

**JANUARY 26, 2005**

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January 26, 2005 LB 60, 84, 284

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning. Welcome to the George W. Norris Legislative Chamber for the fifteenth day of the Ninety-Ninth Legislature, First Session. Our chaplain for today is Senator Stuhr. I'd ask everyone to please rise.

SENATOR STUHR: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Stuhr. I call the fifteenth day of the Legislature to order. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

PRESIDENT SHEEHY: Thank you. Do you have any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Do you have any messages, reports, or announcements?

CLERK: I do, Mr. President. I have a Reference report referring LB 722 to the Natural Resources Committee and rereferring LB 730. Senator Cunningham would ask unanimous consent to change his hearing room, Mr. President, for hearings on Monday, January 31, from Room 1524...to Room 1524 from Room 2102. (Legislative Journal page 363.)

PRESIDENT SHEEHY: No objections, so ordered.

CLERK: Mr. President, your Committee on Banking, Commerce and Insurance reports LB 60 and LB 84 indefinitely postponed; Transportation Committee reports LB 284 to General File; those reports signed by the respective Chairs. Government, Military and Veterans Affairs Committee, notice of hearing; as the Judiciary Committee and the Revenue Committee, Mr. President; all those signed by the respective Chairpersons. And that's all that I have at this time. (Legislative Journal pages 364-365.)

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PRESIDENT SHEEHY: The Chair recognizes Senator Cudaback.

SENATOR CUDABACK: Mr. President, I move that a committee of five be appointed to escort the Governor of the state of Nebraska to the Legislative Chamber to deliver his State of the Nebraska State Address.

PRESIDENT SHEEHY: Thank you. The motion before you is to select a committee of five to escort the Governor. This will be by vote voice. All those in favor say aye. Opposed, nay. The motion is adopted. The Chair appoints the following committee, senators, to escort the Governor: Senator Brown, Senator Engel, Senator Fischer, Senator Don Pederson, and Senator Raikes. Will you please retire to the rear of the Chamber?  
Mr. Sergeant at Arms.

SERGEANT AT ARMS: Mr. President, your committee now escorting the Governor of the great state of Nebraska, Dave Heineman, and his wife Sally. (Applause)

PRESIDENT SHEEHY: (Gavel) Ladies and gentlemen, the Governor of the great state of Nebraska.

GOVERNOR HEINEMAN: Mr. President, Mr. Speaker, members of the Legislature, Tribal Chairmen, distinguished guests, friends and fellow Nebraskans, thank you for the opportunity to address this body under these unique circumstances. As I look out among you, it's reassuring to see familiar faces. Some of you are long-time friends. Speaker Brashear, over the course of the last two years, your friendship has been very, very special to me. Congratulations on being chosen to serve as the Speaker of the Legislature. The confidence your colleagues have placed in you is well placed. Your attention to detail, creativity, and leadership abilities will serve this body well. Senator Schimek, in a sense you and I cut our political teeth together long ago. I am grateful that we have always set aside political and philosophical differences to enjoy a friendship that follows in the great tradition of this nonpartisan institution. I want to recognize my senator, Ray Janssen. Not only have I appreciated your representation, Senator, I appreciate the longstanding friendship that Sally and I have shared with you

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and Nancy. I have great respect for your work in this Legislature. Now I'd like to say a word about your senior member. Long ago, Senator Chambers and I rallied behind a piece of legislation that was proposed to assist a single individual who had been wronged by our state. Following the passage of that bill, the senator paid an unannounced visit to my office to express his appreciation. I have never forgotten that visit. So I use this occasion to publicly thank Senator Chambers for reminding us of our responsibility to care for the less fortunate in our society. I also see among you new acquaintances. The broad backgrounds and enthusiasm of our freshmen senators are sure to contribute to the depth of the debate. Whether you're beginning your 1st year or your 35th year of service, you were elected to serve in this capacity because you've demonstrated a commitment to our state. I share that commitment. Together, I believe we can look ahead with vision and accomplish much for our citizens. It is quite likely that our state will never again have so much collective knowledge and experience present within this respected Chamber. You have a unique opportunity to leave a lasting legacy. By extending your focus beyond the needs of today to anticipate the future needs of Nebraska, you create a solid foundation to build upon when the torch is passed to decision makers of tomorrow. I am also presented with a unique opportunity. I come to this post because a great honor has been given to our 38th Governor. A resounding sense of pride is beaming from the citizens of our great state, knowing that the nation's agriculture sector now has a man of wisdom and integrity at the helm. Equally important, the farmers and ranchers of our state and our nation now have an advocate who will speak passionately on their behalf. Soon, the nation will know what the citizens of Nebraska have long known, that Secretary Johanns will prove worthy of the confidence expressed in him by our President and the United States Senate. As we wish him well in his new post, I become the first Lieutenant Governor in 45 years to assume my new post by operation of our state constitution. That fact only intensifies my determination to provide effective and insightful leadership. I will do everything in my power to earn the trust, respect and confidence of the citizens of this great state as I begin my tenure in this new capacity. I promise you this: I will not shy away from difficult issues. I am committed to

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making our state an even better place in which to live, work and raise a family. Ladies and gentlemen, that journey begins here, with you. The state of the economy offers reason for both optimism and caution. Our state's growing economic strength is reflected in the fact that we closed the books on fiscal year 2004 more than \$100 million ahead of projections, and revenues continue to exceed projections this fiscal year. Yet, I submit to you that caution is in order. I am mindful of the projected \$233 million budget gap, the low-level waste obligation, and other significant financial obligations that we face. The budget proposal before you reflects both optimism and caution. It is a balanced budget with no tax increases and yet it funds important priorities. It addresses the low-level waste obligation in the most cost-effective manner possible, to ensure this burden is not passed on to future policymakers. It is remarkable that we can financially satisfy this debt in one payment, considering the economic struggles of recent years. You've certainly demonstrated a willingness to make difficult, forward-looking decisions during the last legislative session. Despite the difficult economic times, you passed three historic reforms. I propose continuing this state's commitment to those endeavors. My budget provides funding to build upon the very impressive progress that has already been made towards expanding behavioral health services across our state and bringing treatment closer to home. You've brought new meaning to the lives and futures of thousands of Nebraskans who view your passage of LB 1083 as a declaration of their value and an invitation to contribute to their communities. The budget continues to finance the most comprehensive reform of our child protection system in state history, and it supports the continuing efforts to ensure the wise stewardship of water for the sake of generations to come. You revealed a vision for the future in all three areas, and set aside individual interests to put positive change in motion. I, too, have a vision for the future. It is based on four priorities that will guide my decision as Governor. I believe education is the great equalizer. Our children are our hope for the future, so we have an obligation to provide them with the tools to succeed. There is no more powerful tool than knowledge. Second, I believe economic vitality must be a central focus of our leadership. The population of our state shows only modest growth while the

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average age of our citizenry increases. As we care for our aging population, we must contemplate the future implications of this equation. It is critically important that we grow our economy. Doing so requires an examination of the many factors that influence our state's financial status. We must support the industry that drives our state's economy. That means being very attentive to the needs of our farmers and ranchers. It means aggressively exploring opportunities in the areas of biotechnology, value-added agriculture, and foreign markets. Inspiring growth also requires that special attention be paid to small business development, entrepreneurial support, business attraction, and worker recruitment and training. My budget sends a message to small businesses and entrepreneurs, particularly in rural Nebraska, that we are eager, we are eager to support them in an effort to expand the economy of this state. My third priority is efficiency in government. It is important that we continually seek new pathways to efficiency. I believe technology is one key to achieving this goal. Technology can provide a link that further unites our state, a link that bridges our vast prairies and Sandhills. Technology has revolutionized farming. It is helping to bring healthcare services to the smallest of our communities, and it has opened new doors of learning in our schools. We must build on the superb progress that has been made. That means striving to be a customer-friendly, customer-responsive government in everything we do, from issuing permits to answering telephones. The previously mentioned priorities matter little, however, if we fail to protect our families and provide for safe communities--my fourth priority. We are fortunate to live in Nebraska where the crime rate is low and the level of neighborly concern is very high. Yet, we do not take the good life for granted. We know that methamphetamine continues to destroy lives all across our state. We are fighting back on several fronts. The Attorney General and I propose to dramatically reduce the supply of a key meth-making ingredient, pseudoephedrine, through legislation that has been introduced by Senator Bourne and several others. That legislation also stiffens the penalties for meth dealers and manufacturers. On another front, I propose adding 21 troopers to ensure that we have a strong State Patrol to continue fulfilling their broad responsibilities, from the war on drugs to patrolling our

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highways. You can expect to find these four priorities--education, economic vitality, efficiency in government, and the protection of families--woven into my decisions as Governor. They will serve as my compass as I work with you to chart a future course for our state. That brings me full circle, back to the opportunity that lies before us. I believe it is time for us to engage in a statewide conversation with our citizens about the future of Nebraska. While we are taking care of present day needs, we must prepare for our future by asking ourselves the following questions: Do we have a twenty-first century government infrastructure that matches a twenty-first century economy? I ask you to work with me to establish the kind of infrastructure that will be needed to deliver local and state government services, healthcare, social services and education decades from now. Are we preparing our children for twenty-first century work opportunities? Is the classroom of the future a virtual classroom or a classroom with four walls? We must ensure that our children receive a technologically advanced and challenging education. How do we make government more efficient? Are there well-intended government programs that began many years ago which are no longer essential? I propose that the most important priorities for our state be identified and funded first. Do we have a tax structure that encourages investment in future job opportunities, or is it focused on job opportunities of the past? I appreciate the challenges surrounding this particular issue, but I believe that now is the time to tackle them. Nebraskans understand the implications of having a virtually stable population that is aging. They know that we must grow our economy or we simply will not be able to afford the services that we currently expect from government. More importantly, we need to grow our economy to ensure that our children and grandchildren have the opportunity to find fulfilling employment right here in Nebraska. It is time for Nebraska to adopt a twenty-first century business climate that attracts new, dynamic, and growing businesses of the future. I want our state to be the best state in the country, a state where opportunities truly are endless. Our citizens are ready for change. The question is whether we, in government, are ready to make the necessary changes to meet future challenges. I say that it is time to put Nebraska's future interest above any past special

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interest. I believe we are ready. I'm calling on every Nebraskan to share their thoughts, their concerns, and their suggestions with me about how to strengthen our state. Send me a letter or an e-mail with your ideas and I will read every one. Members of the Legislature, you and I have a unique opportunity to leave a lasting legacy for our state. Over the next few years, we must address the needs of today and then look beyond them to our future needs. I ask you to seize the opportunity to blend the knowledge and experience of long-time senators with the enthusiasm and innovation of new members and work with me boldly to set our future course. With input from our citizens, I am confident that together, together we will meet the challenges before us to ensure a vibrant future for our state. Thank you very much. (Applause)

PRESIDENT SHEEHY: Will the committee please escort the Governor and First Lady from the Chamber? We will stand at ease for five minutes.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Members, we will now come to order. Mr. Clerk, do you have items for the record?

CLERK: Mr. President, I do. LB 1, LB 2, LB 3, LB 80 and LB 83 have been reported to Select File, Mr. President. That's all that I have at this time. (Legislative Journal page 371.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We will now go to General File. Mr. Clerk.

CLERK: Mr. President, LB 20, introduced by Senator Kremer. (Read title.) The bill was introduced on January 6, referred to the Agriculture Committee, advanced to General File. The bill was discussed yesterday, Mr. President. When the Legislature adjourned for the day, Senator Schrock had pending AM0028. (Legislative Journal page 358.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Kremer, would you take about a minute and update us on what the bill does?

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SENATOR KREMER: Yes, I will. Mr. President and members of the body, we were on the problem with feral swine, that we've seen a presence, not a large presence but a small presence, in the state of Nebraska. They've become very damaging to many states as far as disease and damage to wildlife and crops. We are trying to get a handle on it so we can be proactive and take care of the problem before it gets greater. The bill was brought to us in the Ag Committee because it's part of the Nebraska Brand Act, which part of that Brand Act has a way of dealing with stray animals. Stray animals is talked...it talks about horses, cattle, sheep, goats, and swine. In order to not go through the whole same process when they're just a stray animal, in order to address the feral swine we needed to take feral swine off of that list. That's why that part was in the Ag Committee. The other part, LB 29, went to the Game and Parks because they will be involved in the situation in trying to identify them. And I guess if there's any other questions, that pretty much is a summary. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. Senator Schrock, would you update us on what your amendment proposes?

SENATOR SCHROCK: Mr. President and members of the Legislature, the amendment is amending LB 20...or, I'm sorry, is amending LB 29 into LB 20. The reason for the introduction of the two separate bills was that the Agriculture Committee need to hear the bill dealing with feral swine, and the Natural Resources Committee need to hear the bill dealing with the Game and Parks Commission and their ability to destroy the animals. Senator Kremer and I believe the two bills should be combined. Amendment AM0028 contains the same provisions contained in LB 29, as it was amended by the committee. The committee amended the bill to include the emergency clause. The amendment allows the Game and Parks Commission and any of its agents to destroy any feral swine. It also make the release of feral swine for purposes of sport or pleasure, amusement, or production of a trophy a Class II misdemeanor. And I would tell you that the Game and Parks Commission has taken the lead on this in the past. I think their main concern is the damage these animals can do to our agricultural producers. And, you know, the Game and Parks has eight commissioners, three of them

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are farmers, and so I think their main goal is to protect our agricultural production in the state and not to have another pest introduced in this state. And if it does show up, they want to be able to take the lead on it and get ahead of the curve and stop the animal from multiplying and spreading. I have passed out a brochure this morning which is furnished by the Game and Parks Commission, which kind of describes what a feral pig is, what a wild pig is, and I hope that's adequate. Thank you for your time.

SENATOR CUDABACK: Thank you, Senator Schrock. (Doctor of the day introduced.) Open for discussion on the Schrock amendment, AM0028, to LB 20. Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I've thought about this bill and I've come around to Senator Louden's position, as I think it exists. I heard what Senator Schrock said about the need for two bills, but when I put the two amendments side by side, the bill which we're on now, which is LB 20, and Senator Schrock's amendment, which is LB 29, I cannot see the need for both of them. The one that we don't need, in my opinion, is the underlying bill that is being amended, and that's LB 20. If you look on page 2, and I'll say this for the record whether anybody wants to look there or not, the existing language says, starting in line 13, "Livestock." This is the definition of livestock: "Livestock means any domestic cattle, horses, mules, donkeys, sheep, or swine." The new language is, "excluding feral swine." Then they give the definition of feral swine, and they write it in such a way as to make it seem to fit in this section which is talking about something other than the intent of the bill, in my view. "Domestic" is a word, when applied to animals, that everybody understands who would have anything to do with it. They define "feral swine" as meaning, "swine whose reversion from the domesticated state." That part of the definition is for the purpose, in my view, of tying this language about feral swine into a section of statute where it need not be placed. Let us just leave the definition of livestock as it is. Then, when you're dealing with feral swine, take Senator Schrock's bill. So what I'm ultimately going to try to do, if you adopt Senator Schrock's amendment, is strike Senator Kremer's bill. I was

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thinking about trying to simplify it by amending Senator Schrock's amendment which would say, "strike all provisions and amendments thereto" to the existing bill, which would be LB 20. Then LB 20 would become what Senator Schrock has in his bill. The definition that we're talking about in Senator Kremer's bill is considered general law. It's a general statute. Senator Schrock is bringing us a specific statute that deals with a specific issue. The Supreme Court has said over and over and over again...there was a guy named Chuck Berry. I think he was the one who sang this song. It said, oh, oh, over and over. Well, that could apply to how many times the Supreme Court has said that the specific rules the general, and it doesn't matter which was enacted first. When you have two provisions of statute dealing with the same subject, the specific rules.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: So we do not have to say anything about feral swine in the definition of livestock, as is being done in LB 20. We don't need LB 20 if we have LB 29. LB 29 says everything that needs to be said plus the proviso that you may not release these domesticated animals into the wild so that they will become feral swine. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Louden, followed by Senators Synowiecki, Kremer, and Schrock. Senator Louden.

SENATOR LOUDEN: Thank you, Senator Cudaback and members of the Legislature. This issue is one that has...will have a long...lasting impact for the state. If feral swine are not considered livestock, then they may eventually be designated as wildlife and become a hunted species. In Kansas, ten years ago a relatively small population of feral swine was a subject of legislation that allowed the swine to be treated as wildlife purposes of controlling. Ten years later, the wild swine are all over the state and hunters have become accustomed to hunting the species. The animals have become a recreational opportunity for hunters instead of being treated as the agricultural problem they are. We do not need to duplicate the mistake made by another state. Feral swine are a threat to agriculture. That

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should be the basis for any policy that the state adopts. We should be addressing this as an agricultural problem and not as a wildlife management and recreational requirement. I met with John Hobbs, the state director of the USDA Wildlife Services, this morning. This is what they do with the service that he operates. They're the ones that take care of our coyotes in the western end of Nebraska. At the present time, the counties are the one that fund the money and the federal government matches part of the money to get funding to have people out there to trap our coyotes that are causing problems. At the present time, they're moving into eastern Nebraska and the Omaha area, and this same director of Wildlife Services from USDA has a contract with getting rid of the starlings in the First National Bank in Omaha. This is a threat for the Omaha area people. Starlings are birds that cause all kinds of problems. They carry diseases that people can contract. I think there's some in the Grand Island area that they are also getting a contract with to eradicate the European starlings in that area. This is something that the feral swine, the starlings, and this sort of thing isn't...shouldn't be in the Game and Parks division. This is an agricultural problem. It should be under the Agriculture Department. A state veterinarian can decide if they're feral swine, then they can be destroyed. It works through the USDA Wildlife Services. And this is someplace that I think we have to be very careful on what we do in the future on how we handle this wording in this legislation. Right now, if you...the legislation that's there in the amendment, LB 29, there's no penalty for killing a domestic hog by mistake in LB 29. It gives the Game and Parks the sole ability to kill the feral swine, and it provides no penalty for the Game and Parks should a domestic swine be killed. What happens if the agency makes a mistake? What happens if one of the agents that's authorized by the Game and Parks make a mistake? Does the agent of Game and Parks have to make restitution to the hog's owner? These are questions that are not addressed in LB 29. And also, when I was talking to Mr. Hobbs this morning, I asked him, what is the definition of a feral swine? And he said the wildlife professionals, what they consider feral is a word that means born in the wild.

SENATOR CUDABACK: One minute.

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SENATOR LOUDEN: And he said any litter that is born in the wild would be considered feral animals, the same way whether it's dogs or whatever. We have the same problem in some areas that dogs that go out and become wild, and once that one litter is born in the wild, they're considered feral dogs and, at the present time, the Wildlife Services is the ones that take care of the problem. I think this bill should be looked at again. I think we need to go a little bit slow on it. I think it's something in the right direction. We need to control feral swine, and I would like to see the correct measures taken. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. Senator Kremer, I have a question with reference to the underlying bill and I was wondering if you would be kind enough to yield.

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

SENATOR KREMER: Yes.

SENATOR SYNOWIECKI: Senator Kremer, on the green copy of the bill, particularly Section 5, okay, "The duties and liabilities imposed by Sections 54-401 to 54-415 do not apply." These sections of the law outline the statutory provisions which provide for remedies for stray livestock. I guess my first question would be the purpose and the reason for Section 5's input into LB 20.

SENATOR KREMER: Okay. The provisions to dealing with stray animals now is there's a certain process that you have to try to identify the owner, and it tells what happens if you cannot identify the owner or do at a later date, the owner has to come and pay you for damages. They have to pay you for feed that maybe the livestock had eaten or that they had fed the livestock while they were there in their possession. Then it told them

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how they could dispose of them. If they couldn't find an owner, they could sell them; that whole process, which did not apply when it becomes feral swine. And that's exactly the reason why we have Section 4 in there; first, trying to define it. If that's a problem, why, we can take it out, but at least we need Section 5 in there because it excludes feral swine from the other...the list of livestock, like Senator Chambers read. If cattle...let's see, it's cattle, horses, mules, donkeys, sheep and swine. If we leave swine in there, and feral swine is considered a swine, then they have to come under those regulations that you're talking about, Senator Synowiecki.

SENATOR SYNOWIECKI: Yes.

SENATOR KREMER: So we are trying to remove it but thinking that then you can handle that in a different way. That's why it came to the Ag Committee, because it's in that section of the law.

SENATOR SYNOWIECKI: And, Senator Kremer, I very much appreciate that synopsis of Statutes 54-401 to 54-415, because that's my reading as well. It provides for remedies for damage done and so forth. My question is relative to the word "estrays" within Section 5, because that would lead one to be under the assumption, or one could logically presume, Senator Kremer, that with that terminology of estrays within Section 5, that once the owner of the swine could be identified or ascertained, if that would so happen, Senator Kremer, the liabilities and duties assigned under Sections 54-401 to 54-415 would not be applicable, even if the owner of the swine can be ascertained. Is that a correct statement?

SENATOR KREMER: I don't think so. In the bill that we changed in Section 2, it talks about--I think it's in Section 2, just a second here--okay, if you think you have a feral swine running around out there, it says that the swine more or less demonstrates the conditions in the observation of a feral swine resembling this feral swine, otherwise roaming, having no visible tags, marking, characteristics indicating that it's from a domestic herd, and reasonable inquiry into the area that does not...that area to try to identify the owner. So you can look at a swine out there that's running around, think it looks like

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a feral swine, but you still have to go through this process that you look for there's any markings, identification, then try to locate any people that is raising swine in the area, and find out if they're missing some animals. So there's still some protection there. You don't just go out and shoot them. So I think there's a safeguard there.

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: Senator Kremer, just the word "estray" within Section 5, why couldn't Section 5 relay that the sections of all that we've been speaking about do not apply in the case of the trespass of feral swine? Leave the word "estray" out...

SENATOR KREMER: Well...

SENATOR SYNOWIECKI: ...because estray, there's a certain assumption there that the owner can be ascertained. And if the owner can be ascertained, of the swine, perhaps, Senator Kremer, that the duties and liabilities should be imposed upon such owner.

SENATOR KREMER: Okay.

SENATOR SYNOWIECKI: Do you follow my logic and train of thought there?

SENATOR KREMER: Well, maybe, and I don't have a dictionary with me, but the definition of "estray," I think I've heard where there's been estray moose or something in the area. It doesn't mean that there's an owner; it just means it's on the loose and roaming around. I'd have to ask Webster about that, but I...

SENATOR SYNOWIECKI: The reason why, because the word "estray" is dominantly mentioned in them Statutes 54-401 to 54-415.

SENATOR CUDABACK: Time, Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you. Senator Kremer.

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SENATOR KREMER: I guess I've pretty well answered most of what I had to say with Senator Synowiecki's question, so I would return my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Kremer. Senator Schrock, followed by Senators Chambers and Louden. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, staff here has been working with Senator Chambers and I think we've got an agreement that would move the bill and fix it on Select File. As far as Senator Louden's concerns about the U.S. animal damage control, Senator Louden, we've had the Game and Parks out there for a long time. They've been working on it, they've been destroying some swine. I know they've been in Harlan County. They have the resources, they have the officers. And, you know, give them credit. They were the initiators of banning hog hunting in the state of Nebraska last year because they were concerned about what that...what the damage might be when hogs escape, or feral pigs, whatever you want to call them. And so, they've been the lead agency on this. They've been proactive. And they're the ones, I think, that have the expertise to identify which animals are domestic and which animals are wild. And so, Senator Chambers, I think we have an agreement to move this to Select File, then fix it, so we don't...so we aren't dealing with two sections of law. Is that what we're trying to fix?

SENATOR CUDABACK: Senator Chambers.

SENATOR SCHROCK: Please respond, if you want, Senator Chambers.

SENATOR CHAMBERS: Thank you. Yes, Senator Schrock. Responding to Senator Schrock's question, instead of having a subject being dealt with in two sections of the law, Senator Schrock's staff, Senator Kremer's staff is working on an amendment which will put the text of what we're trying to do with the feral pig problem under the Game and Parks statutes. We will preserve the part of Senator Kremer's bill which says "except feral swine," where the definition of "livestock" is given. Then there will be a provision that ferals, it will say "except feral swine as

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defined in." Then it will cross-refer to the Game and Parks sections of law. And we will not have all of this definition of "feral swine" under this livestock provision, and then a reproduction of that language in the Game and Parks statutes. And that way, nobody will get the impression that since the Legislature put this in two separate sections of statute, dealing with two different subjects, namely, Game and Parks, then the definition of "livestock," there must be the intent on the part of the Legislature that they are different, they mean something different and then confusion can develop. So what we want to do is collapse all of what is being said about the feral swine, the part that relates to how they are to be dealt with, the role and function of the Game and Parks into the Game and Parks provisions of the law. To reassure everybody who might think that feral swine may be considered livestock, we will leave the new language that Senator Kremer wants to put in the livestock section, which is excluding feral swine, and we will add to that, as defined in the section in the Game and Parks provisions of law. Then all of this other material in Senator Kremer's bill can be stripped from this area of the law. And my light is on, so there are a couple of things more that I want to say, but I will give the rest...oh, unless Senator Schrock is giving me all of his time. How much is left, Mr. President?

SENATOR CUDABACK: About one minute, Senator.

SENATOR CHAMBERS: Okay. If anybody has a question about the process that we want to go through, then I'm ready to answer any of those questions. I am for what the bill is intending to do. And if we cannot get an amendment properly drafted to do what I've discussed, I believe we ought to adopt Senator Schrock's amendment so that we have before us all of the elements that ultimately the bill will contain. Then move it on to Select File and there will be more than enough time for all of us who are working on this, and have agreed on the process and agreed on the ultimate goal, to get that done. Now when I say those of us who have agreed, I'm not drawing Senator Loudon in. I'm not speaking for him because he still may be opposed to what we're trying to do. But what I am interested in is simplifying the statutory scheme by putting it in one place rather than two.

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SENATOR CUDABACK: We're now on your time, Senator.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: You may continue.

SENATOR CHAMBERS: And in order not to drag this out too long, there's an incident that Senator Louden might be interested in. He told how he was the only one in here probably who had roped a hog, and I have not seen or heard anything to the contrary. So Senator Louden stands alone in that regard. I want to let him know, however, that he does not stand alone in having the most no votes on a motion of his. That is my honored position. You got a little further to go, Sonny, before you can achieve that goal. (Laugh) But it's good that he's got the thick skin that those of us who offer these innovative amendments with which nobody may agree, so that he can present it, take his lumps and ride the crest of the wave on his sense of humor. That's what it takes to survive in here. You cannot take these losses personally. If I took personally all the losses that I've had, I'd be at the Regional Center in the basement because I would be so far gone there would be no possible treatment for me. So this stuff rolls off my back like water off a duck's back. This is not my life nor my wife. I work very hard at what I do. I take seriously the issues that I propose. But when you've done all that you can at that moment, let it go, strike sail and await a better breeze because there's always tomorrow. There always will be a morning after. And no matter how rough things look now, no matter how overwhelming the odds or disappointing the present circumstances are, you're going to pass through it. You're going to come out on the other side. It's up to you to decide how much of your hide you're going to let be stripped away in the process. If you're foolish, you're going to be whining and moaning and brooding and crying, and a lot of the world is going to pass you by, and you haven't done anything, except impede your ability to function. Now the incident: There was this farmer who came running to the lawyer, and the lawyer asked him, what's the matter, Farmer Brown? And the farmer said, these pigs got loose and they ran through my farm and they tore up everything. They tore up my corn, ate my soybeans, did all kind of damage. And the lawyer said, well,

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how much do you think the damage was? And the farmer say, why are you asking me that? The lawyer said, well, I presume you come to me because you might want to retain my services, and if there's not enough involved, I'm not going to waste my time on chicken feed. Joke--you know, he's dealing with a farmer. So the farmer said, well, I'd say about \$2,500. So the lawyer said, okay, how did you arrive at that figure? The farmer said he had somebody come out and assess the damage that was done and showed the lawyer the paper. So the lawyer said, okay, I'll take your case. And the farmer said, first of all, based on what I told you, do you think I have a case? The lawyer said, well, certainly. This person should have kept his pigs confined, and when they were allowed to escape, or if they broke out, he did not exercise the due care necessary to keep those pigs, those hogs, confined. And as a result, you were damaged so he was negligent. You suffered harm. You will recover. And the farmer said thank you to the lawyer, because those hogs were yours and you just made the case. So the lawyer just reared back, as lawyers do, and he smiled at the farmer and the farmer said, well, why are you smiling?

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: He said, both of us are lucky today because the advice that I gave you, my fee for that is exactly \$2,500, so we just about break even. Now, I wrote a long poem about this, but I'm not going to give the poem. The farmer was so angry, he pulled out his pocket knife and killed the lawyer. The poem was about the death penalty, but I wrote all that into it to kind of draw some of my rural and farm sector colleagues into a frame of mind where they would at least consider the other issues. So if anybody is interested in the entire rhyme, let me know and I'll see that you get a copy.

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

SENATOR LOUDEN: Thank you, Senator Cudaback and members of the body. I must admit, Senator Chambers, I didn't know that there was something there that we could set records on, on how many no votes, but I thought I was probably getting up there in the top ten anyway. And we'll have to...I'll have to look up and see

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just how many I did get, and one of these days we'll compare notes. Anyway, to get back to the part of the bill, there's already a fund to take care of feral swine. It's in the Department of Agriculture, and it was defunded several years ago, and the cost of taking care of animal damage has been shifted down to the counties and cities and landowners now. In Sheridan County and Sioux County, both, they put up the money. One puts up \$18,000 and the other puts up \$10,000 for animal damage control. In Cherry County, it's mostly the private landowners that put up the money to have the service come in and, at the present time, they've been able to get money. They have an airplane that flies now to control coyotes, and that's how the project has been working there. As I've stated before, there are certain areas that they...in eastern Nebraska that they're working on the European starlings now, some in Grand Island. And these are addressed through the Animal Damage Control Fund which is...will also take care of nuisance birds. This is something that...in the Department of Agriculture, and I think this is probably where we need to go with this bill. I would wonder if we really should go into the Game and Parks with this. I was wondering if Senator Chambers would yield to a question.

SENATOR CUDABACK: Senator Chambers, will you yield?

SENATOR CHAMBERS: Yes, I will yield and I will answer.

SENATOR CUDABACK: Thank you.

SENATOR LOUDEN: Senator Chambers, by going into the Game and Parks with these feral swine, they actually then can be considered wildlife or wild game. Are you comfortable with putting them into that category, or should they be considered a nuisance and a threat to agriculture and stay in the Department of Agriculture? I was wondering if you really do feel comfortable with putting them under the jurisdiction of the Game and Parks?

SENATOR CHAMBERS: I do, Senator Louden, because as we draft the amendment, we can make it clear what we're saying. I don't want there to be any confusion, and I think we will simplify things.

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If, after the law takes effect, the issues that you're raising turn out to be real, then I would work with you to remedy them, because I don't have any inclination to low rate what it is you're dealing with or to harm what the bill is trying to do. But I want the bill to be well drafted and I think it is more appropriately placed under Game and Parks since they have so much responsibility here. And we can indicate that they are not game animals. All we have to do is say that.

SENATOR LOUDEN: Okay. Thank you, Senator Chambers. And I agree that this is what this has all been about. I would like to see a well-drafted bill. At the present time, I've questioned it thoroughly. I hope that this legislation can be brought forward in a well-drafted manner because this is a threat to agriculture. Feral swine carry...not only are they susceptible to pseudorabies, they also have brucellosis which can be transmitted to humans,...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...which is called undulant fever in human beings. And we haven't heard much about that for a long time, but as some of these bills come forward, for those of us that live back in the early days, it's getting to be that before cattle...before all milk cows were tested and before all milk was pasteurized, it was a problem. There were, in the thirties is when undulant fever was finally brought under control, and it was considered part of coming from the milk of cows. So I think this is a real issue. It's a threat to one of our economic drivers in the state of Nebraska because...as these run out there loose. At the present time, the Game and Parks has tried to trap them. They said they trapped about 20 head and they can't get the rest of them, over here by Seward, so they have called in the Wildlife Service from the area to see if they can get rid of the rest of the pigs. So the Game and Parks has been trying to handle the situation...

SENATOR CUDABACK: Time, Senator Louden.

SENATOR LOUDEN: ...and they haven't. Thank you.

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SENATOR CUDABACK: Thank you, Senator Louden. There are no further lights on. Senator Louden, your light just came on. You're recognized.

SENATOR LOUDEN: Mr. Chairman, I rise to ask if Senator Schrock's bill...motion is germane to LB 20.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Louden, would you state why you think it is not germane to the issue, please.

SENATOR LOUDEN: It's in separate sections. I think...one is in Section 37-524.01 and the other is in Section 54-170 through 54-415.

SENATOR CUDABACK: Are you completed?

SENATOR LOUDEN: And that was my question. Is the Chair...

SENATOR CUDABACK: Okay. Okay. Thank you.

SENATOR LOUDEN: Will the Chair rule on that?

SENATOR CUDABACK: I will ask Senator Schrock to respond. Senator Schrock, would you respond to the germaneness issue brought up by Senator Louden, please.

SENATOR SCHROCK: Mr. President, both sections deal with wild pigs. I would beg to differ with Senator Louden. I think they are...it is germane.

SENATOR CUDABACK: Under Rule 7, Section 3, and highlighted by (d), I will rule that it does fall in a natural and logical sequence, as our rule states, and the amendment is germane. There are no further lights on. Senator Schrock, you're recognized to close on AM0028 to LB 20. He waives closing. The question before the body is adoption of AM0028 to LB 20. All in favor vote aye; opposed, nay. The question before the body is adoption of AM0028, offered by Senator Schrock to LB 20. Have you all voted who...on the matter who care to? Have you all voted? Record please, Mr. Clerk.

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

SENATOR CUDABACK: The motion was successful. The amendment has been adopted.

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

SENATOR CUDABACK: Back to discussion of the bill, advancement of LB 20 to E & R Initial. Open for discussion. There are no lights on. Senator Kremer, did you wish to close on advancement of LB 20?

SENATOR KREMER: Thank you, Mr. President and members. I will just simply say that if there's some more work that needs to be done on Select File, we'd be glad to do that. And I think Senator Chambers' proposal would be something that we could accept. We're not quite ready to put that on as an amendment now, but we will do that in Select File, and also Senator Synowiecki's suggestion, too, be something that we will consider. So, with that, I will end my closing. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the closing on advancement of LB 20. The question before the body is, shall LB 20 advance? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 20 to E & R Initial. Have you all voted on the question at hand who care to? Record please, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB 20.

SENATOR CUDABACK: The motion was successful. LB 20 advances. Mr. Clerk, do you have any items for the record?

CLERK: Not at this time, Mr. President.

SENATOR CUDABACK: Thank you. Next agenda item is LB 51.

CLERK: Mr. President, LB 51, by Senator Kremer. (Read title.)

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The bill was introduced on January 6 of this year, referred to the Agriculture Committee for public hearing, advanced to General File. I have no amendments at this time to the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Kremer, to open on LB 51.

SENATOR KREMER: Thank you, Mr. President and members of the body. LB 51 was brought to us by the Department of Agriculture and they were wanting authority to do a laboratory testing for other governmental entities and associations of governmental entities and their membership, and authority to charge actual costs to reimburse the state's cost. Currently, the Agriculture Laboratories Division of the Department of Agriculture does testing for the department's regulatory work, and that is like testing for commercial feeds, commercial fertilizers, agricultural seeds, milk and food products. And it has authority to charge others for fees for testing of seed samples under Nebraska seed law. LB 51 will allow the Department of Agriculture to extend its ability to charge for performances on the sample analysis. Recently, the Department of Agriculture laboratory became involved with a national network of governmental laboratories called the Food Emergency Response Network, acronym of FERN. The FERN network consists of state and federal laboratories which might be called upon to test samples in a national emergency involving the food supply. This emergency might be due to natural events or it could be caused by human means. Should an emergency exist somewhere in the United States and should the emergency overwhelm the regional's ability to perform analysis, the Department of Agriculture laboratory could be called upon to perform this testing. Currently, the Department of Agriculture laboratory has no expressed statutory authority to accept payment for such testing for others. The bill is relatively simple. Section 1 adds authority to perform this testing. And Section 2 provides the permissive authority to the department to conduct with other government entities in Nebraska and other states and federal government and associations with members from federal government entities to perform laboratory testing services, the testing required to be related to the Department of Agriculture's

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jurisdiction. The Department of Agriculture is given authority to charge for services at the actual cost, no more or no less, the money from the charges to be put into a cash fund and used to reimburse the Department of Agriculture for such testing services. They cannot test for anything that would be tested by a private laboratory. It would only be within the authority that they already have. What they really would like to do is be proactive. We know the threat of terrorism, whether it's bioterrorism or animals, disease, whatever it might be. And the thought is that some lab in some area could be so overwhelmed, maybe it would be Nebraska that would like to use some other labs from other entities in other states, or vice versa, that they could use our labs. They have no authority to do that now, but this would...they'd be able to then collect the fees for the actual amount. With that, I'd be able to answer any questions anyone might have.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the opening on LB 51. Open for discussion. Senator Kremer, there are no lights on. Are you waiving closing? Senator Kremer has waived closing. The question before the body is the advancement of LB 51 to E & R Initial. All in favor of the advancement vote aye; those opposed, nay. The question before the body is the advancement of LB 51, offered by Senator Kremer. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 51.

SENATOR CUDABACK: The motion was successful. LB 51 advances. Mr. Clerk, LB 59.

CLERK: LB 59, introduced by Senator Mines. (Read title.) The bill was introduced on January 6; referred to the Banking, Commerce and Insurance Committee; advanced to General File. I have no amendments at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Mines, to open on LB 59.

SENATOR MINES: Thank you, Mr. President, colleagues. The

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Microenterprise Development Act of 1997 made it possible to provide loans, training and technical assistance to Nebraska businesses with five or fewer employees. The Microenterprise Development Act established the Department of Economic Development as the facilitator for microlending and microenterprise development. It also provided funding to foster the creation of microenterprises, and it also developed a permanent statewide infrastructure of microlending support organizations. And then finally, it enabled DED to engage in contractual relationships with statewide microlending support organizations. The original act defined as microloan any business loan up to \$25,000. LB 59 changes that definition to read \$35,000, so we're increasing the amount of loans that a microenterprise loan can be, from \$25,000 up to \$35,000. The bill does not change the \$247,500 amount in state General Funds that we allocate to this fund. We're not asking for more money; simply asking that the amount of the loans be increased to \$35,000. There are two reasons for the proposal. The microenterprise industry in the United States has moved to a new definition of "microloan," meaning \$35,000. So this, by increasing our amount from \$25,000 to \$35,000, we keep in step with the rest of the country's definition, and the U.S. Small Business Administration Microloan Program, and the Association for Enterprise Opportunity increased the definition of their microloan from \$25,000 to \$35,000 in 2001. Secondly, as capital needs for microbusinesses increase beyond the \$25,000 that was approved or set in 1997, business limits have obviously grown and we've got an equity gap. These are businesses that typically cannot get a loan from a bank, and an increase in a microloan size would provide them necessary capital for continued growth while building equity. Eighty-five...or, excuse me, eighty-seven percent of Nebraska's businesses have five or fewer employees. Microbusinesses are the base of Nebraska's economy, both from the perspective of their current activity and their future potential. The Nebraska Microenterprise Development Act is an important part of Nebraska's economic growth. It impacts small businesses throughout our state, and updating this definition will expand opportunities for these start-up businesses. I ask for your support in the advancement of LB 59. Thank you.

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SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening on LB 59. Open for discussion on that motion. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I certainly support this bill. In my area, this Microenterprise Act has certainly helped a lot of our small businesses, especially our minority businesses, and they've turned in to be very successful businesses locally. So I certainly support this and I think this increase is necessary so we can help more people in this enterprise. Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. Senator Synowiecki, followed by Senator McDonald. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. I want to thank Senator Mines for bringing this to the floor, and I want to echo Senator Engel's statements. Relative to my district, this is one of them few government programs that really works. The small entrepreneurs in my district, particularly those in the enterprise zone or the south Omaha business district, receive business training, how to do business plans and so forth. If it weren't for the loan program set up under the mechanism of this microloan program, many of these businesses would not have gotten started. The entrepreneur spirit is high in the south Omaha business district, in a large part due to this mechanism that is available to the residents of the district, and I just want to echo Senator Engel's comments relative to the effectiveness of this program, and I want to thank again Senator Mines for bringing this. You know, a \$25,000 threshold anymore to start a business just doesn't do it. And hopefully, hopefully the Legislature will correspondingly...and I hope Senator Mines would support this, the Legislature will correspondingly increase the resources that it has put in this pot, in this to begin with. And I believe the Governor...one of the Governor's initiatives includes a substantial increase in the resources allotted to the microenterprise program. Thank you again.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator McDonald.

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SENATOR McDONALD: Mr. President and members of the body, I'd like to ask Senator Mines a question, please.

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

SENATOR MINES: Yes, I will.

SENATOR McDONALD: And since this was enacted in 1997, do you know how much money has been utilized by this program?

SENATOR MINES: Without doing the math in my head, the annual allocation, just from our General Fund, is \$247,000. There's also money...a more significant amount of money comes from the private sector, investment by private industry into the fund, and those monies as well are allocated out. So I'm sorry, I don't know.

SENATOR McDONALD: Well, that's quite all right. So by loosening up the requirements, we will have a greater opportunity to utilize this money in rural Nebraska. Is that correct?

SENATOR MINES: Yeah, that's correct. By extending the amount to \$35,000 will allow loans, obviously, of a larger size, and that isn't going to cut down on the number of loans. The microenterprise groups will attract more monies from outside to increase what they do.

SENATOR McDONALD: Thank you, Senator Mines. And I also do support this concept. Many times in rural Nebraska, we're not looking for a big smokestack. We want small opportunities, and this will allow us to have that economic development. On a personal note, I would like to let you know that we received an e-mail from Carson Rogers' daughter this morning, and Carson Rogers was a senator from Ord, from my district, and he is in the hospital in Kearney and recovering as we are speaking, but has a long ways to go. So his friends and colleagues that were here when he was here, I'm certainly...he would certainly be glad to hear from you. So if you'd like some more information

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on this, give me a call. Thanks.

SENATOR CUDABACK: Thank you, Senator McDonald. Further discussion on LB 59's advancement? There are no lights on. Senator Mines, did you wish to close? He waives the opportunity to close. The question before the body is the advancement of LB 59 to E & R Initial. All in favor of the motion vote aye; those opposed, nay. The question before the body is the advancement of LB 59, offered by Senator Mines, to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 ayes, Mr. President, on the advancement of LB 59.

SENATOR CUDABACK: LB 59 does advance. Mr. Clerk, LB 88.

CLERK: LB 88, Mr. President, introduced by Senator Byars. (Read title.) The bill was introduced on January 6; at that time referred to the Banking, Commerce and Insurance Committee; reported to General File. I have no amendments at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) Thank you, Senator Byars, for allowing us to do that. You may open on LB 88.

SENATOR BYARS: Thanks, Senator Cudaback. LB 88 is an amendment to Statute 76-2422(2) that does specifically apply to what we refer to in the real estate industry as a limited seller's agent for a builder, and only applies to those two individuals, limited seller's agent and builder. And according to this change, brought to me by the Nebraska Real Estate Commission, the licensee's compensation, which would be the limited seller's agent, may be...the way that this is identified may be identified immediately preceding the builder's acceptance of an offer to purchase a specific parcel of real property. The reasoning behind this is that a builder obviously builds multitudes of types of property and has different ways of doing that, and obviously as he conducts his bidding process to a seller, his bids may be based on a lot of various costs, and one

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of those being what it's going to cost him to pay the limited seller's agent in the form of a commission. So this very specifically refers to those two individuals, the builder and the limited seller's agent. Currently, the statute requires a written agency agreement between those two, and including the terms of compensation, before a specific parcel of real property might be identified. And this is somewhat cumbersome, obviously, and has created some problems, and the real estate commission feels that this is an appropriate change. Not that many years ago that it used to be that a real estate agent was solely responsible to the seller, and now the agent can make a declaration if he is for buyer or seller or both, and the limited seller's agent falls into another category. So I would ask that you would advance LB 88 to General File.

SENATOR CUDABACK: Thank you, Senator Byars. You've heard the opening on the advancement of LB 88. Open for discussion on that motion. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. Would Senator Byars yield to a question or two?

SENATOR CUDABACK: Senator Byars, will you yield to a question of Senator Smith?

SENATOR BYARS: Yes, I will.

SENATOR SMITH: Thank you, Senator Byars. I'm trying to, I guess, pose a scenario here, or at least realize one that, now you're saying that a listing contract would not be necessary then at all, or just the compensation established therein?

SENATOR BYARS: The listing contract would still be necessary, but the compensation would not have to be determined until after a specific new construction property had been accepted, a contract had been accepted by the builder.

SENATOR SMITH: Okay. So the disclosures or the estimated closing statements would not reflect any compensation whatsoever, or would there be a benchmark of compensation that could change? What would typically be the case there?

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SENATOR BYARS: No, the closing, as I understand it, the closing statement still would need to reflect that as far as the compensation paid. But it's something that didn't have to be. The contract would not have to be established, the compensation amount would not have to be established, until a specific contract was entered into with the prospective purchaser. In other words, typically, if I were to come to you as a real estate agent in Gering, and I would list a home that I was building, even though I wasn't absolutely certain of all of my costs, I would make a guess and you and I would negotiate what that compensation would be. And it would be done prior to me selling that property. In this situation, a limited seller's agent and the builder would not have to enter into what that compensation would be until the builder actually had a contract with the purchaser, and he could negotiate with the limited seller's agent who brought him the prospect for the amount of compensation. Why the Real Estate Commission? Obviously, they have had some difficulties in this as far as license law is concerned, so they felt that it was a necessary change.

SENATOR SMITH: Okay, and I'm generally in support of that. I do want, though, to, I guess, pose the scenario that there would be an estimated closing statement out there that would have, I guess, a hypothetical compensation amount or zero, because that's required at such time the listing contract is signed. So I'm unaware as to how that would actually take place. I mean, I would say that there's probably a decent enough relationship between the seller's agent and the seller in this case, or the builder, that is, the builder and that seller's agent, and so there's probably an understanding. But we know that in the world of real estate, that often is not enough. And so I'm concerned perhaps that there's an amount there that perhaps may be misunderstood. Perhaps I'm misunderstanding, but...and maybe the commission can work that out with rules and regs, but I think that is an item that should be considered.

SENATOR BYARS: Well, appreciate that, Senator Smith, and I'm...typically, on the closing statement itself, obviously, unless you do a projected closing statement for the seller prior to the listing contract, the closing statement can have a number

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of variables, as we know. The date of closing will determine on what...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...the property tax levy is, the amount of the title insurance could be a variable, and so could the compensation. And so I don't know as the compensation would have to then be...it wouldn't be part of the closing contract till the closing was made. And that would still be included.

SENATOR SMITH: Right. And when I referenced closing statement, I was referencing the estimated closing statement...

SENATOR BYARS: Okay.

SENATOR SMITH: ...or the projected closing statement that is required at the time the listing agreement is signed. And so I do have faith that that can be worked out. I just would like the record to reflect that those things probably should be clarified because it's confusing enough, I believe, for agents to jump through all of the hoops and for consumers to be protected at the same time. I think that there's a balance there that is always necessary and that can be worked out, but I hope that we can accomplish that and I trust that we will. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Jensen, followed by Senator Janssen.

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. As a builder and developer for a number of years and had several different developments in the Omaha area, and I had an agreement with a real estate firm and they really had an exclusive with my company that they sold most of my properties. And this is what this bill is really designed at, is that developer who has several different properties for sale, but then rather than enter into an agreement with that real estate firm that would blanket everything, you have this opportunity where you would individually set each one. In real estate, there's no such thing as an oral agreement. Everything must be

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in writing. But this kind of sets forth that relationship between a builder or, really, a developer who has several pieces of property and, rather than enter into a listing agreement for everything that he has, he would...there would be a separate one set up as you approach a sale or if somebody has something of interest, then they come to you and then those agreements are set forth. It really covers that...kind of that bridge in there between an agreement and, yes, a written contract. I think it's a very worthwhile endeavor that we would take this up and have a statute that would cover that. With that, thank you, Mr. President.

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

SENATOR JANSSEN: Thank you, Senator Cudaback. Members of the Legislature, Senator Jensen has answered some of my question. One thing I'm...as I was listening to him, I think that possibly the cost of selling would be less if this is the...if this is the way this is going to go, where, instead of all of the whole development being handled by one real estate agent, you could negotiate a price on each one of those properties. Senator Byars, could you answer some of those questions for me? Am I on the right track here? Senator Byars.

SENATOR BYARS: Yes, Senator Janssen.

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Yes, I think you're absolutely correct. I think it's long been encouraged in real estate transactions and real estate law that the general public, whether they be builders or the buying public, are better served if there can be some sort of negotiating process as far as commissions are concerned. And I think, you know, there are some antitrust type situations involved here, too. But it would appear to me that that would be exactly the case, that you could negotiate and very likely would negotiate a lesser fee, which, in turn, could be transferred to the purchasers.

SENATOR JANSSEN: Thank you, Senator Byars. That explains it to me quite well. I believe that quite possibly these units would

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be able to sell for less because the real estate agents do charge a pretty good fee, and I know they do a lot of work in getting those properties sold. But I believe this would be...this would be a good bill and I can see where it would make things a little more affordable. When you're getting down to, close, on what you can borrow, you know, every dollar counts. So thank you for bringing this bill. I believe it's a good bill.

SENATOR CUDABACK: Thank you, Senator Jensen. Further discussion on advancement of LB 88? Senator Byars, there are no lights on. You...he waives the opportunity to close. The question before the body is, shall LB 88 advance to E & R Initial? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 88. Have you all voted on advancement who wish to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 88.

SENATOR CUDABACK: LB 88 does advance to E & R Initial. Mr. Clerk, LB 118.

CLERK: LB 118, introduced by Senator Cunningham. (Read title.) Bill was introduced on January 6; referred to the Banking, Commerce and Insurance Committee; advanced to General File. I have no amendments to the bill at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Cunningham, you're recognized to open on LB 118.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. LB 118 amends the section of statute in the Equipment Business Regulation Act that deals with the termination, cancellation, or nonrenewal of a dealer agreement, and the notice requirements of such action. Under LB 118, if an implement dealer provides a written request containing certain specified information to a supplier or their manufacturer for the sale or transfer of his or her dealership, the supplier or manufacturer shall approve or deny the request within 60 days. If no action is taken on the request within the 60 days, the request is deemed approved. If

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the request is denied, the supplier or manufacturer shall provide the dealer with a written notice specifying the reasons for that denial. The supplier may only deny a request based on the buyer's failure to meet reasonable requirements consistently imposed on other such transfers and approvals of new dealers. I've been working on this concept for more than a year. I became interested in this subject when one of my constituents notified me of his desire to sell his implement dealership. However, he found that since his dealership was under contract, the supplier did not have to extend that contract to the new owner. My constituent had just recently invested over \$200,000 to remodel his facility to bring it up to new standards that guaranteed a higher payback on warranty work from the manufacturer. Now, I've met in the past year with the major equipment manufacturers and the equipment dealers, and they've agreed to work together on this legislation. The result is this bill, LB 118. Now, both representatives for the equipment manufacturers and the equipment dealers testified in support of LB 118 at the public hearing. No one testified against it. Under LB 118, the supplier can no longer just say no. They must give the dealer a reason for denying the request to transfer the dealership, and the denial must be based on the failure of the buyer to meet reasonable requirements consistently imposed on other such transfers. Additionally, the decision must be made in a certain time frame. I feel that LB 118 is a good compromise and would urge you to vote in advance...and advance it to General File. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. You've heard the opening on LB 118. Open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Cunningham, if I could have a little exchange with you. I want to basically ask some questions about the mechanism of the bill.

SENATOR CUNNINGHAM: Sure.

SENATOR BEUTLER: Prefacing that with the comment that I most certainly support this bill, I support the idea of protecting franchisees to a certain extent in their dealings with larger

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manufacturers, I'm a little surprised though that you're in the business of protecting any particular business element in this free-enterprise system of ours, given your attitude last session with regard to the minimum wage. But I cheer the fact that you are now liberating yourself from these old and quaint notions of our economy and getting in, and that, of course, gives me great hope for the future here of the minimum wage bill. Least (sic) I digress too far, let me get to...let me get to my question, Senator. Again, I like what you're trying to do here. My first question is this. The dealer's request has to include reasonable financial information, background information, and some other pieces of information. What is your intent if, for some reason, one of those four blocks of information is not forwarded and there is no reply from the supplier in 60 days? Has there been a legitimate denial by operation of law in that instance?

SENATOR CUNNINGHAM: Well, no, at this point what happens, there's been instances, and it happened in my district, where they just simply gave no reason; just said they wouldn't renew the contract.

SENATOR BEUTLER: No, no, but I'm, again, indicating that they're giving no reason. They don't reply. The bill says that if they don't reply within 60 days of a written request, and this request was deficient, it didn't have one of those four blocks of information, if he's neither approved nor denied the request within the 60-day period, the request is deemed approved. And, by the way, I would just, for the record, "deemed approved," is that the same as "supplier's consent" as set forth on lines 6 and 7 of page 2? I assume your answer to that is yes, but, just to get that on the record, this would be the same as consent...

SENATOR CUNNINGHAM: Correct.

SENATOR BEUTLER: ...as otherwise set forth in the bill. Right?

SENATOR CUNNINGHAM: Correct.

SENATOR BEUTLER: Okay. Let's say that nothing came in the mail

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in 60 days, but my request had been deficient to some extent. I go ahead and sell to a buyer. Am I safe?

SENATOR CUNNINGHAM: Well, I would assume that the new buyer would have it lined up ahead of time and he would know that he was going to have that contract. So...but if the person that currently owns the business, he would...what, quite frankly, what would happen, they would go to court. That's what it would end up.

SENATOR BEUTLER: Well, what would the court say, Senator? That's what I'm interested in.

SENATOR CUNNINGHAM: Well, we're not certain what the court would say, but we feel they have a legitimate...

SENATOR BEUTLER: Well, is there...is there anything we can do to the bill to help make it more certain as to what the court would say?

SENATOR CUNNINGHAM: Well, I can tell you that this was what the dealers and the manufacturers agreed upon. They thought it was better than the language they currently have, and they agreed to go ahead at this point. Now, if we got to that point, I would be the first to tell you, I would guess it could end up in court.

SENATOR CUDABACK: One minute.

SENATOR CUNNINGHAM: And I can't tell you a lot more about it. I don't know what the courts would say. But currently, manufacturers have a list of things that they expect out of their dealers and, if the new buyer complied with all of those requirements, I would think that the new buyer would have a ground to stand on in court.

SENATOR BEUTLER: I'm just suggesting, Senator, that maybe we should give some more thought to that. Because, after all, a dealer is going to transfer property based on the nonreceipt of information, and if that, by operation of law, approval is dependent on a certain type of request having been presented and

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that type of request was not presented, I think you're opening up...you're opening it up to the lawyers and you're exposing one party or the other to a serious problem. I'll go on next time. I wanted to draw attention to a couple of other things.

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR CUNNINGHAM: Okay.

SENATOR BEUTLER: And I'm just doing this for the consideration of the people who have...who have come together on this...

SENATOR CUDABACK: Time, Senator.

SENATOR CUNNINGHAM: Thank you.

SENATOR BEUTLER: ...to see if we can't improve it a little.

SENATOR CUDABACK: Thank you. Senator Schrock, advancement of LB 118.

SENATOR SCHROCK: Mr. President, would Senator Cunningham answer some questions?

SENATOR CUDABACK: Senator Cunningham, would you yield to a question from Senator Schrock? Senator Cunningham, would you...

SENATOR CUNNINGHAM: Yes.

SENATOR CUDABACK: ...yield?

SENATOR CUNNINGHAM: Yes.

SENATOR SCHROCK: Senator Cunningham, I'm concerned about the loss of all our implement dealers in the state of Nebraska, but of course the fact is there's fewer farmers so I guess we need fewer implement dealers. What you're saying here in this bill, I'm just asking for clarification purposes, is that if the seller of an implement dealership, and we're not talking about used cars here, just an implement dealership, is trying to sell their franchise to another person and the, in this case, John

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Deere is unwilling to transfer the franchise, that John Deere has to, within 60 days, give written notice as to why.

SENATOR CUNNINGHAM: Correct.

SENATOR SCHROCK: And that's it. It's that simple.

SENATOR CUNNINGHAM: That...it's pretty much that simple. I mean, they have a list. Let me give you a little background information. In my area, the constituent I'm talking about is a very major dealership in the area, employs somewhere around 25 to 30 people in a town of 700 people. He's the biggest Case-IH dealership in the area. The manufacturer, quite frankly, would like to eliminate him, when he sells, and turn the franchise over to an existing dealer in South Dakota. So all of northeast Nebraska would lose this, this valuable business. It's valuable for the farmers who depend on that for their implement and their repair work, and it's valuable for the city of Crofton and all of northeast Nebraska for economic development. So we're just asking, if they want to deny the franchise, that they put it in writing of why they are denying the franchise.

SENATOR SCHROCK: Yeah. I'm not opposed to what you're trying to do. I'm not quite sure what you're accomplishing. But, given that set of circumstances, I'll support your bill.

SENATOR CUNNINGHAM: Well, thank you, Senator Schrock.

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

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I'm probably going to vote for this bill, but understand what we've got here. What we've got is two parties who are party to a contract, who write that contract and agree to that contract, who say, wait a second, let's go to the Legislature to get them to write, essentially, terms for our contract for us. I wonder how on other days we're going to feel about that. We're going to have arguments, I think, that the Legislature is overstepping itself when it steps into the private sector to make those kinds of rules. And understand what's happening here. Two relatively

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powerful forces, one probably more powerful than the other, and that's the supplier and manufacturer, and one less powerful, and that's the dealer, but they're not without resources. The dealer probably has a lawyer, probably has an accountant, probably has tools that the average citizen doesn't have to defend their interests; who have a conflict and have basically said, well, let's get the Legislature to write the contract between the two of us. I'm not adverse to this, because I think there is a power imbalance. I will say this. There will be plenty of time on this floor when a less powerful party will come to us and say, help us, with respect to dealing with a more powerful party. And we will hear the words, oh, no, no, no, no, that's the private sector; we have to leave them alone. Well, we're here today doing that. And while I'm prepared to do that in this case, because I think it's not an illegitimate thing to do, I will be...I will find it curious when later this session, when there is a power imbalance, people will be saying, oh, gosh, no, you can't do that; we have to leave that to the rough and tumble of the marketplace. Because if that's the case, this is the rough and tumble of the marketplace that we are protecting certain people from. If that's the case and that's the principle and, by the way, it's something that I do on occasion, I'm fine with that. I just want to welcome all the rest of you to the part of the spectrum that says, you know what, government has a role to play here; it's okay that the private sector on occasion is predatory, the private sector is amoral in its outlook and, in fact, sometimes has to be reined in for their excesses. I'm just glad that there are so many of us here. And the names of the people on this bill, the new constituency for the role of government, in its extended role, I'm delighted to join with you in advancing LB 118.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Chambers, on advancement of LB 118.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I think Senator...Senator Cunningham, it's your bill. Senator Cunningham dropped his money purse, as far as I'm concerned, when he said it's a big operation in a town in his district. A big operation he will bring something to the Legislature for, but if it were an employee being fired for an

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inappropriate reason, Senator Cunningham would be on the opposite side and he would oppose such a bill. Wouldn't you, Senator Cunningham? You wouldn't be in favor of the Legislature stepping in to protect an individual employee as you're willing to have the Legislature protect this big powerful operation. You don't have the same concern for individual employees, do you?

SENATOR CUDABACK: Is that a question, Senator Chambers?

SENATOR CHAMBERS: Yes, it's a question.

SENATOR CUDABACK: Senator Cunningham, do you yield?

SENATOR CUNNINGHAM: Senator Chambers, I do believe that I do, but I...you need to be warranted.

SENATOR CHAMBERS: All right.

SENATOR CUNNINGHAM: The issue you're talking about with the employee and the...being fired for misconduct or quitting on your own free will...

SENATOR CHAMBERS: No, not...let me give you an example. A person has worked for a company for five years, has a stellar record, never stolen, never been late. When the boss was not there because the weather was too inclement, this employee was there. And there is nothing wrong with the employee's carrying out of his or her duties. Then it comes to the employer's attention that this person is gay, and I'm going to fire that person. Would you support a bill that would say you cannot fire a person in those circumstances? Let the Legislature step in to protect that individual's right to earn a living for his or her family as you want to protect this big business operation. Would you support such a bill that I described?

SENATOR CUNNINGHAM: I wouldn't commit to that right now, Senator Chambers.

SENATOR CHAMBERS: Thank you. But you're committing everything, lock, stock and barrel, to protecting this big business in your

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district. Isn't that true?

SENATOR CUNNINGHAM: Well, I think we've got a difference maybe. I said big business for the community it was located in,...

SENATOR CHAMBERS: Yes.

SENATOR CUNNINGHAM: ...but it employs 25 people, so it's far from a big business.

SENATOR CHAMBERS: All things are relative. If you're with a beautiful woman, an hour seems like a minute; if you're sitting on a hot stove, a second seems like an hour--Einstein. I know things are relative. But I'm not going to be as forgiving as my colleagues. This bill is going to be before us for awhile. I believe fair is fair, and I find myself so many times on this floor having to stand virtually alone for those who are powerless; those who have no voice; those who, because of prejudices on the part of people who could properly be described as troglodytes, except it would be defaming the troglodytes, if they ever existed. And yet, when it comes to one of these big operations, here they come, wanting to spread the protective arms of the Legislature over these business people. Senator Cunningham, if this business operation would refuse to hire somebody because of sexual orientation, would you still support our doing what you want to do under this legislation for that business?

SENATOR CUDABACK: Senator Cunningham.

SENATOR CHAMBERS: Would you feel, in other words, that the business has a right to determine whom it's going to hire and fire?

SENATOR CUDABACK: Senator Cunningham, do you yield?

SENATOR CUNNINGHAM: Yes, I do, Senator Chambers.

SENATOR CHAMBERS: So you would feel that they could fire a person because of sexual orientation because, as a business, they have that right, correct?

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SENATOR CUNNINGHAM: Under the laws of Nebraska right now, they do have that right. But I would be...I would...

SENATOR CUDABACK: One minute.

SENATOR CUNNINGHAM: ...be against them doing it. I would tell....

SENATOR CHAMBERS: Well,...

SENATOR CUNNINGHAM: ...you that, Senator Chambers.

SENATOR CHAMBERS: Well, without your attempt to change the law here, a manufacturer can do what you're trying to stop, or the supplier, from doing here. You're trying to change the law. If I want to humanize and bring compassion and justice to Nebraska's law for these employees, why cannot you say you will support that legislation as you want to support this?

SENATOR CUNNINGHAM: I would just tell you that that is a totally different bill, Senator Chambers,...

SENATOR CHAMBERS: Um-hum.

SENATOR CUNNINGHAM: ...and on this particular bill, the manufacturers and the dealers have all agreed...

SENATOR CHAMBERS: Um-hum.

SENATOR CUNNINGHAM: ...and they're all willing to go along with this.

SENATOR CHAMBERS: Um-hum. So you're going to cast aside your moral responsibility as an individual and lay it on these other people and say, because they said it should be done this way, that I, as a member of the Legislature, should join? They didn't tell me that. I'm not a part of that deal. I'm not bound to support this legislation, am I?

SENATOR CUNNINGHAM: No.

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January 26, 2005 LB 69, 70, 118, 139, 162, 498, 665

SENATOR CHAMBERS: And it's...

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

CLERK: Mr. President, your Committee on Natural Resources offers two notice of hearings; those signed by Senator Schrock. Natural Resources...and I also have a notice of cancellation of hearing by Health and Human Services, Mr. President. Natural Resources reports LB 139 to General File, LB 162 to General File with amendments. And a series of name adds: Senator Bourne to add his name to LB 69 and LB 70; Senator Smith, LB 498; Senator Dwite Pedersen, LB 665. (Legislative Journal pages 372-373.)

Mr. President, a priority motion: Senator Jensen would move to adjourn until Thursday morning, January 27, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn till Thursday morning, January 27, 9:00. All in favor of the motion say aye. Opposed, nay. We are adjourned.

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