

MARCH 14, 2005

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 9, 98, 243, 243A, 244, 246, 503A, 557

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Stuhr from the 24th District. Senator.

SENATOR STUHR: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Stuhr, for acting as our chaplain of the day. We appreciate you being here. I call the forty-third day, Ninety-Ninth Legislature, First Session, to order. Senators, please check in. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Any messages, reports, or announcements?

CLERK: Mr. President, your Committee on Revenue, chaired by Senator Landis, reports LB 557 to General File with committee amendments attached; that report signed by Senator Landis. And, Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 98 and find the same correctly engrossed; LB 243, LB 243A, LB 244, LB 246, and LB 503A, all of those bills reported correctly engrossed, Mr. President. That's all that I have. (Legislative Journal pages 827-828.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to Select File, consent calendar. Members, I won't take time to read Rules 1, 2, and 3, but if you aren't familiar with them please read them before we go on. Mr. Clerk, LB 9.

CLERK: Mr. President, Senator Flood, LB 9, I have no amendments to that bill, Senator.

SENATOR CUDABACK: Senator Flood, for a motion.

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

March 14, 2005 LB 9, 55, 247, 450

SENATOR FLOOD: Mr. President, I move the advancement of LB 9 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 9 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 9 is advanced. Mr. Clerk, LB 55.

CLERK: LB 55, Senator, I do have Enrollment and Review amendments. (AM7037, Legislative Journal page 779.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 55.

SENATOR CUDABACK: Thank you, Senator Flood. You've heard the motion to adopt the E & R amendments. All in favor say aye. Opposed, nay. They are adopted.

CLERK: I have nothing further on that bill, Senator.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 55 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 55 to E & R for engrossing. All in favor say aye. Opposed to the motion say nay. It is advanced. Mr. Clerk, LB 450.

CLERK: LB 450, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 450 to E & R for engrossing.

SENATOR CUDABACK: All in favor of the advancement say aye. Opposed to advancement say nay. LB 450 is advanced. Mr. Clerk, LB 247.

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

March 14, 2005 LB 247, 544

CLERK: LB 247, no Enrollment and Review. Senator Baker would move to amend with AM0741. (Legislative Journal pages 828-829.)

SENATOR CUDABACK: Senator Baker, to open on AM0741 to LB 247.

SENATOR BAKER: Thank you, Senator Cudaback and members. Thank goodness Bill Revisors up there are paying attention. We have AM0741 to the bill, simply adds "which shall become effective on the date of entry." It's dealing with the cease and desist orders issued by the Public Service Commission, in that in Section 70 (sic), in Section 133 the change is added to those words, in Section 134 it was brought to our attention we needed to do that, and that's all the amendment does. I urge your adoption of AM0741. Thank you.

SENATOR CUDABACK: You've heard the opening on AM0741. Open for discussion on that motion. Seeing no lights on, Senator Baker waives closing. The question before the body is, shall AM0741 be adopted to LB 247? All in favor vote aye; opposed, nay. We're voting on the Baker amendment, AM0741. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Baker's amendment.

SENATOR CUDABACK: The amendment was adopted.

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

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 247 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 247, as amended. All in favor say aye. Opposed, nay. It is advanced. Mr. Clerk, LB 544.

CLERK: LB 544, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

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

March 14, 2005 LB 122, 471, 544

SENATOR FLOOD: Mr. President, I move the advancement of LB 544 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 544, E & R for engrossing. All in favor of the motion say aye. Opposed to the motion say nay. LB 544 is advanced. Mr. Clerk, LB 122.

CLERK: LB 122, Senator, I do have Enrollment and Review amendments. (AM7038, Legislative Journal page 779.)

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 122.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 122. All in favor of the motion say aye. Opposed to the motion say nay. E & R amendments are adopted.

CLERK: I have nothing further on that bill, Senator.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 122 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 122, E & R for engrossing. All in favor of the motion say aye. Opposed, nay. LB 122 is advanced. Move on to LB 471.

CLERK: LB 471, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 471 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 471 to E & R for engrossing. All in favor of the motion say aye. Opposed to

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

March 14, 2005 LB 105, 115, 402, 471

the motion, nay. LB 471 is advanced. Mr. Clerk, LB 105.

CLERK: LB 105, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 105 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 105 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 105 is advanced. Mr. Clerk, LB 402.

CLERK: LB 402, Senator, once again no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 402 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion of Senator Flood to advance LB 402 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 402 is advanced. Mr. Clerk, LB 115.

CLERK: LB 115, Senator, does have Enrollment and Review amendments. (AM7036, Legislative Journal page 780.)

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 115.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 115. All in favor say aye. And opposed, nay. E & R amendments are adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Flood, for a motion.

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

March 14, 2005 LB 115, 291, 342, 406, 640

SENATOR FLOOD: Mr. President, I move the advancement of LB 115 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 115 to E & R for engrossing. All in favor say aye. And opposed, nay. The ayes have it. LB 115 is advanced. Mr. Clerk, LB 342.

CLERK: LB 342, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 342 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 342 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 342 is advanced. Mr. Clerk, LB 640.

CLERK: LB 640, Senator, no amendments to the bill.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 640 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 640 to E & R for engrossing. All in favor of that motion say aye. Opposed, nay. LB 640 is advanced. LB 291, Clerk.

CLERK: LB 291, Senator, no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 291 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 291 to E & R for engrossing. All in favor of the motion say aye. Opposed, nay. LB 291 is advanced. Mr. Clerk, LB 406.

CLERK: LB 406, Senator, I have no amendments to the bill.

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

March 14, 2005 LB 97, 241, 406, 451

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 406 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 406 to E & R for engrossing. All in favor of the motion say aye. Opposed to the motion, nay. LB 406 is advanced. Mr. Clerk, LB 241.

CLERK: LB 241, Senator, I have no amendments to the bill.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 241 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion by Senator Flood to advance LB 241 to E & R for engrossing. All in favor of the motion say aye. Opposed to the motion, nay. LB 241 is advanced. Mr. Clerk, LB 97.

CLERK: LB 97, Senator, once again no amendments to the bill.

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 97 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 97 to E & R for engrossing. All in favor of the motion say aye. Opposed, nay. LB 97 is advanced. Mr. Clerk, LB 451.

CLERK: LB 451, Senator, does have Enrollment and Review amendments. (AM7039, Legislative Journal page 786.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 451.

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

March 14, 2005 LB 201, 451, 525, 676

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 451. All in favor say aye. Opposed, nay. The E & R amendments are adopted.

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 451 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 451 to E & R for engrossing. All in favor of the motion say aye. Those opposed, nay. LB 451 is advanced. Mr. Clerk, LB 525.

CLERK: LB 525, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 525 to E & R for engrossing.

SENATOR CUDABACK: All in favor of the advancement of LB 525 to E & R for engrossing say aye. Those opposed, nay. LB 525 is advanced. Mr. Clerk, LB 201.

CLERK: LB 201, Senator, has no amendments at this time.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 201 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 201 to E & R for engrossing. All in favor of that motion say aye. Those opposed to the motion, nay. LB 201 is advanced. Mr. Clerk, LB 676.

CLERK: LB 676, Senator, I have no amendments to the bill.

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

March 14, 2005 LB 528, 626, 639, 676

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 676 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 676 to E & R for engrossing. All in favor of that motion say aye. Opposed to the motion, nay. LB 676 is advanced. Mr. Clerk, LB 528.

CLERK: LB 528, Senator has no amendments.

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 528 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion by Senator Flood to advance LB 528 to E & R for engrossing. All in favor of the motion say aye. Opposed, nay. LB 528 is advanced to E & R for engrossing. Mr. Clerk, LB 626.

CLERK: LB 626, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 626 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 626 to E & R for engrossing. All in favor of that motion say aye. Opposed to the motion, nay. LB 626 is advanced. Mr. Clerk, LB 639.

CLERK: LB 639 does have Enrollment and Review amendments. (AM7050, Legislative Journal page 792.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 639.

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

March 14, 2005 LB 306, 639

SENATOR CUDABACK: Heard the motion to adopt the E & R amendments to LB 639. All in favor of the motion say aye. All opposed, nay. E & R amendments are adopted.

CLERK: I have nothing further on that bill, Senator.

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 639 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 639 to E & R for engrossing. All in favor say aye. Opposed nay. LB 639 is advanced. Mr. Clerk, LB 306.

CLERK: LB 306, Senator, no Enrollment and Review. Senator Byars would move to amend with FA82. (Legislative Journal page 830.)

SENATOR CUDABACK: Senator Byars, to open on your amendment to LB 306.

SENATOR BYARS: Thank you, Mr. President. We found, after we approved LB 306 on General File, that we did not take into account temporary practice rights for physicians and surgeons, people that in the industry we call locum tenens. So we made...we, in the amendment, inserted that "This section shall not apply to physicians and surgeons who are applicants for temporary practice rights," and they'll still be able to get temporary practice rights. We also found that we had "settlements" and "and settlements" twice that didn't need to be in the bill, and we wanted to make certain that "settlements" would result in the release of a claim only for professional negligence. And I would ask that you adopt the amendment to LB 306.

SENATOR CUDABACK: Heard the opening on FA82 by Senator Byars to LB 306. Open for discussion on that motion. Senator Byars, there are no...Senator Byars waives the opportunity to close. The question before the body is, shall FA82 be adopted? All in favor vote aye; opposed, nay. The question before the body is

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

March 14, 2005 LB 259, 306, 306A

the Byars amendment, FA82, to LB 306. Have you all voted on the question who care to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: The Byars amendment is adopted.

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

SENATOR CUDABACK: Senator Flood, a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 306 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 306 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 306 is advanced. Mr. Clerk, LB 306A.

CLERK: LB 306A, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 306A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion by Senator Flood to advance LB 306A to E & R for engrossing. All in favor of that motion say aye. Opposed to the motion, nay. LB 306A is advanced. Mr. Clerk, LB 259.

CLERK: LB 259 does have Enrollment and Review amendments, Senator. (AM7051, Legislative Journal page 793.)

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 259.

SENATOR CUDABACK: Heard the motion by Senator Flood, adopt the E & R amendments to LB 259. All in favor of the motion say aye.

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

March 14, 2005 LB 259, 476, 501

Those opposed to the motion, nay. The E & R amendments are adopted.

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

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 259 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 259 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 259 is advanced. Mr. Clerk, LB 476.

CLERK: LB 476 does have Enrollment and Review amendments, Senator. (AM7052, Legislative Journal page 793.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 476.

SENATOR CUDABACK: Heard the motion to adopt the E & R amendments to LB 476. All in favor of the motion say aye. Opposed, nay. They are adopted.

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

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 476 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion by Senator Flood, advance LB 476 to E & R for engrossing. All in favor of the motion say aye. Opposed, nay. LB 476 is advanced. Mr. Clerk, LB 501.

CLERK: LB 501, no E & R. Senator Beutler would move to amend.

SENATOR CUDABACK: Senator Beutler, you're recognized to open on

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

March 14, 2005 LB 319, 501, 762

AM0709 to LB 501. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, I'd withdraw that amendment.

SENATOR CUDABACK: The amendment is withdrawn. Mr. Clerk.

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 501 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 501 to E & R for engrossing. All in favor of the motion say please...aye, please, whatever. Nay, please. LB 501 is advanced, I think. Mr. Clerk, LB 762.

CLERK: LB 762, Senator, I have no amendments to the bill.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 762 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 762 to E & R for engrossing. All in favor of the motion say aye. Those opposed, nay. LB 762 is advanced. Mr. Clerk, LB 319.

CLERK: LB 319, Senator, does have Enrollment and Review amendments. (AM7053, Legislative Journal page 793.)

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 319.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 319. All in favor of the motion say aye. Those opposed, nay, please. They are adopted.

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

March 14, 2005 LB 78, 319, 331, 453

CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 319 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 319 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 319 is advanced. LB 78, Mr. Clerk.

CLERK: LB 78, I have no amendments to the bill, Senator.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 78 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion from Senator Flood to advance LB 78 to E & R for engrossing. All in favor of the motion say aye. Opposed to the motion, nay. LB 78 is advanced. Mr. Clerk, LB 331.

CLERK: LB 331, Mr. President. I have no amendments to the bill, Senator.

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 331 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 331 to E & R for engrossing. All in favor say aye. Those opposed, nay. LB 331 is advanced. Mr. Clerk, LB 453.

CLERK: LB 453, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 453

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

March 14, 2005 LB 320, 396, 453, 534, 754

to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 453, E & R for engrossing. All in favor of the motion say aye, please. Those opposed, nay. LB 453 is advanced. Mr. Clerk, LB 534.

CLERK: LB 534, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 534 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 534 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 534 is advanced. Turn the page, please. Mr. Clerk, LB 320.

CLERK: LB 320, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 320 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 320 to E & R for engrossing. All in favor of that motion say aye. Opposed to the motion, nay. LB 320 is advanced. Mr. Clerk, LB 396.

CLERK: LB 396, Senator, has no amendments.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 396 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 396 to E & R for engrossing. All in favor of that motion say aye. All opposed to the motion say nay. LB 396 is advanced. Mr. Clerk, LB 754.

CLERK: LB 754, Senator, I do have Enrollment and Review

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

March 14, 2005 LB 475, 754

amendments. (AM7055, Legislative Journal page 793.)

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 754.

SENATOR CUDABACK: Heard the motion by Senator Flood, adopt E & R amendments to LB 754. All in favor of the motion say aye. Those opposed, nay, please. The E & R amendments are adopted.

CLERK: I have nothing further on LB 754, Senator.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 754 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 754 to E & R for engrossing. All in favor of the motion say aye, please. Opposed, nay. LB 754 is advanced. Mr. Clerk, LB 475.

CLERK: LB 475, Senator, does have Enrollment and Review amendments. (AM7054, Legislative Journal page 793.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 475.

SENATOR CUDABACK: Heard the motion to adopt the E & R amendments to LB 475. All in favor of that motion say aye. Opposed to the motion, nay. The E & R amendments are adopted.

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

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 475 to E & R for engrossing.

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

March 14, 2005

LB 475

SENATOR CUDABACK: All...open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I would like to engage Senator Schimek in a short conversation about this bill, because I think the intent of this bill is important. This is the bill that has to do with the Public Counsel, the person in our legislative division that we sometimes call the Ombudsman, and it, the bill, was in response, I believe Senator Schimek indicated, to the reports coming out of the State Treasurer's Office with regard to some...what was happening in that office, in part. And the bill requires that the the Public Counsel prepares a certain notice of the rights and responsibilities of employees under the State Government Effectiveness Act, which is what we generally call the whistle-blower act, and to distribute that notice to each agency. And "agency" is defined not in the bill but in the statutes. Then it goes on to say that each agency shall post the notice in a conspicuous place, and the whole intent, I think, of this bill is to be sure that everybody knows that they are covered by the whistle-blower act and protected by the whistle-blower act. Those who are protected, however, are those who are part of an agency, and under the definition in the whistle-blower act an agency shall mean any agency, department, board, commission, or other governmental unit of the state of Nebraska acting or purporting to act by reason of the connection with the state of Nebraska, any other governmental unit of the state of Nebraska. So the question I wanted to ask you, Senator Schimek, with regard...and I might ask you generally about the whistle-blower act, but specifically about the extension of the whistle-blower act in the manner that you're describing, does this act...does it...does it cover the state constitutional officers: the Auditor, the State Treasurer? The State Treasurer, of course, was the office that was...that received information from a whistle-blower and it would be interesting to hear from you as to whether you think that whistle-blower was actually protected by this act. And the Attorney General's Office. I think the bill specifically excludes the Governor and his or her personal staff, so that's a statutory exemption. But does this act cover the constitutional offices, as we know them, of the state of Nebraska?

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FLOOR DEBATE

March 14, 2005 LB 475

SENATOR CUDABACK: Senator Schimek, would you yield?

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Beutler, a very good question and, as you have just indicated by reading the statutes, the exemptions for the courts and the Legislature and the Governor are there, and political subdivisions, et cetera. But...so one would assume that all the other constitutional offices are covered if they're not specifically exempted. But in speaking with the Public Counsel's Office, he indicates that unless those constitutional offices have a grievance procedure, that indeed they're not.

SENATOR BEUTLER: He indicates that unless they have a grievance procedure,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...which most of them do not have.

SENATOR SCHIMEK: Well, I think some of them do.

SENATOR BEUTLER: None of them are required to have. That's...it's...

SENATOR SCHIMEK: That is correct.

SENATOR BEUTLER: Okay. And some of them do not have.

SENATOR SCHIMEK: That is correct, too, I believe.

SENATOR BEUTLER: But they're not covered unless they have a grievance procedure. Why would they be covered if they have a grievance procedure?

SENATOR SCHIMEK: Well, it gives...

SENATOR BEUTLER: I mean, isn't it a statute? In part, isn't it a...maybe there's more than one question here, but in part isn't it a constitutional question of whether the Legislature has this kind of authority over the offices of the constitutional officers?

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 475

SENATOR SCHIMEK: That is, yes, that is part of it.

SENATOR BEUTLER: And is the Ombudsman basing his opinion on the statute or on some interpretation of the constitution when he says that it would apply if they have grievance procedures?

SENATOR SCHIMEK: I'm consulting the legal counsel here and she thinks that he is...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR SCHIMEK: ...basing it on statute.

SENATOR CUDABACK: You may continue.

SENATOR BEUTLER: Okay. Let's assume, for the moment, that it's...that it's based on statute. Would you be of the opinion that the Legislature could change that statute so it applied to all the offices?

SENATOR SCHIMEK: Do I think the Legislature could do that?

SENATOR BEUTLER: Yes. I mean, we're purporting to apply it to some of the offices by virtue of this statutory interpretation. Could we apply it to all?

SENATOR SCHIMEK: Well, I think, if I'm understanding this right, it technically does apply to those constitutional offices, but if there's no grievance policy it's the Public Counsel's position that he...there's no way they can get involved if...I mean...

SENATOR BEUTLER: Okay, so there's no way to force them to have a grievance procedure; therefore, there's no way to force them to deal effectively...

SENATOR SCHIMEK: Right.

SENATOR BEUTLER: ...with a whistle-blower,...

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 475

SENATOR SCHIMEK: Because, again...

SENATOR BEUTLER: ...to protect a whistle-blower. Is that right?

SENATOR SCHIMEK: ...again, like the Legislature, their employees are at will.

SENATOR BEUTLER: Okay. So if the State Treasurer or the Auditor or somebody discovers there's been an operation of theirs that's been reported by a whistle-blower, then if they don't have a grievance procedure they could just fire them and they wouldn't be protected by the whistle-blower act. Is that right?

SENATOR SCHIMEK: That is my understanding, yes.

SENATOR BEUTLER: Okay. Now, if...and that's assuming, for the moment, that the constitutional interpretation is that you can bring the constitutional officers within the jurisdiction of the Legislature for purposes of this whistle-blower act. Is...isn't that accurate, too? I mean, there's still the constitutional question hanging out there.

SENATOR SCHIMEK: Yes, there is a constitutional question, so I'm not sure that we can do what you just said. Say it again, Senator Beutler.

SENATOR BEUTLER: Okay.

SENATOR SCHIMEK: I may not have been listening carefully enough.

SENATOR BEUTLER: You're applying or you're indicating that this measure is being applied to at least some of the constitutional offices.

SENATOR SCHIMEK: That would be what I understand from what the Public Counsel has told us, yes.

SENATOR BEUTLER: And if it applies to some of the

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 475

constitutional offices, then you're implying that the Legislature has authority to mandate this whistle-blower act.

SENATOR SCHIMEK: No, I'm indicating that by a voluntary choice those constitutional offices have done such. They haven't been mandated by the Legislature to do it.

SENATOR BEUTLER: Well, if "agency" includes any other governmental unit of the state of Nebraska, then by the statutory language they're included. Are they not?

SENATOR SCHIMEK: One would assume so, yes.

SENATOR BEUTLER: Okay. Well, the reason this is confusing, I mean,...

SENATOR SCHIMEK: It's very confusing.

SENATOR BEUTLER: ...not confusing just to you and I,...

SENATOR SCHIMEK: Yes.

SENATOR BEUTLER: ...it's confusing to everybody, because the report that came out of the Research Office on this particular topic started out with we're not sure whether the whistle-blower act covers the constitutional offices.

SENATOR SCHIMEK: Exactly.

SENATOR BEUTLER: And let me...let me just go on to indicate why I'm bringing this up. There is a bill that is also in the Government Committee right now, and I hope they'll bring it out for you, but basically it indicates...it's a change to the constitution which indicates that the Legislature...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...would have authority to, for example, be sure that the whistle-blower act applies to the personnel policies of the constitutional offices. Right now, that's not even clear. We could make it clear if we had the other bill

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

March 14, 2005 LB 475

which said that the Legislature had authority to deal with the personnel policies of the constitutional officers. It's not necessarily saying that we would, but it would empower us to do so at a future point in time if the constitutional amendment was passed. But I wanted to bring it up at this point because this very basic whistle-blower act, which I think we all believe is a good thing and a good thing if it applies to any government agency, there is an open question as to whether everything we're doing here, when push came to shove, could be made applicable...

SENATOR CUDABACK: Time.

SENATOR BEUTLER: ...to the constitutional offices.

SENATOR CUDABACK: You may continue, Senator Beutler, and this will be your third time.

SENATOR BEUTLER: So I'm hoping that you will identify the relevancy, through this bill, in part, the relevancy of doing something broader in terms of dealing with the constitutional officers and their personnel policies. I mean, the reason that a bill on the constitution was put in, in this regard, was because it was unclear whether we could deal with personnel actions or personnel policies of the constitutional offices. Well, here's the whistle-blower act, which does, in effect, affect what they can do with their personnel policies. It does...it does limit them. It prohibits them, for example, from punishing a whistle-blower through a grievance or through a...or through administrative action if it's applicable to them. And I think we want that to happen, and I think we want some other things to happen. I think everybody would agree that every constitutional officer ought to have some grievance procedures, for example. Some of them don't. Some of them just enacted some, but didn't have them. And beyond that, even if they have them today, when the next constitutional officer comes in, they can do away with all the personal...personnel policies of the prior constitutional officer. Can you imagine the chaos in state government if the Governor...every new Governor could come in and change all the different personnel policies of government willy-nilly? Well, the constitutional officers can do that, at least under...at least under current law. So I'm going to stop

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 475

with that, but I hope people will take a serious look at this whole area. And, Senator Schimek, let me finish by asking you...Senator Schimek, let me finish by asking you...

SENATOR CUDABACK: Senator Schimek.

SENATOR BEUTLER: ...what your intent is. Do you intend for this green copy of the bill and for the whistle-blower act generally to apply to the constitutional offices?

SENATOR CUDABACK: Senator Schimek.

SENATOR SCHIMEK: Senator, I don't...I don't have a predisposed notion on this because I'm as much in the dark as you are. We're not...we're not...we're not changing existing statute in that respect. And, you know, I was thinking to myself, and this is a good conversation to have, but by exempting the Governor from these statutes it leads you to believe that we have the authority also to include the Governor under these statutes and, therefore, all the other constitutional offices. But I don't know if anybody has ever challenged that either,...

SENATOR BEUTLER: Yeah.

SENATOR SCHIMEK: ...you know? I don't know.

SENATOR BEUTLER: It would appear that the original intent was clearly to include them by virtue of that...

SENATOR SCHIMEK: Of this?

SENATOR BEUTLER: ...by virtue of the example you just gave.

SENATOR SCHIMEK: I would say the...yes, that would be, except for the Governor.

SENATOR BEUTLER: Yeah.

SENATOR SCHIMEK: Right. So, I mean, you...I don't know how to resolve this issue for sure, other than having it go before the courts and having them tell us what is acceptable. Because...

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FLOOR DEBATE

March 14, 2005 LB 380, 475
 LR 11

SENATOR BEUTLER: Ah, then, Senator, I can finish by recommending to you that you advance...

SENATOR SCHIMEK: Do LR 11CA?

SENATOR BEUTLER: ...a constitutional amendment by which we can resolve all of these problems.

SENATOR SCHIMEK: (Laugh) I thought that might be your suggestion.

SENATOR BEUTLER: Thank you. I'm finished, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. Further discussion on the advancement of LB 475? There is a motion on the floor, advance LB 475 to E & R for engrossing. All in favor of the motion say aye. Opposed to the motion say nay. The ayes have it. LB 475 is advanced. Mr. Clerk, LB 380.

CLERK: LB 380, Senator, I do have Enrollment and Review amendments. (AM7056, Legislative Journal page 794.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 380.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 380. All in favor of the motion say aye. Those opposed, nay. The E & R amendments are adopted. Anything further on the bill, Mr. Clerk?

CLERK: Nothing further, Mr. President.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 380 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 380 to

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 205, 380, 546

E & R for engrossing. All in favor of the motion say aye. Opposed? LB 380 is advanced. We now leave Select File consent calendar, and move on to regular Select File. Mr. Clerk, LB 205.

CLERK: LB 205, Senator, I have no amendments to the bill at this time.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 205 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 205 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. We now move on to Select File, 2005 senator priority bills. Mr. Clerk, first bill, LB 546.

CLERK: Senator, first of all, I have Enrollment and Review amendments to LB 546. (AM7030, Legislative Journal page 732.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 546.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 546. All in favor of that motion say aye. Opposed to the motion, nay. The E & R amendments are adopted.

CLERK: Senator Brown would move to amend with AM0782. (Legislative Journal page 825.)

SENATOR CUDABACK: Senator Brown, you're recognized to open on AM0782 to LB 546.

SENATOR BROWN: Mr. President, members of the Legislature, this amendment...this bill is the opportunity zone bill, creating the Nebraska innovation zone, and this amendment would add two members from...move from one member from Cass County to two members. It was an issue that Senator Wehrbein had raised on

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 546

General File, and also add a representative from Washington County, because Washington County is a part of the metropolitan statistical area. Now, Senator Fischer had asked to have a representative from Cherry County, and because I am so fond of Senator Fischer, I considered it, but decided that I would hold fast to the rule that we should have representatives only from within a 300-mile...I mean, they have to be within 300 miles of the zone that we're creating. And so in this particular instance, Cherry County is a little outside the zone. But I would ask for the adoption of the amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. You've heard the opening on AM0782. Open for discussion. Seeing no discussion, Senator Brown waives her ability...opportunity to close. Question before the body is, shall AM0782 be adopted to LB 546? All in favor vote aye; opposed, nay. Voting on the Brown amendment, AM0782, which is an amendment to LB 546. Have you all voted who care to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: AM0782 is adopted.

CLERK: Senator Brown would move to amend with AM0788. (Legislative Journal page 832.)

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

SENATOR BROWN: Mr. President, members of the Legislature, this amendment just clarifies that one of the first activities of the opportunity zone shall be to define the boundaries for the opportunity zone. It was an issue that was raised on General File by Senator Beutler, and it's just merely a clarification. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. You heard the opening on AM0788, offered by Senator Brown. Open for discussion. Senator Brown, there are no...she waives her opportunity to close. The question before the body is, shall AM0788 be adopted to LB 546? All in favor vote aye; those

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242, 546, 546A

opposed, nay. Question before the body is the Brown amendment, AM0788. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of the amendment.

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

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 546 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 546 to E & R for engrossing. All in favor of the motion say aye. Opposed, nay. LB 546 is advanced.

CLERK: LB 546A, Senator Flood, I have no amendments to the bill.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 546A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 546A to E & R for engrossing. All in favor of that motion say aye. And opposed, nay. LB 546A is advanced. We now move on to Select File, 2005 committee priority bills. Mr. Clerk, the first bill, LB 242.

CLERK: LB 242, Senator, I do have Enrollment and Review amendments, first of all. (AM7023, Legislative Journal page 628.)

SENATOR CUDABACK: Senator Flood, please.

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 187, 242

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 242.

SENATOR CUDABACK: You've heard the motion by Senator Flood, adopt E & R amendments to LB 242. All in favor of the motion say aye. Opposed, nay. The E & R amendments are adopted.

CLERK: Senator Beutler would move to amend with AM0779. (Legislative Journal page 823.)

SENATOR CUDABACK: Senator Beutler, you're recognized to open on AM0779 to LB 242.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this amendment is, for the most part, inserting into LB 242, with the permission of Senator Schimek, LB 187, which was a small bill that came out of the Government Committee with no dissenting votes, and it had to do with the question of what latitude state senators and their employees have with respect to ballot issues and, to a lesser extent, with respect to candidates in terms of what they can say and can't say, and what they can do and can't do. And Senator Janssen, Senator Brown, Senator Schimek, others who were involved last summer on the other side of the casino issue all were kind of confused and basically felt overly restricted by the statute that we had put in place and redone a couple of years ago which severely limited what state senators can say and do and, in my opinion, and I think in the opinion of the other people who came up with these ideas that are in LB 187, unduly restricted and put at risk state senators for speaking out on ballot issues, and employees for doing those things with respect to ballot issues that senators were unclear as to what they could do. So this bill seeks to loosen the restrictions on state senators to a limited extent and, in doing that, the first thing it does is simply to set out a definition of "public resources" and what public resources are and what that means. There had been no definition in the bill, so we start out hopefully with a definition that is helpful in terms of what public resources are, what we're talking about. And then there's a section that says, this section does not permit a member of the Legislature from making use of public resources in expressing his or her opinion

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242

regarding a candidate or a ballot question, a candidate or a ballot question, or from communicating that opinion to his or her constituents. Well, the first amendment is to strike "to his and (sic) her constituents," because it becomes extremely confusing as to who your constituents are or who you're appealing to when you have a particular kind of communication. If you turn out in Lincoln a press release to all of the Lincoln radio stations, am I applying...am I speaking just to my constituents, or am I speaking to the constituents of everybody else who represents a part of Lincoln? I mean, there are just terrible interpretations here that are going to have to be made, and some might be made to the detriment of a senator at a particular point in time when they didn't really intend to violate the law. So it seemed to us not an inappropriate thing to do to simply say that you can communicate your opinion and not to worry about whether it's your constituents within your district. You know, another question they came up with was, well, if Ed Schrock is communicating with everybody who's interested in water, are those his constituents? Well, in a sense, they're a constituency of the Natural Resources Committee. That whole water area is a constituency. So it becomes even more confusing in that regard if you think about it in those terms. So that's the first change. The second change says that a member is not authorized to use mass mailings at public expense for the purpose of qualifying, supporting, or opposing a ballot question. Mass mailings have been the one sort of expensive public resource that we have been prohibited from using for purposes of supporting a ballot question or a candidate, for that matter, and under this bill we would continue to prohibit that, but what we would not prohibit are use of other mass communications. So if I'm sending an e-mail to somebody in support of a ballot question or against it, I can do that, but I will continue not to be able to do the expensive thing, which is to do a mass mailing, and that distinction is the second purpose of the bill. Then there are two other changes that were included by the committee amendment and this bill, by the way, presents to you the form of the bill as it was amended by the committee, and Senator Mines added two provisions and I'm going to let him talk about those two provisions. And the third provision that was added by the main bill was a section that says, this section does not prohibit an employee of

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242

the Legislature from using public resources consistent with this section for the purpose of researching or campaigning for or against a ballot issue if the employee is under the direction and supervision of a member the Legislature. So one of the things that was very problematic in terms of last summer and fall and dealing with the ballot question, staff was very skittish, and rightfully so, about what they could or should be doing, and this makes clear that if the senator can do it and if the employee is under the direction and supervision of a senator then they are protected too. So those are the three changes and, with that, I'm going to stop and recommend this amendment to you as an addition to LB 242. Oh, I might also mention that this amendment changes completely Section 44, which was already in the bill, and there was some minor policy change in 44 which everybody seemed to agree could be stricken, and so that is stricken which...and the effect of what that did was to tighten down, again, on the rules, probably to an extent that's more than everybody would agree to, so that, with the okay of the Accountability Commission, that particular provision which they consider not relatively important at all, is being stricken and replaced then with this material that I've just described to you. So that's the description of the matter, absent or without the inclusion of Senator Mines'. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. (Visitors introduced.) On with discussion of the Beutler amendment, Senator Schimek, followed by Senator Jensen. Senator Schimek.

SENATOR SCHIMEK: Thank you, Mr. President and members. I stand in support of the Beutler amendment, AM0779, and as I think Senator Beutler noted, there was some discussion of this during last fall's election, and we actually had several conversations with the Accountability Commission. We also went back and looked at the record that was established on the vote on a bill, the debate and vote on a bill, several years ago dealing with this very topic, and at that time I think Senator Beutler very clearly stated that some of the provisions in what he's doing now were what he intended with that bill. So we felt that it was what the Legislature intended all along but had never been put in statute. I might indicate to you that this did advance to General File with a committee amendment that just said that

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242

public officials and employees are not prohibited from campaigning for or against a ballot question or election of a candidate unless public resources are used. I...the bill advanced on a seven yes to nothing vote. There was one person absent. And I would highly recommend the amendment. I would like to give the rest of my time, if I might, to Senator Mines, who would like to maybe discuss a little bit what his role in all of this was.

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: Thank you, Mr. President and colleagues. My role was minimal. The underlying bill was discussed in committee and had universal approval. I merely suggested that if we're looking...if the bill was looking at permitting the senators from participating in the process, a campaign process, whether it's for an initiative or a candidate, that same privilege and same responsibility should be empower...or should empower all local elected officials, cities, counties, school boards. There's great concern and confusion, even at the local level, about what elected officials can and cannot do in a campaign, and this was merely to clarify and allow those folks. Who better to understand local issues and local concerns than local elected officials? So, rather than preclude them from this process, I merely ask that the committee consider this, and the amendment did include allowing elected officials even at the local level to participate in the process.

SENATOR CUDABACK: Thank you, Senator.

SENATOR MINES: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Senator Schimek, there are two minutes left, if you care to...she waives her opportunity. Senator Jensen, on the Beutler amendment.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. Is Senator Beutler available or...

SENATOR CUDABACK: Senator Beutler, are you on the floor?

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242

SENATOR JENSEN: Where did he go?

SENATOR CUDABACK: Senator Beutler, Senator Jensen is requesting to...

SENATOR JENSEN: Yes, I'd like to ask Senator Beutler a question, and I'll go ahead and propose this as he goes to his mike. First of all, a couple things; I think I understand where you want to go with this, but a couple questions I'd like to have answered. First of all, does the spending limits apply to this as they would to anything that a senator would be involved in, a member of the Legislature?

SENATOR CUDABACK: Senator.

SENATOR JENSEN: When I say...we are...we have spending limits that we do have imposed, or if we sign up for that. Is there anything restricting the amount of dollars that they would put into any issue because of that?

SENATOR BEUTLER: Yeah, this, the provisions that I put in, Senator, don't purport to deal in any way with the use of campaign resources. So, in my opinion,...

SENATOR JENSEN: Okay.

SENATOR BEUTLER: ...it would have no effect on existing law in that regard.

SENATOR JENSEN: Fine. Then the next question I have, when we start talking about an employee or a member, again, one of our staff members may be directed by a member of the Legislature to research and to look at various issues, again, as directed by that member of the Legislature. Would you elaborate on that just a little bit, please?

SENATOR BEUTLER: It was meant to...it was meant to correspond with the other changes that we made. In other words, to the extent that a senator is allowed to do certain types of things, as defined in other parts of the bill, to that extent. And so long as the employee is under the direction and supervision of

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242

the member, then they too can feel comfortable following the member's directions in that regard.

SENATOR JENSEN: But only as directed by the member of the Legislature.

SENATOR BEUTLER: Yes.

SENATOR JENSEN: Okay. I think that will answer my questions. I appreciate that. I'll return the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Stuhr, on the Beutler amendment.

SENATOR STUHR: Thank you, Mr. President and members of the body. I, too, have a question, Senator Beutler, on number...the...where it's designated number (9), when it talks about that this section does not prohibit an employee of the Legislature from using public resources for researching or campaigning. Now, I have a question. I'm just not comfortable with that when it appears that they can use public resources then for researching and campaigning, whereas I don't believe that a senator can use the public resources.

SENATOR CUDABACK: Senator Beutler.

SENATOR STUHR: Can you explain that to me?

SENATOR BEUTLER: Well, Senator, the...it's not an all or nothing statement. I mean, the previous law and the law that we're changing and making does, in fact, allow senators to use public resources to a very limited extent, as defined in the bill, with respect to a ballot question.

SENATOR STUHR: Uh-huh.

SENATOR BEUTLER: And so if you put out a press release, for example, and your staff prepares the press release with regard to a ballot question, that may be a public resource of sorts but that, for purposes of this bill, is being considered, de facto,

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242

a part of your job as a state senator and that you should be allowed to do it.

SENATOR STUHR: Okay.

SENATOR BEUTLER: So, yes, some public resources are being used, but it's very limited and very tailored,...

SENATOR STUHR: Okay.

SENATOR BEUTLER: ...and hopefully within the dimensions of what you and I would think would be a reasonable thing to do.

SENATOR STUHR: Okay.

SENATOR BEUTLER: And to the extent that those public resources are being allowed to be used, then the staff doesn't have to worry about whether there's a separate rule that applies to them, but rather we're all in this together with a consistent rule.

SENATOR STUHR: Okay. Thank you, Senator Beutler. I think that's important to have on the record because...just to point that clarity out. Thank you. I return the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Smith. I'm sorry, your light went off, Senator Smith. Senator Beutler, there are no other...Senator Beutler waives closing. The question before the body is, shall AM0779 be adopted? All in favor vote aye; and opposed, nay. Voting on adoption of the Beutler amendment. Have you all voted who wish to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: The Beutler amendment has been adopted.

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

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Transcriber's Office
FLOOR DEBATE

March 14, 2005 LB 242, 563

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 242 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 242 to E & R for engrossing. Discussion? All in favor say aye. Opposed, nay. LB 242 is advanced. Mr. Clerk, LB 563.

CLERK: LB 563, Mr. President, no Enrollment and Review amendments. Senator Chambers would move to amend with FA31. (Legislative Journal page 582.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA31 to LB 563.

SENATOR CHAMBERS: Thank you, Mr. President and friends all, with proper acknowledgement to my good friend Senator Preister. When I give an opening like that, that should signal that this is going to be a very low-key, user-friendly amendment. Now you have to determine who the users are that I'm being friendly toward. That was given to allow time for anybody who's interested in this amendment to call it up on their gadget. On page 2, in lines 21 and 22, I want to reinstate the stricken matter and strike the new matter. Before I go on, I want to tell you, in effect, what this amendment does. It would define this so-called malt liquor as it should...as it should be. It's not going to be beer. It's going to be a distilled spirit, which is what the whole issue is about, which is what the whole question related to this particular beverage is about. Then, in line 11, after the word "gin," insert "flavored malt beverage." On page 9, in line 7, strike "beer," and insert "beverage." That would prevent any reference to this distilled liquor as being a beer. If you were given a handout and you listen to the discussion, you will see the emphasis placed and provided in such a way as to give the impression that the state is required to adopt a federal standard with reference to what this beverage shall be. The liquor industry is the most heavily regulated industry in any state. The state has plenary power to regulate the liquor industry, even to the point of prohibiting the sale, possession, or consumption of these beverages in the way that it

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

March 14, 2005 LB 563

can prohibit the sale, consumption, or possession of other drugs. And alcohol is a drug, a devastating drug. What has offended me so much about this bill and the approach is that there has not been a frank acknowledgement by the purveyors of alcoholic beverages that this is intended to target young people. This is intended to keep the price low enough so that the targeted groups can easily purchase it. As beer, the tax is not going to be as high. The price can be kept low, and the ones who stagger in off the street can get it. They can come to convenience stores and get it. There are others who are going to speak on other aspects of how this bill would work if it were enacted into law, so I'm not going to touch on everything that they will talk about. But I am going to emphasize that I get tired of the Legislature's hypocrisy. There are people who will stand on this floor and over my strenuous objection put into the law provisions that will make it a crime, based on what they call zero tolerance, for young people to have a certain alcohol level in their system which impairs them in no way, and they say they're doing it because they're trying to protect the young people and they don't want them to find a gateway to worse alcohol abuse. They will wring their hands and beat their breasts and put on a hair shirt and lament the binge drinking that occurs on college campuses. Then they come in here with something like this and want a distilled beverage to be made available to all those who are able to drink, to all those who are not legally allowed but will get hold of this alcohol. When I was at Fort Leonard Wood doing basic training, you could go to the PX and there...beer, I think, was sold there, but this couldn't be sold there, not unless they've changed the standards. This is a distilled...this contains distilled alcohol. Why are they doing this? You think they have some mystical, magical formula here which will prevent young people from waking with a headache if they drink too much? Somebody might say, well, it's not likely somebody will drink himself or herself into oblivion with beer, but we always hear others say that things of an alcoholic nature will often escalate. You might start with one type of beverage, add another, add another, mix them. But at any rate, I can be called, when it comes to this kind of thing, a prude, I can be called a teetotaler, I can be called anything, but I'm going to oppose this. It has been brought to us flying a false flag. This bill should not have

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

March 14, 2005 LB 563

advanced from General File, but the lobbyists do their job. They put together handouts that will lull the Legislature into thinking this is harmless, that it's only a tax issue. That's part of it, but it's more than that. They will make more selling this as beer, in volume, than they're worried about in terms of any tax they would have to pay if we put it where it ought to be as far as its regulation. I don't drink alcoholic beverages. I have never felt that my nondrinking makes me any better than anybody else, gives me any position of moral superiority. I will not eat vomit, but other people might want to eat vomit so let them do it. I just choose not to. Some people may get right down there at the trough with the hog and eat the same thing the hog eats, but I won't. And I'll bet my breath will not smell as bad as theirs will smell. Now I can say that for sure. But on this bill, after seeing so much legislation come through here which allegedly is drafted to show concern for young people, I cannot understand how this body will support something like this. You should never bring another one of those bills and you should abolish all of these open container laws and other things directed at young people. I don't want to see them drink. I wish they were smarter than they are. I wish they had better examples than the grown people they have. Every time you get an invitation, I get them: senators come; happy hour. What do they mean happy hour? They ought to call it fool's hour. You got to drink wherever you go. You got to drink no matter what you're doing. You can smell it on people's breath around here, and especially on the lobbyists. And they'll ply you with liquor, if you'll take it. Everybody knows it's the devil's brew, demon rum. Everybody knows that, even the old "Bibble." Solomon, supposed to be so wise, said don't drink; that strong drink is a raging and wine is a mocker and it rises up and stings you, words to that effect. So they tell me to counter it,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...well, they have where Jesus turned water into wine. I don't know anything about that, because they also said he walked on water. I don't know anything about that. But if Jesus turned water to wine, I know people who can turn wine into water, and they turn beer into water also. They don't call

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

March 14, 2005 LB 563

that a miracle. They just said that's somebody who needs to go to the bathroom. So what is going on around here? I want to see exactly what it is that this Legislature is talking about and how it's going to justify supporting this bill. I've explained my amendment. It's crystal-clear if you read what it does and look at the bill where it amends the bill, but if you have any questions, I'm prepared to answer them. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA31, offered by Senator Chambers. Those wishing to address it are Senators Jensen, Kruse, Janssen, Loudon, and Chambers. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I support Senator Chambers' amendment. I think it is absolutely the correct thing to do. There are four issues here. One is the target, the target of these products. Now I passed out to you just a quick sheet showing you what these are. Again, we are saying that we're not going to tax this as a spirit; we're going to now tax it as a beer. Look at those bottles, and that's just but a few. I pulled up off the Internet a sheet here 45 pages long of these different products that are there. These are called alcohol or "alcopops," a-l-c-o-p-o-p-s, because they kind of resemble, they kind of even taste like a soft drink. I'll just run down a few of these: one called Aqua V--alcohol soda made with a blend of alcohol, water and fruit flavors; Archers Aqua--Archers peach schnapps with also juice of cranberry, lime, orange, peach sparkling water; Bacardi Breezer--Bacardi rum refresher, available in lime, orange, peach, pineapple, watermelon, lemon; peach smells and tastes like squash or perfume and is seemingly artificial pinkish-orange; Bacardi Rigo--daiquiri, rum, lime and soda. What these are is these are really mixed drinks sold in a bottle and they're very sweet to taste. It doesn't have that taste of hard liquor. It doesn't even have the taste of beer. However, they're to be classified as and taxed the same as beer. And we're targeting young people, young kids, primarily women, as a matter of fact, primarily young girls. I'll just read here for a moment. The sweet-flavored drink such as Smirnoff Ice and Mike's Hard Lemonade are the heart of the debate, often called

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

March 14, 2005 LB 563

"alcopops." They have been taxed the same rate of beer, even though they are from alcohol that comes from distillation rather than...distillation rather than from the brewing process. And also these flavored malt drinks would be taxed at a lower beer rate. Well, what does that mean, taxed? You know, we fight and we argue about taxes and about increasing taxes, and here is one product now that we're going to reduce the taxes on. I don't understand why we would go there. I introduced a bill in Revenue Department (sic) to raise taxes for treatment, for treatment only, and that was soundly defeated. And yet, here we are going to lower taxes for a product. Matter of fact is if we would have taxed this at the rate we really should have, we've already passed up \$1.5 million in taxes. So we have the targeting, targeting of young people, particularly girls. And, by the way, I did a little more research on this and if you'll recall on General File I asked who drinks this, I said nobody under 40, really...or nobody over 40. Nobody over 30 drinks this. This is directly targeted at young people, teenagers. Then the tax issue; another issue that's out there is the advertising. Many groups, some voluntary, do not advertise hard liquors but here they can advertise this. Also, there are some communities that restrict sales on Sunday of hard liquor.

SENATOR CUDABACK: One minute.

SENATOR JENSEN: Here, this comes underneath that again. It is absolutely the wrong way. We're targeting young people for a product that is a gateway product that I think will lead to more drinking, more binge drinking. You know, when I was growing up and, yes, everybody wants to be an adult and so, as a teenager, somehow somebody would come up with a cheap wine. Mogen David was one of those. There were others that were out there. And you'd go behind the garage and you would sip on that, and a few drinks and you really thought, boy, I'm getting a buzz. But that is that same type of philosophy here--to get into a drink that has kind of a sweet taste, flavored like fruits and juices, and yet it is just to get you in that gateway, just to get you in the door to trying hard liquor and other drinks. I would certainly support Senator Chambers' amendment. I'm...

SENATOR CUDABACK: Time, Senator Jensen.

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

March 14, 2005 LB 563

SENATOR JENSEN: ...pleased that he brought it forward. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Kruse, on the Chambers amendment.

SENATOR KRUSE: Thank you, Mr. President and members. I stand in support of the Chambers amendment for reasons that have been well-documented. This particular drink is clearly an attempt to target the young market, those under 21, as well as those over. Those who are turned off by beer, they can get a different flavor. It is the flavor of distilled liquor with quite a bit of sweet thrown into it. It's clearly targeted for the young market. It is clearly going to add to our alcohol problems with the young. They are the ones who are now most likely to end their life in alcohol-related driving rather than any other threat to their life. All considerations of accident, disease and so on are dwarfed by the challenge of a young person drinking alcohol, and this is what it's targeting. The second reason is, to me, even heavier. That is, we need the money. Presently, this is taxed as distilled liquor, which it is 50 percent distilled liquor. We need money. We need the revenue that this can produce. And I hope that we will pay attention to the Chambers amendment and give it support. Thank you.

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

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Senator Chambers, I'm glad to hear that you were at Fort Leonard Wood, Missouri, when you were a young man. It could have been such a possibility we were there together, and I do remember those PXs. You know, and I'm not...I'm not going to stand here and argue the effects of alcohol. That's something I won't do. But I wanted to remind you that you still have to be 21 years of age before you can purchase alcohol in this state. That's not changing. I know young people have abused that. I look at the young pages up here and I can see them have a little snicker on their face, but I know what happens in colleges and universities. But what we're talking about here, what is

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

March 14, 2005

LB 563

alcohol? Alcohol either comes from distillation or fermentation. The effects will be the same if it comes from distillation or fermentation. The alcohol in these beverages that we're talking about will still be under 6 percent. Anything under 6 percent shall be taxed and has been taxed in this state as beer. So you tell me if you can tell the difference between alcohol derived from distillation or fermentation. Alcohol is alcohol. Right now, I've heard mentioned that we'll be losing dollars. No, it will stay the same, because now we're taxing these products as beer. Sure, they've got fancy labels on the bottles, but have you looked at...looked at cans of beer lately? They do ever...that's advertising, folks. That's advertising. They got a product to sell and they intend to sell it. I would never think about lowering the age limit when you can purchase alcohol. I think 21 is where it should be. If I believe, if I'm right, at one time we did allow 18-year-olds to consume alcohol, but that was changed after a few years. I'm not asking for anything that other states aren't going to adopt. The Liquor Commission requested that we set something into statutes that they could follow, and that's what the General Affairs Committee is supposed to do. We heard testimony in the committee, about the same kind of testimony we're hearing today. But I do want to instill, and it's very important, that the taxes, we will not be losing any taxes; they will stay the same. These things come and go, folks. They come and go. The industry is out there to push a product. It happens to be alcohol. So the states can tax that as they want. The federal government has set down a ruling now that if you want to tax it as beer you cannot have more than 49 percent of the alcohol, that's still of the 6 percent by volume that this will be taxed, not more than 49 percent of that can come from distillation. Fifty-one percent must come from fermentation, which is beer. I think it is something that this state needs to get down in the statutes so the Liquor Commission has a guideline to go by, and I am going to be opposing Senator Chambers' FA31, and I hope the majority of you follow my line. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Loudon, followed by Senator Chambers.

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

March 14, 2005 LB 563

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've been following this, I have mostly questions to ask. I haven't decided how to support this. I was wondering if Senator Chambers would yield to a question, please.

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

SENATOR CHAMBERS: Yes, I will.

SENATOR LOUDEN: On...is the underlying question on this bill or on your amendment is whether to classify this as spirits or as a beer? I mean, is it supposed to go as an alcoholic liquor, like whiskey and that sort of thing,...

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: ...or to be classified as a beer?

SENATOR CHAMBERS: Yes, we would just move it into that category.

SENATOR LOUDEN: Okay. And what's the alcohol content of this flavored malt, whatever it is, beverage? I'm not familiar with it myself and I'm wondering.

SENATOR CHAMBERS: It can vary, but you can get some specifics from Senator Janssen, because even when they're talking about beer it varies from, they say, 4 to 8 percent or something, whatever it is, but there's a sliding amount. Senator Janssen keeps mentioning 6 percent total alcohol; 49 percent of that 6 percent can come from distilled alcohol in these beverages...

SENATOR LOUDEN: Yeah, I...

SENATOR CHAMBERS: ...and qualify as beer.

SENATOR LOUDEN: Okay. And then, well, like wine, the percentage of that has to be, what, at least 12 percent by volume or something like that? Am I...

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

March 14, 2005 LB 563

SENATOR CHAMBERS: I really don't know, but to show that even bad people speak truth on occasion, Hitler referred to wine as vulgar vinegar and would not drink it. So I accept his statement on that and will say that whatever amount of alcohol it has, it's too much.

SENATOR LOUDEN: I see. Well, thank you, Senator Chambers. I wondered. To me, I guess it's a question of how we're going to classify this and where the tax money, whether it will be priced for the taxes. I think I'm not...this is something that I don't think that needs to be made probably, because I'm sure it's made to target a certain group of people in order to sell the stuff. When it comes out with flavored and sweet-tasting and that sort of thing, I'd be more concerned on it the younger people that would be like children or something drink that when they didn't get a chance or they found it. This is sort of the reason why there were different things put in Prestone, so kids and dogs wouldn't drink it. So here my concern is if this is something that looks like pop and tastes like pop, that they will be people that will drink it thinking it's pop and they'll be way too young to be handling something like this. I would question whether it needs to be designated in some other type of containers rather than sold as something that everyone should do. So, at the present time, I'm listening to the debate and I'll decide further on. And I'll return the rest of my time to the Chair. Thank you.

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

SENATOR CHAMBERS: Thank you, Mr. President. And when I talked about younger people, I was thinking along the lines of what Senator Louden touched on, that this is designed to be deceptive, but I was also thinking about those younger people who are not old enough legally to drink. Some of them might find the taste of beer repugnant. These beverages are flavored for a reason. The reason is to make them taste better. The way the industry can determine what flavors people consider to be desirable is by looking at the types of flavors they will drink when they're drinking other nonalcoholic beverages. Then you just try to make this replicate that flavor to the extent that you can. Does the liquor industry care how many people become

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

March 14, 2005 LB 563

alcoholics? Not at all. This is strictly a lobbyist's bill. I don't know if you all read the article that was in the paper this morning, the amounts of money these lobbyists make. The only reason they call you out is to get you to do what their client wants. I don't see Radcliffe or any of those other people when we're talking about the ravages that young people and even some older people face as a result of consuming alcoholic beverages. All they want you to do is to give them what they can take back to their client and say, pay me because I got those idiots in the Legislature to do this. I've heard Senator Byars talk about children. I've heard Senator Aguilar. Most on the people on this floor at some time or other have talked about the need to look out for the welfare of children. I have heard people on this floor say that you ought to even take driver's licenses from children if they have liquor in their possession, not have consumed it, because consuming liquor is so undesirable when it involves our young people. Well, if they're over 21 and can drink legally, you're not going to say take their driving privileges, are you? So if enough of them who are below the legal age to drink are doing it so that you'd be inspired to take their driver's license, why will you listen to Senator Janssen suggesting that we're only talking about people over 21 and they can make their decision? He and all the liquor purveyors know good and well that a lot of liquor is sold to and consumed by young people, and there are older people who will buy liquor for young people. And if it tastes good, this is what you give them. Now I'm going to shock some of you all. There are people who will apply...who will ply young girls with alcohol to get them out of their minds and then abuse them sexually, and you can now give them some soda pop or some soft drink, some cola. And there are some females who are not so young who are caught up in it. You've heard about these date rape concoctions that are put together. Another thing that's not mentioned in the area of sexual exploitation is why methamphetamine is raging throughout this society. It is a stimulant. It is the poor person's VIAGRA. It will let these men engage in sex, I don't know how it affects women, just on and on and on. But then you pay the piper. They reach a point where they cannot perform at all, but then they're addicted to the methamphetamine...

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

March 14, 2005 LB 563

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...as a drug. It's the sexual stimulation that will get people hooked on it initially, and they like what it does for them. But you all don't talk about that because that is not discussed, so you just talk about methamphetamine without explaining why so many people are willing to risk so much to get it and to manufacture it. Well, I'm telling you that the purpose of this alcoholic beverage is to reach younger people, and Radcliffe knows it and the rest of them know, but they don't care. They're at least getting paid. They're getting paid to put this out there to mess over the young people. You're paid to look out for their welfare. And that article about the lobbyists said, who's looking out for the interests of the people? The special interest groups have their people out there. They'll make over \$8 million after this session for telling you all to pass stuff such as this.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

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

SENATOR CONNEALY: Thank you, Mr. President, members. I rise in opposition to the Chambers amendment. You know, if you're...we're mostly talking about temperance and we're talking about taxes, and I think those are laudable discussions, but I just don't think that this is workable. Right now, these products are characterized as beer. They go through the beer channel of delivery and taxation, and changing them would probably just limit the availability of these products or change the formulations. We had testimony in committee that states that did have a prohibition on the distilled spirits already did get 100 percent of their...these types of products through the distilled process, and so they did change it for those states. We are a smaller state, so it's tougher to do that. They said that we'd get some of that, or we'd have nonavailability of these products, and that's fine. I believe that if we're talking about, you know, Senator Jensen's discussion of higher

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

March 14, 2005 LB 563

taxes on products generally, you know, that's a discussion we ought to have, and if that would limit consumption I think that would be fine. But I don't believe this will raise a penny. I think it will lower the amount of availability and that it will change formulations and so that the products that come here will come with a 100 percent distilled content...I mean a brewed content instead of distilled, and that we won't have as many products here, and that may be what we want to do as a state. But I don't think we ought to think that we're going to increase revenues or that we're going to decrease consumption or that we're going to not have products available for people. You know, we abuse muscatel and MD 20/20 and the hot...here in this state we have fortified beers that are marketed to people that shouldn't be drinking this inexpensive product. But we have that. We need to work on making sure that we give education, that we have as much prevention process as possible, but I don't know if we can stand in the way of the market. The market is going to make these decisions. And I oppose changing this. I think we ought to go with the federal requirement the same...I mean, not requirement, but the federal definition. I would have probably set it at a lower level, but the feds did it and so it's going to be all across the country at 49 percent. I would have probably put it at a lower level, but that's what the industry is going to make, unless they make it for targeted markets. And we are not a very big market, so most likely the availability will be diminished here for consumers. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Smith, on the FA31.

SENATOR SMITH: Thank you, Mr. President and members. I'm trying to sort through all of the arguments here. I hear Senator Jensen's arguments, I hear Senator Chambers' arguments, and other members as well, and I think it's important to note that things get a little dicey when we attempt to use tax policy to effect a social outcome, which I hear Senator Jensen saying. I think it's very appropriate that we use tax policy to attempt to achieve an economic outcome, but any time we've tried to mix those two...and I know that it's done. I think that our tax policy in regards to tobacco is pretty convoluted. If the

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

March 14, 2005 LB 563

arguments are there that we tax tobacco to pay for Medicaid and other issues associated to the effects of tobacco, we're far from that policy because tobacco pays for, at least in the city of Lincoln, it pays for city improvements. But I don't know how much tax revenue comes about in Lincoln now that the...can't smoke too much in Lincoln, but that's a debate for another day. But the fact is, I think this is a reasonable...LB 563 is reasonable in looking at the tax policy and relating...in relation to what we tax, how we tax it, and that's why I have reservations about the Chambers amendment. I think it attempts to leave in place a policy that is convoluted and difficult to adhere to, and certainly would probably, if the amendment is adopted, I think it could be found to have some loopholes in it anyway. And that's why I think that LB 563 is a straightforward approach and that's why I would like to see us advance that without the Chambers amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. On with discussion of FA31. Senator Baker.

SENATOR BAKER: Thank you, Mr. President and members. I sit back here and I've not talked to any lobbyist today on this and I don't know I've talked to any on this subject at all, but I sit back here kind of grinning, thinking to myself, what in the world are we doing talking about this? We happen to have a store that does sell these beverages and, as Senator Janssen pointed out, all we're talking about here is forcing the manufacturers of this to change the source of the alcohol. They're not going to (laugh)...they must be laughing out back, or the manufacturers, at us, wring your hands and worrying about this. I just, it seems to me like a bit of a waste of time or stretch of the imagination to think this is going to make any difference. These flavored drinks, to me, when I see people buying them, they're middle-aged folks, generally female it seems like. Price doesn't seem to bother them, because these are higher-priced products. If I see anything out of the result of this it's the blue bottle, the Skyy Blue bottle. I guess if you aren't anyone special, you just drink the other stuff. You want something that marks you in buying the more expensive alcohol here, you buy the blue bottle. It's distinctive, obviously. But I just shake my head and think, what are

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

March 14, 2005 LB 563

we...what are we doing here trying to convince ourselves that by raising the tax on this is going to change consumption and use of this? It's not. The manufacturers, I think, if we don't adopt...or if we do adopt something like the Chambers amendment, and they may do it anyway, just change the source of the alcohol. You have to remember alcohol is alcohol. It's a chemical compound. It's all the same. Doesn't matter to the manufacturer, I don't really think, where it comes from. They can leave the bottles, they can leave the flavor in these things. I said there's lime, there's lemonade, there's cranberry, there's light varieties, all this stuff. I don't think what we're doing here is going to have any effect whatsoever on the market or who buys this. So that's my comments, as a person who sees people buying this. It just, what we're doing here is a fuzzy, feel-good situation with Chambers' amendment, and I do support the underlying bill, LB 563. So, with that, I'd be glad to answer any questions, as somebody I...we do see this product move. It's not particularly popular. It's more expensive than just straight beer. I don't think many young people have much of a...are not very price sensitive anyway, but most of them don't drink this just because of the source of the alcohol is a little bit different. So, with that, I'm going to oppose the Chambers amendment and support the overlying bill. Thank you.

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

SENATOR JENSEN: Thank you, Mr. President, members. You know, I...whether adults drink this or not, that isn't what the statistics...when I'm saying adults, I'm talking about older adults. The statistics say it is a young person's drink and it's targeted, again, at those young people. Again, looking at the sheet that I pointed out, now there is Bacardi Silver. Bacardi is not a beer, but it wants to be...must...wants to be...have the same privilege as a beer, if you want to say it that way. Smirnoff's, Smirnoff's is a vodka and it says right on the bottle, yet, they want to be accepted as a beer. Jack Daniel's, we certainly know what that is, that that is a hard liquor, and yet they want to be classified as a beer. Skyy Blue, Mike's Hard Lemonade, hard indicates to you it's a hard

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

March 14, 2005 LB 563

liquor. Now, whether it is by content or not, that's another whole story. From the alcoholpolicymd.com, data provided by the alcohol industry shows that a significant minority, 41 percent, of flavored malt beverages are consumed by young people. That's their data. The majority of teens 17 to 18 years old, 51 percent, and many teens 14 to 16 years old, 35 percent, have tried "alcopops," compared to with less than a quarter of adults, 24 percent. In advertising, girls saw a staggering 95 percent more magazine advertising for low-alcohol refreshers than legal-age women on a per capita basis in 2002. Women ages 21 to 34, the age group often identified as target audience for alcohol advertising, were actually less exposed per capita, the magazine advertising, for alcohol pops and beer than ages 12 to 20. Exposure of underage youth to alcohol advertising in magazines declined in 2001 to 2002 in every category except low-alcohol refreshers, for which exposure to girls grew by 216 percent. Now you tell me who they're targeting. The alcohol industry admissions on alcohol pops, or "alcopops," the beauty of...this is their statements: The beauty of this category is that it brings in new drinkers, people who don't really like the taste of beer. With younger drinkers, their palates haven't quite matured yet to drinks like bourbon. "Malternatives," that's what they refer to these, are a sweeter drink, they're easier to drink, it takes less time to mature to the taste. This is a perfect bridging beverage between carbonated fruit juices and new hard lemonade. You know, you've always heard that story, if it looks like a duck, squawks like a duck, it must be a duck, but here we have beverages that look like alcohol, that look like hard liquor, but they want to be called and they want to be classified as beer. I don't approve of that and I would, again, support the Chambers amendment to LB 563. Thank you, Mr. President.

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

SENATOR JANSSEN: Thank you, Senator Cudaback. Members, again, I want to stress the fact that the amount of alcohol that is in these products is still under 6 percent, and I defy any of you to take a alcohol derived from fermentation and that derived from distillation and tell me which one is the difference. It's the alcohol content is what we have to look out for, and that is

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

March 14, 2005 LB 563

under 6 percent. You know, it's important that Nebraska adopt the federal standards adopted by the TTB that would clarify the industry's standard relating to production, composition, and taxation, labeling and advertising of flavored malt beverages. The final rule was issued, let's see, it was issued by the TTB clarifying these standards at the urging of the beer industry, producers of flavored malt beverages, consumers, members of Congress, and other elected officials, and state regulatory agencies. The state regulatory agencies have stated that the federal uniform definition of beer and malt beverages would help them do their jobs, so that ruling has come down now and, in order for the Liquor Commission to set their rules and regulations, we need the legislation changed. You know, we talk about the content of alcohol in other products. Senator Combs just told me that NyQuil, I think that's a cough syrup, contains 10 percent alcohol by volume, almost 10 percent. Yeah, I don't know of anybody who runs around chugging down NyQuil, but it's available. Alcohol, in a can of Coca-Cola you've got a certain percentage of alcohol to keep it from spoiling. What we're asking you to do here today, first of all, we need to defeat the Chambers amendment and allow the Liquor Commission to classify this as a beer, and if it's a beer, in my opinion, it doesn't make any difference where that alcohol comes from as long as the volume of alcohol is under 6 percent. If the Chambers amendment would pass, I'll guarantee you that you wouldn't be selling much of this in this state because the states surrounding us, most all of them, have lower taxes on beer, hard liquor, wine, so on, so forth. And we've seen the effects of what happens on tobacco. I remember sitting in the Revenue Committee, I think that was last year, and when we were talking about taxation on cigarettes and there was a wholesaler there that had his records and he showed them to us. When Nebraska raised the tax on their cigarettes, he sold both in Iowa and in Nebraska, and his sales in Nebraska went down 40 percent and the stores in Iowa rose 40 percent. People are going to buy these products where they cost them the least money.

SENATOR CUDABACK: One minute.

SENATOR JANSSEN: And as far as these full-flavored malt beverages, they're very expensive right now. They're...you

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

March 14, 2005 LB 563

don't sell them like beer. It's more expensive than beer, because they have a market for this product. So I believe that we need to defeat the Chambers amendment and go ahead and pass LB 563 to comply with the federal standards that have been set out. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Chambers. This will be your third time, as you know.

SENATOR CHAMBERS: Thank you. The rule of 33 is in place. I'm insulted by some of the stuff that these lobbyists are sending in here. Now they pushed it over the edge. They think they're smart and they think they know more than they know. Walt and his minions should have found out what was being done on this bill before they started sending these kind of notes in here. I want to ask Senator Janssen a question...

SENATOR CUDABACK: Senator Janssen, would you...

SENATOR CHAMBERS: ...and I'm toning it down because my attitude toward Senator Janssen is different from what it is toward Radcliffe and those people out there. Senator Janssen, you said the source of the alcohol makes no difference, correct?

SENATOR JANSSEN: That's correct.

SENATOR CHAMBERS: You said that the amount of alcohol in the beverage which will allow it to be beer is 6 percent or less. Can it be as high as 8 percent?

SENATOR JANSSEN: No.

SENATOR CHAMBERS: Okay, 6 percent or less. Then why don't we change Nebraska's law...since it doesn't matter the source of the alcohol, it doesn't say that the source will cause it to behave any differently...that any beverage that has no more than 6 percent alcohol, whether distilled or brewed, shall be a beer? The full 6 percent can be distilled. Why don't we describe that as beer? Would you support that?

SENATOR JANSSEN: Well, the federal regulations that we have to

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

March 14, 2005 LB 563

go by now that have been passed in Washington calls for 49 percent can come...no more than 49 percent can come from distillation and at least 51 percent has to come from fermentation.

SENATOR CHAMBERS: Senator Janssen, in this state, this Legislature can define beer any way it chooses. Isn't that correct?

SENATOR JANSSEN: I don't believe so, Senator Chambers.

SENATOR CHAMBERS: If we define a substance as beer but it has more than an amount of alcohol that the federal government would allow, there might be some ramifications in terms of what you can do as far as taxing.

SENATOR JANSSEN: That's correct. Uh-huh.

SENATOR CHAMBERS: But we can call it beer if we choose. Can't we?

SENATOR JANSSEN: I believe so, but the tax would be different on it.

SENATOR CHAMBERS: We can define...we can take the definition of wine that's currently in Nebraska statute and let that be a definition for beer, if we choose. We can substitute the word "beer" for "wine" if we choose. Can't we?

SENATOR JANSSEN: I believe you could do that.

SENATOR CHAMBERS: Yeah, we can do it.

SENATOR JANSSEN: Yeah.

SENATOR CHAMBERS: Thank you, Senator Janssen. Members of the Legislature, some people have asked me, since I've mentioned "Emperor" Radcliffe's name, why do I call him the "Emperor"; does that mean I think he's all powerful as some people do? Absolutely not. That comes from the story about the pompous self-filled fool who was called an emperor, so full of himself

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

March 14, 2005 LB 563

that he didn't realize that he was naked and had no clothes. That's why I use the term "emperor." He has no clothes. And some of the tactics that have been used have disgusted me. I came across a transcript where he insulted my seatmate. Thought he was smart. He doesn't have a vote in here, but he might think he has control of several votes in here. So let him start getting his 33. This, to quote my good friend Senator Combs, is a "four-finger." This bill has become a "four-finger" this morning. If you all paid attention when I started, I used Senator Preister's gentle opening--Mr. President, friends all. I even explained that this opening let's you know...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...that this is going to be a kinder, gentler presentation, user friendly. Then the lobbyists got busy. So, if the cobra must hiss, they're going to find out that it's not an empty hiss; there is some venom connected. If Radcliffe can get 33 votes, let him get them. But if he gets 33 on this, there's going to be a price to pay throughout this session, and I mean it. Does it sound like I'm taking something personal? You better believe it. You all may be afraid of him, but I'm not of any of them out there or all of them collectively. And when they insult the people on this floor, I feel they've insulted me. And they're going to learn how to treat this Legislature, as far as I'm concerned. They don't have to...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...just insult me directly. When I find them getting out of place, I'm going to call them by their name. They get hundreds of thousands of dollars and you mean to tell me...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...they can't stand to be called to task? Thank you, Mr. President.

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

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

March 14, 2005 LB 1-3, 11, 15, 16-18, 20, 21, 33, 37, 51
52-54, 57, 59, 61, 80, 83, 88, 89, 118, 119
120, 140, 162, 175, 176, 216, 217, 261, 263
273A, 283, 293, 301, 329, 332, 351, 383, 442
445, 563, 675, 675A, 680, 709
LR 54

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 217 to Select File; LB 675, Select File; LB 675A to Select File. Health and Human Services Committee, chaired by Senator Jensen, reports LB 332 to General File with amendments; LB 445, General File with amendments; LB 709, General File with amendments; those reports signed by Senator Jensen. Natural Resources Committee, chaired by Senator Schrock, reports LB 120, LB 140, LB 293 to General File with amendments, and LB 351, General File with amendments; those all signed by Senator Schrock. And the Business and Labor Committee, chaired by Senator Cunningham, reports LB 442 as indefinitely postponed; that signed by Senator Cunningham.

New resolution: Senator Price offers LR 54; that will be laid over, Mr. President. New A bill. (Read LB 273A by title for the first time.) Senator Baker has an amendment to LB 680 to be printed. I have an explanation of vote, I have an explanation of vote to...by Senator Cornett (re: LB 1, LB 2, LB 3, LB 11, LB 15, LB 16, LB 17, LB 18, LB 20, LB 21, LB 33; LB 37; LB 51, LB 52, LB 53, LB 54, LB 59, LB 61, LB 80, LB 83, LB 88, LB 89, LB 118, LB 119, LB 162, LB 175, LB 176, LB 216, LB 261, LB 263, LB 283, LB 301, LB 329, LB 383); a second amendment to be printed (re LB 563). Senator Friend and Erdman and Flood would like to add their name to LB 57, as cointroducers. (Legislative Journal pages 832-855.)

And, Mr. President, I have a priority motion.

SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator Fischer would move to adjourn until Tuesday morning, March 15, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn, Tuesday morning, March 15. All in favor say aye. Those opposed nay. We are adjourned. (Gavel)

Proofed by: J. Hurlbut