

FEBRUARY 15, 2005

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: (Recorder malfunction)...chaplain of the day is Pastor Paul Coen, from the Luther Memorial Lutheran Church, in Syracuse, Nebraska, Senator Heidemann's district, which is number 1. Pastor.

PASTOR COEN: (Prayer offered.)

SENATOR CUDABACK: Thank you, Pastor Coen, for being with us this morning. We appreciate you being here. I call the twenty-eighth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please check in.

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

SENATOR CUDABACK: Any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Messages, reports, or announcements?

CLERK: Just one item, Mr. President. A notice of hearing from the Appropriations Committee, signed by Senator Don Pederson. That's all that I have. (Legislative Journal page 517.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Speaker Brashear, you're recognized.

SPEAKER BRASHEAR: Thank you, Mr. President. Members of the body, if I could have just a moment, please. You probably all got this the first time, but I'm worrying about it and not wanting to be misinterpreted. One of my goals is to give you an agenda so that when you come to the floor on any given day, you can really rely on that agenda being followed. So as I indicated to you, when someone is going to be absent, their bills are not going...and they have worked with us.; from time to time, people are absent, they don't work with us, their bills are going to be on the agenda. (Laugh) You probably ought not do that. But if you've let us know, we're going to try to accommodate a day's absence. In that case, you'll see bills

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coming off the agenda and going back onto the agenda. Let me give you an example. If we do not begin debate on LB 150, the Agriculture's first priority bill, today, Wednesday's agenda will list LB 499 after LB 533 and before LB 150. Why? Because the Revenue Committee has designated LB 150, but Senator Landis is absent today. What I'm trying to avoid by...and I promise you I'll try to make this the last time I talk about it. I'm trying to avoid somebody saying, on Wednesday, well, why did he stick that in there? It already had that order. I'm only accommodating day...what I call day absences. And I hope that's helpful to you, so that when you come up here, you know what we're not...what we're going to be passing over, because it isn't going to be listed. Thank you for your patience. On with the day.

SENATOR CUDABACK: Thank you, Speaker Brashear. The body appreciates your review. Next agenda item, legislative confirmation reports. Mr. Clerk.

CLERK: Mr. President, Government Committee, chaired by Senator Schimek, reports on the appointment of Stuart MacTaggart to the Department of Aeronautics.

SENATOR CUDABACK: Senator Schimek, Chairperson of the Government, Military and Veterans Affairs Committee, you're recognized to open on your first report.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. The Government Committee did have a hearing last week, and had a chance to get acquainted with Mr. McaTaggart, and really found him to be extremely well qualified for the position of director of aeronautics. I'd like to give you just a little bit about his background. He has in the past had the management and direct operational control of 48 heavy jets, an airfield, and 500 flight officers. He's been a quality control person for 2,000 flight officers annually. He's managed the training of 8,000 professional crew members. He has a master's degree in aeronautical science, a bachelor's degree in political science, an airline transport pilot's rating with 9,000 hours flying time. His experience includes airline industry, military, and government. And he left the airlines to return to Nebraska and

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his family. He's also flown for the state government for several years, and so knows Nebraska airfields and the people and the challenges. We forwarded his name to you without hesitation. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on the first report offered by the Government, Military and Veterans Affairs Committee. Open for discussion. Senator Hudkins, did you wish to address...Senator Hudkins? Senator McDonald. There were several lights on. Anybody wishing to speak to this report, please stand up in front of their mike, please. There were about eight lights on, otherwise. Seeing no one, Senator Schimek, to close on your report.

SENATOR SCHIMEK: Mr. President, I just recommend the name of Stuart MacTaggart to the body for director of aeronautics.

SENATOR CUDABACK: You've heard the closing on the report. All in favor of the report being adopted vote aye; those opposed, nay. Record please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 518.) 35 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: The report has been adopted. Mr. Clerk.

CLERK: Mr. President, Government Committee offers a second report, involving the appointment of Samuel Seever to the State Personnel Board.

SENATOR CUDABACK: Senator Schimek, to open on your second report.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. Again, the Government Committee had its confirmation hearing last week on Sam Seever for the State Personnel Board. And we found him...first of all, he was a reappointment. But secondly, we found him also to be well qualified and well versed in the issues of the personnel board. Mr. Seever got his education at Nebraska Wesleyan here in Lincoln, and at the University of

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Nebraska College of Law. He at present works for MDS Harris, has been their director of agronomic services, national sales manager. He was the executive director of the Idaho Bar Association at one point, executive director of public relations for the U.S. Jaycees, and a practicing attorney in Superior, Nebraska. He has humongous numbers of professional organizations and community organizations that he's been involved in, as well as a number of professional societies. We found him to be very interested in the reappointment, and excellently qualified. With that, I would recommend him to the body. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Anybody wishing to address the second report offered by the Government, Military and Veterans Affairs Committee? Seeing no one wishing to speak, Senator Schimek, close.

SENATOR SCHIMEK: Thank you, Mr. President. I'm just recommending the acceptance of Samuel Seever for State Personnel Board. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the closing on the second report. All those in favor of adoption of second report vote aye; opposed, nay. Have you all voted on the report, offered by the Government, Military and Veterans Affairs Committee, who care to? Record please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 518-519.) 30 ayes, 0 nays, Mr. President, on the adoption of the report.

SENATOR CUDABACK: Thank you, Mr. Clerk. We now move on to General File, 2005 committee priority bills. Mr. Clerk.

CLERK: LB 126, Mr. President, a bill by Senator Raikes and others. (Read title.) The bill has been discussed. When the Legislature adjourned yesterday, Senator McDonald had pending AM0086. (Legislative Journal page 499.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Raikes, would you care to give us a quick review of LB 126 itself?

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SENATOR RAIKES: I would. Thank you, Mr. President, members of the Legislature. My speech in this regard, I think, can be very similar to the one yesterday. I believe that in terms of the bill and the amendment, we're exactly where we were yesterday at this point. But again, to quickly remind, LB 126 deals with the organizational structure of school districts in Nebraska. Particularly, it would call for the assimilation of Class I districts into K-12 districts. Included are provisions to deal with protecting attendance centers that are now Class I school buildings. And it also has a set of provisions, I believe complete, to deal with the distribution of Class I school district property as these districts are assimilated into K-12 districts. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator McDonald, would you give us a review of your amendment, AM0086?

SENATOR McDONALD: Mr. President and members of the body, my amendment deals with how students will be counted to determine the number of students that attend a particular school. The count of students determines which criteria will be used in a school which will open...if a school will be kept open, or which ones will be forced to close. And the number count, in the bill it says just resident students; and my bill...or, my amendment, says that we should account...we should also count option students in qualifying for those schools to be kept open. And it's just merely a simple bill, asking for option students to be added to the resident student count. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. You've heard the review of LB 126 and the amendment to it, AM0086. We're now open for discussion on the McDonald amendment to LB 126. Senator Hudkins.

SENATOR HUDKINS: Thank you, Mr. Speaker...or Mr. President, and members of the body. We talked yesterday, and also Thursday and Friday, on LB 126. You're all aware that there are some people that are supporting it, others opposed to it. We've also been giving you information as to why all Class I's should not be closed. I won't go into all of the reasons, but I just want to give you a few more. We talked about already, the numbers of

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Latino students were not listed in the ELL countings because some of the children could speak English rather well. We talked about budgets...well, let's just talk about a Dawson County school with a high-budgeted per-pupil cost. Senator Raikes mentioned this one. It was District 17 in Dawson County. And their budgeted per-pupil costs are around \$11,000. That budget was based on last year's student enrollment. And they just happened to have 12 additional students this year. So actual spending this year will likely decrease by the same amount, 28.5 percent, that the amount was budgeted for. But if that school would close, the state...the school would spend...Lexington would spend \$8,000 per pupil. And that's above the state average a little bit, but it is \$500 per pupil less than Lexington Public Schools. So Lexington is spending more than the state average per pupil. Senator Raikes cited budget costs per pupil in six Class I districts near Lexington, of \$9,500 to \$11,000, but failed to mention the budgeted cost at two of the districts nearest Lexington. They are District 22, where the '04-05 budgeted per cost...per-pupil cost is under the average, at \$7,070; and District 16, with its cost of right at the average, \$7,874. I think this is selective disclosure. We have heard from Senator Raikes about all of the high-spending schools. Never mind that we have also given you some of the reasons for that high spending. So Senator Raikes' spending numbers were overinflated, just as his numbers of poverty students in the Class I's nearest Lexington were under-inflated. My question is, how can you sit in an office in Lincoln and judge Class I's clear across the state, when you don't know the rest of the story? Another Dawson County Class I, near Gothenburg, has an '04-05 budgeted per-pupil cost of \$6,500, one of the lowest in the state. That school probably has something to teach us all about educating efficiently. But this bill, LB 126, would eliminate the school entirely, and it would be another minority eliminated. If we're able to get these figures, then Senator Raikes certainly could have. The research, if not the motivation, of LB 126 is questionable. Its fiscal note is full of vague math and assumptions, even though the bill has stood for ten months. I am not criticizing Fiscal. They prepare their reports based upon the information that they are given. Our independent fiscal analysis of this bill is that Class I schools in Nebraska use about 7 percent of the state's

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K-12 spending. So even if all Class I's were closed, and it would cost nothing...

SENATOR CUDABACK: One minute.

SENATOR HUDKINS: ...to educate the 8,000 students elsewhere--and that is an incredibly imaginative projection--the taxpayers would save next to nothing, 1.3 percent. Dawson County residents value living in rural Nebraska, and their involvement in the governance of education as our state founders intended when they created the system of Nebraska's schools more than a century ago. In some of the information that we have given you--I'll repeat it--there are 44 schools in the state that have failed to meet the No Child Left Behind criteria. Only one of those was a Class I school. Some parents in Dawson County live 15 to 20 miles from their nearest Class I, and closing their school would force them to go another 20 to 30 miles to a larger school. I will have more later. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Hudkins. On with discussion, Senator McDonald.

SENATOR McDONALD: Mr. President and members of the body, these are some rough numbers, when it comes to how many schools, Class I schools, are affiliated with other districts. And we have quite a few that are affiliated with more than one district. And I'm still a little confused on how that property will be divided up if LB 126 passes. And I would like to speak to Senator Raikes, if he has a minute.

SENATOR CUDABACK: Senator Raikes, are you available for a question from Senator McDonald? Senator Raikes? He's on his way, Senator McDonald.

SENATOR McDONALD: Thank you.

SENATOR RAIKES: Yes.

SENATOR McDONALD: Senator Raikes, I still am not sure how this property will be divided up, if LB 126 passes, if a school is

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affiliated with more than one district. And we have several schools--and these are just rough numbers--but out of 104 of the Class I schools, 66 will be affiliated with two districts--these are "R"--and 2 are affiliated with five; 9 are affiliated with four; and 26 are affiliated with three districts. Now, tell me how that property is divided up, if LB 126 passes. Does it go to the primary district? Is it percentage of students?

SENATOR RAIKES: Senator, in...the procedure, first off, doesn't include any judgment calls. You take into account only and all the districts with which the Class I is affiliated. Then you consider where the students in the past three years from that Class I district have gone. If most of the...yeah, more than 50 percent of the students have gone to the primary affiliated district, then the building and checking account and liabilities and all that stuff goes to the primary district. Okay? The...

SENATOR McDONALD: That's...excuse me, that's if over 50 percent go there?

SENATOR RAIKES: Yes.

SENATOR McDONALD: Okay. If less than 50 percent go there?

SENATOR RAIKES: All right. Less than 50 percent, then again you consider...and I'm having to remind myself here of these provisions, but I'll...please bear with me. If less than 50 percent go to the primary affiliated district...and again, keep in mind now, in the distribution of properties, you're only considering those districts with which there is Class I property affiliated. If there is an affiliated district that has at least 20 percent of the students who attend, then...and when I say 20 percent of the students attend, I'm talking about within the past three years, the students of the Class I, their choice of school after the Class I; if more than 20 percent of them go to a school that is affiliated, then the property goes to that school as affiliated. Now, these would not be primary affiliates. But if there's less than...

SENATOR McDONALD: Excuse me. "Property" meaning 100 percent?

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SENATOR RAIKES: Pardon?

SENATOR McDONALD: "Property" meaning 100 percent of that property, or a certain percentage?

SENATOR RAIKES: As affiliated. Yeah, it's as it is currently affiliated. One of the themes that we're trying to follow here is, number one, do the best we can to see that property from the Class I districts goes to K-12 districts, as do the students, for the simple reason that the property needs to be there to support the students. The second thing is,...

SENATOR CUDABACK: One minute.

SENATOR RAIKES: ...we're trying to do the best we can to honor the current pattern of affiliation. So if you keep those two things in mind, I think you understand how this process works.

SENATOR McDONALD: So if a certain percentage goes to another affiliated district, some of those affiliated districts that don't have the majority of children going to them actually could lose valuation because of this, resources? Is that true?

SENATOR RAIKES: Yes, that's true. Yes.

SENATOR McDONALD: So as a school is looking at the possibility of a Class I school closing, and assuming that they will maintain with that affiliated district, those percentages will maintain the same, they will have at least as much money coming in, or more. But that's not necessarily the case. Some of our K-12 schools are actually going to lose money if the percentage of students do not choose to go to that school. And I think that might be a...

SENATOR CUDABACK: Time, Senator.

SENATOR McDONALD: ...misperception that people don't understand. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. Senator Fischer, followed by Senator Heidemann and nine others. Senator

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Fischer.

SENATOR FISCHER: Mr. President, members of the body. I have passed out a couple maps here today. One part of this legislation that I don't think has been fully addressed--we've touched on it--is the Class VI-Class I K-12 systems, our regional high schools in this state. And LB 126 does, in effect, destroy that system of schools. So if I may draw your attention to the two maps that I've passed out, if you look at the large map that has the...it's the big colored map, you will see my home district, the Valentine rural high school district, which is a Class VI. And we have what we call our Class I partners in that K-12 system. These are not Class I affiliated districts. They are part of a Class VI system. This is in Cherry County. And as you can also see, my home district, the Valentine rural high school district, doesn't encompass all of Cherry County, but it does take up 3,600 square miles. If you look at the other map that I've given you, the smaller map of the state that's in black and white, you'll see Cherry County in north-central Nebraska. You will also see, in the shaded part, my school district. We've superimposed that district down in the eastern part of the state. And as you can see, it runs from the eastern edge to...of Lancaster County all the way to the eastern edge of Hall County. The point of my maps are this: We've been told we don't need school boards. All of those Class I districts on the colored map have a school board. If you look at the distance that my district covers in the eastern part of the state, I guess I could come back and say, why don't we have school districts that all are 3,600 square miles, and let one school board try to deal with that land mass? So I hope you will think about that. Also, in Class VI districts, our Class I's are part of the district. Our Class I's are the district. I was a member for over 15 years on the Valentine rural high school board. And the Class I's, since they are a part of the district, voted for me, or not for me, as a member of that board. So they have representation on the board, because the Class I's are the Class VI. Another point; in a Class VI-Class I K-12 system, we have what's known as a common levy. That was passed in the early nineties by this Chamber. Under a common levy, every Class I within a Class VI pays the same levy. Everyone is paying the same levy on their taxes.

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They also pay for the bond issue. Every Class I pays for the bond issue at the high school. That is another important distinction between the Class VI-Class I system. Another one is curriculum coordination. As I mentioned on...

SENATOR CUDABACK: One minute.

SENATOR FISCHER: ...Friday, I believe it was, in my home district, all of our Class I's, for over 20 years or more, have had the same board policies, we have had the same curriculum coordination. That includes the rural schools and the Valentine elementary in town, which has over 400 students. They all share the same textbooks, so that when they come to our high school, they are all on the same page, they have had that same curriculum. There is a difference here. But yet, the Class VI-Class I's have been thrown into this bill without consideration to the diversity in this state, without the consideration of the differences we face, whether it's urban Nebraska or rural Nebraska. And I do not believe that this broad-brush approach is appropriate when discussing legislation in this Chamber, nor do I believe it is beneficial to the state. Thank you.

SENATOR CUDABACK: Thank you, Senator Fischer. On with discussion, Senator Heidemann, followed by Senators Smith, Langemeier, Flood, Loudon, and seven others.

SENATOR HEIDEMANN: Thank you, Mr. President. As we go on with the debate on LB 126, I still have questions about it. I still see...fail to see that I'll be able to support it. I do have some questions on the fiscal note. And I want to make it clear right now that I am not questioning our fiscal analysts whatsoever. I believe they do a good job. As a member of the Appropriations Committee, I work very closely with them and I admire the job that they do. I do have some questions about some of the information that was maybe fed to them. I was wondering if I could ask Senator Raikes a few questions, if he would yield to me?

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

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SENATOR RAIKES: Yes.

SENATOR HEIDEMANN: Some of the questions I got on the fiscal note, in the...in a school's general fund expenditures, there's something called grant funds exemption. Could you explain that to me?

SENATOR RAIKES: Probably not in the detail you need, Senator. Do you know, are those accountable receipts? Are they on the spending side, or the receipt side? Is what...you said "grants." Does that mean money coming in?

SENATOR HEIDEMANN: Probably it would be almost on both sides. It would be...I'm talking about, like the REAP grants that you get from the federal government. They are included in on the general fund expenditure, is that not correct?

SENATOR RAIKES: Well, actually, as a grant, it's a receipt. And then the money can be spent on the...obviously, if it's a receipt, I believe those are not accountable receipts. Now, I'll have to check on that to be sure. But it's money that comes through...comes from a federal program. REAP is an acronym, and maybe you know the full designation.

SENATOR HEIDEMANN: I believe it's called Rural Education Assistance Program, I believe.

SENATOR RAIKES: Okay.

SENATOR HEIDEMANN: I could be corrected on that. But our...is the REAP funds part of the general fund expenditures? Can you tell me that?

SENATOR RAIKES: Yes, I believe they are. In other words, once a school gets that REAP fund money, they can spend it on school activities. And I think, in the case of REAP funds, quite often federal monies are pretty much carefully directed or targeted. I don't think these REAP funds are. I think they're...there's a fair amount of latitude, I'll put it that way, as to what a school can do with that money.

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SENATOR HEIDEMANN: There are. I mean, we...they can be spent for technology, mentoring programs. It is a good program. The reason I'm bringing this up, they are in the general fund expenditures. You figured, in the savings in the fiscal note, that the total of the general fund expenditures would be saved. My question is how you can figure the grant fund exemptions in there, all these REAP funds, when it's federal money? And how could you...and if the Class I's close, this money will be lost. And even by your own admittance, it will be at least \$1 million. I've been told \$2.5 million. This money will be lost. How can that actually be considered a savings?

SENATOR RAIKES: Oh, there's a question mark there someplace? What specifically did you want me to...well, I'll...okay, I'll try, Senator. I mentioned this in a couple of contexts, as you referred to. I think the results are that there are...there's about \$7 million now that is...comes into the state through this REAP program. Our estimate is--and this is just our estimate; this doesn't have the blessing of the Fiscal Office by any means--that about \$1 million of that would no longer come in if Class I schools were closed.

SENATOR CUDABACK: One minute.

SENATOR RAIKES: Why would \$6 million still come in? It's because the REAP program is available, I believe, for any school less than 600 students. I'm not exactly sure of the allocation mechanism, but it's something like that. So there are a lot of schools in Nebraska, other than Class I's, that are eligible, or would be eligible, for this kind of...or participation in this program.

SENATOR HEIDEMANN: I think the Class I's get \$2.5 million total out of the \$7 million, if I'm told right. My...just my general point--I know I'm getting close to being out of time here--is that I know for sure at least \$1 million will be lost because the Class I's will be closed. It can't be considered a savings. And I do have questions on the fiscal note. Appreciate the conversation that we have to try to work our our differences. And thank you very much. I'll turn the rest of my time back to

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the Chair.

SENATOR CUDABACK: Thank you, Senator Heidemann. Senator Smith, followed by Senator Langemeier.

SENATOR SMITH: Thank you, Mr. President and members. I rise in the McDonald...I rise in support of the McDonald amendment, because I believe that option enrollment is good for Nebraska, good for the students, primarily. My concerns with LB 126, I want to emphasize, are the fact that it is attempting to create a one-size-fits-all approach, that if a school board has a jurisdiction of kindergarten through 12th grade, automatically there's quality, higher-quality education offered. That's not true. I don't see where there is any research to say that higher-quality education comes from boards that get to hire kindergarten teachers and high school advanced math teachers. I don't see that happening. I was approached quite a while ago about someone saying, we need to limit the number of school districts so we can save on administration. I passed out some materials on the first day of this discussion that very vividly pointed out, in Nebraska, that the fewer number of districts that we have in Nebraska, the more administrators we have, as well. That concerns me a great deal. It concerns me a great deal, as well, when approximately 60-some percent of spending for a certain school district is spent on instruction, instead of 80 or 90 percent. There are a lot of grants that we have in Nebraska that limit administrative costs to 5 and 10 percent. Imagine if we faced administrative costs at 40 percent; that concerns me a lot. And it concerns me a lot when you look at the Lincoln Public Schools administration building, that just so happened to be vacated by a company who had headquarters for a four-state area, and now it's full of administration for one district out of the entire state of Nebraska, albeit a large district. I think that LB 126 will actually lead to more administration when all is said and done. At least, the trend certainly heads in that direction. And that's one that doesn't help children. It doesn't help strengthen families, and it doesn't look at the overall quality of education offered in Nebraska. I appreciated the cartoon that Senator Schimek handed out last week, or the week before, about thinking outside the box, Senator Schimek. And it has a cat sitting beside its

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litter box, and the cat's owner says, absolutely do not think outside that box. I think we get captivated with that theory here in the Legislature, because we have a mind-set of, everything must be done the same way. And it's...I think it's an honorable attempt at fairness. But I think oftentimes we need to step back, allow a small district school board to make some decisions that they feel is best for the community. And I would much rather a battle be fought at the local level relating to local issues, than a battle be fought here in the Legislature. And I know that Senator Stuhr, when she stood up and said, we need to do LB 126 because her districts did it a long time ago, they did that voluntarily. I think she even said that her opinion on this issue has changed somewhat over the last ten years.

SENATOR CUDABACK: One minute.

SENATOR SMITH: And I'm not sure exactly why. But there is the issue of voluntary decisions at the local level, because those are the decisions that I think fit best for those who have the concerns, who have the needs, who have the desires to do the right thing. We have a lot of issues facing us this session, as it relates to budget. And when I see the fiscal note to LB 126 change rather dramatically...and perhaps there is some basis in fact for that, but I'm not convinced, I'm far from convinced that this will automatically save taxpayer dollars, because it's speculated as to how many districts will actually engage the closure of a building, and that's the only way the money can be saved in government these days, is if you close facilities and lay off staff.

SENATOR CUDABACK: Time.

SENATOR SMITH: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. The first five speakers are Senators Langemeier, Loudon, Kruse, Raikes, Erdman, and eight others. Senator Langemeier, you're recognized.

SENATOR LANGEMEIER: Thank you, Mr. President. I'd yield my time to Senator Smith.

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SENATOR CUDABACK: Senator Smith, almost five minutes.

SENATOR SMITH: Thank you, Mr. President, Senator Langemeier. The trends in education today, I think, some are very positive and some concern me quite a bit. And it's not only the number of administrators in a district, but the public perception of education. We have a lot to be proud of in Nebraska with public education. I think we have a lot of hardworking teachers, one of whom is a close family member of mine, who's a bit frustrated, who's frustrated with all the reports, all the tests, and the pressure being put on someone who, the harder they work, doesn't matter, hoping that there are better test results, but there are so very few financial rewards, especially when we're caught in a system where everyone has to be paid the same. But I think there is some views of education in our state today that I think we should be concerned about. And I'm not opposed to home education. But when we see more and more and more parents choosing to educate at home, we need to realize there are some issues we need to address. I think the passage of LB 126 as it stands right now leads to more skepticism in education, more skepticism from parents. Any time you take away those options, parents are going to be skeptical. I just learned again yesterday where someone wants to choice their children to a Class I school, and drive several miles to do that. Now, I hope that it isn't held against that Class I school for being an example of quality education that attracts students from another district. If we build up those walls so high between school districts, we're taking choices away from parents, and we're taking those options away from students as well. I think of...I think it's a 5th grade class at a Class I school. They had a special fund-raiser. They did an exchange program to the East Coast. This class of, I think, eight 5th-graders, which is actually a large Class I, believe it or not, but this class of 8th-graders (sic) got to do an exchange to, I think, North Carolina, or South Carolina. They got that opportunity that they never would have gotten in a larger school district. And I know that there's some concern that these opportunities should not exist because not everyone can have them. But then that goes back to looking for the lowest common denominator in quality education. We can do so much better than

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that, because the more options we provide, the better off we all are. When we have public education with option enrollment as our policy for a long time--and I would say it's been working--the competition between these public school districts is healthy. I think the competition between high schools in a larger school district is healthy. We don't want to build up walls to separate those either. When I hear that Lincoln Public Schools wants to establish a special program in downtown Lincoln, establishing, like, a technology high school, I don't criticize that. In fact, I appreciate that,...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...because I think it's thinking outside the box. That's healthy. Those provide options...that strategy provides options to the students, and the students benefit the most from that. I understand they want to do entrepreneurship as the next project. That's great. That provides options. All I ask for are options across the state. I think it's wonderful that Lincoln Public Schools can provide those options of extracurricular activities as well. We have districts in western Nebraska that share not only facilities, but athletic programs. Scottsbluff and Gering come together to be the same swim team. They only want to maintain one swimming facility. It's the local option for Lincoln Public Schools to have a pool at every high school. That's their option. Now, please allow for options across rural Nebraska. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith and Senator Langemeier. (Visitors introduced.) On with discussion of LB 126 and amendment to it, Senator Louden, followed by Senator Kruse. Senator Louden.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I listen to the discussion this morning on LB 126, how it goes part, and also yesterday, I...the Schuyler school district was always brought up several times. So I was wondering, may I ask Senator Raikes a question?

SENATOR CUDABACK: Yes, you may. Senator Raikes, are you available? Senator Raikes, are you...Senator Raikes, would you

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accept a question from Senator Louden?

SENATOR RAIKES: Yes.

SENATOR LOUDEN: Senator Raikes, on the Schuyler school that you've mentioned that the grade school is drastically overcrowded and that sort of thing, now, with the...it's a Class VI school. And is the high school a 7 through 12 high school, or is it a 9 through 12 high school?

SENATOR RAIKES: Senator, my understanding is it's 9 through 12. But I'll check to...I believe I'm getting an indication that that's right.

SENATOR LOUDEN: Yeah. Now, with that in mind, then, if it's a 9 through 12, and the Schuyler grade school, is that the one that's drastically overcrowded? I mean, is that where the problem is, is in the Schuyler grade school?

SENATOR RAIKES: You know, Senator, I haven't been to Schuyler to go through the school building. So in terms of the condition of crowding, I really am not an expert on that.

SENATOR LOUDEN: Well, but that's where the dialogue has been, that that was...with English proficiency and that sort of thing, is with the Schuyler grade school. Is that right, that they...

SENATOR RAIKES: My contribution to that dialogue, Senator, as you will remember, is to point out the number of students who attend that elementary school, the number of those students who are English language learners, the number of poverty, the operational funding per student, and also the valuation per student.

SENATOR LOUDEN: Yeah. Now, with that in mind then, if the Schuyler Class VI school was changed, then, to a 7 through 12, there would be two grades on...straight across the board on all those districts, it would be the responsibility of the high school district at that time, wouldn't it, with the larger valuation, and whatever that would entail, whether they needed to build better facilities or improve something, that they would

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have a larger valuation and would be acquiring two levels...two grade levels straight across the district. Is that correct?

SENATOR RAIKES: I think that line of argument is correct, as it would be if you said you converted it to a K-12 district.

SENATOR LOUDEN: Okay. Thank you, Senator Raikes. That's my thinking on this. There are other ways that these problems can be solved without dragging the whole state of Nebraska into these situations where we're going to change everything. We have our Class VI districts out in the western end of Nebraska. In my district, I think I have three Class VI districts for sure, and some of them are in the process of reorganizing. And it's working quite well out there. But yet, when we come down here and there's one or two examples that somebody has a problem with...and there are other ways of solving these problems. Why aren't we discussing allowing these K...these Class VI districts to change their operation from a 9 through 12 to a 7 through 12? At the present time, the Hyannis school district always has been a 7 through 12. Some of the other school districts probably, in time, as the student enrollment changes, will...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...turn to a 7 through 12.

SENATOR CUDABACK: One minute,...

SENATOR LOUDEN: Okay, thank you.

SENATOR CUDABACK: ...Senator.

SENATOR LOUDEN: I think this is something that needs to be looked at. LB 126 isn't the complete answer, and I think it probably is going to cause more problems than what it will answer. Also, it will probably cost the state way more money, and not only the state, but the local taxpayers in more money, as it goes...as it works its way through. There hasn't been anything shown yet where there's a large savings in money. There can be some shifting of taxation, but there's not any savings. And with my observation is, it's probably going to

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increase our cost of education. I think there are other ways that we can solve education problems besides beating the Class VI and the affiliated Class I schools. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Kruse, followed by Senator Raikes and others.

SENATOR KRUSE: Mr. President and members, thank you. I affirm the lengthy and seeking discussion, curious discussion, that we've had here. This is a very important subject that deals with some deep and long-held thoughts, feelings, convictions of many of us. And it's appropriate that we spend this kind of time on it. I appreciate the quality of the discussion. I find myself to continue to be supportive of the bill. There has been quite a bit of discussion about finances, and whether this would help or hurt the state. To me, that's a nonissue. It really has nothing to do with the subject at hand. We have to focus on the larger question. A larger question, of course, is the question of racism. We have to deal with that in a variety of ways, and we always have to be conscious of it. However, I don't see that the argument is really effective in addressing the subject. The question is whether those who might be aiding racism or separation of races are talking with each other and making a decision together. And they really aren't affecting each other. That's what's disturbing to me. No one is in charge here. It seems to me this...any of these groups--and certainly there's no judgment upon them as they try to make their own decision within their small group--but they need to be talking to each other. The main thing that I see within this is that every parent in the state should have a right to run for the school board that controls and guides their kids in high school. Every parent in the state should have a right to vote for those persons. We need to get those decisions made on a basis where we don't have to worry about future decisions. I trust the local control when the locals have a chance to be in a broad-based approach to what they are doing. And I support the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Kruse. Senator Raikes, on the McDonald amendment to LB 126.

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SENATOR RAIKES: Thank you, Mr. President, members. I'd yield my time to Senator Beutler.

SENATOR CUDABACK: Senator Beutler, you have almost five minutes.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I understand we're trying to work something out. I hope we're making progress. And to that end, I don't mind talking a little bit about the issue, even though I'm probably going to succeed in making myself unpopular here. But I want to talk about one particular dimension of the debate that we've had. By and large, the debate has been on the subject of education. And that's, obviously, as it should be. And in my opinion, that's what the debate should be about entirely--how the existence and functioning of the Class I schools helps or hurts the overall education system in the state of Nebraska and the local communities. But there's been another dimension that has been spoken of on the floor, several times, by several people. And I think it is a large unspoken element of this debate. And that is the phenomenon of the deterioration of our rural communities over the last...decade by decade, over the last century, really, and the fixation on preserving different types of government infrastructure for the purpose of preserving an economy in a town. That, I think, should not be a part of the debate, because when you do that, you're saying government is the business of a community, not government is there to support the private enterprise endeavors of a community. But in this bill we have provisions preserving small schools if they're in a small town, just because they're in a small town. Let me drop back a little bit more and tell you why I don't think that whole thing is healthy in the long term for the rural communities. The rural section, all of Nebraska, is caught in a great transformation. That transformation was the transformation that the great agriculturists of this state brought forth, in terms of animal livestock production, in terms of crop production, in terms of machinery that allowed you to have bigger and bigger farms, which meant smaller and smaller towns, fewer people to run the farms. That transformation continues. And if you thought that it was going to end in the next five or ten years, you might say, yes, let's preserve our schools, because we'll

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need it in five or ten years. But folks, that's not what's happening. And I'm trying to be realistic. And I'm interested in everybody's reflection on this particular item. But I'm trying to be realistic. It's not going to stop here, in terms of what's happening in agriculture. We have entered into globalization and world trade agreements that bind us to Australia, to Europe, now to South America. And now those agreements are calling in their chits, and they're saying, no more subsidies for agriculture in America. And that's what we're going to have to start giving up in the next 10 and 20 and 30 and 40 years, the subsidies to agriculture. That's the price that we're going to have to pay for globalization and entering into these world trade agreements. It's coming. And the number-one evidence that it's coming was the budget of George W. Bush this year cutting back on ag subsidies in the area of corn, for example, by 5 percent. That's just the beginning.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: What we need to do is make that transformation as fast as we can. Don't let expensive super...infrastructures exist out there that are no longer needed. Take that money that we can save by doing that, and reinvest it in positive economic development for the rural areas, to develop new, supplemental economies that can actually help bring us to the future. We need money for ethanol this year, a lot of money for ethanol. We need the \$2 million or \$3 million or \$10 million that we can save on Class I schools, the education things being equal. We need to take those resources. We're limited with the amount of resources. If we want to direct those resources to rural areas at the scale that we need to do it, we cannot suffer antiquated infrastructure. We have to move quickly through the transformation.

SENATOR CUDABACK: Time.

SENATOR BEUTLER: We can't mitigate, mitigate, mitigate; spend, spend; waste.

SENATOR CUDABACK: Time, Senator Beutler.

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SENATOR BEUTLER: Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Erdman.
(Visitor introduced.) Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. I have no idea what Senator Beutler's comments had to do with this debate, but I would yield my time to Senator Smith and go talk to Senator Beutler.

SENATOR CUDABACK: Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members, and Senator Erdman. And I missed what Senator Beutler had to say, but I heard something about some world trade and so forth. And I'm glad to know that Class I schools have an impact on world trade, because I think they are a little farther-reaching than most of us would admit. And I think there was a good handout from Senator Louden of a cartoon, long ago, of how effective a one-room schoolhouse can be in producing high-quality education for its patrons, namely the students, secondarily the parents. But not all Class I schools are one-room schools. Some are, with very few students. Some are not. I was speaking with a colleague who said that he went to a Class I school--and I won't even venture a guess what years, but it's been some time ago--where there was kindergarten through 8th grade, 1 teacher, 38 students. I think there was some concern of the quality impact on kids there. I can guarantee you that that is not the case. And I speak to that based on my experience, not only as a student, but working in the education setting for more years than some might assume. But we have so many different sizes of Class I's, and we have so many different reasons for Class I's. In Senator Stuhr's district, they didn't have enough reasons to keep the schools open any longer. That was their local, voluntary decision. I support that local, voluntary decision to pursue other structures of school districts. I will stand by the Class I schools who maintain efficiency and effectiveness in providing a cost-effective education across Nebraska, because that's what most Class I schools are about. Now, Senator Raikes points to some egregious examples of stewardship of public funds. I can't dispute that. I can point to some egregious

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examples of public funds in districts much larger than a kindergarten through 8th grade structure. And I think it's quite obvious. But I've expounded on that in prior discussions, and I don't want to repeat myself too much. But the options that are afforded Class I students we need to keep. I know that it's considered to be unfair, to some in here, that Class I 8th graders come to the State Capitol, because it's affordable and they can logistically have a fund-raiser to do that, where the larger K-12 districts, they don't send their students to Lincoln to the State Capitol. Now, if they happen to be on the basketball team and they happen to win districts and go to state, then they'll come to Lincoln. But the State Capitol is not in the mix, I would guess, Senator Brown. We have so many good things to focus on here. I think about the outdoor classroom at a Class I school that the teachers worked so hard to write a grant for. Now, it wasn't luck that this Class I school has a nice building. It was built in the late sixties. Cedar Canyon School was built in the late sixties,...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...and has been cared for so well that I would say...among some other schools, as well, Class I, that they have some of the best facilities across Nebraska, especially for the dollar spent. The students don't even walk on the grass, because they can...there's a rule against it. So they don't walk on the grass. There's this immense respect for the staff, for the community as a whole, that is afforded by these students because of this community feel and this community structure that is currently allowed to happen, that LB 126 not only gets rid of, but purposely gets rid of. The thing we lack most in our schools today is parental participation and parental support.

SENATOR CUDABACK: Time.

SENATOR SMITH: LB 126 gets rid of that. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. On with discussion, Senator Stuthman, followed by Senator Hudkins.

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SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I haven't been involved in this discussion at all in the last several days, probably one time in the entire discussion of the three days that we've been discussing this. The situation that really concerns me is, we're trying to deal on a state level what realistically can be done already. School boards, taxpayers can see the opportunity to combine and belong to a Class I...eliminate the Class I districts. I'll give you some of the observation that is in my area. We had the elementary schools in the area. They went together with a high school, formed the group, and they are all part of the Class I...I mean part of the K-12 school system right now. It was done. It was cooperation with the school boards. They worked together on it. So these things can be done. And it was done by the local control. I'm really concerned about us in the legislative body to try to legislate something that is something for across the whole state. Our state is totally different from one end to the other end, just as the example that Senator Fischer had with the size of the school district, hers up there in Cherry County as compared to the one down here, would extend from Lincoln almost to Grand Island, would be the same square miles. It's very disturbing to me that we as a legislative body have to try to pass a law that would be targeted to probably maybe a couple bad actors, maybe some that really should be organized but are not doing it. But should we put something on the books in a statute as a bill that should be the blanket policy? Maybe we as a legislative body should be dealing with issues such as those that, you know, are really not doing it, cannot get along, cannot come up with agreement, and are expensive to the state and to the taxpayers. I had a bill yesterday, my Nutrition In School Act, that was discussed in the hearing. I had a lot of opposition in this bill. My bill would have made it that it would eliminate the sale of junk foods in the school during the school day. A lot of the opposition said, you know, it should really realistically be the local control school administrators, parents, and those are the ones that should get behind it and deal with that issue. I will have to agree with them; that is where it should go. I brought the issue up in my bill to create an awareness for it, hopefully that parents do take some action in cooperation with the school boards. So I think this is an issue that, we can do it right now without legislation. We

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can...the boards can form, they can eliminate a Class I school district if they seem the time is right. So I'm going to continue to listen to the debate. I don't know whether we should have legislation, you know, to be for the whole state just because we have possibly a couple of bad actors. So with that, I'm going to return the balance of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. On with discussion. Senator Hudkins, followed by Senator Foley.

SENATOR HUDKINS: Thank you, Mr. President and members of the body. We talked a day or so ago about some of the statements that were made concerning LB 126 in the public hearing, and then some of those were repeated in the introductory remarks. I'll refresh your memory on statement number two--and we have 20--some that we would like to address, if there's time: The time has come for us to move to a K-12 organization of school districts in Nebraska; there are several reasons. And then that brings us to statement number three: This is especially the case when these units, 230 separate local government units, serve very few students, and provide the service at a cost per student that, on the average, is higher than in K-12 districts, and in some cases, astronomically higher. Well, now, while the percentage of students served by Class I is a relatively small minority in relation to the total Nebraska students, nonetheless, a total of 8,317 students attended Class I schools in 2003-04. Are you going to take their choice, their school, away? They have made that choice. They have gone from their K-12 to an option school, to a Class I. They did that for reasons that we don't know about. They could be convenience reasons. They could be the fact that there's no bullying in the K...in the Class I. It could be the fact that they get a more hands-on education. There are many, many reasons. We should not be sitting down here and dictating the future for the entire state, those children in the entire state. The statewide per pupil cost average--and this is figured on the average daily membership for 2002-2003--for all Nebraska students is \$7,476. Now, that takes into account some of the ones Senator Raikes told us about that cost \$11,000. This...I hate averages. Do you know what the average temperature in Nebraska is? It's 50; it's 100 in the

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summer, and it's 0 in the winter. So averages really don't tell you a whole lot. Of the 231 or 235 or 241, however many Class I schools that there are...or that there were during the 2002-2003 year--and remember, we keep telling you that these schools are closing at the rate of one every two weeks. If their school is no longer viable, they are closing. But 94 of those operate at expense levels below state average. We didn't hear about them. All we heard about in the committee hearing and in the introductory remarks were the ones that cost over the state average. More than 60 percent of all Class I students attend schools which operate at expense levels below state averages. Statement number four: There is not documentation that student performance is significantly better under this high-cost system, especially given the demographics of the students served. Well, there is no foundational evidence to support the assertion that Class I schools are a, quote, high-cost system. In December 2004, the...

SENATOR CUDABACK: One minute.

SENATOR HUDKINS: ...Nebraska Department of Education released its 2003-04 state of the schools report. In regard to the operating Class I's, the report found that nearly half of Class I districts achieved an assessment quality rating of exemplary, together with earning an exemplary performance rating. An additional 9 percent of Class I districts earned an exemplary assessment quality rating with a very good performance rating, so on and so forth. These kids are, in these Class I's, getting a good education. I asked the secretary at Malcolm Public Schools, in the last 20 years, to figure up how many valedictorians and salutatorians came from a Class I school that comes into Malcolm. One-third of them did. That tells me that those kids are getting a good education. Statement number five: And there is little evidence that...

SENATOR CUDABACK: Time.

SENATOR HUDKINS: Thank you. I'll be back.

SENATOR CUDABACK: Thank you, Senator Hudkins. Senator Foley, followed by Senators McDonald, Fischer, Baker, Janssen,

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Heidemann, and six others. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President and members. We've been on this bill a number of days now. I've been listening carefully to the arguments of both sides, but I haven't yet weighed in. And I sense that we may be getting close to a vote of some kind here. And before we get to that point, I just want to put myself on record with a few thoughts on what I've learned in considering this bill. First, I want to thank Senator Raikes for bringing the bill. I know it's been difficult to carry a bill this controversial. I've received quite a number of e-mails and other communications, including quite a number of phone calls to my home, on this bill. This bill has really stoked the passions of a lot of Nebraskans. And I know that Senator Raikes has taken some personal abuse over his carrying of the bill. And I think it's great that he's brought the bill. I'm glad he's got us talking about this, because it is a problem that we need to address. So I thank him for doing it. The other day, Senator Hudkins was asking me, rhetorically, how would I feel if the school that my children attend, which happens to be a parochial school, were forced to merge in and close and consolidate or whatever, with some neighboring school. And obviously, I wouldn't be very pleased about that. But yet, that is precisely what has happened in other parts of the country with parochial schools. As they've lost attendance and the cost per student got too high, they were forced into a position where they had to consolidate with other schools. I'd also mention that I've done some research on this, and the school that my children attend, which is a parochial school, as I mentioned, educates about 500 students at a cost of \$3,100 per student. And let me tell you, those kids are getting a darn good education. I'm just thrilled that my kids are in that school. It's costing \$3,100 per year to educate those kids. And I know the parochial-public school debate is not an apples-to-apples comparison. There's some differences there in terms of salary structure and benefits and so forth, and the special needs students, and all those kinds of considerations. But I do get concerned when I look through the materials that Senator Raikes and others have provided to us, and I scan through this list of Class I schools, and to my amazement--and I've never served on the Education Committee, so I've never had

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to focus on this before--but to my amazement, we've got schools in this state that are educating students at \$30,000 to \$40,000 per student per year. I can't defend that. I think it's absolutely indefensible that we would spend that much to operate some of these small schools. And I think that's where our attention needs to focus. I'm also finding many, many Class I schools, quite a number of them, that are operating at costs below the statewide average. Somehow they're able to operate those schools very economically. And from all accounts, they're doing a great job academically. In other words, those schools aren't broken. So why are we messing with them? If they're not broken, don't try to fix them. That's my attitude. I'm also told there are some Class III schools that are way out of line budgetwise. This bill doesn't address those schools. I think we've got to focus our attention on those high-cost schools and see what we can't do to nudge them further toward consolidation, because \$30,000 to \$40,000 per student, I'm sorry, that's too much. We can't defend that. I don't...and I know there's a lot of talk about amendments and ways of getting this bill to move forward. What I'd like to see is an amendment that gives some protection to the Class I schools that are performing properly academically, and they're in line within a reasonable band of operation in terms of their cost structure. I think those schools deserve to be protected. And I don't know if there's anybody who's crafting any kind of an amendment along those lines. I've heard some talk of it. But if there is, that would have some appeal to me. So I'll continue to learn and listen, and we'll see how the bill goes. Thank you very much, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Senator McDonald, on your amendment.

SENATOR McDONALD: Mr. President, members of the body, I hope everyone was listening to Senator Foley's testimony this morning. And he's right on track. Let's face it. Some schools' cost per student is much less than the affiliated district that they would be forced to consolidate into. Why would we want to close a school that the kids are getting a good education at far less than what they would be paying and that we would be paying for them in a Class VI...a Class XII (sic)

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school. Some are paying more. Those are the ones we need to look at. We need to address overspending. Now, is it because of a special education issue? We need to address that. If that's the problem, we understand that. But if that's not the problem, we can certainly not continue to overspend for some of those small schools. And we should look at that. That's very important. But why would we close all of them for a few? That's what this LB 126 would do. It just takes them all off. You know, we're going to close them all, the good ones and the bad ones. And that's not what we should do. So I commend you, Senator Foley, for your testimony. And I hope others listened to that also. A concern of mine is, why does LB 126 eliminate the public hearing process on reorganization plans at the state level? It eliminates the public process. We in the state of Nebraska enjoy the public process, because the people are our other form of government here. We have public process. We have committee hearings. People come in and testify. We have people come from clear across the state into the Rotunda to talk to us about issues that they're concerned with. The public process. The people are being eliminated from the choice of having their school. Why does LB 126 take away school districts' decision to appeal the decision of the state committee? They don't even have the right to appeal the decision. It's a slam-dunk. It's all over. If these consolidations are effective on June 6, 2006, when will the voters from the former Class I district be eligible to vote or run for the school board in their new school district? The next election cycle? Because it's every two years, it could be up to four years before we would have someone from the Class I board be able to serve on the K-12 board--up to four years. Are they going to have any say--so what's going to happen if they don't even have the process to be on the school board? When does reorganization process have to be completed, according to LB 126? Process has to be completed in nine months, nine months, by December 1, 2005. Is that enough time to accomplish everything required in LB 126? This doesn't need to be done now. We certainly...last year, we had this bill on the floor, and we did nothing, and the only thing changed from last year to this year is, we subtracted one year. So it could have gone in effect last year. And so to speak, it actually did go into effect last year, because we removed one year. We're back to where we were last year. We just subtracted a year from

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it. We are forcing this issue a lot faster than needs to be forced. We have a lot of rural issues, a lot of rural senators that are concerned about this,...

SENATOR CUDABACK: One minute.

SENATOR McDONALD: ...because we don't understand the process. And I think those that are supporting this bill also don't understand the process. But why should they understand the process? They possibly don't have a Class I school that they're being affected by. They don't care. They don't understand, and many times won't even listen on the floor. They're gone. They don't pay any attention. I noticed Deb Fischer had her map out. Very, very few senators were even looking at that map to see how it affected her district. That concerns me. Senators have made up their mind, they've decided how they're going to vote on this, but yet won't listen to the concerns and the facts and figures that many of the rural senators have addressed. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. On with discussion of AM0086 to LB 126. Senator Fischer, followed by Senator Baker. Senator Fischer, are you available? You're recognized to speak.

SENATOR FISCHER: Mr. President, members of the body, again I would like to address some issues with the Class VI-Class I K-12 system that is legally allowed in this state. We have 18 Class VI's in Nebraska. In fact, when a former Speaker, Senator Ron Withem, was in this Chamber, he introduced, and a bill was passed, that would allow for new Class VI's to be formed in the state. So these are not the horrible, inefficient K-12 systems that we've been hearing about on the floor. Again, when you look at the maps--and if you need visual aids while I talk, please pull your map out. I'd like to discuss student density, average district area, things like that here, where we have the road density, too. When you look at Cherry County, which is the county I'm most familiar with, that's my home county, within the 43rd District, in our public school systems we have 1,039 students. We have 23 school districts. And that land mass in Cherry County is almost 6,000 square miles. It's 5,950 square

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miles. We have a student density of .17 students per square mile. Out of these 23 districts, the average district size, when you take out our high school district, which is made up of all the Class VI's, the average district size is 259 square miles. Now, in Cherry County, as you can see on the map, we also have a Class II district, which is a very small in student population K-12 district, and that is the Cody-Kilgore district, which is District...well, it's the Cody-Kilgore district, and it's in the north-central part of Cherry County. That's included in these figures. It's not just the Class VI-Class I system. In the Valentine Class I and Class VI system, we have about 843 students over that 3,600 square miles. The student density is .23 students per square mile. I can go through that and tell you the number of students in each of our Class I's, and the high school. If you would like that information, I have it available here. But the students, on my information here, the number of students in the district range from 3 students to 415 students in those Class I schools. If you look at the public road system in Cherry County, we have 1,345 miles, or .23 miles of road per square mile. That's the road density. I can go through on the major highways and the rural county roads. As you can imagine, the rural county roads are three times what our major highways are in Cherry County. And if you've been in Cherry County, you'll realize that we don't usually have those nice gravel roads that are here in the eastern part of the state, and they don't run on every section. We have a lot of trail roads, what we call them, in Cherry County. From that information, if you compare that to five eastern Nebraska counties--Cass County, Lancaster County, Otoe County, Saline, and Seward Counties, I'd like to give you some of that information. The public school systems in those five counties have 47,678...

SENATOR CUDABACK: One minute.

SENATOR FISCHER: ...students. There are 34 districts, and they encompass 3,150 square miles. The student density is 15.1 students per square mile, and the average district size is 92.6 square miles. If you exclude the Lincoln Public Schools, there are 33 districts, there's about 15,000 students, and it's 3,100 square miles. Student density in rural areas, outside of

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Lincoln, of these five eastern counties, is 20 times greater than Cherry County, while the area of the school districts are much smaller in eastern Nebraska. Road limitations in Cherry County are as important a consideration in the formation of Class I districts as anything else. Eastern Nebraska perceptions do not hold in Cherry County. Imagine trying to operate the Seward school district spread over all five counties,...

SENATOR CUDABACK: Time.

SENATOR FISCHER: ...with one-tenth of the roads system available. Thank you.

SENATOR CUDABACK: Thank you, Senator Fischer. Senator Janssen, followed by Senator Heidemann, on the McDonald amendment.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Interesting discussion, very interesting discussion. And this happened several years ago, when Class VI districts were put into place. I served on one of those Class VI district boards. And in most cases, in most cases, all you would lose is the elementary board. Hearing Senator Fischer speak about Cherry County, that wouldn't be feasible to close some of those elementary schools. They're too far away. I heard her talk about some of the nice graveled roads we have in the eastern part of the state. Yes, we do have, a lot of them that are paved in my county. Class VI districts were put into place, usually, to reorganize. And then, at that time, some of the elementary schools were closed. They didn't have enough students. The members of those local boards chose to close that school. And if there's a need for that elementary school to be open, it will remain open. It would be up to that local board. That school will remain open. And they will probably, I would imagine, provide transportation. If I'm wrong, someone correct me on that. Beginning June 15 of '06, school boards would be prohibited from closing any elementary attendance center, or changing that grades offered, if the fall membership of the prior school year includes a total number of resident students that will at least be 2.5 times the number of grades offered, and the attendance center is at least ten miles from another

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elementary attendance center within that district, or the attendance center is the only elementary attendance center located within the boundaries of an incorporated city or village. Well, I'll tell you what's happened in my district. Had an elementary building that was old, rundown. The cost-effectiveness of it was terrible. To replace that building would have been a disaster. So we bused those elementary and high school students to the high school or to the grade school that are open. We have two grade schools left, just two. And those are inside a corporate city or village within that county. Someday I hope that there will be one elementary for that whole district. We have some old Class VI districts that have done that, eliminated the attendance centers because it was not feasible to keep them open. They could see the need of closing those attendance centers. They were old. So they did it. And to my knowledge, there wasn't a big uproar within those small communities that it happened to. That attendance center, or changing the grade offered without...

SENATOR CUDABACK: One minute.

SENATOR JANSSEN: ...the approval of 75 percent of that board, I think is a pretty good safeguard. I'm still supporting LB 126, and I will be voting against AM0086. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Heidemann, followed by Senator Price.

SENATOR HEIDEMANN: Thank you, Mr. President. Some of the things that, back to the fiscal note again...I was going to have a dialogue with Senator Byars, but I see he's not here. I'm concerned that in the General Fund expenditures, where they got their fiscal note, part of the General Fund expenditure is the special education. And I have talked to Senator Byars, and both him and I have probably a little bit a special place in our hearts for special needs kids, and my question is, is how, if this money is all figured, these kids can just go into the Class II, III, IVs, whatever they may be? Knowing the needs of the special needs kids, you will not be able to move these children into the resource rooms, the special ed rooms without expended resources, without expended time and effort. And it's

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another problem that I have with the fiscal note, that there's no accounting for these special needs kids that are going to move into these other districts. So it's a very...very much of a concern of mine. We've...I've listened to other senators talk, Senator Janssen just got done talking. The one thing that I've noticed that he said a couple of times, that I really don't have a dog in this fight, and to me this isn't only just about education. We talk about local control and I'm very...I'm a conservative person that believes that the people on the local level, especially since they're paying the property taxes or the taxes that help support this school, that they should be able to make a decision on how these schools are operated or whether they are open or whether they are closed. So I believe that everybody has a dog in this fight. I believe it's...there's more going on in LB 126 than just education, but we can go back and talk about education again. Senator Landis talked the other day about we really haven't talked much about the quality of education of the Class I's. I would like to take...Senator Landis isn't here today. Wherever he may be, I would like to offer him the invitation to go to some of these Class I schools and I will show him the quality of education that has happened in these schools and share, and share that with you. There is education going on. There's parental involvement going on. It's a type of school that I believe a lot of people, a lot of children in this state could benefit by, and I would like to be able to show people that and to prove that to people. Another thing that I'm still very concerned about in LB 126 and...is the right for people to have a say whether these schools close or stay open will be with the K-12 board and it will take at least up to four years to be...have a chance to vote on these people that sit on these K-12 boards. And a big concern of mine is that the Class I people will not have that opportunity to vote before the school is actually shut down. And how anybody can really support that I really question. So I do have a lot of concerns and questions about LB 126. I hope we keep the dialogue open. On the amendment, Senator McDonald's amendment, we talked about not counting the...

SENATOR CUDABACK: One minute.

SENATOR HEIDEMANN: ...option students. And there was a comment

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by Senator Raikes, says that the primary mission, I believe, of the district is to the resident students. I wouldn't consider an option student a second class. I really believe we need to count these, these students in the way they're...whether the schools will be able to stay open or closed. I believe that every student is a student, and whether they're option, whether they're resident or contracted in, I think they're treated fairly. They're counted in the state aid formula and I believe that they should be counted in this formula. Thanks so much.

SENATOR CUDABACK: Thank you, Senator Heidemann. Senator Price.

SENATOR PRICE: Mr. Speaker, members of the body, we've heard passion and pride in their product from the Class I schools and the people who support them. This discussion of assimilation of Class I schools has been taking place for years. I wonder if any amount of planning could have prepared the Class I school districts for consolidations, merger affiliation? There's been a decrease in Class I's over the years, but how many years would it have taken to continue to decrease the Class I schools. This is the first time that I've heard racism and white flight brought into this discussion. I just never had heard this before. I never doubt that there are efficient Class I schools; hardworking, dedicated teachers who serve their students well. But I continue to support LB 126 when it gets down to the cost per student required in real small schools and the educational dollars that are being allotted to these facilities. So I continue my support of LB 126. I return my time to the Speaker. Thank you.

SENATOR CUDABACK: Senator Brashear.

CLERK: I think she meant to return to the Chair, Jim.

SENATOR CUDABACK: You returned it. I'm sorry, Senator Price. I misunderstood you. The next speaker will be Senator Smith. Senator Smith, I did call on you.

SENATOR SMITH: Thank you, Mr. President, members. The issues that have been discussed over the last few minutes and so forth I think are very relevant to the discussion, and most relevant

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is the fact that Class I schools are already closing on their own, much like they did in Senator Stuhr's district, voluntarily so. School districts are closing, according to the Department of Education, one school district every two weeks, on average. That's without a state mandate. LB 126, as it stands right now, is this overreaching, overly broad, boilerplate approach that has nothing to do with quality, zero. We need to foster an environment that enhances the option enrollment, not the opposite. We need to foster that environment of option enrollment by keeping the Class I schools so that we have, number one, options for students but, number two, a healthy competition. And I realize that sometimes the competition might get a little stressful, but I would much rather the competition be between two existing schools than a hypothetical level established by the government that some bureaucrats in Lincoln or Washington established. The local level is the best place to make decisions, especially when it involves the livelihood of a community and the education of children. I suppose I could go on and on and on, do it for the kids, do it for the kids. That's an overused term. But let's look at quality that is a component nonexistent in LB 126. The boilerplate approach is not the right way to go. And just because a school board can hire a kindergarten teacher and the math teacher in the high school does not make it a quality system. There's so much more that needs to be involved with that, and we can do that. We can provide that. We can provide a system and encourage a system that is based, number one, on quality, followed closely by efficiency as it relates to cost. As many reports and numbers that are shifted around at the State Office Building, you would think we could come up with a way that puts quality ahead of the numbers, but the numbers closely follow so that we can track, and we can keep a hand or keep at least a finger on the costs of administration, because that's where we see more and more dollars spent consistently. This is not an isolated scenario with the number of administrators increasing at a rate two or three times that of the decline, decline, emphasis, in the number of districts. I know of a school district with declining enrollment who keeps adding administration. And LB 126,...

SENATOR CUDABACK: One minute.

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SENATOR SMITH: ...that only seeks to close districts and really nothing more than that, is supposed to be efficient when we don't have any other policies in place in terms of limiting administration? These are trends that have nothing to do...again, when we...when we talked about the trend in the increase in administration, has nothing to do with quality, has nothing to do with efficiency, at least I don't see where it's worked that way. Thank you, Mr. President.

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

SENATOR BEUTLER: I would yield my time to Senator Brashear.

SENATOR CUDABACK: Senator Brashear.

SPEAKER BRASHEAR: Thank you. Mr. President, members of the body, everyone who has been concerned about LB 126 has been working very hard this morning and we have reached what I call an accommodation. But there is no such thing as an accommodation unless you, the body, the members of the body, and 25 of you will accommodate it. And this may be slightly more candid than we sometimes are, but I, in defense of what I'm going to do, I'm hoping that it is helpful to those who have not participated in this kind of a negotiation or accommodation to understand how it is it can be done. I'm standing at...this is the mike I began my life at here in the Legislature. I came over here in order that Senator Raikes, when we do the colloquy part of this and talk back and forth and affirm each other's understanding, that it will be convenient. I'm going to indicate to you that I was asked to...I'm not going to butt in to what I'm not asked to be a part of, as a routine part of the discharge of the duties of my office; I was asked last evening to become involved with this and to be helpful, and that's my role. I'm articulating it because the people who asked me to intervene have asked me to articulate the transaction, and so I will. This began by everybody analyzing where they are. We've had a full and fair, well-prepared, substantive debate on this subject. I think, I'm speaking only for myself...I think that people are...it's like having three bullets--General, Select, and Final--and you sometimes wonder whether you have a real bullet in the chamber, if you're going to pull the trigger, or

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whether you have a blank. What we're doing here is advancing a bill, if you will accommodate us, upon some very specific understandings, and I hope no one feels...as I've come through the course of these negotiations to identify them by a name, each of them, so I hope no one is offended if this is your idea. What you find out here is we all sometimes have the same ideas, just at a different time in a different order. But let me articulate it, and I may run out of time and we hope that the next speaker might allow us to continue this discussion. The first is that Senator Raikes has indicated that he wants to come through this, the entirety of this process, with only K-12 boards remaining, and we can accommodate that provided...and so that's a concept, not fully fleshed out yet, not written down on paper. Nobody has signed, sealed and delivered, but it's an understanding. We can accommodate that, and accommodate those who are opposed to the progress of this bill with some additional understandings. One is what I have called the Heidemann amendment, which will take care of postponing implementation until the Class I schools have had an opportunity to elect representation to sit as members of the K-12 board. The...I may need some help to get through these.

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: The second one is the Flood amendment, which would accommodate the concept of cooperative agreements among and between Class I schools and K-12 districts, and I'll come back to that on the next amendment, which is the Smith amendment, which is that the K-12 board would be authorized to allow a former, and I've...I'm picking a term here, the former Class I schools to operate pursuant to a specific set of defined standards which we will agree to. And that will happen between...there must be good faith negotiation between General and Select. And I will, as an effort to facilitate this transaction accommodation, I have said I will utilize, fairly and justly, the powers of my office with regard to the scheduling on Select File.

SENATOR CUDABACK: Your time is up, Senator. Senator Louden, did you wish...Senator Louden yields you your time, Senator Brashear,...his time, rather.

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SPEAKER BRASHEAR: Mr. President, members of the body, thank you, Senator Louden. So that we will define a specific set of standards by which a K-12 board could allow a former Class I school to continue to operate in accordance with those standards, and those standards would include, in the drafting, the Flood amendment concept; in other words, existing agreements in place which meet these standards or it's a standard in and of itself. Finally, we come to the concept that among the Class I school districts, and you can argue over numbers so I won't use those numbers, but among the Class I...or Class VI school districts you have some immediate adverse economic impact to those districts by assimilating and assuming them into K-12, and we're utilizing, in our discussions, a concept that I call hold harmless with regard to that particular economic impact. Some of these things are amendments that others have thought of, that have been drafted, that are works in progress. So then you come to what I believe is the important part of our process, our tradition, and that is that I will ask, having laid this out, I will ask Senator Raikes to speak to it. Then I will ask you to advance the bill to Select File, and I promised that I would point this out, no one should vote for the bill who wants...for it who wants to vote red. That isn't part of the accommodation. But if there are 25 of you who will advance it to Select, then we will continue this process of arriving at the definition and the detail of everything that we've spelled out. Senator Raikes, I...can I yield, Mr. President?

SENATOR CUDABACK: You can if Senator Louden allows you to.

SPEAKER BRASHEAR: Senator Louden,...

SENATOR CUDABACK: He allows it.

SPEAKER BRASHEAR: ...may I yield some of your time to Senator Raikes? And, Senator Raikes, I would ask you to respond to the things that I have said, indicating whether or not I have accurately cast the understanding.

SENATOR CUDABACK: Senator Raikes, two, thirty.

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SENATOR RAIKES: Thank you, Senator Louden and Speaker Brashear. You have accurately captured my main thrust in this proposal, and that is moving to a K-12 organization. The various amendments you talked about are absolutely, I think, within the range of our efforts. We will work very, very hard to accommodate those and, as I understand them, I believe we can be successful. And the only other thing I would say is thank you very much, Mr. Speaker, for your efforts. They have been invaluable.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Brashear, you have about a minute and a half.

SPEAKER BRASHEAR: Thank you. At this point in the process, certainly I stand, am available to be questioned by anybody in the queue who would like to raise any question, want to challenge anything. If you are willing to participate in this accommodation, which I believe is in the best traditions of the legislative body, if you're willing to participate, I would also ask you to, and don't feel inclined to speak to it, I'd ask you to turn off your light. Because the object of the whole exercise is we've all been...considered what's gone on; it's time to advance this bill. Let us do this work off the floor and let us proceed with the people's business. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Louden, did you wish to use your minute?

SENATOR LOUDEN: Thank you, Mr. Speaker and Mr. President. As Senator Brashear has pointed out, there's been some negotiation, there's been some work done on this thing. I think we're probably working in a manner that we can reach an agreement on. My understanding is if it moves to the next level, that it will be there until we agree upon some of this...some of the stipulations of it. Thank you.

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

SENATOR ERDMAN: Mr. President, I would yield the time to Senator Smith.

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SENATOR CUDABACK: Senator Smith.

SENATOR SMITH: Thank you, Mr. President and Senator Erdman. This has been a process that is necessary and we have come to the point now where it's my understanding...and although I would say, without being too cliché, that the devil is in the details...that those of us who are opposed to LB 126 still have some grave concerns. And if we can work out the details, I hate to call it a lose-lose situation when Senator Raikes doesn't get what he wants and have to say we're not getting entirely what we want, but the negotiation proceeds from here. And I just want it...I want the record to reflect that those of us who have concerns about LB 126 still have concerns, regardless of what color the light is or not voting, whatever the case may be on the coming vote, but we are giving up some in the interest of good faith negotiation, and that is my desire, is to move forward in good faith negotiation. I have to say, from the onset of this generation of Class I mandatory consolidation arguments, from the beginning the constituents of mine at home have been willing to compromise. They've come up with ideas, ideas to think outside the box, if you will, and that's what I'm wanting to do and that's what I think we can do. And I appreciate the fact that Senator Raikes is wanting to move forward with those, that it's not his way or the highway, and I appreciate that immensely. This issue is difficult, given the fact there are so many reasons that Class I's exist, but it is my desire to move forward in good faith negotiation, and I thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith and Senator Erdman. Senator Hudkins. This will be your third time, Senator.

SENATOR HUDKINS: Thank you, Mr. President and members. I have mixed emotions about this, LB 126. Obviously, you know I don't like it, but we are willing to enter good faith negotiations with Senator Raikes. We have a lot of schools in the state, yes, some of them probably should close, but our opposition to LB 126 is that under the present bill they all close. So if we all can work together between now and the next time that we see this bill on the floor, hopefully some of these more sticking issues will have been resolved. This is all done for the

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betterment of our children in this state. We are trying to protect the rights of at least 8,000 Class I schools...school students, and if we can come to an agreement to take some of the more onerous parts of the bill out, we are more than willing to do that. So, with Senator Raikes' cooperation and whoever is on his side, and the rest of us and those who are supporting our side, I think that we can come to some sort of agreement. It's called compromise, and a compromise is something that happens where neither side really likes it, but it's something that they can live with, and that's what we're trying to do, is find something that everyone can live with. Thank you, Mr. President.

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

SENATOR McDONALD: Mr. President and members of the body, I would like to thank everyone that has worked so hard on this bill. I'd like to thank Senator Brashear. He has come...brought this body together, as a Speaker should, and I think that he has...he's gone well beyond what we expect from our Speaker, and I'm excited about that. I think that's good for the body because compromise is what it's all about. Many senators, when they first come to this floor, don't realize that we don't go anywhere without compromise. There are many bills that are on the floor that are very controversial, and education is always a controversial issue. But when we can come together, both sides agreeing and not agreeing, but coming out of here with one intent, and that is to make Nebraska a better place, we all benefit from that. And I also want to send a thank you to Senator Raikes for being there with all of our answers to all of our questions. I think he did a great job and commend him for being willing to compromise the issue. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. Senator Heidemann. This will be your third time, Senator.

SENATOR HEIDEMANN: Thank you, Mr. President. I guess I wanted one more say with this. I'm not for sure if I'm comfortable with what's about to happen. I know we need to keep moving, as a body. I think there's some very serious issues we need to

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work out. I wish we could work them out on General File, that's the place that I think they need to be worked out, and then move something forward from there. I'm having a lot of trouble with what's happening right now. There's one thing that I want to share with you, because...on what I consider the seriousness of the issue. I was told that the three most traumatic things that can happen in a child's life, the first most traumatic thing is a death in the family; the second most traumatic thing is the breakup of the family; and the third most traumatic thing that can happen to a child, and this is what I've been told, is the dropping of the grade or the changing of a school. And I really think we need to think about what we're all doing here on LB 126. We're affecting 8,000 kids that go to these Class I's. The third most traumatic thing that could happen to a child is changing a school, and I really think we need to dig deep down in ourselves and ask us...ourselves what are we doing? Thank you very much. I'll turn the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Heidemann. Senator Fischer.

SENATOR FISCHER: Mr. President and members of the body, I'd like to thank Speaker Brashear for his work on this issue in trying to get a compromise accomplished. I do have a lot of questions still about some of the proposals and what the specifics will be on those proposals when we finally come out. And if this bill should be advanced to Select File, and I have finally gotten a chance to look at what's been worked out on this compromise, I certainly reserve the right to begin the battle again and work hard to defeat what I view are inequities, and also to work hard to defeat this bill if the compromises that are reached are not appropriate, in my view. Thank you. I turn the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Fischer. There are no further lights on. Senator McDonald, you're recognized to close on AM0086 to LB 126.

SENATOR McDONALD: Mr. President and members of the body, at this time I would like to pull AM0086. Thank you.

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SENATOR CUDABACK: It is withdrawn. Mr. Clerk, next amendment.

CLERK: Mr. President, the next amendment I have is Senator Louden, AM0075. Senator, I do have a note that you'd like to withdraw, but refile that amendment for Select File consideration.

SENATOR CUDABACK: Senator Louden.

SENATOR LOUDEN: Mr. Clerk, that is correct. I would reserve our chances to continue this if need be at a later date.

SENATOR CUDABACK: So ordered. Mr. Clerk, next amendment.

CLERK: Mr. President, Senator Beutler, FA19.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Mr. Clerk, I'll withdraw both of my worthy amendments.

SENATOR CUDABACK: Amendment FA19 and amendment FA20 are withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Smith, AM...or FA21, Senator.

SENATOR CUDABACK: Senator Smith.

SENATOR SMITH: Mr. President, I'd like to withdraw that, but refile it for Select File.

SENATOR CUDABACK: So ordered. Mr. Clerk, when you get time.

CLERK: Senator Fischer, AM0400.

SENATOR CUDABACK: Senator Fischer.

SENATOR FISCHER: Mr. President, I withdraw LB...or my amendment on LB 126.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

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CLERK: Senator Burling, AM0415.

SENATOR CUDABACK: Senator Burling.

SENATOR BURLING: Mr. President, I'd like to withdraw that amendment and refile it on Select File.

SENATOR CUDABACK: So ordered, Senator Burling. Mr. Clerk, next amendment.

CLERK: Senator Fischer, AM0100.

SENATOR CUDABACK: Senator Fischer, on AM0100.

SENATOR FISCHER: Mr. President, I'd like to withdraw that amendment at this time, but I would like to file...refile that one on Select File.

SENATOR CUDABACK: So ordered. Mr. Clerk, last amendment.

CLERK: Senator Thompson, AM0418. I'm sorry, excuse me, Senator. Senator Flood, AM0418.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Thank you, Mr. President. I'd like to withdraw that amendment, without prejudice, and refile it on Select File.

SENATOR CUDABACK: So ordered.

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

SENATOR CUDABACK: Discussion of advancement of LB 126? Anybody wishing to? There are no lights on. Senator Raikes, you're recognized to close on the advancement of LB 126 to E & R Initial.

SENATOR RAIKES: Thank you, Mr. President, members. I, again, very much appreciate what...the work Senator...or Speaker

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Brashear has done. I appreciate the cooperative efforts of those of you in the body. I cannot overemphasize, though, the work of the members of the Education Committee on this effort--Senator Stuhr, Senator Schrock, Senator Byars, Senator Bourne, and Senator Kopplin and Senator Howard. They have worked very hard. I will tell you, in preparation for our continuing work, should you decide to advance this measure, that I would...I would ask that you try to work through the Education Committee legal counsel. I suggest that for purposes of coordination and also because some of the notions that are in play now have already been drafted as amendments, so that there is a starting point from which we can build on. So I would hope that you could work in that fashion. I will be, as I say, as diligent as I can in working with you to come to accommodation wherever we can. And I think we have a path, so I look forward to moving along that path. Again, I ask your support for the advancement of LB 126 to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the closing on advancement of LB 126. The question before the body is, shall LB 126 advance to E & R Initial? All in favor of the motion vote aye; those opposed, nay. The question before the body is advancement of LB 126 to E & R Initial. Have you all voted who care to? Have you all voted on the issue who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 8 nays, Mr. President, on the advancement of LB 126.

SENATOR CUDABACK: LB 126 does advance. Mr. Clerk, do you have any items?

CLERK: I do, Mr. President. Your Committee on Banking, Commerce and Insurance, chaired by Senator Mines, reports LB 693 to General File, LB 97 to General File with amendments. Natural Resources Committee reports LB 154 indefinitely postponed, and LB 189 indefinitely postponed; those reports signed by Senator Schrock, as Chair. A confirmation report from Banking, Commerce and Insurance. New A bill: Senator Kremer offers LB 150A. (Read LB 150A by title for the first time.) And Senator Chambers, an amendment to be printed to LB 96. That's all that

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I have, Mr. President. (Legislative Journal pages 519-522.)

SENATOR CUDABACK: Mr. Clerk, next bill, LB 533.

CLERK: Mr. President, LB 533 was a bill introduced by the Banking, Commerce and Insurance Committee. (Read title.) The bill was introduced on January 14 of this year; referred to Banking, Commerce and Insurance; advanced to General File. I do have committee amendments, Mr. President. (AM0238, Legislative Journal page 447.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Mines, you're recognized, as Chairman of the committee, to open on LB 533.

SENATOR MINES: Thank you, Mr. President, colleagues. This isn't quite as passionate an issue, although in its own way it is equally significant. LB 533 is an omnibus bill introduced at the request of the Banking Department, excuse me, Banking Department...the Department of Banking and Finance. The bill relates to financial institutions and companies under the jurisdiction of the department. Its primary purpose is to revise and update laws governing these entities. First, for financial institutions, the laws relating to banks, savings and loan associations, credit unions, and trust companies would be amended as follows. LB 533 would add exclusions from the unauthorized use of the word "bank" statute, from...for out-of-state chartered banks, and savings banks, holding companies, and certain mortgage bankers. Certain law is very strict regarding the use of this term. All the exceptions proposed are for regulated entities. These revisions add generally accepted uses of the word and will provide the department with administrative flexibility. LB 533 would provide for a short form procedure if a bank wants to simultaneously swap its main bank location with an existing branch located in Nebraska and, additionally, to set a fee for the procedure. Current law requires the filing of two applications, so this simply makes that process a bit easier. LB 533 would require banks and savings associations to have federal deposit insurance of accounts. There will be virtually no impact on existing entities, as currently all but one of these institutions have insurance, and the bill proposes to

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grandfather the one existing uninsured savings and loan while continuing existing customer notice provisions regarding the lack of insurance. The bill contains corresponding amendments relating to the term "banking institution," a statutory cross-reference, and removal of duplicative language. LB 533 would add electronic transmission as an additional means by which the department could give notice of pending applications. Each financial institution would be given the option of receiving these notices by e-mail or certified mail. Legislation is required because the statutes require certified mailing. This proposal would improve efficiency by saving department staff time, and could save money for the applicant financial institutions. LB 533 would authorize the department to release pledged securities to a receiver for an insolvent out-of-state trust company upon the receipt of a court order and notice publication. Current law does not allow the department to release the securities until all claims are paid, and this is affecting settlement of an existing receivership of a South Dakota trust company. The emergency clause is requested for this proposal. LB 533 would provide for the annual renewal of the three wild card statutes. The law provides parity between state-chartered financial institutions and their federal counterparts. This is the annual reenactment necessary as a result of a state constitutional provision. The emergency clause is also required for these three provisions. LB 533 would update a law relating to bank directors by removing outdated language requiring the bank directors be selected from among the bank's shareholders. This statute was inadvertently not amended some years ago when a requirement which provided that a bank director own a share of stock of the bank or its holding company was repealed. LB 533 would also update the investment laws of financial institutions by including a cross-reference in each set of laws to current law authorizing the institutions to invest in business development corporations. In addition, the Nebraska Banking Act is updated with a second cross-reference to a bank's current authority to invest in a subsidiary corporation. This proposal is simply for ease of reference. LB 533 would update the laws which authorize minors to have deposit accounts at banks and savings associations to provide that electronic withdrawal from these accounts is acceptable. LB 533 would adopt legislation prohibiting a person

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from using the name, trade name, logo, or symbol of a financial institution when the person solicits a loan customer of the financial institution, unless it includes a statement that the person is not affected...affiliated with the financial institution. In addition, the personal loan information of a customer in such solicitations can only be used if certain disclaimers are made. An exception is made for a financial institution doing comparative advertising or solicitations. The department would not be given cease and desist authority...or, excuse me, would be given cease and desist authority and fining authority against persons who violate a cease and desist order. This proposal would reduce customer confusion and the possibility of deception. LB 533 would provide that licensees under this act which opt to pledge securities to the department in lieu of required bond would pay the same fees as paid by the trust companies and trust departments which pledge securities as part of their licensing process. This proposal will codify current department practice. For mortgage bankers, the Nebraska Mortgage Banker Registration and Licensing Act would be amended as follows: LB 533 would provide an exemption from licensing and registration for wholly-owned subsidiaries of all financial institutions. The effect of the proposal will be to provide parity between state and federally-chartered institutions which currently are considered exempt as a result of federal preemption issues. LB 533 would add a provision authorizing the department to issue notice of expiration for registrations which have been surrendered. This procedure will promote efficiency by not requiring a revocation procedure. LB 533 would prohibit licensees from using more than one trade name or doing business as a d/b/a designation in Nebraska. This proposal is intended to reduce consumer confusion. LB 533 would authorize the department to impose an administrative fine or take other action in cases where a licensee employs or contracts with a person who has outstanding consumer complaints relating to his or her association with another licensee or registrant. The employing licensee will have to exercise reasonable care in its hiring/contracting process. This proposal will aid in preventing persons who do not respond to complaints from later working on...from later working in the mortgage banking business. LB 533 would require a licensee to report to the department when it changes its name, trade name, d/b/a

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designation, address, or opens or closes a Nebraska bank office...branch office, excuse me. The information would be deemed material and would have to be reported within 30 days. LB 533 would authorize an increase in fees as follows: An initial registration fee would increase from \$50 to \$200; the renewal fee would increase from \$500...excuse me, \$50 to \$100; the initial licensing fee would increase from \$300 to \$400; and the renewal licensing fee would increase from \$100 to \$200. In the installment loan provisions, the Nebraska Installment Loan Act would be amended as follows: LB 533 would prohibit licensees from collecting loan origination fees on more than one loan made to a consumer within a 12-month period except for that part of the loan which advances new money. This proposal would prevent repeated charging of fees for loans which are rolled over on a frequent basis. LB 533 would provide that loans in a greater amount than \$3 million, but less than 25...excuse me, \$3,000 but less than \$25,000 may not be written for a term greater than 145 months, unless the loan is for a mobile home. This will help prevent excessive charges on a smaller loan. LB 533 would require a licensee to provide payoff information to a customer within ten days of receipt of a request, and authorize a fee...

SENATOR CUDABACK: One minute.

SENATOR MINES: ...when more than one request is made by that customer within 60 days. This proposal will assist consumers in getting timely responses to their requests and, at the same time, allow a reasonable fee for repeated requests. LB 533 would provide authority to the department to impose administrative fines against licensees, their insiders, and others who violate the act. It also provides that liability for fines continues even after termination of a license for acts committed prior to termination. This proposal will provide an additional remedy to the department in its enforcement of the act. LB 533 would increase the initial license application fee from \$150 to \$500, and increase license renewal fees from \$100 to \$250. Installment sales: The Nebraska Installment Sales Act would be amended and LB 533 would provide that liability...

SENATOR CUDABACK: Time, Senator.

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SENATOR MINES: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator. (Visitors introduced.)
Senator Mines, you may open on the committee amendments to
LB 533.

SENATOR MINES: Thank you, Mr. President. If I might conclude,
the installment sales is the last part of the opening and, well,
it's almost the last part. LB 533 would provide that liability
for administrative fines under the act continues, even after
termination of a license for acts committed prior to
termination. This proposal will prevent persons from
surrendering a license in order to escape liability. LB 533
would add provisions to clarify methods of termination of
licenses to allow the department to issue notices of expiration
and notice of cancellation of licenses. This will promote
efficiency by not requiring revocation procedures. And finally,
Delayed Deposit Services Business (sic) Licensing Act, LB 533
would amend this act by adding a fee of \$100 per branch for
renewals of branch office authority. The amendments to the
bill, Mr. President, would amend Section 8-702, Section 21 of
the bill, as introduced, to require that all banking
institutions subject to this section shall obtain Federal
Deposit Insurance Corporation insurance of its deposits no later
than June 30, 2006. Amendments that are added to provisions of
other bills...to add provisions of other bills, in LB 466,
credit reports of licensed bank executive officers, that's
Section 7 of the committee amendments, would amend
Section 8-143.01 of the Nebraska Banking Act to provide that the
board of directors of a state-chartered bank may obtain a credit
report from a recognized credit agency on an annual basis for
any or all of its licensed executive officers in lieu of the
existing requirement in this section that a licensed executive
officer who becomes indebted to another financial institution
shall, by the next meeting of the board of directors, make a
written report to the board stating the date and amount of such
loan or indebtedness, the security of the loan or indebtedness,
and the purpose for which the proceeds have been or are being
used. It also adds...includes LB 212, and that is a total
return trusts. In Section 33 to 35 of the committee amendments,

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they would amend Sections 30-3116 and 30-3117, and would enact a new section in the Uniform Principal and Income Act that would provide procedures and requirements for an income trust to be converted by agreement or court order to a total return trust for which a trustee shall invest the trust asset, seeking a total return without regard to whether the return is from income or appreciation of principal. LB 170 is the Uniform Trust Code amendment. Sections 36 to 46 of the committee amendments would amend Sections 30-3803, 30-3805, 30-3810, 30-3822, 30-3836, 30-3837, 30-3849, 30-3855, and 30-3879 of the Nebraska Uniform Trust Code, Nebraska Revised Statutes Section 30-801 (sic) to 30-38,11 (sic), to reflect amendments to the Uniform Trust Code adopted by the National Conference of Commissioners on the Uniform State Laws in August of 2004. In 2003, Nebraska enacted the Uniform Trust Code, which became operative on January 1 of 2005. The UTC is becoming the first truly national codification of the laws of trust. To date, it's been enacted in ten states, including the District of Columbia, and additions...and additional introductions are expected in 2005 and the next few years. Clarifying and cleanup amendments recommended by NCCUSL are enacted by Nebraska and it can be expected that as this National Trust Code further becomes a national standard of trust law, there will be periodically further technical refinements in the provisions. It's important that these NUTC sections be enacted subject to the emergency clause early in 2005 in order to minimize the gap in time between the entire NUTC's operative date of January 1, 2005, and the effective date of these sections. In Section 36 of the committee amendments, section would insert a new subdivision (2) in Section 30-3803, to provide a definition of "ascertainable standard" which would link to the definition of "ascertainable standard" in the Internal Revenue Code. Currently, the only provisions regarding an ascertainable standard in the NUTC are contained in subdivision (b)(1) of Section 30-3879. The new definition would apply to the provisions in two places: the definition of "power of withdrawal" in renumbered Section 11 of Section 30-3803, as well as the discretion of a trustee or co-trustee who is also a beneficiary in subdivision (b)(1) of Section 30-3879. This section would amend...excuse me, Section 46 of the committee amendments would amend the definition of "power of withdrawal" in renumbering subdivision (11) of Section 30-3803. A "power of

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withdrawal" is considered a general power of appointment. These amendments would clarify that a power excusably...excusable (sic) by a trustee which is limited by an ascertainable standard does not constitute a power of withdrawal. This is to prevent an unintended inference relating to a discretionary power of attorney (sic) to make a distribution of the trustee's own benefit which is limited by an ascertainable standard. Section 42 of the committee amendments, which would amend Section 30-3849, relates to this issue and would add a clarifying new subsection (e) to that section, and you can see the description of Section 42 of the committee amendments. This section in Section 42 would amend the definition of "qualified beneficiary" in renumbered subsection (13) of Section 30-3803 to clarify that the subdivision (13)(B) relates to a continuation of the trust, and subdivision (13)(C) relates to the termination of that trust. Section 37 of the committee amendments would amend Section 30-3805 to make two important changes in the few mandatory provisions of the NUTC. The UTC is primarily a default code in that the provisions of the trust instrument control its legal consequences and the statutory rules merely supplement the provisions of the trust. This section would amend the mandatory requirements in subsections (b)(8) and (9) of Section 30-3805. These subdivisions relate to the extent that the trust instrument can waive notices and information the trustee is obligated to send or supply to the trust beneficiaries. A majority of the first states to enact the UTC significantly modified these provisions and NCCUSL has now bracketed them in the official text, which means the states may elect to enact these provisions without change, delete these provisions, or enact them with modifications. Following substantial further analysis by the legislative interim study group involved in the original Nebraska enactments and others: (1) This section would repeal subdivision (b)(8) of Section 30-3805 in its entirety. This subdivision currently makes mandatory the notices required under subdivisions (b)(2) and (3) of Section 30-3878 to be given to qualified beneficiaries within 60 days of establishment of an irrevocable trust. It is felt by practitioners that this instead should be left primarily to settlors and their trust planners. (2) This section would amend subdivision (b)(9) of Section 30-3805 to

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clarify that it relates, number one, to qualified beneficiaries only and, number two, to the duty to keep qualified beneficiaries reasonably informed.

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute.

SENATOR MINES: Other than this mandatory requirement, the provisions of the trust as a notice control and the UTC operates in default of language in the trust instrument. Section 38 of the committee amendments would amend Section 30-8...excuse me, 30-3810 to clarify that a charitable trust is considered a qualified beneficiary under the UTC. A designated charitable organization is considered a qualified beneficiary if it has rights similar to those of a qualified beneficiary in a noncharitable trust. NCCUSL has recommended this clarifying change in the official UTC text. Section 39 of the committee amendments would amend Section 30-3822 with addition of a new subsection (d) which would eliminate the power of a settlor a trust to represent and bind a beneficiary with respect to termination or modification of a trust. This is the NCCUSL change, adopted in the recommendation...on the recommendation...

PRESIDENT SHEEHY: Time.

SENATOR MINES: Thank you, Mr. President.

PRESIDENT SHEEHY: Mr. Clerk, do you have a motion at the desk?

CLERK: Mr. President, Senator Bourne would move to amend the committee amendments with FA22. (Legislative Journal page 514.)

PRESIDENT SHEEHY: Senator Bourne, you're recognized to open on the amendment to the committee amendment.

SENATOR BOURNE: Thank you, Mr. President and members. I wanted to inform the viewers at home, those watching at home, that this mess on the desk is not mine; it's Senator Synowiecki's. So I just wanted that clarity for the record. Say, my amendment is very simple. It simply deletes the language in the committee

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amendment on page 37 by striking lines 8 through 20. While it's a simple amendment, it might take me a minute or two to explain it. As Senator Mines mentioned, the original version of the bill, as introduced, would require banks and savings associations to have federal deposit insurance on accounts...or of accounts, but it said there will be no impact on existing entities as currently all but one of these institutions have such insurance, and the bill proposes to grandfather the one existing uninsured savings and loan while continuing the existing customer notice provisions regarding the lack of insurance. And I'm simply putting the grandfather clause back in, as the bill was originally introduced, and deleting that language, the grandfather clause...or the elimination of the grandfather clause language from the committee amendment, and I do this for several reasons. There's only one state-chartered mutual building and loan company that this would apply to, and it happens to be up in Benson, and this company called me the other day and they indicated that if this amendment goes, they would not be able to afford the assessment put on them by the federal government and they would actually close and cease doing business. So my objection to this being in the committee amendment was that it was not in the original bill so there was no benefit of a hearing to this entity that is being impacted. I was talking to the committee counsel, who's been here a number of years, to the Banking and Insurance Committee and he mentioned that in the mid-eighties this provision was put into statute that required all entities, banks and savings and loan associations to have FDIC insurance. And he mentioned that this company, it's called Metropolitan Savings and Loan, they came to the Capitol and they brought literally two busloads of their account holders, and in this type of an entity an account holder is actually an owner of the company, and they brought two busloads down here of account holders and asked for this grandfather clause which would allow them to continue to remain in business without insurance, provided that the entity gives notice once a year to the account holders. And so what I'm simply doing with this amendment is striking the language in the committee amendment that takes away this grandfather provision. I'm simply maintaining the status quo, as was established a number of years ago, that grandfathered this...these entities in. As times...as time has evolved and gone on, these entities

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have either changed into savings and loan associations, or merged with other banks, and so today there remains this one entity that is a state-chartered mutual building and loan. It does not have insurance on the accounts, but it provides the members, the owners of the company, those who have accounts there, with an annual notice indicating that they do not have this insurance. So, I think this is a fair proposal. Again, there was no benefit of public hearing to this entity and my amendment simply strikes the new language in the committee amendment. I'd be happy to answer any questions, if anyone would have them, but I would urge your adoption of this amendment. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Bourne. The floor is now open for discussion on FA22, amendment to the committee's amendment. Senator Beutler.

SENATOR BEUTLER: Mr. Lieutenant Governor, members of the Legislature, I wasn't going to speak on this bill, but then I thought the Committee Chair said it was an ominous bill. Is that...is that what you said, Mr. Chairman?

PRESIDENT SHEEHY: Senator Mines, would you yield?

SENATOR MINES: I'm sorry, Senator Beutler?

SENATOR BEUTLER: Did you refer to this as an ominous bill?

SENATOR MINES: An ominous bill is correct. I've just begun reading.

SENATOR BEUTLER: Oh. Okay. Maybe it was omnibus, but it sounded to me like ominous. In any event, we're now on Senator Bourne's amendment, and to me this is a situation where, if the conversion that is being requested by the committee is reasonable, it ought to be done. If, on the other hand, it causes the consequences that Senator Bourne is describing, perhaps it ought not to be done. And perhaps we need to follow the lead of the committee until we determine what the fact of the matter is. But if it helps you any, let me go back and give you some of the history of this situation. Back in the early

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1980s, you may recall that we had a major debacle in one set of our financial institutions, commonly referred to as the Commonwealth failure, and the failure of the whole structure essentially, and none of those...well, those deposits were covered by a fund, but it wasn't the FDIC, and it wasn't an adequate fund. This Legislature actually failed in terms of setting up a structure that included a fund that was adequate to really protect depositors. And all of these institutions failed, essentially the system failed, and a whole bunch of depositors never did get all their money back. I think it was something like 60 or 70 percent, after a long series of years and an inexplicable wait went by. So, when that happened, if I'm remembering correctly, we looked around and we said, okay, what else is not insured here? And I don't remember whether this particular institution was the only one at that particular time in the mid-1980s, or whether there were others. I think there were some others. But the argument was made that they need time to convert; that if we put some strict requirements on them with regard to notice...and there are some strict requirements in there now with regard to notice of depositors when they set up accounts or when they invest their money. But we allowed them to continue to operate. Now, this is back in 1985 or thereabouts. So they've had about 20 years to convert over and get the normal FDIC insurance and apparently they have not done so. Perhaps it was never understood that they would go along that path someday, but I thought that was the understanding. In any event, it is a peculiar situation and it is a peculiar exposure, to some extent, to the depositors of that particular institution. On the other hand, 20 years have passed and they've apparently done a just fine job of protecting their depositors. So that's kind of the situation, but as far as I know, it's the only federal, state...it's the only kind of institution, it's the only institution that takes depositors' money...

PRESIDENT SHEEHY: One minute.

SENATOR BEUTLER: ...that is not now covered by FDIC insurance, and I think it's a very worthwhile subject for some serious conversation. Thank you.

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PRESIDENT SHEEHY: Thank you, Senator. Senator Mines.

SENATOR MINES: Thank you, Mr. President. I can tell the body that discussions in committee, the bell of insurability and insuring the public was rung frequently. Commonwealth did come up again and, as best we could, we tried to evaluate the...this single entity that is not insured. The committee as a whole decided that it's time that this entity become insured, just like everyone else, and that's the reason. Now, if there are extenuating circumstances, if Senator Bourne would like, we'd be glad to discuss this with the owner of the institution between now and...if we can move this bill along, we'd be glad to talk to him if...before we do anything on Select...if he'd like to sit down and talk to the committee, if you'd like to engage, if we can move this from General to Select with the understanding that we will talk about this in committee. Thank you.

PRESIDENT SHEEHY: Senator.

SENATOR MINES: Oh, yeah, let me ask Senator Bourne...

PRESIDENT SHEEHY: Senator Bourne, would you yield?

SENATOR MINES: ...to respond.

SENATOR BOURNE: Thank you, Mr. President, members. Senator Mines, I appreciate your offer. My concern here is that we have an institution who claims that, and I have no reason to doubt them, they say they will not be able to afford the assessment and will close. So I have a problem with the process in that they were not entitled to public notice and the benefit of a hearing. And I don't know if anyone else in here struggles but...with the process, but if you're going to, in a sense, close an institution that has been in business since 1922 without the benefit of a hearing, I don't think that's appropriate. And so what I'm asking is that, if you want to do that, bring a bill, allow a public hearing, but what I'm asking is that we delete the added language, the new language, that as I understood came in a...on basically a whim in Executive Session. And so what I'm asking is let's remove that language, let the bill go forward, and if you want to study this over the

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interim, that's great. If you want to sit down and meet with these folks, that's great. They would be happy to meet with you. But again, I don't think that it's fair for us, as an institution, to deny these people the right to a public hearing.

SENATOR MINES: And, Senator Bourne, I guess the position of the committee is that hasn't...there is no reason to do that. The institution in question hasn't demonstrated and hasn't had the opportunity, I agree, to demonstrate that it would do harm. On the other hand, everyone else has fallen under that determination and the committee felt that it was time that that happens. Would you respond?

SENATOR BOURNE: So, Senator Mines, I thought you and I had discussed this and you were in support of my amendment.

SENATOR MINES: I'm in support of introducing the amendment and if we want to take it to a vote, that's certainly fine.

SENATOR BOURNE: Senator Mines, since we're having this colloquy on the microphone, didn't you mention to me yesterday that the original bill did not contain language that would have...that would have eliminated the grandfather provision?

SENATOR MINES: Yeah, that's true.

SENATOR BOURNE: Did you also mention that at the Exec Session it just kind of came out of thin air that we go ahead and eliminate that grandfather provision?

SENATOR MINES: Well, there was...believe me, it didn't kind of just come out of thin air, but okay.

SENATOR BOURNE: The point is, was there a hearing relative to the grandfather provision?

SENATOR MINES: No, there was not a hearing to that.

SENATOR BOURNE: Okay, that's my problem with the process. And I don't...I guess I'm struggling as to why we're throwing our rule book out the window, in a sense, and not...

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PRESIDENT SHEEHY: One minute.

SENATOR BOURNE: ...giving these folks the benefit of a hearing when it was...it wasn't in the original bill, it was done in an Exec Session. And you and I both know that these ideas come up at the last minute and everybody thinks it's a great idea, but oftentimes we don't realize who it impacts. And I tell you, there's 1,200 or 1,300 depositors in this institution that receive notice every year, are very comfortable...and I'm going to...I've pushed my light on to speak and I'll give you statistics about this particular institution, and I would suggest to you it's probably one of the most financially sound institutions in the entire state. And I'm really struggling. I don't believe it's appropriate that we, in a sense, close their business without the benefit of a hearing. And if you'd like to comment, Senator Mines, I'd appreciate it.

SENATOR MINES: No, all I can say is that all the other institutions in the state are federally insured. This one is not; has not been for 20 years; and I agree with you, has not been given the benefit of an audience. And I understand your...

PRESIDENT SHEEHY: Time.

SENATOR MINES: ...your issue.

PRESIDENT SHEEHY: Senator Bourne, you're recognized.

SENATOR BOURNE: Thank you, Mr. President, members. And I don't know how much to belabor this. I think it's a pretty reasonable request that we give this institution the benefit of a public hearing, but I do want to reiterate that a number of years ago there was a provision or a bill was brought forth that would have required every institution to have FDIC insurance. This bank, and again the depositors in this bank are the actual owners of the bank, they came down in droves, as I understand it, and testified that they are willing to forego the insurance and, in return, this bank provides notice on an annual basis to all the owners of the bank that it's not covered by insurance. And they gave them a grandfather clause and, as I understand it,

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there was no requirement that they evolve or change; they simply maintain the business on a going-forward basis. Let me tell you a little bit about the bank, and the name of the bank is Metropolitan Savings and Loan Association. It is a state-chartered mutual building and loan. It's the only one in the state. This bank makes only first mortgages and they make first mortgages where they require at least a 10, 10 to 25 percent down payment, so they make very secure first mortgage loans. They...in fact, they have probably the most conservative loan to value ratio in the entire state. The federal government requires a 2 percent loan to value, this is called reserve to asset ratio, and Metropolitan has an 11 percent reserve to asset ratio. The liquidity that they have, which is the 11 percent, that is invested in other banks. It's invested in CDs at other banks who do have insurance. All the other assets of the bank's...all the bank has, other than the first mortgages and the liquidity, is in the form of drawer cash, and that's covered by the bonding scheme that everybody knows about. Again, Metro, this bank, only loans on houses. They don't do any risky loans, and that's the reason that we've put in the requirement everybody have insurance, so that you risk...you loan on cattle or you loan on land speculation, things of that nature, it makes it more risky. Well, this isn't that. So again, I'm simply saying that if we, in an Executive Session of a legislative committee add a requirement without the benefit of a hearing that's going to close an entity down, I think that's inappropriate and I'm asking for your support on this floor amendment to the bill. It would maintain the status quo. The shareholders, the owners of this institution, are aware of this and I think it's a reasonable request. And I'm a little surprised with Senator Mines. I did speak with him yesterday and he...maybe I, in my youthful enthusiasm I misinterpreted, but as I understood it, he was supportive of this concept yesterday. But again, I'd like all of you to ask yourself, is it appropriate to do this, to put this on a business that in a sense they tell me it's going to, the assessment, will cause them to close? They won't...they just will cease to exist. They'll sell the loans or whatever. But is it appropriate to do this without giving them a voice down here in the Legislature, and I suggest it's not. So I ask for your support of this floor amendment to the committee bill...or the committee amendment,

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and we'll go on from here. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Bourne. Senator Mines.

SENATOR MINES: Mr. President, Senator Bourne, thank you, and let's take this to a vote and I will give you a green on it. However, what I'd like to do is get the rest of the amendments read into the record today, Mr. President, so as my close, can we move from there? Continuing on with the amendments, this is an NCCUSL change, adopted on the recommendation of the American College of Trust and Estate Counsel. Its purpose is to eliminate the possibility of unintended and unwanted federal tax consequences to the settlor. Section 40 of the committee amendments would amend subsection (b) of Section 30-3836 to repeal the power of a settlor to initiate and maintain proceedings to modify or terminate a trust. This is a NCCUSL bracketed change intended to eliminate the possibility of unintended and unwanted federal tax consequences to the settlor. Section 41 of the committee amendments would amend subsection (a) of Section 30-3837 to repeal the authority of the settlor and all trust beneficiaries to modify or terminate a material provision in a trust without court approval and to require that even if the settlor and all trust beneficiaries consent, the court must approve the modification or termination of a material provision of the trust. This is a NCCUSL change, adopted to the recommendation...on the recommendation of the American College of Trust and Estate Counsel, intended to eliminate the possibility of unintended and unwanted federal tax consequences to the settlor. Section 42 of the committee amendments would amend Section 30-3849 to add a new section (e) utilizing the new defined term "ascertainable standard." The new subsection would clarify that creditors of a trustee or co-trustee who is also a beneficiary of...such as a surviving spouse, cannot reach the beneficial interest if the trustee's discretion to make distributions is limited by an ascertainable standard. The current common law rule which might otherwise be applicable are not clear in this respect and, for that reason, NCCUSL has recommended this change. Section 43 of the committee amendments would amend subsection (a) of Section 30-3855 to reaffirm that the duties of a trustee of a revocable trust are owed exclusively to the settlor. These amendments would repeal

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the language now bracketed in the official NCCUSL text. The rights of the beneficiaries of the revocable trust whose settlor becomes incompetent would be comparable to the rights of devisees under a will of a testator who becomes incompetent. A settlor's power to revoke the trust would not be terminated by the settlor's incapacity, although the incapacity may affect the settlor's legal ability to exercise the power. Nebraska attempted to deal with these issues of a settlor's subsequent incapacity in LB 999 of 2004 by enacting nonuniform provisions, which became the last two sentences in subsection (a). These amendments would have repealed those two nonuniform sentences to conform subsection (a) to the alternative version of the official NCCUSL text. In Section 44 of the committee amendments, they would amend subsection (e) of Section 30-3867 to clarify the nature of the internal reference to the Nebraska Uniform Prudent Investor Act. Section 46 of the committee amendments would amend Section 30-387 (sic) and reflect two changes that would effectively be made in it by the UTC sections of the committee amendments. Number one, the repeal subdivision (b)(8) of the section in Section 37 of the committee amendments, mandatory provisions of the UTC, would make the notices specified in subdivisions (b)(2) and (3) of Section 30-3878 default requirements rather than mandatory requirements of the UTC. And the operative date would be deferred to January 1, 2006. The...and, number two, the amendments to...

PRESIDENT SHEEHY: One minute.

SENATOR MINES: ...subdivision (b)(9) of Section 30-3805 in Section 37 of the committee amendments, mandatory provisions of the UTC, would limit the applicability of subsection (a) of Section 30-3878 to qualified beneficiaries. In Section 46, the committee amendments would amend Section 30-3879 and repeal language in subdivision (b)(1), and Section 36 to 46 of the committee amendments would be subject to the emergency clause, an important aspect of these sections, in order to minimize the gap between January 1, 2005, the operative date of the NUTC, and the time these sections would become effective. It's not intended that there would be adverse legal consequences arising from this short time gap. Thank you, Mr. President.

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PRESIDENT SHEEHY: Thank you, Senator Mines. Senator Beutler.

SENATOR BEUTLER: I just intended to give Senator Mines additional time, if he wanted to finish. I would yield.

PRESIDENT SHEEHY: Senator Mines.

SENATOR MINES: Thank you, Senator Beutler. Just wanted to mention, too, the committee amendments to LB 533 would insert the provision from LB 170, introduced by Senator Landis, to make some cleanup and clarifying amendments to the Uniform Trust Code which have been recommended to the states by the National Conference of Commissioners. The amendments have been discussed and approved nationally, and have been reviewed by our own interim study working group which, over the last three years, has been working on the development of the Nebraska UTC. A real good example of the sort of thing these amendments do is, one, it would allow the person who sets up a trust, we'll call him the settlor, to have his trust document drafted so that it overrides trust codes, trust code provisions that would otherwise require the trustee to notify qualified beneficiaries of an irrevocable trust upon their reaching age 25; number one, as to the existence of the trust and, number two, the identity of the trustee and, number three, the right to receive trustee's reports. It's pretty logical to conclude that many people who set up trusts don't wish to have beneficiaries, often close relatives, snooping through the documents to see they're getting or maybe not getting. These amendments would allow those wishes to be respected. This is good...this is a good amendment and they are being made in trust codes around the country. The UTC amendments are described section by section in the committee statement and the descriptions were written by Professor John Gradwohl from the University of Nebraska College of Law. I thank you for that, and thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Mines. Anyone else wishing to speak on FA22? No lights are on. Senator Bourne, you're recognized to close.

SENATOR BOURNE: Thank you, Mr. Lieutenant Governor. Members, again, the original version of the bill, as introduced,

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continued the grandfather clause. The committee amendment changed that and eliminated the grandfather clause and without the benefit of a public hearing. I support the bill as long as this floor amendment is adopted. I appreciate Senator Mines' support of this amendment, and I would urge you and request your green vote on this amendment. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Bourne. The question before the body is, shall FA22, amendment to the committee amendment, be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish? Senator Bourne.

SENATOR BOURNE: I think members are filing in, so maybe if we wait one second, rather than call the house, if we could. Thank you.

PRESIDENT SHEEHY: Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: The amendment is adopted. We'll now move to amendment...Mr. Clerk, do you have some announcements from the desk?

CLERK: I do, Mr. President. Thank you. Priority bill designations: Senator Janssen, as Chair of the General Affairs Committee, has selected LB 563; Senator Flood, LB 217 as his personal priority bill; Senator Price, LB 146. New resolution, LR 42, by Senator Howard, will be laid over, Mr. President. Amendments to be printed: Senator Louden to LB 54; Senator Synowiecki to LB 40; Senator Jensen to LB 175 and LB 176. (Legislative Journal pages 523-527.)

Mr. President, priority motion. Senator Smith would move to adjourn until Wednesday morning, February 16, at 9:00 a.m.

PRESIDENT SHEEHY: The motion before the body is, shall we adjourn until Wednesday, February 16, 2005, at 9:00 a.m.? All in favor say yea. Opposed say nay. Okay, we are adjourned.

Proofed by: Bernie Ward