

FEBRUARY 16, 2005

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February 16, 2005 LB 35, 74, 167, 233, 290, 408, 451, 477, 525
581, 591, 685
LR 34

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Pastor Flores, from Zion Peace Lutheran Church in Omaha, Nebraska. That's District 5, and that's Senator Preister's district. Pastor.

PASTOR FLORES: (Prayer offered.)

SENATOR CUDABACK: We thank you, Pastor Flores, for being with us this morning. We appreciate it. I call the twenty-ninth day of the Ninety-Ninth Legislature to order. Senators, please check in.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Mr. Clerk, please record.

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

SPEAKER BRASHEAR: Thank you, Mr. Clerk. Are there any corrections for the Journal, Mr. Clerk?

CLERK: I have no corrections this morning, Mr. President.

SPEAKER BRASHEAR: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, your Committee on Government, chaired by Senator Schimek, reports LB 451 and LB 525 to General File; LB 167 to General File with amendments; and the following bills indefinitely postponed: LB 35, LB 74, LB 233, LB 290, LB 408, LB 477, LB 581, LB 591, and LB 685. Mr. President, I have notice of hearing from the Appropriations Committee, signed by Senator Pederson as Chair. That's all that I have at this time. (Legislative Journal pages 529-533.)

SPEAKER BRASHEAR: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 34. Thank you.

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: (Visitors introduced.) We now go to General File, 2005 committee priority bills. Mr. Clerk, LB 533.

CLERK: Mr. President, LB 533, a bill introduced by the Banking, Commerce and Insurance Committee. (Read title.) The bill was discussed yesterday, Mr. President. It was reported to the floor with committee amendments attached. Committee amendments were offered by the committee. Senator Bourne had an amendment to the committee amendments that was adopted. At this time, Mr. President, the committee amendments are pending to LB 533. (AM0238, Legislative Journal page 447.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Redfield, would you like to give us a quick review?

SENATOR REDFIELD: Thank you, Senator Cudaback, members of the body. We have now addressed Senator Bourne's issue yesterday in an amendment to the amendment. We're back to the committee amendment. Senator Mines took time to explain those to you yesterday in detail. I would refresh your memory that they are mostly technical in nature, and they are to bring us in conformity with both the federal IRS code and the recommendations of NCCUSL, which is the National Conference of Commissioners of Uniform State Laws. And with that, Senator Cudaback, I would give my remainder of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Redfield. We will now be discussing AM0238, back to committee amendments to LB 533. On with discussion, Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. Senator Redfield, this is another one of those large bills that has many parts, almost all of which are probably good. Maybe all of them are good. I'm sure they probably are. But I did want to take just a little time this morning. And I understand that you're at a disadvantage, not having prepared on all of this. But just take a little time to identify a couple of areas, and to indicate that some additional information, at

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least for me, would be helpful in a couple of those areas. And the first area I wanted to direct your attention to is page 3 of the committee amendment, the section beginning on line 9 and going through the next page. It's a section that deals with making a report, requiring executive officers to make reports to the board of directors of a bank with respect to the date and amount of all loans or indebtedness that those particular...that particular officer may have with respect to other institutions, I believe. Is that correct?

SENATOR REDFIELD: That's correct.

SENATOR BEUTLER: And that rule is for the benefit of who, basically?

SENATOR REDFIELD: I think it's akin to the rules that we have, any kind of conflict of interest, or, certainly, any vulnerability of the officers of the institution.

SENATOR BEUTLER: So it's for the benefit of the directors of the institution, as well as the public?

SENATOR REDFIELD: As well as the public, yes.

SENATOR BEUTLER: Okay. And the old rule was that this executive officer, except in limited circumstances, needed to make a written report to the board of directors on their holdings in certain areas. Is that accurate?

SENATOR REDFIELD: That is correct.

SENATOR BEUTLER: Okay. And it's being changed so that in lieu of that annual report, the board of directors may obtain a credit report on that particular executive officer. Is that right?

SENATOR REDFIELD: That is correct. But remember that the annual report is still a mandate. And this allows the board of directors to select to use the credit agency report in lieu of. If you look at the language in line 24,...

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SENATOR BEUTLER: Okay.

SENATOR REDFIELD: ...or line 23, except as provided in subdivision. So we still require that report annually. It's just allowing the board of directors here, in lieu of the written report, to accept the...or to request the credit report from a credit agency.

SENATOR BEUTLER: All right. So it indicates that in lieu of that annual report the board of directors may obtain a credit report from a recognized agency. And the word "may" doesn't really mean "may"; it means "shall" if they choose to exercise the authority of the new subsection (b). Is that accurate?

SENATOR REDFIELD: It is accurate to say that the board of directors shall receive a report. What is permissive is that they may choose the credit reporting agency.

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: And that is the...that would be their choice, or their discretion. But they will receive an annual report. That is mandatory.

SENATOR BEUTLER: Okay. But they cannot choose to...under this language, it's not intended that they could choose to do away with the annual report and also choose not to have a credit report. Is that accurate?

SENATOR REDFIELD: That would not be their option. They would have to have a report annually.

SENATOR BEUTLER: They would have to have one or the other.

SENATOR REDFIELD: Yes.

SENATOR BEUTLER: Okay. Thank you. The next session I wanted to ask you about...and again, I understand that this section is the incorporation of another fairly complicated concept. And in order to understand a certain portion of the bill that appears on page 19, line 23, Senator,...

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SENATOR CUDABACK: Time. Members, I know it's early in the morning, but please try to hold your conversations down, in respect for the speakers. Thank you very much. On with discussion, Senator Beutler.

SENATOR BEUTLER: If I may continue, Senator Redfield. Page 19, line 23. And I think that Senator Mines attempted to explain this a little bit, but I was a little slow. It says, a trustee--and this is with respect to converting a trust to what's called a total return trust--a trustee has no duty to inform a beneficiary about the availability and provisions of this section. I wanted to go back and, if it's a fair question, ask you about the overall intent and methodology of this particular section of the bill, in order to better understand why a...why there's no duty to a beneficiary to inform them of their possible rights in the situation of a conversion. And if we can better discuss this off the floor, that would be fine. But I just wanted to identify that as a question. What...the ability to convert to a total return trust, for whose benefit is that? What basically happens, and for whose benefit is that?

SENATOR REDFIELD: Well, you're talking about an income trust. And your...the conversion would allow them to have the discretion to withdraw the principal as well as the interest earnings. And so the language change would clarify that, so in fact that would be possible. But you have to understand, in any conversion process there are a number of steps that are necessary to protect both the creditor and the person who owns this trust. So there are a number of steps that are necessary. But this would actually allow them to convert to a trust, which would allow them to return both income and the appreciation on the principal, without differentiating between the two.

SENATOR BEUTLER: So is it designed to provide for greater income and less residual value?

SENATOR REDFIELD: Yes, it could.

SENATOR BEUTLER: Okay. And some beneficiary may benefit only from the residual value?

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SENATOR REDFIELD: Under the terms of the trust, yes.

SENATOR BEUTLER: Why would we not want to inform that beneficiary about the availability and provisions of the section of law?

SENATOR REDFIELD: Well, Senator, I can't tell you exactly, other than the fact that this addresses the procedures and all of the agreements that are necessary in that court order. And there is a court order involved, which would protect the interests of all parties.

SENATOR BEUTLER: Okay. Senator, thank you very much.

SENATOR CUDABACK: Are you through...are you finished, Senator Beutler? Okay. Thank you. (Visitor introduced.) On with discussion of the committee amendments to LB 533. Senator, there are no lights on. You are authorized to close on the committee amendments, AM0238.

SENATOR REDFIELD: Thank you, Senator Cudaback. I appreciate the patience of the body, and I would ask you to adopt the committee amendment to LB 533.

SENATOR CUDABACK: The question before the body is, shall the committee amendments, AM0238, be adopted to LB 533? All in favor of the motion vote aye; those opposed, nay. Have you all voted on the committee amendments who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Discussion of advancement of LB 533 itself. Seeing no lights on, Senator Redfield. She waives her ability to close. The question before the body is, shall LB 533 advance to E & R Initial? All in favor vote aye; opposed, nay. The question before the body is, shall LB 533 advance? Record please, Mr. Clerk.

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CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB 533.

SENATOR CUDABACK: The motion was successful. LB 533 advances. Mr. Clerk, items.

CLERK: Mr. President, thank you. There are hearing notices from the Judiciary Committee, three separate notices, all signed by Senator Bourne, as Chair of the committee. Mr. President, Transportation will have an Executive Session at 10:00 today in Room 2022; Transportation Committee, 10:00, Room 2022. That's all that I had, Mr. President. (Legislative Journal page 534.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) On with the next agenda item, LB 499. Mr. Clerk.

CLERK: LB 499, Mr. President, a bill by Senator Landis. (Read title.) The bill was introduced on January 14 of this year, referred to the Revenue Committee, advanced to General File. At this time, I have no amendments to the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Landis, to open on LB 499.

SENATOR LANDIS: Thank you, Senator Cudaback, members of the Legislature. Before 2002, every state had an estate tax, and it was essentially structured to maximize the federal death tax credit, which said, you can reduce your federal obligation by an amount up to a certain amount that states may take, and if states tax that, then the feds won't. It meant that the estate tax didn't go up, but that states got a portion of the revenue. That was the way it was up until 2002, when there was estate tax reform at the federal level. Since that time, a number of states have stopped doing the estate tax, and a number of states continue to do so. One of the old provisions was that you allowed a credit for taxes paid to another state against your own state. And since every state had one of these, it worked out that you weren't taxing property in another state, that in fact there was a credit for the taxes that were paid in that state. But now that about half the states or more don't have an

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estate tax, there are...when a person in Nebraska dies with property in another state, they no longer get this tax credit for taxes paid to another state, and, under the way our law is written, that will come back into the corpus of the Nebraska state, which is then taxed, even though it's property in another state. There is old United States Supreme Court case law that would argue that unapportioned estate tax is unconstitutional, unapportioned among various states in which the property is maintained. The argument is that Nebraska cannot tax property located in another state without violating the due process clause. And the issue boils down to whether or not a tax on a transfer, the amount of which may be higher because the property is located in another state, is in fact equivalent to leveling the tax on foreign property. And although the estate tax existed for many years in all states without a mathematical apportionment formula, it did not operate to expand Nebraska estate tax liability, so long as all of the states had an estate tax. Now it operates to increase your Nebraska estate tax liability, and that is what is problematical. Estate tax academics, John Gradwohl among them, practitioners like Doug Deitchler, will say there is a constitutional flaw; others say there's not a constitutional flaw, however, we are now taxing what we've never taxed before, and probably shouldn't, which is the out-of-state property. Whether it's for constitutional purposes or whether it's because our law now operates to expand our tax base beyond what we ever intended it to be, LB 499 achieves what both of those two proponents or arguers would want, which is that there would be an apportionment that would be done so that we would, essentially, not tax property outside the state of Nebraska. Currently, there are a number of estate tax returns on file with the Department of Revenue. We have been assured that at least some of those are large enough that they have reason to challenge our existing statute in the event this change is not made. And I do suggest LB 499, not just because of its constitutional issue, but also because I think the underlying issue of fairness is appropriate as well. LB 499 would amend Section 77-2101, estate tax, to provide that the estate tax liability otherwise calculated shall be apportioned to reduce the amount of tax in proportion to the amount of the estate of a resident decedent that is held as real and personal property located in another state. The way that's done, for a

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nonresident decedent, the tax shall be the amount that the in-state property represents as a proportion of the entire estate. So if you have Nebraska property and live in another state and die, your Nebraska property is taxed. If you are a Nebraskan and you are...and you die, your estate is taxed on what you hold in Nebraska. Stated another way, under LB 499, the tax otherwise calculated would be multiplied by a fraction that represents the in-state share of the entire estate, assuming that intangible property is located in the state of residence of the decedent. The amount of estate tax otherwise calculated would be reduced by the Nebraska inheritance tax. Those are two different ones. Our inheritance tax serves as a credit against the estate tax. That remains unchanged. Many of you might have gotten word from county officials that they opposed a bill. That bill...it was LB 399; it was not LB 499. In fact, there were no opponents to LB 499. LB 499 was passed out of the Revenue Committee without opposition by testimony, and unanimously by the committee. The change will be effective as of January 1, 2003, and essentially means that Nebraskans and non-Nebraskans, in their estate tax, will be taxed on property that they hold in Nebraska. I ask for the advancement of LB 499.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on LB 499 by Senator Landis. Open for discussion on that motion. Senator Don Pederson.

SENATOR D. PEDERSON: Thank you, Mr. President. Could we have a little more quiet around here?

SENATOR CUDABACK: Members, please keep the conversations low, as respect for the speakers, please.

SENATOR D. PEDERSON: Mr. President, I speak to you in two capacities--first, as a legislator; secondly, as a lawyer. And as a legislator, I look at the fiscal note of this, and the fiscal note shows a decline of our revenue, or nonreceipt of revenue, approximately \$1 million in '05-06 and '06-07. And that, of course,...ordinarily I would say, you know, we've got to be alarmed about this. And I don't like the idea that it will reduce our state revenue. We do have to watch that sort of

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thing. But now I'll speak to you as a lawyer. I have studied this issue, and I would confirm everything that Senator Landis has said, that what we have been doing, what we are doing currently, is now, in my opinion, unconstitutional. I think we cannot reach out and tax property in the other states, as we have been doing. And I would ask for you to forward this bill on for the next round. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson. Further discussion on the advancement of LB 499. Seeing no lights on, Senator Landis, you're recognized to close on the advancement.

SENATOR LANDIS: Thank you, Senator Cudaback. I concur with Senator Pederson completely. And by the way, I think the best way to look at that \$1 million is that it's illusory. The \$1 million is illusory, I think. I think it's subject to a constitutional challenge, and we would not receive it. At the point that it got to be \$1 million, it would be attractive enough to challenge it that we would never get that amount of money. So from my perspective, I agree with Senator Pederson, and I would say that the fiscal note assumes that we have the right to tax this and that we're losing that, and I'm not sure that that's the basis upon which the actual issue would work out in the courts. Whether it's from the constitutional provision, or whether it's from the results perspective--and by the way, of the two, I take the results perspective--if we don't make this change, we will be taxing property that we never intended to tax under the old system. And for that reason, I ask for the advancement of LB 499.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the closing on LB 499. The question before the body is, shall LB 499 advance to E & R Initial? All in favor vote aye; opposed, nay. The question before the body is, shall LB 499 advance? Have you all voted on the question who wish to? Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB 499.

SENATOR CUDABACK: LB 499 does advance. Mr. Clerk, LB 150.

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CLERK: Mr. President, LB 150 was a bill introduced by Senator Kremer and others. (Read title.) The bill was introduced on January 7 of this year, referred to the Agriculture Committee for public hearing. The bill was advanced to General File, Mr. President. I do have committee amendments pending. (AM0218, Legislative Journal page 467.)

SENATOR CUDABACK: Senator Kremer, you're recognized to open on LB 150.

SENATOR KREMER: Thank you, Senator Cudaback and members of the body. LB 150 adopts the Nebraska Beef Industry Development Act. I brought LB 150 on behalf of the Nebraska Cattlemen and other individual livestock producers who would like to assure the continuity of a promotion program to serve the beef industry, should the national program be declared unconstitutional. LB 150 is substantially similar to LB 1130, that was amended by the Ag Committee last year. We did not get to it. It was about two down on the senator priority list, and we did not accomplish being able to address it last year, so we brought it back again this year. We heard the bill on January 25. And we do have a few committee amendments. And as I go through the bill, I'd like...I'll just point out when the committee amendments will change that, and then address that when we get to the committee amendments. A little bit of history of the beef checkoff in Nebraska. The industry is a self-funded program for promotion, research, and marketing development and education. It's been continuous in effect since...in Nebraska, since 1983. The legislation was first enacted...the Legislature first enacted the Nebraska Beef Industry Development Act in 1983. It created the Nebraska Beef Industry Development Board as a state agency. The board members are elected by district, defined in the act. It imposed a mandatory assessment collected upon the sales of cattle. Congress enacted the Beef Promotion and Research Act as part of the 1985 farm bill. The act authorizes the Secretary of Agriculture to initiate a beef promotion order to impose a mandatory assessment of \$1 per head when cattle are sold or imported. Now, that's always contentious, people saying that imported cattle are not included in the checkoff. But they are. The order was issued in 1996, and installed the National Beef

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Board, accountable to the Secretary of Agriculture, to develop and implement a national program for promotion, research, consumer education, using these checkoff dollars. It provides for a quality beef...state beef councils that were either existing state agencies or private organizations governed by beef producers that promote beef industry. Nebraska Beef Board was certified as the qualified beef council for Nebraska in 1991. The federal act coordinates collection of checkoff, and provides the national direction and coordination of all the state programs. Producers contribute to the state-qualified beef organization are given 50 cents a head credit on the amount paid to the federal program; 50 cents stays in the state. In 1991, the Legislature enacted LB 583. This dissolved the state agency status of the Nebraska Beef Board, and allowed the board to re-form as a nonprofit corporation. It recognizes the Beef Board, upon successful reorganization, as the qualified state beef council for purposes of a federal beef promotion program. Some of the values of the checkoff program that's been used over the years, the state has a considerable interest in the state's beef industry. And I'd like to point that out. This is checkoff money coming from producers, but it is really valuable to the entire state. The beef industry has an \$11.5 billion impact on the Nebraska economy. Nebraska ranks first in commercial cattle slaughter, and consistently is the national leader in livestock feeding. Nebraska produces 20 percent of the nation's beef consumption. That's pretty considerable. And that's why we feel like the money has been used to...really for...to promote industry in the whole state of Nebraska, benefits all of Nebraska. A program as a means of...by which cattle producers may collect funds...fund projects to help stimulate the demand for beef. Beef has to compete with other food choices available to consumers. It's a nationally organized promotion program, including the slogan, and I'm sure you've all heard it if you listen to any of the Nebraska football, basketball games, or anything, it's: Beef, it's what's for dinner. It's probably one of the most recognized slogans that there is. As far as...that's on the promotion side of it. As far as research, we've developed new beef products, new products that fit a modern lifestyle. Chris Calkins, from the University of Nebraska, has done a lot of work on muscle profiling and research, participated by the university in the

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checkoff. And they've developed the flatiron steak, and some others, that have taken some cuts that were once just put into hamburger, and made a quality product out of that, which is beneficial to the consumer. Improving beef safety. Beef checkoff dollars helped leverage \$5 million on research methods to better understand E coli. The effort was led to improve production, food preparation, storage, processing, to reduce E coli risks. And it's also part of the Beef Quality Assurance Program, which many of the cattlemen participate in, to do practices that will ensure the safety and the best quality possible. Why we're bringing this before you now is that the national checkoff, which is a mandatory \$1, has been challenged in court. It was declared unconstitutional because it violated the first amendment, saying that it was compelled speech, that people did not support how the money was being spent, were compelled to contribute their money to it. It was declared that it was unconstitutional. The Supreme Court heard the case, and it was in the Supreme Court. I think they heard it about in December sometime, and have not made a ruling on that. Some feel very confident that it will stand. What we're anticipating to do is to pass this legislation so if it would become unconstitutional, we have a seamless transition into having dollars for promotion, research, and education. I will go over some of the parts of the bill and what they do. It reinstates the authority of the state beef development program, and vests the Director of Agriculture the responsibility of carrying out the program. So it would be...the program would be in the overview of the Department of Agriculture in Nebraska. It grants basically the authority necessary to carry out such a program common to all commodity development programs. In Section 4 it describes and lists permissible and prohibited use of the funds, including specially prohibiting the use of the checkoff funds for lobbying purposes. And that has been, even though at the national level they could not use it for lobbying purposes, but some feel...people felt that was being misused. It requires that an annual report of activities funded by the program, and prescribes the information to be contained in the report. Section 7, it imposes the assessment of \$1 per head, paid by the seller of the livestock, and it provides the proceeds to be collected...for collection of the assessment. I'm sorry...it provides the processes for collection of the

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assessment. It creates the Nebraska Beef Industry Cash Fund, administered by the Department of Agriculture. It authorizes the director to contract with a qualified state beef council, under federal program, to implement the program. As I mentioned before, I think it was in 1991, our state agency, which is our Beef Council, was designated as a qualified agency to collect those funds. And since that is in place and it's...the board is all producers, that it would appropriate that we would continue that. Department then would contract with them. It authorizes the director to contract with them. The current qualified state beef council is the Nebraska Beef Council, based in Kearney. It's a board of directors, as I said, directed...or, elected by directors. It is legally and functionally separate from other industry trade groups or advocacy groups. It's a nonprofit, but it's not associated with the different groups. Section 5, it prescribes terms, accountability, and other contractual delegation to the Beef Council.

SENATOR CUDABACK: One minute.

SENATOR KREMER: They're required to give an annual prepared budget to the director for review. They maintain books and records open for inspection. It's submit an annual report. They continue organization government by the board of directors, elected by producers, any other terms also deemed appropriate to assure the duties of the Beef Council are carried out correctly. Section 7 designates how the refunds are to be made. And I will have...that will be changed a little bit in the committee amendments that we have. But at this time, it would be refunds made on a quarterly basis. But that will be changed. The effective date was...in the bill, states that it will become operative 30 days. If the national checkoff program is declared unconstitutional, then this would kick in 30 days after the assessments cease. Section 6 gives authority to begin developing the regulations upon the enactment of the bill. So if we would pass this bill...

SENATOR CUDABACK: Time.

SENATOR KREMER: Thank you.

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SENATOR CUDABACK: Thank you, Senator Kremer. You heard the opening on LB 150. There are committee amendments. Senator Kremer, as Chairman of the Ag Committee, you're recognized to open on AM0218.

SENATOR KREMER: Okay. Thank you. I timed that pretty good. I was on my last sentence when you stopped me. So I will just explain the committee amendments. How much do I...time do I have on this, then?

SENATOR CUDABACK: You have ten minutes, Senator.

SENATOR KREMER: Ten minutes? Okay, I won't need all that. The changes that we have was after we heard the testimony. And there were some people that had some concerns with different parts of it, and we did try to relay that in the committee amendments. Section 15 provides that the collection and expenditures of the beef development assessment to begin only after termination of the federal program. The immediate effective date in Section 6, the department began collecting regs...developing the regulations prior to the remainder of the bill being in effect. What could happen here is that if the federal government...if the Supreme Court would decide that it was unconstitutional, and they would stop the assessments, say, on July 1, and we would say that the assessments then would kick in 30 days after that, that would be too soon for the Department of Agriculture to have the rules and regulations in place. So we have the effective date...it would be 30 days after the assessment stops, or not before September 1. So that would give the Department of Agriculture...felt that they had time, if we could pass this with the E clause, they could start at that time writing the rules and regulations. They could be done with that by September 1. If at that time the assessments have not stopped, it would still not kick in then until 30 days after the assessments. But if they would happen before that then they would...effective date...the operative date would be September 1. It also adds the E clause to that...to the bill. Because we felt like it needed to pass to become in effective law very soon, so that the department could start writing the rules and regs, should the national program go down. Also, Section 7 is an amendment that we put in there in response to

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the concern that some had. Some felt like...we had a quarterly refund. They had to submit an application for the refund on a monthly basis, but the refunds were made on a quarterly basis. Some people felt that that was too long. They would like to have to be able to opt out at the point of sale. If they opt out at the point of sale, it would cause a lot of paperwork for the seller, the livestock commission firm, or whoever it might be, that it would be very cumbersome. We also had some reports from Louisiana where they tried that, in order to get the bill passed, that they could opt out at the point of sale. They tried it for two years, and they said it was so much dishonesty and fraud going on, that people said, oh, nobody...they didn't collect the checkoff, they didn't send it in, and they finally did. So they came back after two years and did the same thing we did, which is a mandatory checkoff, but you could get the refund, but the refund was made within 15 days after the end of each month. So that was in response to some of the concerns that people had. Also, we eliminated Section 7. In the original bill we said that with a unanimous vote of the Beef Council, and then going to the Department of Agriculture, they could raise the checkoff from \$1.00 to \$1.25. We felt like it would be better leave it at \$1. If it needed to go up from that, that we'd come back and have legislation do that. There was some concern that people would just take that up. It did require that they have a public hearing, but felt like that was something they didn't want to do. So we removed that part from that. We had the E clause; we had the refunds at the end of each month within 15 days of each month; and also the operative date is changed. That's what, really, basically, the amendment does. I think that...I might want to mention one other thing I think I didn't mention, that those collecting the checkoffs now could retain up to 5 percent of the money just for the administration and the paperwork that they would have to do. At this time, the Brand Committee, as existing law,...now, the Brand Committee, if they go out at a private sale of cattle and do a brand inspection, they can keep 5 percent. And I think there was a...maybe I saw a note that it may be less money going to the Brand Committee if we enacted this. But I don't think it would, because we allow them to collect...to retain 5 percent, just like they do now. At this time now, the livestock auctions do not keep any money. We're allowing them to keep 5 percent as

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money they can retain for the work that they do in collecting the checkoff. I think that's covering everything, and I would be glad to answer any questions you have. If not, I would ask you to advance this on to the Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the opening on the committee reports by the Ag Committee to LB 150. Open for discussion. Senator Edward Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, good morning. It's good to be here. Senator Kremer, I am absolutely for this bill. And we do produce a little beef in my area of the state, and personally we produce a little beef. And I think it's important that we as cattlemen advertise and promote the product. But I'm going to fire a few shots over the bow here, because I want discussion on issues that are maybe not directly related to this, but are related to it. The old beef checkoff generated about \$10 million of revenue a year. And the report on this says it's only going to generate from \$6 million to \$7.5 million a year. How do you explain that?

SENATOR KREMER: Well,...

SENATOR CUDABACK: Senator.

SENATOR KREMER: ...right now it's a mandatory with no refund. We're anticipating that there will be some refund. And I...that's probably a guess of how much that will be.

SENATOR SCHROCK: There's also a mandatory...well, there's also a voluntary checkoff on soybeans. And it's my guess--and I didn't look it up--but it's my guess, because I've looked it up in the past, is less than 1 percent of the people ask for a refund on soybeans checkoff. Now, the corn is mandatory, as is the wheat and sorghum. So I think you're overestimating that.

SENATOR KREMER: You think it should be more than the \$6,000, then? Or less?

SENATOR SCHROCK: I do. But then maybe...

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SENATOR KREMER: Okay, well, that could be.

SENATOR SCHROCK: Maybe feed lot operators and ranchers are different than...

SENATOR KREMER: I guess I don't...

SENATOR SCHROCK: ...the grain producers of this state.

SENATOR KREMER: ...know how you put that figure somewhere. So I don't know. It's probably an educated guess that there would maybe be 20 percent or something refund. I don't know.

SENATOR SCHROCK: By the way, I don't like voluntary checkoffs. I think they should be mandatory.

SENATOR KREMER: I do to.

SENATOR SCHROCK: But we're trapped into this.

SENATOR KREMER: I do.

SENATOR SCHROCK: And I hope that the federal courts rule in favor of the present checkoff, because I think it's working well, and I don't think they should mess with it. And I think it's important that we all contribute to the cause. I don't like people who want to get refunds. It doesn't...and don't want to support their industry. Another thing that bothers me a little bit, as you know, I've been an ethanol supporter ever since I got involved in the Corngrowers Association about 25 years ago. And it's been one of my main agenda items. And anybody...if there's anybody on this floor that's maybe more pro-ethanol than I am, it might be Senator Connealy. But I have a problem with the way some people want to fund the EPIC fund. We are the only state in the nation that taxes corn and soybeans for the...or, we don't tax soybeans...corn and grain sorghum. We're the only state that taxes corn and sorghum for producer credits, for subsidies, whatever you want to call it. And I don't have an objection to it at the level we're at now. But I do have a strong objection to increasing that. You know, at some point in time, you got to say, enough is enough. And it

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wouldn't be so bad...and I know everybody has heard me say this, but there's not a farmer in this state that wouldn't benefit tax-wise if they could move to one of the surrounding states. Now, I've been on the Appropriations Committee. I don't know where to cut. So we have to have tax revenue, and as a farmer, I'm willing to pay my share. But enough is enough. And I don't think the corn checkoff should increase. What I want to ask you is, if you feed a 20 percent wet ration of distiller's wet grain in the feed lot, according to Dr. Klopfenstein, you'll make \$5 to \$12 per head more profit than if you just feed the ration without. Now, why shouldn't the beef industry be contributing to the EPIC fund, like the way the corn producers are? And what about 10 percent of this going to the EPIC fund, while we're at it? You know, the interesting thing is, is the beef producers and the ranchers in the western part of this state, near as I know, the representatives of those areas of the state have always opposed any ethanol program we've had, and yet it's the cattle industry that's benefiting big-time from this. And this isn't me saying that. Go talk to Dr. Klopfenstein. He's the one that says \$5 to \$12 per head more profit...

SENATOR CUDABACK: One minute.

SENATOR SCHROCK: ...if you use distiller's wet grain in your ration. And we don't have to decide this on General File. But maybe I should file an amendment on Select File and we should talk about that. Personally, I'd like to see the General Fund contribute more, because in other states, that's where the incentives come from; it comes from a general fund. The farmers don't have to pay for the ethanol incentives in other states; it comes from a general fund. But if it's going to have to come out of the pockets of farmers, why shouldn't the cattle producer contribute, and why shouldn't we take a look at this as a method for doing that? I've raised a lot of questions there, Senator Kremer. You can respond with what time I have left.

SENATOR CUDABACK: Was that a question, Senator Schrock, of Senator Kremer?

SENATOR KREMER: Do I have the balance of your time? Well, the livestock industry is a bigger consumer of corn than the ethanol

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industry is. We don't have a fund set up to promote livestock like we do the ethanol industry. I think they're very good combination. I think there's going to be some restricting...

SENATOR CUDABACK: Time, Senator Kremer. Thank you, Senator Schrock and Senator Kremer. Senator Louden, on the committee amendments, AM0218. Senator Louden.

SENATOR LOUDEN: Thank you, Senator Cudaback and members of the Legislature. I support this bill because in the cattle business and that sort of thing, we've done this years ago. Nebraska was the leader in checkoffs for promoting their product, and we were into it long before the federal government got into it and it was done nationally. And there's been a lot of good has come out of this checkoff program that we've had. The research, as Senator Kremer pointed out, here at the University of Nebraska, with different types of steak and different muscling and that, has all come out of research and research money that was given to do this. The way the bill is written, why, it isn't mandatory. If you want your money back, there's a way to get it back, if you feel that that's best for your operation. There's one thing about it. When we've put money into programs like this and had a beef board, that it helps maintain the honesty in the advertising. We don't have these ads anymore that are complaining about beef or comparing beef to a poor-quality substitute, or something like that. So I think we've come a long way in that. It gives us an advantage on bringing forth our product for...as a wholesome product that it is. There's one question I do have. And I was wondering if Senator Kremer would answer questions.

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

SENATOR LOUDEN: Senator Kremer,...

SENATOR KREMER: Yes, (inaudible).

SENATOR LOUDEN: ...on page 9 in there, where the people that are supposed to be the ones that...I think line...page 9, line 24, someplace in there, where the people that collect the

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checkoff dollar. At the present time, out in the western part where we have brand inspectors, the brand inspectors collect the money. And of course, as you noted, they get the 5 percent or whatever it is. I know there's order buyers that, as far as they're concerned, they would like to have the Brand Committee take care of the book work and take care of that. Should there be something entered in there that in areas where there are brand inspectors that they would be the ones that collect the money? It's worked out quite well over the years to do it that way for us. And I'm wondering if something like that could be amended into it on the next round.

SENATOR CUDABACK: Senator Kremer.

SENATOR KREMER: I don't think there's anything that says that they can't. And I think that's kind of the...maybe it should be written in a mandatory, that they have to. But I...right now, they can. And we've already left in there that they can retain that 5 percent, as well as anybody else that collects it. But I think if the Brand Committee, as long as they do collect it, that they would be really the logical one that would collect it if it's an order by, or something like that. So I would hope that that would continue on. And I think that, you know, maybe in the rules and regs they could...I don't think it would be wise, though, to put it in just mandatory, because maybe it wouldn't apply at all time. But it's sure permissible.

SENATOR LOUDEN: Well, does something like that have to be in this statute someplace? Because you are designating livestock dealers, commission companies, and that sort of thing. Should something be designated in there about the Brand Committee?

SENATOR KREMER: Well, I guess I was kind of understanding that they were included in that. But then, we can look at that. And if they're not...because my understanding is that they should be included in that, and that would be part of those that could collect the fees, and that they should be reimbursed. And that was our intention. And I guess if there's some wording that needs to be changed, we're open to that.

SENATOR CUDABACK: One minute.

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SENATOR LOUDEN: Well, I'm comfortable with that. If that can be amended on the next round, why, I'm comfortable with something like that. I really do think this is something that...is something we probably need to move forward with. We have to be very careful, because if that checkoff program nationally is declared unconstitutional, then we certainly need something to help promote our Nebraska product. And this looks like, to me, one way that we can still go ahead and fund our own products, which we were doing before the national checkoff came about. And I would continue...I'd hope we could continue to do so. Thank you, Mr. President.

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

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I'm very supportive of any of the checkoff programs that we have, you know, any of the livestock programs, because I think it's realistic that people that, you know, produce these products have to get involved with the promotion of it. I do have a couple questions, though, that I need to get clarified before, I think, we vote on this. And I would like to engage in a little dialogue with Senator Kremer, if I could, please.

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

SENATOR KREMER: Yes, I will. Please repeat it. I'm sorry, I was distracted and I didn't hear your question. Or maybe you didn't ask it yet.

SENATOR STUTHMAN: No, I'm just...

SENATOR KREMER: Okay, I'm ready to listen.

SENATOR STUTHMAN: ...preparing myself to ask the question right now.

SENATOR KREMER: Okay, I'm ready to listen.

SENATOR STUTHMAN: What is this program realistically going to

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cost us? According to the fiscal note it's a \$12 million expenditure. Is this just going to create a cash fund where there's going to be revenue and expenditure? And can you explain to me who is going to administer the program? Is it going to be the same outfit that is doing it right now? And at what expense of that \$12 million?

SENATOR KREMER: For...the expense for administration? I can find that out in their report, because they have to report that, the Beef Council. Really, the overview would be by the Department of Agriculture, but they would contract with our existing qualified beef council, which meets all the requirements, that...and their producer...board is all producers. They then dispense of the money. And I'm trying to find out here just how much they use for administration. But it's in their report. And our bill, too, it requires to come back and report with all that, all their expenditures, the cost of administration and everything else, that they have to answer back to the Department of Agriculture and make that known publicly at the time. So maybe sometime if I find that, I'll tell you what the administration costs are in my time, then, so.

SENATOR STUTHMAN: Thank you, Senator Kremer. This is a concern of mine, because, you know, if we're going to respectfully submit the \$1 per head, and if it brings in \$12 million, what percentage of that \$1 per head is going to be utilized in administrative cost, and what percent of that \$1 is going to be realistically used in the promotion of our product? Those are things that really do concern me. If it's going to cost, you know, 50 cents of that \$1 in administration, we're realistically not...we're only getting 50 cents worth of value in the promotion of our product. Yes, they're doing the job. But I like to see things done that would not require as much administrative cost. And in respect to, you know, it's a voluntary one, I think producers are in agreement to that. The concern that I have with the voluntary one--and we had the same situation in the pork producers years ago--that some of the larger producers will request the refund, because, you know, they do sell a lot of cattle. Means a lot of dollars to those people. But in the testimony that was given at the hearing, you know, some of the larger producers are in favor of this. And I

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think at the time frame that we're in right now, I don't think there would be very many producers that would request the refund. So I'm...I need to get a couple of these questions answered, as far as how much administration is going to be. If it's going to take \$12 million out of the General Fund of the state, then I have a real concern about it. And if we have to return those \$12 million coming back in to provide for that, it's kind of a wash. And I'm really concerned with that also. So I need to get a couple questions answered yet. And I'll return the balance of my time to Senator Kremer, if he wants some.

SENATOR CUDABACK: Senator Kremer, about one minute.

SENATOR KREMER: Okay, thank you. Are you asking the administrative costs that the Beef Council has in their administration part of it? I've got a figure, and I don't have the percentage on it yet. Rick's trying to figure it out. But it's \$187,000 out of the \$10 million. It says the administrative cost in their report at the end of the year. There are some other ones. There was a...there's a little bit here from...that goes to the brand inspection, \$21,000. Now, they get that reimbursement back for collection. That would be up somewhat, because we would be reimbursing also the Livestock Marketing Association, those others, up to 5 percent. That doesn't say that they have to. But it says, administration, \$182,000. This is from the Beef Council. And if I find out it's different now...but that's the figures that I have right now. That's a pretty small amount. I mean, you're going to have to have some for just doing the paperwork and the personnel and everything else from that. So it definitely would not be 50 cents. Because of the \$1 checkoff we have now, 50 cents stays in the state and 50 cents goes out. We still have a lot of advertising, promotion, and education going on within the state,...

SENATOR CUDABACK: Time.

SENATOR KREMER: ...so it's not a very large amount. So, thank you.

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SENATOR CUDABACK: Thank you, Senator Stuthman and Senator Kremer. Senator Beutler, on AM0218.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. Senator Kremer, if I could just have a little exchange with you and...

SENATOR CUDABACK: Senator Kremer.

SENATOR BEUTLER: ...learn more about the bill.

SENATOR KREMER: Sure.

SENATOR BEUTLER: I, too, am...don't know any reason why I shouldn't be 100 percent in favor of the general bill. I wanted to inquire about certain aspects of it, though. Because this is similar, in terms of it having a very unusual structure, to something like the State Fair Board, or...it's an unusual kind of relationship that we're setting up here, in the sense that it's not a straight agency operation that is going about its business under the general principles that we generally apply to state agencies. So I wanted to explore several things with you, if I could. First of all, it appears to say that...and tries to set up this system whereby it goes into operation at such time as fees are no longer allowed to be charged by the national organization, as I understand it. And I wanted to ask you a little bit more about the litigation, and whether we've covered all possibilities, to the extent possible. In the sense that...are we at the stage of litigation where there will be a final, absolute decision? Or might there be a situation where a fee is temporarily enjoined, for example, but then may be allowed by a later or higher court decision? I just don't know where the litigation is. But the language of the bill seems to be fairly definite. If the fee is once terminated, this kicks in. Just tell me there's no possibility that the fee would be reinstated at the federal level at a later point in time, and we'd have a duplication, or something like that.

SENATOR KREMER: Okay. The point that the litigation is now is in the United States Supreme Court. Now, if there's a higher court than that, then...

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SENATOR BEUTLER: Okay. That solves the problem then.

SENATOR KREMER: That's it.

SENATOR BEUTLER: All right. Secondly, the authority of the Director of Agriculture. Is it envisioned that, by and large, the operations of and the decision making with respect to the expenditure of the fees will be contracted out to a...basically, a private entity, a nonprofit corporation? Is that accurate?

SENATOR KREMER: And it designates it has to be a qualified, because there's certain criteria that our Beef Council had to meet in order to be qualified by that. And one thing is that it's a producer...the board is all producers. And it has to meet the requirements for disclosure of what all happens, and reports back. And, yeah, elected producers.

SENATOR BEUTLER: Well, let me try to define what I'm thinking in a little different way. The contract...if the director is going to contract out most of the job here, they can contract it out with any entity? Is that accurate?

SENATOR KREMER: Yes. But it does...we do state, a...

SENATOR CUDABACK: One minute.

SENATOR KREMER: ...qualified...I mean, I don't know what that would all entail. But then they could go out to anything. But this is already set up now, and it's kind of the logical place to go, rather than start up some whole new procedure and group to do it. And whether you come back with the same thing or not, when it's a producer board and you're elected by producers and it's a producer program funded by producers.

SENATOR BEUTLER: You mean you would expect the director would set up certain qualifications for those who...well, would this be open to a bid process or not? It would...

SENATOR KREMER: Maybe I don't understand. A bid to who does...who...?

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SENATOR BEUTLER: Well, it indicates that the director may designate and contract with an entity that is qualified to be the Nebraska beef council. The "Nebraska beef council" is in small caps, so I assume that it's not legally required to contract with the Nebraska Beef Council as we know that entity today. Is that accurate?

SENATOR KREMER: Repeat. I'm sorry.

SENATOR CUDABACK: Time.

SENATOR KREMER: Repeat your question. I'm sorry.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Kremer, you're recognized.

SENATOR KREMER: I'll make a couple comments, and then I will turn some time back to Senator Beutler, if he wants to pursue the questions he has. I would like to go back maybe to what Senator Schrock had to say. I guess if the Beef Council, in looking--and I'm sure people make applications of this...where this money could be used--felt like it was a promotion to the beef industry to get involved in the ethanol, that wouldn't preclude them from doing that. The beef industry utilizes more corn than the ethanol does. We do not have a fund to promote livestock. So the beef industry does profit from the ethanol industry. Also, the ethanol industry profits from the beef industry. If we didn't have beef cattle to consume, or dairy cattle to consume the by-products, the dry distiller's grain, the wet distiller's grain, you would not have an ethanol industry. I think there's going to be some areas of the United States that would like to have ethanol plants, that don't have a livestock industry, that they're not going to be able to do it. Because you have no other place to go with the...with your by-products. Another couple points I'd like to make is that the board for the Beef Council right now, if...in order to get on that board, you have to go out and get 100 signatures of beef producers to be...have your name on the ballot. Then it's voted on by beef producers. The beef industry...this is why it's set up as a private group. It's funded by the industry. We

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don't...the cattle industry doesn't use LB 775 money. We don't have any EPIC fund money. We're using our own money. And now, because it's been challenged that some people don't like the way it's being spent, you even have an opportunity to get the money back. There's been some discussion that you should have a referendum every so often. If you can get a refund and if 90 percent of the people are asking for a refund back, you better wake up, because there's something wrong. So it in itself is kind of a referendum right there. Like I said, the industry does not use LB 775 money; the ethanol industry does. And I'm all for the ethanol industry, and I want to have more of them, and I think it's great for the beef industry. The checkoff that's going toward the EPIC fund is a separate checkoff. It's not the checkoff part that the beef board gets...I mean, the Corn Board. The Corn Board has a checkoff of their own that they use for promotion, research, and education. We've added to that. I don't think it would be appropriate to take this fund that's to be used for three things--promotion, education, and research, and it designates how that can be used--that we would take part of that money, unless the Beef Council would decide that this is something that would really promote our industry, promote our product. When Senator Schrock said that it makes another \$10 or \$8 profit per head, that might be true. But it also might just prevent to be \$8 less loss sometimes, too, so. If you feed cattle, you know that you don't make money all the time, so. Those are just a few points. And I didn't write them all down; I probably missed something. But I'd like to give the balance of my time back to Senator Beutler, and he could pursue the questions that he had. I'll try to answer them, too. I would like to give my time back...the balance of my time, to Senator Beutler.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Senator Beutler.

SENATOR BEUTLER: Senator Janssen. Senator Kremer, thank you very much. Let me go back and be sure I understand how this all is working. The director may designate and contract with an entity.

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SENATOR JANSSEN: One minute.

SENATOR BEUTLER: And there's no bid process required here. Is that right? They can pick out any entity they want and contract with them?

SENATOR KREMER: It...no, it's not written in the bill that they have bids or anything like that. No, it does not.

SENATOR BEUTLER: Okay. And then...and the fact that "Nebraska beef council" is in small caps, I assume means that that entity doesn't necessarily have to be the Nebraska Beef Council as constituted today.

SENATOR KREMER: It does not necessarily have to be the designated one. That's true.

SENATOR BEUTLER: Okay. Now, if all of this is being contracted out to a nonprofit, is it your general intent that the operations of the nonprofit, whoever it is, be totally transparent? That is, that their operations be and their meetings be open to public meeting laws, for example,...

SENATOR KREMER: Well, I...

SENATOR BEUTLER: ...that would be applicable if...

SENATOR JANSSEN: Time.

SENATOR BEUTLER: ...the director were doing it himself?

SENATOR KREMER: Yes. "Time," he said, so.

SENATOR JANSSEN: Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature. Senator Kremer, Senator Beutler is probably going a little bit where I want to go also. The question is, the Corn Board, the Sorghum Board, and I'm not sure about the Soybean Board, they're state agencies. The money goes to state agencies. The people are appointed by the Governor. And yet, this is going to be

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different. Why did you go the route you're going now and not the same route as the other checkoff programs in the state?

SENATOR KREMER: That's a tough question. I guess this is in continuity to the way it's been structured now. I think that there's real concern that the state agencies will be up for challenge, too. One thing that's been challenged in a lot of the checkoffs--and I think almost all checkoffs are set up differently. The Soybean Board is set up differently, the Wheat Board is set up differently, some of them. And maybe they should all come back and be the same thing. Some of the challenges are--and they withstand the challenges if they are a speech...a government speech. I think the fruit industry had a challenge, and that it was set up in a way that it was government speech. And now it seems to me it's almost opposite. When it's producer speech and producer money, why shouldn't they do it? But if it's government speech, it's okay. But it's really set up this way because just to be of continuity of the way it's going right now. I would agree with you that I would rather see a mandatory checkoff. I think as soon as we start to have a voluntary, you're going to have, how do you know it's not going to be the large producer get the refunds, and carry...and then the smaller producers? In case...I'm using your time. I'm sorry.

SENATOR SCHROCK: That's fine.

SENATOR KREMER: In the case of the mushroom checkoff, it was challenged by a large producer. I know there are not many mushroom producers. And they wanted to take all their money and provide...and direct it toward their own little product, and let everybody else fall by the way. This seems like it's more challenged by the smaller people, think they're getting eaten up by the larger ones. But the large operations contribute based on the proportion of number feed...cattle they feed, and they base...and the outcome, if there's benefits, well, they benefit more, but they also contribute more. And I think it would be...make sense. And hopefully, that...if this goes down, maybe in two years we could get something back on the federal level where all states are the same and it's coordinated in a way that...and maybe this would just go on for two years then, until

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something like that comes on. Then that new program would address the concerns of the constitution, which has been the free speech. So I...really, it's set up basically because of the ongoing continuity. It's yours.

SENATOR SCHROCK: Mr. President, it appears, though, that this creates a private, nonprofit corporation, and we have public funds going into it. And I don't know if that's a problem. But in the case of the corn checkoff, it doesn't work that way. And you know, it's been brought to my attention that maybe we should have an Attorney General's Opinion on this issue. If we're going to do this, we better do it right. And is this creating something that we can't control? And so that's an issue I raise. I don't want to stop the bill today. We can talk about this between now and Select File. But I'm a little concerned about that. I'm also concerned about refunds. I don't want this to be an issue. Right now, they have...they can ask for a refund within 30 days? Is that correct, Senator Kremer?

SENATOR KREMER: They have to apply for the refunds at...in that 30-day period. The refund then would be made within 15 days of that...end of that month. So it's monthly refunds.

SENATOR SCHROCK: I would rather have them wait 30 days before they could apply for a refund.

SENATOR KREMER: Okay. Well,...

SENATOR SCHROCK: And...

SENATOR KREMER: Okay, this is a compromise, because some of them didn't want to even have their money in there for 10 days. So we brought it down to where...you know, that it would...if they did not approve of the way the money was being spent, they didn't want somebody using the money for that time.

SENATOR JANSSEN: One minute.

SENATOR KREMER: So this is compromising that.

SENATOR SCHROCK: Well, I'd rather have them wait 30 days before

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they could apply for a refund, because I don't agree with the voluntary part of it anyway. But I understand you have to do it or the federal government comes. But let's talk about that between now and Select File also.

SENATOR KREMER: Okay.

SENATOR SCHROCK: I'll give the rest of my time back to the Chair.

SENATOR JANSSEN: Thank you, Senator Schrock. Senator Louden.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I guess Senator Schrock has some problems with it. And I agree that he's comparing it to a corn checkoff, and also he and I probably don't agree on the corn checkoff. I don't have any corn, so as far as I'm concerned, you can put all the checkoff on corn. And he doesn't sell many cattle, so I suppose he wants all the checkoff to be on the state level. And that's good enough. Part of the reason why you have mandatory...or non-mandatory, or it's...you have a refund in there, is because at the present time, that's part of the reason that the national one has been found unconstitutional, because there's no way of having refund and it's mandatory. By having a refund in there, then it isn't a mandatory checkoff. This is more or less something done by the trade organizations, the cattle industry in Nebraska. It was formed this way, I think, clear back in the eighties, or whenever it was first started, Nebraska was one of the first ones to have their state checkoff. And this is the way it was formed in the beginning. It was something on just the industry itself, was. We didn't acquire money from other agencies. We didn't acquire any money out of the General Fund. It was something that was done on their own. And consequently, where you have your Corn Board and that, they're having a checkoff, but they also are using a lot of state money to build ethanol plants. Now, I haven't seen anyplace where we were getting a lot of state money to build processing plants for beef. There's some LB 775 money I suppose goes to that. But that goes on the labor end of it for the local and economic issues on that. So there is a different set-up here than comparing checkoff on cattle and checkoff on corn. I still feel

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that we need to move forwards with this bill, or otherwise the beef industry in Nebraska will have...will not have any funding for promotion whatsoever. This was done years ago. And when the national checkoff is...looks like it's going to break down, or perhaps will, depending on the lawsuits are coming across and what the courts decide, we're having a backup plan in place, ready to go. It has been...the auction markets are the ones that will collect the checkoff, if you run cattle through an auction market. And that was part of the reason that the national one has been declared unconstitutional. I think the livestock auction markets are one of the associations that took it to court, because of the way it was handled. And the national was handled in the correct way at one time, until they had some national trade organizations got into the mix of it and started receiving funds from the checkoff into their national trade organizations. And from then on, everything went junk. So I think the plan you have here is a very good plan, and I would like to see it continue as such. There's one of the...I think Senator Stuthman brought up the \$12 million, and that's mostly a case of depositing the money in an account someplace, so that we have a place to put the account. And that shouldn't have anything to do with the General Fund. And at this time, any time I have left I'll return to Senator Kremer, if he so desires it.

SENATOR JANSSEN: Senator Kremer, you have a minute and 21 seconds.

SENATOR KREMER: No, at this time I would turn it back to the Chair.

SENATOR JANSSEN: Thank you, Senator Kremer. Senator Beutler.

SENATOR BEUTLER: Senator Janssen. Senator Kremer, if I could continue with you just a bit? However the Cattlemen want to do this is fine with me. I just want to be sure that everything is transparent and subject to review, and identified to the public and to those who agree and disagree with the Nebraska Beef Council and how it's run. The things that...you're indicating that there will not be a bid process. And there will be a contract out to an entity. This entity is a nonprofit.

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Normally, a nonprofit is not subject to Nebraska open meetings law. Do you have any objection if I prepared an amendment making them subject to the Nebraska open meetings law as a terms of getting the contract?

SENATOR KREMER: I guess I don't right now. I'd have to study it and see what...

SENATOR BEUTLER: Sure. But just as a general...

SENATOR KREMER: ...you know, whether I would support it or not. I guess I can't...you can do anything you want to do. But then whether I'll support it or not, I'd have to look at it and see...get some advice, too, so.

SENATOR BEUTLER: I'm sorry. I didn't under...

SENATOR KREMER: I...no, you can look at an amendment anything you want on it, so.

SENATOR BEUTLER: Okay.

SENATOR KREMER: I could...

SENATOR BEUTLER: The...

SENATOR KREMER: Okay, go ahead. It's your time.

SENATOR BEUTLER: In addition to open meetings law, there is a provision in here that requires them to prepare a budget that they will then submit to the director. And I assume that becomes public...

SENATOR KREMER: Right.

SENATOR BEUTLER: ...once submitted to the director, so it can be reviewed by anybody. Right?

SENATOR KREMER: Right. At this time, they do that. They print out a brochure and tell how everything is spent, the administrative costs and everything.

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SENATOR BEUTLER: Okay. And they also are required to have an audit at least once each fiscal year, and submit a copy of the audit to the director. And I assume that the director would be required to produce that audit for anybody who was interested in it. Would that be accurate?

SENATOR KREMER: I think it would be. I assume that it is, yes.

SENATOR BEUTLER: Okay. And...

SENATOR KREMER: The audit is open to anybody.

SENATOR BEUTLER: Okay. And with respect to most state agencies, the Beef Council, for example, I think it would be subject to performance audit by the Legislature, if the Legislature should ever choose to do that. Would it be in your intent that the...whoever gets this contract would also be subject to audit? Would you have any...performance audit? Would you have any objection to that, or to financial audits, by the state?

SENATOR KREMER: I guess I would not object to that. I mean, I think it should be so visible and open and...to anyone. But then, I don't think...it's not our money...it's not the state's money going into the program, though, either.

SENATOR BEUTLER: Yeah. Well, that's true. It's not. But as Senator Wehrbein and others are very aware, there are all kinds of cash fees that we collect from people to use for specific purposes, all of which are subject to audits of one type or another. So Senator, I think that's...those are the only questions I had. Thank you for being so helpful.

SENATOR KREMER: I'll try to, you know, get you a little more...

SENATOR JANSSEN: One minute.

SENATOR KREMER: ...information on some of that, on the qualified organization, too.

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SENATOR BEUTLER: Okay.

SENATOR KREMER: Thank you.

SENATOR JANSSEN: Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, I hope my agricultural colleagues are listening. The Revenue Committee is debating a new round of business tax incentives, and I think that's appropriate. I would also say that I think agriculture has benefited from LB 775. But there's a perception out there that most of the money and benefits have gone to our urban areas. But ag processing and ethanol plants have benefited from LB 775. And I appreciate that. I've always been supportive of LB 775. But as they debate this new round of incentives, I always have to ask myself, what's going to be in it for rural Nebraska? What's going to be in it for agriculture? And I've also asked myself...we as agriculture has been expected to pay most of our own way as we go along, by way of checkoffs, by way of a checkoff on grain for the ethanol plants. I don't know what the business community in this state does to help finance these business tax incentives. To me, it's all been a one-way street. The state gives, but the business tax...the business community doesn't contribute towards helping that climate. And so I have to ask myself, why is...why are we in agriculture expected to pay for our own incentives when the state of Nebraska and the General Fund essentially pays for the business tax incentives. And I wouldn't mind if somebody from the Revenue Committee would respond to that. And Senator Connealy, it looks like you're...am I perceiving this wrong? Is the agriculture community supposed to pay for their own tax incentives, while the General Fund pays for the business tax incentive? Is that what's...that's kind of been what's going on. Is that what you're debating in the Revenue Committee? And what are we going to come up with?

SENATOR JANSSEN: Senator Connealy, will you respond?

SENATOR CONNEALY: Thank you, yes. I think that agriculture needs to be part of the mix when we redo incentives. And I...it's my purpose to do that, to be part of what we do in

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small business and agriculture. And that's why I've introduced bills to do that. And we'll see when we get a package...the Revenue Committee has not presented a package yet to the floor, and hopefully will be part of that. Traditionally, we've had a cooperative agreement between agriculture and business, to be part of paying our own way. And I think you're right, that we're moving toward agriculture carrying too much of the burden, especially in the ethanol industry.

SENATOR SCHROCK: Well, I'm...if I could have my time back, Chair, I'd just like to respond. I think it's time that we become partners. I think it's time the business community becomes partners. Because agriculture is important to the business community of this state. And I...it just bothers me a little bit that everybody says, oh, agriculture, you don't pay your own way. And we do pay for our own tax incentives. And yet, for business tax incentives, the General Fund pays for it. And so I think that's an issue I would like to see discussed when that package comes to the floor. I don't mind paying my fair share. I've always...I've been supportive of the corn checkoff for ethanol incentives. But I think enough is enough. And that's the reason I bring that issue in front of the body this morning. And so those of you who are rural senators, sometimes we get called "aggies." I wear that label pretty proud. I'm an aggie. We need to watch this. We need to take care of our own constituency. We need to take care of agriculture in this state. And you know, I know we've got a heavy tax burden, and so we've got to be careful what else we lay on the rural communities and the agriculture producers of this state. And I think we need to be careful here. I'm willing to pay the beef checkoff. It's a continuation of a program. I have a little concern about the refund, and I have some concern about, maybe we're contributing to a private monopoly here, or a corporation, or whatever you want to call it, when maybe it should be a state agency like our other checkoff programs. And so we'll be watching this, and maybe going to offer some amendments on Select File. And I want to work with Senator Kremer and his committee staff to accomplish this.

SENATOR JANSSEN: One minute.

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SENATOR SCHROCK: So...but beef is really important to this state. And we need to raise some money to promote our products. And a lot of that money needs to be spent outside of this state. If everybody in this state ate beef three times a day, it probably wouldn't impact the market very much. So we need to make sure that the people in our urban areas and our populated areas of this country get the message that beef is a wholesome food, it's good for you, and it's something we need to do. So thank you.

SENATOR JANSSEN: Thank you, Senator Schrock. That was your third time. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I haven't liked the beef checkoff program. I was told by Senator Kremer that with the way the bill is amended, the producers agreed to it. I had told him that if that's the way it is, I'm not going to, paraphrasing, interpose myself between that industry and what it chooses to do. One of the reasons that people don't like the checkoff program is because the money is spent on things they don't agree with. So when you mandate a checkoff, you are compelling people to contribute to something which they feel is against their interests. So a court is not going to make it mandatory. One of the things that took away some of the onerousness of this refund system was that each month, the person could get this refund. If that's what the people who are involved are willing to consent to, I would not, again, stand in the way of them having what they want. Based on the discussion this morning, however, there is not necessarily universal agreement with this checkoff where you're going to have to put some money into a pot even though you can take it out in a relatively short period of time. There is nothing I intend to do to hinder the movement of this bill, but in the past I have stood for the interests of rural, farm, and producer interests when I thought they were not being adequately represented on this floor by the senators who, because of the area they came from, should have taken a greater, more aggressive role in the discussion and determining what would happen. Before my rural colleagues put up what I call a pitiful mouth about what they have to pay in terms of paying their way,

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they need to look back at the times that these boondoggle bills for the big corporations were coming down the pipe in this Legislature. I'd like to put this on the record. I wanted some benefits laid aside to help those businesses that would be found in small rural towns. I battered my rural colleagues over the head. I said, you're not going to have a great big company of any kind set up in a small town when there might be more employees than people in the town, it's located out of the way, so look at the kinds of businesses that might thrive in a small town. You wouldn't necessarily allow any of these credits or other benefits to go to a grocery store in a large city, a bakery, or some of these other so-called mom-and-pop operations, so you could tailor a provision of the kind that I'm looking at to affect small towns and small communities. And you know what those dunderheaded rural senators would do? They would join the urban senators in voting it down. And I would tell them, you don't care about the people who sent you here to represent; these corporations didn't send you here; and the way these giveaway programs are crafted, they never are going to benefit the rural areas. So then, because my rural colleagues are so easily bamboozled,...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...some kind of ragtag, bobtail, ad hoc, thrown together item would be put in a bill which would benefit nobody, and the "ruralies" would go away satisfied. And I would become so irritated that they would roll over so easily and sell out their constituencies for nothing. Go back and read the story of Esau and Jacob, where Jacob tricked Esau into selling his birthright, but at least Esau got a mess of pottage for his birthright. The "ruralies" get nothing. Why should anybody be sympathetic? Make them pay their way. Then they go for these ethanol boondoggles. I know my time is up, Mr. President, so I'll stop for now.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of AM0218, Senator Erdman, followed by Senator Chambers.

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SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, I appreciate the discussion, Senator Schrock and others, and I...specifically on the proposal. I want to thank the Chairmen for their efforts in this area. I know that whether it was Chairman Kremer or Chairman Dierks at the time, where we've addressed some of these issues there's been a lot of discussions and trying to move people to an agreeable position, and I think that's ultimately what's going to happen here. I appreciate Senator Loudon pointed out the fiscal note and the pass-through provision, essentially, that will happen and how the collection, and then the A bill that follows, will allow the department then to distribute that money to the entity that they contract with. And I think Senator Beutler brings up some very important points, specifically, on the refund provision. We have a number of programs in the state, or checkoffs or excise tax, whatever, that are mandatory, but we do have some that are voluntary. And, as was pointed out in the committee hearing, one of those that I'm most familiar with is we have the dry bean checkoff, which is a refundable provision, much as what LB 150 would be, and I think to this point it's less than 5 percent annually get refunds out of that provision. Now, realistically, a majority of the beans are probably grown by a large operator, and so it would be pretty easy to say, well, the reason why LB 150 won't work on the refund part is because these other places, the large guys are taking their money out so that we can't promote the product, we can't do the research and development. Simply not the case. So I think the way that we know that something like this could work is by looking at the track record for those areas, and specifically those commodities, in which we have seen success, and I think that's important to look at. This is not uncharted territory. The uncharted part about this probably is we're not completely certain what the U.S. Supreme Court may rule in the beef checkoff. We're trying to position the state and the livestock industry, specifically the beef industry, to be prepared for what decision may come down. When you look at the cost to the state of losing an industry, whether it's due to a scare due to a bioterrorism issue, or whether it's the lack of ability to promote the product or the ability...the lack of the markets that may be available, we have a vested interest as a state

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specifically, but we also have a vested interest in agriculture to be able to promote our product. And if we can present a provision like LB 150 that provides a seamless transition period until we get to the point where we go back to maybe some other form of a national program that puts the seams back together in a constitutional provision nationally, then I think that's an appropriate response for us to take and a reasonable step. So, I appreciate the discussion. I do know that there are others that still have questions and, you know, the committee started off with a proposal. They worked with those who were interested. Some of the ideas of individuals that were opposed to the bill at the actual hearing were actually presented prior to the testimony. Some of those concerns are probably more than what's realistic to ask for, but I think what we've heard from the Chairman and what we've seen from our committee staff is to work with those individuals to try and balance the interest to come up with something that agriculture can be proud of and will in fact promote our beef industry. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Chambers, followed by Senator Beutler.

SENATOR CHAMBERS: Yes, Mr. President, let me get back on my hobbyhorse. Talking about the "ruralies," I've never called them "aggies," because when I was a child an aggie was a marble that had a certain design in it and it was considered kind of a rarity and something that everybody wanted. You'd have to give up five to ten marbles to get an aggie. And Senator Schrock may know about fishing, but he may not know about football season, so don't call himself an aggie during football season, because Nebraska is now in the Big 12 and there is a Texas team known as the Aggies. So don't you tell some of these crazy people running around here in red clothes during football season that you're an Aggie. That will be the last word to come out of your mouth, and when you wake up 20 years from now out of that coma you'll be asking, what's it all about, Alfie; what happened? I'm just giving you some good advice before I launch into what I'm going to say. Senator Schrock mentioned that the rural community will have to do more in the way of paying its way. That's because they don't understand practical politics. I would try to use myself as an example; point out to my

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colleagues how forceful I will be; how recalcitrant and unyielding I will be on those issues I believe in; and tell them if I, as 1 person, can do this, what could just 12 of you do? Sometimes I'd give the story of when Abraham was bargaining with God, because God was going to destroy the city where one of his relatives, Lot, was located, and God knew what he was going to do anyway. Abraham thought he was gaining something by telling God, if you can find 100 good people will you not destroy it? Right, I won't. Well, for lack of five, does that mean you'll destroy it? No, if you can find 95...and got all the way down to about 10, and Abraham was satisfied. He thought surely there have been...be ten righteous people there, because we're not talking about Nebraska. We're talking about Sodom and Gomorrah, which is not Nebraska, and certainly you got ten righteous people there, and no Christians, because Christianity hadn't been invented by that time. Well, there were not ten people, and God knew it in the first place. So I would try to get my colleagues to see that with a few you can do something. You can take this Legislature by the throat and make them give some consideration to the rural areas that is of practical value. I don't mean like you all were doing on those schools the other day. That means nothing. You had help from outside and inside that you didn't even know that you had, so don't get too carried away with having slowed down a bill. And some of you who were in the middle of that fight are not willing to lose everything you've got for the rest of the session. You need to know what the stakes are. You might know what kind of game you're in, you might push the chips that you have out there on the table, but what you don't understand is that not every chip is on the table and not everybody who's going to have a part to play in the outcome is sitting at the table. So don't presume to know more than you really do. Not everything that is to be known is said on the floor of the Legislature. So, when you go forward and you don't have everything that you need to successfully carry the day, your feelings get hurt and you'll be asking, what's it all about, Alfie; I thought I had it. That's because you didn't know all of the factors that come into play. Those excuses won't apply to my rural colleagues, because they had been here long enough to know how that giveaway game is played. They could have stopped some of these corporate drains on the treasury. Then some of their...

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...boondoggles perhaps could have gotten in there. But you also don't have as many areas in the urban community pulling down these huge multithousands of dollars in subsidies for doing nothing, guaranteeing price supports, guaranteeing a profit. And then the little farmers whine and cry because the lion's share of these handouts are going to the giant farms and the corporations. And why are you surprised? That's capitalism. That's what you all love. When you voted for George Bush, that's what you voted for. When you vote for those kind of people, that's what you vote for. Why are you surprised when you get what you voted for? So then all the whining comes. Well, at least give us some ethanol. And who benefits from the ethanol industry?

SENATOR CUDABACK: Time, Senator. Thank you, Senator Chambers. (Visitors introduced.) On with discussion, Senator Beutler. It will be your third time, Senator.

SENATOR BEUTLER: Senator Kremer, I just wanted to ask you one more, one more question, if I could.

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

SENATOR BEUTLER: And the...

SENATOR KREMER: Yes.

SENATOR BEUTLER: ...as you indicated earlier, the director of Agriculture can contract with a group to carry out a variety of functions. The bill doesn't say anything about how long that contract can be for. Would you have any objection if some fairly short term were designated in the bill for the purpose, in my mind at least, of creating additional leverage on the part of the department to react to whatever situation may arise and to be able to control, basically, how this group operates? If, in fact, it's going to be a...appear to have the blessing of the state and appears to be controlled by the Department of

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Agriculture, would a provision that provided for a 3- to 5-year contract, or something that didn't establish a 15- or 20-year right on the part of a particular group to operate without making, you know, any changes that might be seen as desirable?

SENATOR KREMER: I would sure consider it and visit with you. I would...I guess it's an assumption, and you can't ever take assumptions, that the Department of Agriculture would operate on that, those terms, right now. Because there are some definite requirements. So this Beef Council would have to come back and really be responsive to what the department wants, and to us as the beef producers, that where money is being spent. So I...if they're not accountable like it's spelled out in there, then I'm just assuming that they would find somebody that is accountable. But then I don't know how you would write it in there, because you would...if you said it's in five years, they would still go through the same process at the end of the five years that I hope they do every year, so...but I'd be glad to visit with you and see what your proposal might be.

SENATOR BEUTLER: Okay. That's fine. Thank you very much, Senator. I return my time to the Chair, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers. As you know, this will be your third time as well.

SENATOR CHAMBERS: You said this is my third time?

SENATOR CUDABACK: It is, Senator.

SENATOR CHAMBERS: I'd like to challenge the Chair.

SENATOR CUDABACK: Well,...

SENATOR CHAMBERS: Just tell me that that's inappropriate; I can't make a challenge like that.

SENATOR CUDABACK: That's out of order, Senator Chambers.

SENATOR CHAMBERS: I thank you, Mr. Chairman, for that bit of mentoring which I think benefits me and others too. Not every

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ruling that the Chair makes is subject to challenge. We can say, I want to challenge, but that doesn't mean we're entitled to have a challenge. Is that correct, Mr. Chairman?

SENATOR CUDABACK: Well taken. That's correct.

SENATOR CHAMBERS: I'm duly chastised, I'm humbled, and I won't make that mistake again. Thank you, Mr. President. How much do I owe you for that instruction?

SENATOR CUDABACK: I'll think about it.

SENATOR CHAMBERS: Thank you very much. I will tell you all while I'm talking on this bill, I don't think that I was misled by Senator Kremer at all. He answers any question that I would ask him about a bill. But he can no more anticipate what everybody on the floor will think or feel about a bill before it gets out here than I or anybody else. So I don't want him to think that I'm taking issue with him with respect to anything. But these kind of programs are the kind that I ordinarily will not support. I feel differently about the beef checkoff because Senator Kremer had mentioned the work with the producers, and that can shake itself out, and it's not going to be mandatory. On the other hand, when we talk about ethanol, the purveyors, the promoters, the sellers want to gouge the public. Archer Daniels Midlands does not need a piddling little state like Nebraska's Legislature to underwrite the production of ethanol plants. There is so much federal subsidization of the ethanol so-called industry, that if the federal government withdrew those subsidies there would be no ethanol industry. It takes more fossil fuel to produce ethanol than the amount of energy realized. If you have machinery that uses gasoline or diesel fuel, you haul it, you process it, you are using the very kind of fuels that this country is dependent on other countries to obtain. Ethanol is the worst boondoggle that was ever put together, and it could only be brought off by some of these huge corporations that donate to certain high-placed members of Congress. The federal money comes rolling in. There are little tagalongs in various states who will try to plunder the General Fund and make all of the taxpayers underwrite this ethanol boondoggle. You all saw what happened last session when what

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was called a loophole was found so that these individuals could set up these ad hoc stills and hurry up and get under the wire and qualify for millions of dollars in state benefits which the taxpayers are expected to come up with. That shows the dishonesty, the deceptiveness, the crookedness, in my opinion, of the ethanol industry, the purveyors and those who represent it. So, as long as the rural senators identify themselves with that operation, they shouldn't get any consideration. It shows that there are those kind of people where, we were advised by a famous person, when you find one, bump his head. And they get their heads bumped because they make themselves a handle that fits the tool of any operative who wants to plunder the General Fund, and that is the location where everybody's money goes.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I'm going to listen to the discussion on the checkoff of this program, but when it comes to the corn checkoff, I want those suckers to pay the full cost of giving those benefits to the ethanol industry, because they are the ones who pushed that stuff through the Legislature. You talk about trash legislation. It is worse than some of the stuff that came from the Judiciary Committee before they became enlightened. So, to my good friend Senator Connealy, who I know is going to bring us some of that ethanol stuff this session, as soon as one of them comes out here I'm going to have a contest to see whether I can put more amendments on Senator Byars' bad seat belt bill or Senator Connealy's worse ethanol bill. But in either case, we're going to spend a long, long time on both of those bills. Mr. President, I'm going to listen now to the discussion, and I'm not going to offer any amendments on this bill, so I will not be speaking again. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. There are no further lights on. Senator Kremer, you're recognized to close on AM0218, offered by the Ag Committee.

SENATOR KREMER: Thank you, Senator Cudaback and members of the body. I appreciate the discussion, the concerns. And the committee amendments, which I have stated before, include the refundability within 15 days after the month of the sale, or

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after the month of the application. That probably is...was really come about because of the concern of the opt out at the point of sale. That seems to be maybe the biggest concern yet, and we did give that considerable amount of thought. And originally it was the refund would be quarterly. You would still have to apply for your refund monthly, but refunds would not be made quarterly. Senator Schrock even thought it ought to be longer than the month, so we really tried to have a compromise. And I'd like to just read a little bit for the record. In the state of Louisiana, this was in their conference committee, and this...this person, Mr. Felknor, I'm not sure if he was the chair of the committee or what, he said that when the exemption for the...okay, they wanted a...their first bill passed with a point...with the opt out at the point of sale. He said when the exemption form passed, they were told to try it and see how it would work, and they agreed to try it so the bill wouldn't die in the conference committee. And so they didn't want to do it at the point...opt out at the point of sale, but they said, let's try it and be exempt out at the point of sale. And then his testimony is, after two years of this program, they have experienced untold number of forgeries, false statements on the exemption form, so that it's totally impossible to manage the program and get compliance. You can imagine. Now, I don't know whether they were able to opt out the total amount of...I think they had a 50-cent checkoff, or if they were able to opt out any amount or what. We have in this bill that it's a \$1 checkoff, but if you think \$1 is too much, you can ask a refund for 50 cents, you can ask a refund for a quarter, for any or all amount. And I can just imagine a sale barn where there's hundreds of cattle sellers in there that day and everybody comes up and tells them that they want a refund for a different amount, the paperwork that they would have, and it would be...open it up so much for some dishonesty that they could say that everybody opted out; collect the money and how would you...how would you police that? So we felt, after looking at what happened there and it didn't work and so we brought it down to a month so that if somebody made a contribution of \$1, and say it was at the 28th of January, they wouldn't have to wait very long to get their money back. So we've tried to make it so that we're responsive to their concerns, that their money isn't laying there being used by somebody that they don't approve of.

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And so this has been a compromise because there's people who thought we should have a yearly refund on the end of it. So that's why we did have that amendment, to be able to get the refund in a month. And also it has the E clause in there, which we think is necessary so the department could start working on the rules and regs, and also take out that part where they could increase the checkoff. That was a concern, too, that they maybe wouldn't have any input on increasing the checkoff. We took it out so it would have to come back as legislation again. So, with that, I ask your support to adopt the committee amendments.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the closing on Agriculture Committee amendments to LB 150. The question before the body is, shall those amendments be adopted? All in favor vote aye; opposed, nay. The question before the body is adoption of the committee amendments offered by the Agriculture Committee, AM0218. Have you all voted on the question who wish to, the Agriculture Committee amendments? Record please, Mr. Clerk.

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

SENATOR CUDABACK: The motion was successful. The amendments have been adopted. Mr. Clerk, further amendments to the bill?

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

SENATOR CUDABACK: Okay. Thank you, Mr. Clerk. (Visitors introduced.) Discussion of the advancement of LB 150? Open for discussion. Seeing there are no lights on, Senator Kremer, you're recognized to close on advancement of LB 150.

SENATOR KREMER: Thank you, Senator Cudaback and members of the body. Thank you for discussion today. I'd just like to reemphasize it's a voluntary checkoff that's only producer money. The board, it's governed by producers. It really benefits the whole state of Nebraska when we have an industry that has the impact of our beef industry as much as the whole nation, and really the world; that we need money to promote our product in Japan and get that market opened up. We need money

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for research, even respond as the BSE situation happens. We need money for education to educate people how to prepare the meat in a safe way and to promote our products in any way that we can, and education of what the qualities are of our products. And so I think it's a very good bill. It really is. I'll state again that it does not even become operative unless the United States Constitution is declared...or, it's declared unconstitutional. Then it would kick in so we had a seamless transition. Hopefully, that maybe something could come back on a national level where all states are exactly the same. There are many other states that are passing legislation just like this. I know there's some in South Dakota that we've been in contact with that we could work in conjunction with. It doesn't make a lot of sense for us to...it's like preaching to the choir, if we use all our money just to promote beef in Nebraska and the small population we have. It needs to be on a broader scale than that, and hopefully we can work with other states that are doing the same thing as this until maybe we could come back and get something else on a national level that would meet all the requirements that the...or that the Supreme Court decides that we need to do. So thank you again for your discussion on this, and ask you to advance this to Select File, please.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the closing on LB 150, offered by Senator Kremer. The question before the body is, shall LB 150 advance? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 150 to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 150.

SENATOR CUDABACK: The motion was successful. LB 150 advances. Mr. Clerk, LB 150A.

CLERK: LB 150A, by Senator Kremer. (Read title.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Kremer, you're recognized to open on LB 150A.

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SENATOR KREMER: Thank you, Senator Cudaback and members of the body. What this simply does is creates the cash fund that would...that the approximate amount of \$7,000,500 (sic) which we think might be the amount after the refunds in there; creates a cash fund that the department can use. It also appropriates about \$23,000 for the management services and expense of the revolving fund that will be reimbursed by the checkoff fund. So it's going to be no cost to the state. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the opening on LB 150A. Open for discussion. There are no lights on. Senator Kremer, you're recognized to close. He waives the opportunity to close. The question before the body is, shall LB 150A advance to E & R Initial? All in favor of the motion vote aye; opposed nay. The question before the body is the advancement of LB 150A. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of the motion to advance LB 150A.

SENATOR CUDABACK: LB 150A advances. Mr. Clerk, items for the record?

CLERK: Mr. President, I do have some items. I have a confirmation report from the Education Committee. I have a series of amendments to be printed: Senator Brown to LB 263; Senator Schimek, LB 54; Senator Mines, LB 119; Senator Jensen, LB 301; Senator Byars, LB 89; Senator Raikes, LB 126; all those to be printed. Priority bill designation: Senator Kopplin has selected LB 500 as his priority bill for the session. New resolution, LR 43, offered by Senator Howard; that will be laid over, Mr. President. Hearing notices from the General Affairs Committee and the Business and Labor Committee, signed by their respective Chairs. I have a withdrawal of a gubernatorial appointment from the Governor. And, Mr. President, your Committee on Natural Resources, chaired by Senator Schrock, reports LB 722 to General File with committee amendments attached. And Education Committee reports LB 142 as indefinitely postponed; that signed by Senator Raikes. That's

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all that I had, Mr. President. (Legislative Journal pages 535-545.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We continue with General File, 2005 committee priority bills. Mr. Clerk, LB 503.

CLERK: LB 503, Mr. President, was a bill originally introduced by the Retirement Systems Committee. (Read title.) Bill was introduced on January 14 of this year, at that time referred to the Retirement Systems Committee for hearing, advanced to General File. At this time, Mr. President, I do have committee amendments pending to the bill. (AM0380, Legislative Journal page 515.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Stuhr, Chairperson of Retirement Committee, you're recognized to open on LB 503.

SENATOR STUHR: Thank you, Mr. President and members of the body. LB 503 proposes to make a number of changes to the operation of both the Nebraska Public Employees Retirement Board, also referred to as PERB, and the Nebraska Investment Council. This bill was heard in committee on February 3, 2005, and was unanimously approved by members of the committee. First, LB 503 would require the director of NPERS to carry out audit procedures in order to verify the accuracy of employee information submitted by employing agencies and political subdivisions included within each retirement system, including school employees, judges, State Patrol, state employees, and county employees retirement plans. Next, LB 503 would increase the required financial and investment experience necessary in order for an individual to be appointed to the Investment Council. It has been suggested that this requirement should be heightened in order to provide a greater level of investment experience prior to a Governor making his or her appointment to the council. This bill would also raise per diem amounts paid to members on both PERB and the Investment Council. Currently, there is no per diem for PERB members, while there is a \$20 per diem for Investment Council members. This amount would be raised to \$50 for PERB members, and \$75 for NIC members for each

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meeting. Given the time contributed by each member, it was reasoned that this increase was appropriate. In addition, the bill would make changes to the annual reports filed by both PERB and the Investment Council. These changes include the type of information provided in each annual report and the timing as to when each report will be presented to the Nebraska Retirement Systems Committee. This provision would also require additional disclosure of investment, administrative and recordkeeping fees collected by both PERB and the Investment Council. Such disclosures will give employee members better information regarding the types and the amounts of each fee. LB 503 also updates the statutory language describing the process by which the Legislative Council may fund a benefit adequacy study as an expense of the retirement systems. And finally, the bill would insert language to outline the duties and responsibilities of the internal auditor employed by PERB. Both the internal auditor and the legal counsel employed by PERB would be included under the state personnel system. In summary, LB 503 makes a number of changes to both PERB and the Investment Council. These changes help address issues raised in prior audits, as well as updating certain provisions in order to ensure the continued proper operation of both agencies. There is an emergency clause attached because some of these changes will need to begin at the state of the state's fiscal year on July 1, 2005. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Stuhr. As stated by the Clerk, there are committee amendments. Senator Stuhr, you're recognized to open on AM0380.

SENATOR STUHR: The committee amendment, AM0380, would delay the implementation of the required auditing of employer information until January 1, 2006. The amendment would also delay the compliance audit completion date contained within the bill until December 31, 2007. The reason for such delays is to give the agency additional time to implement the procedures required by LB 503. In addition, AM0380 also would amend four additional retirement bills into LB 503. Each one of these bills was passed out of committee by a unanimous vote, and during the hearing on each bill there were no testifiers speaking in opposition to any of the proposals. So I will briefly just

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review those bills that are included in the committee amendments, and you do also have a handout on your desk with those short summaries. LB 368, as amended by AM0179, would temporarily increase the current employee and employer retirement contribution rates under the School Employees Retirement Act. Beginning September 1, 2005, the employee and employer rate would be 8.03 percent and 8.11 percent, respectively. Beginning September 1, 2006, the employee and employer rate would be 7.88 percent and 7.96 percent, respectively. And then, beginning September 1, 2007, the employee and the employer rate would return to their current rate level of 7.25 percent and 7.32 percent. The purpose for an increased employee contribution rate is because the state actuary has indicated that there is a need for an additional contribution requirement of approximately 1.25 percent of pay, which represents \$15,415,949. Because this is a defined benefit plan, the state is obligated to fund any actuarial shortfall that may arise. The committee determined that the best approach to dealing with this matter was to increase the contribution rates temporarily, rather than General Fund dollars to offset this amount. And I would also commend the schools and the teachers for their willingness to come forward with an increase in their contribution rates to cover this shortfall. LB 411, as amended by AM0104, would make changes to the method of calculating compensation for members of the school employees retirement plan. This measure is intended to address what has commonly been referred to as salary spiking by school employees in anticipation of termination of employment for purposes of retirement. This proposal would implement, for purposes of calculating retirement benefit, an annual compensation cap of 7 percent for the 60 months of employment that precede retirement. In addition, if a member receives a compensation increase that exceeds 7 percent, then the employing school district is required to inform PERB that the member has received an increase exceeding that cap. LB 412, as amended by AM0212, would temporarily increase the two years...for two years the retirement contribution rates for the State Patrol employee member from 12 percent to 13 percent, and for the employer agency from 12 percent to 15 percent. Then, on July 1, 2007, the retirement contribution rates would decrease for an employee from 13 percent back down to 12 percent, and for the employer

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agency from 15 to 13. The purpose for this increased employee and employer retirement contribution rate under the State Patrol system is because the state actuary has indicated that there is a need for an additional contribution requirement of approximately 4.19 percent of pay, which represents about \$948,654. It is anticipated that such a rate increase will be offset by an increase in an employee's annual salary, and the remaining amount to cover the shortfall is also covered in the Governor's budget proposal. Finally, LB 494, as amended by AM0373, would create an additional fund selection category for members participating in both the state employees retirement system defined contribution benefit and the county employees retirement system benefit. This additional fund selection category would have an investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans. The amendment also creates an age-based account category containing an asset allocation and investment strategy that changes based upon the age of a plan member. This proposal would give members in the defined contribution plans additional options for them to determine how to invest their retirement dollars. And I might add that this morning PERB has informed us that they may need some additional time to implement this last category that was proposed under this amendment, and we will have that amendment ready for Select File. As mentioned earlier, each one of these proposals was adopted unanimously with no opposition in the committee hearings. A lot of work has been put into the beginning of the process to make sure that each of these proposals before you, that there was a consensus. So I would ask the body to adopt the committee's amendment, and would be happy to answer any questions. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Stuhr. You've heard the opening on AM0380, which is the committee amendment to LB 503. Open for discussion on the committee amendments to LB 503. Senator Stuhr, there are no lights on. You're recognized to close. She waives her opportunity to close. The question before the body is adoption of the committee amendments offered by the Retirement System to LB 503. All in favor vote aye; opposed, nay. The question before the body is AM0380, offered by the Retirement System to LB 503. Have you all voted on the

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question who care to? Record please, Madam Clerk.

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

SENATOR CUDABACK: Was successful; the amendments have been adopted. Anything further on the...

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

SENATOR CUDABACK: Thank you, Madam Clerk. Discussion of the bill itself, LB 503, advancement to E & R Initial? Senator Stuhr, there are no lights on. You may close if you care to.

SENATOR STUHR: Thank you, Mr. President and members of the body. Again, LB 503 would make a number of changes to the current operations of both the Nebraska Public Employees Retirement Board and the Nebraska Investment Council, and these changes will help to address issues raised in prior audits. They will help to update procedures in order to ensure continued proper operation of both agencies. As I have previously stated, there is an emergency clause attached because it is necessary that some of these changes would begin at the start of the state's fiscal year on July 1, 2005. With that, I would ask your support. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Stuhr. You've heard the closing on the advancement of LB 503. The question before the body is, shall LB 503 advance? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 503 to E & R Initial. Have you all voted on the question before the body who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 503.

SENATOR CUDABACK: Thank you, Mr. Clerk. LB 503 does advance. (Visitors introduced.) General File, LB 72, Mr. Clerk.

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CLERK: Mr. President, LB 72, introduced by Senator Stuhr, relates to security services. (Read title.) Bill was introduced on January 6 of this year, referred to the Government Committee, advanced to General File. I do have Government, Military and Veterans Affairs Committee amendments pending, Mr. President. (AM0059, Legislative Journal page 345.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Stuhr, to open on LB 72.

SENATOR STUHR: Thank you, Mr. President and members of the body. I come before you today to introduce LB 72, which proposes the licensing and regulation of security guards by creating the Security Personnel Licensing Act. To give you some history, last year LB 1063 was introduced and it was evident from the hearing that the involvement of the industry was imperative if we were going to have some workable legislation. Many meetings have been held in the past six months with the security guard industry, and I would say probably 20 to 30 of those members from all different walks of life came and met. Under the act, a security officer is defined as an individual other than an employee of a federal, state, or local government, whose primary duty is to perform a contract or proprietary security service, is full- or part-time, could be armed or unarmed, in a uniform registered with and approved by the Secretary of State, or in plain clothes. A security officer does not include an employee whose sole duty is internal auditing or credit functions, a technician or a monitor of electronic security systems. The Secretary of State's Office will administer the rules and the regulations related to this legislation, and specifically the Secretary of State's Office will license the applicants as security officers who meet the guidelines, the standards, the requirements, and the qualifications of the act. They would establish minimum guidelines for educating and training licensees under the act. They would enforce the act by reviewing and investigating complaints of violation. They would establish conditions for reinstatement and renewal of licenses. Applicants must meet minimum guidelines to be licensed under the act. Such guidelines include that the applicant not have been convicted of unlawful conduct, not have been declared, by any court of

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competent jurisdiction, incompetent by reason of mental defect or disease, and not be currently suffering from habitual drunkenness or from drug addiction of dependance. Additionally, the applicant must be 18 years of age for a license, and 21 years of age for a security officer firearms permit. Each applicant must have a federal criminal history record check through the Federal Bureau of Investigation. Applicants must also submit evidence of successfully completing an education and training program as required by the Secretary of State. Another aspect of the legislation creates an advisory board made up of security professionals to help advise the Secretary of State's Office on the rules and regulations governing this act. I do believe that this legislation is very important for the safety of the public, as well as for the protection of our state. In these times of terror alerts and national security issues, it is important to know that all of those working in the security industry meet basic standards of safety and professionalism. With that, I will urge your support of this bill and I will be happy to answer any questions that you might have. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. There are committee amendments, as stated. Chairperson Schimek, you're recognized to open on the committee amendments offered by the Government, Military and Veterans Affairs Committee.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. If you want to follow along in the green copy, this is a four-part amendment. The first amendment affects lines...affects line 12 and it inserts the language, after "local government," which refers to also an employee of a political subdivision, or an individual appointed as a deputy sheriff. And that is simply providing that those are not included in the definition of a security officer. The second part of the amendment talks about the definition of a uniform and makes it clear that these uniforms cannot look like those customarily worn by law enforcement officials. We do know that that has happened in the past and it's confusing, to say the least. The third part of the language is on page 5 and it just says that you have to be at least 18 years of age to train for a license, and 20 years of age...21 years of age to train an applicant for a security officer. And then finally, the committee amendment changes the

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provisions regarding the length of the initial committee members from a term of service, and that's on page 9, and it makes it so they're staggered terms and you have two members who are appointed for a one-year term, two members for a two-year term, and three members for a term of three years, as determined by the Governor, so that you get them properly staggered. The committee has heard this bill several times and I know that Senator Stuhr and all of the people affected by this bill worked very hard over the interim to address any questions. I think it's important that we license security officers; that there is some state oversight and regulation. And those who are in the business of hiring or providing security officers also believe that there should be some regulation. So I hope the body will help us pass this act this year and, with that, Mr. Chairman, that concludes my explanation of the committee amendments.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on the committee amendments to LB 72. Open for discussion on those amendments. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ban these people, but that's not going to happen, so Senator Stuhr and others are trying to do the next best thing, which is to regulate them, put in some kind of requirements relative to the uniforms that they wear so they will not be mistaken for sworn law enforcement officers, although there are people wearing those uniforms who should not wear them, in my opinion, but we're not talking about that in her bill. Also, there is some language relative to the granting of firearms permits. I would like to ask Senator Stuhr a question, if she would respond.

SENATOR CUDABACK: Senator Stuhr, would you respond?

SENATOR STUHR: Yes.

SENATOR CHAMBERS: Senator Stuhr, I understand that you may not have the answer to this, but I want to raise the question anyway. In order for a person to possess a firearm while functioning in the role of a security guard, does that person

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have to have, preliminary to that, a license to have possession of a pistol?

SENATOR STUHR: I'm not sure how to answer your question, Senator Chambers. I know that if...there will be certain provisions for those that are armed. The training and the standards and qualifications would be, you know, similar to anyone, you know, carrying a gun or a firearm.

SENATOR CHAMBERS: But the issue I'm raising is whether or not allowing the Secretary of State to give a gun permit circumvents the existing requirements for somebody to have the right to possess a firearm. So, as I said, you may not have the answer, but it's something that those who are listening may be able to check out and respond to later.

SENATOR STUHR: Okay.

SENATOR CHAMBERS: That's all I will ask you right now. There is so much in this bill that needs to be discussed and hammered out that I don't see any way we could finish it today and I don't think anybody expects that to happen. It might be good, since we're at the point in the agenda where this bill might be discussed, to try to get to some of these issues which are troubling, at least to me, so I will speak for myself. The Secretary of State establishes minimum guidelines for educating, training licensees, and practically everything that goes along with this bill, including firearms training courses. I don't think the Secretary of State or anybody in the Secretary of State's Office possesses any particular expertise to qualify them to do this. I also realize that you have to put regulation of this kind under some official's office. It wouldn't be under the Governor. It certainly shouldn't be under the Attorney General. It won't be under the State Auditor, so should it be the Law Enforcement Training Center? I don't have the answer right now because I just started looking at the bill, not anticipating that those others we had this morning would move so rapidly. But when you consider what these people do, there should be very stringent training requirements before the state empowers them to carry these guns.

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: If there is no regulation, that is one thing. There ought to be. But when the regulation is to be put in place it should be meaningful, effective, and of substance. This bill attempts to cover the waterfront, but for that very reason I think detailed discussion is necessary for practically every part of it, including some of the definitions, such as unlawful act or unlawful conduct. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the committee amendments, Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. I had mentioned to Senator Stuhr that there were some drafting...in my mind, some drafting issues with the bill. And I have undertaken drafting an amendment that I believe would resolve them, but it's not done. I didn't anticipate that we would get here today. And so I'm going to...I'm going to outline my concerns with the bill and maybe we could have some discussion. Maybe...obviously, it's Senator Stuhr's call. Maybe we'll pass over the bill. I don't know. I do have a fundamental opposition to regulating anything and everybody that we can. And last year, you recall the great tattoo artist debate. Senator Stuhr is hopefully laughing, but maybe not. I just don't believe that we should regulate anybody and every entity that we can. Even though, I give you, we have the power to do that, I believe government should stay out of people's business to the extent possible. That being said, I do think if we are going to regulate an entity then...or a group of persons, that we should do it properly and it should be drafted narrowly, tightly, and quite clearly so that people know what their obligations are under the law. I'm going to outline a couple of my questions and then Senator Stuhr can figure out how to proceed from here, if we just want to pass the bill over, work on an amendment, or, as persuasive as she is, she might persuade us to move it over to Select File and then with the commitment that we'll have an amendment. But I don't think that it's clear as to who is and isn't required to be licensed under the bill. And also, I do want to go back. I think a lot of times entities will come in and testify on this type of legislation because, in

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my mind, it's a barrier to entry. So if Senator Kopplin wants to start up a security business, it's harder for him to do that and compete with me when I already have a security business. So I do think that, even though people don't come in and testify in opposition, there's a reason, and the reason is that these types of bills, in my mind, are barriers to entry. There's a definition of protective services or, excuse me, there is a word, a phrase, "protective services," on page 2, line 5, but it's not defined. There's no definition that I saw for "security service," page 2, line 9. The bill allows the Secretary of State to set out to give permits for firearms, so these individuals can carry firearms, and yet there's no training. It does say firearm training, but it doesn't say what kind. Does it mean they have to...anyway, it's just not defined and I think that that should be defined. If we are going to allow these folks to carry guns, the training...at least we should know, if we're going to delegate this authority to the Secretary of State, we should know what type of training there is going to be. When can the Secretary of State revoke a security officer's license? There isn't a mechanism, as I saw it, in the bill, and you all know that if someone has a license to do something the state can't take it away without some sort of a hearing. That's called due process. And I don't...I don't see the mechanism or how the Secretary of State can revoke a license. I think that's a problem. It says other sanctions the Secretary of State can impose on a licensee, other than revoking their license. And what are those sanctions? We don't know. What revocation procedures are established by the act? It's not clear. And I do want to know why the Secretary of State is given total discretion as it relates to setting the licensing fee for security officers. We always have placed a cap on those because of delegation issues. The Legislature delegates its authority to an agency, and yet we usually set a range. But in this instance there's no range. The Secretary of State could charge anything. Again, I mention that there is no guarantee in the bill of an administrative hearing and/or an appeal prior to a license being revoked. Someone could argue that that is a due process violation. I think that's a concern. The bill doesn't, as I read it, doesn't discuss individuals who are currently working in the field. I'm not aware of the grandfather provisions. Does everybody have to be...take these new tests

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and that, or are they grandfathered in? There's a whole host of other issues. I, in reading through the bill quickly...oh, there's another one. The bill refers to, quote, the department, but we really don't know which department it's referring to. The point I'm trying to make is if...I don't...I don't believe we should be regulating to this extent, but if we are going to regulate to this extent, we should do it properly and I do have some concerns with the drafting problems. I leave it up to Senator Stuhr as to how to proceed this morning. I apologize to her that I wasn't able to get an amendment prepared that would clean this up, because I, quite honestly, didn't anticipate we'd get here yet this week, but here we are. Senator Stuhr, I'm sure her light is on. And again, I'm not trying to kill the bill. I'm simply saying that if we're going to regulate in this regard it should be properly done. With that, my concerns are out there. I think there's quite a few issues with the bill we need to resolve...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...and hopefully we can do that yet this morning. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Stuhr, on the committee amendments.

SENATOR STUHR: Thank you, Mr. President and members of the body. First of all, I do want to stand in support of the committee amendments. I think it helps clarify some issues in the bill. I would like to give just a little bit of history on this particular issue. It has been brought before the Government Committee for a number of years, and I know that several years ago Senator Aguilar brought the bill because he had some concerns in his local community about what was going on in the way of the security guard industry. I had a constituent from my area come to me directly who was a retired State Patrol, who now has started his own security contract business. He does a lot of work across from state to state, and he came to me and said, when are we going to have a licensing provision in Nebraska? There are over 30 states across the nation that do have this. As he goes into the other states, they ask him to

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see his license, and of course Nebraska does not have...has not had any standards in the past. So we introduced a bill last session, as I said. There were...there was a great deal of opposition to that bill, and I can understand why, after working with the industry for the past six months. They actually put this bill together, in fact, and we followed many of the federal guidelines because, on the national level, we are expecting that there could be a bill. We never know how soon or how long, but we wanted our definitions and our terminology to coincide with what was on the national level. I would be very happy to work with Senator Bourne, if he...on the issues that he is concerned about. I do not believe that this is a barrier to entry. When an industry comes and says, we want to have some standards of professionalism, I think that this is a result of their approach and saying that. And also, I think it's a consumer protection issue; that we want to know that those people that are in uniform and that serve as security personnel, that they have met the regulations as far as firearms training. And there's much...and there are many, many other factors involved besides just the firearms training. We did write the bill rather loosely in the fact that we did not include a fee amount, because it was a consensus that that would be very...that would be very difficult at this point to put a number. And I think it's better to have those kinds of things in rules and regulations that can be changed without having to come forth and change a statute. So, Senator Bourne, I hope that you understood why we did not put the fee amount. I think the key thing is, this act is modeled under the Private Investigators Act. All that act is administered by the Secretary of State. We worked very closely with the Secretary of State. They were at many of our meetings. They helped us in redrafting and redrafting the bill. The advisory committee is set up of seven members.

SENATOR CUDABACK: One minute.

SENATOR STUHR: And this committee is going to work directly with the Secretary of State in writing the rules and the regs. There will be hearings. So many of these details can be worked out. I also understand that there is an administrative code that the Secretary of State must follow in regard to due

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process, so that is already in statute and covered, but, you know, if there's some additional areas. We do have the firearms statement on page 5. They must submit evidence of successfully completing any education and training requirements established by the Secretary of State by rule and regulation. So that training, we debated that issue over and over again, but, you know, if you wanted to be more specific,...

SENATOR CUDABACK: Time, Senator Stuhr.

SENATOR STUHR: ...but I would need help in how we could make that more specific. Thank you.

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

SENATOR SMITH: Thank you, Mr. President and members. I rise with great concern about the underlying premise of LB 72 and the attempt to, I think, as Senator Bourne pointed out, place a barrier of entry. And I think that Senator Stuhr's efforts are well-intended and she probably remains convinced that this is necessary. I remain convinced that this is not necessary. I believe that oftentimes it is appropriate for government to step in and regulate certain industries and activities in the state; however, I do not believe that this is one and I will attempt to explain why. Regulating or placing licensure for security guards is unnecessary because their typical clientele is much more sophisticated than someone needing a haircut, than someone purchasing natural gas, than a lot of other activities that we regulate here in the state. I sat on the Government Committee and heard this bill prior to this. I've tried to keep an open mind and I really think that this is creating not only a barrier to entry into this activity or this industry, but it also establishes another level of government that is not necessary. I do have a question for Senator Stuhr, if she would yield.

SENATOR CUDABACK: Senator Stuhr, would you respond to a question from Senator Smith?

SENATOR STUHR: Yes.

SENATOR SMITH: Senator Stuhr, I think you'll agree that there

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are a lot of different levels of security necessary for various events. A very common one would be enforcing the liquor laws that we have, primarily at a temporary event. Would you agree with that?

SENATOR STUHR: Yes,...

SENATOR SMITH: Let me give you an example.

SENATOR STUHR: ...there are different levels, yes, of course.

SENATOR SMITH: Right. Let me give you an example. I mean, being a bodyguard for someone is different than making sure someone does not carry an open container out of an event that is in a confined area. Would you agree with that?

SENATOR STUHR: Yes.

SENATOR SMITH: Does this bill, in hopefully as short of an answer as possible, does this bill treat everyone the same, or would there still be the flexibility or are we just going to have one standard for that entry into the industry?

SENATOR STUHR: If you are a contract security guard or a proprietary security guard, you would have to meet the standards set forth in the bill.

SENATOR SMITH: So if there was a volunteer security guard at an event at the county fair, who had "security" on their T-shirt because they were preventing those from leaving the event with an open container, would those folks need to be licensed?

SENATOR STUHR: If they are a volunteer, no, they would not, is my understanding. They would not.

SENATOR SMITH: So the mere voluntary status would be the triggering mechanism, or lack thereof, to being licensed?

SENATOR STUHR: Well, I think, Senator Smith, it would depend if they would be carrying a gun. And, of course, if they would be carrying a gun, they would have to meet certain requirements

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whether they were a volunteer or not.

SENATOR SMITH: Okay. Is that reflected in the bill then? I mean the carrying a gun and whether or not they're paid, I know a lot of people who'd (laugh), believe it or not, volunteer to carry a gun out in the open, of course. We have to abide by the laws. We can't conceal them. But, nonetheless, I think that we have some very real issues here that we need to work out in the bill. But certainly...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...my underlying concern is the philosophy behind the regulation, and it's regulation that I don't think is necessary. I would yield the balance of my time to Senator Aguilar.

SENATOR CUDABACK: Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Smith. I appreciate that. I only got one minute so I really want to quickly touch on what happened in Hall County. We had a security company move to our town and they immediately purchased uniforms and automobiles that exactly replicated our sheriff's department. That's the problem. That's what happens when we're not regulated and we just let people do whatever they want. And these are people that have lights on top of their cars. They're a different color, but there's lights. They can stop anybody. They can start your...stop your daughter down on a dark road and question her or do whatever they want. It makes them very vulnerable when they see a position of authority like that. The other thing I think we need to touch on and not forget,...

SENATOR CUDABACK: Time.

SENATOR AGUILAR: ...that many of these security companies, they are allowed to carry guns.

SENATOR CUDABACK: I'm sorry, Senator Aguilar.

SENATOR AGUILAR: Thank you.

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SENATOR CUDABACK: Thank you. Senator Chambers, the Government, Military and Veterans Affairs Committee amendments.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to support the committee amendment. I do believe some kind of regulation is necessary, but there is so much, if we're going to regulate, as Senator Bourne said, as I had said the first time I spoke, that we should do, if we can, considerable discussing, other than on the floor. But if that can't be done, then we'll take the time on the floor. The bill, in the form that it's in now, could not be supported by me. Senator Bourne touched on some of the things I didn't go into, such as definitions, but I had talked about one of the terms, and that was unlawful... "unlawful conduct," or whatever that is. Yes, "unlawful conduct" on page 3, starting in line 7. If this unlawful conduct had not been engaged in within the previous 12 months, then apparently you can get a license. Maybe some of this unlawful conduct is the kind that would prevent you from carrying a weapon legally, such as domestic violence. So that is something that needs to be looked into, to see exactly what is being said and what is being intended, because I don't want people getting a permit to carry a pistol from the Secretary of State if, under the law, as it exists now, they could not carry a pistol. I also have a difficulty with saying that this bill trumps a provision of the statute that currently exists relative to carrying concealed weapons. I want to know how many of these people are going to be dressed in plain clothes and carrying concealed weapons. They are not sworn officers. You don't know this person from Adam's house cat, and he or she may come up to you and pull a pistol. Well, how do you know that they're... this is a rent-a-cop or, as they used to say in the old days when they were angry with anything in a uniform, a rent-a-pig? How do you know? It's just somebody who came up and drew a gun on you, and you think this person is as illegal as I am, so you whip out your .45 and he points his .45 at you. And you know what happens? If you're like Billy the Kid and Jesse James... people don't realize that they had a duel. I don't think Senator Kopplin even knew that. But they met on a dusty street in a little dusty town on a very dusty day wearing dusty clothes and had an attitude to match, and neither was

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going to give place or ground to the other. That's what happens when you're carrying pistols. They talk to you. You don't have to take that. You going to let him do that to you? So each one was being talked to by his pistol. So each one drew his pistol and each one began to fire at the other, and you know what happened, why neither killed the other? Their bullets met in midair at the same spot and created a little pile of lead on the ground. Well, in real life that's not going to happen with two people who are armed and dangerous. So I'm going to want to know who, under this bill, can carry a concealed weapon. Merely being a security guard, in my view, does not create carte blanche for such a person to carry a concealed weapon. If the language says when he or she is performing duties, what are the perimeters within which that duty occurs? Does it mean if this person works as proprietary counsel, or whatever they call them, for a company...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and are considered to be on the payroll 24 hours a day that they can carry a concealed weapon 24 hours a day or, as George Bush says, 24/7, 24 days a month, 7 hours a week? Is that what it means? (Laugh) There are questions that I have and I think Senator Stuhr knows that the bill is not going to move today. And, Senator Stuhr, I do believe some regulation is needed. And I can't promise to give all of the time necessary to maybe rewrite the bill, but I will work with you to the extent that I can. I will look at Senator Bourne's amendment, and I may not agree with everything he has, but I think he's moving in the right direction, based on some of the issues he raised. So try not to get heartburn yet. Go take an Alka-Seltzer or one of those things that people use. I don't use those strong medications. But take one of those, sit back, kick your feet up, be cool,...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...and we'll work our way through this. Thank you, Mr. President.

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

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items for the record?

CLERK: Mr. President, thank you. Your Committee on General Affairs, chaired by Senator Janssen, reports LB 201 to General File; LB 209, General File; LB 210 indefinitely postponed; LB 405 indefinitely postponed; those reports signed by Senator Janssen. Banking, Commerce and Insurance, chaired by Senator Mines, reports LB 545 to General File; LB 564, General File; LB 647, General File; LB 676, General File; LB 41 indefinitely postponed; LB 391 indefinitely postponed; LB 688 indefinitely postponed; those signed by Senator Mines. Education Committee, chaired by Senator Raikes, reports LB 270 indefinitely postponed; that's signed by Senator Raikes. And Urban Affairs, chaired by Senator Friend, reports LB 528 to General File; LB 626, General File; LR 2CA to General File; LB 384 indefinitely postponed, likewise with LB 414; those reports signed by Senator Friend. Priority bill designation: Banking Committee has selected LB 570 as one of the committee priority bills, Mr. President. (Legislative Journal pages 545-546.)

And I have a priority motion. Senator Bourne would move to adjourn until Thursday, February 17, at 9:00 a.m.

SENATOR CUDABACK: Heard the motion to adjourn till Thursday, 9:00 a.m. All in favor of the motion to adjourn say aye. Opposed, nay. We...the ayes have it. We are adjourned.

Proofed by: AEG