

**MARCH 15, 2005**

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FLOOR DEBATE

March 15, 2005      LB 4, 10, 57, 76, 94, 100, 148, 198, 206  
                         211, 211A, 236, 238, 262, 284, 298, 335, 355  
                         409, 455, 758

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK:      Good morning.      Welcome to the George W. Norris Legislative Chamber.      Our acting chaplain this morning is Senator Kruse.      Senator Kruse.

SENATOR KRUSE:      (Prayer offered.)

SENATOR CUDABACK:      Thank you, Senator Kruse.      Senator Kruse represents the 13th District.      I call the forty-fourth day of the Ninety-Ninth Legislature, First Session, to order.      Senators, please record your presence.      Record please, Mr. Clerk.

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

SENATOR CUDABACK:      Are there any messages, reports, or announcements?

CLERK:      Mr. President, your Committee on Enrollment and Review reports they've examined and engrossed LB 10, LB 76, LB 94, LB 198, LB 211, LB 211A, LB 236, LB 238, LB 262, LB 284, LB 298, LB 335, LB 355; all of those reported correctly engrossed.      Your Committee on Judiciary, chaired by Senator Bourne, reports LB 4 to General File; LB 57, General File; LB 100 to General File; LB 148, General File; LB 409 to General File; LB 455 to General File; and LB 758 to General File with amendments.      And that's all that I had, Mr. President.      (Legislative Journal pages 857-859.)

SENATOR CUDABACK:      Thank you, Mr. Clerk.      We now go to General File, 2005 senator priority bills.      Mr. Clerk, LB 206.

CLERK:      LB 206, a bill by Senator Byars and others, relates to developmental disabilities.      (Read title.)      Bill was introduced on January 7, at that time referred to the Judiciary Committee.      The bill was advanced to General File.      I do have Judiciary Committee amendments pending, Mr. President.      (AM0633, Legislative Journal page 727.)

SENATOR CUDABACK:      Thank you, Mr. Clerk.      Senator Byars, you're

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recognized to open on LB 206.

SENATOR BYARS: Thank you, Mr. President. LB 206 is a bill that I bring to you that I, honestly, truly, in my heart wish that I never had to introduce. I don't think it's often in this Legislature that we do bring legislation that we regret but that we find absolutely necessary. LB 206 was the result of an incident that happened back in May of last year, 2004, where an individual who has developmental disabilities and severe behavior and mental health issues seriously injured a young boy. We received an alert from that, that we're missing a vital service within our developmental disabilities community. The man responsible was sent to jail. Because of his developmental disability, he wasn't able to stand trial, but he was also not receiving any type of treatment for his disability in jail either. Something needed to change. Shortly after the incident, Governor Johanns called together a group representing Health and Human Services, advocacy agencies, the Legislature, for the specific purpose of developing a risk assessment and screening process, which at this point is already in place; and to develop a secure unit for the very, very few developmental disability clients with high-risk and dangerous behaviors, this already has been put in place administratively; and to develop a Developmental Disabilities Court-Ordered Custody Act, which is before you now in LB 206. LB 206 was developed for two reasons: one, to protect society; and two, to protect individuals with developmental disabilities who have severe behavior issues. Under this act, the person who is...who has the developmental disability would be ensured that his or her rights are protected and, if ordered into custody, that custody would be an appropriate placement for treatment. LB 206 provides the state with a very narrow avenue in which to place into custody a person with developmental disabilities who is...who has posed the threat of harm to someone in the community. "Threat of harm" is defined in Section 15 of the bill as actually having harmed or attempted to harm someone. Court-ordered custody would be used for an extremely small number of individuals, probably fewer than ten or less a year. Typically, those individuals who have developmental disabilities and have violent behavior still deserve and are entitled to appropriate care and treatment. We have done this with mental health commitment, but

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we have found our statutes don't allow us to do appropriate placements for people with developmental disabilities. LB 206 provides a way for the state of Nebraska to place a person in services and require that that person stay in those services. Currently, all individuals are voluntarily accepted by the...and all services currently accepted by the individual or a parent or guardian of that person who has the developmental disability. In the rare instances when a person with developmental disabilities has posed the threat of harm, the county attorney or the Attorney General may file...may file a petition in district court stating that that person has allegedly committed an act of harm or attempted harm and is in need of court-ordered custody and treatment. Court-ordered custody means that the person would now be required to receive the services, and the agency providing the services would have the ability to prevent that person from leaving those services. The bill also lists the person's rights during the process. If a petition for court-ordered custody has been filed, the court must hear the petition within 90 days. The petitioner may also request emergency custody pending a hearing. If that emergency custody is granted, Health and Human Services shall provide a recommendation of an appropriate treatment program which has available space and is willing to hold the person. The department must evaluate the individual within seven days after the date of the EPC to determine if the person has one or more developmental disabilities. If that EPC is granted, the person has the right to an expedited hearing within ten days of being taken into custody to challenge the order of the EPC. The custody hearing should be as practicable...as soon as practicable, but no later than 45 days from the date when the person is taken into custody. Placement of the person shall be in the least restrictive alternative, and an appropriate treatment program that is capable of providing and willing to provide treatment in accordance with the plan. And we have done this with the establishment of our Bridges Program, using available space at the Hastings Regional Center, with the supervision and staff running the program from the Beatrice State Developmental Center. Annual review hearings are required. At any time, if that person no longer poses a threat of harm, any party may file a motion for a review hearing upon good cause shown. The party must show clear and convincing

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evidence that the custody order should be modified or vacated. As we presented this piece of legislation, we had representatives of individuals with developmental disabilities, of the advocacy community, of advocacy services, who came to the hearing. Senator Chambers raised some points that we needed to deal with. I think those effectively have brought all of the individuals together, in addition to the attorneys for the Department of Health and Human Services, and I think the amendments that will be offered by the committee will deal with those issues that were raised at that time. What one of the fears has been of the disabilities community is that this, once again, opens up the door to wholesale...to a wholesale ability of the state to put individuals with developmental disabilities back into an institutional-type setting. This is totally as far away from that as we can possibly get. But what it does do is give us statutory authority simply to do what we do in a mental health situation, to have a commitment act that deals specifically with individuals with developmental disabilities. I think it's reasonable with the committee amendments. I think it protects society, and I think at the same time it protects and affords the treatments that need to be available for individuals with developmental disabilities. And I know the committee amendments are extensive so I would yield my time back to the Chair, Mr. President, and allow the committee amendments to be presented.

SENATOR CUDABACK: Thank you, Senator Byars. (Doctor of the day introduced.) As Chairman of the Judiciary Committee, Senator Bourne, you're recognized to open on AM0633.

SENATOR BOURNE: Thank you, Mr. President and members. I want to thank Senator Byars for his work on this bill. I think it's a good piece of legislation. The Judiciary Committee heard this bill earlier in the session. And the committee amendment does several things. The first thing it does is allows any party to file a motion for a review hearing to be held as soon as practicable if it appears that a subject no longer poses a threat of harm to others, or if the circumstances upon which a plan submitted change. The next thing it does, it grants immunity for acts taken in good faith to comply with the act, except gross negligence, recklessness, or willful or wanton acts

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are not covered. Immunity does not apply to any action for damage or injury caused during the operation of any motor vehicle, airplane or boat, or damage or injury caused by an employee of a treatment program while such employee is impaired by alcohol or any controlled substance enumerated in Section 28-405. The amendment also changes the green copy of the bill such that it requires HHS to collaborate with the Advisory Committee on Developmental Disabilities to submit quarterly reports to the court, all parties of record, and the guardian of any subject in a court-order testimony (sic). The amendment also requires HHS to submit an annual report to the Legislature regarding the implementation of the act. The reports shall not contain identifying factors or other confidential information. Next, the amendment adds an additional member to the Advisory Committee on Developmental Disabilities who is a representative of a statewide advocacy organization for persons with developmental disabilities. Next, the amendment adds an additional duty for the Advisory Committee on Developmental Disabilities to provide oversight to ensure that persons placed in custody under the Court-Ordered Custody Act are receiving the least restrictive treatment and services necessary. The amendment also changes the language that was in the green copy regarding deliberately setting a fire, in Section 15, to better reflect the arson statute currently in our books. And, finally, it makes some other procedural changes that allow for an efficient court process. The Judiciary Committee worked with Senator Byars in developing the committee amendment. All the members of your Judiciary Committee present at the Executive Session supported the amendment and also to advance the bill. I would urge your support of the amendment as well. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on the committee amendments offered by the Judiciary Committee. Open for discussion on those amendments. Senator Schimek, followed by Senator Chambers.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members of the body. First of all, I rise in support of LB 206 and the committee amendment. And, Senator Byars, I would like to issue a personal thank-you to your and your staff. I can't think of

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anybody who would have been more thoughtful or caring or deliberative on this issue than you, because you have always cared about the community of the developmentally disabled. And so I thank you for your work in this. The incident which precipitated not only this bill but the Governor's resolution to look at the process by which we put those with developmental disabilities in various facilities across the state, those...these two things are very positive moves in addressing a very harmful...potentially harmful situation. I think there are other pieces of the puzzle yet to come, but I like this and I wanted to signal that I am very supportive of it. I do have just a couple of questions and, Senator Beutler, the first one is...or, Senator Byars, the first one is for you, if you would respond.

SENATOR CUDABACK: Senator Byars, would you?

SENATOR BYARS: I certainly will.

SENATOR SCHIMEK: Senator Byars, you did indicate that there were lots of people supporting this bill, and I can read that for myself on the committee statement. I also notice that the Association of Trial Attorneys came in, in opposition. Can you recall what their opposition was, and did that get resolved in the committee's discussion and the committee amendment? Do you recall?

SENATOR BYARS: Senator Schimek, yes, I do recall and, yes, it has been resolved to their satisfaction. To the best of my knowledge, I don't know of anyone who came in with any concerns in the bill or who...the only negative testimony, as you noted, by the Trial Attorneys. I think they've all been satisfied.

SENATOR SCHIMEK: Okay. Thank you. And the second question I would like to ask would be of Senator Bourne, if I might, Mr. President.

SENATOR CUDABACK: Senator Bourne, would you respond?

SENATOR BOURNE: Certainly.

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SENATOR SCHIMEK: Senator Bourne, thank you also for your work on this. I do have one question about part of the amendment, which you talk about the additional duty for the advisory committee to provide oversight to ensure that persons placed in custody under the Court-Ordered Custody Act are receiving the least restrictive treatment and services necessary. Do you have a vision of how that might work?

SENATOR BOURNE: I don't have a vision, necessarily. I do think this is Senator Byars' area of expertise, but in the committee we were concerned with an individual, a DD individual, just simply being placed in jail and not receiving the least restrictive type of treatment. And so, as I understand it, there will be reports going back to the advisory committee. And then if...and if you also look at the committee amendment, it says that any person...any person can file a motion for review to make sure that that person is getting the least restrictive type of care. And so what I would assume is that there would be a review, the advisory committee would look at this to verify that the individual was, indeed, receiving the least restrictive, not just locked in a cell somewhere.

SENATOR SCHIMEK: Thank you. I get a little nervous because I realize these advisory...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...committee members are there on a voluntary basis. They won't...it won't be as if they have access to these particular persons that are in custody all of the time. And I guess I would like to be assured that there will be a timely reporting process back to this advisory committee. What does the committee amendment say on that?

SENATOR BOURNE: As far as the time frame?

SENATOR SCHIMEK: Right.

SENATOR BOURNE: Let me look into that, Senator Schimek, and see...

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SENATOR SCHIMEK:    Okay.

SENATOR BOURNE:    ...exactly what that is. And, of course, you know there's a long way to go until the bill hits Final Reading, and if there's some language that we can put an additional obligation on that committee to do it in a timely manner, we certainly can do that.

SENATOR SCHIMEK:    And I appreciate that. I'm almost thinking that it might be well to have somebody, someone, targeted...

SENATOR CUDABACK:    Time.

SENATOR SCHIMEK:    Thank you.

SENATOR CUDABACK:    Thank you, Senator Schimek.      Senator Chambers, followed by Senator Burling.

SENATOR CHAMBERS:    Mr. President, members of the Legislature, talk about being defender of the downtrodden, the people we're talking about today really fit into that category. People who are considered, quote, different, unquote, for any reason are treated as though somehow being different makes them less than human, and they're treated in that fashion. Sometimes they are dealt with as though they're the disposable people. In the old days, individuals who were afflicted in certain mental and physical ways were hidden in closets, attics, basements, even by families who were embarrassed and ashamed, twofold; ashamed and embarrassed that they would treat a family member in the way they did, but also ashamed and embarrassed of that family member. They knew how society would view that family member, so they collapsed, folded, and did not aid the one who needed their aid the most at the time that aid was needed. When we operate as a Legislature and put words into the statute books, those words, as I say on occasion, are written in stone. The thrust of this bill is probably justifiable, and I know that the public fears the category of people that we're dealing with, and that fear would exist whether one of these persons had ever done anything to harm another individual. I am of the opinion that protection is needed for these people when they are taken into custody or being subjected to whatever constitutes treatment.

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Always when a vulnerable, weak, defenseless, friendless, rejected person is being handled by the state, whether a state employee or an agency or individuals contracted with by the state, that person is entitled to be treated by the individual with due care, due care. That simply means the things that ought to be done which are reasonable ought to be done. This bill, through the committee amendment, will say, and I hope Senator Schimek and Senator Byars will listen, it says that due or reasonable care does not have to be exercised when dealing with these people. Here's the language that the committee amendment would adopt, and Senator Bourne was right when he said all those present, when this bill was voted on by the committee, voted for it. I was not there. I've always been concerned about this type of language. On page 1 of the committee amendment, beginning in line 21: No treatment program or employee of a treatment program shall be liable for acts taken in good faith to comply with the...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...Developmental Disabilities Court-Ordered Custody Act, except for gross negligence, recklessness, or willful, wanton acts. Negligence is excusable. It is allowable. It is enshrined in the law and they're being told, you don't have to exercise reasonable care; you can be negligent and you're not liable. I don't see how negligence can coincide with good faith. But, nevertheless, that is the structure of the committee amendment and I'm going to fight that. I'm crafting an amendment to strike that. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion, Senator Burling, followed by Senator Byars.

SENATOR BURLING: Thank you, Mr. President. Members of the body, I stand in support of LB 206 and the amendment that's before us. As a cosponsor of this bill, I just thought I'd spend a couple of minutes talking about how the Behavioral Health Reform Act has impacted the people in the district I represent. While behavioral healthcare is generally a responsibility of the state, shortages of resources, as we all know, sometimes limits what we can do in these areas. But I

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believe we need to remain vigilant, that certain necessary levels of care are in place. LB 206 is a great addition to innovative solutions in this new perspective. This bill defines the necessary level of care for some people. I thank the former Governor Johanns and the Policy Cabinet for deciding to utilize one of the buildings at the Hastings Regional Center campus for the new services that this bill addresses. Behavioral healthcare reform has led Hastings Regional Center to change the types of services that it provides to consumers in Nebraska, and this legislation exemplifies that reform as it continues to emphasize the need for these kinds of services. Last week, Senator Byars, several staffers, some members of the Health and Human Services Department visited Hastings campus and the program called Bridges. Bridges is a 14-bed unit that houses people with developmental disabilities; is a facility for those who need secure residential services and an illustration of Nebraska adjusting services to meet the current needs of the consumer. This program is a cooperative effort between the providers of the two cities of Beatrice and Hastings. It's a new, young program, but is growing. I always support action on behalf of people who have disabilities in advocating for their rights, including the freedom to enjoy the rights of full societal membership, but I also believe there has to be a balance. If individuals are dangerous to themselves or the public, we must ensure that those who need services are in an environment which will minimize a potential threat to themselves and public safety. This bill definitely assists with that effort, and I thank Senator Byars for bringing it to us. Thank you.

SENATOR CUDABACK: Thank you, Senator Burling. Senator Byars.

SENATOR BYARS: Thank you, Mr. President. Certainly want to assure Senator Chambers. I know that he understands completely that my passion and my impetus for any type of representation for people with any type of disabilities, not only developmental disabilities, is genuine, and I know he understands that. The piece that he referred to, we'll certainly look at his amendment. We want to work with the Senator so that we can have a bill that's going to be appropriate and deal fairly with all involved and, in this case, we're looking at employees or people

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who, in effect, would have the responsibility for the supervision, training, and rehabilitation of these individuals. We certainly will work with him relative to that. Senator Schimek, will you...Senator Schimek, would you...

SENATOR CUDABACK: Senator.

SENATOR BYARS: ...yield for a moment, please?

SENATOR CUDABACK: Senator Schimek, would you?

SENATOR SCHIMEK: Yes. Thank you. (Laugh) You're not my counsel, Senator Chambers, although I appreciate all your good advice.

SENATOR BYARS: Senator Chambers, you can remain and be part of the conversation, if you'd like. One of the things that was extremely important in drafting the amendments to this bill was to involve the disability community and their advocates. And much of the language that was presented by the Judiciary Committee has come from an ongoing dialogue and a working together of finding language that would appropriately protect those individuals. So the DD Advisory Committee is going to be a committee that won't just be in name only, but will be extremely active. And if you note in Section 25, in the committee amendment, Senator,...

SENATOR SCHIMEK: Section what? Twenty-five?

SENATOR BYARS: In Section 25.

SENATOR SCHIMEK: In the committee amendment.

SENATOR BYARS: Correct. The plan is...

SENATOR SCHIMEK: It starts at section...

SENATOR BYARS: ...is...

SENATOR SCHIMEK: I'm sorry, Senator, it starts at Section 28. Am I looking at the wrong amendment?

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SENATOR BYARS: I don't think so.

SENATOR SCHIMEK: Well, tell me what that section is and maybe I...

SENATOR BYARS: Okay, the information, let me share the information with you, which I hope will...

SENATOR SCHIMEK: Okay.

SENATOR BYARS: ...alleviate some of your concerns. The plan, as it is submitted, shall include both an evaluation and recommendations of an independent mental health professional. As this process works, it goes from the court, back to HHS to develop a plan. That plan is not done just at somebody's whim. There is an appropriate evaluation done of the individual, an assessment done, and then the plan, which includes a history of the individual with developmental disabilities past, what the treatment has been in the past, a comprehensive evaluation of their developmental disability, a risk analysis, and what type of treatment and staffing requirements would be appropriate. So this is part of what will be the plan for the individual. So I feel comfortable and those people in the disabilities community felt comfortable, as did the attorneys representing the Judiciary Committee and Department of Health and Human Services and others, and the advocacy agencies, felt that this...that there was appropriate protections built into the language in the bill. But I would yield my time to you, Senator, for any other questions or any (inaudible).

SENATOR SCHIMEK: Thank you, Senator Byars, and I understand what was confusing. You were talking about the bill and I think you said the amendment, so that's what had me confused. Okay. I appreciate that, and I think that a lot of care has gone into this bill, but the only thing that I was questioning really in the amendment, before Senator Chambers...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...rose on his concern, was that paragraph

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about the oversight. And I'm still not quite certain how that would work, because I think at some point it suggests that there's a yearly report, and that doesn't seem like very good oversight to me.

SENATOR BYARS: There is both a quarterly and an annual review.

SENATOR SCHIMEK: There is a quarterly as well.

SENATOR BYARS: Yes.

SENATOR SCHIMEK: And what would you...well, we probably will run out of time. I've got my light on and maybe we can discuss it just a little bit further. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek and Senator Byars. Mr. Clerk, a motion on the desk?

CLERK: Senator Chambers would move to amend the committee amendments. (FA84, Legislative Journal page 859.)

SENATOR CUDABACK: Senator Chambers, to open on your amendment to the committee amendments to LB 206.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have drafted a substitute amendment, and I want my time to continue running, but I'm going to put it on the desk.

SENATOR CUDABACK: You may do so. While we're waiting for the amendment to be drafted correctly, Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I want to get involved in this debate a little bit since the incident that was referred to at the beginning was an incident here in Lincoln and Senator Schimek and I had occasion, on a number of occasions, to talk to the neighborhood and the people involved in that incident. And obviously, what we're trying to strike here today is a balance between the rights of the individuals who are concerned and the right of the public to be protected. I want to start out by saying I understand that this bill almost breaks Senator Byars' heart because he has such a

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deep and abiding care for this particular group of underprotected...or people who cannot essentially always protect themselves. And for myself, I've had a long-abiding interest in the shift from institutionalization to community life for this particular group of people, for other types of mentally ill people, and for...and this movement has been going on for 20-25 years now or more, and I've always been supportive of that. However, I recognize, and I think Senator Byars recognizes, that the success of moving people into community settings is dependent upon one thing, and that is the acceptance of the general overall community to this particular movement, this particular idea. In the case of the Lincoln incident, I was, frankly, pleased in one respect, and that was in talking to the people of the neighborhood, in talking to people around Lincoln who are interested in this particular problem, common people. They are at a level of sensitivity and a level of education that is far, far above what it was just 20 years ago, thanks in part to the work, the good work, that Senator Byars has done and Arc has done, and the various organizations have...community organizations have done, including Lincoln neighborhood associations, in familiarizing people with the clientele that is going into the communities, with their rights, with how those people in the community would want their relatives or sons or daughters treated should they be in that situation. And so my perception of the matter is that there is more widespread and deeper community support for integrating individuals with these problems into the communities so that they can have as normal a life as possible. But the other side of the coin is, we don't want to lose that process...that progress. We don't want to lose that support. We want to keep building it so that the things that Senator Byars wants to add in the future with regard to the dimensions and substance and form of...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...of the community facilities can happen. And so, for that reason, and I think he believes that too, for that reason he's come forward with this bill. And let me tell you, it is the one...we're doing a lot of things in this area. Some we're not doing as well as we should. Some cases, individuals are failing, or organizations are failing. But this

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is the one statutory piece where the law itself is inadequate and there is a gap. And Senator Byars, much to his chagrin in some ways, is filling that gap. But it's the right thing to do. It will...it will lead to enormous additional public support, I think. And I'm going to ask Senator Byars some hard questions today as this goes on, but I'm sure he'll have good answers...

SENATOR CUDABACK: Time, Senator.

SENATOR BEUTLER: ...and the public will understand how things are advancing here.

SENATOR CUDABACK: Thank you, Senator Beutler. Mr. Clerk, a motion on the desk?

CLERK: Mr. President, Senator Chambers would move to amend the committee amendment with FA84. (Legislative Journal page 859.)

SENATOR CUDABACK: Senator Chambers, to open on your amendment to the committee amendments.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I need to explain this process first. To let you know what I want to do, I want to strike the immunity section from the green copy of the bill and from the committee amendment. Here is the way that I have to do that. The way the committee amendment is drafted, it simply substitutes a new Section 33. But in the committee amendment, the only way liability would exist for these programs or the employees is if the negligence rose to the level of gross, wantonness, or whatever the other one was, recklessness. My view is that if negligence is committed, there should be liability. So here's the way my amendment has to be drafted. If I simply struck Section 33 from the committee amendment, that would leave intact and in place the original Section 33 in the green copy, which is worse, if you can believe that, than what is in the committee amendment. So what I will have to do is to strike the language from the committee amendment that deals with Section 33 and, instead of replacing it, Section 33, the language would say instead strike Section 33, and that then would carry it back to the green copy and strike it from the green copy. If all I did

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was to strike the existing Section 33 from the committee amendment, I would be left with the original Section 33 in the green copy. Now I'm going to explain why I want to get rid of that language, and I'll answer any questions about the process and the amendment itself. Negligence exists when a person fails to exercise due care. That means, under the circumstances, you are held to a certain standard of care which would be reasonable under the circumstances. We should not make people immune when they engage in conduct that is unreasonable under the circumstances. We should not make people immune for the harm caused by their conduct if they did not exercise due care. When you enact immunity clauses or statements such as these, it is really a license to be negligent, because it says you may be negligent and you're not liable. I don't agree with that when we're dealing with anybody, but especially vulnerable people. These people did not deliver themselves voluntarily into the hands of those who are dealing with them. These people are being treated differently from the run-of-the-mill person in the category of which they are a part. They are being taken against their will and placed in the hands and at the disposal of people who would be told by the law that in dealing with these vulnerable people you may be negligent and you're not liable. We should be doing what we can to make these caregivers, caretakers or whatever term you want to designate these people by, that they have got to be careful when dealing with these vulnerable individuals who are placed in their hands against their will through the power of the state. One reason I have trouble getting excited about these bills that come through here talking about looking after the interests of these children who are at risk, because I look at other things such as this and there comes a disconnect and suddenly we don't really care. Our handling of these problems should be like a seamless web. All of these people, whether they're infants or the aged, who are vulnerable and not able to look after themselves and their interests, and a step beyond that, they are placed in the hands of the state and, in some cases, against their will, how are we going to talk as though we care about these people, then put into the statute a license to be negligent and they're not liable? How many people do you think on the street would support this bill even though it has high-sounding goals, high sounding principles, and it exudes verbal compassion? The

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"Holly Bible" says at one point, allegedly quoting Jesus, why call ye me, Lord, Lord, and do not the things that I say? It's not enough to just use words. Conduct must attend those words. And I am not going to take seriously what people say on this floor about their concerns for these vulnerable people if, at the same time, they're going to put into the law that these caregivers can be negligent and they're not liable. So let's say, as a result of negligence, one of these persons winds up with a broken arm. So you set the arm and that's it. The negligence could have consisted in not paying attention to the individual in a circumstance where there was danger. That simple inattention does not rise, necessarily, to the level of wantonness, recklessness, or gross negligence. Those all are almost intentional acts. We should let these people know, the caregivers and the programs that employ them, that you are going to live up to that designation. You are going to care, and you're going to be held to a standard of reasonable care, a standard of due care. These people are at your disposal against their will, but you have chosen to be in the position you're in. You are paid to care. You can hate these people, but you are paid, you are compensated, you are making money because of their misery, and because of that, if you are negligent and these people are hurt, you're going to pay. This state is not going to exempt you. Now, I'm going to listen to my colleagues. I'm going to hear what they say, because I don't want these people to be delivered from the kettle into the fire. These individuals do not have to have actually hurt anybody. Their conduct may have been construed as a threat. There could even be a belief that they may be dangerous to themselves. So, in rescuing them from the danger they pose to themselves, you deliver them into the hands of people who can be negligent and cause them harm, and that negligent person is not liable, but this person who is disabled will have his or her freedom taken and, against his or her will, be placed in circumstances where he or she can be harmed through negligence and the negligent people are not liable. Who wouldn't like a job like that?

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I bet you couldn't work for a company and they'd tell you, you can be negligent and you'll keep your job.

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Would you want a doctor to feel, when conducting heart surgery, that he or she can be negligent and not be liable; the dentist can pull the wrong tooth and not be liable? I hope you all will think about this. And for those who come in here for these prayers every day, if you do it to the least of these my brethren and "sisterings," you have done it unto me. Apply it now. Show me a thing or two that all of this praying, pontificating and religiosity does with reference to your conduct when it comes to those you have a responsibility to help look out for. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA84, the committee amendments to LB 206. Open for discussion on that motion. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I didn't intend to get so involved in this discussion up here because I just wanted to indicate my support for the bill, but, Senator Chambers, I think you have raised a good point here. And I understand from your discussion of your amendment that you will be removing both the amendment in the amendment...or you will be removing both Section 33 in the amendment and in the bill. And, Senator Chambers, might I ask you a question, please?

SENATOR CUDABACK: Senator Chambers, would you respond to a question from Senator Schimek?

SENATOR SCHIMEK: Or may I?

SENATOR CHAMBERS: Yes, I will answer.

SENATOR SCHIMEK: Senator Chambers, do you then intend to offer an amendment to replace this language in any way?

SENATOR CHAMBERS: No, then, without this grant of immunity, if people are negligent they are liable for their negligence. This language is put in because without it negligent conduct is actionable, so this language was designed to rescue people from liability if they're negligent.

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SENATOR SCHIMEK: Thank you, Senator Chambers. The next thing I would like to do is I would like to have a little bit of a discussion again with Senator Byars, if I might, Mr. President.

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

SENATOR BYARS: Yes, I certainly will.

SENATOR SCHIMEK: Did you hear Senator Chambers' response to my question, Senator Byars?

SENATOR BYARS: I'm sorry, Senator Schimek, no, I...

SENATOR SCHIMEK: He would not offer language to replace Section 33 in either the bill or the amendment if we were to pull that language out of both. My question to you is, first of all, would you respond to that, and would you have any other suggestions?

SENATOR BYARS: Thank you, Senator Schimek, and thank you, Senator Chambers, for the dialogue. I know Senator Chambers knows me well enough and we've worked together long enough to know that my passion is with these individuals. I think there has to be a way in-between. I'm not certain that I can totally accept Senator Chambers' offer of striking both the original Section 33 and the substitute amendment 33, and let me give you a little reasoning why. The individuals that this applies to are only those individuals that go through the court-ordered custody process. This does not apply to other individuals with developmental disabilities placed in any community-based setting or others. The problem I'm just envisioning in my head, Senator Schimek and Senator Chambers, is when you have individuals with severe behaviors, as you know, and if you haven't worked with those individuals such as I have, you know there are circumstances where there could be an individual who, in the process of appropriately being restrained or try to control a behavior, accidents happen. What happens then to the provider of services? Are they going to say, hey, no, we just aren't going to accept any of these individuals because...if we don't have some protection of some sort from what an accident,

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something that can happen not from mistreatment but from purely an accident that happens in this situation? So I am certainly...I want to work with Senator Chambers. I certainly want these individuals to...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...these individuals to be treated appropriately, and I don't want anybody to escape that abuses them. I would personally take them on individually, anybody that wants. Senator, I'll yield to you.

SENATOR SCHIMEK: Well, (laugh) yes, I will yield to you, Senator Chambers.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: This is Senator Schimek's time.

SENATOR CHAMBERS: Oh, I'm sorry.

SENATOR SCHIMEK: No, please.

SENATOR CHAMBERS: Oh. Senator Byars, accident nullifies negligence. If it's an accident, there is not negligence. There cannot be both an accident and negligence.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Schimek, did you wish to...your 20 seconds? She waives here 20 seconds. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President. Members, let me just kind of give you some background as to where we're at. The original green copy of the bill pretty...not pretty much, it absolutely said that any person, treatment program, department, political subdivision who acts in good faith to comply with this act shall be immune from civil and criminal liability. That was what the green copy of the bill said. I personally don't believe that we should have a complete immunity and so that's why we worked on in the committee amendment to change it to the language that you see in the committee amendment found on the

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bottom of page 1 and the top of page 2. The way the immunity would work today, if the committee amendment is adopted, it says that no treatment program or employee shall be liable for acts taken in good faith to comply with this act, except if they use gross negligence, recklessness, or willful or wanton acts. And then there is an exception that talks about damage or injury during transportation or if they're under the influence of alcohol and drugs. And so what we tried to do in the committee amendment is come up with a compromise. The green copy of the bill said absolute immunity. The committee amendment says there is some form of immunity, up to a point. The reason we did that is that when the act states that they should have the least restrictive type of custody, that could mean a treatment facility owned by a nonprofit organization. Denny...Senator Byars might have the names of those groups. I'm not...I'm not as familiar with this program as he is or this area as he is. The point that I'm trying to make is, if there is...if there isn't some form of immunity or liability, these facilities won't take these kids and they'll end up in jail. And I don't know a lot about this area, but I know that that is not the right place for a DD kid, so...or a DD person, not necessarily a kid. So I'm willing to listen to Senator Chambers. The committee amendment was a compromise. Again, it was a compromise from the absolute immunity found in the green copy. I personally believe that there has to be some form of immunity or these facilities, when they're presented with this individual, will simply say, no, we're not going to take them. And then what's the police officer going to do, you know? And my understanding is, this development...the DD person has committed some form of a crime where they could be put into a...in a jail. So when that private facility, who is totally opened up to liability under Senator Chambers' amendment, refuses that person, where are they going to go? Imagine a DD person in a jail cell. I don't think that's the appropriate place. Quite honestly, that's the reason for the bill, because that's where they're going today. They don't need to be there. They need to be in a least restrictive place. I don't know what I'm going to do with Senator Chambers' amendment. I do believe that if somebody acts in a negligent manner they should be held accountable. Whether that's civilly or criminally, I don't know. But I do think there has to be some protection for these facilities; otherwise, they won't take

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these individuals and they'll end up in jail, and I think we can all agree that's the worst place. I do think that Senator Chambers' amendment goes perhaps a little bit too far. Now, you know, the legislative process is all about compromise and maybe we can work something out where these entities have some protection, but still, if they commit acts of negligence, there's some liability there. With that, I'll yield the rest of my time to Senator Chambers, if he wants it. Again, this is a compromise. We'll see what the body does. I think that Senator Chambers' amendment, even though philosophically I would agree with it, I do think that it puts too much liability on these facilities to the extent where they won't accept these people. With that, I'd yield my time to Senator Chambers, if he'd care to respond to that.

SENATOR CUDABACK: Senator Chambers,...

SENATOR CHAMBERS: Yes.

SENATOR CUDABACK: ...you have about one minute.

SENATOR CHAMBERS: Thank you, and I do have my light on so I will be able to go into more detail. On the one hand, these agencies are lauded as being so compassionate in providing a service. But they're extortionists, really. They say, this is the trade-off; if you don't let me be negligent, I'm not going to accept these people. Then the state should say, then you're not going to get any state money; get your money someplace else. But any facility that receives any state money is not going to reject these individuals, and they're going to be held to a standard of due care. If merely calling themselves nonprofit means also that they don't understand what due care is in handling these individuals, their agency should not have these people brought to them in the first place. When my light comes on, I'm going to go step by step and explain what it is that I'm doing and how I'm not going to be swayed by these threats that if you don't do it this way,...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Chambers and Senator Bourne. On with discussion of the Chambers amendment, FA84, to the committee amendments to LB 206. Senator Byars, followed by Senators Beutler and Chambers. Senator Byars.

SENATOR BYARS: Thank you, Mr. President. I'm somewhat ambivalent because I'm relating to the sensitivity, I think, truly, that Senator Chambers is wanting to bring to this legislation. However, I also concur with Senator Bourne and disagree with Senator Chambers in that the providers of services, without any type of ability to protect themselves from what we all see, unfortunately, as many frivolous type lawsuits, I think they are going to say no. I think they're going to be reluctant to take individuals who can and do need an extraordinary amount of care, supervision, training, services that you don't always see with an individual with developmental disabilities. Remember, this is an extremely, extremely small percent of the developmental disabilities population. But, as Senator Bourne said, the reason for this bill is to put into statute something that will make certain that individuals with disabilities aren't thrown in jail and there's nothing to do with them. There's no place to put them. There's no place to receive treatment. We've alleviated that administratively by building bridges, literally, at the Hastings Regional Center, and I visited with those individuals with developmental disabilities last week. As a matter of fact, I've already gotten letters from a couple of them because they so appreciated us coming out and visiting with them. These are individuals that do have severe behaviors, but they can receive treatment, appropriate treatment. Senator Chambers, I really want to work with you on this, but I don't...right now, I don't have compromise language. But I think we have to be extremely careful that we don't cut off services. And, even though I know you have stated very clearly you think these individuals that are responsible will accept these individuals anyway because...and if they don't, then they would just be mean to them anyway, I disagree with that. I think it's a situation, number one, where we don't have appropriate reimbursements for the individuals or the agencies that are providing services now, and if you asked to provide the additional services and

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treatment that we're going to be requiring of the places where we place these individuals, it's going to be more expensive, and I have a fear that they truly will say, we...state of Nebraska, you're just going to have to do this because we can't, you know, we just can't afford to do it. And I don't think that that's a crass or a selfish reaction. But I can't help but think that there absolutely needs to be some liability on the part of the provider. Now what that...to what extent that language needs to be written, I don't know. We have depended on all of the attorneys that have come together from the Judiciary Committee, from advocacy services, from the trial attorneys themselves who wrote this language, and to make certain that individuals with disabilities were appropriately protected. And it was felt all around that that was accomplished with the language in the amended copy of the bill. But, Senator, and certainly can continue the dialogue, I don't have an answer. I wish I did. I wish I had some magical words that I could lay before you now that would allow us to move what I...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...consider a fair and a humane way of treating individuals with disabilities, allow this legislation to go forward. I would pledge to work with you between now and Select File, and with the other appropriate individuals, the providers, the advocates for persons with disabilities, and others that are involved in this, the representatives of the Department of Health and Human Services, to find language that will satisfy you to make sure that in no way will we abdicate the responsibility of providers to give safe, humane, and sensitive treatment to people with disabilities.

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

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I'm going to vote for this bill whether it has Senator Chambers' amendment or not. I understand all of Senator Chambers' arguments, I believe, and he well knows that I have stood firm with him on police pursuits and liability on the part of the cities in that respect, and most everywhere else. But what I really think is that the committee compromise and what Senator

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Byars is saying is the right answer for the short term, and Senator Chambers' argument is the right answer for the long term. And let me just tell you the couple of observations I had as...again, as it relates to the small amount of time and exposure to the system that I had as a result of this incident in Lincoln. And one of the...one of the big things out there is that these organizations who are taking care of these young people, and some older people, they either are not doing the appropriate amount of training or they don't have the funds to do the appropriate amount of training, and they don't have the funds, apparently, to pay people who are the caretakers a reasonable amount of money. So when you go out to the group homes, what you'll see is...in Lincoln at least, is an awful lot of college kids who are there for six months, a year, sometimes a little bit more. But lots and lots of the caretakers are in this category. They're very poorly paid. They are not as well trained as I think they should be or as most people, I think, think they should be. There's another bill that deals with training. And this system overall is somewhat financially fragile. It will improve as the state economy improves, as the Legislature and the Appropriations Committee are able to put some more funding into provider rates and hopefully find a way that that funding for provider rates can go into training and keeping people there longer so that there is an increased level of expertise among the caregivers. That really needs to happen first, because if you create a negligence liability standard in this atmosphere, in these conditions, I think it is true that the providers, as Senator Byars has indicated, may rebel and simply not want to take anybody they consider to be on the more dangerous side of the spectrum, or somebody that would require more constant care, like Mr. Einspahr. Senator Chambers, I'm sure, will argue, well, training will come faster if we hold them to a negligence standard, and that is, generally speaking, the reason in American jurisprudence why you hold people to a negligence standard, so that it forces things to improve. But I'm not sure at all in the context of this particular situation at this time that that will be the result. I think a few years down the line, when everything is more stably structured and hopefully there's more training, there's another bill that requires more training and some other adjustments to the system,...

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SENATOR CUDABACK:    One minute.

SENATOR BEUTLER:     ...then I think a negligence standard could kick in and be the most advisable thing to do.    But I do hesitate short-term.    Thank you.

SENATOR CUDABACK:    Thank you, Senator Beutler.    Senator Chambers, on your amendment, FA84.

SENATOR CHAMBERS:    Mr. President, members of the Legislature, I'll make a deal with my colleagues.    If you all stop having those Christian preachers come in here and you Christians stop standing up there telling me and others about Jesus and praying in his name, then I'll stop rubbing what he said in your face.    I'm going to give Senator Byars and the rest of you "Chrishians" some magic words.    The hireling flees when the wolf comes, but the good shepherd gives his life for the sheep.    A shepherd had 100 sheep.    One lamb strayed and was lost.    The shepherd left the 90 and 9 who were safe, and sought after and found the 1 who was lost.    And when your Jesus finished telling that parable, he said, allegedly, if the "Bibble" is correct, and you all believe it is, there is more rejoicing in heaven when one sinner comes in than for 90 and 9 just persons who have no need of salvation.    So you all played the numbers when Jesus didn't.    One was enough.    And although I've read the "Bibble" many times, from cover to cover, I did not read one place when I was reading the mythology about a man dying on the cross, then coming back alive, where he looked down from the cross and said, oh, wait a minute, there's only one person who needs my blood; only one person needs my grace, so call this whole show off, and then he jumped down on the ground, healed his wounds and went on about his business.    He even told you all that if you want him among you, you don't have to have a crowd; two or three.    And if I take the word of the people in here, there are far more than two or three who claim that Jesus.    This is not stuff I'm making up.    This comes from your "Bibble" and right from the words of the ones you all pray to and in whose name you invoke blessings every morning.    And you wonder why I don't want somebody up there praying.    I'd rather have Walt Disney's animators up there talking to us about Donald Duck, Mickey Mouse, and Goofy,

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because I at least know who they are. I know where they stand, but I don't know where you all stand. So we're playing numbers. Since only a few people are involved here, if they're treated negligently and suffer harm, let the wrongdoers escape. I say if they come to the state to get money to have these vulnerable people placed at their disposal, tell them you're going to meet this standard and if you don't you're going to have to respond in damages for any harm you cause to these people negligently who are placed in your care. And if you don't like that deal, you don't get any money from the state. And maybe if we cut out some of these incompetent, negligent caregivers, we could give more money to those who would meet the standard that they ought to. We're not dealing with commodities. This is not where you take a book and you drop it and you break the binding and you can get another book or you can repair that one. We're talking about human beings. And when you shatter somebody's life, it may never be restored. This is even harder to deal with than Humpty Dumpty shattering when he fell off the wall. All the king's horses and all the king's men, even in the child's nursery rhyme, could not put Humpty Dumpty together again. There are lessons and messages in those stories if you will look at them and derive from them what is there. So who's going to restore the shattered life...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...of people whose life may be shattered due to negligence? Why do you think the law allows recovery for pain and suffering? Some of that pain and suffering is of the mental variety, not just physical. People's feelings can be hurt whether they're little children or people as old as myself or Methuselah. But I don't wear my fingers...my feelings in my fingertips. My feelings cannot be hurt. That was taken care of by me in the way I was treated by white people in this society a long, long time ago. If I have feelings, they've been callused over so heavily that I don't even know they're there. So intellectually, I can empathize with people who are mistreated, and it doesn't have to be a member of my family or myself before I am spurred to do something to help those who are...

SENATOR CUDABACK: Time, Senator.

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SENATOR CHAMBERS:      ...being harmed and they can't help themselves. Did you say time?

SENATOR CUDABACK: I did, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Bourne, followed by Senators Byars and Beutler.

SENATOR BOURNE: Thank you, Mr. President, members. I just kind of want to redirect the debate so that everybody kind of understands what we're talking about. The original version of the bill had an absolute immunity provision. And again what we're talking about is an individual who has been diagnosed as developmentally disabled. If they do something that would require the police to be called, way it works now, as I understand it, is that individual is arrested and can be placed in jail. And what Senator Byars is proposing is that individual would be...still could be arrested, but would be taken to the least restrictive means of confinement, which could often be a facility. And so, to boil it all down, in Senator Beutler's (sic) original version of the bill, he had an absolute immunity provision. The committee amendment is what I felt was a compromise. We had a...we had the hearing, of course. And quite honestly, in the hearing Senator Chambers expressed the exact concern that he's raising today, and we attempted to address that in the committee amendment. Now, what Senator Chambers is proposing is to eliminate the immunity provision in the committee amendment, as well as the immunity provision in the green copy of the bill, and set forth, and he can correct me if I'm wrong, and set forth a general negligence standard. And what that means is that that facility would owe a duty to the developmentally disabled person. That duty was breached, that person was hurt, and...or damaged, and the cause of the damage was due to the breach of the duty that the facility owed to the individual. I, like Senator Beutler, intend to support the bill whether Senator Chambers' amendment is adopted or not. I do think it's a good piece of legislation. My only concern is, is that these facilities might not accept these individuals. And I

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think that's legitimate. There has to be a balance. They should not have absolute immunity, I absolutely agree with that. And, quite honestly, the other side of that would be what is called strict liability. And Senator Chambers is not proposing that. He's simply saying a general negligence standard should be applied to these facilities. I, personally, don't feel that's unfair, although we did in the committee amendment work together with Senator Byars, developmentally disabled facilities, HHS, I believe the trial attorneys were involved in those discussions, and what we came up with in the spirit of compromise was the white copy of the bill. I know that this is a process. If Senator Chambers' amendment is adopted and the facilities can demonstrate to us that they...that individuals won't have opportunities to be placed there, instead they'll go to jail, why, then hopefully we can look at this on Select File. So there it is. It's up to your discretion as to what to do. I don't feel that the Chambers amendment is particularly harsh to the facilities or those places where these individuals might be confined, although they might disagree. So I'd leave it up to your discretion. I intend to support the bill regardless of whether or not the Chambers amendment is adopted to the committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Byars, followed by Senator Beutler.

SENATOR BYARS: Thank you, Mr. President. I want to throw one thing out to you, Senator Chambers, if you'll yield for a moment.

SENATOR CUDABACK: Senator Chambers, would you...?

SENATOR BYARS: And then I have some comments. If, in the committee amendment...and you talked about this just briefly in your opening as you started your dialogue. And not knowing all the legalese...and of course, you pointed out to me that you are not a trial attorney. I was shocked, but I...you know, I'll accept whatever you tell me as gospel, Senator Chambers.

SENATOR CHAMBERS: My standards are higher than those of trial attorneys.

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SENATOR BYARS: If we took out "gross"...if we took "gross" out of the committee amendment and left in the amendment "negligence, recklessness, or willful or wanton acts," what would that...what would that do to you? And give me, of course, as brief an answer as you can, but...

SENATOR CHAMBERS: It would at least be truth in advertising, because we say this is a gross bill. But I can't tell you that that would be satisfactory. I'll think about it, because it had never been offered before.

SENATOR BYARS: Okay. Senator, if...and let me ask you this question, because you feel, Senator Bourne feels, members of Judiciary Committee, Senator Beutler, I think...Senator Schimek, I think the people on this floor know that this is a piece of legislation that's needed. We needed a Court-Ordered Custody Act. If I will vote for your amendment and move the bill with the amendment, will you pledge to work with me to try to find...between now and Select File, to work with Senator Bourne and Beutler and Schimek and whoever else? Obviously, all of the advocacy committee, including providers, need to be part of the conversation. Will you work with me to try to find something that will be an appropriate solution to this logjam?

SENATOR CHAMBERS: You...do I have to answer real quickly?

SENATOR BYARS: No.

SENATOR CHAMBERS: I'll try to make it brief by giving an analogy. Did you, when you were younger, ever hear a song, and one of the...part of the lyrics was: work with me, Annie? I will work with you more than that person was trying to have Annie work with him, in a different way, of course.

SENATOR BYARS: That's very appropriate, Senator. I would take the time that I have left, give it to Senator Beutler, if he has some other comments.

SENATOR CUDABACK: Senator Beutler.

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SENATOR BEUTLER: Senator Byars, thank you. I have no further comments. My light is on and I was going to yield it to Senator Chambers so he could reply to you, but...so I'll pass. Thank you.

SENATOR CUDABACK: Senator Beutler, your light is next, if you wish to use it.

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

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Beutler. Thank you for your offer, Senator Byars. I am not interested in harming this bill. I have to use stories sometimes, because people are familiar with those and sometimes a point can be made not only more quickly but more graphically with a story. There was a person described as a wicked old witch and she took a very tempting apple and put a toxic substance in it so that a person who would consume this apple and the substance would fall into a deep sleep. The apple looked like any other apple, but there was something even worse than a worm in it. Now, if there was a way to remove all of the toxic substance or, if it were a worm, remove the worm, and what was left was wholesome and healthful, that would be better than nothing. Maybe nobody will get the entire apple, and that's because Senator Byars is working with people who want to have that toxic substance and the worm left in the apple. My feeling is that if those substances remain in the apple, the apple is not worth salvaging. But if we could arrive at a set of circumstances where the bulk of what's in this bill is salvaged, that's what they should want. So the way I would envision the situation resolving itself this morning is that Senator Byars would vote for my amendment and suggest that enough of you vote for it to adopt it. That would then put...he didn't say this. I'm saying this. He would be more diplomatic. That would put everybody's feet to the fire who professes to have an interest in this bill. None of them would have to talk directly to me. I will talk to Senator Byars. There are some people who'd rather not deal directly with me. That doesn't bother me. The reason ambassadors exist, the reason mediators exist, the reason arbitrators exist is because a go-between is

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necessary. And if you "Chrishians" would allow me to invoke your religious beliefs once more, you all believe there has to be an intercessor because you are so desperately wicked that if the one who can destroy both body and soul in hell was to behold you without looking through the prism of that intercessor, you'd be destroyed. Now that's a strange God, but that's what you all believe in, so I'm just reminding you of that. I remind you of that so you'll understand, I'm not invoking a strange doctrine when I suggest that Senator Byars can serve as the go-between and fulfill that role so that the people on his side do not have to talk directly to me. It is stated in the "Bibble" that nobody could look upon the face of God and live. Now I don't want to be presumptuous, neither sacrilegious, but some people treat me in that manner. But they might say, well, if I looked upon your face and did not live, it would not be for the same reason that I would not live if I looked upon God's face. And not being a god, I wouldn't strike them dead for saying that. I would applaud them for having a bit of wit. But now to make this deadly serious, which it is, if the amendment is adopted, the bill can move. Senator Byars will collect all of the people he knows of who have an interest in it, see what it is they are prepared to do. Then Senator Byars and I will talk and we'll see what kind of accord can be reached. And if we cannot reach any, what Senator Byars would then do on Select File is tell you all you should remove from the bill my amendment or not do it in that way, craft language that he would insert into the bill that would grant the level of immunity that he felt...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...was required. So, by adopting this amendment, all you do is allow this bill to move forward at this time, and that is not the end of our handling the bill. The fact that Senator Byars has invested so much in it and he wants the bill but is willing to do it in this fashion, and he made the offer, I think you should feel comfortable in following his lead. And I mean it when I say that I will work with him and we'll do the very best that we can. Thank you, Mr. President. Thank you, Senator Beutler.

SENATOR CUDABACK: Thank you, Senator Chambers. Further

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discussion? Seeing none, Senator Chambers, you're recognized to close on...he does not...he waives closing. The question before the body is adoption of FA84 to AM0633. All in favor vote aye; those opposed, nay. Voting on adoption of the Chambers amendment. Have you all voted on FA84 who wish to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: Amendment has been adopted. Back to discussion of the committee amendments themselves, AM0633. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President. I just have a really quick question, Senator Byars, now that we're back on the committee amendment, if I can find it here. It's on that Section 4...or Section...it's on page 3, paragraph (4), about the advisory committee and the oversight. Can you...I did talk with your staff member off the mike a little while ago, and I guess her explanation to me was that the way that the advisory board and the department are going to interact is going to be on an ongoing basis. There's going to be dialogue on a continuing basis so that the advisory board not only will get those quarterly reports, but they will also get them on a yearly basis. And would you elaborate or respond or anything that you wish to do to that? I just want to feel assured that this oversight will truly be effective.

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Thank you, Senator Schimek, and I certainly will. In all of the conversation, in the development of the bill and the...in its original form, and then the conversation after the committee amendments were drawn by all the advocacy groups, the department, persons with disabilities, all of the attorneys that need to be involved, it was the intention, continues to be the intention, that this advisory committee is an active advisory committee that doesn't just work every three months or once a year, but it's a committee that is actively overseeing the circumstances involved with the individuals who

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need to have a court-ordered custody placement, and they're going to be analyzing and making recommendations on a continuous basis. This is the intent, this is the pledge of the advocacy community, and I'm hopeful we've tried to make the language as generic and as loose as possible to enable this to happen rather than saying the advisory committee needs to meet every six and a half days and what have you. So we've tried to leave some latitude in the way that we've constructed this. But I feel confident, knowing those members of the advocacy community, they'll be very, very active in making certain that appropriate oversight is given.

SENATOR SCHIMEK: Thank you, Senator Byars. That is reassuring. I thought it was important that we get that on the record. But in addition to that, I would like to say I'm guessing that we're not talking about a large number of people here that we have to have oversight over. (Laugh) That's not a very good sentence construction. But we're not talking about large numbers of people here, are we?

SENATOR BYARS: No. This would be a maximum of a ten-member group, Senator.

SENATOR SCHIMEK: No, I mean of the folks, the individuals that we're providing the oversight for.

SENATOR BYARS: With all the assess...the risk assessments that have been done, the ongoing objective assessment process, we're...and obviously, we have to do a guess based on past history and done on risk assessments of those individuals that we can do assessments on. We're looking at less than 10 individuals on an annual basis.

SENATOR SCHIMEK: That's what I would guess or anticipate. Well, I thank you very much for that. I thank you again for your work on this matter, and Senator Beutler and Senator Jensen, who has been very involved with this situation from the beginning, drove down from Omaha for several community meetings and has been very supportive and concerned about the problem that was generated. So again, this is a good piece of the puzzle, and I will be supporting the amendment and the bill.

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Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Further discussion on the committee amendments? Senator Bourne, you're recognized to close on AM0633.

SENATOR BOURNE: Thank you, Mr. President and members. I'll go through again what the committee amendment does. It allows any party to file a motion for review hearing to be held as soon as practicable. I think this goes towards Senator Schimek's concerns that if somebody sees a DD individual is not placed in the least restrictive area, they can file a motion to have their case reviewed. We did change the immunity provisions and so now these facilities are held to an ordinary negligence standard. And of course, you heard Senator Chambers had committed to working with Senator Byars if we find that that's a significant problem, between now and Select File. It requires HHS to collaborate with the advisory committee and submit quarterly reports, requires HHS to submit annual reports to the Legislature, adds an additional member to the advisory committee, creates an additional duty to provide oversight on the whole process, to ensure that persons placed in custody are receiving the least restrictive treatment possible. And it changes language regarding deliberately setting a fire, that was in the green of the bill. I think we've had a good debate on the bill. I commend Senator Byars for his interest in this, and I think this will go a long ways towards making sure these individuals are placed in the appropriate facilities, not simply in a jail somewhere. I'd urge your adoption of AM0633. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard closing on the committee amendments. The question before the body is, shall AM0633, offered by the Judiciary, be adopted as amended to LB 206? All in favor vote aye; opposed, nay. We're voting on the adoption of the committee amendments. Record please, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of the committee amendments.

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SENATOR CUDABACK: Anything further on the bill, Mr. Clerk?

CLERK: Nothing further on the bill, Mr. President.

SENATOR CUDABACK: Open for discussion on the advancement itself. Senator Beutler, followed by Senator Jensen.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature; Senator Byars, I'd like to have a dialogue with you, if we may, on a couple of issues.

SENATOR CUDABACK: Senator Byars.

SENATOR BEUTLER: And I want to explore a couple of dimensions of this bill that you, of course, are already familiar with, I think everybody in the body should be familiar with, in terms of being able to defend and talk about to their constituents exactly what we did here. And let me explain to you by way of reference. I look back at the mental health act. There is a separate elaborate mental health act, as you're well aware. It appears that some of this was modeled after that. But you and your people have rightfully made a whole myriad of changes so that it applies more appropriately to the developmental disability definition that is in the bill. And as we all know, mental disability is defined...mental illness is defined as different from developmental disability. Nonetheless, there were a couple of provisions in the mental health act that caught my attention, and I think it would be a helpful discussion for you to explain why there is a different treatment here in this bill. In the...and one of the big deal...one of the big items is the language in the bill that kicks in this particular procedure. If there...if the person with the developmental disabilities poses a threat of harm to others...now over in the mental health side, as you may be aware, it is a twofold kind of test, whether they pose a threat of harm to others or whether...or if...and the mental health bill would also apply if they were a threat of serious harm to themselves. Now I've always interpreted that in the mental health act as a benign kind of provision indicating that the state is willing to accept a responsibility with regard to people who may be a danger to themselves, not to allow them to harm themselves, to provide

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that level of care that's necessary in these extreme cases to prevent them from harming themselves. Over here on the developmental disabilities side, there is no option for society to take care of that category of people. And you've obviously made a conscious decision to exclude that grouping. And I would yield to you the rest of my time to talk about why that was done and what the difference is and why the legal difference is justified in this instance.

SENATOR CUDABACK: Senator Byars.

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

SENATOR CUDABACK: Senator Byars, you have about two, twenty-five.

SENATOR BYARS: Thank you, Mr. President. Thank you, Senator Beutler. That's a very good question and very good thoughts, and I appreciate that a lot. To distinguish between a person with mental illness and the reasons for making a commitment versus a person with a developmental disability and this...what we're trying to accomplish in this legislation, and let me distinguish between the two. When you have a mental illness, many times it's not recognized by the system or the bureaucracy as we recognize it. It needs to come to the attention of the bureaucracy either through law enforcement, through family members, through circumstances that cause the rest of society, or even a small part of society, to recognize a person with the mental illness. Up until that time, it could be you or I here on the floor of the Legislature that have a mental illness but we might not even be aware of it, let alone those around us. A person with a developmental disability, and the piece that we passed as a Legislature last year and that we've been doing but not as efficiently, if you have a developmental disability, you're diagnosed with a developmental disability,...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...and you have to be in order to enter the system, once you enter the system, you...we do an objective assessment process that looks at your needs. And this is done

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by professionals who, through years of study and the gathering of empirical evidence, understands what your needs are as far as a person with a developmental disability. This is different than a person for mental illness who that might not happen until an event happens. We have stretched that further by having a risk assessment process that we have kicked in as a state that can take further, not only the objective assessment process, but look at risks in individuals of...through various testing, through history, of being able...

SENATOR CUDABACK: Time.

SENATOR BYARS: ...to recognize...and is it absolutely 100 percent accurate? I don't think there's anything in the world 100 percent accurate, but as accurate as we...

SENATOR CUDABACK: Time, Senator Byars Thank you. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. I just want to stand in strong support of this bill. And as Senator Byars said, it was one that we hoped that we wouldn't have to bring forward. But I think that this is a bill that will ensure the safety of those with developmental disabilities and also the safety of the general public. Certainly what happened here in Lincoln a year ago was not a pleasant situation, both for the neighbors and many of those who were involved, law enforcement and all. But I think this is a good solution. I certainly commend Senator Byars for his work and effort in this arena, not only this last year, but for the many years that he's been in the legislative process. So I just wanted to stand in strong support of this and thank Senator Byars, Senator Bourne, and all those who have brought us to this position, and look forward to the passage of this. Thank you, Mr. President.

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

SENATOR BEUTLER: Senator Cudaback, I would first yield my time to Senator Byars to finish his explanation.

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SENATOR CUDABACK:    Senator Byars.

SENATOR BYARS:      Thank you, Mr. President. Thank you, Senator Beutler. As this process then is refined, and as we're getting better at it, because, again, we're involving everyone involved in all of the communities that have some sort of effect on these individuals. We're getting better at this in mental illness, but we're not there yet. You know, we've moved a long way toward trying to define and trying to look at appropriate treatment for people with mental illness, but we haven't been very good at it. We've been better in the developmental disability field, and a lot of that is because symptoms show us from birth of an individual that has a developmental disability, and we have been able to build a system that deals with that. Is it perfect? Boy, it sure isn't. Have we gotten where we need to be totally? No, we haven't. And you and I have had the discussion, we in the Health Committee have had the discussion. Senator Jensen and members of the Health Committee are very supportive of the fact. We finally have an administration, a policy cabinet, who are truly devising a plan for people with...all people with developmental disabilities, to look at what are needs; are they getting too many services; are they not getting enough; are they not getting any; is this person who is receiving services all of a sudden exhibiting some behavior that might be termed violent or dangerous, that needs to have some additional supervision or training? We're going to have a plan, finally, to deal with all of these issues. As part of that, we're going to deal with some issues that are very important to you: training, training of staff, appropriate placement and how do we make a decision on who it is and where it is that an individual is placed, what do we do as far as direct care staff workers and the type of abilities that they have and what type of training to deal with all of these things that we find in the assessment process. It's ongoing, but we have a definite difference in the mentally ill and those people with the developmental disabilities, in the recognition of both. And I would yield my time back to you, Senator.

SENATOR CUDABACK:    Senator Beutler.

SENATOR BEUTLER:     Senator Byars, I think I understand most of

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what you're saying, and I certainly share your upbeat note with respect to the apparent efforts being made by DHH to devise a more comprehensive vision and to identify where work needs to be done and to move forward on this. Let me go back to the question of a person who may be inclined to harm themselves, in the context of a developmental disability situation. And the bottom line is, I want to be sure that everybody is going to be comfortable and nobody is going to be mad at the state. If somebody who exhibited serious tendencies to harm themselves, in fact, in some unfortunate circumstance did finally harm themselves in the ultimate way, because obviously that will become a very visible issue and questions will be asked; and so I want to go back and just explore with you a little bit by way of an example...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...of how this would work, because I'm not sure myself. I don't understand this system as well as you do. But let's take it from the beginning. Let's say that we have a young man who is over 18 but...and so subject to this act, but not subject to the act in the sense that his tendency is to harm himself. Let's say he has tried to commit suicide two or three different occasions. He may or may not have a guardian, I suppose; hopefully he has a guardian. I assume that some sort of voluntary commitment is available, but you may comment on that. I may not be exactly right on that. But what if the "guardiancy" in this situation still doesn't want to institutionalize the young person,...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BEUTLER: ...but chooses to handle the situation...

SENATOR CUDABACK: Senator Byars, you're recognized to speak next.

SENATOR BYARS: Thank you, Senator Cudaback. I'll yield to Senator Beutler to finish his remarks.

SENATOR CUDABACK: Senator Beutler.

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SENATOR BEUTLER: ...and the guardian chooses to deal with the situation on an individual basis. And many times, if not most times, the guardian is a parent. It's...obviously the parent cares, or hopefully the parent cares. And so one might do as we do for many parents, even though the child is not of the age of childhood anymore, we give some great deference to the decision of a parent, or in this case, of a guardian if they're over 18. But if a guardian makes a wrong decision or a bad decision, and correct me here as we go along if I'm kind of misstating the situation in any way, but if the guardian makes a bad decision, and the young person succeeds in suicide, for example, and in part then some may argue, well, if this person had been under the care of the state under this act, that might not have happened. Are we going to be subject to criticism as a society or all of the people that you work with that care most about the issue, are they prepared to live with individual decisions there? Talk to us some. And I'll yield...I'll get some time and yield to you my time. But talk to us some about that situation and why it's okay in this bill not to include those who are a danger to themselves.

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Thank you, Mr. President. Thank you, Senator Beutler. I think that we're, through the objective assessment process and through the risk assessment process, that is, the risk assessment process already in place, the objective assessment process being refined, and we have what we call the ICAP which has been the customary type tool to use in assessing people with developmental disabilities. The advocacy community, persons with disabilities themselves, in coming together with the Department of Health and Human Services and others, myself included, have...want to deal with this issue exactly. And the fact that we want to be able to recognize that individual prior to those things happening; and we feel, with the science that we have today, that we can do that. If we don't initiate that assessment process, you have some of the problems you mentioned about persons harming themselves. Again, can we 100 percent guarantee that will never happen? No. But can we do everything we can to make sure that we get as close to 100 percent as

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possible? Yes. The purpose of LB 206 is to allow us, as a society, to get past where we are now, where the guardian...it's a voluntary arrangement. If those things are recognized and the state doesn't push it, they can, through the IEP process, they can in effect tell a guardian, say, hey, you're not acting in the best interest...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...of this individual, we need to make some changes. They can push it. But right now, everything is voluntary. If the guardian doesn't choose to get additional treatment or recognize this, we're stuck. If society says there's nothing we can do, you put them in jail. This is what we're trying to get past. With the assessment processes, we're going to identify these individuals early. If there is danger to themselves, it will be identified. Appropriate treatment can be designed. It's available and would be available to these individuals.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Johnson, advancement of LB 206.

SENATOR JOHNSON: Mr. President, members of the body, I rise for a very short period of time to express my support of LB 206. As you look around the room for those that have been standing and talking about this this morning, we're looking at those members of this body that have had years and years of experience, trying to help remedy the situation regarding these people. This...we're dealing with some of the finest feelings that this body embodies. Indeed, as we look back at what lit the match for this reform, it was a tragedy, and here is an opportunity for us to move in the right direction by what Senator Byars and others have put together with this bill. I would be hopeful, in fact confident, that the legal issues that Senator Chambers has pointed out to us can be resolved, as this bill is too important for them to be abandoned. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator Beutler, and this will be your third time, Senator.

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SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think Senator Byars gave a good explanation of the situation with regard to those who may do harm to themselves. And I think it's important that we understand, if I understand him correctly, that we've left a large measure of responsibility here in the guardians and in the caretakers, and they're not absolved from responsibility in any way and have a specially serious responsibility with regard to particular individuals who may have a tendency to harm themselves. The second and last question, Senator Byars, that I would like to have a short discussion with you on is the age limit in the bill. As I understand the bill, it applies, or can be applied, to individuals who are 18 and older. Is that correct?

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Yes.

SENATOR BEUTLER: Okay. As you know, in the criminal justice system and at least in the mental health act, I didn't see any age limitation there either. And in the criminal justice system, we may treat those who are younger differently but they're still taken into the system and dealt with in some comprehensive fashion. I'm not altogether sure I feel comfortable with a strict age limit, but maybe I would. In any event, give us the rationale for why this bill would have a strict 18 age limit when...and remembering now that we're talking about the bill itself which only applies to harm to others. So if we're talking about individuals, those very few individuals in the system who might have that potential, might not that potential exist before age 18, and should this not...should not this bill comprehend that possibility and allow in some way for the system to engage those people rather than what I presume to be the alternative that the system may simply throw those people in jail, for example, if they weren't satisfied with what the guardian was wanting to do? In other words, aren't we arguably better off allowing this piece of legislation to create a new situation, even for people that are younger than 18, than to endure the old system in the case of those under 18? That's my question, if I haven't made it too complicated.

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SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Thank you, Senator Beutler, and I wish I could give you a very wise and informed answer to your question, and I can't. I presume there is an answer and a reason why those people who constructed the terminology within the legislation, that they made that decision. I honestly can't tell you what that is. What I will do is I'll find out, and between now and Select File, will look to see if for some reason in the quirk of the law, this needs to be this way, or whether there's a way that we can construct it to better meet the concerns...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...that you have. But I can't honestly give you an answer to that because I don't have one.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Byars, that's a completely satisfactory answer, and I wish to not impede the movement of the bill another minute. It's a great bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Byars, did you wish...yours is the last light, if you wish to speak or close.

SENATOR BYARS: I'll close.

SENATOR CUDABACK: You may do so.

SENATOR BYARS: Thank you, Mr. President. Thank you, colleagues, and thanks to all of you who have been part of the debate. And I've watched all of you who haven't been listening very carefully, and we appreciate that very much. This is extremely important legislation, and I think because of that it rightfully received the type of attention, dialogue, concerns, that any good piece of legislation should receive. I want to particularly thank Senator Jensen also, our Committee Chair, although this bill was in Judiciary. Senator Jensen has long

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been a champion of people with disabilities, and understands the issues, and I certainly appreciate his support and all of the Health Committee's support. And Senator Bourne and his Judiciary Committee were open and willing to work involving everybody within the disability community. And Senator Chambers, I'm very respectful of your concerns and, as we have agreed, we will work between now and Select File to try to make sure that we have a bill that's going to do what we all want it to do. And that's to protect society but, at the same time, make certain that appropriate placement and appropriate treatment is given to those people with developmental disabilities. And Senator Beutler and Senator Schimek, thank you for your dialogue. I appreciate it. I would ask that you advance LB 206 to E & R Initial as amended, and thank you very much for your involvement this morning.

SENATOR CUDABACK: Thank you, Senator Byars. You've heard the closing on advancement of LB 206. The question before the body is, shall LB 206 advance to E & R Initial? All in favor vote aye; those opposed, nay. The question before the body is advancement of LB 206. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB 206.

SENATOR CUDABACK: The motion was successful. LB 206 advances. Mr. Clerk, items for the record, please.

CLERK: Mr. President, a series of resolutions: LR 55, Senator Byars; LR 56, Senator Byars; LR 57, Senator Stuthman; LR 58, Senator Heidemann. Those will all be laid over. A series of committee reports: your Committee on Health, chaired by Senator Jensen, reports LB 480 to General File with amendments; Education, chaired by Senator Raikes, reports LB 460 to General File; Banking Committee, chaired by Senator Mines, reports LB 498 to General File with amendments, and LB 655 indefinitely postponed; Transportation, chaired by Senator Baker, reports LB 558 to General File; LB 587, General File; LB 82, General File with amendments; LB 288, General File with amendments; LB 438, General File with amendments; LB 663, General File with

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amendments; and LB 136 indefinitely postponed. Confirmation hearing reports from the Transportation Committee, two separate reports. And amendments to be printed: Senator Kruse to LB 107; Senator Howard to LB 177; Senator Louden to LB 739. And Mr. President, I have the designated Speaker priority bills list as provided by the Speaker, to be inserted in the Journal. (Re: LB 4, LB 47, LB 101, LB 193, LB 218, LB 227, LB 237, LB 256, LB 274, LB 276, LB 389, LB 407, LB 465, LB 484, LB 505, LB 545, LB 557, LB 566, LB 664, LB 682, LB 683, LB 693, LB 703, LB 761, and LR 2CA.) That's all that I have, Mr. President. (Legislative Journal pages 859-870.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, LB 268.

CLERK: LB 268 is a bill by the Urban Affairs Committee and signed by its members. (Read title.) The bill was introduced on January 10 of this year, referred to the Urban Affairs Committee, advanced to General File. At this time, I have no amendments to the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Friend, Chairman of the Urban Affairs Committee, you're recognized to open on LB 268.

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, LB 268 involves the Volunteer Emergency Responders Recruitment and Retention Act, proposing to change the nature of the trust fund holding the assets for a service award program to ensure that benefits accruing to individual participants are not taxable in the year which they become nonforfeitable. The act...LB 849, adopted in 1999, established the authority for first and second class cities, villages and fire protection districts to establish service award benefit programs to encourage the recruitment and retention of volunteer firefighters and rescue squad personnel through the adoption of the volunteer emergency responders recruitment and retention incentive act. Individual cities, villages, fire protection districts or combinations of them could establish service award benefit programs which would qualify persons who met specified service criteria to receive service benefit awards based on at least ten years of continuous active service. The awards would

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then be calculated on an annual contributions individual accounts made by the sponsoring municipality or fire protection district. At such time as the qualifying individual reached the age of 65, he or she would receive the entire amount in his or her account as a lump sum or as an annuity. The legislation here, or the potential legislation, is not mandatory. It merely authorizes the cities, villages and fire protection districts, if they choose to do so, to implement a service benefit award program. The amount of money would be appropriated for the program was left exclusively within the discretion of the sponsoring body and could be increased, decreased or ended at any time, subject to only the rights of those members who had already qualified for service benefit awards. The basic concept of the VERRRA was made possible by federal legislation adopted in 1993. The authorization of the creation of service benefit award programs, and provided that benefits accrued by the volunteer for each year of service, would not be counted as taxable income to the individual beneficiary, if the program was properly created. Thus, the volunteer would not be required to report or pay taxes on those benefits accrued under the program, even if they were nonforfeitable or vested, until the volunteer has retired and began spending the earned benefits. Therefore, the reason for the change here. Concerns have been raised about the current provisions in the act in light of IRS rulings on similar programs in other states. Because Section 35-1324 creates a funded arrangement where the assets are held in virtual and viable trust for benefit of volunteer, that has qualified for the ultimate benefits...or payment of the benefits, there is a possibility that benefits could be considered by the IRS to be taxable to the volunteer in the year that they were earned. To avoid this circumstance, the amendment proposed in Section 3 would provide that the assets would be placed in a grantor trust within the meaning of the relevant provisions of the IRS Code, which is on page 5, lines 11-14 of the bill. This would be structured to provide to provide some security for the sponsoring political subdivision without penalizing the individual participating volunteer by creating a current tax liability. This is accomplished by making the funds set aside for the programs subject to creditors of the city, village, or fire protection district in the event of insolvency or bankruptcy of those subdivisions. The assets

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set aside for the volunteer would not be subject to attachment for debts of the volunteer until final distribution. Also, a new subdivision to Section 35-1324 is added, authorizing the subdivision sponsoring the program to include any trust...in the trust, any provisions deemed necessary to ensure that the benefit accrued...benefits accrued are not taxable to the beneficiary until distribution. This is the core issue of the bill. There are other matters that are dealt with in the bill. Section 35-1310 is amended in Section 1 of the bill to make it clear that the certification administrator of any program must make annual status reports to the governing body of the political subdivision sponsoring the program, and not just one report at the beginning of the year. Second, 13...35-1312 is amended to authorize graded vesting in the local program. Third, Section 35-1330 is amended in Section 4, to authorize at the discretion of the sponsor that forfeited amounts, funds set aside for the volunteers who do not vest in the serving...by serving sufficient time, be used to reduce the amount of current or future obligations of the sponsor to total awards...to the total awards benefit program. Finally, just to sum up here, I wanted to say thank you, Senator Carol Hudkins, for making this a personal priority; also to the Urban Affairs Committee for the work on this bill. I would ask, with that, the advancement of LB 268 to Select File. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Friend. Senator Friend, your light...did you wish...thank you. Senator Hudkins.

SENATOR HUDKINS: Thank you, Mr. President and members of the body. Yes, I did take LB 268 as my personal priority. In years past, I have sponsored other legislation that would benefit volunteer firefighters. If you were here, you remember the workers' compensation bill that we worked on a year or so ago, and that one would say when exactly the firemen or the rescue responders were covered for workers' compensation purposes. This bill is necessary because, as Senator Friend said, the IRS has been looking at this with the idea that if this...if these monies are set aside for a specific purpose, then it could be that the people whose benefit they were set aside for may be taxed in the year that they are vested, rather than when they reach their retirement years. I want to do everything that we

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can to recruit and to retain volunteer firefighters and emergency responders. Over the years, we have had the opportunity or the occasion or the bad fortune to have to call the fire department three separate times. And they always were there, they...four times, actually. They always were there, they did their job, and they did it proficiently, and they left and no...no thanks were asked. This is a way that we can thank them for making sure that they are not taxed unfairly for these benefits. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Hudkins. Senator Beutler, on advancement of LB 268.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Friend, just a couple of questions, if I might.

SENATOR CUDABACK: Senator Friend, will you yield?

SENATOR FRIEND: Yes.

SENATOR BEUTLER: I want to direct your attention to the new language at the bottom of page 4 of the bill. And actually both the questions that I'm...that I'd like to ask are based on my own ignorance, so please don't take them as critical in any sense. On page 4, it says: Nothing in this section shall be construed as preventing a city, village or rural or suburban fire protection district from establishing a vesting schedule under which a stated proportion of the participant's interest in his or her annual accounts become nonforfeitable upon completion of a specified number of years of service, subject to three different sections of statute. If you just read that provision, without going back and looking at those three subdivisions of statute, it would seem to indicate that it's at the complete discretion of those governmental subdivisions to say when year one, year two, year five, up to year ten, that the right of the participants to have vested is his or her contribution. First of all, since I haven't read the sections it references, I assume those references don't change that prerogative on the part of the political subdivision. Is the fact of the matter that, under the green copy of the bill, a political subdivision can have the "vestiture" take place at any point in time

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starting from the very beginning when payments are made? I would yield to Senator Friend for a response.

SENATOR CUDABACK: Senator Friend.

SENATOR FRIEND: Senator Beutler, that's my understanding. And if I understand your question...the answer to your question is yes. And if I understand your question, if I'm deciphering it properly, because this is...we're changing it to a grant...excuse me, I believe the term is a grantor trust. It's my understanding that that language was needed because we made that change. Now I could be...I could be off the beam on that. But because we did that, we're establishing the powers for the city that they may not have necessarily had before because they are now a grantor trust. Does that make sense? A grantor trust, meaning that they're essentially going from what was a...I hesitate to look over to Mr. Stadtwald there because I'm probably getting myself into trouble. But the point is, that got...that put us in the situation where that...it's my understanding, where that language is needed. We changed what the city was actually calling its trust. And I don't know if I'm answering your question properly.

SENATOR BEUTLER: It may be, Senator. I certainly don't know. But if there is a relationship, I guess we can...I can discover that off the floor. But the general question I had was, is this vesting provision, if exercised at its earliest point in time, consistent with the vesting provisions that are currently applicable to state employees, to school district employees, to all other kinds of employees?

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Because I wouldn't want to create a situation where we allowed some people to do it one way and some another, so that there was inconsistency and inequity and further arguments in the Legislature about what the appropriate vesting time is. But I really don't know the answer.

SENATOR FRIEND: Thank you, Senator. It's my understanding that that is not the case. This is not strictly, as intended by some

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of the points that you had made on...in using as examples, this is not a strict retirement type of program. I mean, because I think that we're...it's not something that the state is guaranteeing; it's something that's strictly voluntary, I think, for those municipalities. We're not creating the same type of entity here, or the same type of entity has not been created in the past, and we're not expanding on the same type of entity.

SENATOR CUDABACK: Time. Thank you, Senator Beutler. Senator Bourne, followed by Senator Beutler.

SENATOR BOURNE: Thank you, Mr. President, members. Would Senator Friend yield to a question or two?

SENATOR CUDABACK: Senator Friend, would you yield?

SENATOR FRIEND: Yes.

SENATOR BOURNE: Senator Friend, as I understand what you're trying to do with the bill is to make certain that the monies held in these trust funds are...they comply with IRS standards or statutes, and that it's not considered income to the individual who might receive this money. Is that accurate?

SENATOR FRIEND: That's accurate, Senator Bourne.

SENATOR BOURNE: Okay. And I understand that. Do you know about the underlying program? And if you don't, I'm sure it was put in before you were here. And as the Chair of that committee, I'm sure you have a number of issues to become familiar with and you might not be familiar with this. But I certainly am not. I'm curious, do you have a familiarity with the program itself?

SENATOR FRIEND: Senator Bourne, probably not much more than you do, based just the...when it was created, why it was created, that there were rural fire districts that believed that this could be a recruitment and retention tool. There were also folks out there that were...that believed it was something that was right to do for those rural firefighters. So from a high level, Senator Bourne, I don't know what were...how effective

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it's been. I can't really speak to how well, I guess, the...or how much the firefighters really enjoy and partake in it. But I can certainly get some of that information for you, if you'd like.

SENATOR BOURNE: Do you know when the bill was originally passed?

SENATOR FRIEND: In 1999, Senator Bourne.

SENATOR BOURNE: Okay. All right. And the money...so it's designed to do is recruit and perhaps provide some payment to the volunteer firefighters?

SENATOR FRIEND: I believe that that was...yes, I believe that that was one of the original, I guess part of...a purview of the original bill that they're looking at. I wouldn't say enticements, but the ability for some of these communities to offer some...yeah, I would say some enhancement to what they're trying to accomplish in those areas.

SENATOR BOURNE: And is it done in the guise of retirement pay? Because I read the bill and there's some language in here regarding vesting. So is it money that's up-front to entice...and "entice" is not a negative word, in my mind. Is it money up-front to entice individuals to become a part of the volunteer firefighter department, and then they get this upon retirement age?

SENATOR FRIEND: Well, Senator Bourne, I think you said it best, in the guise of a retirement plan. It's not the...it's not a, like you and I would get...well, actually we don't get retirement pay, do we? (Laugh) It would be...it would not be in the normal mode that you would expect a...from a collective bargaining agreement from a particular municipality that they would provide for their firefighters. So I think the point of your question, yeah. I mean, it's a tool, I think, and it's been used as a tool, but I don't think that's all it's for. I think it is something that can be seen as doing what's right for those firefighters, for the folks that are, you know, so...

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SENATOR BOURNE:      Good.      Is the money paid only upon retirement,...

SENATOR FRIEND:      Yes.

SENATOR BOURNE:      ...after they've served a number of years as a volunteer firefighter?

SENATOR FRIEND:      That...yes, that's my understanding.

SENATOR BOURNE:      And do you know how many years that is that an individual would have to participate on a constant basis in order to become eligible to receive some of these funds?

SENATOR FRIEND:      I believe the language is ten, but I believe 65 is also the age where, if you will, that money would be appropriated.

SENATOR BOURNE:      And is it...are the monies...are there any state contributions to this program?

SENATOR FRIEND:      No.

SENATOR BOURNE:      It's all a locality,...

SENATOR CUDABACK:      One minute.

SENATOR FRIEND:      Yes.

SENATOR BOURNE:      ...municipality?

SENATOR FRIEND:      Yes.

SENATOR BOURNE:      Do you know how many municipalities or cities or villages have set up such a...I guess it's a service award benefit program? Do you know how many communities have done this?

SENATOR FRIEND:      Senator, I should have that information here, and I don't. Call it a learning experience.

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SENATOR BOURNE: And, Senator Friend, I would understand that you wouldn't. I mean, I was just curious. I'm trying to get a sense of the underlying program. It's kind of hard to support a bill that changes a program that you don't understand to begin with,...

SENATOR FRIEND: Right.

SENATOR BOURNE: ...that I don't understand to begin with. And I'm...that's not a criticism against you at all. I'm just trying to get a sense of where the money comes from. But it is a local contribution to this fund?

SENATOR FRIEND: That's correct.

SENATOR BOURNE: Okay. And you're changing the bill in that in order to comply with the IRS guidelines, that these monies would be held in account by the city, but they could be attachable if the city had...if it had a suit or a judgment or a lien placed upon it.

SENATOR FRIEND: Or it goes bankrupt, right. That's right. What we're...

SENATOR CUDABACK: Senator Bourne.

SENATOR FRIEND: ...because we changed...because...

SENATOR CUDABACK: Time is up.

SENATOR FRIEND: ...in order...oh.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Friend, my second question. And this is going to sound a little bizarre, but a couple of very bizarre things have happened in my time in the Legislature. And maybe this relates to what Senator Bourne is getting to, but on the bottom of page 5, it is the language that sets up some kind of trust, and the deposits are made into the trust. And then it goes on to say "until paid to participants or their

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beneficiaries, are subject to the claims of the creditors of the city, village, or rural or suburban fire protection district conducting the program in the event of the insolvency or bankruptcy of the city, village, rural or suburban fire protection district." The likelihood of an insolvency involving a city or village, probably even a rural or suburban fire protection district, is not...is highly unlikely, of course. But we had an insolvency in the mid-1980s where an industrial bank failed. We had set up a system that was inadequate. The state didn't have formal liability for it. There was nothing in the statute that said we had to pay these people who lost their money because of the system we had set up. But the argument was made that there was a moral obligation there because we set up a system that we should have known simply wouldn't work. My question is this. First of all, in a legal sense, should a rural fire district, for whatever reasons become bankrupt or insolvent, as I understand this bill, they could take the money in the trust and pay the claims and they wouldn't have to pay these people who had put the money aside in the trust. In other words, I could work for 40 years, have all this money in the trust; if this admittedly rare event occurred, and the creditor did have a legitimate claim on the money, all of the money, then the individual participate would simply not be paid. Is that accurate?

SENATOR FRIEND: That's accurate.

SENATOR BEUTLER: Okay. So then following that, would it also be accurate to say that the state had no liability, no legal liability whatsoever, to reimburse those persons for that lost money?

SENATOR FRIEND: That's correct.

SENATOR BEUTLER: Does the state have a moral obligation to reimburse these people for that money?

SENATOR FRIEND: Well...

SENATOR BEUTLER: I mean, if that happened, would you be standing up on the floor here arguing that we should probably

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pay them that money?

SENATOR FRIEND: In...I think some could argue, and I would probably be one of them, Senator Beutler, that the state has not...this is a voluntary program and the state has not insisted that these municipalities take part in it and these rural...these subdivisions take part in this. So I would answer the question by saying this. If a municipality were to go bankrupt...goodness knows we don't, obviously, want that to happen, but I suppose it could. And if it did, and they started tapping into these funds, those particular people that are tapping into those funds are going to be held accountable by those voters,...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: ...and the firefighters, all the other voters who know that this is happening, going to be held accountable at a local level for taking advantage of a benefit that wasn't theirs to try to get out of that type of debt. So I mean, Senator, I think that there is some accountability, even though it might not be the state's. But the state is not telling those subdivisions to do this. It's just saying, this is a benefit to you, you can frame it and shape it how you'd like, so.

SENATOR BEUTLER: Senator, yeah, I understand that. And back when the industrial banks failed, nobody told them to create the banks. It was discretionary. And nobody told the people to put their money in that bank. That was discretionary. But nonetheless, in the face of individual pain and loss...

SENATOR CUDABACK: Time. Thank you, Senator Beutler. (Visitors introduced.) On with discussion, Senator Bourne, followed by Senators Connealy, Beutler, and Friend.

SENATOR BOURNE: Thank you, Mr. President and members. Senator Friend, would you yield to another question or two?

SENATOR FRIEND: I will.

SENATOR BOURNE: Thank you, And again, I'm not trying to

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concentrate on your carrying of the bill, and so please just, you know, help me out if you can. Is there, if...okay, say the municipality or the village or the city has some financial problems such that a creditor attaches a lien and gets these funds. Is there any liability to the state by those funds being gone?

SENATOR FRIEND:      I'm sorry, Senator Bourne, the state? What...can you repeat? I'm sorry.

SENATOR BOURNE:      Well, okay. As I understand it, there's a certain account that's set up for these volunteer firefighters so that they can get some money when they leave. And Senator Baker, in passing, said it's really a nominal amount. I appreciate that. But I want to know is, all right, say the village of "X" has a fund set up for its half a dozen or dozen volunteer firefighters, and somehow they run into money troubles. They have a judgment against them, and somebody attaches to the city's assets. And as I read under the green copy of the bill, they can attach to this fund. Is that right?

SENATOR FRIEND:      That's correct.

SENATOR BOURNE:      Okay. So if that money is attached and it's gone, basically it's paid out to a creditor, the city would still have an obligation to pay those monies to the volunteer firefighter who later retired. Is that accurate? I mean, they would have...they would have to live up to the vesting schedule established. Correct?

SENATOR FRIEND:      No. Well, this...because of the nature of the...because of the nature of this statute, that would not be the case, Senator Bourne. I mean, we're talking about a risk and reward type of situation and, hence, the reason, you know, for a bill like this because the risk...they would rather have the risk be that of the solvency of a city, I guess, as opposed to the IRS coming and taking hold of those funds and taxing them before they're, you know, ready to be used. So...

SENATOR BOURNE:      Right. I guess, again, what I'm trying to establish is what liability the state might have if there is

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some sort of a forfeiture. And if you read the bill on line...or page 4, down at the bottom, it said "which a stated proportion of a participant's interest in his or her annual accounts becomes nonforfeitable upon completion of a specified number of years of service." So that means, to me, if the city sets out a vesting schedule of, say, 10 years or 20 years, that individual meets that, they do their 10 years so they're entitled to what...I think it's 50 or 60 percent under the bill, and somehow the city doesn't have the assets or the funds to pay that, for whatever reason, whether they were sued and lost a judgment; what I'm wondering is is...I don't...I read it the obligation doesn't go away. Is there ever a way or a point where that obligation could become the state's if the city, village, or municipality is unable to pay under the vesting schedule?

SENATOR FRIEND: Senator, it's my understanding that that obligation cannot become the state's.

SENATOR BOURNE: Okay.

SENATOR FRIEND: That's my understanding, and not only from the current statute and any changes that we are proposing to make here. The obligation cannot become the obligation of the state.

SENATOR BOURNE: Okay.

SENATOR FRIEND: It is the obligation of the city.

SENATOR BOURNE: And, Senator Friend, you might not know this and I really wouldn't expect you to know that, but do you know how much money is being held in these accounts statewide now?

SENATOR FRIEND: I'm sorry, Senator, I do not know. And I can find that out, too, and we can talk about it.

SENATOR BOURNE: Okay. But, so long as there's no way that this obligation would be transferred to the state.

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SENATOR JANSSEN: One minute.

SENATOR BOURNE: And you're saying, the way it's drafted, that that cannot happen.

SENATOR FRIEND: Right. And that's one of the concerns that I actually discussed with staff members, that because we are...this almost is a trade-off, that we're saying that these firefighters would rather have the opportunity to reap the benefits of their, you know, of their, I guess, the type of pension that they're creating here, that they'd rather have that unfettered by IRS intervention, I guess, and then take their, you know, chances at having a second class city go bankrupt, I mean, which like we all hope that's not going to be the case. But the obligation is the city's.

SENATOR BOURNE: And unlikely that it would. Senator Friend, thank you for your patience in answering these questions.

SENATOR JANSSEN: Thank you, Senator Bourne. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President and members. I was on the Urban Affairs Committee. The first time we tried to pass this bill, it actually had state funds in it, and it had, you know, a state benefit that would go out to volunteer fire departments. And I was in support of that then. We didn't put that in place, so we put a smaller program in place to allow cities to structure a benefit for their volunteers. And what this refining of this act does, it allows it to fit with federal code and it also leaves an opening there if the fire department or the city gets in trouble that we can use that funds. I don't think that will happen ever. If it does, then I think that ought to be part of this, because it is a benefit for a volunteer and it is not obligated for these cities or these fire departments to do this. Now they're doing it if they have the resources and if they have the ability to give this benefit to try to attract firefighters. We have a graying population, especially in rural communities, of firefighters, and it's tougher and tougher to get them to come out and do the work that they need to do to protect us all. And any benefit that we can give...if we could do it on a state level, I'd like to do that,

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but we haven't ever been able to get those kind of resources ahead to be able to do that. I support the Urban Affairs work on this, and I support the bill, and I urge you to, also.

SENATOR JANSSEN: Thank you, Senator Connealy. Senator Beutler. And this is your third time, Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Janssen. Senator Friend, I think we've established...Senator Bourne has established through your conversation with him and through the previous conversation, that there is no legal liability on the part of the state in a technical sense. But I indicated to you earlier that concept of moral obligation that can be forthcoming in the event that individuals are taken unawares and don't have a full appreciation of what could happen in the future. When we went through the Commonwealth experience, we left one savings and loan company in existence that didn't have FDIC coverage. And you may remember, Senator Mines and Senator Bourne, I think they participated in a conversation earlier this year about that savings and loan that had no FDIC coverage. Well, you know, to a certain extent, depositors were exposed there. However, one of the things we did in the...after the Commonwealth foreclosure with regard to this particular savings and loan, was to require a notice in their standard forms indicating to each and every depositor in very big letters and several times a year that your deposit is not covered by FDIC and you're at risk. And there's some more language in there. I'm not sure what all it says. But it seeks to make absolutely clear to every depositor that there is a risk associated with that deposit and it's a risk that's different from the risk that most banks present, and here we're telling you about it, and if you want to take that risk, fine. Would you have any objection to language in this bill which simply made a part of the boilerplate of the bill some sort of notice that said: We're doing this for your benefit in order to maximize or to minimize the tax effects of what we're doing for your benefit; however, it is subject to the claims of creditors, et cetera, et cetera, in the event that a bankruptcy or insolvency occurs. Would it make any sense to, on Select File, look at that kind of notice to these people so that no possibility of a moral obligation on the part of the state rose up at any point in time? I would yield to Senator Friend.

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SENATOR JANSSEN: Senator Friend, you have two minutes.

SENATOR FRIEND: Thank you, Senator Beutler. Senator Beutler, I think that would make sense, and I think...I don't know what the fine print looks like right now. Let me give you a quick analogy. There's a significant difference between the way I look at my place of business, at my 401(k), and the way I may look at a pension that I have, or the way I look at Social Security, the way the government is supposed to...the way, you know, the way that's supposed to be implemented--significant difference between the ways that I look at those things. What that fine print says right now, yeah, we can look into, and also I think...to answer your question, I think it does make sense to investigate that and make sure that for as much protection as we can provide for people. Understanding is protection in this situation. And if we can provide that type of understanding, I would be very willing and open to discussing that between now and Select File. The other thing I'd add,...and I've got my light on, too, so if you need time, Senator, you're welcome to have it. The other thing that I'd add is that you have been, in a lot of different ways, an advocate or, especially lately with term limits, the idea of local control and the way we can produce better results for our citizens based on some of the things that are going to happen from a statewide standpoint and from a state law-making standpoint. What I would say is those fine points and the things that are happening now could be happening at a...and I can get that information, too. I don't have that at my fingertips. But I hope that a lot of that understanding is there from a local standpoint right now, that I hope that these firefighters are saying, hey, by the way, you do realize that if, you know, our town goes bankrupt because we are now a grantor trust, I mean, the game changes a little bit. So what I would say is I don't know what kind of local control, what kind of information is out there on this issue right now, but we can discuss that as well. And I would say that it would be...

SENATOR JANSSEN: Time, Senator Friend. But your light is next, so you can continue.

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SENATOR FRIEND: Thank you. Thank you, Mr. President. I would just say, with that in mind, I would hope...you never plan on that information being available. Unless I looked into 401(k)s and things that...I mean, they're not force-feeding it and spoon-feeding it down my throat; you have to actually look into that type of stuff. But I think this is a situation that we can deal with and maybe provide some implementation to if it's not there, in order... because it probably is the right thing to do. So I would yield the rest of my time to Senator Beutler, if he'd like it.

SENATOR JANSSEN: Senator Beutler, you have about four minutes.

SENATOR BEUTLER: Senator Janssen, Senator Friend, thank you. I don't need all that time. I think that answer is satisfactory. If we could just look at something that might make sense that wouldn't be a burden and could be built into the boilerplate, yet gave people full knowledge that there is a vulnerability here, however remote the occurrence may be, I think that might be helpful. And if you're willing to look at and it makes sense, we can do that between now and Select File. Thank you.

SENATOR JANSSEN: Senator Friend, there are no further lights on. Would you like to close?

SENATOR FRIEND: Just to say...thank you, Mr. President. Just to say that, again, I appreciate Senator Hudkins prioritizing this bill, the work of the Urban Affairs Committee. Thanks for the discussion. And I would say just to keep in mind one more thing. Because it is changing to a grantor trust, I think that that spurred some of the conversation here and I appreciate the conversation, because this is not changing significantly but it's changing enough that I think that it's important that the firefighters and the folks working in these rural communities understand what they're dealing with. With that, I'd ask for the advancement of LB 268. Thank you, Mr. President.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Friend. The question before the body is, shall LB 268 advance to E & R Initial? All

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in favor vote aye; those opposed, nay. Have you all voted who care to? Record please, Mr. Clerk.

CLERK:      34 ayes, 0 nays, Mr. President, on the advancement of LB 268.

SENATOR CUDABACK: LB 268 does advance. Mr. Clerk, LB 439.

CLERK: LB 439 was a bill introduced originally by Senator Kremer. (Read title.) Introduced on January 13, referred to the Agriculture Committee for public hearing, advanced to General File. I do have committee amendments, Mr. President. (AM0628, Legislative Journal page 755.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Kremer, to open on LB 439.

SENATOR KREMER: Thank you, Mr. President and members of the body. LB 439 addresses an issue that has come to light since the enactment of LB 735 two years ago. Although there were agreements among the grain industry and the Public Service Commission on the basic goals of LB 735, there's been an ongoing dispute over interpretation of a key provision in that bill with respect to certain delivery, direct delivery, transactions. That's just a little bit of background. And I handed out a diagram here. I've taken what Senator Landis always does and draws a diagram that's much easier to understand. In the first item on there, standard delivery, is kind of what the way deliveries are made in the past for many, many years, where the producer would take his corn or his grain to the warehouse or to the elevator, and two things he could do. He could sell it for cash and get dollars back, or he could put it on storage to sell at a later date sometime and pay storage on it. The second was direct delivery shipments, and that was kind of what happened as things change over the years, and ethanol plants and feed lots come in existence, and that's what LB 735 pretty much addressed two years ago, created a grain dealer's license and a bonding mechanism for those that just handled in the dealer's situation. The diagram there, if the producer wants to sell some grain to the elevator and the elevator says, I've sold grain to this ethanol plant; if you'll deliver directly over there, then the

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ethanol plant actually pays the warehouse or the elevator; the elevator pays the producer. In the last one on the diagram is what we're dealing with today, and that's what the dispute has kind of been since two years ago. The farmer says he wants to take his grain to the elevator for a storage position on it, and the elevator says, well, I've sold all this grain to the ethanol plant; if you'll deliver directly, I'll pay you a little more, and I will get paid from the ethanol plant, and I will give you a warehouse receipt or a storage position; we'll never transact any money. And then we...it was still...actually, I should go back a little bit. The Public Service Commission did write up the rules and regs, sent them to the Attorney General and to the Governor, and they determined that you could not do this, that we could not do this transaction. If you're going to get storage, you had to physically deposit it at that elevator, and we could not make these transactions. And it was something that really had been going on for some time, maybe a little under the radar screen. But when they tried to put it in the rules and regs, we got nowhere. So with many meetings with the industry and with the Public Service Commission, and a lot of explanations of what they wanted, the Public Service Commission, who has been great to work with, did say that they thought they could make it work, and they started writing rules and regulations. And they pretty much...their rules and regulations were exactly what the bill said. But feeling that we still needed something in statute, we introduced then the committee amendments, which are really the bill. So at this time I guess I would like to close on the bill itself and open on the committee amendments.

SENATOR CUDABACK: And you're recognized to do that as Chairman of the Ag Committee, Senator Kremer.

SENATOR KREMER: Thank you, Mr. President. As I stated, the committee amendments do become the bill, and we strike a lot of the original provisions that are in the bill. And the amendment substantially revises the bill but carries out the original intent. It's somewhat different, a simplification mechanism. As amended, the bill would essentially codify pending regulations and resolutions that overlap the grain dealers and warehouse act application and direct delivery grain intended for

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storage. Since the introduction of LB 439, we've continued to work with the Public Service Commission and the industry to reach a resolution on the interpretation of this. The Public Service Commission has offered versions of proposed rules to implement the portion of LB 735 that is addressed in LB 439. The parties are now in agreement, and largely the version incorporates many of the concepts of LB 439. The provisions in the amendment, I will just kind of quickly go over them. Defines new terms for common usage of both grain dealers and Grain Warehouse Act. These terms mirror pending definitions that the PSC is putting in their regulations, and they include a direct delivery of grain, the definition of direct delivery obligation, definition of in-storage transfer, post-direct delivery storage positions, and it retains the Revisor's view of the definition of grain dealers for clarity. Some of the parts of the amendment are, it omits the grain dealer's payable concept of the original bill, but retains a similar concept by amending 75-905 to the Grain Dealers Act. The amendment clarifies that a warehouseman's grain dealer's security secures payment for the value of the direct delivery grain until such time as the post-direct delivery position is consummated, up to 30 days. The grain dealer's security includes the value of the direct delivery grain on the date of delivery, excluding direct delivery grain if it is satisfied that same day. So you have some time period for the paperwork to be transferred between the direct delivery and the warehouse unless it would be done the same day; then the grain dealer's bond does not cover. The bond for the grain dealer covers until the paperwork is done, then the bond is covered by the Warehouse Act. It omits the certified elevator concept in the original bill. The original bill stated that only those could direct delivery. If they were certified, they had to give a financial statement, and many other things. Felt like it was too cumbersome, and it would eliminate some of the smaller elevators to do this; and the Public Service Commission felt like it was not necessary, so that's eliminated. It omits the provisions in the original bill creating a new disclosure form, and also omits the authorization of issuing scale tickets. This is all done in the rules and regs now. They will design a scale ticket that works so they can follow the paperwork through, so it did not have to be in the original bill. An express prohibition against recording

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grain as physically delivered. You cannot say that it was physically delivered; you have to say it was substituted if it was not physically delivered. The amendment retains the provision that allows warehouses up to...to use up to 70 percent of their appraised value of real assets in determining whether the warehouse meets the net worth requirements. If an elevator has to say that they have a net worth of so much, they can use 70 percent of the value of their appraised value. Just a couple of other comments. The direct delivery activity is growing in importance. It provides efficiencies and additional options for producers to take advantage of premium opportunities. It helps retain the quality of the grain if it's not handled so much, and the machinery and the costs anymore of fuel and equipment, that it's very important that we be as efficient as we possibly can. We also met with the banking community to make sure that if there's a lien on the grain that the producers raised, that it...that lien could follow clear through with the paperwork, so when you have a storage position, that the bank would still have a lien on that when that corn has been substituted in the storage position. It retains the option that allows a producer to secure storage position under the Grain Warehouse Act at the end of the transaction. It provides a better definition and regulatory structure under the substitution transaction to occur, that the main bonding protection throughout the transaction keeps intact. Number two, it better assures that the substitution is carried out responsibly, and that the warehouse has grain to make that substitution. You got to make sure that they own the grain; they can't be substituting for something that they don't even have. It provides for a timely documentation of the transaction to allow producers to substantiate their status as a value...of a valid storer and owner of the grain for the purpose of protecting...protections offered under the Grain Warehouse Act. So make sure that there's still protection of the bonding all the way along. It really reinforces in the statute in the regulatory reform. So it's to put in statute some of the main things that we're trying to accomplish, but then the Public Service Commission is really covering most of the areas in the original bill with their rules and regs, and have been...we've had many meetings and it's been fun to work with the groups, and they sat down and really tried to work out something that's going to be beneficial to

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everybody. With that, I will ask your support for the committee amendments to LB 439.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the opening on the committee amendments. Open for discussion, Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I have a couple of concerns with this bill, and maybe I'd like to engage in a little bit of a dialogue with Senator Kremer, if I could, please.

SENATOR CUDABACK: Senator Kremer, would you yield?

SENATOR KREMER: Yes.

SENATOR STUTHMAN: Senator Kremer, delivering to a point and then getting a warehouse receipt at another destination or another storage place, is this going to have any problems with the Farm Service Agency Commodity Credit Corporation with, you know, losing the beneficial interest in it? Or has that been run through the Commodity Credit Corporation, you know, as whether you can LDP that grain? Does it have to be LDP'd on the grain that you delivered it to the feed lot? Or is it going to be just as we're planning that, you know, you still retain the ownership and going to the storage place? Has that been taken care of through the Commodity Credit?

SENATOR KREMER: Yes, that's a good question and we discussed that quite a bit on the original bill, and it was determined that you do lose your beneficial interest. And it was...we talked about having a documentation that you would give to the producer that he understood that if he did...went through this direct delivery, he would lose the beneficial interest. So as long as he knows that and he needs it, then he would not be able to participate in the direct shipment. He would have to literally take his grain to the storage position in order to keep the beneficial interest. And we checked with the FSA, and that was the determination so far. Now it could be that they would change that, but right now the farmer would have to be notified by some kind of a disclosure saying that you do lose

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beneficial interest. So then they would not want to participate. Thank you.

SENATOR STUTHMAN: Yes. That was a concern of mine, because I think, you know, that can be handled through communications of the FSA in their newsletters, you know, but I think that is something that needed to be identified because...but realistically with this bill, the owner of the grain would still have that amount of bushels in a warehouse or a storage facility, the way I understand this bill, it's going to go. But his beneficial interest in the grain has been terminated when he delivered it to the feedlot or to the ethanol plant. And at that time, that date, or prior to that date, that's when he would, you know, if there was an LDP program at that time, then he would have to take that portion of it. So that's the way it's going to be handled then, Senator Kremer. Is that correct?

SENATOR KREMER: That's correct.

SENATOR STUTHMAN: Okay. Thank you. That's all the questions I have. Thank you, Mr. President. I'll return the balance of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Kremer, there are no further lights. You're recognized to close on the committee amendment, AM0628.

SENATOR KREMER: Well, I would just simply say that this is a procedure that I think is very important to retain efficiencies and as the costs go up, and anything we can do to saving the handling of grain to retain the quality that we want to do, that's something that is kind of being done but it needs to be in statute. And the Public Service Commission is writing the rules and regs to do this, and I think that everybody is on board, and I think it can be done in a very efficient manner. So with that, I'd ask your support for the committee amendments to LB 439.

SENATOR CUDABACK: Thank you, Senator Kremer. The question before the body is, shall the committee amendments be adopted to LB 439? All in favor vote aye; those opposed, nay. The

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question before the body is adoption of the committee amendments offered by the Agriculture Committee. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted.

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

SENATOR CUDABACK: Open for discussion on advancement of LB 439. There are no lights on. Senator Kremer, you're recognized to close, if you care to, on advancement.

SENATOR KREMER: Okay, thank you, Mr. President. Just to remind you that the committee amendments are the bill, and ask for your support of LB 439. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. You've heard the closing on advancement of LB 439. The question is, shall LB 439 advance to E & R Initial? All in favor vote aye; opposed, nay. Have you all voted on the advancement of LB 439 who care to? Record please, Mr. Clerk.

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB 439.

SENATOR CUDABACK: LB 439 does advance. Mr. Clerk, items for the record.

CLERK: Mr. President, Enrollment and Review reports LB 66, LB 66A, LB 71, LB 71A, LB 139, LB 264, LB 441, as correctly engrossed. Your Committee on Judiciary, chaired by Senator Bourne, reports LB 117 to General File with amendments, LB 361 to General File with amendments. Amendments to be printed: Senator Jensen to LB 382; Senator Chambers, amendments to LB 563. (Legislative Journal pages 870-873.)

Mr. President, I have a priority motion. Senator Cunningham would move to adjourn until Wednesday morning, March 16, at

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9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn to 9:00 a.m. Wednesday, March 16. All in favor of the motion, say aye. Opposed to the motion, nay. We are adjourned.

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