

MARCH 16, 2005

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Pastor Tom Peyton, from Ord Evangelical Free Church, Ord, Nebraska; a guest of Senator Erdman and Senator McDonald. Pastor.

PASTOR PEYTON: (Prayer offered.)

SENATOR CUDABACK: Thank you very much, Pastor Peyton. Pastor Peyton is from the 47th District. I call the forty-fifth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please check in. Please record, Mr. Clerk.

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

SENATOR CUDABACK: Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Reports, messages, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and engrossed LB 9, LB 55, LB 78, LB 97, LB 105, LB 115, LB 122, LB 201, LB 205, LB 241, LB 247, LB 259, LB 291, LB 306, LB 306A, LB 319, LB 320, LB 331, LB 342, LB 380, LB 396, LB 402, LB 406, LB 450, LB 451, LB 453, LB 471, LB 475, LB 476, LB 501, LB 525, LB 528, LB 534, LB 544, LB 626, LB 639, LB 640, LB 676, LB 754, and LB 762; all reported correctly engrossed. I have a gubernatorial appointment to the Nebraska State Fair Board, Mr. President. That's all that I have at this time. (Legislative Journal pages 875-877.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Members, it's a little "buzzy" in here, so please hold the conversations down, if you would, please. We now to go Select File, 2005 committee priority bills. Mr. Clerk, LB 570.

CLERK: Senator Flood, LB 570, I have Enrollment and Review amendments. (AM7027, Legislative Journal page 633.)

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SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 570.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 570. All in favor of the motion say aye. Opposed to the motion say nay. The E & R amendments are adopted.

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

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 570 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion, advance LB 570 to E & R for engrossing. Discussion? Seeing none, all in favor say aye. Opposed, nay. LB 570 is advanced. Mr. Clerk, General File, 2005 committee priority bills. Mr. Clerk, LB 588.

CLERK: LB 588, Mr. President, introduced by the Performance Audit Committee and signed by its membership. (Read title.) The bill was introduced on January 18 of this year, referred to the Executive Board for public hearing, advanced to General File. There are committee amendments pending, Mr. President. (AM0472, Legislative Journal page 578.)

SENATOR CUDABACK: Senator Beutler, as Chairman of the committee, you're recognized to open.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this is a Performance Audit Committee bill and there are some short committee amendments, by and large technical in nature, so I want to take a little time to tell you what the bill is about so that you have a basic understanding of the bill before we get into the discussion. But it has to do with confidentiality and it has to do with giving the Performance Audit Committee, which is the performance audit group in our state government that does performance audits, giving them the same parallel authority that

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the Public Auditor has with regard to financial audits. This bill, from the way I envision it at least, is one of a number of things that the Performance Audit Committee is doing in order to hopefully have in place in two years, when term limits kicks in, a Performance Audit Committee that's...that is the best and the most that we can make it in terms of both the internal training, the internal structuring, the internal procedures, the personnel themselves, and likewise being sure that they have the different tools they need to operate effectively and immediately for a Legislature, that's going to need a high level of expertise when turnover becomes great, in order to function as well as it can. So this is...this is polishing one of those tools that is necessary in order to have a fully comprehensive Performance Audit Section that can really look over government spending anywhere. I want to just read from certain sections of the bill to you, and I'm going to start out on page 7, at the top, because on page 7 is the meat of the bill, and basically it says: "The section shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the section is denied such access by federal law," and that's an important exception because there are some places where federal law prohibits inspection of the records, "or explicitly named and denied such access by state law." That's the basic fundamental piece of the bill. Then down in subsection (2) on that same page, line 17, you'll see it explains a little further: "Except as provided in this section, any confidential information or confidential records shared with the section shall remain confidential." There's a misimpression out there, to some extent, that if confidentiality is breached by a Performance Audit Committee...and, by the way, all states have some form of performance audit committees and what we're doing is not at all unusual in terms of the powers that those units have...but many people have the misimpression that if a Performance Audit Committee reviews a confidential record, that somehow it then becomes a public record or everybody knows about it, but that's not true. It remains confidential and it goes on to say, "shall not be shared by an employee of the section," and by "section," that word is defined to mean the Performance Audit Committee itself, not the entire Research Division of which the Performance Audit Committee is a part, and not even...and not

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even members of the committee, not even the senatorial members of the Performance Audit Committee. They're not seeing the confidentiality...the confidential information either, except in the case if a dispute arises, then the Speaker of the Legislature, who is a member of the committee, can himself be included in the confidential...or herself, in the confidentiality and look at the document in order to resolve a dispute. It goes on to say then that if anybody in the legislative branch who has access to confidential information inappropriately divulges that information or makes it known in any way, they're subject to a Class III misdemeanor and, in addition to that, they will be dismissed from their job. And that would pertain...the divulgence of confidential information would also be a penalty with respect to any member of the committee who had access to confidential information. So that gives you a basic idea of what goes on there. I want to talk a little bit about confidentiality as it applies to the Department of Revenue, because I know that that is a particularly sensitive area with some people. And the pertinent information there on that starts at the bottom of page 15 and down about line 22, in subsection (10). And, by the way, these sections of statutes that I'm talking about now that we have amended to allow the Performance Audit Committee access to records are the Auditor of Public Accounts' records, so we're not asking for anything more for the Performance Audit Committee than what the Auditor has access to for the purpose of financial records. You know, we clarified, you may recall last year, we clarified that the Auditor does financial audits and the Performance Audit Committee of the Legislature does performance audit committees, and now that we've made that distinction we are amending the statutes to give us appropriate and equal, but not more, access. So, in the Auditor's statute, we amended what is there right now. It says the Tax Commissioner shall, upon written request of the Auditor, make tax returns and tax return information open to inspection by or disclosure to officers or employees of the Auditor of Public Accounts. It then goes on to outline some additional parameters that curtail the Auditor, in certain respects, with respect to how they do the audit in the Department of Revenue, and I will read a little bit more from that so you have a better sense of that. But I want you to understand that all we've done here is insert the words

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"Legislative Performance Audit Committee" in order to empower the Legislature to do the same kind of job that the Auditor would do and under the same parameters that the Auditor has but with respect to performance audits. When the Auditor or the Legislative Performance Audit Committee is doing work in the Department of Revenue with regard to income tax returns, they say that the audit shall be: statistically and randomly select the tax returns and tax return information to be audited based on a computer tape provided by the Department of Revenue, which contains only total population documents without specific identification of taxpayers. Okay? The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor, and then it says confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. Can't be taken off premises. And then it goes on to say all audit work papers pertaining to the audit shall be stored in a secure place in the Department of Revenue. In other words, the work papers can't even be taken off the Department of Revenue premises. So all those limitations that now apply to the Auditor...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...would also apply to the Performance Audit Committee. And then the penalty, the penalty for violating confidentiality in this area, that is the area of tax returns, is not a Class III misdemeanor but rather a Class IV felony. So it gets to be very serious business at this level. We treat tax returns with a high measure of respect and that will continue to be the case. I've given you some handouts. I gave you an Attorney General's Opinion so that you could see that we...in fact, it is dubious as to authority in several areas and we want to clarify that. I've given you the handout that shows the processes, the processes used by the Performance Audit Committee, how we go through the audit process, so I wanted you to see there are carefully laid-out procedures.

SENATOR CUDABACK: Time, Senator. Thank you, Senator Byars (sic). You've heard the opening on LB 588, Legislative Performance Audit Committee, by Senator Beutler. Open for discussion. Senator Smith, followed by Senator Redfield and

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others. There are committee amendments. Senator Engel, you're recognized, as Chairman of Exec Committee, to open on the committee amendments.

SENATOR ENGEL: Mr. President, members of the body, these are technical amendments, and the committee amendment to LB 588, AM0472, does three things. First of all, it reinstates existing language that was inadvertently stricken so that the Performance Audit Committee, in addition to the Performance Audit Section, continues to have the authority to inspect or examine agency records and documents. Second, the committee amendments add language to ensure that any consultant employed by the Performance Audit Section is subject to statutory restrictions on access to tax records, and subject to the penalty for violation of those statutes. And, finally, the committee amendment permits the Performance Audit Section to discuss or share confidential information with the Performance Audit Committee Chairperson, who would be subject to a penalty for disclosure of such confidential information. That's kind of the extent of it. I'd appreciate your approval of these and, of course, of the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. You've heard the opening on the committee amendments offered by the Exec Committee Board. Open for discussion. Senator Smith.

SENATOR SMITH: Thank you, Mr. President. Would Senator Beutler yield to some questions?

SENATOR CUDABACK: Senator Beutler, would you yield?

SENATOR BEUTLER: Yes.

SENATOR SMITH: Senator Beutler, I have been listening to your remarks and you basically said that you want to give the Chair of the committee as much authority to investigate, basically, as the State Auditor. Is that accurate?

SENATOR BEUTLER: That...let me...let me explain that in detail so that we're clear as to what happens. It gives the authority to do the audit to the section, that is the people, the

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employees, who are doing the performance audit. There is a situation, the committee amendment addresses it in part, but the Performance Audit Committee, as far as committee members are concerned, only the Speaker would be authorized to look at confidential information and then only in the instance of a dispute between some other agency and the Performance Audit Committee with regard to the validity of the audit that's being done, the credibility of the audit being done. And let me remind you that this committee has on it the Speaker of the Legislature, by virtue of his position; the Chair of the Exec Board, by virtue of his position; the Chair of the Appropriations Committee, by virtue of his position; and then four other members. That's what the green copy of the bill says. The committee moved to give the Chair of the committee authority with respect to confidential information in instances where the section needed guidance with respect to that question, and that's what the committee amendment did. So, of the members of the committee, only two, under certain circumstances, would have access, possibly, to confidential information.

SENATOR SMITH: Okay. Now, but this is access that's already established in the Auditor's Office. Is that accurate?

SENATOR BEUTLER: The access is already established in the Auditor's Office to investigate their records to whatever extent that statute, the current statute, allows and to whatever extent they may argue they have inherent authority, being Auditor, to look at records. I don't know what they would argue in that respect.

SENATOR SMITH: Right. And I guess my underlying concern is that we're duplicating some things that don't need to be duplicated. Because, in my experience on Government Committee in the past and so forth, it was my take on the situation that if the Legislature needed a kind of audit that they weren't able to obtain for reasons of personnel resources or otherwise, they would just go to the Auditor's Office, get that; and, likewise, if the Auditor needed some information that the Legislature only had the power to obtain, then the Auditor would come to the committee to get that. So I'm a little concerned that this is duplicating some things that don't need to be duplicated, but

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certainly...and I haven't even chatted with the Auditor about this. I'm just concerned, based on my experience in...on Government Committee over the last six years, have seen the situation kind of ebb and flow and evolve into various forms, and so I have concerns that this is duplicative in nature. Thank you, Mr. President.

SENATOR CUDABACK: One minute. Thank you, Senator Smith. And, for the record, Senator Beutler opened on LB 588, not Senator Byars. On with discussion. Senator Redfield.

SENATOR REDFIELD: Thank you, Senator, members of the body. I also have some questions for Senator Beutler, if he would respond.

SENATOR CUDABACK: Senator Beutler, would you yield?

SENATOR BEUTLER: Of course.

SENATOR REDFIELD: Senator Beutler, the Legislature has subpoena powers. Currently, I don't believe that we give the Auditor's Office subpoena powers. If we're going to do a parallel universe here, would we be restricting the subpoena powers of the Legislature in this instance? Do you know how that would work?

SENATOR BEUTLER: Senator, if we don't have access to the information, we can't get it with subpoena powers. If it's confidential information and we don't have access to it, we can't get it with subpoena powers. If we do, in fact, have access to it, if we need to use subpoena powers, we can do that.

SENATOR REDFIELD: All right. So...

SENATOR BEUTLER: That's not an authority that's given to us in this bill. That's an authority, when this Performance Auditor Committee was first set up, was...it was given to the committee.

SENATOR REDFIELD: Oh, I understand. That's why I was trying to ascertain how it would be different from the access that the Auditor's Office would have, since we have more power through

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the subpoena. And could you give us an example of what might not be available that we would have to exercise the subpoena powers to get?

SENATOR BEUTLER: Senator, I should have some more examples, but there are spread out throughout the statutes a number of confidentiality records, and if you...if you were looking at Medicaid reimbursements or that sort of thing, if at some point you wanted a certain type of information that may be defined as confidential, as many areas of health records are, then that might be an instance where you would...you would be empowered, by virtue of this bill, to look at those records.

SENATOR REDFIELD: And there would be no constraints under HIPAA, the federal law, trumping that?

SENATOR BEUTLER: HIPAA is a federal law, and to the extent that federal law prohibits a Performance Audit Committee from looking at the records, then the federal law would stand. We couldn't do anything about that. And...but interestingly enough, federal law generally recognizes the legitimacy of Performance Audit Committees at the state level, and with respect to tax records, for example, if a legitimate audit system is set up, then the federal government will approve that audit system for purposes of looking at confidential tax records.

SENATOR REDFIELD: All right.

SENATOR BEUTLER: And we would have to get that approval, too, by the way. I mean, if we get these laws in place then, with respect to tax records, we're going to have to go back to the federal government and say we have a...we have a legitimate Performance Audit Unit here and we would like to have the authority to review confidential tax records if needed.

SENATOR REDFIELD: All right. Thank you. I have one other question. Oftentimes, when we are looking at a policy area, we tend to look at the people that are there and we have a trust factor and everything looks wonderful, but I know that, down the road, we don't know who will actually be in these positions and what staff may be hired for these positions. And so I'm

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wondering what kind of external controls there would be put in place. Currently, I know that the Department of Revenue is going to be audited by our own State Auditor. We have external folks that come in. We also, for the Auditor's Office, have the same thing. We have outside entities that come in and verify that they're following procedures. What kind of...

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: ...external controls will be put here?

SENATOR BEUTLER: Senator, I have my light on and I will yield to you, because I'm not sure I'm entirely understanding the gist of your question, but let me indicate what I think you're getting at and I'll try to respond. Are you asking what kind of external controls are there on our Performance Audit Committee itself in how it functions?

SENATOR REDFIELD: To ensure that in fact they would be following the procedures and verifying the confidentiality of all of these records that we would be giving them access to.

SENATOR BEUTLER: Okay. Well, there are...there are at least two things I can think of right now that are going to be the constraints upon the committee. One is certainly the makeup of the Performance Audit Committee, which I think was originally designed to be a safe and conservative committee, because the decisions with regard to seeking confidential information...

SENATOR CUDABACK: Time, Senator. Thank you, Senator Redfield. (Visitors introduced.) Also this morning, the croissants that are being passed around is in honor of our Speaker's birthday. So would you all give our Speaker a nice, well, whatever it is we do on a birthday. (Laughter) He didn't say his age, but I think it's around 50. On with discussion. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President and members. I wonder if Senator Beutler would yield further to some more questions.

SENATOR CUDABACK: Senator Beutler, would you yield?

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SENATOR FOLEY: Senator Beutler, I appreciate your work in this area because it's been one of my frustrations in the five years that I've been here that, to the extent that you start to get interested into the details of a particular government program, inevitably you run up against some confidentiality issues, as well as some other staff issues and resource issues, to try to thoroughly research a particular question. One of the questions that I've been trying to dig into recently is the Universal Service Fund program and I know that you've had some interest in that area as well. And when I call over to the Public Service Commission and talk to people like Andy Pollock or Jeff Pursley, they genuinely try to be responsive. They return my phone calls. They return my...they respond to my e-mails and so forth and they try to be responsive, but we keep bumping up against this confidentiality question in areas like trying to learn what kind of rate of return companies are earning or how much money they're collecting in USF monies and so forth. Can you walk with me through your process in how I can get more information about this program under what you're trying to do with this bill?

SENATOR BEUTLER: Okay. Senator, of course this bill is limited to the Performance Audit Committee and its function, but generally speaking, the starting point for all audits are requests for audits that come from other members of the Legislature. So you, for example, if you were interested in certain types of functions of the Public Service Commission and you felt that you were not going to get to where you wanted to go by yourself, under your lone authority as a senator, because you were blocked by confidential information, you could put in a request to the Performance Audit Committee. We look at them as they relate to all other requests that we currently have before us, and we look at the resources of the staff to see how much...how many of them they can accomplish, and then we try to figure out what's in the best interests of the public in order...in terms of which one we do, and we will pick out one or two and do what we call a preaudit, which is basically a preliminary investigation to determine whether what we thought was a good idea in fact is a good idea, before we invest a large amount of resources. So you would, for example, if you were interested in having the Performance Audit Committee look at the

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Public Service Commission, some aspect of its work, you could request a performance audit, being as specific as you possibly can get. The committee would decide whether to take up that audit. If they did take up the audit and if the audit became defined so as to require confidential information in order to efficiently and effectively complete the audit, then the committee could make the decision to request that information.

SENATOR FOLEY: But as an individual senator, and as one who's not on the committee, would I...could I become part of that process of investigating that particular program if the Performance Audit Committee...if I was successful in selling them on the concept that this program, in particular, needed to be reviewed?

SENATOR BEUTLER: Yeah.

SENATOR FOLEY: Or am I kind of...

SENATOR BEUTLER: You cannot become a direct part of the process and the reason for that is because we've always made a huge effort to try to depoliticize the process and...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...if individual senators are directly involved as part of the audit, then it's not seen...it becomes seen as more political. So not even the members of the committee participate in the actual audit work. We wait for results to come back at certain stages and we make decisions based on the information. But while the audit is going on, there's no individual interplay between the office being audited and the legislative members of the committee even, except conceivably, although I've never exercised or seen it exercised in my time, except conceivably those two instances I described where there may be a need for some intervention in the event of a dispute.

SENATOR FOLEY: And what about the staff resources that would be available to the Performance Audit Committee? Does this bill provide any enhanced staffing?

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SENATOR CUDABACK: Time. Thank you, Senator Foley. On with discussion. Senator Landis, followed by Senators Beutler and Smith. Senator Landis.

SENATOR LANDIS: Thank you, Senator Cudaback. Members of the Legislature, this idea came up a year ago or so. It came up in the context of a bill that was an update of LB 775, and we had some disclosure terms in that bill that got into trouble on the floor. Senator Beutler offered this idea, I think, at that time, or a variation of this idea at that time. It was defeated at that time, and it's back now with, I think, the further consideration of the work of the committee. I must say I opposed it at that time so it shouldn't come as a surprise to Senator Beutler. This is a close call. As a matter of policy, I don't think it's a big question one way or the other, although I come to a different conclusion than Senator Beutler and I'm going to vote against the bill. If I understand correctly, I listened carefully to the opening, I think the essential argument was this is a parallel authority to that which exists in the Revenue Department and within the Public Auditor's, essentially. The tax confidential records are available to the executive branch in those ways, and our own Performance Evaluation Committee ought to have the same kind of leeway, and that there are a number of protections. I would grant all of that argument. I think that argument is sound and fairly made. Here's my problem. I don't think that we want to expand the number of tax records, people who are accessible to tax records, without a clear showing of need. That I don't think has been happened so far. I heard an example that was a question that was about Medicaid records, but that has not been persuasive to me. In other words, I think we ought to have a pretty clear agenda ahead of ourselves if we're going to give ourselves this authority. Secondly, I think if you ask the public if they saw any difference between the Public Auditor and their state senators looking at their tax records, I think the public would see a distinction there. Even though we're equal branches of government and there is a similarity, I've got to say we mix, in the legislative arena, public policymaking with this oversight of government function. In the Auditor's account, there is not a public policy function, there is a ministerial function of

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oversight, and that mixture is somewhat dangerous. Now the only example I have about the legislative use of confidential records comes from a friend of mine who I have a huge amount of respect for--Vard Johnson. And it was not a violation of a confidentiality by the law. It was just the way we normally do business. Years ago, there was a big fight on the banking tax, and one of the banks said to Vard, look, if this is between us, we'll show you our tax record. The agreement was made it was confidential. Vard was going to look at the tax record and he was going to bring his arguments to the floor. Now, the outcome of that was this: Vard was shocked by what he saw; came to the floor of the Legislature and reported what he had just seen, okay; reported, in essence, a broken confidence, but not by the law, not by a Class III misdemeanor, but by what we normally do in this body, which is to give our word. And I asked Vard later on, because it surprised me, it kind of...it kind of really surprised me, and he said, look, it's true I did, but you know what, the issue was more important. And, by the way, we did change our tax...bank tax policy accordingly. He said the information was powerful enough, it really would make a difference; I knew I gave my word but it was so darned important I needed to share it with the world. He did. We changed the law. We taxed banks more. We may like that outcome, but here is the problem. At the heart of it was a track record that was compromised because a senator said to himself, you know what, public policy is more important than the confidentiality. Public...now, the public records...Public Auditor didn't have that problem because they're ministerial. The Department of Revenue doesn't have a problem. We have that problem because we're senators.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: We have a foot on the dock and a foot in the boat. And what I'm saying is, until there's a clear signal, until there's a clear showing, I think we can let those who are ministerial do the job of seeing whether we're doing tax records right, and then over here it seems to me that we can debate the public policy. I am nervous about mixing the ministerial function and the policymaking function and, for me, I'd have to say that the standard that I've got for tax confidentiality in

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this case is higher. I intend to vote no. On the other hand, since I'm going to a funeral, I'll simply not be present, and since they got to get 25 votes it works the same way. I must say I see the argument of the other side and I think it's legitimate. It's, for me, a relatively close call, but it is because in the absence of a compelling case, which there is not at this moment on the floor, I side with a...with a concern that our status...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...and role is different than in the executive branch and I (microphone malfunction) this power I don't think.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Beutler, followed by Senator Smith and Senator Chambers.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, let me address several arguments that have been made there and let me kind of take them one at a time. First of all, there is the argument that senators shouldn't have access to records. Senators are not, generally speaking, getting very much access to records at all. No member of the Legislature gets access. The Performance Audit Committee, none of those members get access, except two members in limited occasions. This power that we're suggesting for our Legislature is the same power that many, many...most all Performance Audit Committees, where performance audit committees are performed by the legislative branch, have and they need to have that power in order to act. You can argue that there's no compelling case, but that's precisely why we need to get this tool in place. Because if you wait until there is a compelling case, then you're going to be in an argument between some agency that wants it on...that doesn't want it on a particular issue and the Legislature that wants it on a particular issue, and it becomes a dispute on a particular issue. And if you waited for disputes on every particular issue, you would have to be coming back to the Legislature time, and time, and time again to get authority to look at a confidential record in this compelling case, a confidential record in that compelling case. Performance audit is at the heart of government, and being able to look at all

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confidential records is, sometimes when it's necessary to do the audit, to be at the heart of government. There is no duplication of efforts. Remember that the State Auditor, doing their ministerial duty, has the same power that is being suggested to you today, but they have it only in the area of financial audits. They do not have it in the area of performance audits. You established that a long time ago, before I...before I was a part of this process, and it was clarified last year. So there is no duplication of efforts. The Auditor works from the financial records side; the Legislature works from the performance audit side. In some places, the Legislature does both financial audits and performance audits. In other places, the Auditor does both. But in Nebraska, our system has evolved so that the Auditor does financial accounts; the Legislature does performance audit accounts. There's no duplication. I think it should be readily apparent to everybody that at any point in time one of you may want us to do an audit in a certain area, just as Senator Foley has indicated his problems with regard to a particular agency, and unless we're going to be forced to come to the Legislature every time one of these instances comes up, I think you would agree that it makes sense to have...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...a limited confidentiality right in the Performance Audit Committee of the Legislature. Why do we...why do we devalue ourselves? Why do we devalue our own ability to control things? The Performance Audit Committee, again, peopled by the Speaker, the Chair of the Appropriations Committee, the Chair of the Exec Board, that's not going to be a radical committee. That's going to be a very thoughtful committee. And with respect to penalties, I don't...the Vard Johnson situation is completely different. If one...if any senator on the Performance Audit Committee or any staff member on the Performance Audit Committee reveals confidential information, they're subject to a felony offense. If that doesn't keep you from revealing information, I don't know what would.

SENATOR CUDABACK: Time.

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SENATOR BEUTLER: That's a serious penalty.

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

SENATOR SMITH: Thank you, Mr. President and members. Think we've come down to what Senator Landis, I think, has accurately pointed out, is that this balance of authority. And, again, I want to emphasize that it was my perception that this turf battle was over a little while ago. Because if the Legislature needed access to something that only the Auditor had, they'd go through the Auditor, and vice versa. I think that's a livable situation. When we compare ourselves to other states, we need to compare everything, and that is where there's an auditor there's truly an auditor, and when there isn't an auditor and there's a function within the legislative branch, then they have some different authority. We have a Auditor, a statewide official within the executive branch that is accountable to all Nebraskans, not a pocket of 34,000 in a particular area of the state, and I think, based on the fact that some of these policies of what the Auditor can and cannot do, we have to be honest and talk about the fact that some of those duties were changed because the Legislature didn't like what a former Auditor was doing. And I hesitate to say that it is a good idea to fashion policy around a personality, but nonetheless that's done and we should move on. But to reach back into those situations and try to adopt policy now I think gives us a even more complex situation when we talk about authority, and especially in dealing with confidential records. If our concern is about the mischief that a particular person could engage in, given their authority, I think that there's more accountability within the executive branch for someone who answers to all Nebraskans, not, as I said a moment ago, a pocket of 34,000 people, as we represent in our various districts. That's a concern that I have. And I think that we can carry on with the current policy but to expand the powers to one or two members of the Legislature, I think, is not the right thing to do, and it certainly blurs the separation of powers that I think is missing in this argument. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Chambers, on LB 588 and the committee amendments to it.

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the first thing I want to point out is that the former Auditor was going to make inappropriate political use of senators' telephone records and perhaps even other information, so the Legislature, in protecting the prerogatives of the senators to keep confidential certain phone communications and numbers, erected legislative protection, but in no way were any of the duties of the Auditor diminished. So that's a red flag and a red herring, that's what I meant to say, that is being drawn across the path of this discussion. I'm going to listen to the debate, but something else is troubling me this morning. I've told you all time and time again how tired I am of females being dismissed and disrespected in this state. The Chairperson of the Health and Human Services Department is a woman. She had instructed an individual, a man named DeLiberty, that when job applications were being considered for a particular position information had come in that the man he was looking at, named McGuire, had a conviction so check it out, and if there's a conviction don't offer the job, and if the offer has been made withdraw it. This scoundrel has no respect for Ms. Montanez, and maybe it's her last name, maybe her ethnicity. He deliberately ignored and then violated state policy and her specific instructions; found out that there was in fact a conviction; that on the man's application, when it asked had he been convicted of any violation of the law other a traffic violation, a minor one, he checked no. When he was interviewed, he didn't bring up the conviction. But this DeLiberty knew about it when he extended anyway the job application offer after his boss told him don't do that. When that kind of insubordination and disobedience is engaged in, that person should be fired. Now, the Governor defended the director in ordering that job offer to be withdrawn. I called her, when I became aware of what was going on, and she didn't know that this man, this DeLiberty, had discovered a conviction and went ahead and offered despite it. When she found out, she called me back within three to five minutes and said, that job offer is going to be withdrawn; I knew nothing about this conviction and this DeLiberty had been instructed not to make an offer if there was a conviction. Because she's a woman, I'm sure, is what is behind it. This man, DeLiberty, who is an underling,

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deliberately disrespected her and, in so doing, embarrassed the Governor; HHS, which needs no more of these kind of scandals; and the director. There was an old guy on his deathbed and one of his longstanding enemies came to gloat. The man on the deathbed didn't realize that that's what it was for, so he raised himself up on his elbows and said to this guy, you know, if I die, which it looks like I'm going to, the debt that you owe me is erased and the grudge is done. He sank back on the pillow. Then he thought about something; he rose up. He said, however, if I do survive, the debt and the grudge both are reinstated. On this particular matter, the Governor behaved in an exemplary fashion. He not only defended...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...his department head, as he should, but he defended the withdrawal of that job offer and said this man should never have received the job offer. I give the Governor his credit, but now that that is over, the grudge the he and I have that is ongoing is reinstated. But I have to acknowledge when he does the right thing. And now the Governor needs to go a step further and see that this DeLiberty man is fired. If he is not fired, I will then believe that the Governor endorses and ratifies the deliberate insult and demeaning of a high-ranking female in his administration. And whether these women think that I ought not speak for them is of no moment to me. I'm doing what my conscience and what my principles demand of me. Any time I become aware of a women being insulted and demeaned and degraded around here, I'm going to speak. Sometimes it would be good if other legislators would do that, but they don't see that as their job.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President. I put my light on.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors and doctor of the day introduced.) On with discussion with the committee amendments to LB 588. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President, members of the

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Legislature. And I'm trying to decide for my own self how I will move on this issue, but I would like to enter into a conversation with Senator Beutler, if I may. Would you respond, Senator Beutler? One thing that I have been particularly interested in, we pass many bills in this Legislature. Many of them have significant funding behind them and I'm always concerned about the administration cost of following that bill. And in a couple areas that I've looked at, and I have gone to the State Auditor and I've said, what is administration costs, what is the percentage? Recognize I come from...as a contractor, I did a lot of cost-plus contracting in my life, and there was a percentage that, yes, you applied to the overall cost. And I said is there a percentage cost of administration that is following this, and she said, we don't look at that. Is this, if this were to pass, is this something that the Performance Audit would look at as to the administration costs of a particular issue? We have a housing program that I'm concerned about some of the administration cost that is going to be tagged on to that \$2 million that we set forth for housing. I don't want...I don't want the \$2 million to be all eaten up in administrative cost and in FTEs and everything else.

SENATOR BEUTLER: Yeah.

SENATOR JENSEN: I want those dollars to go to the proper individual. I want them to go to the consumer. So I get concerned about that and, yet, the State Auditor says we don't look at that issue. Could you give me some relationship to this as to that particular area that we might look at?

SENATOR BEUTLER: Absolutely, Senator. Performance Audit is at the heart of conservative government in the sense that, as you well understand, something we don't put enough time in on and something we don't do very well is, after we pass the laws, to go back and examine how they're being implemented and whether they're being implemented in the way that we intended, and whether they're being implemented efficiently. And your question goes straight to the question of efficiency, which is a question of performance audit. And if you came to the Performance Audit Committee and laid out your concerns in that regard, that would certainly be a legitimate item for the

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committee to look at.

SENATOR JENSEN: Well, thank you. And, you know, we did the same thing...I've looked at the public health bill that we passed here a few years ago. Those dollars I think are being well-spent, but yet you look at some of the public health agencies and their administration costs are much higher than others. Why, I can't dig into personally, but certainly perhaps a performance audit could look at that issue. But if we're talking about efficiency in government, we've got to follow through. We've got to ensure that our citizens' dollars are well-spent and are going to the programs that we want them to, the services are going to those individuals that we intended them to go through, and the consumers, the recipients of those, are getting well funded. So I don't know. If that's the case, I sure hope that this is the type of thing that could follow along with that.

SENATOR BEUTLER: Senator, I couldn't agree with you more. I mean, this...I can't tell you how much it bothers me, that what you and I and everybody else put into effect here, when it's not efficiently played out. And the last audit that we did with Medicaid reimbursement billings and that sort of thing, you're generally aware of that, and that resulted...has result... and will result in a lot more reimbursement...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...coming back to the state. And it's going to result in a complete overhaul of the way they're doing things there and a complete reevaluation, and it's resulted in the change of certain personnel. So the process works, and all we're trying to do is fashion it so that it can work every time for future senators.

SENATOR JENSEN: Yeah, and somewhere maybe we need to follow up with every bill, not just ones that you might select or go to the Performance Audit; that a report be given back so that we can look and see if the dollars that we intended to go to a program are being used and the consumers, the recipients, are being serviced by that. Otherwise, all we're doing is building

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bureaucracy. With that, thank you, Mr. President. I appreciate the comments from Senator Beutler.

SENATOR CUDABACK: Thank you, Senator Jensen. On with discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, let me...let me be clear about two or three things that were thrown out to you here, because I don't think there's really any issue. First of all, we are not doing battle with the Auditor of Public Accounts on this bill. We're not taking away anything from the Auditor in this bill, don't purport to. Any differences that the Performance Audit Committee had with the Auditor were, by the by, last year when things were straightened out by you all on this floor in the way that you thought appropriate. And so we're not intending, nor does this bill do, any damage whatsoever to the Auditor's ability to do that which they are intended to do. Secondly, with regard to the separation of powers, I think there is absolutely no separation of powers question. The Legislature has absolutely the right to look and see how its laws are being implemented and whether they're being implemented in the way that they're intended. Not only do they have the right to do that but, in my opinion, we have the obligation to do that. We have one of the weakest Performance Audit Sections in the country. We have just four people. Even small states have eight, nine, and ten people doing that work. We're not geared up yet to do it right. That's part of what the committee is trying to do in a number of ways, is to gear it up so that we can perform that efficiency function and be as effective in reviewing the laws as we are in making the laws. And, finally, this is not about individuals. No senator is benefiting from this. The Speaker of the House...the Speaker of the Senate, by virtue of the absolute necessity of having...of having somebody resolve a dispute in a question of whether there's a right to access and whether there's a right to see whether an audit was properly done, that is the only instance of a senator having access to confidential information, except one. This committee amendment gives the Chair of the committee the right to have an interplay with the staff on the question of confidentiality and what the staff should be doing. I think it was intended by others, I didn't suggest it, that the committee

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Chair should have somewhat similarly the same relationship to the staff as the Chair of other committees have to staff. But if you think that's too much, if you think the Chair of the committee shouldn't have that power, reject the committee amendment. There's nothing in the committee amendment that can't be put on back in Select that's technical in nature, and you're very welcome to reject it. I'm not going to be personally offended if you...if you want to narrow this yet more. Obviously, the committee thought it was appropriate. So this is a very limited authority; same authority the federal government has. You've heard of the GAO. You know they do enormous amount of good work. They should be doing a lot more, given the size of the federal government. But senators have the same powers and more with regard to the GAO than we would have with regard to our performance audit function. Did you say time, Senator Cudaback?

SENATOR CUDABACK: You have about 1, 6.

SENATOR BEUTLER: One, six, okay. Well, I hope I've answered the questions with respect to the concerns that have been brought up, and I understand that there are...that there will be concerns with a bill of this type. But I hope you'll feel at ease with it because, again, it is nothing at all radical in any respect. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. On with discussion. Senator Howard.

SENATOR HOWARD: Thank you, Mr. President and members of the Unicameral. I'm very grateful for Senator Beutler to having...to...that he brought this up. Indeed, there are many abuses in many areas that certainly need to be looked at, especially within the department that I've come from. These abuses range from overbilling in day-care programs, to fraudulent charges on clothing vouchers that are given for foster children that sorely deserve them. I, too, am very concerned about individuals that have been employed by the Department of Health and Human Services. I'm appalled the background checks are so poorly done. And we're concerned about foster parents. We should be equally concerned about

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individuals that are in the...in high positions. This isn't the first time this has occurred, that an individual has been hired with certainly, at minimal, questionable background. I recall the time that, not that many years ago, that an arsonist was placed, a convicted arsonist, was placed in a position of authority. And I would like to have further discussion from Senator Chambers, and I relinquish my time to him. Thank you.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Senator Chambers.

SENATOR CHAMBERS: Yes, thank you, Senator Howard, for giving me your time. And, members of the Legislature, it wasn't too long ago that Rock Mueller was hired by Ron Ross, who was head of Health and Human Services to head a tobacco abatement program, and he was in prison at the time. But Ron Ross thought he should be given a chance, and he messed up that program and now he's facing...not Ron Ross, this Rock Mueller...a string of felonies across the Midwest. Those are the kind of people being hired. That's why I want to give the Governor credit at this point for having spoken strongly. And just to read you a few comments from this morning's World-Herald, Nebraska's officials said McGuire's failure to tell them about the Rwandan conviction was enough to revoke the job offer regardless of whether the conviction was legitimate. He had checked the "no" box where the job application asked, quote, have you ever been convicted of a violation of law other than a minor traffic infraction, and he did not mention the conviction in his job interview, officials said. Given the circumstances, said the Governor, this is a man who should not have been hired. And that was in a statement released by his office. Continuing, last Wednesday, Behavioral Health administrator Richard DeLiberty, I'm going to call him "Deliberately," "Deliberately," by someone who had done a Google search on the Internet that McGuire might be the man involved in the Fossey case, said system spokeswoman Kathie Osterman. Women are assigned to pick up the mess after these men make it. Montanez said she then instructed "Deliberately" to investigate the allegations. Quote: I told him if there's a conviction, we would have to withdraw the offer, Montanez said. "Deliberately" went forward with the hiring process after he

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concluded that McGuire's conviction was not an obstacle. Obviously, he made a poor judgment call, Montanez said of "Deliberately." He does not have hiring authority without having it signed off by me. Montanez declined to say whether "Deliberately" would be disciplined. Chambers said he ought to be fired. Continuing with Chambers' quote: If it's enough to withdraw the job offer, it's enough to terminate "Deliberately," Chambers said. He embarrassed the Governor, he embarrassed Health and Human Services, and he embarrassed...

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...Nancy Montanez. Members of the Legislature, that's what I had said, but it goes deeper than embarrassment. It goes to this culture of dismissing women. No matter what title or position a woman has, or the authority that she is cloaked with by virtue of being in that position, she is dismissed. This "Deliberately," after being told don't go forward with this if there's a conviction, he had been told that and did it anyway. I don't see outrage on this floor, except me and Senator Howard and some might who come up to me quietly. But these things that need to be aired in the daylight, I'm going to do it. But since we're on Senator Beutler's bill, I tend to support what he's attempting to do. Thank you, Mr. President. Thank you, Senator Howard.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Senator Chambers, you may continue.

SENATOR CHAMBERS: Thank you, Mr. President, and this will be the last comment I will make this morning on this issue. There was an old fellow in the "Bibble," the Old Testament, the Jewish mythology portion. The New Testament is the "Chrishian" mythology portion. This old fellow named Job, who some people will call pronounced job, was being jobbed, because God and Satan had nothing better to do. So Satan came up to God and said, what's up? And God said, nothing, what are you up to? He said, oh, walking up and down on earth, to and fro in it, seeing whom I might devour, and I get everybody. And God said, have you considered my servant Job? Now, there's poor old Job, doing the best he can to do what God told him to do, minding his own

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business, and he had a shrewish wife on top of it. That's what the "Bibble" said. He even called her, said she was like one of the foolish women. So I'm not putting down women. I'm going by what the "Bibble" said. So Job is going along, minding his business, and God and the devil decide to have a bet. Job said...the devil said, I bet you I can make Job curse you to your face. God said, you're on; what are the stakes? Devil pulled out a cigar, stuck it in his mouth. God popped his finger and a bolt of lightning shot across in front of Satan and lit the cigar for him. Satan took a deep drag, blew a few smoke rings and said, well, whatever you want. And God said, well, whatever you want. And so they, being long-time acquaintances, they said the stakes won't matter; we'll just enjoy this. So, to make a long story short, this man was smitten with boils and sores from which worms crawled. The house fell in and killed his children. All kinds of livestock diseases wiped out his flocks, and Job is still trying to hang on because he knows God wouldn't treat him like this, because God didn't let him in on the bet. So that's when the woman came and said, Job, why don't you curse God and die? Job said, you talk like one of the silly women. The Lord giveth, the Lord taketh, blessed be the name of the Lord all the days of my appointed time. I'll wait till my change comes. So after all of these things were happening, Satan said to God, skin for skin; all that a man has will he give for his life. So God said, do anything you want to, to him, but don't take his life. And after the devil did all he could and Job was strong, well, he was blest and he lived happily ever after. In fact, he lives down the street from the barbershop where I used to work. But along the way, these people were talking to Job, religious people, trying to consult with him and speaking for God, saying if you hadn't done something wicked this wouldn't happen to you. And they went on, and on, and on. So there was a young man there. He said, I've listened to all you old people. Just because you're old obviously doesn't mean that you're wise. Had I not spoken I would have burst, there was so much welling up inside of me. Then he put these old people in their place and explained that you cannot always determine what a person's life is by the misfortunes that befall that person, nor the kind of life...person...life a person has lived because he or she experiences good fortune. I said all that to make this simple

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statement. When I see these terrible things happen to women, there's something that wells up in me and would cause me to burst if I didn't comment on these things. Before it's over I'm going to sensitize you all. I'm going to make you all aware of what I'm talking about. And if you got daughters, I'm ask how would you feel it was your daughter? If you've got a wife or had a wife, how would you feel if it was your wife? You all had mothers. How would you feel if it was your mama? Why would I have to do that to make you look at injustices? And we're talking about passing laws every day about justice and fairness. This bill is talking about the appropriate and proper administration of laws that we pass, but then you can watch injustices being heaped on women...

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...and it doesn't even bother you. It goes right past you. I will venture to say that if you would stop that praying up there for six months every thing and every body would be better off, because you feel that when those prayers are engaged in, that ends your responsibility. So if you get tired of me talking like this, you're going to have to begin to talk like this. But whether you do or not, I'm going to continue. Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. Speaker and members of the Legislature. A couple questions of Senator Beutler.

SPEAKER BRASHEAR: Senator Beutler, will you yield, please?

SENATOR BEUTLER: Yes.

SENATOR Dw. PEDERSEN: Senator Beutler, last year, I think it was last year, maybe the year before, there was some concern, I think, about performance audits being done by the Auditor's Office, and I think the Governor, Governor...not Governor Heineman, Governor Johanns, had some concern about the Auditor's Office doing, basically, a performance audit on some of the

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agencies. Is that something that you remember?

SENATOR BEUTLER: Senator, I remember part of that for sure.

SENATOR Dw. PEDERSEN: My concern is, are we doing audits on all of the agencies, on everything that we're...that the Auditor would be doing, wanting to do audits on?

SENATOR BEUTLER: The distinction is this, Senator Pedersen, and this distinction was made before I was involved with the Performance Audit Committee, I think when...perhaps when Senator Engel was Chair, maybe even before that. Senator Wehrbein would probably remember when this came about. But there is no duplication between the Auditor's Office and what we do, and the reason that there is no duplication is because even before last year, but with the clarifications of last year, the Auditor does financial audits, and we do performance audits. We're not looking to see if some money was stolen or whether the accounts add up right, that sort of thing. We're looking to see if the statute that you passed is being conformed to in the way that you intended. We're looking to see whether that statute that you passed is being...is being followed efficiently. So performance audit goes to performance, not to financial discrepancies and financial problems and financial statements, that sort of thing. So there's no duplication. The Auditor does one thing; we do the other.

SENATOR Dw. PEDERSEN: Then how do you pick...

SENATOR BEUTLER: When I say "we," I mean the Legislature.

SENATOR Dw. PEDERSEN: How does the Performance Audit Committee pick those areas or pick what they're going to do performance audits on?

SENATOR BEUTLER: The process, Senator, it starts with you. When any...whenever any senator, and you may recall at the beginning of this session I sent a letter to everybody inviting them to send to the Performance Audit Committee suggestions as to what kind of...as to a performance audit that needs to be done that they've come across in their experience in the

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Legislature, working with agencies. And, by the way, we don't deal with local political subdivisions. We just deal with state government. And then we have a list of those items that different senators are interested in, and the members of the committee sit down and talk about each one and try to flush out each one. We try to get the staff to flush out information on each one. And we have to make a decision because we don't have enough resources to do everybody's. In fact, I wish we had more resources so more of them could be done. We can only do one or two at a time with our present resources. Two at a time puts us at our limit. But whatever we decide to do, whichever one is chosen by the committee, then that's what we proceed to engage in and that's how...that's how they're chosen.

SENATOR Dw. PEDERSEN: I'm specifically interested in, when you mentioned your definition of the...

SPEAKER BRASHEAR: One minute.

SENATOR Dw. PEDERSEN: ...performance audits, about the legislation that we have passed to see if they're following what we put in statute. And it's some things that I'd like to talk to you about...

SENATOR BEUTLER: Great.

SENATOR Dw. PEDERSEN: ...which whatever way the bill goes, because there's, for instance, I've had two different times where I've actually got legislation passed on this floor with the Department of Corrections to change some things on how things were done out there, and both times they wrote rules and regulations to go right around it; a very major one with Health and Human Services a couple years ago about having a division on alcoholism, drug abuse and addiction disorders, and they went right around it and ended up firing the guy who was the director of that agency that we put in...and then he filed suit and the courts have now agreed and in the meantime we changed the law and they've come back and said, well, now it's the law, we can't have them. And my whole thing wasn't to them, you know, you don't follow the law anyway...

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SPEAKER BRASHEAR: Time.

SENATOR Dw. PEDERSEN: ...because you broke it the last time; why can't you break it this time? But I've got more issues. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Dwite Pedersen. (Visitors introduced.) Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker. Would Senator Beutler yield to a question?

SPEAKER BRASHEAR: Senator Beutler, will you yield, please?

SENATOR BEUTLER: Sure.

SENATOR SMITH: Senator Beutler, in my previous discussion, I said that it was my perception, based on my experience on the issue, that we had basically arrived at a truce of requesting information and obtaining information in a cooperative manner rather than trying to establish the authority in two different places to effectively obtain the same information. Am I being unfair? Am I being inaccurate? What would be your perspective on those assertions that I've made?

SENATOR BEUTLER: Senator, if I understand them, they're simply not accurate. But elaborate a little more on what it is you...how it is you think we're impinging...well, do you think we're impinging further on the Auditor? Is that your perception?

SENATOR SMITH: Well, and I heard you say earlier this morning that you're wanting some of the same authority...

SENATOR BEUTLER: Right.

SENATOR SMITH: ...to obtain confidential records.

SENATOR BEUTLER: It's a parallel authority procedurally, Senator. It's not the...oh, I may have confused you. I'm sorry. It's a parallel authority having to do with procedures

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and access to confidentiality. It's not the same authority with respect to the parameters of her jurisdiction. She is going to continue to do the same types of things that we resolved last year; we're going to continue to do the same types of things. The only sense in which I meant that was that the same kinds of procedural access that she has with regard to financial audits we would have on our side with regard to performance audits. I apparently confused you and I'm sorry. We're not reaching over here for any more jurisdiction from the Auditor.

SENATOR SMITH: Okay. And at such time that you feel that you don't have enough information and you need confidential information, do you feel that the only way you can do that is to expand the legislative authority?

SENATOR BEUTLER: Yes. Senator, we only have...we only have two choices. The confidentiality provisions are peppered throughout our statutes, and even this year I think we put two more into place. And when we put them into place, we don't think about the fact that maybe we're precluding basic good government by precluding audits in those particular areas, so we don't look at every confidentiality provision and say, well, should we accept that for audit purposes, or should we not? So, unless we want to take up the process of going back over all the statutes one by one and looking at them individually, the alternative is to do what the committee voted unanimously to do with this bill, and that makes sense. When you're setting up a Performance Audit Committee or setting up any kind of committee you should try to define its jurisdiction and the tools that it would need, and since our Performance Audit Committee is not very old, we've been building it up, that was a tool that didn't get put into place so we're putting that tool in place.

SENATOR SMITH: Okay. Thank you. And I want to sneak in a few more...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...comments here before my time is up. I think

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it's important to note, and I heard Senator Beutler say, that the Legislature needs to know if and when our policies are effective, and I tend to agree with that. Now, what we have no right to do is enforce the policies. That is the executive branch of government's authority, to enforce the policies established in the Legislature. It's a separation of powers issue. And it makes me nervous when the legislative branch of government, which I happen to be a member of, but it makes me nervous when the legislative branch wants to reach out and engage in the enforcement, and I feel that expanding our scope into confidential records is overstepping our power within the legislative branch of government. That is a huge concern that I have. I think it's not only unnecessary, but certainly inappropriate. Thank you, Mr. President.

SENATOR CUDABACK: Time. That would be your third time, Senator Smith. Senator Wehrbein.

SENATOR WEHRBEIN: Mr. President, members of the body, I'm going to rise to support the bill, but I'm going to speak...specifically speak mostly to the amendment at this point and to support the amendment. I realize the concern here, and I have some of the same concern, about the fact...the power that's perhaps given to a Chair or the Performance Audit Committee or other members. But, on the other hand, I look and I think back and watch what happened to the Auditor's Office a few years ago where a person was in charge for a long time and there was absolutely nothing any of us could do about it as we watched the office be decimated. If someone is abusing that power within this body, as Chairman of Performance Audit, even a Speaker, anyone else gets too far afield, I think the body would have the ability and the power to rein that person in. So I think that, to me, that's an offsetting issue, if you will, that we can control what's done. Because I do believe this bill is needed. I will speak a little more about it on the next...on another time when we're on the main bill, but I do think the Legislature needs to extend its oversight into more and more of our agencies and to see that they are carrying out exactly as the legislative body had it. Once it's gone through this body and we've had 25 votes or more and it's signed by the Governor, that should be the statute. That should be the law. And we have every right,

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in my mind, to oversee that and see that it's carried out to...per our agreements. And I think putting more emphasis and influence in this body is appropriate, and if that is abused I think we have the internal controls over time that we can control it even faster than a state elected constitutional officer who can go at least four to eight years.

SENATOR CUDABACK: Thank you, Senator Wehrbein. Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the Legislature. First of all, I couldn't agree more with Senator Wehrbein. I do believe that we have to have and need to be involved in more oversight of these agencies. I know Senator Chambers has said many, many times that we have control with the purse strings, but that isn't all I think we need to be involved in. People have said to me from time to time that, far as my interest in Department of Corrections is, how do you get that involved? And mine was interest because this is where I've worked most of my life, and a lot of them people out there are people I have worked with. About 70 percent of the people I have worked with in the past have probably ended up in prison, because I worked with the young kids who are being charged as adults, which already means they've gone through the juvenile system and are ending up in more serious problems. I've been very pleased with the Legislature, in the 13 years I've been here, that we are now starting to move in the area of community corrections. Senator Brashear has done a very good job in bringing that to the forefront, which I was not able to do, but with the help of the Legislature that's happened. That's why we need involvement in there and then to have some authority over these people or be able to do more than just say we have the purse strings. Senator Wehrbein is one who, what he just said, I agree with 100 percent. That hasn't always happened. We need to be involved, and if that's through this type of audit, then let's do it. I'm going to support the amendment. I need to say that I've always been kind of more supportive of performance audits being done by the Auditor's Office, but if we can do it and do the...a better job even than what we've done, then I...then I would be more supportive, and that I need to know that happened. I'd like to ask Senator Beutler a couple more

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questions...

SENATOR CUDABACK: Senator Beutler, would you?

SENATOR Dw. PEDERSEN: ...and then give him the rest of my time, if there's any there, to answer them. The first question is, should we be more specific when we ask for performance audits of things to be looked at, like the bills I was talking to you about or the statutes that aren't being followed? And the second one is, have we ever done a performance audit, let's say, on the Governor's Office, on the administrative offices? Because I know that was part of that conflict that happened a few years ago between the Governor's Office and the Auditor's Office. If you could answer them, and any other time you want for whatever, please. Thank you.

SENATOR BEUTLER: Right. With respect to how specific you should get on your request for an audit, I think the answer is the more details you can give us, the more convincing you can be that we really need to do an audit in this area, the better off you're going to be in terms of convincing the committee that this, indeed, is a problem. If we feel like we don't understand what's being asked for, we will often ask the committee staff to explore further with you, you know, exactly what you're thinking in terms of. So I would say the more you can give us, the better, but if it's a choice between giving us nothing and giving us a skeletal idea, I think we would much prefer that you send us the idea and then we can explore it further with you. Now, with respect to the Governor's Office, there's never been an audit done of the Governor's Office, and I don't think...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...we can do...we don't have authority to audit the Governor's Office.

SENATOR Dw. PEDERSEN: (Microphone malfunction) Thank you.

SENATOR CUDABACK: Thank you, Senator Pedersen. Senator Brashear.

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SPEAKER BRASHEAR: Thank you, Mr. President. Members of the body, I will not belabor this, but I don't want Senator Beutler twisting in the wind on this issue. I heard reference made to the fact he was willing to give up the fact that members of the committee had suggested that the Chairman of the Performance Audit Committee ought to have the same relationship to our staff as any other Chair of any other committee, and I want to stand before you and tell you that I'm the one who made the motion to see that that be included. I do believe, another phrase that I picked up from Senator Beutler, by listening to the debate when off the floor this morning doing something else, was when he said why do we disrespect ourselves. And I apologize for the tone of frustration in my voice over this bill, but for those who don't know, I come from the side of not wanting anybody pawing around in any tax returns. It is not my natural bent to say, oh, let's just open the doors and destroy confidentiality and look. So I have been on, quote, maybe the other side of trying to help formulate this bill. And I did make that motion. I do believe that the Chairman of the Legislative Audit Committee ought to have the same powers as any other Chairman of any other standing committee of this body, and that we ought to respect that and demand it. Secondly, I thought Senator Jensen, not to disrespect anybody else's, Senator Wehrbein's words were wise, but Senator Jensen's words were wise also. He has all of these issues that we have all of these constituents out, citizens out across the state of Nebraska, who want to know about this, that, and the other thing, and when you can't tell them, they look at us like, what's wrong with you? Well, the reason we can't comprehensively answer some of the questions that our citizen constituents ask us is because we don't entitle ourselves to that kind of information. I've had several people say to me this morning, are you really in favor of releasing tax returns? Please, that's not what this is. They may not be able to understand it out there, but we can read and understand it here. It's about random, random selection in order to obtain data, never to obtain a copy, in order to compile studies, in order to answer questions, in order that we might know whether the things that the citizens complain to us about are functioning or failing to function. We are using the federal standards. Good heavens! I mean, you know, Congress does everything correctly. They sit there in their televised

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hearings and they have hearing, after hearing, after hearing, after hearing, studying and studying and studying. They get paid the big bucks. Nobody is trying to term limit them. What? They're all trustworthy and we're not? I know I'm a little bit...I can tell by the way Senator Hudkins is looking, I'm a little off the reservation. I'm sorry, but this is not about releasing tax returns. This is about empowering the Legislature to be able to do appropriate, confidential, investigative work; do it properly or pay a huge price. And maybe we need to get some information on Health and Human Services and how much their administrative costs are. Maybe we need to know why a...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...Department of Corrections, you know, is giving away surplus property in a scandalous fashion. Maybe there are other things we need to know and I also join Senator Beutler in the comment, remember, you do it when you can, or you do it when we must. I'd hate to be sitting on this floor with a scandal upon us and then trying to get the authority to go get the basic raw data in a random, abstract, controlled, and confidential nature. And, by the way, we're on General File, so if somebody can find a real hole in this bill let us know before Select or Final and I think we'll all try and correct it. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. On with discussion, Senator Erdman. But before we do that, Senator Erdman, Senator Smith would like to announce a guest this morning. (Visitors introduced.) Senator Erdman, on the committee amendments.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, as a new member of the Performance Audit Committee, I've learned a great deal here in the first 40 days of session. But the reason I'm rising is to point out the correction in the committee statement. The prior committee statement showed a unanimous vote coming out of the Exec Board of 7 to 0. The revised committee statement shows the vote to be 6 in favor of advancement and 1 present and not voting, that was myself, and so we have corrected that. And it's not necessarily opposition

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to the goal here, because I believe that we have a responsibility, as Senator Beutler has pointed out, but there were some questions that I think are being resolved that I had. Having said that, Mr. President, I would yield the rest of my time to Senator Smith and would say that that doesn't necessarily reflect my views on this issue.

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

SENATOR SMITH: Thank you, Mr. President and Senator Erdman, and I'll try not to embarrass you too much. It comes down the fact whether or not the legislative branch should have access to confidential information or not. I remain unconvinced that it's necessary that the Legislature obtain confidential information. This issue never seemed to be of concern until there were some interest groups outside the Legislature who wanted to know, company by company, who was benefiting from tax incentives more than others. That's my observation. Perhaps there was a desire for the legislative branch of government to obtain confidential information prior to that, but that's my perception, that this whole issue came about when, I would say again, outside groups, in an attempt to derail economic development incentives, wanted to get in there, dig in within the Department of Revenue to see how effective, quote, unquote, our tax structure is; does it leverage. And that's fine. There is a desire to know that, but my, oh my, the fun that could be had in getting in there and obtaining that confidential information. Again, I remain unconvinced that it's necessary and I will no longer use Senator Erdman's time. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith and Senator Erdman. Further discussion on committee amendments? Seeing none, Senator Engel...is Senator Engel on the floor? Senator Engel, you're recognized to close on the committee amendments by Executive Board to LB 588.

SENATOR ENGEL: Mr. President and members of the body, I think this amendment is very important and I'd appreciate your passage. Thank you.

SENATOR CUDABACK: You've heard the closing, committee

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amendments. All in favor of adoption of AM0472 vote aye; those opposed, nay. The question before the body is adoption of the committee amendments to LB 588. Record please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Mr. Clerk, anything further on the bill?

CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Open for discussion, advancement to E & R Initial. Any wishing to discuss advancement? Senator Beutler, there are no lights on. You're recognized to close on advancement of LB 588.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this bill was signed by every member of the Performance Audit Committee. There were no dissenting votes to it on the Exec Board. We've tried to accommodate all concerns and we have accommodated some. We have one more concern that we think needs to be accommodated on Select File. Certainly would entertain any suggestions any of you might have for Select File, but this amendment goes to the core of what is good government, and every place in this country, at the federal level, at the state level, they have found over time that having a strong Performance Audit Committee is important to seeing that the laws that you and I pass are properly and effectively carried out, and that's all really that this amendment is about...this bill is about. I would recommend its advancement. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the closing on LB 588. The question is, shall LB 588 advance to E & R Initial? All in favor vote aye; those opposed, nay. Voting on the advancement of LB 588 to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 35 ayes, 2 nays, Mr. President, on the advancement of LB 588.

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LR 59

SENATOR CUDABACK: LB 588 does advance. Items for the record, Mr. Clerk, please.

CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports they've examined and engrossed LB 546, and find the same correctly engrossed, LB 546A. New resolution, LR 59, by Senator Byars; that will be laid over. I have a Reference report referring a certain gubernatorial appointee for confirmation hearing. Your Committee on Banking, chaired by Senator Mines, reports LB 589 to General File with amendments. New A bill. (Read LB 111A by title for the first time.) And an amendment to LB 675 to be printed by Senator Langemeier. That's all that I had, Mr. President. (Legislative Journal pages 877-882.)

SENATOR CUDABACK: Thank you, Mr. Clerk. On with General File. Mr. Clerk, LB 382.

CLERK: LB 382, by Senator Jensen, relates to drugs. (Read title.) Bill was introduced on January 12 of this year, referred to the Health and Human Services Committee for public hearing. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM0702, Legislative Journal page 747.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Jensen, to open on LB 382.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, LB 382, as introduced, relates to prescription drugs and the practice of pharmacy. It's a very important measure, so important that the committee asked that this be one of its priority bills to present to this Legislature. The bill does several things, but probably the most significant things is it authorizes faxed prescriptions. It is a very important issue in our technology, advanced culture, and one that impacts practitioners, pharmacies, and patients alike. As a personal note, two years ago I went to an orthopedic doctor because of a knee situation I have that I will get a new knee right after the session, but the doctor gave me two prescriptions, one for some

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pharmaceuticals and the other one was a prescription for a physical therapist. I went to the pharmacy to get the anti-inflammatory medicine and the druggist said it will be a moment, and he needed to call the doctor because he couldn't read the prescription. I went to the physical therapist's and the physical therapist said, before I begin therapy, I have to call the doctor to find out exactly what this says. Now, I know doctors are in a hurry and we've heard some of those stories, but here we had two situations where the provider could not perform because of the way of the handwriting. As introduced, LB 382 provides an electronic imaging for prescriptions, facsimile prescriptions, and deletes current references as an authorized, transmitted copy of prescription. The bill defines an electronic image prescription. The bill says that medical orders transmitted by electronic image prescriptions must be transmitted by an authorized prescriber or his or her designated agent as a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice. Other requirements are also provided for such orders, and I'll discuss these further when I'm recognized for the committee amendments to follow this. Also, there's an amendment to the committee amendment that will follow. The bill updates the list of Schedule I controlled substances in Section 28-405 to conform to federal law. The bill provides that solid controlled substances may be destroyed if witnessed by two members of the healing arts and recorded in accordance with subsection (4) of Section 28-411. The bill exempts pharmacist interns from mandatory reporting requirements under Section 71-168. Pharmacist interns are credentialed under the Uniform License Law and are, therefore, subject to such requirements but, as students, are not simply situated to other professions and occupations credentialed under the ULL. The bill revises the definition of "compounding" under Section 71-1,142 to reflect the most current definition found in the Model State Pharmacy Act and model rules of the National Association of Boards of Pharmacy. As currently defined, "compounding" means preparing, mixing, assembling a drug or a device. LB 382 defines "compounding" as a preparation of components into a drug product. There are committee amendments. I will just stop there and introduce the committee amendments when recognized again, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Jensen. There are committee amendments, as stated. Senator Jensen, as Chairman of the committee, you're recognized to open on the committee amendments offered by Health and Human Services.

SENATOR JENSEN: Thank you, Mr. President. And the committee amendments, AM0702, replaces the bill, as introduced; a new white copy, if you will. It retains most provisions of the original bill, revises provisions related to faxed prescriptions, and adds provisions of LB 725, as amended by the committee. The amended bill deletes references to electronic image prescription and, instead, uses the term "facsimile" prescription or electronic prescription...or "electronic transmission" of a prescription. The amendment permits prescriptions to be transmitted by facsimile or electronic transmission, and deletes current references to an authorized transmitted copy of prescriptions. Medical orders transmitted by facsimile or electronic transmission must be transmitted by an authorized prescriber, or his or her designated agent as a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice. No intervening person may be permitted to access the medical order to alter such an order, or the licensed pharmacy chosen by the patient. Such orders may be transmitted through a third party intermediary. Such orders must identify the transcriber's (sic) telephone number or other suitable information necessary to contact the transmitter for oral or written confirmation, the time and date of transmission, the pharmacy intended to receive the transmission, and any other information required by law. Such orders will serve as original medical order if they meet the above requirements. Medical orders transmitted by electronic transmission must be signed by the practitioner, either with an electronic or digital signature. The pharmacist must exercise professional judgment regarding accuracy, validity, and authenticity of medical orders transmitted by facsimile or electronic transmission. The amendment still updates the list of Schedule I controlled substances in Section 28-405 to conform with federal law. The amendment revises provisions dealing with the destruction of solid, controlled substances in hospitals. The amendment still exempts pharmacist interns from mandatory recording...reporting requirements under Section 71-168. The amendment still revises

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the definition of "compounding," as in the original bill. The amendment does insert and amend provisions of LB 725, which was introduced in the committee, and passed unanimously, by Senator Stuthman, as amended by the committee, and it provides that prescription drugs or devices that have been delivered to a community health center for dispensing to a patient of such health center pursuant to valid prescription, but are not dispensed or administered to such patient, they may be delivered to a pharmacist or pharmacy under contract with the health center for relabeling and dispensing to another patient of the health center, pursuant to a valid prescription. What this does is it ensures that prescriptions that are sealed, that are controlled, that are in a locked environment, will not be just destroyed but they can be used for another patient, provided the doctor has prescribed the same prescription. Exceptions are provided, and the decision to accept delivery of the drug or the device rests solely with the contracting pharmacist or pharmacy. The drug or device must have been in the control of the health center at all times; and three, the drug or device must be in its original and unopened, labeled container with the tamper-evident seal intact, and bear expiration date or the calculated expiration date and lot number; and four, the relabeling and redispensing is not otherwise prohibited by law. I would ask for the adoption of the committee amendments, Mr. President, and I've also filed just another small amendment to the committee amendments, which I could address next.

SENATOR CUDABACK: Thank you, Senator Jensen. (Visitors introduced.) Mr. Clerk, a motion on the desk?

ASSISTANT CLERK: Mr. President, Senator Jensen would move to amend the committee amendments with AM0808. (Legislative Journal page 871.)

SENATOR CUDABACK: Senator Jensen, you're recognized to open on AM0808 to the committee amendment.

SENATOR JENSEN: Thank you, Mr. President. This amendment is to the committee amendment; simply adds the emergency clause and makes a technical correction to the bill relating to Schedule I drugs, and I would ask for adoption of the amendment. I would

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just also add, personally, that this just brings our prescription issue into the twenty-first century. We actually have hospitals, we have pharmacists out there that have been ready and some of them even doing this prior to this authorization, and so we need to bring the pharmaceutical prescription into this twenty-first century. Facsimiles, electronic orders are part of our culture today and so we just need to move this bill forward. I would ask for the adoption of the amendment to the committee amendment, the committee amendment, and also the advancement of the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the opening on AM0808. Open for discussion. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I just want to give a little bit more information to part of this bill, which was one of my bills. It's the distribution of medications that are accepted and given to a federally accredited health department, of which there are five of them in the state of Nebraska, so this portion of the bill only relates to those five accredited community health centers. As Senator Jensen had stated, you know, these medications have never been tampered with; they've never left the community health department. There is no problem, you know, with them ever being, you know, returned or anything like this. This will not be accepted. But one of the regulations and restrictions and the things that are a part of the community health centers is that of these five accredited community health centers, they must have a contracted pharmacist to do their medications, as prescribed by the doctor in those health departments. So it's not just a pharmacist that they hire to come in and do something, a pharmacist at one time or someone else at another time. It is a contract that they have with a pharmacist. This is an individual that is part of the staff of the community health centers. So, realistically, there is no way that something could, you know, fall apart or anything like that. Everything is very straightforward with this. The medications have never been tampered with, but many times the medications, you know, never do get given to the individual that was supposed to receive these medications because the individual's medication

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may have been changed by the doctor, or the individual has left the community. And the way the regulations are right now, those medications need to be destroyed. This is a very good bill, a good part of this bill that will help, you know, with other individuals that do need some medication, you know, and it will be prescribed by a doctor. I also want to make just...during my time, I just want to make a couple comments as to what Senator Chambers discussed this morning with the problems with the Health and Human Services Department. And I truly respect, you know, the director, Nancy Montanez. I think she's doing a wonderful job. And she had given a direction to Mr. DeLiberty. I understand, you know, there was a lot of people that had applied for this job, in the area of 80-some, and if this was the best of the 80, which I hardly believe, that he recommended for this job, even by doing something that was, you know, supposed to be considered by the director, you know, I surely would think that there would be someone else in that number of people that could have been one that was acceptable that could have done that job. I really have a problem with what had taken place there and the time involved in going through this again, and going through the process again. You know, there's a lot of good things that could be done with that time that they are doing by hiring the individual and then not hiring him, going through the process again. So, realistically, you know, I admire the director, the direction that she gave, and I wished it would have been listened to because she spoke, you know, and it should have been listened to. And, Mr. DeLiberty, I think you have faltered in that way and I am very disappointed. So, with that, I'll turn the balance of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Johnson, AM0808.

SENATOR JOHNSON: Mr. President, members of the Legislature, first of all, addressing the situation with Nancy Montanez, I too am very pleased with her leadership under these trying circumstances. We won't go into that any further, however, this morning. First of all, regarding Senator Stuthman's bill, which was amended into the original bill, I think this is a good amendment. There are thousands and thousands of dollars worth

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of medications. I think that it approached \$50,000, and I don't know how long a period it was, perhaps half a year or so, where the medications now are literally disposed of, and so this is a way within the organizations that Senator Stuthman has outlined where these medications can be used, and it will cut down on the amount of money that it takes to run these various agencies. As far as the main bill itself is concerned, this is just one step, you might call it an outpatient step, of what is going on throughout hospitals and the whole medical community to make these records electronic, and that makes it a lot safer. We've been going with a lot of technical things this morning. I think I'll support this bill by telling you a little story about physicians' handwriting. A physician friend of mine had an open heart operation a few years ago. When you wake up from one of those you will have an air breathing tube in your throat and you cannot talk. You will be awake, however. And this physician friend of mine in the recovery room, what they do is hand you a little notepad and then ask you questions, and then you're asked to write your answers. Well, my physician friend wrote his answers. The nurse took the notepad, very disturbed, rushed out to see my physician friend's wife, showed her the notepad and said, can you read that? And she says, oh, yes, that's his normal handwriting. Nurse said, oh, thank God, I thought he had had a stroke. Thank you. (Laughter)

SENATOR CUDABACK: Thank you, Senator Johnson. Further discussion? Seeing...there are no lights on, Senator Jensen. You may close, if you care to.

SENATOR JENSEN: Thank you very much. The amendment to the committee amendment, all it does is add an E clause, makes a small technical change in the bill. I'd ask for its advancement.

SENATOR CUDABACK: Heard the closing on AM0808. Question before the body is, shall AM0808 be adopted? All in favor vote aye; those opposed, nay. Voting on adoption of AM0808 to the committee amendments to LB 382. Have you all voted on the question who wish to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of

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Senator Jensen's amendment to the committee amendments.

SENATOR CUDABACK: The motion was successful. The amendment has been adopted. Back to discussion of the committee amendments themselves, as amended. Senator Jensen, there are no lights on. You may close.

SENATOR JENSEN: Thank you very much, Mr. President. The amendment actually becomes the bill, and it does include in that Senator Stuthman's amendment for FQHCs, and again I would ask for adoption of the amendment.

SENATOR CUDABACK: Thank you, Senator Jensen. The question before the body is, shall AM0702, offered by Health and Human Services Committee, be adopted to LB 382? All in favor vote aye; opposed, nay. Voting on the adoption of the committee amendments. Have you all voted on the committee amendments who care to? Record please, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: Committee amendments are adopted. Anything further on the bill, Mr. Clerk?

CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Open for discussion on advancement to E & R Initial of LB 382. Senator Jensen, there are no lights on. You may close on the advancement, if you care to.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, thank you for your understanding. The amendment that was passed is actually the bill, and I would just ask that you advance the bill to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. The question before the body is, shall LB 382 advance to E & R Initial? All in favor of the motion vote aye; those opposed, nay. The question before the body is advancement of LB 382, offered by Senator Jensen. Have you all voted who wish to? Record please,

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Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 382.

SENATOR CUDABACK: LB 382 does advance. Mr. Clerk, LB 739.

CLERK: LB 739 by Senator Cunningham. (Read title.) Bill was introduced on January 19 of this year, referred to the Business and Labor for public hearing, advanced to General File, Mr. President, with committee amendments attached. (AM0747, Legislative Journal page 822.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Cunningham, you're recognized to open on LB 739.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I'd like to start by giving you a little history of the recent years of the Unemployment Trust Fund. In early 1997, the Unemployment Trust Fund stood at approximately \$225 million. At that time, the Department of Labor came under considerable criticism because of alleged overfunding of the Nebraska Unemployment Trust Fund. Legislation was introduced that would impose a two-year statutory moratorium on the collection of unemployment contributions, so the department agreed to reduce unemployment taxes through the annual rate and rule process. In the fall of 1997, there was a four-step reduction in the tax rate table for 1998. One step equals .5 percent change in the reserve ratio in an individual employer's experience account balance needed to achieve the lowest tax rate. In 1998, to help determine the appropriate fund balance, the Department of Labor hired Creighton University Professor of Economics Ernie Goss to study the Nebraska employment system and recommend a suggested Unemployment Trust Fund balance that would allow Nebraska to withstand all...withstand all but the most severe recessions without risking insolvency. Because benefits paid from the trust fund are tied to wages paid, Professor Goss recommended that the Unemployment Trust Fund be maintained at a level where the year-end balance remains at .85 percent of all wages paid...or all wages paid in covered employment. The Department of Labor adopted Professor Goss' recommendations and determined

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that the fund, to be solvent and to withstand most economic downturns, the fund should maintain a fund balance at the end of each year that is equivalent to .85 percent of all wages paid. In 1998, the year-end balance of the fund was \$185 million, which met the .85 percent goal. But then came the unexpected, horrible event that we have all come to know as 9-11, and the economic fallout from the event. There were increasingly high payouts from the fund. Additionally, the weekly benefit amount paid to employees increased in 1998, and I have down a percentage that I don't think is right, so I'm not going to read that to you at this time. I'm going to get that for you later. But the state paid out \$52.5 million in benefits. In 2002, the state paid out \$112.2 million in benefits. This placed the fund balance dangerously low. By the end of 2001, the fund balance remained at .58 percent of wages paid, and so the Department of Labor raised the tax rates paid by employers. The department has continued to raise the tax rates paid by employers every year since 2001. In 2004 and 2005, the tax rates continued to escalate dramatically. But even with the raise in taxes the Unemployment Trust Fund remains dangerously low. Presently, the fund sits at .5 percent of all wages paid in covered employment. This year, although there was another four-step increase to employers, the fund will only collect from employers enough to meet the benefits paid out to the employees. And although some of you may think just tax employers more, there is a point where we have to address the total unemployment insurance program, and we are at that point today, I would contend. A few senators that included Senator Bourne, Senator Redfield, Senator Combs and myself, started working on the problem. We realized the need to address the issue of how to get the unemployment program solvent and keep it solvent into the future. We gathered together other individuals that represented employers, both large and small, and representatives from the labor community. The primary goals were to create a system that provides a fully-funded Unemployment Insurance Trust Fund, predictability and stability. There were several meetings held to work out the details of how to fix and improve the unemployment insurance program. LB 739 was introduced as a product of those meetings. The committee hearing was held on this bill on January 31. Again, we listened to the comments and concerns and set to work out the finer details. Additionally, we continued to hold

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meetings to gather additional feedback and to inform business, labor, and the legislative body. If you remember, we had a couple meetings where we invited legislative staff and all the senators to hear what we were proposing, and we asked them at that time to give us other ideas, and we had several meetings after those meetings to continue addressing the issue. I want each of you to understand that what we've come up with is a compromise. All parties--business, labor, Department of Labor--we've all worked together. We've worked hard to get this bill to where it is and to where the committee amendment actually is going to be the bill. And like a house of cards...it's like a house of cards. If you pull one card out, the whole thing can fall apart. So I'm going to ask you to please support this as it's written. And I'm going to use the rest of my time...how much time do I have left, Senator Cudaback?

SENATOR CUDABACK: Almost five minutes.

SENATOR CUNNINGHAM: I'm going to start introducing the committee amendments, because...

SENATOR CUDABACK: Why don't we just...

SENATOR CUNNINGHAM: Well, it will take a little. I won't get those done in the amendment time. If that's all right.

SENATOR CUDABACK: You may. You may do so.

SENATOR CUNNINGHAM: Okay.

SENATOR CUDABACK: Won't know the difference.

SENATOR CUNNINGHAM: LB 739 was introduced to address the state of emergency of the Unemployment Trust Fund. That which is offered is a compromise bill that was assembled by representatives of labor, business, the Department of Labor, fellow senators, and myself. The primary purpose of the task force was to offer a bill that would slowly build the trust fund and make it solvent for future years. LB 739 introduces a change from the current annual rate-setting process for

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employers, commencing in calendar year 2006, to a system that is similar to that used in other states, such as Maine, Vermont, and Iowa. The system provides for basing the unemployment tax rates around the state's reserve ratio, which is the Unemployment Trust Fund, plus the state unemployment insurance tax fund, divided by total wages paid in unemployment...or, pardon me, paid in employment. Once the state's reserve ratio is determined, it's matched with the yield factors to determine the amount of combined tax that the system needs to generate for the following year. The series of yield factors would automatically work to adjust revenue levels up or down to try and maintain an adequate state reserve ratio. The yield factor tables...factor table establishes as a goal a state reserve ratio of .85 percent. And we're going to do something different you've probably never seen before. Because other senators were so heavily involved in this bill, two other senators are going to introduce part of this bill, Senator Combs and Senator Redfield. We're going to go through the amendments one section at a time, and they will come in, in their appropriate spots. Section 1 in the committee amendment is just technical changes. Section 2 is the definitional section. Section 3 is a new section that gives the Commissioner of Labor discretionary authority to impose a solvency surcharge in tax years 2006 through 2009 if the state's reserve ratio drops below .4 percent. The reserve ratio is a combined balance of the Unemployment Trust Fund and the state unemployment insurance tax fund, divided by total wages paid in covered employment. If the state's reserve ratio is less than .4 percent on September 30 in years 2006 through 2009, the Commissioner may, upon a seven-day notice and after a public hearing, impose a combined solvency surcharge of not more than 1 percent of the taxable wages paid during the prior four quarters that end with September 30 of the year that the emergency surcharge is imposed. The solvency surcharge will not exceed the amount reasonably required to generate revenue sufficient to pay current year benefits. Section 4 is technical. Section 5 deletes obsolete language, and there's also some new language in Section 5. This section provides for a two-year benefit freeze with the maximum weekly benefit amount thereafter to be the lesser of one-half of the state average weekly wage, or the then current maximum weekly benefit amount plus \$10. It further

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provides that in any year, commencing in 2006, that the state's reserve ratio as of September 30, if it falls below .4 percent, the maximum weekly benefit amount for the following calendar year shall not be increased. Section 6 is the section that establishes the maximum table wage base. Currently, the taxable wage base is at \$7,000. In 2006 it will go to \$8,000, and in 2007 it will go to \$9,000. And I'm going to skip over Section 7. We're going to go to Section 8. For benefit years prior to September 30, 2006, a person will be paid equal to the full weekly benefit amount if wages are payable to each such week equal to one-half his or her weekly benefit amount or less. If a person makes over one-half of the benefit amount, but less than the full weekly benefit amount, he or she shall be paid an amount equal to one-half of the benefit amount. On or after October 1, 2006, a person paid a benefit...

SENATOR CUDABACK: Yeah.

SENATOR CUNNINGHAM: ...amount equal to his or her full weekly...

SENATOR CUDABACK: Senator Cunningham, you're now officially on opening on the committee amendments.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback. On or after October 1, 2006, a person is paid a benefit equal to his or her full weekly benefit amount if there are wages payable or has wages payable to him or her equal to one-fourth such benefit amount or less. If a person has wages payable to him or her greater than one-fourth of the benefit amount, the person is paid an amount equal to the individual's weekly benefit amount, less the part of the wages payable in excess of one-fourth the individual's weekly benefit amount. Section 9 is a new section. It amends 48-627 to increase the minimum earnings capacity needed to qualify for unemployment benefits from \$1,600 to \$2,500, and you have to earn at least \$800 in at least two quarters of the previous base period. That's effective January 1, 2006. In January 1, 2007, and each year thereafter, there's a minimum earnings test will be adjusted to reflect the changes in the Consumer Price Index. It also requires that in order to file consecutive claims, an individual must earn six

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times his or her weekly benefit amount the following commence...following the commencement of the original claim. And Sections 13 or 14, 13 is technical, 14 is a repealer. And I'm going to yield the next part of the time to Senator Combs.

SENATOR CUDABACK: Senator Combs.

SENATOR COMBS: Section 10 of the committee amendment continues. It amends 48-628 to increase the disqualification period, and this is the topic that we had a lot of discussion on last year on a bill that we had brought that addressed specifically this issue. An individual shall be disqualified for benefits for the week he or she left work voluntarily without good cause, is discharged for misconduct, or refuses suitable work, and for the following 13 weeks. As we mentioned last year, we are only one of a handful of states, I believe, of four that currently permit this. And in response to this part of the legislation, we have included and codified good cause quits in Section 7. This is a new section that takes the language establishing good cause quits from the original Section 11 and puts them in their own stand-alone section. It further defines eligibility of construction workers for good cause quits, and broadens the definition of abuse. This laundry list of good cause quits for voluntary reasons includes an individual who voluntarily leaves his or her employment shall be deemed to have left his or her employment for good cause if the commissioner or his or her deputy finds that: an individual has made all reasonable efforts to preserve the employment voluntarily but leaves his or her work for the necessary purpose of escaping abuse, and that means as in on the job or from the employer, or abuse as defined in Section 42-903, which is domestic abuse. So if they're being abused on the job, that is now being codified as a good cause quit. Two, an individual left his or her employment voluntarily due to a bona fide nonwork-connected illness or injury that prevented him or her from continuing the employment, or continuing the employment without undue risk of harm to the individual; an individual left his or her employment to accompany his or her spouse to the spouse's employment in a different city or new military duty station; four, an individual left his or her employment because his or her employer required the employee to relocate; five, an individual is a construction

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worker and left his or her employment voluntarily for the purpose of accepting previously secured, insured work in the construction industry if the commissioner finds that, section (a)(i), the quit occurred within 30 days immediately prior to the established termination date of the job which leaves the individual voluntarily...of which the individual voluntarily leaves; two, the specific starting date of the new job is prior to the established termination date of the job which the worker quits; three, the new job offered employment for a longer period of time than remained available on the job which the construction worker voluntarily quit; and four, the worker had worked at least 20 days or more at the new job after the established termination date of the previous job, unless the new job was terminated by a contract cancelation. Or, (b)(i), the construction work site of the job which the worker quit was more than 50 miles from his or her place of residence; two, the new construction job was 50 or more miles closer to his or her residence than the job which he or she quit; and three, the worker actually worked 20 days or more at the new job, unless the new job was terminated by a contract cancellation; (c) the provisions of this subdivision (5) shall not apply if the individual is separated from the new job under conditions resulting in a disqualification from benefits under subdivisions (1) or (2) of Section 48-628. Six under good cause quits: an individual accepted a voluntary layoff to avoid bumping another worker; (7) an individual left his or her employment as a result of being directed to perform an illegal act; (8) an individual left his or her employment because of unlawful discrimination or workplace harassment on the basis of race, sex, or age; or (9) an individual left his or her employment because of unsafe working conditions. So here we have codified eight additional good cause quits and explained them, in addition to only the one which was in statute before, which was domestic abuse. And Section 12, it amends 48-652 to provide that benefits paid for newly established good cause quits under Section 7, that we just covered, (3) to accompany spouse, and (5) for certain construction workers, will not be charged to the employer's experience account. The following are not charged to the experience account. One, benefits were paid on the basis that the claimant either: (A) left work voluntarily without good cause; (B) left work voluntarily due to a

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nonwork-related/connected illness or injury; (C) left work voluntarily with good cause to escape abuse under Section 428 (sic), Section 7 of this amendment; has left work from which the employee was discharged for misconduct connected with his or her work or left work voluntarily in accordance with (3) or (5) under Section 7 above; and the employer has filed timely notice of the fact on which such exemption is claimed. So, as you can see, this was addressed. How much time to I have, Mr. Speaker?

SENATOR CUDABACK: About two and a half minutes.

SENATOR COMBS: Two and a half minutes, okay. We did attempt to address this and, as he said, we did have business and labor together. There has been give and take with this, and there's been several meetings where these issues have all been discussed. Particularly encouraging to me was the codification of good cause quits, because many times employees do leave their jobs for reasons that are beyond their control that is not misconduct and is not just quitting, but it is for good cause. Before, the only one that was codified is domestic abuse, and now we've added all the others, which I think helps protect the employee in the situation. We also have protected the employer who, up until this time, has been unfairly charged for people who have been fired for misconduct for reasons other than listed, or just leaves and quits. So, again, we are trying to be fair to both sides with this. And I was looking at the picture here that was just distributed. The Unemployment Trust Fund and target reserve as Senator Cunningham had mentioned, it began to decline severely here. Here's where we should be, is the brown line. Look at the sharp decline that it's taken. And in the last two years, from 2001, the end of that to now, clear down here. The fund will be insolvent and unable to pay benefits if we do not do this in two years. So employees that are entitled to unemployment insurance will not be able to receive anything if we do nothing at this point. That's why it's so critical that we are engaged in this conversation, that we pay attention to what the committee is trying to do here, and that everyone understands the critical nature of what we need to do to protect employee's benefits. Thank you, Mr. Speaker.

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SENATOR CUDABACK: Did you wish to give Senator Redfield some time?

SENATOR COMBS: I would relinquish the rest of my time to Senator Redfield.

SENATOR CUDABACK: Senator Redfield, about...

SENATOR COMBS: ...for the start of hers. Thank you.

SENATOR CUDABACK: ...about one minute, Senator.

SENATOR REDFIELD: Thank you. I will begin the discussion on the funding mechanism in the bill. On page 50 of the committee amendment, you see how the state's reserve ratio is calculated. The yield factor there actually starts at 1.50, and it goes down to .70. Realistically, we don't expect to get to .70. That's going to take a very extraordinary economy because, in fact, we have dug into a hole that is deep. The goal is .85 percent. That's going to put us in the midpoint of all of the 50 states. Ernie Goss has calculated that as the best economic piece and everyone is in agreement that that's the goal, to get there. So the number there at that factor, the yield factor, would be one at .85, and you see that if in fact we are below that, the fund is at .70, then we're going to have to pay 1.1 on the yield factor.

SENATOR CUDABACK: Time, Senator Redfield.

SENATOR REDFIELD: Thank you.

SENATOR CUDABACK: Thank you. You've heard the opening on AM0747. (Visitors introduced.) On with discussion. Senator Combs.

SENATOR COMBS: Mr. President, I would like to yield my time back to Senator Redfield.

SENATOR CUDABACK: Senator Redfield.

SENATOR REDFIELD: Thank you, Senator Combs. Starting back to

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the yield factor, you see that the factors will increase if the fund is in the hole; they will decrease if the fund is overfunded. That's a long way away from where we are now, if you look at the charts that were passed out to you. Then the next thing you look at in the committee amendment, pages 48 and 49, you see the experience factor. An array of 20 levels has been created. This is new. This is a significant change in the current system. Right now we have shelves. You fall off a cliff between levels. And this would allow businesses to calculate what their costs are going to be in the coming year as they see their employees utilize or not utilize the funds. They're not going to fall off a deep cliff. So you see that the average rate is the 12th step. That's the experience factor of 1.0, and it...the top category, number 1, where in fact there is very little utilization, is .15. But level 20 is 2.6. That's where we see a lot of experience being used. This is the multiplier against the average tax rate. The benefit of the array is not only the fact that we get rid of the cliff, but the fact that we can plug in the numbers that we need each year in order to make this fund whole eventually. We are trying to create a system which will not come back in crisis to the floor of the Legislature and ask you, in panic, to make a quick decision. We're trying to create a mechanism that will make us whole throughout all kinds of economic times, both good and bad, and I think that's a good thing. So I'm hoping that you look at the technical pieces of the bill. The people who we talked to about the bill actually thought that they liked it so well they've asked that we put in place in 2006 rather than, as the bill had stated, in 2007. You will find that contained in the committee amendment and I think that that also is something that would actually commend it to you, the fact that all the parties that participated in negotiations have enough common ground here and enough confidence in the array system that they're willing to put it into place a year earlier. Senator Cunningham has talked about the surcharge that we would have in the early years to create wholeness in the system, give it a jump-start, and that certainly is a very costly piece for our businesses, but they have agreed to step up to the plate and put us in the black. I hope that you're looking at the charts before you because, as Senator Combs has pointed out, the trust fund is...shows black but usually you show red when you're going

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down, and the summary of annual adjustments will tell you that in year 2004 we ended the year with only \$84 million projected. That's not enough to keep us solvent, folks, if we have great demand. We are losing at the tune of \$20 million a year and the bar chart there also shows the annual cash flow is very negative and we are hoping that you will adopt this process. We think it's a good process. And I would yield the remainder of my time to Senator Cunningham, if he would like it.

SENATOR CUDABACK: Senator Cunningham, about 1, 20.

SENATOR CUNNINGHAM: Thank you, Senator Redfield and Senator Combs, for your part in introducing this bill. I realize this is totally different than you've seen in the past, but it was a joint effort started last fall. We met, actually started meeting, in Omaha. I met with Senator Bourne and some members of organized labor. We came back here and met with the Department of Labor. From that point on, we started including business and we had several smaller meetings that went to larger meetings, and it's just been an awful lot of meetings. And I am very proud of organized labor, the business community. They've done a good job. They've all made concessions and I'm very happy with that. The Department of Labor, I can't say enough for the work that they have done. We've had a lot of last-minute meetings. They would work late into the evening, getting us numbers and PowerPoints. And also my staff, it's just...they've been phenomenal. Grace, the legal counsel, has been great on this. So I want to thank all of them. I realize Senator Chambers has some concerns. I don't know how many of the rest of you have concerns, but we'll field those questions...

SENATOR CUDABACK: Time.

SENATOR CUNNINGHAM: ...of you as you offer them. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. Senator Redfield, you are in order to speak next.

SENATOR REDFIELD: Thank you, Senator Cunningham (sic). Members of the body, I want to speak to the fact that currently our

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system asks our employers with a positive balance, the people who are not laying off employees, we're asking them to pay more than their fair share. At the same time, those who are in fact utilizing and have a heavy experience level are not really bearing the fair share that they should be paying, so that's what we're trying to remedy in the whole process, to make sure that we are actually hitting the employers that are creating the problem at a greater rate than those certainly who are contributing to hiring our people and putting them to work and a paycheck in their bank account. I also want to piggyback on Senator Combs' discussion. I don't know how much you were listening, but we paid a great deal of attention to the discussion last year over some of the people who find themselves out of work through perhaps a choice. Someone chooses to take other employment, that spouse, means that you have to leave your employer. We listened to that and we have taken care of it in the bill. We have looked at a particular industry, such as construction, where in fact projects are short term, and we wanted to make sure that we addressed their needs very carefully within the bill. We also looked at some other pieces because we wanted to make sure the people who were having to collect an unemployment check could actually utilize the system from week one and not have to wait, as they do now, until week seven through ten in order to have a paycheck to support their family. So we have a long laundry list of what are good cause quits and we have incorporated those into the body of the amendment, and I hope that you will endorse that portion because that is very, very crucial in protecting the citizens who are hard workers and want to be employed but, because of circumstances, whether in fact there was some misconduct on the part of the employer, there was an unsafe situation in the workplace, there are a number of good cause quits and I hope that you look at that portion very carefully. I think it's a positive move on the part of everyone that was involved. I hope that we heard all of your concerns, that we didn't leave out anything that was not addressed. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Further discussion? Senator Chambers, followed by Senators Cunningham, Connealy, Wehrbein, Beutler. Senator Chambers.

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SENATOR CHAMBERS: Mr. President, members of the Legislature, that nefarious conglomeration described euphemistically as the business community have come in here with a piece of what I consider legislative trash. Notice I said the business community. I'm not talking about Senator Cunningham or Senator Redfield, because they are working hard to get some things done, but they, the business community, they know that I don't like a 13-week disqualification period. We're going to divide the question at some point, but not this morning because it would be too difficult to try to get that done and have a rational, cohesive division of the question. I'm requesting that division, not at this point as a tactic to defeat the bill, but we may reach a point where I will do everything I can to defeat it. When these business people think they are so smart, they've been going to the school of lobbying of shyster and con man Walt Radcliffe. They think that they can put a few pieces of candy into a dish, and everything else in it is foul, and give that to me and I will see only the candy and consume that which is foul along with the candy. And guess what kind of candy they offer? Youngsters won't know what this is--horehound candy. When your parents didn't want you to eat sweets and said, you can't eat any sweets but here's some candy you can have, they would give you horehound candy. When kids used to go trick or treating, if you got that, that family, that home, was going to get a trick. Now they've offered this horehound candy to me and that's the best part of the bill. I won't tell you how I would describe the other parts, if I use that type of language, but we have ladies present. We have youngsters present. There might even be some children in the homes where this discussion is being watched on television. But even without all of those restraints, I don't use that kind of language. It's not a part of my vocabulary and the reason it is not, I never want to use those words. But as much self-control as I have, some circumstance could arise where that would temporarily weaken and what is in me would come out, for of the abundance of the heart the mouth speaketh. So I keep those things out of my mind -- a part of the words I would actively use. But when I was a younger man, and as that singer said, when I wore a younger man's clothes I knew the language and I used the language. But when I was a child, I thought as a child, I behaved as a child, spoke as a child. But when I became a prudent person, I put

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away childish things. What we're trying to do this morning is engage in a general discussion so that time will exist after we leave here today to divide the question, but I want those business interests and their lobbyists to know that 13 weeks disqualification is not going to go, if I can stop it, so they need to start trying to amass their 33 votes, not only here on General File, but Select File and Final Reading, and I will go after other bills to stop us from getting to this one again. The Business and Labor Committee has been converted into a private preserve for these business groups. They had so many business lobbyists coming through there over and over and over that it became intolerable, unbearable and repugnant to me. They've got...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...somebody who is a Chairperson that they think they can run over, and I think there ought to be cochairs now of that committee--one for business, which they have now; and one for labor, which does not exist in that committee. Or they ought to split the jurisdictions so there's a business committee and there's a labor committee. They had over 90 bills, I was told. I didn't even go to a lot of the hearings. Why? The bills are not prioritized; they're not going anywhere. And I got, to be frank, sick of hearing them come and give this BS to the committee. Some of those bills never should have been introduced, but they were, and I'm not going to waste my time and let them waste it. But they brought this piece of trash out here and I will be the garbageman on this, and I'm getting ready, brothers and sisters. I'm just kind of testing myself here. No heavy punches right now,...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...just a little sparring. But we will get to the real thing later and I'll say, let's get ready to rumble.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Cunningham, followed by Senator Connealy.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I

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guess I would start, Senator Chambers, thank you for the kind words. (Laughter) And I'm not going to use my whole amount of time. I'd like to hear what other people have to say about this bill today. I know Senator Chambers has a lot of concerns, with the 13 weeks especially, and I know, Senator Chambers, you're not going to believe this, but this didn't start with business. This started with myself and Senator Bourne having the discussion and meeting with organized labor first. So I would (laugh)...but anyway, that's the truth. That's where it started. And it's a lot of meetings have ensued and we've got a compromise here. Organized labor, the business community, everyone is on board. And if we're going to talk about the 13 weeks, we had that debate last year that you all remember and we did run into major problems on the floor of the Legislature. And we included extra reasons for good cause quits that are in the bill, and Senator Combs and Senator Redfield have both talked about some of those reasons, but I'll go into those again because it's very, very important. A person who has made a reasonable effort to preserve employment voluntarily but leaves. Oh, I guess that one was already in the bill, I'm sorry. If you leave to accompany your spouse to the spouse's employment in a different city or new military duty station, that was a major concern Senator Beutler had last year. We've included that in the bill so right...as a good cause quit. So currently someone in that position, they're going to have a waiting period when they fall into that position. They're going to have a seven- to ten-week waiting period. In this bill, they're going to be able to collect immediately. We had construction worker language in the bill that came from organized labor because some of the things that are done in the construction industry are a little different than the rest, so that's in the bill. And those people, if they fall into that position, are going to collect immediately. They're not going to have a seven- to ten-week wait, but that was part of the deal-making process that we went through. We all worked very hard together. I know Senator Chambers has told you that I do everything for the business community. I think that if you were to ask many people out there, I stood up for organized labor many, many times in these negotiations. You can actually ask the Department of Labor when we were in smaller meetings. I stood up for organized labor when there was no one there from their side to defend their

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point. So I think it's probably a little unfair of Senator Chambers to say the things he said, but I'm not going to change his mind. So I think I'll end it with that and thank him again for the kind words. Thank you.

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

SENATOR CONNEALY: Thank you, Mr. President and members. And I want to thank Senator Cunningham for working on this. And I do get a little concerned when you say it's a house of cards and one card goes away and it falls apart. I don't think that's a good way to do law, and so I think that we ought to be able to voice our concerns about specific parts of the bill and work on those here. And I do worry, to some extent, about taking benefits away and limiting them. The meager amounts that we do give, we've had a problem here in the unemployment fund. We've been very generous and been able to keep rates extremely low here in Nebraska. We've benefited by that with economic activity, with our businesses not paying more...as much as other states pay. And then, when we had a downturn, we have to come up and step up and do that. Doing it in a different way with more tiers and targeting to where people need it I think is a good...at least on the face of it, it seems like a really good idea, Senator Cunningham, and I want to thank you for that work. But I think that we need to look at the benefits, especially here in Nebraska where we don't pay an awful lot and we ought to be careful to make sure that we give workers the benefits that they deserve under this. And I'll be listening to the debate.

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

SENATOR WEHRBEIN: Mr. President, members of the body, I don't know who to ask a question, whether...maybe Senator Cunningham would answer a question.

SENATOR CUDABACK: Senator Cunningham, would you yield?

SENATOR CUNNINGHAM: Yes.

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SENATOR WEHRBEIN: I was just interested in the range of experience factors on page 48 and 49. I see the average is...I'm just wondering, as you have this range of experience factors and you've programmed that into the formula this year apparently, I was just wondering where does the concentration of experiences go? There's quite a range from .15 up to 2.60. This is more just information on my part. Where are most employers in terms of the average experience?

SENATOR CUNNINGHAM: Senator Wehrbein, they're divided into five...

SENATOR WEHRBEIN: Employers, I should say.

SENATOR CUNNINGHAM: Pardon me?

SENATOR WEHRBEIN: I should say employers, not employees.

SENATOR CUNNINGHAM: They're divided into 5 percent of the taxable wages in each group. You're looking at the part that has 20 categories? Yes.

SENATOR WEHRBEIN: Page 48, 49 in the...

SENATOR CUNNINGHAM: Yes. They're divided. Five percent of taxable wages are in each group. So on group one there's 5 percent of the taxable wages in the state; group two is the next 5 percent.

SENATOR WEHRBEIN: So it's even? They're about even?

SENATOR CUNNINGHAM: It's even. It's even. And these numbers were just worked out. Numbers were ran, and ran, and ran, and it looks to us that it's more fair for most businesses. It does create an increase in 19 and 20.

SENATOR WEHRBEIN: Yeah.

SENATOR CUNNINGHAM: It creates an increase for those negative balance or zero balance employers, so over currently what they're paying now.

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SENATOR WEHRBEIN: But the factor that you used was meant to compensate for those that are, let's say, excessively using the...their experience is...well, maybe excessive isn't the right word, but quite a bit of the use.

SENATOR CUNNINGHAM: Right. Well, I'm not sure I understand the question, Senator, but as I remember, as I remember it, right now the negative balance employers are maxed out by state law at 5.4 percent, and these down in the 20th group I believe are going to be around 5.88 percent.

SENATOR WEHRBEIN: Okay. So they'll be doing a little...

SENATOR CUNNINGHAM: So, I mean, it's...it's theoretical...

SENATOR WEHRBEIN: ...they're going to be giving a little more than they are now, relatively speaking.

SENATOR CUNNINGHAM: Right. Right. They're going to give more here and they're going to give more in the increase in the base.

SENATOR WEHRBEIN: Okay.

SENATOR CUNNINGHAM: Now, some of the ones with the best experience factors are going to probably give less, but the...

SENATOR WEHRBEIN: Okay. So you were able to make some adjustments there on the extremes,...

SENATOR CUNNINGHAM: Right.

SENATOR WEHRBEIN: ...let's call it,...

SENATOR CUNNINGHAM: Right, we've...

SENATOR WEHRBEIN: ...on each end.

SENATOR CUNNINGHAM: ...we've tried to fine-tune this, running the numbers, running the numbers, and the business community has looked at it. I mean no...in the business community, they're

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not all happy with all of this either.

SENATOR WEHRBEIN: I understand.

SENATOR CUNNINGHAM: I mean, there's a lot of things they don't like, but they understand we've got to fix the fund and that's what we're trying to do.

SENATOR WEHRBEIN: Okay. Thank you.

SENATOR CUDABACK: Thank you, Senator. Senator Beutler. Is Senator Beutler on the floor? Yes, he is.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Cunningham, let me...I'm just trying to digest this right now. I have no opinion one way or another, to be honest with you. And let me start out by asking you, I got a section-by-section handout of LB 739, as revised. Did that handout come from you?

SENATOR CUNNINGHAM: Yes, Senator, I gave that to you, but it was done very early and it was done rather quickly, so I think it's accurate but...yes.

SENATOR BEUTLER: You think it's accurate. Okay.

SENATOR CUNNINGHAM: Yes.

SENATOR BEUTLER: And it is intended to apply to AM0747.

SENATOR CUNNINGHAM: Correct. We gave you that...

SENATOR BEUTLER: Okay.

SENATOR CUNNINGHAM: ...just to give you a preliminary look at the bill, being as you had the concerns last year.

SENATOR BEUTLER: Okay. Let me just ask you quickly about Section 5. Section 5 is still about the .4 reserve ratio and the period of time from 2006 to 2009. It appears, and I'm working from your section-by-section handout, it appears that

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adjustments can be made if the ratio falls down below .4 in all of those years, up to 2009. What happens after that?

SENATOR CUNNINGHAM: Well, we feel that we're increasing the base also, so the first year the base increases.

SENATOR BEUTLER: To \$7,000, to \$8,000, to \$9,000.

SENATOR CUNNINGHAM: So we feel by that time there shouldn't be a problem. You know, we're...but this is just giving the department the opportunity, as dangerously low as the fund is at this point, until we get it built up that there is something in place that if we were to have an emergency today that they could deal with it.

SENATOR BEUTLER: Uh-huh.

SENATOR CUNNINGHAM: Right now, you know, if we had a 9-11 attack right now, there's a good chance we wouldn't be able to deal with it. The fund would go broke.

SENATOR BEUTLER: Okay. And, Senator, I should have prefaced my remark by saying I can see, just going through things quickly, that you've done a lot of things well, at least in my humble opinion, and I appreciate the making of something...making something clear that was very vague before, and that was that whole "with cause" thing. I like the delineation there much better than I like the old law, which was so uncertain. But if, with respect to that reserve ratio, that you expect the reserve by 2009 to be way higher than this, if that's what you're telling me, what harm does it do to leave that provision in?

SENATOR CUNNINGHAM: Well, the reality, it probably doesn't do harm. It was just one of the deals that we made with the business community. I mean, they don't like the solvency, the emergency solvency, at all, but it was one of the deals they made and they're willing to make it if we put a deadline on it. You know, right...

SENATOR BEUTLER: Well, why is the deadline important to them?

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SENATOR CUNNINGHAM: Well, theoretically, theoretically, if everything goes as it should, it shouldn't be a problem, Senator.

SENATOR BEUTLER: Okay.

SENATOR CUNNINGHAM: It's just that...

SENATOR BEUTLER: Let's...let me ask you this, and I'm, again, not asking because I know. I'm asking because I'm learning here. But should the improbable happen...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...and it fall below .4 after the year 2009, will that have a detrimental effect on the other provisions of the bill relating to what a worker will actually be paid out of the fund if that should happen?

SENATOR CUNNINGHAM: Well, every time it falls below .4 percent, there also is a freeze in benefits. So any...

SENATOR BEUTLER: There is also a what?

SENATOR CUNNINGHAM: A freeze in benefits on the years that it falls below .4. There is an emergency...

SENATOR BEUTLER: Is that a permanent freeze? Is that a permanent provision, a permanent freeze?

SENATOR CUNNINGHAM: Just for that year.

SENATOR BEUTLER: Pardon me?

SENATOR CUNNINGHAM: Just for that year.

SENATOR BEUTLER: For the year. For which year?

SENATOR CUNNINGHAM: The year that...the year that we have to institute an emergency surcharge, there also is a freeze in benefits.

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SENATOR BEUTLER: Okay. So if the improbable should happen, and I understand that it's improbable, according to the calculations, and it falls before...below .4,...

SENATOR CUDABACK: Time.

SENATOR BEUTLER: ...is there any factor...

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers, on AM0747.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm well-aware of the various entities, individuals and groups that sat down to do something on this bill. I'm aware that some people acted in good faith. But just because an individual has labor attached to his name doesn't mean he's in favor of laboring people. Just because the Labor Department has "labor" in front of the word "department," does not mean they have any interest in the problems of laboring people. They got hold of some money that came here like a windfall and, instead of helping make sure this fund was floating, bought some computers. The reason the amount that employers were paying into this fund was reduced was because they said, when times are somewhat better let us not pay as much in. And they knew the chickens would come home to roost, and now that they've come home to roost, they want to take it out of the hide of the workers and say reduce their benefits or put in longer periods of disqualification, and I'm not going to do it. A lot of you all don't read history and you certainly don't see people who call themselves spokespersons for labor standing up and speaking for working people as they need to be spoken for, so you'll see a pale imitation of that from this very other than pale complexioned individual. There was a time when being prolabor meant something. People didn't just let the words come out of their mouth, I'm for the working man or the working woman. Those words carried a notion of commitment and dedication. I don't care how many people got to work on this. They could tell me that Saint Paul and Peter were resurrected and that Jesus came down and presided over it, and the Holy Ghost was sitting there every now and then just doing some ministrations. And

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that means something to me? When the work product is unjust, I don't care who sponsored it, it is still unjust. And this is not a good bill. And they thought by putting in these few little jelly beans it was going to overpower me or give them enough people with enough interest to get 33 votes. Well, I've dug my feet, my heels in, and I will fight them tooth and nail. And if labor is going to try to help bury me, I'll tell them like that William Jennings Bryan said, you shall not crucify labor on this cross of gold. And they will understand what that means, and maybe it will cause them to think back to better and different days when they were better and different men. It will remind them of how they felt when they truly stood up for those people who could not help themselves, those people who would repose trust in them, to do for them what they couldn't do for themselves, those people who knew enough and cared enough and had enough moxie to go among these employers who were trying to exploit them, and speak up for the rights and interests of these people who trusted them. They may think back to those days and say, yeah, I did feel better then. When I went in front of the mirror to shave, I didn't just look at my chin and where my moustaches are; I was able to make eye contact with myself in the mirror, which I can no longer do now. They know that they're wrong. They know they sold out when they went for this that we're talking about now. They know they sold laboring people out. And they were able to get some people who do have jobs, who do work, to go along with them. I'm not bound by anything anybody else does. I'm bound only by what I do. And there's something that binds me which moves me and obligates me far more than any deals that people made who put together something like this. If Sedlacek likes this, it's no good. If that fellow...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...who represents the banks, Hallstrom, went for it, it's no good. If the state Department of Labor went for it, Albin, it's no good. Why do I call them by name? They have names. Acts are committed by people. Why do you think Santa Claus called his deer, reindeer, by name? He didn't just say, hey, reindeer, do this, no--Dasher, Dancer, Prancer, Vixen, Comet, Cupid, Donner, and Blitzen. Then you all threw in

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Rudolph to dilute the whole thing. Labor is diluting what labor unions and labor representatives ought to be about. But there will be one who has not bowed the knee to Caesar, one who still will not take his hat off in the presence of the king. Thank you, Mr. President.

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

CLERK: Mr. President, thank you. I have amendments to be printed: Senator Schrock to LB 335, and Senator Stuhr to LB 111. Senator Heidemann would like to request to have his name added to LB 114 as cointroducer. (Legislative Journal page 883.)

And, Mr. President, I do have a priority motion. Senator Byars would move to adjourn until Thursday, March 17, at 9:00 a.m.

SENATOR CUDABACK: Heard the motion to adjourn, Thursday, March 17, 9:00 a.m. All in favor of the motion say aye. Opposed to the motion, nay. The ayes have it. We are adjourned.

Proofed by: J. Hurlbut