motion is withdrawn. I raise the call. Mr. Clerk.

CLERK: Mr. President, back to the committee amendments and Senator Dierks had pending AM1560 as an amendment to the committee amendments. (Legislative Journal page 1535.)

SENATOR CUDABACK: Back for discussion of AM1560 to the committee amendments to LB 536. Open for discussion. There are no lights on. Lights were taken off over the lunch hour. The first light on is Senator Chambers.

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SENATOR CHAMBERS: Mr. President, this is just to ask where...what are we on right now?

SENATOR CUDABACK: We're on AM1560, the Dierks amendment, to the committee amendments to LB 536.

SENATOR CHAMBERS: And I hope that won't count because I'm not going to speak right now. I just wanted to find out where we are.

SENATOR CUDABACK: That's where...I thought I stated that. That's where we are, on AM1560. Those wishing to speak to the amendment? Senator Chambers, your light is on.

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

SENATOR CUDABACK: Senator Dierks.

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: Senator Dierks, have you explained this amendment?

SENATOR DIERKS: I have.

SENATOR CHAMBERS: Would this be the third one that you had up there before you withdrew, or is this the second one that you had offered?

SENATOR DIERKS: This is the second one. I had AM1559 and AM1560. The first one we substituted with AM1559. So this is an amendment to the committee amendments.

SENATOR CHAMBERS: And that is the one we had talked about this morning.

SENATOR DIERKS: We have talked about it. It's...this...I call it the Sutherland amendment.

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SENATOR CHAMBERS: Okay, now that's what I need to ask you. In this amendment you leave the Sutherland plant in. Is that correct?

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: In your next amendment, do you take it out?

SENATOR DIERKS: No.

SENATOR CHAMBERS: So Sutherland is supposed to stay in throughout.

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: Suppose...what would it take to get you to eliminate the Sutherland plant?

SENATOR DIERKS: I don't think you can convince me that I should do that. I don't want to do...I won't do that.

SENATOR CHAMBERS: Okay, that's what I needed to hear.

SENATOR DIERKS: This...this was part of the planning process from day one, Senator Chambers, and I can't take it out.

SENATOR CHAMBERS: On these taxes and checkoffs, everybody who's going to be affected by those has come to an agreement, is that true, and there is universal support for the bill now? None of the commodity groups oppose the bill?

SENATOR DIERKS: Senator Chambers, what are you asking me?

SENATOR CHAMBERS: There were people who were concerned about that gluten feed tax.

SENATOR DIERKS: Yep.

SENATOR CHAMBERS: They're no longer concerned about that, is that true?

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SENATOR DIERKS: Oh, I think they are.

SENATOR CHAMBERS: Oh, so that opposition still exists, but you're leaving that tax in place.

SENATOR DIERKS: Exactly right.

SENATOR CHAMBERS: Okay. Now which commodity group would be involved with a checkoff?

SENATOR DIERKS: The corn growers.

SENATOR CHAMBERS: And do they agree with that checkoff?

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: And it has been reduced from three-quarters of a cent to a half cent?

SENATOR DIERKS: That's right.

SENATOR CHAMBERS: Would they support three-quarters of a cent?

SENATOR DIERKS: Well, they would have, but that was when we were looking at \$7 million out of the General Fund. When we reduced that...in order to keep the thing close to 50/50, why, we had to bring it down to half a cent.

SENATOR CHAMBERS: Senator Dierks, why cannot those who are going to reap the most benefit be the ones to fund this? That's my ultimate question. But here is a preliminary question. How big a checkoff would be necessary to raise the amount of money that this bill envisions spending?

SENATOR DIERKS: This bill envisions spending about \$70 million.

SENATOR CHAMBERS: Not in one year.

SENATOR DIERKS: In seven years.

SENATOR CHAMBERS: Now...so \$10 million a year, is that what

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they want, the total?

SENATOR DIERKS: Well, that figures out about right.

SENATOR CHAMBERS: And the state is being asked to put \$5 million in?

SENATOR DIERKS: Three.

SENATOR CHAMBERS: Three. And...

SENATOR DIERKS: Well, \$3 million in General Funds, that's what you asked before.

SENATOR CHAMBERS: The General Fund would put in \$3. And these commodity groups are going to come up with \$7 million to reach the \$10?

SENATOR DIERKS: The...part of it is coming from interest that's accumulated on the EPIC Fund as it grows. Part of it is accumulated by the tax on distillers grain. Part of it is some carryover from the old LB 60...what is it, LB 609 or LB 605 bill. I think there's \$9 million in there yet.

SENATOR CHAMBERS: So there will be money taken out of that \$9 million.

SENATOR DIERKS: I'm sorry, it's \$7...it's...I believe it's \$7 million.

SENATOR CHAMBERS: Seven million. Money will be taken out of that \$7 million to help bring this total up to \$10 million per year.

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: No more, though, than \$3 million of it will be state money.

SENATOR DIERKS: That's right.

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SENATOR CUDABACK: One minute.

SENATOR DIERKS: Three million of it will be state General Fund dollars.

SENATOR CUDABACK: And what other state sources will there be providing money for this?

SENATOR DIERKS: I'm not sure...that...some of it comes from that \$7 million we're talking about in the EPIC Fund.

SENATOR CHAMBERS: Okay.

SENATOR DIERKS: Some of it will come from interest that the EPIC Fund is going to attract after it's in place.

SENATOR CHAMBERS: Thank you, Senator Dierks. Mr. President, how many times have I spoken on this?

SENATOR CUDABACK: Once, Senator.

SENATOR CHAMBERS: Oh, thank you.

SENATOR CUDABACK: Your light is still on. If you wish to speak you can again.

SENATOR CHAMBERS: Yes, I do. What I want to do now is not just ask questions, but talk more about the policy that we are being asked to put in place. First of all, I need to ask Senator Wehrbein, I need to...Senator Wehrbein, I would like to ask you a question.

SENATOR CUDABACK: Senator Wehrbein, do you yield to a question?

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Senator Wehrbein, does this \$3 million appear anywhere in the budget?

SENATOR WEHRBEIN: No, it does not.

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SENATOR CHAMBERS: Well, will there be an A bill accompanying this bill?

SENATOR WEHRBEIN: Yes, there should be.

SENATOR CHAMBERS: Do you think...

SENATOR WEHRBEIN: This will...

SENATOR CHAMBERS: Oh, excuse me.

SENATOR WEHRBEIN: ...this will...this will be part of the...the A bill allocation at this point is \$21 million.

SENATOR CHAMBERS: So if this bill is enacted then that would leave \$18 million for everything else.

SENATOR WEHRBEIN: Well, and \$21 is over the 2 years, so it would actually be 3 times 2, is \$6 million off of \$21, so it would be \$15.

SENATOR CHAMBERS: Fifteen million. Oh, so that \$21 million is for the two years.

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Not each. Oh. Thank you, Senator Wehrbein. This is even worse than I had thought. You're going to take \$6 million from \$21 million. Think of all those other bills that you all have that you have A bills on. Does it mean so much to you to bail out these investors, and that's what you're doing, that you will take \$6 out of \$21 million over the next two years to fund this boondoggle, which is going to continue to be a boondoggle and will continue to need infusions of cash from the General Fund of the state? And where do we get that money from? The taxpayers. The taxpayers are being asked to fund this boondoggle, and I think it is not a good policy. When Senator...I don't remember his name, very easy, but I have short-term memory loss. When Senator Bruning continues to talk...Senator Redfield looked at me and almost made me forget what I was going to say, but when he says I should not say I'm

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the defender of the downtrodden but rather the defender of big oil, and I was going to touch on that this morning, the ones I'm concerned about and Senator Bruning ought to be concerned about are the taxpayers. He could not justify in his district spending \$6 million out of \$21 million available for other bills on this. I need to ask Senator Wehrbein another question, if he will yield.

SENATOR CUDABACK: Senator Wehrbein, would you respond?

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Senator Wehrbein, is that \$21 million available at this time based on the revenue projections, the most recent revenue projections that we have?

SENATOR WEHRBEIN: Yes, it is subject to the recommendations of the Appropriations Committee, an action that we took Friday afternoon that I filed as an amendment this morning with some actions through the Cash Reserve Fund, yes.

SENATOR CHAMBERS: Is it possible that if the economy weakened even more that there could be a change next year in the money we'll have available for A bills?

SENATOR WEHRBEIN: Well, anything is possible, Senator Chambers. It's very difficult to look...look ahead, especially three and four years out. We feel fairly comfortable at this point with our next two year's projections.

SENATOR CHAMBERS: Thank you, Senator Wehrbein. Members of the Legislature, at the beginning of the session, it was thought that more money would be available than turns out to be. That was a shorter period of time from today than the time period from today until next session.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I don't think it's wise to obligate the state to set this money aside. Remember, these plants are not creating employment as a precondition. They are not required to

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invest anything, from what I read in the bill, in terms of a dollar amount. It's strictly a free boondoggle. Don't talk about Senator Byrd and call him the king of pork from West Virginia, or Virginia, wherever he comes from. (Laugh) "Pandora" is messing with me. This is a bill which I think, in the interest of shielding the taxpayers, should not be enacted. If these plants cannot make it, why should they be guaranteed this kind of money? I was very upset with Senator Wehrbein's milk compact bill because of the impact on the...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...public, who would be the consumers.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Schrock, on AM1560 to the committee amendments to LB 536. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, Senator Chambers, I'm a little more optimistic than you are. My crystal ball tells me that is we build more ethanol plants there's going to be made...more profit made in the agricultural sector, and that will help the General Fund of...and so we'll have more money for the Appropriations Committee to give out in the future. So I think we have a bright future in ethanol in this state. I know Congressman Osborne thinks we should triple ethanol production in this state, and the demand in California will be such I think we need to do that. So I don't share your doom and gloom. I think we have a very positive industry here and certainly if we...I don't know what people are going to burn in their automobiles when oil gets shorter, but ethanol certainly is a good alternative. I'll give the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Schrock. Open for discussion on...Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Schrock is not paying attention. Senator Schrock, put on your thinking cap and listen and think. First of all, ethanol is not generating a profit now. Ethanol needs a

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subsidy. You didn't even read my rhyme, because I articulated the philosophy that you have--a product which is not selling now will sell better if you make more of it. The more you make of a product that won't sell the greater your profit. I begin to understand why farmers can't make it now. They got things topsy-turvy and don't understand the realities of life. What they should do is go to one of these preschools where they teach kids how to count pennies. The only pennies that you have in your bank, children, are the pennies that you put in there. If you put two pennies in your bank, you only have two pennies. That's all. If you don't put any money in your piggy bank you don't have any pennies. Teacher, I want to ask a question. All right, what's your question? If everybody else in the room puts two pennies in their piggy bank and I don't put two pennies in my piggy bank, will my piggy bank then have two pennies in it? You haven't been paying attention. The only pennies in your bank will be those you put in. Now, here comes Senator Schrock, who is, at least in terms of his chronological age, beyond the age of adolescence. He says that these plants that are not making money, these plants, some of which have gone into bankruptcy, these plants which cannot even sell what they're making now even with the assistance of trying to manufacture an artificial demand by compelling retailers to sell it, all of this which shows that you're dealing with an enterprise, a product, which cannot make money. Knowing all that, he tells us, well, if you build two more plants and you subsidize them, you're going to start making more money for the state, there will be more money in taxes. Let me ask Senator...I'll ask Senator Wehrbein this question, because I think he may have the answer. I genuinely don't.

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

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: Senator Wehrbein, there's an outfit in Hastings identified by the letters AGP.

SENATOR WEHRBEIN: Yes.

SENATOR CHAMBERS: They don't pay any property tax based on

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other considerations they get under various statutes, is that true?

SENATOR WEHRBEIN: Well, I really wouldn't know. You mean if...

SENATOR CHAMBERS: Oh.

SENATOR WEHRBEIN: ...they took LB 775 or something like that? I don't...I really don't know the individual case of...

SENATOR CHAMBERS: Oh.

SENATOR WEHRBEIN: ...AGP.

SENATOR CHAMBERS: Okay. Thank you. I'd like to ask Senator Baker a question.

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

SENATOR BAKER: Yes, I would.

SENATOR CHAMBERS: Senator Baker, do these firms that are listed on this revised sheet that we had handed to us by Senator Dierks pay property taxes where they're located?

SENATOR BAKER: I would assume they do, yes.

SENATOR CHAMBERS: Do you know that they do?

SENATOR BAKER: Not for a fact, but I...I can't see how they'd be exempt.

SENATOR CHAMBERS: Are there various bills that give tax breaks that could affect their property tax liability, do you know?

SENATOR BAKER: I...I suppose there could be, yes.

SENATOR CHAMBERS: I'm really not sure. That's why I was asking. Thank you. That's all that I will ask you. I'm sure that these amendments are going to be adopted. I'm sure the

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Legislature would like to enact this bill into law.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: The rest of you, as you begin to try to make your case to the rest of us for A bills, think about what you're doing today and think about the amount of money that's going into this boondoggle. It's not going to generate money. It's going to always have to be subsidized. In the same way that production agriculture was ruined through federal subsidies from which it cannot wean itself to this day, such was the case with ethanol from the beginning and such will always be the case.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) Senator Dierks, there are no further lights on. Did you wish to close on your amendment, AM1560, to committee amendments to LB 536?

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, yes, I...again, I appreciate the debate this afternoon. I think that we've covered a lot of ground and talked about a lot of things. I think we continue to try to answer your questions, those people that have difficulties with it. I would like to indicate for the record that at this point we've invested \$168 million, Senator Chambers, in these ethanol funds from the state, and the people that own the plants have already invested \$1.1 billion in expansion and in building their plants. So it isn't all...and they are profitable. From what I get, the...every plant is profitable. They are making profits. They are buying corn. They're paying their bills and they are profitable. With that, I'd like to ask your support in amending the committee amendments. Thank you.

SENATOR CUDABACK: Thank you, Senator Dierks. The question before the body is, shall AM1560 be adopted to the committee amendments to LB 536? All in favor of that motion vote aye, and opposed nay. We're voting on the Dierks amendment, AM1560, to the committee amendments to LB 536. Have you all voted who care to? Have you all voted? Have you all voted who care to? Senator Dierks. I'm...record, please, Mr. Clerk.

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CLERK: 25 ayes, 1 nay, Mr. President, on the adoption of the amendment to the committee amendments.

SENATOR CUDABACK: The amendment is adopted. Mr. Clerk, items for the record?

CLERK: Mr. President, amendments to be printed: Senator Suttle, to LB 468; Senator Chambers, LB 242 and LB 641. (Legislative Journal pages 1619-1620.)

Mr. President, Senator Bruning would move to amend the committee amendments with AM1553. (Legislative Journal page 1535.)

SENATOR CUDABACK: Senator Bruning, to open on your AM1553 to the committee amendments to LB 536.

SENATOR BRUNING: Mr. President, members of the Legislature, what AM1553 does is pretty simple. We have clearly, as the discussion has indicated here today, a General Fund problem as far as additional monies that we can spend on worthy projects, such as LB 536. What this particular amendment does is it takes 20 percent of a fund that some of you are going to be very familiar with, some are not, called the LUST Fund, Leaky Underground Storage Tank Fund. It...that money is collected from nine-tenths of...nine-tenths of a cent per gallon tax on gasoline, three-tenths of a cent per gallon on diesel, every time you fill up, every time I fill up here in this state. And initially, this LUST Fund has generated...well at least last year the LUST Fund generated about...looks like \$10.7 million, roughly. And so what this particular amendment does is it takes 20 percent of those collection in the LUST Fund, roughly \$2 million plus a year, and moves it over here into the EPIC Fund, which is of course the ethanol credit that we're talking about today. The other thing that this amendment does is it strikes the gluten tax and distillers grain tax that we've been talking about today. And I know there is some...there is a great deal of opposition to that here in the body. So when you net this out, the distillers grain tax is roughly \$700,000 a year, with the amendment we adopted from Senator Dierks, it may be closer to \$900,000 a year. My amendment will take that out. What it also does then, of course, is it brings in \$2 million

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plus from the LUST Fund. And based on last year's figures, \$10.6 million, 20 percent of that is going to be roughly \$2,100,000. So it would be a net gain to the bill of about \$1.2 million, based on a \$900,000 gluten tax figure. And that \$1.2 million would reduce our reliance on General Funds. And that's what I'm trying to do. I want to find a way to pass this bill. I think ethanol and support of ethanol by the Legislature and by the people in Nebraska is critical. I'm trying to find...I...I am scrapping and scraping for any money in our budget, any money that we can find to make this doable. And I know that for some people the gluten tax is a hurdle, for others the General Fund appropriation is a hurdle that's very difficult for them to make. And so that's why I've offered this amendment. Now let me get a little bit into the arguments as to why we should use the LUST Fund and what that's about. Essentially, if you go back in time here, this thing was introduced by Senator Loran Schmit. And the idea...this was 1989, the idea is to clean up leaking underground storage tanks. Those of us on the Natural Resources Committee are very familiar with it, other in the body may not be so much if you haven't spent time. But these leaking underground storage tanks, of course, are a threat to drinking water. And they do need to be cleaned up, and I'm not proposing here that we eliminate the fund by any stretch. It started out pretty small, it started out with one-tenth of a gallon...one-tenth of a cent per gallon on diesel, and three-tenths of a cent on gasoline, and that was in 1989 when the Legislature passed the bill. And then that has crept up. In 1992, the \$3 million generated by the original bill wasn't enough, Legislature increased the tax to 2 cents on diesel, six-tenths on gasoline, effectively doubled the fund, it was 6 million bucks a year that it was generating in 1992. By 1998, it was increased again to three-tenths on diesel, nine-tenths on gasoline, now generating the current figure of \$11 million a year. What that's done is over time, if you look at how much money we've spent here, total reimbursement since 1989, the LUST Fund has reimbursed the cost of cleanups for these leaking underground storage tanks to the tune of almost \$50 million. So the people of Nebraska have determined, we as their representatives have determined that it's important to clean up these leaking underground storage tanks. And again, I agree; I'm not proposing we stop that at all. So we've spent

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\$50 million of taxpayers money since 1989 to do this. The estimated liability for future sites is \$270 million, so there's still a need there. Again there will be money there. What this amendment does is simply take 20 percent of that and move it into what I believe is also critical to the people of Nebraska, important to the people of Nebraska, and that's incentive to ethanol and the production of ethanol through \$2 million or 20 percent of this fund. So I know there's going to be some controversy and there will probably be an argument that this...what this will do is stop the cleanup. I disagree; there's still going to be \$8 million or more available for the cleanup, which was good enough in 1997. So that will still be available. And it does take out the gluten tax. And I guess a word on that and why I included that in the amendment. Basically, I'm not comfortable with the policy of "incenting" on one end and taxing on the other. As this grain moves through the process, we're "incenting" the ethanol producers with the incentive money, like LB 536, with the corn checkoff money. We're "incenting" ethanol, we're subsidizing ethanol, there's no question about it. Then to tax the by-product of ethanol on the back end, to me, is not necessarily something we need to do, it doesn't make sense. If we're going to tax the by-product, instead of doing that let's reduce the incentives slightly and just avoid the...all the paperwork shuffling that's going on in the middle. It's...it's the old adage, robbing Peter to pay Paul, that's essentially what we're doing here. So with that, I'd be happy to talk about my reasoning for the amendment in further detail, if the members wish. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bruning. You've heard the opening on AM1553 offered by Senator Bruning to the committee amendments to LB 536. Open for discussion. Senators wishing to speak to the amendment Senator Dierks, followed by Senator Schrock, Chambers, and Raikes. Senator Dierks.

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, I appreciate the effort that Senator Bruning is making. I understand where he's coming from. I wish I could support the amendment. I can't do that. One of the arguments that he makes is that we are "incenting" on the front end, yet, taxing on the back end. The...we are "incenting" the ethanol

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plant producers on the front end, but we aren't taxing them on the back end. The tax is actually paid by the livestock feeder. Although it appears, I know, to some that it's a tax on the...on the processor, the tax really is going to be paid by the producer. I don't think there's any question about that. If I go to buy gluten feed or steep to spray to my cows...on my cows' hay, I'm going to pay the tax because they're going to charge me for that. They're not going to eat that tax. I know corporate America too well. So we're not going to...we may be "incenting" on the front side, but we're not taxing on the back side. I just am sorry that we have to go through this procedure but I don't...I can't...I can't accept the amendment. I think that you've heard me talk before this morning and then this afternoon again about the use of the...of the tax on the gluten feed and the distillers grain, and I...we've kind of...we've decided this is the way we have to go to make things equal as far as the whole formula is concerned, and I'm going to have to stick with that. So I oppose this amendment and I would hope that you would also.

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

SENATOR SCHROCK: Mr. President, members of the Legislature, I passed out a handout that I thought might be helpful to the members of the Legislature. I am neither going to oppose or support this amendment. My heart maybe belongs a little bit with Senator Bruning here. My good judgment says I should probably go with Senator Dierks, for what's that worth. But when it comes to subsidies and support, the motoring public has certainly subsidized the cleaning up of these underground storage tank sites and you see that we have spent \$48 million on that at this time and there's \$271 million to go. That's a lot of money. Certainly this program was started before I was involved in the Natural Resources Committee, before I was even in the Legislature. I would tell you at this time, though, that the money has been concentrated on the sites that have been the most onerous and the sites that have the most potential to pollute, especially as it concerns our groundwater. The interesting thing is, if we'd have had ethanol in all these tanks instead of straight gasoline and MTBE I don't think our

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pollution problem would be as great as it is. I think it's good to take a look at this. Senator Bruning and I did sit down with three officials from the Department of Environmental Quality. Some of the contaminants in this underground...in this soil that's being contaminated, some of that will eventually biodegrade and go away, but there are ingredients in gasoline that will be there forever if we don't do...if we don't clean them up. Now, if you're sitting on a clay liner and you're 200 foot from water, it may never be a problem. But I think, considering what we know now, I don't know if \$10 million a year is enough to spend. Certainly some states have spent more and some have not done as well as other states have. But keep in mind when you buy that gallon of gasoline at the station it's nine-tenths of a cent a gallon to go to cleaning up leaking underground storage tanks for the petroleum industry, because tanks were used that leaked. I think the good thing about it is now that we don't tolerate that anymore. That isn't happening now. For the most part, everything is inspected, everything is new tanks, everything is up-to-date, but we are paying a heavy price for tanks that leaked in the past. Senator Bruning, if nothing else, you've brought the attention of this to this legislative body. I do appreciate that. If you have any questions I'd be glad to try than (sic) answer them. With that, I'll give the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Chambers, on the Bruning amendment, followed by Senators Raikes, Baker, Tyson, and Bruning.

SENATOR CHAMBERS: Mr. President, members of the Legislature, could I begin my talk by using the time that Senator Schrock gave to you?

SENATOR CUDABACK: I'm sorry.

SENATOR CHAMBERS: Oh, all right, be tightfisted and skinflint, if you choose. Members of the Legislature, I think Senator Bruning has an idea that will help torpedo this bill, so I'm going to support his idea. I knew it wasn't going to go anywhere when I saw it on the little gadget, because Senator Bruning is not one of those who's in with the in-crowd, so you

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know that the big shots who are pushing this bill are not going to ask him to offer the amendment so he's got to find a way to inject himself into the discussion. To show that I appreciate his innovativeness, such as it is, I'm going to support his amendment, for whatever value it may have, and we should add it to this bill, for whatever good it may do. Now, Senator Schrock has talked about the subsidy that the state...I meant that people who buy gasoline and these other fuels are providing to clean up the leaks from these tanks. I'd like to ask Senator Schrock a question.

SENATOR CUDABACK: Senator Schrock, will you yield?

SENATOR SCHROCK: I will.

SENATOR CHAMBERS: Senator Schrock, could the state have imposed that burden on the petroleum industry or those who either manage stations or those who own the whole operation and let these stations be leased or franchised by others?

SENATOR SCHROCK: Senator Chambers, the state could have backed away from this, but the question was, would a lot of the gas stations remained open. Certainly the liability for this is large and the insurance is not available in a lot of cases for these petroleum sites. Certainly Senator Bromm or Senator Beutler, who's no here, can probably answer some of these questions better than I could because they were more in on the ground level of this. But, as I understand of it, we are doing this to create a pool of money to clean up underground contamination and also to protect the petroleum marketers in this state who have sites that have not been cleaned up from the damaging liability it could have on their retail business.

SENATOR CHAMBERS: All right. Thank you, Senator Schrock. I'd like to ask the introducer of this amendment, Senator Bruning, a question.

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

SENATOR BRUNING: Yes, I will.

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SENATOR CHAMBERS: Senator Bruning, when you were presenting this amendment, you said that if your amendment were adopted it would result in a wash, in effect; that tax on the gluten could be taken off and this money would replace what would have been raised by that tax. Is that what you said, basically?

SENATOR BRUNING: It will do that, Senator, and it will add \$1.2 million to the EPIC Fund, which will reduce the General Fund need.

SENATOR CHAMBERS: And that would be a contribution of epic proportions, considering what we're dealing with. Would you agree?

SENATOR BRUNING: Well said.

SENATOR CHAMBERS: Thank you, Senator Bruning. I am going to support his amendment and he'll have the opportunity to get one of those votes on an amendment that I often get, except he won't be alone. I think when a person ventures into new territory, he or she is entitled to have some company. And those who are experienced in dealing with the slings and arrows of an unkind fate ought to be willing to introduce the tyros into this new dangerous area of offering amendments to bills of this kind. I would like to ask another question of Senator Dierks, if I may.

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

SENATOR CHAMBERS: Senator Dierks, this is with reference to the amendment you offered. We adopted your second and your third amendment, is that correct? First of all, how many amendments did you offer altogether to the committee amendments?

SENATOR DIERKS: Two.

SENATOR CHAMBERS: And we...you withdrew the first one that was up there, and then we adopted the next two of yours.

SENATOR DIERKS: That's right.

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SENATOR CHAMBERS: Okay. Thank you. I need to keep that in mind because when I offer amendments...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: They will have to be redrafted to Senator Dierks' amendments, because his changed the portion of the committee amendments that I was going to go into. So, rather than try to jockey around and see if they may still be valid, I'm going to probably have to withdraw them and then head into Senator Dierks' amendments. Because, as a part of the committee amendment, they can now be amended. I couldn't offer it before, any amendment, because his was an amendment at that time. I wonder if the reason for rejecting Senator Bruning's amendment is more political than practical, and that's a question I would like to put to Senator Schrock. Senator Schrock, is the rejection that you recommend of Senator Bruning's amendment based more on political considerations or...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...practical considerations? Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Raikes, followed by five others. Senator Raikes.

SENATOR RAIKES: Thank you, Mr. President. Members, I oppose Senator Bruning's amendment and let me explain a little bit why. One of the biggest groups of beneficiaries of the ethanol industry in the state, in my opinion, has been livestock producers and, in particular, cattle feeders. I am one of which...I buy both gluten feed that comes from a wet milling plant, and I also buy distillers grains, which comes from a dry grind plant, the kind which is proposed to be subsidized with the money in this bill. Under Senator Bruning's amendment, as I understand it, my next-door neighbor, who as far as I know doesn't produce any...feed any cattle, he's in Lincoln here, would not pay anything, or, excuse me, would pay...would pay a tax. In effect, their contributions to the...to the General

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Fund revenues of the state would be a part of the contribution to the ethanol plant. I, on the other hand, as a cattle feeder, to the extent I feed my own corn, would not pay any tax on the corn and also I wouldn't pay any tax on the gluten feed that I feed and that I am the beneficiary of. I guess what I'm telling you is that I think I would be and am a beneficiary of the ethanol industry in the state and I should pay the tax. I should help support that. My basic premise is that this is an industry that does not support itself, as evidenced by the fact that we're going to subsidize it. So, if it doesn't support itself, then we ought to try, as best we can, to assign the costs of that industry to those who benefit from it. I am one of the beneficiaries, as a user of gluten feed; therefore, I should help pay the cost and I should be taxed. Now, the rest of his proposal has to do with transferring LUST Funds. I know very little about that, but it looks to me on the sheet handed out that there are a number of those projects that have been backlogged that are not funded. Certainly to take money away from that fund to pay for ethanol subsidies doesn't seem to me to be a wise state policy. So I guess for both of those reasons I oppose this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Baker, on the Bruning amendment, AM1553.

SENATOR BAKER: Thank you, Senator Cudaback. Members, I also stand in opposition to the Bruning amendment. This LUST Fund, these proceeds from the LUST Fund actually don't have much of an effect on current retailers. These are clean-up sites from...the ones I'm familiar with in my district are sixties, seventies fuel stations. They're long since closed. There's no buildings there; there's an old tank or two. The city, out in our case, I think there's two cities in my area that are subject to this; they're trying to get cleaned up. Old tanks around a light plant in one case and another old station that the city now owns and so on, et cetera, where they had tanks. There's such a backlog. This print...this handout of Senator Schrock's here pretty well says it all. There's 2,310 backlogged known leaking tank sites. There's only, like, 1,800 retailers in the state and obviously those people aren't operating with old tanks that are leaking now. That's all in the past. That's history.

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These are, in a lot of cases, publicly owned sites that have no bearing on a retailer whatsoever, and I think it would be a big mistake to take the money. Obviously, we're short of money, this kind of a backlog, to take any money away from the LUST Fund and direct it to the EPIC Fund. It may sound great, but the practical matter of it is, is it's going against obviously a policy established years ago that seems to be working. And these are inactive sites. As Senator Schrock said, there's nobody out there now operating with a leaking tank. It's these things need to be cleaned up though and over a period of time they will be. As far as being an MTBE state, Nebraska is not under clean air standards at all and actually I think about the only MTBE that's been found in the state was a result of pipeliners not having things flushed and so on, et cetera. There's some MTBE traces and whatnot around the state, and there is some obviously in...some groundwater in those cases. But we're not mandated to use...you know, we're not a clean air state. This nine-tenths of a cent a gallon on no-lead and three-tenths on diesel is going for what it was intended and I...I think to make a major policy change here in the middle of a bill here with an amendment would be absolutely wrong and I will oppose the amendment and hope that the majority of us do. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Tyson, followed by Senators Bruning, Jones, Wehrbein, Dierks, and Chambers, and Stuhr. Senator Tyson, on the Bruning amendment, AM1553.

SENATOR TYSON: Thank you, Senator Cudaback. Members of the body, I rise in opposition to AM1553 and, just as an aside, I almost wish that it would be successful. I forget, I think it was Cato "the Censor" that said, "Timeo Danaos et dona ferentes", and that's my advice to Senator Bruning. In this case, the "Danaos" would be Senator Chambers. We have a LUST Fund, and I wasn't aware that we had a LUST Fund. I could have plumbed it for other benefits. But if we have a fund established for a purpose, we have, in effect, made a bargain with those who paid the tax, which are the motorists who purchased petroleum in the state of Nebraska. Now, I look upon that tax as a subsidy to the petroleum operators who didn't take

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care of their tanks, but that is a recent view because 15 or 20 years ago, 30 years ago, people weren't interested in that and they had single skin tanks, one thing and the other. My area has two serious pollution problems and they're not capable of being air stripped or treated in that fashion, and they're moving. We need that fund and we will need that fund for many years to come. I don't think once we establish something like that, that we should then pervert its purpose, as it were, and for this reason only I will vote against the Bruning amendment and I urge everyone else to do the same. Thank you.

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Thank you, Senator Tyson. On the Bruning amendment, Senator Bruning.

SENATOR BRUNING: Mr. President, members of the Legislature, appreciate Senator Tyson's Latin and his portrayal of Senator Chambers as a Greek, although I would question whether that is indeed Senator Chambers' heritage. I'm sure he would not claim Greece as the father land. I rise in support of the amendment, of course. And I think most of the arguments here...you know, I respect Senator Dierks immensely and Senator Schrock and their arguments against it and Senator...I mean, all the arguments against it. But I would say if you would go back in time here, I mean these are men of their word. And the reason they're in opposition to the amendment may not be so much the design of the amendment as they've given their word as to how the bill will look to get it out of committee. We all do that. And these people are men of their word, they've agreed to stick to a certain plan with regard to this bill. And I'll be with the two, if this amendment fails. It will not change my support of this amendment. But I think as you decide how to cast your vote on this amendment, think about the fact that Senator Dierks and Senator Schrock, who are very knowledgeable about ethanol and about the LUST Fund, are rising in opposition to this maybe not so much because of the details of it as the commitments they've made over time. The other thing I'd tell you about the LUST Fund there are right now 3,752 known sites. And you can see this from Senator Schrock's handout. And incidentally, I do want to say that David Chambers and the other folks over at DEQ

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that handle the LUST Fund do so efficiently, do so with a high degree of excellence, and I have no complaints over how they cleanup these sites, their speed, their efficiency or how they spend the money. I have nothing but praise for them. But as you look at these sites there are 2,310 that are backlogged. And I asked Mr. Chambers about this, and this is David Chambers, not Senator Chambers, David Chambers at DEQ. And he said, basically, his guess is that roughly six out of seven of those are going to need a Tier I investigation, that means an initial investigation. And if...if history is a judge, roughly one out of seven of those will be okayed immediately. And after the Tier I investigation, roughly one out of two of those can be closed immediately for investigation. So you look at this huge backlog but a significant numbers of these...significant number of these are going to fall off the list as soon as they're looked at because they're not a big problem. Either like Senator Schrock mentioned, maybe they're on clay and so there's no chance of leakage, or a number of reasons, maybe the leakage has been very slight and there is not a problem. When we decide how to spend the taxpayers money, we're making decisions for the people of the state as to what is the most important purpose for that tax money. And I'm arguing here that the cleanup is still important; there's still going to be \$8 million a year, which is more than we did in 1997. Remember, just in 1998 we bumped this tax from six-tenths of a cent per gallon on gasoline, three...two-tenths on diesel, we bumped that 50 percent, from six-tenths to nine-tenths on regular gas, and from two-tenths to three-tenths on diesel, we just did that in '98; decided evidently we needed to have some more money in this fund. So this is not set in stone. Senator Tyson said we're perverting the...the point of it, I don't believe so. There's still \$8 million more than we had in '97, \$8 million per year for these cleanups. Is that enough? In my mind that's going to be enough. We can...we can redirect \$2 million for another compelling purpose that the people of Nebraska are asking us to support and that's ethanol--thousands of jobs, clean environment and all the reasons we've talked about. The other thing I'd urge you to consider as you think about voting on this, if you support ethanol and you support this concept, it's easy to forget about the fact that the day is coming...

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PRESIDENT MAURSTAD: One minute.

SENATOR BRUNING: ...when the money is not going to be there. As soon as we take through the mainline appropriation bill, there is going to be virtually zero dollars available. This relieves that problem a great deal; takes off the gluten tax, and that will be a wash with \$700,000 to \$900,000 worth. But by any figure there's going to be an additional \$1.2 million annually, brought by this amendment, into the EPIC Fund that reduces our need for General Fund dollars. Anything that can reduce the need for General Fund dollars, I think, is important. There's another way we can do it that we may end up doing on Select File, we can just reduce the size of it, and I hope we don't have to bargain that away. I'm sure Senator Dierks is fearing that that may happen and I am too, with a program this important. So I hope you'll consider the General Fund impact of this amendment is positive for the EPIC Fund and for this bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bruning. Senator Jones, on the Bruning amendment.

SENATOR JONES: Mr. President, members of the body, I haven't got a chance to talk on this bill yet, but I'd like to mention that I am strongly supporting the bill itself, LB 536, because I think it's the right way to go if we're going to deal with the ethanol issue, and I think we need to have in more plants because I do think there's going to be a market for it, and especially could be in California. But specifically on this here amendment I wanted to talk just a little bit about it. I just...Senator Bromm is not here right now, but he's got the LUST Fund bill this year and what it does, extends it for four years. Right now, this is going to run out in July this year and this bill has not been passed yet, I think it's on Final Reading right now, that extends it four years. Otherwise, it's going to run out in...in July and they're going to have to figure out how they can get it...because I think the money is still going to be collected but they won't be able to draw on it to...for the cleanups. DEQ probably won't be able to draw money on it for the cleanups if we don't pass that bill on through. And I guess I would have one question for Bruning on this issue.

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Let's see if he could answer it for me. Thank you.

PRESIDENT MAURSTAD: Senator Bruning.

SENATOR BRUNING: Yes.

SENATOR JONES: Yeah, Senator Bruning, you realize that we haven't got the bill passed yet to get the extension on it, that it's on Final Reading.

SENATOR BRUNING: Yes.

SENATOR JONES: And how will this affect the feds on this issue? How will that come in the picture? Do they...if we start to pulling some off of it, now what do you think is going to happen there?

SENATOR BRUNING: Well, I'm not certain of the impact there, Senator. I mean, we'll still have \$8 million a year for cleanup, which is very substantial, more than we had even three or four years ago. So I think there's still enough in the LUST Fund to continue the clean-up efforts. It will slow them down 20 percent, but that's it.

SENATOR JONES: Well, I was just concerned whether that would even be right to do that; what they would say about it, I guess that's my concern, if we start pulling some off and all of a sudden we need to have extra money for the cleanup because of a big problem or something. I guess that's my concern.

SENATOR BRUNING: Well, I don't anticipate, Senator, that there's going to be...you know, these...the folks, David Chambers and others over at DEQ have managed to keep this under control and certainly they're putting out the hottest fires first, but...and there is a large backlog, but they've been working through that efficiently and I...I expect they'll continue to do so with \$8 million annually, as they do with \$10.5 million annually.

SENATOR JONES: Thank you. I...I'm still having problems whether I want to support this or not. It...the gluten tax has

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always kind of bothered me on that and charge that extra tax, but I figured on supporting the bill even with that on it if I needed to. But this...this might be the route to go, but I...I'm just concerned that I...about it right now because of the consequences might be and especially if we don't get this other bill moved on through on Final Reading, get it signed by the Governor. Because they really need this extension bad because if they can't draw on that money and it's still collected, well, I think it's something we need to do and keep in force. So I'm strongly supporting that bill. It come out of Natural Resources Committee and so I'm going to vote against this amendment because I think this a wrong step to do this right now. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Jones. Senator Wehrbein, on the Bruning amendment.

SENATOR WEHRBEIN: Thank you, Mr. President. Members of the body, I'm doing everything I can to try to continue to support this bill and I...I appreciate Senator Bruning's effort to try to do this. I believe it's a mistake to take it out of the LUST Fund and I wish Senator Bromm was here to probably defend that a little more vigorously because I remember a few years ago I was on the task force that tried to get at that issue and we have...it's a very serious backlog on that and it has to do with groundwater contamination, some other things. So I...I think it will be a mistake to do that. Still, I appreciate Senator Bruning's effort to try to do something because I want to try to do something to, to draw down the General Fund some more, realizing that tomorrow we're going to be extensively into this debate of how much is left for A bills in the state of our budget. I think positively though that the ethanol industry has been very, very, very good for Nebraska. It's led to large investments by many companies across the state. It's spread out across the state. Ethanol is being used in many areas but probably, and more important, it's...it's broadened the base that many of these companies are...are producing from (inaudible) with the corn. I know that monosodium glutamate is produced at Blair, high-fructose syrup is produced. We've got several others that I can't recall at this time and I think Senator Janssen was going to look into some of that. In other

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words, we've got a lot of peripheral industries that have started here from this corn market and that investment would not have been here, particularly at Blair, if it hadn't a been for the initial investment for ethanol. It seems to me that worldwide, globally, we ought to be more energy deficient...efficient and be producing more of our own fuel, whatever it may be. So, contrary to some of the things I've heard on the floor about we ought not to be...or at least it implies that we ought not to be energy independent, I thought to try to do something about that. This is one way to do it, and I think there's going to be other ways to produce ethanol in the future that may be over...more cost effective. But right now, the figures that I have, we gain 24 percent on energy BTUs, a bushel of corn BTU versus what we gain at 124 percent using latest technology, I'll acknowledge, whether it's ethanol production, fertilizer production, or whatever, but it is energy efficient at this point. And I see no reason why we should be dependent upon global circumstances many times to find out so that we then are vulnerable to whatever is going on. But I did want to ask Senator Dierks a question. I've noticed we've gone from 7.5 incentive to 20-cent incentive, and I'm looking, frankly, at the necessity of really having 20-cent incentives, Senator Dierks. Why have we gone from 7.5 to 20? How critical is...are those numbers? In other words, could we cut this down some for the incentive, still draw the plants here and somewhat reduce our revenue need?

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: The 20 cents was part of the original bill years ago, the bill that they...bills they used to "incent" these plants early on.

SENATOR WEHRBEIN: Now, that was my bill. I'll tell you that. (Laugh)

SENATOR DIERKS: Okay. So that's just a continuation. The 7.5 was there for additional expansion and that's what the 7.5 was for. That's what it's still for, for expansion. And we cut that back in this bill from 60 months or 5...5 years, to 36 months or 3 years with the committee amendments.

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SENATOR WEHRBEIN: Your...this handout that you handed out is not with the committee...the one I have here says six years of \$3 million each from the General Fund.

PRESIDENT MAURSTAD: One minute.

SENATOR DIERKS: That's for the 20-cent per gallon. That's for 7 years.

SENATOR WEHRBEIN: Payment.

SENATOR DIERKS: That's a 20-cent gallon. The 7...the 7.5 cents for the the expansion was cut back. I think...

SENATOR WEHRBEIN: So...we...I have one minute. Where are we at? What is the incentive now for new ones coming on, say, in 2003? What will they get per gallon? I thought it was going to be 20 cents all the way through.

SENATOR DIERKS: Twenty cents, you're right.

SENATOR WEHRBEIN: And I seriously am looking at 10 cents or something less since we were at 7.5. I acknowledge 20 cents back in 1992 when that first bill came up, but I'm wondering how critical it is today to have that level versus something less if we could see fit to make this bill get through the legislative body.

SENATOR DIERKS: Well, I think it's pretty critical that they get the 20 cents. That's...that's the way the bankers are going to develop their credit, their...

PRESIDENT MAURSTAD: Time. Senator Dierks, your light is on next, if you want to continue.

SENATOR DIERKS: Okay, let's just continue that, Senator Wehrbein. I think that...I think it's essential that they have the credit set at 20 cents a gallon. If they're going to receive these credits from the Department of Revenue to show to their bankers when they go to bond the plants, get the money for

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funding the plants, I think they have to have the 20 cents.

SENATOR WEHRBEIN: Okay. I...it's your time now so...

SENATOR DIERKS: Well, you go ahead and ask...you go ahead and ask questions if...

SENATOR WEHRBEIN: I don't really have any more right now except I was...I recognize \$3 million is going to be an obstacle to somebody a year out of the General Fund and as we get into the debate tomorrow it may become a bigger obstacle. I was trying to find something that...that I could support without a trace of conscience bothering me, if you will. And still, I think it's important to "incent" these plants for Nebraska. Ethanol plants are being built all over the country. There's no reason we shouldn't have it here. There's...I'm not going to go into all the benefits, but I have heard several feeders say that without...without the by-products they would lose competitiveness, particularly in growing rations. I feel the same way. I think there is a reason to have this industry in Nebraska for many reasons and I...I don't think we have to apologize in the least for any of that. But it does...there is a significant commitment here. And I'll let you have your...your time back, Senator Dierks. Thank you.

SENATOR DIERKS: You bet. Well, I agree with you that there's a commitment here. I think that, regardless of some of the things you've heard this morning, these plants are very essential to economic growth in Nebraska. I think they help all facets of economic growth throughout the state and I think that they have proven fruitful. They are not...they are not like a leech. They're going...they're doing very well. They have all made money and I understand that the...that the plants, as they get up to full production, is when they start making the profits. Before that, it's sketchy, but that's why we have to have those dollars there to help them get up to full production. Once they get in full production they're able to make money and they're able to provide income for their investors. The investors in these two plants that we're talking about, the one over at Kearney, the one up at Plainview, these are local farmers that have gotten together and pooled their financing to start this

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thing, get...give this thing a jump-start, and they really are in need of these EPIC Funds in order to finish their construction, to start it and finish it. But I know that, if history proves correct, by the time they get up to full production they'll be making money and this will be...they will be profitable ventures in our state. Senator Wehrbein hit it correctly when he said that the state has...has proven...it's been proven advantageous for our state to have these plants here. They've been very successful. The \$7 million...you know, I had...I had this difficulty too, Senator Wehrbein, when we were getting this bill put together. The green...the original green copy called for \$7 million a year for five years, and we worked very hard to try to bring that down, and when it was suggested in committee that we could bring that down with the use of a...a tax on an excise tax on distillers grains and the corn gluten product, and we got looking into it, it appeared that we could; we could bring that down even farther. And by stretching this out over seven years instead of five years, it turns out we can get by with \$3 million a year. Now I think that's a tremendous improvement over the \$7 million we started with, although it may not be enough for some of you. But I really think that...

PRESIDENT MAURSTAD: One minute.

SENATOR DIERKS: ...I really think that we have, in our possession here, some legislation that will provide for good economic development in parts of Nebraska that have not had it and can use it very readily, and I think that it will also prove advantageous to the state after they're up and running and have gotten full production. I don't have any problems with the...asking this body to support the \$3 million. I think that we need to do that to "incent" these people. We've done this for a number of other projects across the state that I think it's really advantageous to us to have this same process available for us. Thank you, Mr. President.

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

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

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I'm again going to tell you that I'll support Senator Bruning's amendment. He will not go down in flames alone. I'm looking at, again, this revised sheet that Senator Dierks gave us. Senator Dierks, I'd like to ask you what does AGP stand for with reference to the Hastings plant, if you know?

PRESIDENT MAURSTAD: Senator Dierks.

SENATOR DIERKS: Oh, I think Ag...Ag Processors, I believe.

SENATOR CHAMBERS: Okay. Do you know the history of this company, of how they got hold of this plant?

SENATOR DIERKS: That was before I was involved with it, Senator Chambers. I don't.

SENATOR CHAMBERS: Do you think you were born then?

SENATOR DIERKS: I think so.

SENATOR CHAMBERS: Okay, thank you. And I was born at that time, too, because I'm older than you.

SENATOR DIERKS: You were born about five years after I was, I think, so...

SENATOR CHAMBERS: Who? No, kid, watch yourself there. (Laugh) Show some respect to your elders. Members of the Legislature, there's a plant in Jasp...a company in Jasper, Tennessee, that had owned this AGP originally, and that company was called Tenol, T-e-n-o-l. They went bankrupt, and then the Department of Energy took the plant. I guess the Department of Energy would take it because maybe there was some federal money involved, but it wound up in the Department of Energy's hands. Then a Minnesota firm took it. It passed through that Minnesota firm's hands into AGP's hands, and AGP, with these other failures, are telling the legislators that the taxpayers ought to ante up some money to keep subsidizing this plant and the others which will forever need subsidization. The guaranty bank loans that had to be paid off in all of this mess that I had talked about totaled \$60 million, and the taxpayers ultimately

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paid those off. These companies have spotty histories, at best. There is no other enterprise that could show such a poor record of performance, considering the bankruptcies and so forth, that could seriously ask this Legislature to ante up taxpayers' money and the Legislature would do it, poor performance in terms of being able to sell their product. There are so many contradictory things said and done on this floor. Members will stand up here and talk about what a fine product ethanol is and how it's selling. Everybody wants it. Then there's a bill that has to compel retailers to stock the stuff. That doesn't compute at all. I'd like to ask Senator Dierks a question or two, because I need some help in an area that I'm going to venture into.

PRESIDENT MAURSTAD: Senator Dierks, would you respond?

SENATOR CHAMBERS: Senator Dierks,...

SENATOR DIERKS: Yes.

SENATOR CHAMBERS: ...if a person is going to use some fertilizer that involves anhydrous ammonia, would it take about 160 pounds of anhydrous ammonia per acre raising this corn?

SENATOR DIERKS: I think that's right.

SENATOR CHAMBERS: And that's not produced by using fuel laced with ethanol, is it?

SENATOR DIERKS: That's produced with natural gas, I believe, or...

SENATOR CHAMBERS: And that's a nonrenewable fuel source that comes out of the ground, isn't it?

SENATOR DIERKS: That's true.

SENATOR CHAMBERS: So, to produce corn, in the first instance, we have to use large quantities of nonrenewable fossil fuels...

PRESIDENT MAURSTAD: One minute.

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SENATOR CHAMBERS: ...and, in some cases, petroleum fuels. Isn't that true?

SENATOR DIERKS: I'm sorry, I was distracted, Senator Chambers.

SENATOR CHAMBERS: That's okay. He said I only have a minute, so I won't proceed at this time. I'll have other opportunities to bring that up. But, members of the Legislature, ethanol is not used as a fuel which can produce ethanol. It can't be used for that purpose. You know to whom they must turn? The wicked petroleum industry. So if the cartel that Senator Beutler talked about is wickedly taking money from America, aren't these agricultural interests, aren't these plants that you all are going to subsidize, giving money to that cartel because they use...

PRESIDENT MAURSTAD: Time.

SENATOR CHAMBERS: ...fossil fuels and petroleum products to generate the energy to produce ethanol? Did you...

PRESIDENT MAURSTAD: Time.

SENATOR CHAMBERS: Oh.

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

SENATOR STUHR: Thank you, Mr. Speaker and members of the Legislature. I rise in opposition to the Bruning amendment. I have to agree that if we had actually used more ethanol we probably wouldn't have to be even addressing this LUST Fund, but I do feel that we have made the commitment in that area and that we are going to have to continue to respect our commitment. But I did want to make a couple points. Senator Chambers mentioned that, earlier, as he was speaking this afternoon, that ethanol will not totally replace gasoline, and I agree with that because I don't think any of us have ever made the statement that it is totally going to replace the fuel that we use in our cars, but we feel that we could certainly be more energy independent.

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Again, I...I want to talk just a little bit about the high cost of subsidizing the petroleum industry. We keep talking about subsidizing the ethanol industry and the great impact that the petroleum industry has on our trade deficit. Petroleum imports account for 45 percent of America's current trade deficit, and in the next few years we are expecting that to rise to 60 or 70 percent of our trade deficit. I thought it was interesting that in 1987 trade deficit for crude oil was \$27 billion. In 1990, that rose to \$44 billion, and by 1999 it has reached or it reached \$60 billion. And we were looking at some statistics from September of the year 2000 where the U.S. foreign oil bill charged to the United States was over \$10 billion a month. So I think that as many on...of the members of this body feel that renewable fuels such as ethanol do play an important part of reducing our dependence on imported oil. The total U.S. ethanol production of nearly two billion gallons lowers imports by 350,000 barrels per day. Now I think that's quite significant. In fact, the total ethanol production right now is the equivalent of replacing about 29 percent of U.S. gasoline imports. So that's why, over all, I think that this bill is very important for us in Nebraska. It's very important to the people in the United States that we need to continue to support the ethanol industry. We need to become more energy independent. As I said, not totally. We will never replace all of our petroleum needs, but we certainly have a long way to go and can certainly improve our trade deficit by continuing to support this industry in Nebraska. With that, I thank you and I again rise in opposition to the Bourne amendment, but certainly do support the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Stuhr. Senator Vrtiska, on the Bruning amendment.

SENATOR VRTISKA: Thank you, Mr. President. I...and as far as the Bruning amendment is concerned, I would like to ask Senator Wehrbein a question, if I could.

PRESIDENT MAURSTAD: Senator Wehrbein.

SENATOR WEHRBEIN: Yes.

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SENATOR VRTISKA: Senator Wehrbein, I appreciated your remarks in regard to the budget and the things that are going to come before us in the next couple three days, and one of the questions that I guess that always comes to the forefront when you're talk...start talking about budgets...before I ask the question I want everybody to understand that I support this bill. I'm not too sure about the Bruning amendment, but I do support the bill and I think we need to support it and get on with it. But my question is around this area that you discussed and that is if, in fact, there comes up when the budget is being discussed a shortfall somewhere, where do you think the cuts will be made? Do you have any idea? I mean, I know it's putting you on the spot, but that's a question that's going to come up and maybe you want to wait and talk about it tomorrow.

SENATOR WEHRBEIN: Well, I will talk about it tomorrow. Actually, the way the budget we're presenting, it will be with our recommendations. As of last Friday afternoon, the budget will be in balance and there will be \$21 million...and/or \$21 million left for A bills, however you want...we'll have the minimum Reserve and \$21 million over the two years left for A bills with the recommended Cash Reserve transfers that have been talked about over the weekend.

SENATOR VRTISKA: Okay, I'm pleased to hear that, because you hear so many things floating around the floor and I just kind of wanted to get it on the record that at this point things are not quite as gloomy as some have indicated, but there certainly is not an excess of funds. Is that right?

SENATOR WEHRBEIN: That's true.

SENATOR VRTISKA: Okay. Thank you, Senator. I ask Senator Dierks a question quite quickly.

PRESIDENT MAURSTAD: Senator Dierks, would you respond?

SENATOR VRTISKA: We've been talking about profitability and you made mention about profitability of ethanol and I think you're correct, but you made the question that they are profitable or will become profitable. What do you think the time frame is

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before a plant becomes profitable? Is it dependent on how much they produce or what is the...

SENATOR DIERKS: Well, I think it is based on when they get to full production. I think that before that they have difficulties. When they get at full capacity that's when the profits start to be made. I'm not sure what the time frame is. Depends on the plant, I suppose, and the contractors building it, but...

SENATOR VRTISKA: Okay, and it also depends on encouraging the use of the product once it's produced. Isn't that right?

SENATOR DIERKS: Well, that's true, but I think that there are other forces that do that (inaudible).

SENATOR VRTISKA: Absolutely. Absolutely, and I agree with you totally. I just wanted to let the record show that these plants do become profitable once they're able to get up in full production, and so it's not that they're going to have to be... I mean the mention was made they have to subsidized (inaudible). There may be... forever. There may be some subsidy, but it could be changed. And so I guess, again, I support the bill. Appreciate your answer. I don't want to take up a lot of time because everybody knows rural Nebraska needs to get behind this kind of legislation and help it because it means jobs, it means less dependent on foreign oil, it means more jobs in the rural... (inaudible) part of the section... parts of the country where these plants are put up and, by the way, I'd like to have one put up in southeast Nebraska soon as we get underway. But I... I'm not going to take up a lot of time because I think we're running out of time. I think Senator Bruning would like to make a comment and I'm going to turn the rest of my time over to Senator Bruning. Thank you.

PRESIDENT MAURSTAD: Senator... Senator Bruning.

SENATOR BRUNING: Thank you, Senator Vrtiska, Mr. President. I just want to make a point here about the LUST Fund. We're defending it and defending the LUST Funds' honor and these poor down and out folks that are receiving LUST Fund help, let me go

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through the list here for you. Little IBP, Inc., Dakota City, got \$301,000 out of the LUST Fund, that's in 1996. I mean I understand, those people were down and out fellows, and they deserve our...

PRESIDENT MAURSTAD: One minute.

SENATOR BRUNING: ...they deserve the taxpayers' dollars. Poor little IBP, I think they only, you know, they only had record profits last quarter, a couple billion dollars. Well, the taxpayers of Nebraska helped them clean up some site to the tune of \$301,000. Here's Amoco Oil, I tried to find my friends from big oil, back there, but they received money. US West, I mean this is a great company, there is no question. US West is a great company; I'm not going to knock them like I knock IBP. But here's US West got money to clean up a site. Casey's General Store, well, Casey's General Store, if you know anything about Casey's General Stores, there's hundreds of them, they're making lots of money, and the taxpayers don't need to bail them out to do these cleanups. So when you defend the LUST Fund remember this is not sacred cow. There are monies being spent here to help people that don't need the money. Just wanted to make sure that was in the record today, because I know we're going to move on at three o'clock. Senator Vrtiska, thank you for yielding me your last minute.

PRESIDENT MAURSTAD: Thank you, Senator Bruning. (Visitors introduced.) Mr. Clerk, items for the record?

CLERK: Mr. President, your Committee on Appropriations reports LB 758 to General File, that report signed by Senator Wehrbein. And amendments to be printed: Senator Chambers, to LB 620, LB 142, and to LB 536. That's all that I had, Mr. President. (Legislative Journal pages 1620-1621.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Pursuant to today's agenda, we will move to Select File, 2001 senator priority bills. Mr. Clerk.

CLERK: Mr. President, LB 773 is the first bill. Enrollment and Review amendments have been adopted. Senator Burling had

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made a motion to indefinitely postpone the bill. Senator Kruse, at that time, had agreed to lay the bill over. Senator Burling, I understand you want to withdraw...his kill motion, Mr. President.

PRESIDENT MAURSTAD: The motion is withdrawn.

CLERK: Mr. President, the next amendment I have to the bill, Senator Kruse would offer AM1418. (Legislative Journal page 1455.)

PRESIDENT MAURSTAD: Senator Kruse, you're recognized to open on AM1418.

SENATOR KRUSE: Mr. President and colleagues, thank you, and thank you to Senator Burling for putting a bookmark in this place. Last week you received a summary of what we're talking about here on the yellow sheet. Over the weekend it changed to a nice spring blue, and would invite your attention to that. I'm not going to go through it in a thorough fashion; will say just enough to establish for the record what we're doing here. To refresh your memory, on General File we spent quite a bit of time on this bill and discussed all the points of it. Senator Bromm, Committee Chair, asked Senator Chambers and me to come up with an amendment for Select File that would allow us to do our business at this point. We have done that and it's been back and forth to the Bill Drafters several times, so I have reason to believe that it is in order before you. So looking then at the sheet that you have, this refers to the amendment, and the amendment becomes the bill. Number one, the amendment will, as did the original bill, will allow a serious bodily injury conviction to be an enhancement to other convictions. Number two, the original bill, LB 773, addressed the issue of officially suspending licenses for probationers when they've been ordered not to drive by the judge. I would remind you that we have, since this time, moved along a bill of Senator Thompson's which redefined "suspension", and we are using that definition of "suspension" here. An amendment on the first round, adopted...adopted on the first round removed first offense from the suspension. This amendment removes the second offense as well, and leaves it on for the third and fourth

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offense. Number three, the committee amendment added during the first round allowed chemical samples to be withdrawn within three hours of driving. That is removed. Number four, there was a recognition of DUI violations under another state's municipal ordinances. That is removed. In addition, we have proceeded to clean up some of the urine from the pages. Just (laugh)...I'm just checking to see if you're still listening. A few were. Well, let me to a little further. Most of it. Thank you. Let me go a little further and declare that urine is obsolete. Well, there's still some around, but the testing of urine, in order to determine blood alcohol content, is an obsolete test and it is removed and all references to that type of a test have been removed. There is an appropriate use of urine testing for drugs, and those references have been left in. Colleagues, I believe that completes what we need to know about that. I think it is in order and I urge your support of the amendment, which will become the bill.

PRESIDENT MAURSTAD: Thank you, Senator Kruse. Members, I've had a request by one of your colleagues. If you could keep your discussions on the floor down or take your conversations off the floor, be appreciated. Senator Chambers, on the Kruse amendment.

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

PRESIDENT MAURSTAD: Senator Kruse, would you yield?

SENATOR KRUSE: Yes.

SENATOR CHAMBERS: Senator Kruse, I was occupied while you were explaining your amendment. Did you take out all of the references to that three-hour period?

SENATOR KRUSE: Yes.

SENATOR CHAMBERS: Okay. So this, then, is what you and I had worked out earlier?

SENATOR KRUSE: Yes.

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SENATOR CHAMBERS: Thank you. Members of the Legislature, Senator Kruse has been a joy to work with. I didn't get him to do everything that I thought ought to have been done with the amendment. He couldn't get me to agree with as much as he wanted me to agree with in his bill, so we wound up with what people call a compromise. My interest, when I deal with these bills that relate to drinking, is never to encourage drinking and driving; never to try to make the law look the other way when somebody has been drinking and driving. But my purpose is to see that the law is fair in the way it is written and in the way it is administered. I never will agree when we're dealing with a bill of this kind to include language that would allow abuse by the way the language is written. I always will look at what a prosecutor or a cop misbehaving could legally do under the bill. When we had the three-hour period, a cop could have picked up somebody he knew was not drinking. That person could have been held three hours. Then they say, well, we don't think we'll give a test because they knew that the person had not been under the influence anyway. That language that was stricken would have permitted that to happen, and that certainly was not Senator Kruse's intention. I have come to the point of realizing that he is not of a mind to heap up punishment on top of punishment for any person who runs afoul of the law. I appreciate the fact that he was willing to drop that part of his bill dealing with ordinances from other states, because we went through a long drawn out fight about that last session and concluded that we ought to drop it. So, despite the fact that there were provisions in the bill that were close to his heart, he looked at the reality of the situation and was willing to move toward a position that I hold and, because he was moving toward me, I was willing to move toward him. As a result, we have a bill which contains some provisions that it would not contain if I had my way. The bill is lacking some provisions which would be in the bill if Senator Kruse had his way. I don't want anybody to think that because Senator Kruse and I reached an accord that I can be referred to as "Kruse control", because I do not control Senator Kruse. I would like to ask Senator Kruse a question.

PRESIDENT MAURSTAD: Senator Kruse.

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SENATOR KRUSE: Yes.

SENATOR CHAMBERS: Senator Kruse, can you think of any other things that we discussed that would have to be put into or taken from this amendment?

SENATOR KRUSE: No.

SENATOR CHAMBERS: I can't either, so the question I'm going to ask now, the bill with the adoption of this amendment will be in the form that you and I agreed it should be in,...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...correct?

SENATOR KRUSE: Yes, and I would agree it is a good bill.

SENATOR CHAMBERS: Thank you. Members of the Legislature, (laugh) I think the work that Senator Kruse and I did was good work, but I can't say necessarily it's a good bill, (laugh) it's better than it was. So, I don't think I'll have to say anything else on the bill. I'm going to vote to adopt his amendment. But because of some of the things in the bill I will not be able to vote for it. But since it's on Select File I'm sure it will move by a voice vote and it won't be necessary or me to show on the board at this time any opposition to the bill itself. Thank you.

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

SENATOR BROMM: Thank you, Mr. President. I would have a question of Senator, I guess, Kruse, and then Senator Chambers, since they worked out this amendment.

PRESIDENT MAURSTAD: Senator Kruse, would you yield?

SENATOR KRUSE: Yes.

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SENATOR BROMM: Senator Kruse, is there anything in this amendment that would eliminate testing of urine for drug purposes?

SENATOR KRUSE: No, we were careful to maintain that, and that's part of the reason it went back and forth to Bill Drafters, to be sure that we were protecting drug testing.

SENATOR BROMM: Okay. Then, Senator Chambers, if I could ask you, is that...

PRESIDENT MAURSTAD: Senator Chambers.

SENATOR BROMM: Senator Chambers, if you would yield? Is it is your intention that any testing that we have now for...for drugs, including urine, that that not be affected by this amendment?

SENATOR CHAMBERS: Yes, that is my understanding. And if they conduct a test with urine, I hope that the tester washes his hands afterward.

SENATOR BROMM: Okay, okay. Thank you. Well, Mr. President, I...I...when the committee amendment came out we had, of course, using convictions in cities in other states as prior convictions, particularly in the metropolitan area that becomes a factor from time to time. We of course would like to have seen that retained, but I'm not going to stand in the way of compromise that's been made by colleagues. And that's not the...the law now doesn't permit the use of those, so it...it...it simply doesn't change the state of the law in that respect. I was concerned in...in first reading the amendment we might be affecting drug testing, but I'm sure that we're not and I can't see that we are. So, I will certainly support the adoption of the amendment and the advancement of the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Senator Kruse, you're recognized to close on your amendment to LB 773.

SENATOR KRUSE: Thank you, Mr. President and colleagues. I

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truly appreciate the...my fellow senators as they worked with this. And I urge the adoption of the amendment.

PRESIDENT MAURSTAD: Thank you, Senator Kruse. Question is the adoption of AM1418 to LB 773. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is adopted.

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

PRESIDENT MAURSTAD: Debate on the advancement of LB 773? Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 773 to E & R for engrossing.

PRESIDENT MAURSTAD: Question is the advancement of LB 773. Those in favor say aye. Those opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 711. Senator Erdman, I have Enrollment and Review amendments pending. (AM7075, Legislative Journal page 1230.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 711.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments to LB 711. Those in favor say aye. Opposed nay. The amendments are agreed to.

CLERK: Senator Wickersham would move to amend. (AM1595, Legislative Journal page 1568.)

PRESIDENT MAURSTAD: Senator Wickersham, you're recognized to

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open on AM1595 to LB 711.

SENATOR WICKERSHAM: Thank you, Mr. President, members of the body. The amendment that we filed last week to this bill is a very simple one. It reduces the cap on the COLA from 2.75 percent to 2.50 percent in the School Employees Retirement Plan, in the judges plan, and in the State Patrol plan, the three defined benefit plans. Of course, those are the only ones that have a COLA, but it reduces the COLA. Now, to give you an idea of why we are proposing this change to you, we have distributed a new actuarial study that pertains to all three plans, if you have a moment to look at that. Of course the objective is to reduce the expenditures against the current surplus in all three plans. And if you examined the second page...or the first page of the handout that we have provided to you, it shows that by reducing the COLA, from 2.75 to 2.50 percent in the school plan, we save a little over \$60 million in the excess formula annuity side of that benefit, we save about \$21,600,000 in the service annuity side of that plan; in the State Patrol, if we don't do Carrier Enforcement, we save \$4.5 million, roughly; if we do Carrier Enforcement, we would save \$4.8 million, almost \$4.9 million; the judges we save \$1.2 million. Now, of course, on General File we advised you that there were plenty of assets in the plans to support the benefit changes that we were proposing on General File. I would still tell you that that is true. In fact, if you look at the actuarial study or if you called up...I guess, more properly if you called up the Investment Officer for the state of Nebraska and you asked about valuations in all the defined benefit plans as of the end of March, he would tell you that all the plans are currently funded at 107 percent of...against liabilities, that they are still very well-funded for public plans and that there are surplus assets. But given the recent volatility in the stock market, I asked the actuary and others whether it might not be prudent to reduce the cost of LB 711. And I think that the reduction of a quarter percent in the COLA is prudent based on fluctuations in the stock market. Again, the intent with this amendment is not to alarm you about overall funding of the plans, to suggest to you that if we don't do this amendment something awful is going to happen, but I think that it is simply time to examine this kind of an amendment as a prudent

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measure given...given the stock market fluctuations and other considerations. It is my judgment and I think if you look at the actuarial study it is clear that the...LB 711 is still affordable, after this change, based on the July 1, 2000 valuation. But again we're suggesting this as a kind of a prudence amendment. It gives us a larger margin for error, if you will, in the actuarial valuation, it gives us a wider margin of error or wider margin for stock market fluctuations because we'll be doing another valuation of the plans as of July 1st of this year to determine their soundness and putting in what amounts to \$60 million, about \$60.2 million in the school plan on the excess formula annuity side, \$21.6 million on the service annuity side, \$4.6 or \$4.9 million in the...in the State Patrol, and \$1.2 million in the judges plan I think is prudent. Hope it's...hope it's the right thing to do in the current environment and hope you'll support the amendment.

PRESIDENT MAURSTAD: Thank you, Senator Wickersham. Debate on the Wickersham amendment? Senator Vrtiska.

SENATOR VRTISKA: Thank you, Mr. President, members of the body. I concur with discussion that Senator Wickersham just took you through. I think it is prudent. I would, however, indicate that should the markets change, as some have predicted, there would in fact be...be excess funds again and we could address that at another time. I think now the prudent thing to is to do...is to be...use some caution because certainly there's some...some uncertainty in the market at the present time that we need to...to take a good, hard look at, and the actuary has...have done that. And this is the model that they have come up with that I think needs...needs to be followed because they are the people who have a good...good understanding of how this...how this money comes and how it can be used. It's certainly important, I think, to remember that this is not certainly General Fund money, this is the money that is put in by those who are in employment in those various agencies, along with some...with some other...some funds out of the districts and out of the...out of the state coffers. So, I think this is a good move that we should pay attention to. And I hope you would support the amendment and then support the bill as it moves on through the...through the process. With that, thank

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you, Mr. President.

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

SENATOR WEHRBEIN: Mr. President, members of the body, real briefly, I also rise to support Senator Wickersham's amendment. I think it's logical in terms of the volatility, note of caution, and it's just prudent to do and I support the amendment.

PRESIDENT MAURSTAD: Thank you, Senator Wehrbein. Senator Wickersham, you're recognized to close. Senator Wickersham waives closing. Question is the adoption of AM1595 to LB 711. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 31 ayes, 1 nay, Mr. President, on the amendment.

PRESIDENT MAURSTAD: The amendment is agreed to.

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

PRESIDENT MAURSTAD: Debate on the advancement of LB 711? Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 711 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 711 to E & R. Those in favor say aye. Opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 335, Mr. President. I have Enrollment and Review amendments, Senator Erdman. (AM7092, Legislative Journal page 1369.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the adoption of the E & R amendments to LB 335.

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PRESIDENT MAURSTAD: The question is the adoption of E & R amendments to LB 335. Those in favor say aye. Opposed nay. The amendments are adopted.

CLERK: Senator Wickersham would move to amend, AM1335. (Legislative Journal page 1607.)

PRESIDENT MAURSTAD: Senator Wickersham, you're recognized to open on AM1335 to LB 335.

SENATOR WICKERSHAM: Mr. President, this amendment is one that Senator Kristensen and I discussed on General File. If we're going to have state funding take over or supplant local funding for an ongoing program, it has been our practice, in other areas, to cause the state aid that flows in under those circumstances to be counted as what we characterize as restricted funds, that is funds that would count within the budget limitation, the same as the property taxes or other revenue services that are restricted funds that the state aid is supplanting would do. That's the purpose of the amendment, what it does in practical terms. Because we have...we would have state funding of a local option it doesn't mean then that the local governments can shift the money away from that function and spend it on something else. They have to use our money for the service and not just extra spending on their part. So it fits within the spending limitations. Again, it would make the aid that comes out under the provisions that have to do with essentially the county delivering a specified level of service, meeting rules and regulations, and really modifying their public defender program to meet state requirements be...the aid that would come through that system be restricted funds. It was something, again, that Senator Kristensen and I discussed, agreed should be done on General File. This is the amendment which I sincerely hope implements our agreement.

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

SENATOR CHAMBERS: Not at this time.

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PRESIDENT MAURSTAD: Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. As I read Senator Wickersham's amendment, he's placed the...the reimbursement from the county or from the state to the county for those states choosing to adopt the guidelines under the restricted funds. I was wondering if Senator Wickersham would yield to a question or two about this?

PRESIDENT MAURSTAD: Senator Wickersham.

SENATOR WICKERSHAM: Yes.

SENATOR BOURNE: If, Senator Wickersham, if...if a county adopts the guidelines or the standards and they're reimbursed from the...the state for indigent defense, what I'm concerned about, if it's under the restricted funds, that somehow it would dilute the reimbursement from the state, making those dollars...the point I'm trying to make is I think the bill provides an incentive for counties to adopt these guidelines or standards. And I'm concerned if the reimbursement rate is lower...strike that "is lower", if it's under the restricted funds then the incentive for counties to adopt these standards and thereby obtain state funds for the defense might not be as great. There would be less of an incentive for a county to adopt these guidelines. Do you have any thoughts on that?

SENATOR WICKERSHAM: Oh, oh, sure. I think that if you've got a program that meets, let's say, 70 percent of the guidelines and you're paying for all of that and you can adopt the guidelines and get state aid to supplant the spending that you're already doing, you'll do that in a minute.

SENATOR BOURNE: I guess, what I'm trying to say is that,....

SENATOR WICKERSHAM: It's a...you know, you get...

SENATOR BOURNE: ...Senator, we're...

SENATOR WICKERSHAM: ...you get a program that's 30 percent better and it doesn't cost you anything.

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SENATOR BOURNE: Are we accomplishing the same thing by Senator Wicker...or Senator Kristensen's amendment that reduces the amount of reimbursement by the counties? Senator Kristensen has also an amendment filed, I think it's AM1613 to LB 335, that reduces the reimbursement rate. And what I'm concerned with is that if we put the money under the re...the restricted funds, in your amendment, that there would be less of an incentive to counties to adopt these standards or these guidelines for indigent defense.

SENATOR WICKERSHAM: I don't...well, I...I'm unfamiliar with Senator Kristensen's amendment; I'm going to have to look at it, Senator Bourne. I...I...I don't know if there's some relationship between them that might...might create the effect that you're talking about, but I don't think so, because any time the state offers to pay something that you're already funding out of local dollars, it looks to me like you have the incentive to go for the dollars. But I'll...I...I...I just...I'm unfamiliar with Senator Kristensen's amendment.

SENATOR BOURNE: Okay, thank you, Senator Wickersham. Members, the original bill provided that...I'm trying to look through the bill here and the E & R amendment provided a certain level of reimbursement to those counties who adopted the standards set forth by the Indigent Defense Standards Board. And what Senator Wickersham is doing with his amendment is putting them through the or putting them under the restricted funds. And what I'm concerned with is that the whole purpose of the bill is to encourage counties to adopt standards so that indigents obtain the best defense that they can. And I think that we need to, to fit into budget constraints, I think it's appropriate to perhaps reduce the reimbursement rate. But what I'm concerned about is if we put it under the restricted funds, it will be such a disincentive or there will be no incentive for counties to adopt these standards. And while we have certainly, through Senator Kristensen's...or Senator Wickersham's amendment, restrained...

PRESIDENT MAURSTAD: One minute.

SENATOR BOURNE: ...or...or cut the amount of expenditure for

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this bill, I'm afraid that the counties will have no incentive to adopt these legal standards. And so I'm kind of concerned about this. I'm going to go back and read Senator Wickersham's amendment to make sure that I've assessed it correctly. Thank you.

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

SENATOR WICKERSHAM: All right. Mr. President, very briefly, you saw me checking with Senator Kristensen. He believes this amendment does what he and I agreed to on General File. And again, I'll confess that I am unfamiliar with the contents of the following amendment by Senator Kristensen. But in all other contexts where we have delivered state aid to fund a program for counties, for schools, for...wherever we deliver state aid, it goes in as restricted funds. So that what we do not have the anomalous situation of just simply providing extra money that allows counties or any other political subdivision to divert money from one source and then to spend it on another source without any compensating reduction in local property taxes or other revenue sources that might come to that political subdivision. If we're going to fund a program, and we may even fund it at higher levels of cost, for example, when we take over county assessors offices we don't allow the county to maintain in their budget the funding that they used to have for a county assessor. The reason we're doing that is not to allow them to take that bundle of dollars and move it someplace else, we don't want to give them that kind of an incentive. We'd rather, if they're going to make that move to use state resources, that they do it in a...in a way that delivers a beneficial program. So I think that...I think that the counties, if they want to access the state dollars and they want to improve their program, as many of them would have to improve their programs in order to comply with the guidelines I think in Senator Kristensen's bill, I think they'll do it. At that point it's state dollars involved and they are left neither worse off, nor better off, in a financial sense, but their constituents would be left better off because they have a better program, and that should be the reason that they're doing it.

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PRESIDENT MAURSTAD: Thank you, Senator Wickersham. The question is the adoption of AM1335 to LB 335. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

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

CLERK: Senator Kristensen would move to amend. (AM1613, Legislative Journal page 1609.)

PRESIDENT MAURSTAD: Senator Kristensen, you're recognized to open on AM1613.

SPEAKER KRISTENSEN: Thank you, Mr. President, members of the Legislature. At the time of General File, there was considerable discussion about the scope and how broad this bill was in terms of touching a number of areas. As you remember, this is a program where we are going to try to increase the quality of defense, at the same time adopt some minimum standards so there is more uniformity, but also try to increase the quality of those defense, meanwhile still keeping in the philosophy of the commission on public advocacy, whether it would be a reimbursement, at least a portion of that total expenditure that a county makes for defense would come from the state in the form of...of some property tax savings, but quite frankly the goal and the bottom line is to have a better job of people defending individuals. What AM1613 does is a recognition that the bill was very broad. It did what...if you were going to set up an ideal system and a system that was going to work well, you would keep the green copy as amended by the committee amendment. AM1613 recognizes that we're going to have...we're going to do a little less. And to do a little less means that we're going to, instead of taking a little away from everything, and so nothing works well, we're going to try to focus into one area and that is the area of felonies, which is the most important, those are certainly the most serious. As you know, the green copy deals with misdemeanors, juvenile cases, mental health commitment cases, child support and paternity

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establishment; those will wait. Under this amendment we would limit reimbursement only to felony cases. We would reduce the reimbursement from 40 to 25 percent, and if there is insufficient funds, in other words, what this is is a cap. This says that you are going to have only so much money to spend on this. If there is insufficient funds to reimburse a county, then all counties would receive a pro rata share of whatever remaining funds there were for that year. This also would require that they submit their plan by May 15th, instead of July 15th under the bill. The bottom line is that it reduces the fiscal note down to roughly \$442,000 for the first year, and \$993,000 for the second year, which is down drastically from the \$1.7 million and \$3.7 million fiscal note that was originally there. It still keeps in place all the issues of standards. And what I would hope to get from this bill would be (one) the ability to begin to establish standards; I think that's so crucial, that is the first step that needs to be done; that is still kept intact. Basically, what this is going to do is be a trial run for felonies only. And if it is successful then we can tinker, under the appropriations process, with the reimbursement percentages and we can expand it to other cases. But this would drastically reduce the fiscal note. Given the revenue forecast and some of our other bills, I think it's the prudent thing to do. And, with that, I would offer the amendment and be happy to answer any questions. Thank you, Mr. President.

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to support it. I sure wish Senator Vrtiska were here. Maybe, maybe Senator...maybe Senator Kremer can help me on locations. Senator Kremer, Senator Vrtiska represents Richardson County, doesn't he?

PRESIDENT MAURSTAD: Senator Kremer.

SENATOR CHAMBERS: Do you know? Oh.

SENATOR KREMER: District one, I know that.

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SENATOR CHAMBERS: Okay, people are nodding yes. Thank you. I...I need him here. I would like to ask Senator Kristensen a question, if he's near.

PRESIDENT MAURSTAD: Senator Kristensen.

SPEAKER KRISTENSEN: I'm listening.

SENATOR CHAMBERS: Senator Kristensen, was the Teena Brandon case handled in Richardson County?

SPEAKER KRISTENSEN: Yes, it was, Senator.

SENATOR CHAMBERS: Was Judge Orville Coady the judge?

SPEAKER KRISTENSEN: On the second, as I understand it, on the second civil trial, yes, I believe there was a judge from Beatrice that was on the initial case.

SENATOR CHAMBERS: But the one that really was the travesty that the Nebraska Supreme Court just handed the decision down on was based on Orville Coady's fumbling, stumbling and bumbling, and based on the atrocious questioning and other activities of the former sheriff. Am I on track, on target?

SPEAKER KRISTENSEN: Well, you're own the track. I would say it's his opinion that was appealed from and resulted in the opinion being written, yes.

SENATOR CHAMBERS: Thank you. Members of the Legislature, I am so sick of Orville Coady and the way the Nebraska Supreme Court Chief Justice is protecting that totally incompetent man. He has shown in case after case that he cannot even read the statutes. He was trying to use a principle of comparative negligence that applies in negligence cases in a case where there was an intentional act. You cannot apportion responsibility between a person who is deemed negligent and one who committed an intentional act, and the comparative negligence statute makes it clear it deals only with negligence. Coady has misread the law in other cases, and the Nebraska Supreme Court

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has sent them back. They alibi for him and say, well, maybe he didn't know that this was going to be the law, and maybe this issue hadn't been resolved before, but it had been addressed in other cases. And Coady is not a new judge. Senator Brashear has a bill that's coming up soon this session, not soon today, to raise the salary of the judges, and it's going to have awfully rough sledding. As long as the Supreme Court insists on keeping incompetent judges, insists on shielding and protecting them, even when that court itself has to return case after case to this incompetent judge, I say they're not entitled to be paid for shabby work. In Omaha there was a former juvenile judge, named Colleen Buckley, she created all kinds of problems in Douglas County by not doing her job, misusing court personnel, her attitude toward others, the way she handled cases, and I made it clear that there would not be another juvenile judgeship created for Douglas County as long as she was on the bench, and they didn't think I meant it. They tried to run some bills through here, and they couldn't get another juvenile judge. Buckley finally got the message, because others told her, you're in the way; so she said she would not stand for retention, which meant she, in effect, got on out of the way. Well, I'm saying that as long as Orville Coady sits the bench, I'm going to stand on those bills that are designed to...

PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: ...raise the salaries for these judges. The Chief Justice, and nobody else can tell me think of all the other judges. Well, maybe they're all as bad as Orville Coady, and that's why he's being protected. Maybe Coady has said, if you tell on me, then I'm going to tell on the others, which is what "Deacon" Jones, in Douglas County, tried to do, the judge that I succeeded in helping get bounced off the bench for his wrongful conduct. This is a very serious area of the law, and Coady has shown a total disregard for women. In one of the cases which I filed a complaint about, he said a protection order is not worth the paper it's written on, which shows his attitude. And he demonstrated it in the case where Teena Brandon suffered brutal beating, brutal rape...

PRESIDENT MAURSTAD: Time. Senator Chambers, on the Kristensen

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amendment.

SENATOR CHAMBERS: ...and then, when she reported the rape and went to the sheriff, he treated her, if it's possible, worse than those who had raped her had treated her. His questioning was obscene, it was vicious, totally irrelevant to the issue of whether or not a rape had been committed. Then the county attorney down there in Richardson County, oh, there's Senator Vrtiska. I'd like to ask him a question.

PRESIDENT MAURSTAD: Senator Vrtiska, would you yield?

SENATOR VRTISKA: Yes, I will.

SENATOR CHAMBERS: Senator Vrtiska, do you know who is the county attorney in Richardson County?

SENATOR VRTISKA: Yes.

SENATOR CHAMBERS: Who is the person?

SENATOR VRTISKA: (Laugh) I know him, but I can't think of his name right now.

SENATOR CHAMBERS: It's a "he"?

SENATOR VRTISKA: Yes.

SENATOR CHAMBERS: Okay. Well there was a female county attorney who had been questioned on behalf of the county and she said she was more confrontational towards females who had been raped than the sheriff had been trying to protect the county. Now, what I'm looking at...somebody said Merz.

SENATOR VRTISKA: Merz, I think, yeah.

SENATOR CHAMBERS: Okay. That's all I was going to ask you, Senator Vrtiska,...

SENATOR VRTISKA: Okay, all right.

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SENATOR CHAMBERS: ...because I'm off and running now on Judge Coady, Judge Orville Coady. He had to be disciplined, some years ago, as a result of my complaint, because he referred to a white man as a Nigger in the courtroom, and said he's going to have to eat crap like black people, and made other demeaning statements. Then, when I filed a complaint, a judge who was on the Judicial Qualifications Commission, named Mark Fuhrman, said they ought to give him only a 30-day suspension because he had kids in college and you shouldn't punish him too much by giving him the punishment he deserved. That's the way they cover for each other. And Coady has committed other violations along the way and he is protected. This is the straw that's going to break the camel's back that carries the funding bills for these judges. We exercise oversight by controlling the purse strings. I'm sure you all have seen and heard Congress persons make various statements and take various action because they were dissatisfied with the way the courts were operating. Well, I see a person who is like a cancer on the judiciary, he is totally insensitive, totally incompetent and outright stupid. You all don't read his opinions, I do. He can't even read the language of the statutes, then he makes decisions and the Nebraska Supreme Court sends cases back. And then the Chief Justice wants to protect him. I thought when Hendry became the judge, Chief Judge, that he was going to be a good judge, elevating the quality of the judiciary. I even referred to the Nebraska Supreme Court as the renaissance court, foolishly thinking that a change had occurred. If one did, it was cosmetic. I don't know what Coady may have on whom, but I'm going to stay after him and I'm going to file another complaint against him, and I'm going to make the Chief Justice, once again, defend and justify his total incompetency in reading the law and applying the law. And at some point I'm going to get to the bottom of what is going on in the judiciary. And while I'm on it, some things are going on around here that I don't like also, but there is supposed to be some corrective action. And I don't know if it was taken, but it's something that the Governor knows about and some of our people know about here. And, if it's not corrected and they have guilty knowledge, they are going to go down when I decide I have to take action, if I must, and I will.

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PRESIDENT MAURSTAD: One minute.

SENATOR CHAMBERS: This is not a hunting ground. Nobody is going to be treated inappropriately in this Legislature, and no employee of the Legislature is going to protect and cover up that kind of misconduct, and I mean it. I'm tired of it. It's got to end. And if the Governor doesn't do something, I shall. I've had senators come to me and ask what's going on, and other people already know. It's going to stop. We talk about our young people and the example that ought to be set for them. Two of my colleagues, Senators Thompson and Suttle, were talking about what happens to young women in the criminal justice system. You all do well to get quiet.

PRESIDENT MAURSTAD: Time. Senator Chambers, your light is on next.

SENATOR CHAMBERS: Mr. President and members of the Legislature, there is so much that goes on and people try to cover it up. And the covering up is worse, in some respects, than the act itself. I'm going to get back to Orville Coady now. At some point I may offer an impeachment motion so that I can get some things officially in the record. But what I thought about Chief Justice Hendry, in terms of his being a good administrator and a judge trying to clean up problems in the judiciary, has been all but dissipated. See, the Chief Justice doesn't run me like nobody else. Lieutenant Governor doesn't run me; Clerk doesn't run me; the Governor doesn't run me, and nobody else does. These are just men, and I am a man. Their titles mean nothing to me and I'd like to see them say they're going to do something to me, I wish they would at any level, and we'll find out what we are made of as men. I know what I'm made of, but there are some people who probably have not learned that yet. You know one of the worst things that can happen to a female, for example? To be in a vulnerable position. I was just reading where in the military, down at Ft. Leonard Wood, where I took my basic, they're having some investigations of sexual harassment conducted by sergeants and other trainers of these female recruits who were in a vulnerable position, and those who were over them took advantage of them. Then they like to come back and say, if you say anything, I'll fix you and others. If you

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say anything, I'll get you and I'll get others. I want 'em to get me; I want them to threaten to get me and others. It's easy to threaten women and youngsters, it's a little different when it comes to a grown man who has not one molecule of fear of anybody. I look at young people who are around me as I look at my own children. And in the way that my children are going to be protected, those young people are going to be protected. As I said, I'm waiting for some corrective action and, if I don't become aware of it, then some things are going to come out into the light. That which is done in the closet, said Jesus, will be shouted from the housetops, and I'm the one who can do it and the one who will do it. That's all I have to say on this amendment which I intend to support and I intend to support the bill.

PRESIDENT MAURSTAD: Thank you, Senator Chambers. Senator Kristensen, recognized to close.

SPEAKER KRISTENSEN: Thank you, I appreciate the opportunity, Mr. President. Again, the amendment limits this bill to only felony cases, it reduces reimbursement from 40 percent down to 25 percent, changes the date from May 15, instead of July 15th; it also, where funds are insufficient to reimburse fully a county, the counties will all receive a pro rate share of the remaining basis...the remaining funds, based on a percentage of their requests that they've made during the year. Again, it drastically changes the fiscal note. I think that it should be welcomed, and I would hope that you'd adopt the amendment, thank you.

PRESIDENT MAURSTAD: Thank you, Senator Kristensen. The question is the adoption of AM1613 to LB 335. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is agreed to.

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

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PRESIDENT MAURSTAD: Debate on the advancement of LB 335? Senator Erdman, you're recognized.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 335 to E & R for engrossing.

PRESIDENT MAURSTAD: Question is the advancement of LB 335 to E & R. Those in favor say aye. Opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 335A, Mr. President. Senator Erdman, I have no amendments to the bill.

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the advancement of LB 335A to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 335A. Those in favor say aye. Opposed nay. The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 489. I have Enrollment and Review amendments, first of all, Senator. (AM7093, Legislative Journal page 1373.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. Lieutenant Governor. I move the adoption of the E & R amendments to LB 489.

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

CLERK: Senator Quandahl would move to amend, AM1385. (Legislative Journal page 1392.)

PRESIDENT MAURSTAD: Senator Quandahl, you're required to open.

SENATOR QUANDAH: Yes, thank you, Mr. President, members of the

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body. AM1385, just for your edification, is the same as LB 383 from this year, 2001, and also it's the same as LB 1229, introduced in the 2000 legislative session by Senator Brashear. Just briefly, AM1385 clarifies that only the earnings of wage earners engaged in traditional employer-employee relationships who receive payments on a regular periodic basis are entitled to protections from garnishment under Neb. Rev. Stat. Section 25-1558, and thereby, by inference, entitled to an exception in bankruptcy. I would also offer that this...my...LB 383 was held by the...or held a hearing in front of the Judiciary Committee on February 21st of this year and it did pass out of committee. Just for a little bit of history behind this, federal law was changed way back in 1968 to protect employees from excessive wage garnishment. And just as a basic rule, a person, if they're employed, 15 percent of their disposable earnings can be garnished if they are head of a household. If they're not head of a household, 25 percent of their disposable earnings can be garnished. What this amendment does and what LB 383 did merely clarifies Nebraska law with respect to this point, that the earnings of wage earners are protected but not accounts receivable. The...if you'd look on your gadget, if you care to, the important language on the amendment shows up on page 2, it's underlined. And all it does is it just adds this language to the current statutes, "by an employer to an employee"; it's in there under subsection 4(a), "Earnings shall mean compensation paid or payable by an employer to an employee". And, with that, I will close on this and I urge the adoption of this amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Quandahl. Debate on the Quandahl amendment to LB 489? Senator, you're recognized to close. Senator Quandahl waives closing. The question is the adoption of AM1385 to LB 489. Those in favor vote aye; those opposed vote nay. Madam Clerk, please record.

ASSISTANT CLERK: 26 ayes, 0 nays on the adoption of the amendment, Mr. President.

PRESIDENT MAURSTAD: AM1385 is adopted. Mr. Clerk.

CLERK: Mr. President, Senator Bromm would move to amend,

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AM1370. (Legislative Journal page 1393.)

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

SENATOR BROMM: Thank you, Mr. President. I want to thank Senator Brashear for at least discussing with me the opportunity to offer this amendment. This is basically exactly LB 377, which came out of Transportation Committee...Telecommunications Committee with no dissenting votes this year as well as last year. And it removes a few words in Section 39-1345.05, dealing with the situation where the Department of Roads permits the public use of a highway that's under construction or repair. By the removal of these words, the party that is responsible for damages, if the department has permitted public use, the damages will either be the responsibility of the party causing the damage or the state. And the result would be no...no responsibility on the part of the contractor where the Department of Roads has permitted the public use of a highway, unless of course the contractor is negligent in some fashion in causing the damage or the accident to happen. It's not too complicated. As you know, many of the projects that occur now we try to continue traffic while the construction is underway. We used to have a lot more detours than we have now, and as a result of having less detours we have more situations that can occur where there's an accident and...and the state is in a position, hopefully, if it is the state's fault, for pursuing the party that caused the damage. So they're in a better position to do that than the contractor. With that, I'll be glad to answer any questions, but again this is LB 377 and we did not have any opposing testimony or dissenting votes. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Debate on the Bromm amendment? Senator Bromm, you're recognized to close. Senator Bromm waives closing. The question is the adoption of AM1370 to LB 489. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

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PRESIDENT MAURSTAD: The amendment is agreed to.

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

PRESIDENT MAURSTAD: Debate on the advancement of LB 489?
Senator Erdman, you're recognized.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 489 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 489. Those in favor say aye. Opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 797. Senator Erdman, I have Enrollment and Review amendments, first of all. (AM7097, Legislative Journal page 1398.)

PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the adoption of the E & R amendments to LB 797.

PRESIDENT MAURSTAD: The question is the adoption of the E & R amendments to LB 797. Those in favor say aye. Opposed nay. The amendments are adopted.

CLERK: Senator Chambers would move to amend. (AM1332, Legislative Journal page 1421.)

PRESIDENT MAURSTAD: Senator Chambers, you're recognized to open on AM1332 to LB 797. (Gavel)

SENATOR CHAMBERS: Mr. President and members of the Legislature, this is that type of amendment which I refer to as the Chambers amendment by shorthand, and it is language that says, "as such sections existed on the effective date of this act". And that is so that the reference that exists in the statute will not constitute an inappropriate delegation of authority by the Legislature. So we're adopting that provision as of the effective date of this act, and I hope you will adopt this

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amendment.

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

SENATOR RAIKES: Thank you, Mr. President. I would urge the adoption of this amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Senator Chambers, you're recognized to close. Senator Chambers waives closing. The question is the adoption of AM1332 to LB 797. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is agreed to.

CLERK: Senator Raikes would move to amend, AM1466. (Legislative Journal page 1610.)

PRESIDENT MAURSTAD: Senator Raikes, you're recognized to open on your amendment to LB 797.

SENATOR RAIKES: Thank you, Mr. President and members. I've passed around a sheet that details this amendment. Briefly, it involves adding an emergency clause to the bill and amending provisions that were adopted earlier which were in LB 240 which is qualified zone academy bonds. In particular, these are bonds that can be used by a school system to improve buildings in certain...that meet certain qualifications. The gist of it is that the school district can float the bond. The federal government, through tax incentives, at least up to a certain extent, pays the interest on the bond. As such, these bonds fall not under...under the \$1.10 or \$1 levy maximum but rather under a 5.2 cent levy cap that deals with environmental hazard, accessibility barriers and so on. This amendment strictly clarifies the provisions dealing with those qualified zone academy bonds. In particular, on the bullet sheet, the two...what, the fourth one from the bottom, the fourth and third

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one from the bottom, I think, detailed the essence of it. That is, it clarifies that money raised under this mechanism can only be used to rehabilitate or repair the public school facility or to provide equipment used at such a qualified zone academy. It...and this is consistent with what we...our current Nebraska policy regarding funds from...used from bonds. It does not allow, under this amendment, use of the money for developing course materials or for training teachers. These latter two uses are part of the federal regulation, but have never been consistent with Nebraska policy, so this simply makes that clear. With that, I would stop, answer any questions, and urge your adoption of the amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Debate on the Raikes amendment to LB 797? Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question is the adoption of AM1466 to LB 797. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is adopted.

CLERK: Senator Raikes would move to amend, AM1467. (Legislative Journal page 1614.)

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

SENATOR RAIKES: Thank you, Mr. President and members. This amendment is also one that is clarifying, and let me emphasize that all of these amendments, none of them are intended to be a substantive, but rather clarifying in nature. There is one that will come up next that, that does make some changes which I will try to carefully detail, but there's no substantive new program or anything like that involved. This particular amendment, if you go to page 14 of the green copy of the bill, had to do with a person qualifying for membership on the State Board of Education and exempting anyone who served on another state board or commission. The idea was that if they did serve on...if that person did serve on another board or commission, then that board

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or commission could not be involved with the exercise of executive power. Our first attempt at wording that was it exempted anyone...a member of a state board or commission whose duties involved the exercise of executive power. There was some discussion on General File about what that really meant so we've tried once again, and now instead of the words, "whose duties involve the exercise of executive powers", we have, "unless the board or commission is limited to an advisory capacity". It's our hope that that is a little bit clearer in terms of the intent. And with that, again if there are any questions, I would try to answer them, but I would urge your adoption of this amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. Debate on the Raikes amendment to LB 797? Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question is the adoption of AM1467 to LB 797. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is adopted.

CLERK: Mr. President, Senator Raikes would move to amend, AM1609. (Legislative Journal pages 1623-1627.)

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

SENATOR RAIKES: Thank you again, Mr. President and members. This is the final amendment we have to offer. This one deals with option enrollment, and it actually is an amended version of LB 573, a bill which was introduced by Senator Redfield. The amended version does three things which I'll outline for you. One, it would make it possible that a student would be allowed to attend any school district where at least one of his or her parents reside. The second is that the option roll dead...option enrollment deadline, which is currently January 1, now it's January 1 prior to the following September that should would begin. That January deadline is moved ahead to March 15, to allow parents a little bit more time to make a decision about

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option enrollment. And then finally the last one is clarifying, it's a cross reference that clarifies that an expelled student has to get approval of the school board in order to be admitted through the option program. So again, this deals with some changes in the option enrollment program and substantive to the extent that I, hopefully, have outlined for you. Any questions, but other than that I would urge your support. Thank you.

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

SENATOR HARTNETT: Senator Raikes, could I ask you a question?

PRESIDENT MAURSTAD: Senator Raikes, would you yield?

SENATOR HARTNETT: You mentioned that the expelled student would have to get permission of the receiving school board? Is that correct?

SENATOR RAIKES: That's true. The...again, this is not a new provision of this amendment or that...or would be of the technical bill as amended. But currently in law in order for a student to be accepted by a new school district, so to speak, there's a requirement that that student complete his or her program if that student has been expelled, complete whatever requirement was associated with that "expellment". And this just simply makes it clear that that...that that also applies in the option program.

SENATOR HARTNETT: That...of the receiving district, they would have to get permission. Are the records kept up, Senator Raikes? Would you know if a student is expelled? How do they...how does a Board of Education know or administrator know that...

SENATOR RAIKES: The sending school district would have that information, Senator. And whether or not...I'll see if I can find out for you if there's...

SENATOR HARTNETT: Is there...is there a time limit from the time...you know, from one to the other, how fast does a decision

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have to be made by the receiving district?

SENATOR RAIKES: Well...

SENATOR HARTNETT: What's the time...I...it sounds reasonable. I'm just curious.

SENATOR RAIKES: Okay. I've gotten the information, Senator, that there's a 15-day time period during which everyone would be notified as to whether or not the option was accepted.

SENATOR HARTNETT: Okay. Thank you, Senator Raikes.

PRESIDENT MAURSTAD: Senator Redfield, on the Raikes amendment.

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor, members of the body. I did introduce LB 573, and so I want to stand in support of this amendment. It has been substantially changed; however, I will support the changes that they have put in here. I do think that when we look at school law, we need to be very, very careful that it is always student-centered, and this bill focused on what was best for students. We want to make sure that students have every opportunity to stay in their class with their friends, their teachers, and have as much dis...or as little disruption to their lives as possible when there are custody situations that occur. And that's the first part of this where they could continue to attend wherever either parent resided. And sometimes in a custody situation, that can be very different and very disruptive for students. Certainly it is an improvement to move from January 1 to March 15. That gives more flexibility when parents sometimes are building a home and they are not sure exactly what the deadline is to move into that new residence and they want to start a student in the school where they will be residing the following fall, even though that may occur after they actually take up residency. So these are some of the situations that occur where parents may want to option their child into a school district because they want continuity in the lives of the student and they want as little disruption as possible. So I will support the amendments that they have put on the bill, and I hope that you would support their amendment. Thank you.

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

SENATOR RAIKES: Thank you, Mr. President, members. Quickly, a question was asked. I don't believe this amendment would have any fiscal impact, to clarify that. The second thing, I was asked about the time period that...the option enrollment deadline would be moved from January 1 to March 15, then there's a 15-day period, or by April 1, the receiving school district would have to know the...or notify the student and the sending school district of its decision. And then finally, on the expelled students, the...this would make it clear that the receiving district may require, does not have to require but may require, that the expulsion period be completed. So with that, thank you. I urge your support.

PRESIDENT MAURSTAD: Thank you, Senator Raikes. The question is the adoption of AM1609 to LB 797. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is adopted.

CLERK: Nothing further, Mr. President.

PRESIDENT MAURSTAD: Debate on advancement of LB 797? Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 797 to E & R for engrossing.

PRESIDENT MAURSTAD: The question is the advancement of LB 797. Those in favor say aye. Opposed nay. The bill is advanced. Mr. Clerk.

CLERK: LB 667. E & R amendments, first of all, Senator. (AM7099, Legislative Journal page 1505.)

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PRESIDENT MAURSTAD: Senator Erdman.

SENATOR ERDMAN: Mr. President, I move the adoption of the E & R amendments to LB 667.

PRESIDENT MAURSTAD: Question is the adoption of the E & R amendments to LB 667. Those in favor say aye. Opposed nay. The amendments are adopted.

CLERK: Senator Stuhr would offer AM1454.

PRESIDENT MAURSTAD: Senator Stuhr.

CLERK: Senator Schrock.

PRESIDENT MAURSTAD: Senator Schrock, are you handling the amendment? You're recognized to open on AM1454.

SENATOR SCHROCK: Mr. Lieutenant Governor, members of the Legislature, I'd like to substitute AM1637.

PRESIDENT MAURSTAD: Withdrawing AM1454?

SENATOR SCHROCK: That is correct.

PRESIDENT MAURSTAD: AM1454 is withdrawn, without objection. We will take up AM1637. Senator Schrock, you're recognized to open. (Legislative Journal page 1628.)

SENATOR SCHROCK: Thank you, Mr. Lieutenant Governor. Members of the Legislature, AM1637 is LB 405, which was introduced by Senator Stuhr. Senator Stuhr is not here today and she's asked...authorized me to handle this amendment. LB 405 was advanced out of committee with an 8 to 0 vote in favor. Under the provisions taken from LB 405, the amendment proposed to require that whenever real property is transferred the deed or instrument would contain a water resources disclosure identifying any water rights or water wells associated with the property. The transfer of the property with the water right or well...water well would be required to file a water resources update certificate with the Department of Natural Resources

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within 60 days after recording the deed or other transfer instruments. The Department of Natural Resources would use the certificate to update water rights and water well filings. They would also establish a fee for the water resources update certificates, however, the fee could be no higher than the amount necessary to cover the costs incurred. In addition, AM1637 contains provisions of LB 457, which was introduced by Senator Baker. I would ask for your support for this amendment and yield the rest of my time to Senator Baker to introduce his portion of this amendment.

PRESIDENT MAURSTAD: Senator Baker.

SENATOR BAKER: Thank you, Mr. Lieutenant Governor, members. And thank you, Senator Schrock. As he said, I...I...I don't want...I don't have too much to add to this. This was LB 457, my part of this amendment. What it does is allows for the department to issue or to file registration forms for the wells electronically. And, as he said, both bills, LB 405 and LB 457 allow the Department of water...or Natural Resources, now, to set a fee that is no higher than an amount necessary to cover the costs incurred for the processing of these notices. That's the first part of LB 457, dealing with electronic well registrations. The second part is dealing with pump installation and decommissioning water wells and, rather than have it open-ended for decommissioning water wells, it also...it...it puts the stipulation in here, in statute, that a pump installation contractor means so and so, and also includes decommissioning water wells, so that there are some standards for people who decommission water wells. To...to take care of an issue that Senator Jones had in committee, we added in there that an individual who installs or repairs pumps or pumping equipment for a water well, or who decommissions a driven sand point well is exempt from this. Now, a sand point well...and Senator Jones may want to talk about this, because they're up in his area more so than mine or Senator Schrock's, sand point-driven well is one they simply take and wash a piece of pipe down in the sand, usually not more than 20 or 30 feet deep at the maximum. And this...this eliminates the need for a registered decommissioning as such, if he has one. There is no casing, when they pull the pipe out the well collapses and it's

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gone anyway. So that's on page 13 of the amendment, I believe. And Senator Jones may want to address a little of that. It also includes, as Senator Schrock said, LB 405. And part of this is Senator Schrock's, part of it is mine, but it also requires that any person, this is in Section 25 of the amendment, any person transferring ownership of real property not inside corporate city limits now has to file a written notice, complete a form of transfer at or before the closing of the transfer, a notice stating that the water resources update notice acknowledging that if there are any surface water rights transferred with the land it also includes they must notify the new owner whether there are any water wells, not just surface water, but water wells that are on the property that were constructed (inaudible)...I'm sorry, that's the exception if they're domestic wells. That's if there's a change of ownership in the real estate they have to put the notice of the wells and resources...or surface water resources, they have to give that to the...the transferee. Once again, as he said, there's a fee process in there that they can set none of these fees higher than the necessary amount to cover the cost. And I think that's all I have to add on this. If Senator Jones wants part of this time to address the sand point wells, I'd yield him whatever time there is left here.

PRESIDENT MAURSTAD: Senator Baker, it's Senator Schrock's time.

SENATOR BAKER: Oh, I'm sorry.

PRESIDENT MAURSTAD: Senator Schrock, you're recognized.

SENATOR SCHROCK: I see Senator Jones has his light on, so I'll let him talk on his time. But this amendment also contains provisions of clarification by Senator Beutler regarding replacement wells on page 3 and changing the effective date to July 1, 2001 for this portion of the bill only, the main bill has...has the emergency clause, to allow the department time to develop forms. Senator Beutler, would you like a little time to explain your amendment? Okay. Then I can give the rest of my time to Senator Jones.

PRESIDENT MAURSTAD: Senator Jones.

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SENATOR JONES: Thank you, Senator Schrock. Mr. President, members of the body, I did want to talk just a little bit about a driven sand point. And they're all over the Sandhills. But the problem of it is they're... a lot of them are making casings now and not using the sand points anymore, so it's just a matter of pulling the sand points out and putting casings in. And when you pull a sand point out well the sand just collapses in under and you cannot decommission them anymore. So I just wanted it so that they didn't have to go to the expense of trying to decommission a well that there's nothing there to decommission because it's all collapsed back in it anyway. A lot of people don't realize what a sand point is, but I've helped to drive a lot of them myself. You just take and drive them down and then screw your pipe on and hope you can pump some water out, because a lot of them, as you know, is in sand or in gravel, but the water table is real close to the top of the surface, so you can get enough water through a sand point to do that. All they want is the privilege they can pull them out and lay them collapse in and then from now on they'll probably be putting casings in anyway with plastic. So, thank you.

PRESIDENT MAURSTAD: Thank you, Senator Jones. Senator Jones, your light is on next. Senator Baker.

SENATOR BAKER: Thank you, Mr. Lieutenant Governor, members. One other point of clarification, this was dealing with a question Senator Beutler had, I think, that this amendment does require that on that registration form that there be a detailed site plan which shows the location of each such water well at the site and a log from each such water well for water wells constructed as part of this plan. And that also came out of committee with much discussion. I believe that our local NRDs, down our way, are helping with siting these wells with GPS systems. And I speak from experience. We had one out in the middle of nowhere there and I wasn't quite sure where it was, but that also is made a requirement here in the amendment that they shall have a detailed site plan. And the NRDs out in our area are doing a great job with helping owners get maps updated. And if you have a question about the actual position of the well, they're coming out and helping us determine this, where

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there's no boundary lines from sections or anything out in the wide open prairie. They're doing an excellent job of it and I think that they're taking care of it locally. With that, I return my time to the Chair. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Baker. Senator Schrock, you're recognized to close. Senator Schrock waives closing. The question is the adoption of AM1637 to LB 667. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is agreed to.

CLERK: Mr. President, Senator Baker, AM1499. (Legislative Journal page 1480.)

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

SENATOR BAKER: Thank you, Mr. Lieutenant Governor and members. This amendment was brought to me by Health and Human Services strictly as a cleanup measure, nothing else. It changes some definitions here. It's quite a lengthy amendment, but it describes...or it defines a public water system, what it does not include, it's on page 9, if anyone is interested in it. Public water system does not include a special irrigation district; a public water system is either a community water system or noncommittee (sic, noncommunity) water system. It redefines a Special Irrigation District to mean an irrigation district in existence prior to May 18, 1994. It has the Chambers' amendment in there dealing with a federal statute it refers to. They caught that after this was redone about three times. And I think that is it. Questions, I'd be glad to try and answer them, but it's mostly just some change in definitions, very mundane changes and cleans up some language and that's about it. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Baker. Senator Schrock, on the Baker amendment.

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SENATOR SCHROCK: Mr. Lieutenant Governor, members of the Legislature, the committee counsel and I have looked at Senator Baker's amendment and we support it.

PRESIDENT MAURSTAD: Thank you, Senator Schrock. Senator Baker, you're recognized to close. Senator Baker waives closing. The question is the adoption of AM1499 to LB 667. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

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

PRESIDENT MAURSTAD: The amendment is adopted.

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

PRESIDENT MAURSTAD: Debate on the advancement of LB 667? Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I move the advancement of LB 667 to E & R for engrossing.

PRESIDENT MAURSTAD: Question is the advancement of LB 667 to E & R. Those in favor say aye. Opposed nay. The bill is advanced. Mr. Clerk, items for the record?

CLERK: Thank you, Mr. President. Senator Jones, an amendment to LB 305; Senator Beutler, LB 641; Senator Tyson, to LB 543; Senator Cudaback, to LB 142, Senator Wehrbein, LB 758. Enrollment and Review reports LB 640 and LB 640A to Select File. And a new A bill, Mr. President, LB 329A, by Senator Schrock. (Read by title for the first time.) Mr. President, Senator Price would like to add her name to LB 366. And, I believe, that's all that I have, Mr. President. (Legislative Journal pages 1628-1634.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Speaker Kristensen.

SPEAKER KRISTENSEN: Thank you, Mr. President. I move that we adjourn until tomorrow morning at 9:00 a.m.

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

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