

**FEBRUARY 25, 2005**

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 38, 54, 77, 78, 113, 180, 263, 283, 715  
721

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning. Welcome to the George W. Norris Legislative Chamber for the thirty-fourth day of the Ninety-Ninth Legislature, First Session. Our chaplain for today is Pastor Thomas Schmitt from Zion Lutheran Church in Omaha, Nebraska, Senator Mines' district. Everyone please rise.

PASTOR SCHMITT: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Schmitt. We will now call the thirty-fourth day of the Ninety-Ninth Legislature to order. Would all senators please check in. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Thank you. Are there any corrections for the Journal?

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

PRESIDENT SHEEHY: Is there currently any messages, reports, or announcements from your desk?

CLERK: Mr. President, Enrollment and Review reports LB 54, LB 263, and LB 283 as correctly engrossed; those reports signed by Senator Flood. Revenue Committee reports LB 38 to General File with amendments, and LB 113 indefinitely postponed; those signed by Senator Landis. Transportation Committee, chaired by Senator Baker, reports LB 77 to General File; LB 78, General File; LB 715 indefinitely postponed; LB 721 indefinitely postponed; those reports signed by Senator Baker. And Senator Engel, as Chair of the board, reports LB 180 advanced to General File.

Mr. President, I have a unanimous consent request from the Business and Labor Committee. They would request unanimous consent to hold their public hearings on Tuesday, March 15, 2005. (Legislative Journal pages 611-613.)

PRESIDENT SHEEHY: Are there any objections? No objection, so

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005

ordered.

CLERK: Mr. President, subsequent to that, I have a hearing notice from the Business and Labor Committee; hearing notices from the Appropriations Committee, and from the Transportation and Telecommunications Committee; all signed by their respective Chairs. Reports received from Health and Human Services, and the Property Assessment, Taxation Department. And finally, the report of registered lobbyists for this week, Mr. President. And that's all that I have. (Legislative Journal pages 613-614.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now move to legislative confirmation report.

CLERK: Mr. President, the first report this morning is by Education Committee, involving the appointment of Mary Harbaugh to the Educational Telecommunications Commission. (Legislative Journal page 586.)

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on the Education Committee report.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Mr. Clerk, I'm going to call that Mary Harbaugh, but you may be right. I didn't check on the pronunciation. The Education Committee recommends the confirmation of Mary Harbaugh to the Nebraska Educational Telecommunications Commission. Ms. Harbaugh is a reappointment to the commission. Her term of service would be four years, extending from January of 2005 through January of 2009. She is one of...she would be one of six members of the general public that are on the commission. If you recall, the commission has a total of 11 members, and is formed to fulfill three primary purposes, which are: number one, promoting and establishing noncommercial educational telecommunications facilities within the state of Nebraska; two, providing noncommercial educational telecommunications programs throughout the state of Nebraska by standard broadcast, by closed circuit transmission, or by other telecommunications technology distribution systems; and three, operating statewide educational and public radio/television networks and services.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 51

With that, I'll close by encouraging your support for this confirmation. Thank you.

PRESIDENT SHEEHY: Is there any discussion? Seeing none, Senator Raikes, you're to close. Senator Raikes. The question before the body, shall the Education...confirmation report from the Education Committee be adopted? All those in favor vote yea; and opposed, nay. Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 615.) 31 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT SHEEHY: Thank you. We'll now go to the next item on the agenda, Select File.

CLERK: Mr. President, Select File, I have no Enrollment and Review amendments, Senator. I do have other amendments on LB 51. The first amendment I have, Senator Kremer, AM0477.

PRESIDENT SHEEHY: Senator Kremer, you're recognized to open on AM0477.

SENATOR KREMER: Thank you, Mr. Lieutenant Governor, members of the body. I would like to draw that amendment, please, AM0477.

CLERK: Did you say withdraw, Senator?

SENATOR KREMER: Yes, I did.

CLERK: Thank you.

PRESIDENT SHEEHY: AM0477 is withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Kremer would move to amend with AM0565. (Legislative Journal page 607.)

PRESIDENT SHEEHY: Senator Kremer, you're recognized to open on AM0565.

SENATOR KREMER: Thank you, Mr. Lieutenant Governor. I would

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 51

give you just a little bit of review of LB 51. We did hear this bill in General File on January 26 and passed it and, since then, we had some indication that there's some things that we'd like to change a little bit. The bill really, in Section 2, this is LB 51, authorizes the Department of Agriculture to contract with listed governmental and quasi-governmental entities to perform laboratory analysis, and the reason for that is to enable the government...or the department to participate intrastate or interstate partnerships to pool laboratory resources in the event of food safety or disease emergencies. Nebraska is a member of the Food Emergency Response Network. This is intergovernmental agreement and it participates...the participants may be called upon in the event of food safety emergencies that overwhelms capacities in one area of the country. In case of a terrorist attack, something like that, that laboratories would be overwhelmed, say, in Nebraska or another state, that they could participate with one another to perform the laboratory tests that would need to be done, whatever it might be. The second part would enable the department to be a participating lab in verification studies for new analytical techniques or methods developed by entities whose primary function is to establish laboratory and analytical standards. The amendment is to avoid any perceived...or perception that the authority to contract laboratory services authorized by the bill could be utilized as entrepreneurial activities for the expansion of lab capacities beyond the need for regulatory functions, and it's also to be certain that the department does not compete with the private sector. Now, we mentioned in the bill, as we introduced it, that that was the intention, but some felt like it needed some clarification. And it's also to conform the bill with the state's intention by the department in requesting any of this authority. As I mention that concerns arose that the, on General File, the private labs, that the bill may not adequately spell out that the department was prevented from using the authority to expand laboratory facilities and activities into areas that compete with private sector. The bill, as introduced, contains restrictions that were intended to address these issues. The amendment merely makes more...more precisely spells out when the department could accept requests for lab services to be certain that the use of the authority of the bill is limited to what it's intended for.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 51

The amendment does not introduce any substantive changes. The amendment specifically says the laboratory testing services authorized by this section shall not be performed beyond the scope of the Department of Agriculture's statutory authority, and shall be limited to one or more of the following: one, acts of terrorism, natural disaster, or other public health or agriculture emergencies; number two, testing performed in accordance with intergovernmental agreements with laboratory testing services; and three, testing performed in connection with validation studies for analytical techniques and methods developed for the entities whose function is established in providing official laboratory and analytical standards. This was brought to us by the agribusiness group and there are several labs across Nebraska that felt like they would like to have this more clearly defined what the Department of Agriculture could do and could not do. With that, I would ask you to advance the amendment, please. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Kremer. The floor is now open for discussion on AM0565. Currently, there are no lights on, Senator Kremer. Senator Kremer waives closing. The question before the body is, shall AM0565 be adopted? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Kremer's amendment.

PRESIDENT SHEEHY: AM0565 is adopted. Did you have a message, Mr. Clerk? We now move to the next item on the agenda, Mr. Clerk.

CLERK: Mr. President, the next amendment is LB 51...I'm sorry, is FA35, offered by Senator Beutler. (Legislative Journal pages 615-616.)

PRESIDENT SHEEHY: Senator Beutler, you're recognized to open.

SENATOR BEUTLER: Mr. Lieutenant Governor, members of the Legislature, this is a friendly amendment, intended to insert into the bill a nonliability provision for the state of Nebraska so that should, in these...in performing these emergency

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 51

functions, should anything go wrong, it's not going to result in a liability to the state of Nebraska, since we're doing all of this in the role of a good Samaritan. It's a standard provision that's taken from the Nebraska Emergency Management Act, another provision of our law where the government is acting as a Samaritan in performing emergency services. So it's acceptable to Senator Kremer. I think that there shouldn't be anything controversial about it and hopefully it will, by adding this kind of a provision to the contract, better protect the state. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Beutler. Senator Kremer, you're recognized.

SENATOR KREMER: Thank you, Mr. Lieutenant Governor, members of the body. I would rise in support. We've just had a chance to look at this just the last couple minutes, but we feel like the Department of Agriculture probably would do this and maybe even have that in their rules and regulations, too. But we would support this amendment and thank Senator Beutler for bringing it.

PRESIDENT SHEEHY: Thank you, Senator Kremer. Further floor discussion? You're recognized to close, Senator Beutler. Senator Beutler waives. The question before the body is, shall FA35 be adopted to LB 51? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: FA35 is adopted.

CLERK: Senator Flood, I have no further amendments pending to LB 51.

PRESIDENT SHEEHY: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 51 to E & R for engrossing.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 51

PRESIDENT SHEEHY: All in favor say aye. Opposed, nay. It is advanced. Senator Don Pederson, you're recognized on...

SENATOR D. PEDERSON: Mr. Lieutenant Governor, members of the Legislature, I request a personal privilege at this time so that I may submit a report from the Appropriations Committee. In a few minutes...could I have your attention, please? In just a few minutes there will be submitted to you the preliminary report of the Appropriations Committee. It's being...as I'm speaking now, it's being delivered to you. This is the report that is required under Rule 8, Sections 2 and 3 of the...of our rules, and it represents the Appropriations Committee's initial proposal concerning the budget. And the General Fund status reflects the committee's recommendation and shows a variance from our General Fund minimum reserve, 3 percent, of a negative \$61.3 million, or equivalent of a 2 percent reserve, and you'll look at the financial status and you will see that on page 4, lines 25 and 26. However, despite this budget imbalance, it is anticipated that much of it will evaporate with the likely revenue forecast revision upward later today. The Forecasting Board, as you know, is scheduled to meet at 1:00 today. And a revised status will be available next week when...after the Forecasting Board has met and issued its report. The current revenue estimate for the status are on line 9 of the status page. It's likely that the estimate for the first three years will be raised by the Forecasting Board. As you all know, for this fiscal year so far we are ahead in revenue approximately \$130 million over what the Forecasting Board had initially proposed in October of last year, so we anticipate with today that we will have a different forecast that will improve that situation considerably. The budget at this stage, I want to caution you, is a work in progress and, by rule, the committee budget is due on the floor the seventieth legislative day, April 28. In the meantime, the committee will continue agency budget hearings, and when completed with hearings we will convene in Executive Session and define our final recommendation to you. We use this initial Appropriations Committee preliminary report for the benefit of the various agencies that come before the state Appropriations Committee so that they will know what the initial sense of the committee was concerning their request. We then hear, as we are right now and

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 533

we will until March 17, hear from these various agencies as to their specific requests. We also hear bills at the committee level. And we will ultimately modify our Appropriations Committee final report after we have finalized, and there will be adjustments made to this preliminary report, but this is a good report for you to see where we stand at the present time. So thank you very much for your consideration.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Pederson. We now go to Select File, 2005 committee priority bills. Mr. Clerk, LB 533.

CLERK: Mr. President, LB 533. Senator Flood, I do have Enrollment and Review amendments first of all, Senator. (AM7020, Legislative Journal page 597.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendment to LB 533.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 533. All in favor of the motion say aye. Opposed, nay. They are adopted.

CLERK: Mr. President, Senator Beutler would move to amend, AM0508. (Legislative Journal page 586.)

SENATOR CUDABACK: Senator Beutler, to open on your amendment.

SENATOR BEUTLER: Members of the Legislature, there's a portion of this bill that deals with total return trusts and it...there is...there are five or six pages of fairly complicated legal language dealing with total return trusts, and it is a process of converting a trust from one type of thing to another. Most of the time, I think that would be to the benefit of the beneficiaries. There may be circumstances where it's not, and so the bill provides that written notice will be given to beneficiaries in those instances so they will know what's happening. You give them a written notice under the bill and

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 533

then you send them a copy of these six pages of legalese. What my amendment does is says, okay, do that but, in addition, give them the notice that...specifically that they have 60 days in which to take action. In other words, instead of forcing them to go through six pages of complicated language, allow them to get the notice that they have a certain amount of time to deal with it and then they can be sure to get it to their attorney in time. You all know what it's like to get complicated...pages of complicated legal provisions that are telling you about changes in credit cards or changes in legal documents of one type or another. In fact, some of you may not know that lawyers actually invented nanotechnology. It all started when they tried to put print in as small a print as they possibly could. So this is simply designed to be sure that beneficiaries are acquainted with the time period that they have to deal with the change that's being proposed. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM0508 to LB 533. Open for discussion. Senator Beutler, there are no lights on. You're recognized to close. He waives closing. Question before the body is, shall AM0508 be adopted to LB 533? All in favor vote aye; opposed, nay. The question before the body is adoption of AM0508, offered by Senator Beutler to LB 533. Have you all voted on the question who wish to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: Amendment has been adopted. Mr. Clerk, next amendment.

CLERK: Senator Mines would move to amend with AM0581. (Legislative Journal page 616.)

SENATOR CUDABACK: Senator Mines, you're recognized to open on AM0581.

SENATOR MINES: Thank you, Mr. President. Mr. President, colleagues, this amendment is a very short cleanup amendment. In fact, it's the shortest one that we will see all day. It

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 499, 533

does one thing. It adds a missing word, "not," n-o-t. While the bill was on E & R, the Bill Drafters discovered an omission but said that a correction at that point would just not have...would have too much substance to technically disqualify its inclusion in E & R amendments, so this amendment comes at the suggestion of the Bill Drafters. On page 5 (sic), line 15 of the white copy committee amendments, there's a sentence that describes what are assets for which there is no readily available market value. That sentence begins with the phrase, "By way of example and by way of limitation." That doesn't sound quite right in context. The word "not" has been left out. What it would read is, "By way of example and not by way of limitation." That's all it is, Mr. President, the addition of the word "not." Thank you.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening on AM0581. Open for discussion. Seeing no lights on, Senator Mines. He waives the opportunity to close. Question before the body is, shall AM0581 be adopted? All in favor vote aye; opposed, nay. Voting on adoption of AM0581 to LB 533. Have you all voted who care to? Record please, Mr. Clerk.

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

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

CLERK: Senator Flood, I have nothing further on the bill, Senator.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 533 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 533 to E & R for engrossing. All in favor of the advancement say aye. Opposed, nay. LB 533 is advanced. Mr. Clerk, when you get time, LB 499.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 499, 503

CLERK: LB 499, Mr. President. Senator Flood, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 499 to E & R for engrossing.

SENATOR CUDABACK: Seeing no discussion, all in favor of the advancement of LB 499 to E & R for engrossing say aye. Opposed, nay. LB 499 is advanced. Mr. Clerk, LB 503.

CLERK: Mr. President, LB 503. Senator Flood, I have Enrollment and Review amendments. (AM7019, Legislative Journal page 597.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendment to LB 503.

SENATOR CUDABACK: You've heard the motion, adopt E & R amendments to LB 503. Senator Landis, did you wish to address the E & R amendments, Senator Landis? He does not. All in favor of the E & R amendments say aye. Opposed, nay. They are adopted.

CLERK: Senator Stuhr would move to amend with AM0575, Mr. President. (Legislative Journal pages 616-617.)

SENATOR CUDABACK: Senator Stuhr, you're recognized to open on AM0575.

SENATOR STUHR: Thank you, Mr. President and members of the body. LB 503 is the Nebraska Retirement Systems Committee priority bill that proposes to make some changes to the Nebraska Investment Council and the retirement systems. This amendment would make some technical as well as other minor changes to the bill. First, based upon revised estimates from the Nebraska Public Employees Retirement Systems, the agency that administers these retirement plans, we were able to reduce by five basis points the contribution rate increases proposed for the school

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 329, 503

employees' retirement system. Under this amendment, the employee contribution rate would be 7.98 percent for 2005-2006, and 7.83 for 2006 to 2007. As I stated previously on General File, I appreciate the representative groups that came forth with an increase in their contribution rate to cover the shortfall in this system. The amendment will also insert some harmonizing language in the definition of compensation for school employees' retirement plan in the event that LB 329, which is currently on Final Reading, is passed by the Legislature. In addition, the amendment will delay the implementation for the age-based investment fund proposed for both the state employees and the county employees' retirement system. This has been delayed in order to give NPERS additional time to implement the necessary changes related to the creation of the investment option. Also, as it relates to these plans, the amendment will leave in place the default investment options currently in statute. Finally, the amendment makes some additional changes that were recommended by Bill Drafters in order to clarify some provisions within the bill. Again, I appreciate the groups and plan members who agreed to the changes within this bill, the provisions of which were passed unanimously by the Retirement Committee, with no opponent testimony during the hearings. LB 503 will help to ensure the continued successful operation of the state's public retirement plans. I ask for your support on this amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Stuhr. You've heard the opening on AM0575. Open for discussion on that motion. Anybody wishing to address AM0575? Seeing no lights on, Senator Stuhr, did you wish to close? She does not. The question before the body is, shall AM0575 be adopted? All in favor vote aye; opposed, nay. Question before the body is adoption of AM0575 to LB 503. Record please, Mr. Clerk.

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

SENATOR CUDABACK: The amendment has been adopted. Mr. Clerk, next amendment.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

CLERK: Mr. President, Senator Bourne would move to amend with AM0598. (Legislative Journal pages 617-621.)

SENATOR CUDABACK: Senator Bourne, to open on AM0598.

SENATOR BOURNE: Thank you, Mr. President, members. This is...it's actually a simple amendment, but I won't say it's without controversy. As many of you know, a lot of our retirement funds are underfunded, and it's not anyone's fault necessarily. It's simply a result of downturn markets. The Teachers' Retirement Fund is down, I believe, about \$15 million due to, again, poor market performance over the last few years. And this bill would allow...well, in the underlying bill, as you know, the contributions are increased by the teachers, so the amount the teachers have to pay in is increased, and the amount that the employer or the school district pays in is also increased. This would simply...this amendment would simply for two years give school districts and ESUs additional levy authority and additional budget authority to respond for the short...to the shortfall in the teachers' retirement plan. So again, it's about \$15 million. We had a hearing in the Retirement Committee, of course. The school districts came in and the school board association came in and expressed the difficulty that they would have in meeting this obligation. They asked for, oh, a delay in implementing the additional contributions, and I believe that's in this bill. But then I also...we talked about it in committee, and I will...I assure you the committee did not adopt this, we discussed it and it seemed to meet with some favor in the committee, so I decided to bring the amendment to you for your discretion. And again, simply what it does is it gives school districts additional levy authority, additional budget authority for two years to respond to this budget shortfall, and it simply says that property tax levies by school districts and ESUs, for any increase in retirement costs over the retirement costs budgeted and spent for the prior fiscal year. So it's to help school districts respond to this budget shortfall. If you have any questions, I'd be happy to ask (sic) them. Again, it's not very complicated, but I won't say it's without perhaps some tension. I submit this for your consideration and urge your...its adoption. Thank you.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

SENATOR CUDABACK: Thank you, Senator Bourne. (Visitors introduced.) Also, the treats are from Senator Kruse's 76th birthday, so thank him for the treats, and happy birthday. On with discussion of the Bourne amendment, AM0598, to LB 503, Senator Landis, followed by Senators Raikes and Synowiecki. Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, this is the institutional role that the Chairmen of the Revenue Committees in the past have always played, which is to say here's the consequence; it's a knowing choice that we should make but we do need to be clear about this. This is \$15 million of property tax. It is the budget and the levy authority, which means even if they're at the top of their levy, they also get to raise their levy higher than what it is now; and it's the budget authority, which is how much money they can spend. Let me tell you what the consequence of that is. If you put \$15 million in the base, it doesn't come back out. Now, I'm going to check the language to make sure that's the case, but once it's there in the base it stays. The levy authority can drop back down, but the budget will have expanded. This will wind up, for those schools that can continue to pay for it because they're not at the maximum of their levy, this will be a permanent expansion of their base to do this project. Now, it's a pretty deserving project, no doubt about it. I understand completely and, by the way, I think schools are up against it with respect to the budget lid and the levy lid. On the other hand, let's be clear, this is the...of the pieces that have come out so far from the committee, this one was in the committee. It was in another bill that had this plus health insurance. The sum total of that was a large amount of money and it has not gotten out of committee. My guess is it would be killed but for the fact that we just...we didn't get there to the time to kill the bill. My guess is it not only doesn't have five votes to advance, but there are probably five votes to kill the bill because it's as large as it is. This is not our tax base; this is the property tax base. This is a tax base, however, that we squeeze for local political subdivisions, no doubt about, and schools are squeezed. It's \$15 million, but that's spread across the entire state, and 15 million bucks is not a great deal when across the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 109, 503

entire state. However, it is not for two years. If you put it into the budget and it's there in the base, that base stays there year, after year, after year. While the levy might operate for only two years, that if you put it into the budget and it...and you don't take it back out, it will be there permanently. So this is a moment in time in which the body gets to say, do we want to spend \$15 million of property tax? Because my guess is that schools will want to do this. Certainly there are teachers will want the schools to do this, and I think there are many schools that will in fact want to do this with their money, particularly if they have the authority to do so. In fact, if it's outside the lid, they'll want to do this and maybe they'll free up some money that they were otherwise going to do that now will go to something else. But if we do this amendment, it will be \$15 million of property tax for two years and I would submit to you in the overwhelming number of circumstances it will continue to be that, because once in the budget base it will be spendable. So while there is an aspect that's two years, I think you should think of this in terms of a permanent alteration of the budget authority for schools to the tune of \$15 million of property tax. My guess is that the body will have its...will make it...well, I don't guess. I know the body will make up its own mind. I just want to tell you, number one, the idea was in committee along with another very expensive aspect, which was health insurance. It couldn't get out. And this is Select File. It's fair game for this to be brought up. The rule that says it needs 30 votes does not apply because we didn't kill LB 109, and even that bill had two ideas and this only has one, and I think it's up to the body to decide. This is the property tax base. It is \$15 million. It is, however, in my estimation, permanent, not temporary. Once you change the underlying budget authority, it grows year by year, and if a school will have the continuing levy, they'll be able to do this expenditure outside the budget lid because the budget base will have been expanded. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. On with discussion of the Bourne amendment, Senator Raikes. Senator Raikes, recognized.

SENATOR RAIKES: Thank you, Mr. President and members. I am

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

going to chime in, I think, with Senator Landis. My role is, I think, somewhat different. He mentioned his traditional role representing the Revenue Committee; mine, the Education Committee. And I would tell you that very...I feel that I very much support the financial requirements of school systems in the state, and I do appreciate Senator Bourne bringing this proposal because it's something that's of interest to, I think, the entire body, from both the aspects of revenue and education. I will also tell you up-front that I don't support the proposal. One thing, and Senator Landis has mentioned, once you start down this route, where is the logical place to stop? Retirement benefits for two years, well, maybe longer than two years. And actually once you start making exceptions to the budget lid, as soon as you do it, it goes on, and on, and on, so there's no sort of withdrawing from that. But he mentioned healthcare costs, which are critically important, and certainly they've gone up a lot. If you're going to do retirement, then it certainly makes sense to do healthcare and maybe some other things. You could also argue, I think, that if this were a huge impact on the financial well-being of schools, this may be more nearly justified. There's \$15 million, but my understanding is half of it is going to be borne by the employees themselves, so only about half of it would be the obligation of the school system. And \$7 million, if \$7.5 million is not an insignificant amount of money, on the other hand, the total expenditures in our K-12 schools in the state are up a little over \$2 billion. So this is not a major percentage increase. When you put that in combination with the other things that you could logically include once you do this, I think it raises the broader issue. If you're going to do something like this, then you need to consider totally redoing the budget lids, the levy lids that we now have in place. Maybe we should do that, but I don't think this is the time to do it. So I think the appropriate action at this point is simply say no to this proposal, even though I, again I will tell you, I appreciate Senator Bourne raising the issue because it's one that needs to be brought up. But I think the correct answer at this point is no. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Synowiecki, on the Bourne amendment to LB 503.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. Senator Bourne, would you yield to a couple questions?

SENATOR CUDABACK: Senator Bourne, would you yield?

SENATOR BOURNE: Yes.

SENATOR SYNOWIECKI: The questions that I have are relative to the underlying bill more so than your amendment, and the fact that the Retirement Committee, of which both of us are members, was confronted with the potential of significant General Fund exposure to these two plans. But both the teachers and the school districts, the employees and the employers, agreed to an increase in the...a temporary increase in their contributions to the plans. Is that correct?

SENATOR BOURNE: That's absolutely correct. The teachers, the school districts stepped up to the plate, recognized there was an obligation, and I might add through no fault of their own, and agreed to pay this so that we would not have to pay it out of the General Fund. That is an absolute accurate statement.

SENATOR SYNOWIECKI: And this, in return, saved...our potential exposure on the General Fund end of this was \$15 million.

SENATOR BOURNE: I think, yeah, I think it's \$15.5 million, but right.

SENATOR SYNOWIECKI: Okay.

SENATOR BOURNE: A lot of money.

SENATOR SYNOWIECKI: Senator Bourne, we attempted in the Retirement Committee to do a similar adjustment, if you will, with the judges' retirement plan and what we attempted to do, Senator, was increase the contribution rate of the judges to help with the solvency problems with that plan. What ended up happening, however, was that the state was sued for this action and we were found to be in violation, or the temporary order of the federal court was that we were in some kind of...afoul of the law constitutionally in that we did not correspondingly

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

increase any benefits within the retirement plan and/or we didn't increase their pay simultaneous to that. How does this interrelate with what the teachers and school districts did?

SENATOR BOURNE: Excellent question, Senator Synowiecki, and that's why I have some sympathy for the teachers and the school districts and is why I'm bringing this amendment. As Senator Synowiecki mentioned, I think it was a year or two ago the judges' fund was underfunded by, I want to say it was \$500,000 or \$600,000, peanuts compared to \$15 million. We introduced, and I think Senator Beutler would remember this, there was...because he was involved to a certain extent. There was a bill that was introduced. I think it was LB 329. It created an additional contribution from the judges and no corresponding state money. The judges sued and, as Senator Synowiecki mentioned, the federal court put in a temporary restraining order saying the state could not increase the judges' contribution to the plan because it was an unlawful taking. There were some contract issues. I think it was a violation of contract. And basically, the state could not increase their assessment without giving them a corresponding increase in benefits. And the court, again, struck down that additional contribution and, as a result, we are having to pay for the judges' retirement shortfall through our General Funds. Now, I am not sure, but I do believe the teachers could do the same thing, and instead they've decided to step up to the plate, participate, as they have throughout this entire budget crisis, I might add. They're one of the few entities and few organizations that have actually participated. Everybody else fights you tooth and nail; they participate. They realize how integral they are to the system and they participated. They're doing the same today, and I commend them, and I'm simply trying to give them a little help. Is Senator Landis accurate in what he says about this being an expanding of the base? Absolutely right, it is. He has portrayed it accurately. However, this is a narrowly-defined provision in the levy and the budget authority that simply allows them to respond to a \$15 million shortfall that they are not responsible for. I would not carry this amendment if they made this mistake, but they didn't do it and, actually nobody did. It was simply a function of the market turning down. But Senator Synowiecki is exactly right.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

The judges did sue us a year ago and we, as a result, are making up their shortfall through General Fund appropriations.

SENATOR CUDABACK: Senator.

SENATOR SYNOWIECKI: Thank you, Senator Bourne. And I can certainly appreciate Senator Raikes' concern and, quite frankly, that needs to be discussed here while we discuss this. But as a member of the Retirement Committee, I think the members need to be fully cognizant of and fully aware that we were on the line, General Funds, state General Funds were on the line for over \$15 million relative to the solvency problems with these...

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: ...with the teachers' plan, and it was because of the teachers of the state of Nebraska and the school districts agreeing to participating in the solution to this, to being part of the solution, that their participation saved our General Fund expenditures in excess of \$15 million. And, while I agree with Senator Raikes that...relative to some of the points he was making, I do think that we have to also be aware of the substantial savings in the General Fund expenditures relative to the solvencies of these retirement plans. And if you look at what...how the judges reacted to their not wanting to be a participant in the solution and what the teachers have offered to do, I do believe that we need to be cognizant of our history with...relative to these plans as well. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Stuhr, on the Bourne amendment.

SENATOR STUHR: Thank you, Mr. President and members of the body. I do appreciate Senator Bourne bringing this amendment for the discussion, although I realize that this bill actually was introduced in Revenue Committee. A couple things that I wanted to point out and, first of all, yes, we did have the hearing on the rate increase for the school employees and school employers. The Council of School Administrators did come in as a proponent and supported that rate increase. The school boards

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

association came in as a...in neutral testimony. I wanted to just share with you the increase, which is for the first year for the employees is 73 percent of 1 percent-- .73. The increase for the second year would be .58 percent. For the school employers it would be .74 percent, and .59 percent for the second year. I do want to just mention it because Senator Synowiecki and Senator Bourne both have talked about the judges' situation a couple years ago. We had a situation in that case where there was no offsetting pay increase. We were asking for an increase in their contribution rate, but no corresponding increase in benefit. In the schools', in this situation, I believe that the percentage is so small that they would have to receive no pay increase to have that same situation that we had in the judges', and I don't see that happening because I believe that all of the school employees will receive some percentage of increase. We are talking about property taxes. I do...I was very pleased in the fact of just looking at our state budget and looking at the shortfall of \$15 million, which I know was going to have an impact. We know it is the state's responsibility, when we have a downturn in the investment markets, to cover. And we have not had this happen since...it was in the nineties. I can't tell you the exact year, but it's been a number of years. But the school...schools and the school employees did come forth on a willing basis to do this and cover this amount this year, knowing the budget crisis that we are still experiencing. I also appreciate the remarks that Senator Raikes had. I believe we're going to see an increase in school aid, which should help offset this increase to the schools. I will probably, reluctantly, be voting no on this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Connealy, on the Bourne amendment.

SENATOR CONNEALY: Thank you, Mr. President, members. You know, we do get a lot of calls for going over the lid and exemptions and the like, and I really don't want to raise property taxes, but I think that this one fits. I think that it's short term. It's a part of the budget that's really something that was unforeseen, as we crafted this. It is abnormal. You know, I agree with Senator Raikes that we can't do it all; that we ought

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

to maybe look at how we set lids and limits and maybe this isn't the only one that we should look at, but I believe that this is right at the top of the list because of the fact that it isn't a part of the budget that's going to be out of whack here for a next few years. It is a part of law that the teachers and the schools are stepping up to help fix, help us manage that. And so I've been in support of this lid exclusion and I think that everyone should look at this very seriously.

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

SENATOR LANDIS: Mr. Speaker, members of the Legislature, one of the impacts of putting this amount of money in the base is that it becomes part of the needs and resources formula of state aid. So it may make you feel better that over time the property tax impact will go down because once it's in the base it's then part of the needs minus resources equals aid formula of state aid. So if you're really nervous about the property tax impact of it, I must say that over time it will become our obligation because at least a portion of it will wind up coming back through the state aid formula. It'll have expanded the base permanently. It will be a property tax cost at the beginning, but once it's in the base this will be a demonstrable need. The resources will shrink because the levy limit may go away, but, for whatever purposes, then it will funnel back through for the state aid on that formula. I think I'm just stating what I believe is the implication of this process. I, myself, will ultimately vote against this amendment, and it's not because the teachers don't deserve some breaks and help or whatever. I just...I am...I think we should pull down the levy and budget limitations at some appropriate time, but they will stay there forever if we create Swiss cheese in which we have our favorite exceptions to them that make them more tolerable over time. As somebody who ultimately wants to return local control to school districts and to local political subdivisions, it's at the point at which the budget lid is too draconian that it will be repealed. The point at which we create exception after exception will continue the lids into place over time and add a cynicism to the lids as budgets grow while at the same time the Legislature claims there are limitations. And for that reason I'll vote against this amendment.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

SENATOR CUDABACK: Thank you, Senator Landis. Senator Bourne, on your amendment.

SENATOR BOURNE: Thank you, Mr. President, members. Again, I just want to add a little clarity. What Senator Landis said is absolutely true. There will be a temporary increase in property taxes, but then there will be a corresponding reduction in property taxes, but an increase in the state's obligation. And, again, everything he has said is accurate. Everything Senator Raikes has said is accurate. This is simply a policy choice. I personally think that...and for those of you who are new or perhaps don't know, there's two levies, or two budget limitations, as I would characterize it. One is the levy authority. They can only assess \$1.10 per hundred. And the other is, their budget can only grow by, I think it's 3 percent annually. This would simply allow them to raise the levy only to the amount that they need to, to respond to this uncontrollable cost of the retirement fund shortfall, and it would also remove from their 3 percent budget restriction this same amount. I do want to point out...and Senator Stuhr, I appreciated her comments very much on this. We did discuss this in committee and she has made no commitment to support this, although she did say she would listen to it. But one thing I'll point out to you is, if you recall, last year we had the water issue and we gave the NRDs additional budget authority of a penny per hundred, which was about the same amount, \$13 million to \$15 million. And Senator Stuhr argued accurately at the time that this might not necessarily mean an increase in that property tax by that amount. I don't know if it has increased or not, but we did give budget authority last year to the NRDs to expand their budget to respond to a water issue. So, I mean, this is...this has been done and, again, I think that my personal feeling, and if there are school administrators or former board members in the body that want to comment on this, my personal sense is that the budget authority, the limit on how much their budget can grow on an annual basis is to control negligent spending, for lack of a better word. What I'm suggesting to you is that this is not a controllable cost to the school districts, nor to the teachers. Did they foresee this? Could they have seen this coming? Yes, they could have. Could

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

they have responded better? Perhaps. I don't know. But I do think they're up against the wall in terms of their levy authority and their budget authority. They're trying to provide educational services to the kids. And, quite honestly, as we cut Medicaid and cut other programs, as we have for the last several years, the school...the obligation on behalf of the schools to society has increased. And I think we've cut their budget, we've cut other budgets, and the need for some of those services that we have cut doesn't go away. People simply look to different sources, and they're looking to the schools. I think that this is an appropriate exception to the levy and budget limits that we have. Again, I don't believe that the budget authority or the budget limit was put there to control school districts from responding to uncontrollable costs, and that's what we're asking them to do. This is a significant increase in their obligation, their retirement fund obligation, and we're simply saying, all right, we understand that. It's a...it's not a once in a lifetime occurrence, but it's rare that we have such underfunding in our retirement funds. We're going to give them a little help. That's it. And again, what Senator Landis mentioned is accurate, but I do want to point out that what we're allowing them to do through these two...through this amendment, the levy and budget authority, is raise up to the amount that they might have to raise to respond to the shortfall. The shortfall might not be \$15 million. If the market comes back, it will not be that expensive.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: And I want to point out, say it is the absolutely worst case scenario, that they are able to raise \$15 million. The school budget is about \$900 million. So, you know, my sense is that this isn't...yes, it is a property tax increase in the first year or two, and then it's a reduction in property tax increase...a reduction of the property tax in the long run, but I do think that this is something that we should do as a policy. We should help these school districts respond to this unforeseen, uncontrollable cost of theirs. And again, I urge your adoption of this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Pederson,

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

Don Pederson, that is.

SENATOR D. PEDERSON: Thank you, Mr. President. Members of the Legislature, I have a couple of questions that I would like to ask of Senator Stuhr. We both serve on the Retirement Committee. I think neither of us have exactly made up our minds yet about this particular amendment. And the thing that I would like to ask her specifically is, if we adopt the amendment, what's the net effect? If we don't adopt this amendment, what's the net effect?

SENATOR CUDABACK: Senator Stuhr, would you respond?

SENATOR STUHR: What Senator Bourne is asking for, is my understanding, is to go outside of the levy and increase the allowable growth to cover the costs of the retirement system. Now, what we have agreed on and actually passed on General File and in the amendment that we adopted this morning was...actually, the amendment we adopted this morning was an adjustment on the increase in contributions for the schools, which I refer to as employers, and the employees, which are the school teachers. And we...what the costs to the state will be with this amendment is \$551,000. They will...the NPERS will ask for an appropriation from the state for \$551,000, which lowered the original actuarial report from over \$15 million to now 14 million, 800 and some thousand, which will be covered by the schools and the school teachers. Now, does that...does that...

SENATOR D. PEDERSON: Yes.

SENATOR STUHR: ...explain?

SENATOR D. PEDERSON: That helps. I...

SENATOR STUHR: Okay.

SENATOR D. PEDERSON: ...I'm very concerned about the amount that we're building into the base of K-12 education in the state, and we are supporting that at a very high level now, almost an unsustainable level. And I was just concerned about the net effect that this may have. So I...it's coming clearer

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

to me now as to the directions that we need to go. Thank you, Senator Stuhr.

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

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

SENATOR CUDABACK: Senator Bourne, would you yield?

SENATOR BOURNE: Yes.

SENATOR CHAMBERS: Senator Bourne, were you asked to bring this amendment?

SENATOR BOURNE: Actually, I was not.

SENATOR CHAMBERS: So who drafted it?

SENATOR BOURNE: My staff, Lisa and...Lisa Johns, my...

SENATOR CHAMBERS: Oh, okay. But it didn't come from the Omaha Public Schools.

SENATOR BOURNE: No, it did not. Now I will tell you, Senator Chambers, and I think that Senator Stuhr and other members of the Retirement Committee would vouch for this, after...well, during the hearing, I asked one of the representatives, I believe from the school board administrators, if this...they had asked for a delay in the enactment of this increase, and I asked them during the hearing, if we remove that from the levy, would that help, and they both...they said yes. And so, actually, I'm...while I think the Omaha School District and the other school districts are supportive of that, it was my idea, for better or worse.

SENATOR CHAMBERS: And I'm proud of you, Senator Bourne, but I still don't think that I'm going to support it. I was just curious about the role of the Omaha Public School District, because having read the petition that they filed in joining the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

lawsuit against the state, if I had the time or if I could raise the money to hire adequate legal counsel, the racism, the discrimination, the unfair rendering of educational opportunity found in the Omaha Public School System, acknowledged in its petition, would smash that school and put them in a position where a court would order them to do what they ought to be doing for all students. Those who don't live in Omaha may have read about the concept of magnet schools. This is where they will place a building in an area deemed by the schools and the majority population, I'll use that term so that my colleagues of the Caucasian persuasion will not get jumpy and nervous, but when I tell you what the euphemism means, when I use the euphemism you're going to be as jumpy when you hear that as when you would have heard the other name, just as I'm resentful when they in the school system want to apply the term "academy" to the segregated intentionally inferior schools in the black and poor areas of the city. Calling it an academy does not alter what it is and the damage that it does to these children. But they will place a building in these undesirable areas, as they're deemed to be by the majority population and the school officials, and put offerings that are not made available in the schools in that area, period, and one or two offerings that might not be available in all of the schools in the favored areas, which would be the areas where the majority population live. My feeling is that once a school district establishes anywhere in that district the type of education and the quality of education it is capable of delivering and is delivering on a piecemeal basis, that should be the standard of education for every child served in that district, and it certainly should not be a situation where schools are placed in the disadvantaged areas and the children in those areas cannot go to that school. In their area, they cannot go. So it's like putting a catering service in the midst of an impoverished area, where the people are wracked...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...by hunger every day, and all of those delectable aromas of cooking food will waft throughout that area, but the poor people are told, but you cannot come here and eat; we're going to put it here so that people from the other

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

areas where they may have this can come here and eat, but your children cannot eat here. I have fought against things that the Omaha Public School System has sought to get from this Legislature, so if this had been initiated by them, I know what my vote would have been, with several exclamation points after it. My mind is open, but right now my inclination is to vote no, even though Omaha did not originate it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Erdman, on the Bourne amendment to LB 503.

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I talked to Senator Bourne and I told him I wasn't going to speak on his amendment. I would like to, in turn, direct the body's attention to maybe the year 2015. What happens in that year is that, if Medicaid and TEEOSA continue to grow at the rate that they're at, we can't generate enough revenue to pay for those two programs' increases. So if you look at the modeling that's been done based on current growth for Medicaid and for state aid to schools, and you compare it to the agency spending, when you get to the year 2015, when we begin that discussion on that budget, whoever is fortunate enough to be here, you'll have to begin to cut state agencies to pay for those two programs. So when we start thinking about these decisions, whether it's Senator Bourne's amendment or others, I like to think that we have an opportunity as a body these next couple years to try to resolve some problems, to try to think ahead and try to present this state in a way to be successful. I think some of these discussions are well within it, but they definitely have an impact long term. If you add \$15 million to the base, it then moves that line from 2015 up earlier. So now we're not only talking about having that decision at that point, where we already know we have Medicaid growing at an astronomical rate for the state to afford, and how do we deal with those issues, but we also look at state aid as an important part of our state's process now, and how do we afford to do that if we continually add to the base through this process? So whether you're at...whether you're in favor of doing this or not and for whatever reason, I would like to have us think a little bit in the future. I do have that

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

information. I'll do my best to get to that to the members because I think that's important for us to think about as we're making some of these decisions. What we do today will impact what happens in the future, and we have some opportunities, based on the members who are currently here, to address some of these issues in a way that I think is appropriate and is well-thought-out, maybe more so than what we would have in the future. So I just wanted to rise to point that out. We have some major financial problems on the horizon and I think we should be cautious before we begin to add to those. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Kopplin, on the Bourne amendment.

SENATOR KOPPLIN: Thank you, Mr. President and members of the Legislature. I've been listening carefully to the debate and discussion going on, and some of it is a little bit mind-boggling to me. I can't think in terms of 2016, because I won't be here. But that doesn't matter. What we're talking about is what's happening to kids right now. Fifteen million sounds like an awful lot of money when you say fifteen million, but if you break that down to individual schools, we're not talking about huge increases in the budget. As I understand the amendment, it's simply saying this is an emergency that has to be handed for the retirement system. The teachers and the board units have agreed that it could be worked into the budget. This is a suggestion, that it could be outside of the lid to help them do that. The percentages I'm hearing, 1 percent of a \$40,000 teacher would be, what, \$400. So if we're talking about this is an expense of .75 percent, that's \$300 per teacher. A system with 200 teachers, what does that come out to? Sixty thousand dollars. So what is the \$60,000 though that the school district is going to do? That's the price of one full teacher. I sit on the Education Committee and I hear about the requests for a need for all-day kindergarten in every school. I agree with that. But you know what? We can't afford it, so we pass on it. We talk about the buildings, school buildings in the state of Nebraska. They are in definite need of improvement. They're falling apart, some of them. We can't do anything about it because we can't afford it. We can't afford not to do these

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLCOR DEBATE

February 25, 2005 LB 503

things. We can't afford not to give the schools a chance to at least move this minor part out from under the lid so that they can increase their property tax a very small smidgen in order to correct a problem in the retirement system that was none of their creation; it just happened. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Kopplin. Senator Janssen, on the Bourne amendment.

SENATOR JANSSEN: Thank you, Senator Cudaback. Members of the Legislature, I've been listening to the argument on Senator Bourne's bill...or his amendment, and it seems to me that not all districts would have to raise their levy. You all know what your property tax has been, and you've seen the increase in the value of your property, which means more property taxes. So I doubt very much that this is not...\$15 million sounds like a lot of money, but throughout the whole state...and listening to Senator Kopplin talk, I think he's right on track. What the Bourne amendment would do, it will allow that school district, it will allow them to raise their levy if they need to. You know, the school district that I pay taxes to, you know, I think of that as a pretty new institution. But, you know, you start looking and thinking about it, it's 40 years old. It doesn't seem that long. Of course, some of you younger members of the Legislature will find that out. The older you get, you know, time goes by pretty fast. But they need to put in a new sewage treatment plant, you know. And when we built that school we thought this thing would last forever. Well, those things don't. So there is another million or two that they're going to have to spend. And I can't...I can remember, going back in time, no one...no one could imagine...I can't remember the name of the bill, I think it was LB 1059 or something like that, that then we started to use some sales and income tax money to help our schools out. Those dollars have increased such a great extent that it's getting to be kind of mind-boggling how much state aid is going out to the schools. But I want to remind you that it is not necessarily going to be this much money because of the increase in your property tax or the value, the increase in the value of your property. You know, I never thought that my house would be valued at what it is now, but it is. And I could probably get more for it than what it's valued at,

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

hopefully. So I'm going to listen to the rest of the debate. I haven't made up my mind what I'm going to do. I think it's a reasonable solution. On the other hand, I don't want it to be abused either. So, with that, I give the rest of my time back to the Chair. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Louden, on the Bourne amendment.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. May I ask Senator Bourne a question, please?

SENATOR CUDABACK: Yes, you may. Senator Bourne, would you yield?

SENATOR BOURNE: Certainly.

SENATOR LOUDEN: Yeah, Senator Bourne, as I look over this amendment there and you're changing the tax levy and that sort of stuff, how will that affect districts like out in our areas that aren't up against their levy lid? We have, like our Sioux County district out there, the levy is probably down in there below 80 or something like that. They receive no state aid because of the...as they call them a rich district. Will that levy...will they still have to levy a certain amount of money for pay for part of this retirement fund? Is that the way your amendment is?

SENATOR BOURNE: No. If they have the levy authority, they could...they could right now for any issue raise the assessment. What...I don't...is...are those districts up against the budget authority? Is their budget increasing by the 3 percent a year?

SENATOR LOUDEN: Why, I think it's usually taken care of. I don't think that's the problem there. I think it's mostly just the levy.

SENATOR BOURNE: Well, if they have...if they have levy authority, you know, they can go up to \$1.05, and if they're at 80, your levy, as I understand it, and somebody, Senator Raikes or whoever, could correct me, but I am 99 percent certain this

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

is accurate, their levy will not increase to resolve this problem. And also keep in mind that this is only for the additional costs of retirement. If they spent...if your district out there spent, you know, \$100,000 last year in retirement and their obligation next year is \$105,000, we're talking about \$5,000 being exempt from...you know, giving them additional levy authority and additional budget authority. But if they're already under on the levy authority, they could raise that regardless of this bill.

SENATOR LOUDEN: Well, if this amendment isn't attached to it, what will happen? I mean they'll still be able to pick up part of that shortfall, if they so desire. Am I correct on that?

SENATOR BOURNE: Absolutely right. If you're district is at 80 now and they have...so obviously they have, what, 25 cents in budget...or in levy authority, they could raise the levy now to respond to this shortfall in the retirement fund. Those districts that are at their levy would...this would just give them a little bit of leeway to respond to. And again, it's not all retirement costs. We're talking about just the additional retirement costs due to the shortfall in the state fund.

SENATOR LOUDEN: Well, is that...does that have to be all paid for in this one year? Is this over a period of years?

SENATOR BOURNE: It's over two years.

SENATOR LOUDEN: Two-year period of time?

SENATOR BOURNE: And, as Senator Landis pointed out, Senator Louden, if this goes through, there might be an increase in the levy for the first two years, but then there would be a decrease in the levy or the property taxes in subsequent years.

SENATOR LOUDEN: Now that shortfall came about, as you say, it wasn't through anybody's fault, but not...

SENATOR BOURNE: Absolutely not because of anybody's fault. We have an Investment Council here in the state that I believe is second to none in the entire country. Every state has had

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

negative returns in their retirement investments. I think our negative returns are the least negative returns of any other state. So it was simply a function of the market downturn.

SENATOR LOUDEN: Well, now, there's other retirement funds that the state of Nebraska looks after, I guess, for better...choice of a better word. Does the state have to cover the shortfall on all of those other retirement funds?

SENATOR BOURNE: Well, that was...yes, that was the discussion that Senator Synowiecki and I had. We, a year ago, we tried to compel the judges to increase their contributions to the fund to make up the shortfall, and they sued us and won. And so, as a result, we are, through the state budget, funding their retirement shortfall.

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: True, because something was done. If nothing was done, though, would the judges been able to sue anybody? I mean if it's a shortfall there, do they just have some of the benefits reduced?

SENATOR BOURNE: No, it's a state obligation.

SENATOR LOUDEN: Okay. Thank you, Senator Bourne.

SENATOR BOURNE: If we hadn't made the fund whole, they probably would have sued us over that as well.

SENATOR LOUDEN: Thank you, Senator Bourne. I'm going to listen to the discussion farther, but I always have some disturbing questions when we start raising a tax levy and start raising a lid and that sort of thing, when we're worked to try to keep that under control. So at the present time, I don't know as I can support this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Raikes, on the Bourne amendment to LB 503.

SENATOR RAIKES: Thank you, Mr. President and members. It's

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

been a good discussion. Senator Bourne just mentioned again the judges situation and I think Senator Stuhr responded to that appropriately, in that that was a situation where the state was in control of judges' salaries and also in control of retirement. That is not the case here. This...each school district would deal with teacher salaries in that school district, and as long as there is some increase, and there almost always is, or there...I don't know of a situation where there isn't, the judges' lawsuit problem does not arise. Also was mentioned that we're talking about \$15 million additional expense to schools on a \$900 base. That's not correct. It's only half of the \$15 million. It's only \$7.5 million, and the \$900 million is only the state aid. The total funds available to school districts are \$2 billion and a little bit more. So we're talking about a \$7.5 million increase in obligation on a \$2 million (sic) base. Now keep in mind additionally, we already know from the certification that schools are going to get more than \$60 million additional in state aid for the first year of the two-year period that we're talking about. The amount of additional funding they'll get through property taxes is not yet known, but we do know that the valuation increases are averaging something over 4 percent. So it's not as though schools are going to be facing a huge increase in costs with no additional resources. The additional resources...and I'm defending the additional resources, because K-12 schools participated very strongly in the budget problems we had a couple years ago, so to a certain extent they are just coming out of the cuts they've had. But nonetheless, those cuts amount to, just this year, just this coming year, an additional \$60 million. My additional point: In our discussion yesterday, which I also thought was a good one, you have to talk about priorities. As far as funding K-12 schools, the current proposals, I think, both by the Governor and by the Appropriations Committee, are flatlining special education. I submit to you that dealing with the financial situation K-12 schools face on special ed is a much more important issue than is this retirement, which I'm not going to describe as minuscule but it is certainly small compared to special ed. We've got to decide what it is we think is more important in terms of addressing the financial fiscal needs of K-12 schools. This is an issue, but it does not rank in importance certainly with

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

special ed. This is something that I think, although we can acknowledge that it is something schools are going to deal with, we simply, again, need to say no to this particular proposal. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Kruse, followed by Senator Brashear. Senator Kruse.

SENATOR KRUSE: Thank you, Senator Cudaback and members. I stand to support this amendment. As has just been pointed out, it's not a significant amount and so...but that's not my reason for it. This is my ongoing protest of the levy limits that we have placed on schools. This is such a screwed up system, I just have to protest any time I can. I understand levy caps on cemeteries and other places like that, but when there's a quite visible, known school board, then to me it's a matter of local control and somebody should be able to recognize, we in the state level should certainly recognize, that that board can do what is needful for that group. I have shown before, and others of you have witnessed to this, that the levy cap does not hold down taxes in all situations. In fact, some places it raises it because they can't pay for maintenance of a school, but they can run a bond for a new building. They can replace it instead of repair it. This kind of thing is taking away from local, well-monitored, well-evaluated boards the work that they need to do. So I support that they do their work and I support the amendment.

SENATOR CUDABACK: Thank you, Senator Kruse. Senator Brashear, on the Bourne amendment.

SENATOR BRASHEAR: Thank you, Mr. President, members of the body. I...what a great moment, in my opinion. I...it was recently reported to me that people...a visitor to the Legislature said, there's so many people running around, having different conversations and talking and so on, they couldn't understand how we ever got anything done. And I have certainly been moving around and talking, and others of you have been, too. But as I reflected on the morning, you know, you learn how to multitask, or dual-track, or whatever, when you're here. What a great debate. We have...we are dealing with something of

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

importance to our future. We have been informed...and in no particular order. You know, in politics you try never to start listing names for fear you'll leave somebody out and offend them. But just what we've heard, front to back, or reverse order, or whatever else, we've heard from the Retirement Committee Chair, we've heard from the Appropriations Chair, we've heard from the Revenue Chair. Senator Bourne has been periodically advocating the idea. We have heard people say they weren't certain. We've heard people say they want to think about it. And I guess that's when I became motivated to speak once, to make the point, we're on Select File. What I love about this place is the process. We don't always have to make an up or down decision until the last time. And Final Reading doesn't always have to be a dull, boring exercise--and isn't always--in which we bring bills back...or which we don't bring any bills back and we don't have any debate. And based on all the thoughtful...I heard Senator Kopplin. Based on all the good thoughts I heard this morning, I said to myself, well, I've made up my mind; I'm voting for the Bourne amendment. And I'll revisit this subject and continue to process it and think about it, and we can decide this on Final Reading. That's what Final Reading is all about. That's why we go through it three times. Everything isn't an up and down, and nothing is forever. So I just wanted to use it as a moment. Because it is a great debate. You can listen when you're off the floor, you can listen while your TV is talking to you and you are doing something else. And this has really been informational. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. There are no further...I'm sorry, Senator Stuhr, your light came on. You're recognized to speak.

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I believe that I concur with Senator Raikes, when we are looking at...we keep throwing the figure out of \$15 million. But we are talking about the cost to schools of about \$7.5 million, which is a very small amount in the total overall picture. As I shared with you before, we are looking at, for the employer's cost, .74 percent increase for 2005-2006; and '06 and '07, a .59 percent increase. I am going to oppose this

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Anybody else wishing to address the Bourne amendment to LB 503? Seeing no lights on, Senator Bourne, you're recognized to close on AM0598.

SENATOR BOURNE: Thank you, Mr. President, members. I, too, want to thank everybody for their discussion. I think it's been collegial, it's been...I think it's been a good, informative discussion. I can't disagree with anything that anyone here has said. I personally feel that these school districts are up against the wall in terms of providing the services that they need to with the amount of money that they get. And I'm simply asking that we give them a little bit of flexibility. We've done this in other areas. We did this for the NRDs last year, to respond to a water issue. I think that we can give them just a little bit of authority to respond to this significant shortfall. And again, I can't stress enough that this shortfall is due to no fault of their own. One thing I will say is, it's not my intent to bring this bill down. I think there's some important issues in there. Senator Stuhr and the Retirement Committee have worked hard on the bill. And so what I'm suggesting is that...to echo Senator Brashear, is, let's adopt this amendment now, and if some information comes out between now and Final Reading that this is a huge problem or that it's going to bring the bill down or that there's some other issue that we have yet to uncover, then I'll take the amendment out, with your support. I do think that this is a small thing to do. They might not even use this full levy authority. But I think it simply gives them some flexibility to respond to a problem that is not of their own making. I would urge your support of the amendment. And I commit to you that if information comes, between now and Final Reading, such that this is the wrong course of action, I submit to you that, you know, I will try to remove the amendment, with your assistance. So again, I would urge your support of AM0598, to give the school districts and the teachers just a little bit of help. Thank you. With that, I would ask for a call of the house, Mr. President.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye;

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 503

those opposed, nay. Record please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators please report to the Chamber. The house is under call. The house is under call. Senator Foley, would you check in, please. Senator...thank you. Senator Foley. The house is under call. Senator Foley, the house is under call. Please report to the Chamber and check in, please. All members are present or accounted for, Senator Bourne. There's been a request for a roll call vote. The question before the body is, shall AM0598 be adopted to LB 503? Mr. Clerk, call roll on the question, please.

CLERK: (Roll call vote taken, Legislative Journal pages 621-622.) 16 ayes, 23 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The motion was not successful. The amendment was not adopted. I do raise the call. Mr. Clerk, anything further?

CLERK: Senator Flood, I have no further amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion, please. Senator Flood.

CLERK: Senator Flood, I have no further amendments to the bill, Senator.

SENATOR FLOOD: Mr. President, I move the adoption...I move the advancement of LB 503 to E & R for engrossing.

SENATOR CUDABACK: Any discussion on the motion? You've heard the motion to advance LB 503 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. Mr. Clerk, items for the record, or announcements?

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94, 191, 272, 317, 331, 389, 453, 534  
584, 658, 664  
LR 46

CLERK: Thank you, Mr. President. Mr. President, new resolution, LR 46, offered by Senator Landis, offering the Legislature's condolences to the family of former Senator Kathleen Foote. That will be laid over. Mr. President, your Committee on Agriculture reports LB 317 to General File with amendments; LB 584, General File with amendments; those reports signed by Senator Kremer. Natural Resources reports LB 191, LB 658 indefinitely postponed, those signed by Senator Schrock. Banking Committee reports LB 389 to General File with amendments, that signed by Senator Mines. Health and Human Services Committee reports LB 272 to General File; LB 331, General File; LB 453, General File; LB 534, General File; those signed by Senator Jensen as Chair. And Health and Human Services Committee, LB 664 to General File with amendments. I also have a series of confirmation reports from Health and Human Services Committee, Mr. President. That's all that I have. (Legislative Journal pages 622-627.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to agenda items, General File. Mr. Clerk, LB 94.

CLERK: LB 94, introduced by Senator Janssen. (Read title.) The bill was introduced on January 6 of this year, referred to the Natural Resources Committee, advanced to General File. At this time I have no amendments, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Janssen, you're recognized to open on advancement of LB 94.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. LB 94 was heard in the Natural Resources Committee on January 21. LB 94 revises the current definition of a facility that is eligible for the statutory cap on emission fees. In 1996, an emission fee cap was placed on midsize electric generating facilities. Three facilities, in Fremont, Grand Island, and Hastings, were paying a disproportionate amount of emission fees per capita. So the cap was put in place to bring them more in line with the per capita payments of larger electric generating facilities, which also have a cap in statute. In 2003, the Nebraska Department of Environmental Quality notified the city of Fremont that the department now

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94

interpreted the language of the legislation in a way that Fremont did not fall under the cap. The language establishing the cap may not have been as clear as it should have been, although the intent was clear that the Fremont electric plant was under that cap. LB 94 clarifies the definition of these facilities for the purposes of the cap. It makes it clear that cities that were originally intended to be eligible for that cap are eligible for the cap now. Because the Nebraska Department of Environmental Quality has been charging Fremont emission fees under the cap, LB 94 should not affect the department's revenue from these emission fees. It will stay the same. It just clarifies the language in the statute to leave them under the cap. With that, thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. You've heard the opening on LB 94. Open for discussion. Senator Preister, followed by Senator Schrock.

SENATOR PREISTER: Thank you, honorable President, friends all. I rise to give a little information to the body. I'll start with an adage you may have heard. We can live for four weeks without any food, without...or until we get to a point where it's going to severely affect us. We can live for about four days without water. But we can only go about four minutes without air before it starts impacting us in a negative health way. This legislation deals with air quality and the quality of the air that we breathe in Nebraska. I don't know how many of you know, but currently there is 122,141 pounds...I'm sorry, tons of air pollutants that only our utilities, our coal-fired utilities, put into our Nebraska air. Over 122,000 tons of pollutants that they're putting into our air. And this has increased just in the last four years, from 76,000 tons. When this cap was initially proposed, I didn't like the cap. I didn't like the idea of the cap. And I had a dialogue with Senator Janssen about what those three utilities were going to do to reduce their emissions into our air. Senator Janssen read a list of things that they were going to do. They were rather general and vague, in my opinion. That's no disparagement to Senator Janssen. He was just relating what the utilities gave to him. However, since that time, we have not seen a reduction. In fact, they have increased by 50 percent. That's not what we

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94

should be doing to our air in Nebraska; 122,000 tons of pollutants are going out of the stacks of our coal-fired...and that's only seven plants. That's the Gerald Gentleman plant, the Lon Wright plant, OPPD's Nebraska City, the Whelan, the Platte plant, the North Omaha station, and Hallam. Seven plants are emitting that amount of pollution into our air. What the Clean Air Act was designed to do was to charge polluters, emitters, based on the amount of pollutants that they put into our air. So there's an incentive to reduce the amount of pollutants. The more you pollute, the more you get charged. The charge goes to pay the cost of implementing the enforcement and the Clean Air Act. So since you're putting more in, you're requiring more time, more effort, more response by NDEQ. Therefore, you pay more, and you pay proportionally. Well, the larger emitters had a cap, and they had a cap on their largest coal-fired power plants, NPPD and OPPD. So the three medium-sized emitters decided they wanted a cap, too. And they were successful in getting that. However, there was a glitch, and apparently, as it's interpreted, Fremont wasn't included in that. I think we should eliminate the caps altogether. The more you pollute, the more you pay. Polluters pay. It shouldn't be shifting that burden. And in effect, it does shift the burden to other emitters who may be in your legislative districts, because when there's less paid by the bigger emitters,...

SENATOR CUDABACK: One minute.

SENATOR PREISTER: ...somebody else makes up the difference. And as somebody else makes up the difference, those businesses don't feel that that's fair either. As a result of those emissions, we have advisories on water bodies in Nebraska. We have mercury, which comes out of the stacks from coal-fired power plants, mercury advisories at Czechland Lake, Box Butte Reservoir, Liberty Cove Lake, Little Blue River, Merritt Reservoir, Oliver Reservoir, Skyview Lake, Wehrspann Lake, and Zorinsky Lake, two in the Omaha area. I think my time is just about up. I also want to talk about where we have PCB advisories. We have a number of water bodies in this state that are impaired, and that impairment is coming from...

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94

SENATOR CUDABACK: Time.

SENATOR PREISTER: ...pollutants. Thank you.

SENATOR CUDABACK: Thank you, Senator Preister. Senator Schrock, followed by Senator Preister.

SENATOR SCHROCK: Mr. President, members of the Legislature, the Natural Resources Committee heard this bill and passed it out. And I believe the vote was unanimous. Senator Preister, you're good at figures. You're very effective. Electricity is a very important source of energy for the state of Nebraska, and it's a very reasonably priced source of energy. And I hear your concerns about the emissions from the coal plants. I do not deny your figures are right. I didn't do any research on this, but I do know that certainly the larger facilities...and I've toured the one at Sutherland, the Gerald Gentleman plant. They've spent a lot of money on baghouses. They're very efficient. Matter of fact, their cost per unit is...they're the cheapest operating coal-fired plant in the nation. And I know they've spend a lot of money on their baghouses for clean air. To put it into perspective as to how much they're polluting the air in the state of Nebraska, I don't know. I can't do that. I do know we have clean air in the state of Nebraska. And thanks to people who are vigilant, like you, and hopefully I'm part of that, we'll keep it clean. But with the generation of electricity from coal-fired plant, there is going to be a certain amount of emissions. I will grant you that. We looked at this issue, and it seemed like the city of Grand Island, Hastings, and Fremont were paying an unfair proportion of the fees being paid for emissions. And so what we tried to do here was level the playing field. We heard testimony from the appropriate sources, and it just seemed like they were paying an inordinate amount compared to what OPPD and NPPD were paying on their coal-fired plants. And of course, whenever you increase the cost of doing business, with emission fees going to DEQ--and I'm not saying DEQ can't use the revenue, because they can--then that has to be paid back by the consumer. So we have implemented in this state an emissions fee to comply with the EPA regulations, and for...to offset...a fee to offset the amount that they emit. I think it's appropriate where we're at

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94

now. I think this bill is appropriate. If any committee members would like to also respond, I would welcome that. But Senator Janssen has brought us a reasonable bill. And I think you also probably support it. But I think your remarks are to be noted. I commend you for doing that. But I would ask this body to move forward and put this bill on Select File.

SENATOR CUDABACK: Thank you, Senator Schrock. Mr. Clerk, for an announcement, please.

ASSISTANT CLERK: Thank you, Mr. President. Senator Stuhr would like to announce that there will be an Executive Session of the Retirement Committee at 11:00 this morning under the north balcony. That's Retirement, 11:00, under the north balcony.

SENATOR CUDABACK: Thank you, Mr. Clerk. On with discussion of LB 94, Senator Preister, followed by Senator Janssen.

SENATOR PREISTER: Thank you, honorable President, friends all. I appreciate your comments, Senator Schrock. And I certainly think that the Natural Resources Committee has been looking at this issue in a sense of fairness to the utilities. And with two of the medium-sized utilities not having to pay the additional fee being under the cap, it probably is fair that they're all treated equally. I don't fault that, and I am not criticizing that. The point of my comments are that we have these huge amounts of emissions going into our state. We do have public power and we do have low-cost electricity, but there's a cost to that, and that cost that's low-cost does not factor in all the healthcare cost, all the environmental cost, all of what's termed externalities. And so when we factor in the total cost of electricity, I'd like to see all those costs factored in. We have an asthma problem in Nebraska. Nebraska has the second-highest leading cause of death from asthma of any state in the union. If in fact our air is so clean, why do we here in the middle of the country have so much asthma? I'm not saying that all of that is attributable to our utilities. I like public power. I'm a champion of public power. I have stood on the side of public power, and wanted to keep public power when others have talked about selling it off and deregulating it. But as much as I'm a supporter of public

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94

power, I don't see public power doing enough with renewable energy. We have approximately half a percent, half a percent of our electricity generated in this state coming from renewable energy. We can do better than that. Our utilities can do better than that. Six...we are the sixth leading capacity state for wind generation in the nation. The states all around us, Iowa, Minnesota, Kansas, Texas, other states, are rapidly advancing in putting up wind turbines and using renewable energy. Nebraska can do better than that. We don't have to keep putting 122,000 tons of pollutants just from our seven coal-fired power plants. And these figures, by the way, I got from NDEQ just this morning. So these aren't my figures. The figures I got were from DEQ, based on the monitoring that was done. We don't need to keep increasing at a rate of almost 10,000 tons a year of pollutants into our air. We don't need to continue to affect our children and our water bodies. I said I would talk about the PCBs, the utilities being one of the contributors to the PCB contaminants. We have the big Nemaha River that's contaminated and has an advisory on it. Carter Lake, Elkhorn River, Jeffrey Reservoir, Lake McConaughy, Lake Ogallala, the Loup River Canal. Irrigation comes out of that canal. We're putting PCBs on our irrigated crops. Midway Canyon Reservoir, Missouri River, Papillion Creek, West Papillion Creek, Platte River, Salt Creek, South Platte River, Sutherland Outlet Canal, Sutherland Reservoir. These are water bodies that we have tested and we know there are contaminants in from PCBs and mercury. We don't have the money to test all the water bodies in the state. We're woefully underfunded in testing water, and we know that there are more water bodies that are impaired, but we don't...

SENATOR CUDABACK: One minute.

SENATOR PREISTER: ...have the money to test them. Because of that, this is a limited list. It's only the ones that we know about. Mr. President, did you say time?

SENATOR CUDABACK: One minute, Senator.

SENATOR PREISTER: Oh, thank you.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94

SENATOR CUDABACK: You're welcome.

SENATOR PREISTER: My point, again, is that we need to limit the amount of pollutants in the air, as opposed to putting caps on what it's going to cost the polluters; and that this does shift the cost, not between utilities, but to other emitters; and we need to do more with renewable energy. We have much greater capacity. We need more emphasis. We need more renewable energies. They're never going to make up the total amount of generating capacity. But we should be able to get up to 10 percent at least, not under 1 percent. I think that's unfortunate that that's all we're doing in the state of Nebraska. Thank you.

SENATOR CUDABACK: Thank you, Senator Preister. On with discussion. There are no further lights on. Anybody else wishing to address the advancement of LB 94? Seeing none, Senator Janssen, you're recognized to close.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. You know, Senator Preister and I have been to a lot of meetings on wind generation and so on, so forth. Yes, we need to do more to using those types of machinery to generate electricity. We need to get away from the coal-fired plants. That's not what this bill is about. This bill is about an inequity that was brought against the city of Fremont. This clarifies the language, so that they...they are under the cap, and makes that plant that produces a lot of energy for the city of Fremont, fall in with the other local municipal power plants that are in the state. With that, I ask for your support in the...move this on to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. The question before the body is, shall LB 94 advance to E & R Initial? All in favor vote aye; opposed, nay. We're voting on the advancement of LB 94. Have you all voted on the question who wish to? Record please, Mr. Clerk.

CLERK: 27 ayes, 1 nay, Mr. President, on the advancement of LB 94.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 94, 298

SENATOR CUDABACK: LB 94 does advance. Mr. Clerk, LB 298.

CLERK: LB 298, a bill by Senator Landis. (Read title.) Introduced on January 10, referred to Revenue...or, excuse me, referred to Natural Resources, advanced to General File. I have no committee amendments, but I do have other amendments to the bill, Mr. President.

SENATOR CUDABACK: Senator Landis, you're recognized to open on LB 298.

SENATOR LANDIS: Thank you, Senator Cudaback. (Sneeze) That's what I was waiting for. LB 298 was introduced to correct an unintended consequence of the passage of a bill last year, LB 983. That bill was brought to the Revenue Committee by the Department of Revenue, and it completely rewrote the motor vehicle fuel tax statutes. Good bill, good policy. But among the changes in the bill, the bill merged previously separate statutes for the taxation of gasoline and diesel fuel into a single motor fuels tax statute. When we merged those definitions in that bill, it unfortunately changed the definition of motor fuels into meaning gasoline and diesel. And that did not then include gasoline, diesel, motor oil, crude oil, waste petroleum, and petroleum products. Because we changed that definitional section, there was another section of law that got affected. Our LUST statute, the Leaky Underground Storage Tank bill, an original...originally one of my bills that was introduced and passed in the eighties, makes reference to that section of the revenue code to determine to what kind of leaks the LUST fund may be applied. The intention has always been to have that cover gasoline, diesel, motor oil, crude oil, waste petroleum, and other petroleum products. The LUST fund was meant to do all of those things. By changing the definition in the Department of Revenue Bill, it had the follow-through effect of narrowing the implications or the effect of the LUST fund. This bill goes back, solves that problem, and basically says, the LUST fund may continue to do what it has always done, which is to provide remedy for gas, diesel, crude oil, motor oil, waste petroleum, and other petroleum products, and undoes the inadvertent error of having narrowed the scope of the law. That's what the underlying bill does. That bill was reported

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 8, 298

out unanimously by the Natural Resources Committee. I will be offering an amendment to that bill. And then, I believe, Senator Beutler, I'm informed, has some amendments to my amendment.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening. Mr. Clerk, amendment.

CLERK: Mr. President, the first amendment I have to the bill is by Senator Landis, AM0250. (Legislative Journal page 445.)

SENATOR CUDABACK: Senator Landis, to open on AM0250.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. The bill that I'm talking about in AM0250 is LB 8. And the truth of the matter is, this bill was reported also out unanimously by the Natural Resources Committee. There is a nexus between the two ideas. This is an appropriate place, I think, to amend one bill into another. But if you want to see the idea, you'd look in your gadget, as Senator Chambers calls it, for LB 8. LB 8 is a uniform state law. It is suggested by the Uniform State Law Commissioners as something that would be good for each individual state to pass so that we would then have, in the course of commerce across state lines, essentially uniform principles with respect to the Uniform Environmental Covenants Act. The Uniform Environmental Covenants Act was based on the idea of getting land that need to be remediated up to the levels that an agency like the EPA or the DEQ forced remediation, and then to create a covenant running with the land that would allow only certain uses of the land. And those certain uses then would not be endangered, if you will, by the quality or nature of whatever environmental risk might have continued to be there, and that the land could then be returned into the marketplace and bought and sold. The hypothetical that was given to the committee was a piece of land for which there was in fact a despoiling pollution, that the EPA remediated and required that the land be dug up for ten feet, sand to be...replace those ten feet of earth, and above the sand, capped with concrete. This was the remediation that the EPA asked for. What it didn't do is it did not remediate every bit of pollution. It reduced the pollution down to ten feet, filled it

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

with sand, and capped it with concrete. However, under those circumstances, the EPA still would not want residences on top of that. Now, some kind of parking lot, some kind of storage area, yes. But not a residence. To get to the place of residences or new wells, you'd have to find every bit of pollution and take it all out, and then you'd be able to have pristine land. Well, in this circumstance, better that you do the remediation project to the ten feet of pollution, sand to replace it and capping it with concrete. The environmental covenant would say, so long as future owners never dig a well and never build a residence, that land can be sold and bought and used for other legitimate and appropriate purposes for the land. And by the way, the promise by the buyer never to build a residence or never sink a well will continue with the land into the future. Why would we do such a thing? The reason is, some remediations are too expensive and too difficult and are too impractical to actually be carried out to their end result. And what happens in those situations is, owners simply leave them alone and wait for the superfund, which is overwhelmed and can't pay for these things. So the brownfield stays in place. The owner walks away. Perhaps they're bankrupted. The pollution stays in place. There is no one to look out for the land. And we're waiting for the superfund to get around to those situations. Better, says the agencies and the Uniform State Law Commissioners, to have the agency, EPA, DEQ, require remediation; once the remediation is done, identify the purposes for which the land could then be used at that level of cleanliness and safety; create a rule by which the future users of that land would have to observe environmentally appropriate standards. The remediation would be kept in place, but it could be returned into the stream of commerce with limited sets of usage. The bill sets out the way that we would create those covenants, how they would be administered, the relatively strict standards that would have to be used. And let me say that the state and the cities do not become guarantors of this process. It is the ultimate landowner who becomes the guarantor that the land is being used consistent with the promises that have been made. It does not limit the EPA or DEQ. They can continue to regulate in exactly the way they regulate. If there are new problems, they can come back in and demand higher levels of action. But it is a balancing of interests sufficient to permit the return to the stream of

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

commerce land which has been polluted, which there is a remediation plan. That remediation plan has been carried out, and then the land is returned to the stream of commerce, at less than its pristine value, but at a practical and safe limited set of usages for which the law would then allow, into the future, owners to observe and control the land. The bill was reported out by the Natural Resources Committee unanimously, and I would ask for the adoption of this amendment to LB 298. Thank you.

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

CLERK: Mr. President, I now have amendments to Senator Landis' amendment. Senator Beutler would move to amend with FA57. (Legislative Journal page 628.)

SENATOR CUDABACK: Senator Beutler, to open on your amendment to the amendment.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this is a necessary bill, and I understand that, and correctly used, can do a lot of good; incorrectly used, can do a lot of damage. I am sad to be debating it even, in the sense that the bill itself is an enormous admission of defeat for our society. It admits our inability to correct environmental damage, serious environmental damage. And it says to us that as a society, we're going to accept, in the future, contaminated land that will only be good for limited purposes. And that's good, because limited purposes, in many cases, is better than no purpose at all. On the other hand, I hate to see something like this put into effect, for fear that it will cause regulators to be more likely to allow other situations to deteriorate, with the idea, well, they can be partially redeemed with environmental covenants and restricted land uses. I don't want us to go any further in the direction of enormous pieces of land here and there becoming constricted and retracted and limited in their uses. Hopefully this is a solution for the enormous ignorance we exhibited from the time of the Industrial Revolution up until the 1970s, and that the enormous harms that were done in that time, unbeknownst to most of us, not understood by most of us, can be corrected by remedial action and by admissions, sad admissions, like this set of statutes

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

represents. Having said that in favor of Senator Landis' bill, I think it's interesting to read the preface to the Uniform Environmental Covenants Act. This bill appears to be constructed along those lines. And I want to get into Senator Landis...with Senator Landis as to how the bill was constructed, and what was used, and that kind of thing. But it states in the preface to the Uniform Environmental Covenants Act, two principal policies are served by confirming the validity of environmental covenants. One is to ensure that land use restrictions, mandated environmental monitoring requirements, and a wide range of common engineering controls designed to control the potential environmental risk of residual contamination, will be reflected on the land records and effectively enforced over time as a valid, real property certitude. This act addresses a variety of common law doctrines, the same doctrines that led to adoption of the Uniform Conservation Easement Act, that cast doubt on such enforceability. So in other words, it's creating a somewhat slightly different and new kind of covenant that can run with the land, apply to future owners, and serve the purpose of identifying to people what those limited uses are as property transfers from hand to hand. The second important policy served by these kinds of covenants is the return of previously contaminated property, often located in urban areas, to the stream of commerce. The environmental and real estate and real property legal communities have often been unable to identify a common set of principles applicable to such properties. The frequent result has been that these properties do not attract interested purchasers, and therefore remain vacant, blighted, and unproductive. This is an undesirable outcome for communities seeking to return once important commercial sites to productive use. But I think it should also be remembered that it's an undesirable result if people are allowed to use these properties and not protected from the contamination that's there. And so the nature of these covenants, the nature of the agreement under which a covenant is constructed, the parties to the agreement, who can enforce agreements, all of these little technical things become the devils in the details. And they are indeed important.

SENATOR CUDABACK: Senator Beutler, are you...you may continue.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

SENATOR BEUTLER: I'm just pausing, Senator. Thank you.

SENATOR CUDABACK: Thank you. I'm sorry.

SENATOR BEUTLER: The amendment, just to acquaint you with the amendment, was a vehicle for asking for a dialogue with Senator Landis on a particular division...portion of the bill. And I want to go through several portions of this bill, because I think they all need to be understood in order to know how the bill operates. The amendment has to do with who can be a holder of an environmental covenant. And the definition that's provided in Section 4 of the bill, on page 2, if you're interested, line 21, it says, any person may be a holder. When you look at the definition of "person," it includes individuals, corporations, business, trusts, et cetera. And then it says, government, government subdivisions, agency, or instrumentality. So it appears to say, then, in the basic rule, that any person, including possibly a government entity, may be a holder. But if you read down into the next sentence, it says, the state of Nebraska, a municipality, or another unit of local government may not be a holder. And my amendment, pending a better understanding of the relationship between the definition of "person" and the apparently contradictory sentence in Section 4 with respect to governmental entities, my amendment would strike that sentence beginning on line 22 of page 2. Now, maybe this is clearer than I understand at this moment in time. So Senator Landis, I would ask you--and if I need to repeat my dilemma I will--but I would ask you if there's not some kind of conflict here as to who a holder may be.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Senator Beutler, the bill originally, as introduced last year, didn't have this language in it that said the state couldn't be a holder. It does have it this...in that...amendment in it this year, and it's written in the green copy. It came from the concerns of the Natural Resources Committee last year, and I think Senator Preister most specifically, that the state of Nebraska not be a holder,...

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 8, 298

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...so that could not be the situation of a liability on the state's part for being the holder of a covenant. And while it's true that the first language, and the uniform language, is that any person could become a holder, it is the work product of last year's Natural Resources Committee that this language worked into this year's version, because this is a change that they wanted to say that the state couldn't be. I believe the concern was to make sure that we would not wind up being liable for property that we held because we were in the situation of holding a covenant for land, and for some reason then having a continuing liability on that land for work that we...you know, for its existence while we were responsible for it. I believe that was the theory of the language. I adopted that work product. That's why it's there.

SENATOR CUDABACK: Time. You've heard the opening on FA57, which is an amendment to the Landis amendment, AM0250, to LB 298. Open for discussion on that amendment. Senator Schrock, followed by Senator Beutler, Landis, and Preister. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, I'd like to make a few comments on the opening bill, on LB 298. LB 298 is really an extension of LB 983, that the Revenue Committee heard last year. But it did not...while it included gasoline and diesel fuel as a source of pollution, it did not include motor oil, crude oil, waste petroleum, and other petroleum products. And so this is mainly a cleanup bill to address that issue. Now, with Senator Landis' amendment of LB 250 (sic--AM0250), which is LB 8, the environmental covenants bill, that has added a new twist to this. LB 8 did pass out of the Natural Resources Committee unanimously. And it is correct that it was a bill that we heard last year, and when Senator Preister was a member of the committee, this language was added. And Senator Preister, would you like to have some of my time to explain why we put that in there? Because I'm just kind of trying to catch up, if you don't mind me saying so. And Senator Landis is doing a marvelous job of explaining what's going on. And I think Senator Beutler's concerns are legitimate. And so a

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

discussion this morning is very appropriate.

SENATOR CUDABACK: Senator Preister, did you wish to use some of Senator Schrock's time?

SENATOR PREISTER: Yes, honorable President, I would like to do that.

SENATOR CUDABACK: You're recognized to do so.

SENATOR PREISTER: Thank you, Senator Schrock. This environmental covenants issue was introduced and it was brought to me well over a year ago. And I did look at it. I had some concerns at the time. Like Senator Beutler, I continue to have some reservations. I also see some benefits that it can provide. In looking at it, there were things that we thought needed to be adjusted. One of the concerns was liability. Should the cities, the counties, the states, should the municipalities assume financial...potential financial responsibility or liability? And it seemed that it would be better that they did not. There may not be a lot, but there's the potential that they could. And as a result of that, the sentence that we're striking, which reads, "The State of Nebraska, a municipality, or another unit of local government may not be a holder." A "holder" would be a holder of one of the covenants. So this would, as we discussed, preclude municipal government, state government, any political subdivision from holding a covenant. And the thought behind it was to not put that potential liability on these political subdivisions. If there is some harmonizing that may need to be done with other areas, I'm certainly willing to look at that or discuss that. But the rationale was, as Senator Landis adequately, I think, described, and I concur with, and also, Senator Schrock. So at this point, I'm still willing to look at it and make adjustments. I have some concerns. And I'm willing to listen at rationale. But since I'm primarily responsible for having this sentence in there out of that concern for liability, I thought I should at least rise and try to get more information of why Senator Beutler may want to do this. And since this is Senator Schrock's time, I do have my light pressed. And perhaps even on Senator Beutler's time, he could state more of...and I

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

apologize, Senator Beutler, because I've had at least three discussions going on while you were introducing your amendment.

SENATOR CUDABACK: One minute.

SENATOR PREISTER: But I would be happy to discuss it further, or, if the bill moves today, to discuss it between General and Select File, too. So Senator Schrock, do you want any of your time back?

SENATOR CUDABACK: About 30 seconds, Senator Schrock.

SENATOR SCHROCK: Well, just briefly to say that this bill, the environmental covenants bill, is mainly to protect owners, as I see it, of these contaminated sites, and to restrict the use of those contaminated sites. And the best example I can give is a gas station that's had a leaky underground storage tank, and there's been some contamination of the soil and the groundwater below it. It's probably not an appropriate place to build a residence, but it certainly is appropriate for a parking lot or some other use. And...but then this environmental covenant goes with the land and has a permanent restrictions. And I think it's appropriate that we do that. And there are certain things that probably shouldn't be done on some of these sites. And one of the most obvious is...

SENATOR CUDABACK: Time.

SENATOR SCHROCK: ...that you wouldn't want to...

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

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. Senator Preister, let me say right up front, I'm enormously respectful of anything you put in the bill, because I know you have a deep-seated and abiding interest in environmental protection, and have become sensitized over the years to liability problems resulting from episodes that you and I are very familiar with in the past. But let me repeat what I perceive to be the problem, and then let me expand upon that and suggest to you additional questions as to why I'm worried about

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

the relationship of provisions in this bill, just in terms of the effectiveness of the bill, to begin with. The rule stated at the beginning of Section 4 says, any person may be a holder of one of these covenants. The definition of "person" includes governmental subdivisions, seeming to say a governmental subdivision can be a holder. But that seemingness is contradicted by the second sentence of Section 4, which says, the state of Nebraska, a municipality, or other governmental...or another unit of local government may not be a holder. I am not...I've just started reading this bill. I'm not familiar with the entire significance of being a holder or not being a holder. But let me look...let me direct your attention to another provision at the very bottom of page 2. It says, the right of an agency...and that includes DEQ, for example. And I want to go back and talk about what an agency is, at another point in time. But the right of an agency, under this act, or any environmental covenant, other than a right as a holder, an agency is a governmental subdivision. So again, it seems to assume that a governmental subdivision can be a holder, because it's saying that an environmental covenant, an agency...under an environmental covenant, other than a right as a holder, is not an interest in real property. But then, if the agency can't even be a holder, if you switch the meaning of the words and say they can't be a holder, then their interest in whatever agreement is made is not an interest in real property. And I'm not sure I understand the implication of that. And I don't know who I should ask, Senator Schrock or Senator Landis or Senator Preister. But again, there appears to be a contradiction in terms. And so let me...I...whose bill is this? Senator Landis.

SENATOR CUDABACK: Senator Landis, would you yield?

SENATOR BEUTLER: Let me ask you about...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...that last line on page 2 and the beginning of page 3. Does that not seem to indicate that a government unit could be a holder?

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

SENATOR LANDIS: Senator Beutler, let me acknowledge two things that might help explain the situation. As originally drafted, state entities and political subdivisions could be holders. It was the work of our Natural Resources Committee who said, no, we don't want the state or political subdivisions to be holders. They made a specific decision to do that. We didn't go back and bill draft to make every implication do that, having said as specifically as we did that the state couldn't be a holder. I think the point that you're raising here is that perhaps the drafting could be more well synthesized. If that's the case, we could do that easily between now and Select File. If the implication is that it's a mistake to be...that we shouldn't let the state be a holder,...

SENATOR CUDABACK: Senator Landis, we're now on your...

SENATOR LANDIS: ...which is the impact of your amendment,...

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

SENATOR LANDIS: ...that would be good for it. But if this is about drafting, I think we could draft better, because there are two thoughts there. The controlling meaning is, the state may not be a holder. And that's what we mean for this to say. To the extent that we need to do something better, I think that would...I would be available to do that off the floor, and draft appropriately, if that's the nature of the controversy.

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

SENATOR LANDIS: And I will give some back to Senator Beutler, because I'm sure he's not done with this. I just want to make this point. What I can't understand is that Senator...is Senator Beutler saying the state should be a holder? Because that's the effect of the amendment. The point that he's making, which, by the way, I acknowledge and I think is true, is that the language that's now there was drafted originally to allow the state to be a holder; then we made one declaration, the state can't be a holder, but didn't go back and harmonize the rest of it to fit with that element, so that there is an implication that is in fact in conflict. I'm not troubled by

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

it, because I think the specific controls. But if it's troubling, in fact I think with slight adjustment we would be able to get on one side of the fence or the other. The side of the fence that I have come to agree with is Senator Preister's side of the fence, and that is, we don't want the state to be a holder of one of these covenants and therefore liable. That's what I think the bill says. That's what the bill undoes. And to the extent that we want to get on one side of the fence or not, I'm with Senator Preister and the Natural Resources Committee. I oppose this amendment. But I would hold out to you the prospect of making adjustments so that the language said one and only one thing, without implication. I would give Senator Beutler the rest of my time, because I think he's developing a theme, and I need to hear the rest of it.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Landis. I'm not sure if I'm developing a theme. I am sure of this--my hide has grown very tough over the years, and I can sit on the fence for quite a while, until I understand something. And the reason I can't come down on one side of the fence or the other is because I think I need to understand at least how...the intent of...that you have expressed, how that plays out in the rest of the bill. All right. Let's make your assumption. Let's say that on that last line on page 2, the right of the agency, under an environmental covenant...and since they can't be a holder, it would be, is not an interest in real property. So let's say that the environmental covenant transfers to a new owner. And let's say that the agency, DEQ, the one who's going to represent the public in this whole transaction, let's say that they had required certain things, and those things were not done, and it transferred to a new owner. They don't have an interest in the property, under this provision. Do they still, under the law, Senator, have the right to enforce this, not only against the person who transferred it, but do they have a right to enforce it vis-a-vis the new owner of the property? I'd yield my time to Senator Landis. Or if I'm on his time, I yield it back.

SENATOR CUDABACK: Senator Landis. About one minute, Senator Landis.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

SENATOR LANDIS: The answer and the intent are the same, and that is, DEQ at no time surrenders the power to regulate and control. So that for whatever owner there is, DEQ's power to come in and regulate remains in force. DEQ is not giving somebody a pass on making agreements and then breaking them. It's not giving them a pass to a future owner to go back or violate the covenant. They get to continue to regulate against anybody and everybody.

SENATOR BEUTLER: Well, let's say that under the bill...and as I understand the bill, admittedly in very limited form at this point, but let's say under the bill, I believe you require agency consent in order to transfer property. Would that be accurate?

SENATOR LANDIS: Yes, that would be fair. Yes.

SENATOR BEUTLER: Okay.

SENATOR CUDABACK: Time.

SENATOR BEUTLER: "President" Landis indicates that it's correct. (Laugh)

SENATOR CUDABACK: Time is up. I'm sorry. Time is up. Senator Preister, you are next.

SENATOR PREISTER: Thank you, honorable President, friends all. I will, in a minute, yield my time to Senator Beutler so he and Senator Landis can continue. But let me just acknowledge that as I read the sentence prior to and after the sentence that's being amended out, I now clearly see where Senator Beutler sees some contradiction in how we did it. I will assume some responsibility for how it's drafted and how it's in there, in inserting that sentence that takes away the authority of municipal subdivisions from holding title to one of these covenants. As I looked at it, I thought it was better that the state not assume potential liability for someone else's actions. I also saw what Senator Landis started to say, too, or I assumed he was, is that NDEQ then is in a position of regulating itself,

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

essentially. Because if the state were to have a covenant and NDEQ continued to regulate, then it's essentially regulating itself. That's part of the thought process. It isn't drafted as clearly as it could be. I would concur with Senator Landis, I think that the meaning is fairly well understood. But in terms of redrafting it, I'm certainly open to doing that, to adding clarity. I'm willing to continue listening, but I do think the position of not holding political subdivisions potentially liable is a good position, and I stay with that. Senator Beutler, if you would like the remainder of my time to continue with Senator Landis, you're certainly welcome to have it.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator, thank you, I would. Senator Landis, let's switch over to the termination provisions. And I'll circle back to where we are.

SENATOR LANDIS: Okay.

SENATOR BEUTLER: Starting on the very bottom of page 7, it says, an environmental covenant is perpetual, unless. Are you there?

SENATOR LANDIS: I'm actually looking at the green copy of the bill, and I bet you're looking at the amendment. Thank you. So it's page 7?

SENATOR BEUTLER: Page 7, bottom line.

SENATOR LANDIS: Thank you.

SENATOR BEUTLER: It's perpetual, unless. And then it states some conditions that I'm not concerned about at the moment. But it...one of those is, terminated by consent, pursuant to Section 11. Okay? When you switch over to Section 11, which is on page 9, Senator, about the middle of the page, the consent has to be signed by the agency. If the consent is not signed by the agency, tell me what happens. Is the termination of the covenant effective?

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

SENATOR LANDIS: No.

SENATOR BEUTLER: Even though the agency has no interest in the real property?

SENATOR LANDIS: They don't have a real estate interest in the property. They have a regulatory interest over the covenant. And if they do not consent, the covenant stays in place, even if the buyer and the seller want to undo the covenant. It runs with the land, subject to the regulatory authority of the state to demand that...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...appropriate actions are taken, and that appropriate uses match the level of pollution that's permitted to continue to exist.

SENATOR BEUTLER: Okay. So in a situation where, let's hypothesize that the agency is left out, an environmental covenant is terminated under the provisions of the bill, the property transfers to a new owner. The new owner takes the risk that the environmental covenant was not appropriately terminated?

SENATOR LANDIS: Well, to get to that hypothetical, you have to have a real estate lawyer so boneheaded as to have missed the fact that a recorded covenant...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...was part of the legal history of the land. This is an...this is contemplated to be a recorded...

SENATOR CUDABACK: Time is up, Senator Landis.

SENATOR LANDIS: ...covenant.

SENATOR CUDABACK: I'm sorry. Thank you, Senator Preister and Senator Beutler. (Visitor introduced.) Senator Schrock.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

SENATOR SCHROCK: Mr. President, I am going to yield time. But just a few comments. What is taking place here is very technical, and it's probably beyond me. And I think what Senator Preister is saying, we don't want the state, and in this case probably DEQ, to become a holder of these covenants. Is that correct, Senator Preister? Senator Preister acknowledges that. There are interested parties besides us who I think could be helpful here. And I'm not saying we expediate the process and move to Select File. But I'm saying this discussion is productive. Counsel, as you know, is with me. And I don't think I would...I'm not going to make any apologies, but I would agree that probably drafting could be...could have been done better. And so I would say that I think we could sit down between now and Select File. Because I believe, for the most part, Senator Preister, Senator Beutler, and Senator Landis and I would be on the same page on this issue. We're close enough that we could agree to something on this between now and Select File. Having said that, I will yield some time to Senator Landis, because he was in the middle of his train of thought. And so the rest of my time I will yield to Senator Landis.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: I'm going to wind up yielding this time back to Senator Beutler, because we're not going to do anything on this until his interest and curiosity is satisfied and he gets a chance to raise the points that he wants to raise. So I'm going to waive my time. Just to say this, that the agency...the hypothetical, I think, is terribly remote. The sale of land is usually done with a check on the title. And this is a recorded covenant. And it would be bumped in even by a layperson. That being the case, the failure of the signature of the agency, I think, is something that winds up being terribly remote. But let us assume that even that happened. And I think the answer is that any sale or transaction would have a significant flaw to it, that if it was contemplated that somehow the covenant termination had been successful when the agency didn't sign it, the termination would not have been successful. And I think my guess is that the underlying contract would have been flawed, and the buyer and the seller's sale would not be effective, that

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

in fact the seller would still hold it. That's my best guess, off the top of my head. But I think that's terribly remote. I think in the search for the title, any good title lawyer would discover that fact on a recorded instrument. I'll return the rest of the...of Senator Schrock's time to Senator Beutler, because it's his concerns and...that need to be satisfied here.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator, in the example that we've talked about, is it required that a termination statement be filed with the register of deeds?

SENATOR LANDIS: Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or the court finds that a court (sic) no longer exists...I'm looking for the language. If an interest in real estate is subject to an environmental covenant, the interest is not affected by an amendment to the covenant unless the current owner of the interest consents (inaudible) in a signed record the right to consent to amendments. I'm looking for the answer to that question. The existence of the covenant is recorded. I'm not going to answer for sure the second, about the termination. And I'll check that if it is. However, if somebody has on record a...the covenant, the termination is ineffective without the agency's signature. I will yield...I will turn the question...the time back to you for your...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...additional questions.

SENATOR BEUTLER: Senator, I assume it's in there someplace. I would hope that it would be. However, you might be surprised the extent to which...or the extent to which a title company did not look into the details of a termination statement. This is a very complicated area of law. In any event, the question, I think, is a valid question, of the appropriate termination and the effect of a lack of signature on the transfer of title. But let me move on to some other things, so that at least today you know the different concerns that I've identified at the moment.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

Do you want your time back?

SENATOR LANDIS: Just for a little bit.

SENATOR BEUTLER: Okay.

SENATOR LANDIS: The environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real estate is subject to the land. Page 7, line 18. Now, back to you.

SENATOR BEUTLER: Okay.

SENATOR CUDABACK: Time. Senator Beutler, you are next. And it will be your third time, Senator.

SENATOR BEUTLER: Senator Landis, the agency that's required to consent to, for example, a termination of an important duty is the agency that was involved with the project. And I guess I'm assuming that there would only be one--the federal government, perhaps, an agency of the federal government; or an agency of the state of Nebraska, DEQ. And then, under the definition of "agency," it also says it can mean any other state. If, for example, the agency that could consent to the termination of an environmental covenant...well, let me ask you this. When would it be an agency of some other state? I'm trying to understand that particular detail.

SENATOR LANDIS: I'm not sure, Senator Beutler.

SENATOR BEUTLER: Well, let's...

SENATOR LANDIS: I'm not sure.

SENATOR BEUTLER: Okay. Let's hypothesize for a minute that it is some other state that would give this termination consent, or it is the federal government that would give this consent. Might it not be very possible that the people of the state of Nebraska would not feel the same about the termination of the environmental covenant as the DEQ of North Carolina, or even the federal government?

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

SENATOR LANDIS: My interpretation is that these are concurrent systems, federal and state. The termination is ineffective unless the state of Nebraska, were they a consenting agency, said that they agreed to the termination. And it wouldn't make a difference if everybody else was agreed. If we didn't say that it should be terminated, then it shouldn't be terminated. That's...

SENATOR BEUTLER: Okay, so...

SENATOR LANDIS: Should there be more than one regulator, I think every one of them has an operating veto.

SENATOR BEUTLER: Okay. So your intent, under this language, would be that regardless of who else may be defined as an agency, your intent is that there could be more than one, and there would always be the Nebraska DEQ, and the Nebraska DEQ would always have to consent?

SENATOR LANDIS: That's right. The signatories would have to say yes. And our state never should surrender its power to regulate.

SENATOR BEUTLER: Okay. Well, I don't think that's the way the bill reads, Senator. But we can discuss that. Let me go on to another part of the bill, so...and again, I'm getting to parts of the bill where I'm not sure that I understand completely. And I appreciate whatever help you can give me. But if you're going to have an effective environmental covenant, do you not have to get subordination agreements, if it's going to be perpetual? Subordination agreements from those who have a priority interest? If you have a mortgage holder on the property, for example, in order for them not to foreclose the environmental...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...covenant, would they not have to subordinate their interest to the environmental covenant?

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

SENATOR LANDIS: In the practical world, I think that will be the case. In fact, mortgage holders very much want for this to occur. Investment bankers are in favor of this bill for exactly that reason, in the practical world. We don't need to recite that, I think, in the terms of the bill itself.

SENATOR BEUTLER: Well, there's a provision that says, a subordination agreement may be contained in an environmental covenant covering real property. If the subordination agreement is contained in the covenant covering the real property, then it is of record at the register of deeds, and can be reviewed by title insurers. But the language goes on to say that it may be contained in the covenant...

SENATOR CUDABACK: Time.

SENATOR BEUTLER: ...or in a...

SENATOR CUDABACK: Senator Landis, you may continue.

SENATOR LANDIS: I think Senator Beutler's concerns here are the agenda of the day. I'll be happy to waive my time to him and see if I can take some notes.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Finishing that sentence, it indicates that the subordination agreement may be in a separate record. And I'm wondering how a title insurer, for an example, would know that an appropriate subordination agreement, a necessary subordination agreement, was in fact executed if there was some kind of separate record that was allowed. And that's what I'm trying to understand. There is a definition of "record." It means information that is inscribed in a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. But is it...but that doesn't necessarily mean that that record is of public...has been filed of record and is reviewable by the public, including title insurers. Or maybe that's not what this sentence means. And I guess my question to you, Senator, is, where can this subordination agreement be? If it's a separate document, does the bill intend that it be filed

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 298

of record?

SENATOR LANDIS: No, it doesn't require that subordination agreements be filed, as they are not now. There is no obligation that I know of to file a subordination agreement. I know that I've signed several over time. And to my knowledge, they were just simply private agreements between a bank and myself. What this says is, look, if you want to put that into the agreement you can, but you don't have to. And the reason is, no matter what else happened on the subordination agreement, the covenant would be binding on the signatories to the covenant. While it might be not a bad practice, my guess is that that's a general practice we should do someplace else, and just say subordination agreements should be recorded. But in this case, they wouldn't serve, in my...to alter the existence of the covenant. It might alter some of the parties vis-a-vis each other, and they might have a fight. But it doesn't get to the issue of whether a covenant exists, because these are the rules for the covenant. That's my best guess as to what I think the answer to your question is.

SENATOR BEUTLER: Okay. What my response would be, that sometimes knowledge of and filing of subordination agreements is extremely important to a person's rights. Senator, let me ask you about page 5, line 14.

SENATOR LANDIS: Yes.

SENATOR BEUTLER: The rights of the holder, in addition to its right to enforce the covenant pursuant to a particular section,...and then it goes on to say, in addition to other conditions for its approval of the...of an environmental covenant, the agency may require that those persons...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...specified by the agency who have interest in the real estate have signed the covenant. Then it goes on and says this, at the beginning of Section 6--and this is the sentence that in particular I wanted to ask you about--"An environmental covenant that complies with the Uniform

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 25, 2005 LB 114, 242, 298, 563  
LR 8

Environmental Covenants Act runs with the land." So in other words, if it doesn't comply, then it doesn't run with the land, I take it. Or maybe it runs with the land. What does that sentence mean to you?

SENATOR LANDIS: What that means is, this...if you're going to use this bill and this methodology for an Environmental Covenants Act, you have to comply with this act to get it to run with the land. Could you privately...

SENATOR CUDABACK: I'm sorry, Senator, but time is up, Senator. I'm sorry. Time is up. And I thank you both. (Visitor introduced.) Mr. Clerk, items for the record.

CLERK: Mr. President, I have a report from the Executive Board regarding the appointment of the Public Counsel. Enrollment and Review reports LB 242 to Select File and LB 563 to Select File. I have a series of amendments to LR 8CA by Senator Chambers, to be printed; Senator Beutler, an amendment to LB 298. A name add, Mr. President: Senator Mines would like to add his name to LB 114. (Legislative Journal pages 628-631.)

And, Mr. President, a priority motion. Senator Preister would move to adjourn until Monday morning, February 28, at 10:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn until Monday morning, February 28, at 10:00 a.m. All in favor of the motion say aye. Opposed to the motion say nay. We are adjourned until Monday morning at 10:00 a.m. Have a nice weekend, members.

Proofed by: AEG