

MARCH 24, 2005

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March 24, 2005 LB 664, 664A, 739

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our Chaplain of the day is Pastor Calvin Kroeker from the Calvary Bible Evangelical Free Church in Wayne, Nebraska, Senator Engel's district. Pastor Cal, please.

PASTOR KROEKER: (Prayer offered.)

SENATOR CUDABACK: Thank you, Pastor Cal, for being with us this morning. I call the fiftieth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK: Mr. President, no corrections this morning.

SENATOR CUDABACK: Any reports, messages or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 664 and LB 664A to Select File, one of which has Enrollment and Review amendments attached. And two reports received in the Clerk's Office, one from the Department of Education, one from the Property Assessment and Taxation; those will be on file in the Clerk's Office, Mr. President, and that's all that I have. (Legislative Journal pages 995-996.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to General File, 2005 committee first priority bills. Mr. Clerk, LB 739.

CLERK: Mr. President, LB 739 was the bill originally introduced by Senator Cunningham. (Read title.) The bill was introduced in January, has been discussed on the floor on three separate occasions. Committee amendments have been divided. Pending, Mr. President, is committee amendment component FA109, and pending to that is Senator Chambers' floor amendment FA115.

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SENATOR CUDABACK: Senator Cunningham, would you like to give us a review on what took place with LB 739?

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. As you remember, when we left session two days ago we were discussing the split bill, I guess it was FA109, and we discussed all day on the wage freezes and also the 13 weeks, the disqualification period for 13 weeks. And I believe we're getting closer to some sort of an agreement. We're waiting for an amendment to come down. So with that, I will yield my time.

SENATOR CUDABACK: Thank you, Senator Cunningham. Senator Chambers, would you like to review FA115 to the committee amendments? Senator Chambers. (Legislative Journal page 910.)

SENATOR CHAMBERS: Mr. President, I was speaking to the Chair of the Executive Board on an issue that is relatively...well, very important, so I missed what you told me that you want me to do.

SENATOR CUDABACK: Senator Cunningham has reviewed LB 739 itself, so would you like to review your amendment to the committee amendments to LB 739?

SENATOR CHAMBERS: Yes, I would be...and what is the number of that one that I will be talking about?

SENATOR CUDABACK: FA115, Senator.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, because we are working on a settlement of sorts which will at least make it possible for the bill to move to Select File, I'm going to discuss this amendment, because time is needed to get that other amendment properly drafted. What Section 7 deals with is the listing, I believe, of the reasons constituting good cause for voluntarily leaving employment. When we use the term voluntary, it means, at least in a legal sense, that there is no coercion, no pressure, whether it be psychological, physical, or otherwise. If anything extraneous to a person's will is brought to bear which will induce that person to do something other than what he or she would do if left completely free to make a choice, then that choice,

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so-called, is not deemed voluntary. Because the listing as it stands and the way it is drafted in the committee amendment that is before us contains a discrete listing of reasons that constitute good cause, the effect is that any other reason outside of that list cannot be considered by the director or whomever he or she would designate to review a case of a person who feels that he or she had not been granted consideration that was due. Part of what is going to be offered here in the amendment that I mentioned before that has not been drafted yet, a change in the language to make it clear that the listing includes, but is not limited to, those items specifically set forth. There is an additional open-ended or catchall bit of language which would say, or as equity or good conscience would dictate. This means that the Legislature is acknowledging that the listing that currently is found in the law does not cover and anticipate every possible reason that could constitute good cause for leaving a job. Now the consequences of leaving a job voluntarily without good cause is that the person is disqualified from receiving unemployment compensation benefits for however number of weeks we will ultimately decide. What I've offered here that you see on the gadget is just a categorical statement to strike Section 7 from the bill. My intent in offering these types of motions, as I stated the other day, is to create a set of circumstances which will allow us to debate and give consideration to each of these major items in the bill. We need that debate whether we would agree with them or disagree with them, in order that we will understand what it is that we're doing. Much has been put into this committee amendment that will become the bill, and because that has happened, it is unwieldy and impractical to try to discuss the entire bill as an entity. It must be broken down into manageable sections which, in turn, can be analyzed and evaluated. When that amendment that I've alluded to earlier is brought here, I'm going to sign it, I'm going to offer it. That amendment is an outgrowth of some strenuous very good work done by the Speaker out in the lobby. And when I offer the amendment itself, I'm going to go into a bit more detail on how we arrived at the point we will be at when that amendment is presented. Brothers and sisters, things around here do not happen in a vacuum. When there is a contentious, serious issue that seems to be going nowhere, when it appears that there is no way out,

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then suddenly the logjam seems to have been broken, the impasse seems to have been breached, that didn't just happen. You all who are "Christians" probably think that having that preacher up there in the morning praying somehow invoked divine intervention. That didn't happen. There is no such thing. Changes occur because there are corporeal human beings laboring, fighting...

SENATOR CUDABACK: Senator, your time is up on your...

SENATOR CHAMBERS: Okay.

SENATOR CUDABACK: Thank you. On with discussion of amendment, FA115, Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I rise in support of the amendment that is being prepared for you, because, in fact, Senator Chambers is correct. When we put a list in statute, we do exclude anything that is not in that list. And certainly, we would all recognize that there may be extraordinary circumstances that actually all citizens of good sense would recognize would include equity and good conscience, and we would want to recognize those good cause quits. So the language is being prepared for you, and I hope that you will adopt it, because this is not, certainly, going to be a common instance. It's not going to be a license for abuse, but we recognize the fact that in making that list, there may be some extraordinary circumstances that we have not listed that all of us would recognize. And certainly the courts would recognize as an equitable type of situation, and we would give them the freedom to recognize that. So I hope that you adopt the amendment that is going to appear here, and forward the bill. And I thank you for your time.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Chambers, are you available, or...

SENATOR CHAMBERS: Mr. President, when it's appropriate, I have an amendment that I'm going to substitute for this one. That means I will withdraw this one and offer the one which is on the Clerk's desk, if it's ready to be presented.

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SENATOR CUDABACK: Yes, FA115 is withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would like to withdraw FA115 and substitute therefor AM0939. (Legislative Journal page 996.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, this amendment is going to show up on your gadget, but to tell you in general what it does and the areas of the bill that it deals with, I will say a few words. I will yield some time to Senator Cunningham--I was looking for him--so that he can make it clear that this has been talked about. But in his absence or temporary absence from the floor, I will give some time to Senator Beutler, because there is an area of the amendment which he has an interest in. On page 26, in line 27, there is language dealing with a date. Well, I should say dates. Senator Beutler had pointed out some difficulty which the inclusion of that language poses, and he will make clear once again what the concern is there. There is then a part of the amendment number 2, and it talks about an emergency solvency surcharge which will be imposed, and that is something Senator Cunningham can touch on. And the part that I discussed the last time I spoke says the following: "Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons." That opens it up so that the listing does not exclude every other valid reason which may develop during an appeal. Then there is a catchall provision which says the following: "When equity and good conscience demands a finding of good cause." That means, in disregard of the limiting list, in disregard of things that may seem to be outgrowths of that list, it is conceivable that equity and good conscience...this language is a term of art which has an existence in the law, so it will be known and understood by those who administer this bill. This catchall language would allow anything to be taken into consideration which will result in reaching a just decision. I'm going to yield some time now to Senator Cunningham because I see he has returned to his mike. So, Mr. President, if that's allowable, that's what I will do at

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this point.

SENATOR CUDABACK: Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. Thank you, Senator Chambers, for the time. As you stated, this was an agreement. We do agree with your amendment to move the bill forward. The first part of it, I guess you've gone through every section of it, so there's no reason to go back through it. Senator Beutler might want to clarify something when he gets up to speak. I might just ask you a question on your intention, Senator Chambers, just to...when you get to that clause of when equity and good conscience demands a finding of good cause, I mean, the way I envision that is more the extreme type cases, not just the everyday cases. Would you agree with that?

SENATOR CHAMBERS: I would not attempt to put a limiting interpretation on this language now because, excuse me, it would not have to be an extreme case. It could be an ordinary case. And sometimes the most ordinary cases are the ones where such a thing as this might be necessary because it could have a little outgrowth that was not contemplated. It will not fit squarely within that list, but justice would require that whatever that consideration ought to be, or would be, should be looked at and factored in. So I would not say it applies only in extreme cases.

SENATOR CUNNINGHAM: Well, maybe that was a wrong way to term it. But you wouldn't anticipate it being just the normal case? I mean, it wouldn't open the statutes up to abuse, in your mind. That isn't what the purpose of this is.

SENATOR CHAMBERS: Senator Cunningham, you sound very nervous, and it indicates to me that somebody out in the lobby is nervous, because you and I understand each other. So I'm going to address as directly as I can. This is not to be limited in the way that people in the lobby want it limited. But I will say this as a general principle when I'm involved in legislation: It's not designed to open the statute to abuse. And if the lobby continues to do what it's doing, this whole thing is going to fall apart because I'm going to withdraw that

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amendment and we're going to go back to the battle that we had. I'm sick of the lobby, I'm sick to death of them. We on this floor determine what we're going to do when it comes to legislation. When the Speaker has taken his time to go out there and explain to those people in the lobby the ways things are going to be done, then they're going to disregard the accord that was reached and think they can come in here and derail it, they have another think coming. And if they think, because I signed onto an amendment which contains an accord that I agreed to, that they're going to push me around and try to put words in my mouth, they have another think coming. So I need to ask Senator Cunningham a question so I will know whether we're going to deal with this amendment and the way we had talked about it, or all bets are off and everything is off the table and we go back to giving them the chance to get you all to vote for cloture on this bill.

SENATOR CUDABACK: Senator Cunningham, would you yield?

SENATOR CUNNINGHAM: Yes, I will.

SENATOR CHAMBERS: Senator Cunningham, what is your purpose in asking me the questions that you just did?

SENATOR CUNNINGHAM: Senator Chambers, I apologize for asking you the questions, but I was just talking with Senator Brashear and didn't hear everything that you said, so I apologize for that also, but...

SENATOR CHAMBERS: Okay. I'm not upset with you asking the questions. I want to know why. Because it seems that you've talked to somebody out in the lobby who wants to get you to come in here and somehow persuade me to say that the language in this bill amendment does not mean what it says.

SENATOR CUNNINGHAM: Actually, everyone in the lobby says it's fine, Senator Chambers. I was just curious as to what your intention was. Everyone says it's fine. So I want you to totally understand that no one, and I stress no one, in the lobby suggested in any way that I ask you that question.

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SENATOR CHAMBERS: But it is not a question that was in your mind yesterday when we talked about this, was it?

SENATOR CUNNINGHAM: No. I'm not an attorney, Senator Chambers, so I didn't think of it soon enough. And I really don't understand the law like you do. I will be totally honest with you on that.

SENATOR CHAMBERS: Okay. Then in order to...how much time do I have, Mr. President?

SENATOR CUDABACK: About two minutes, Senator.

SENATOR CHAMBERS: Okay. That might be enough time. Then, Senator, you're going to have to tell me where your sudden concern and worry about this language came from. What is your concern, so if I'm able to address it, I can. But if I'm not sure what it is, there's nothing I can do to alleviate the stress that you're feeling at this point.

SENATOR CUNNINGHAM: I guess, Senator Chambers, I would like to withdraw that concern, because no one in the lobby even came close to suggesting this. This came from my office and my office only. I take total responsibility and I withdraw the question.

SENATOR CHAMBERS: I don't care about the question. I just have to be sure that it's still work being done on the floor between and among us. I don't object to any question, but I felt that I had answered it adequately the first time...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...I responded. But when you wanted to pursue it, it seemed to me you were trying on behalf of somebody to get me to somehow, in building a legislative history, to say that this language does not mean what it means. So I will state categorically, it means exactly what it means and it will apply in any case that comes before the director or his or her designated person if it is appropriate to apply it. Thank you, Mr. President, because I know the time is just about up.

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SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening, without objection, on the substitute amendment, AM0939. Open for discussion on that amendment, Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I'm sorry that this all happened the way it happened. I take full responsibility for that question. It came totally from me, not from anyone in the lobby, and I apologize to Senator Chambers if there's any thought that this goes back on our agreement. I think it's a good agreement. I think we've worked hard on it, and I wish you would support it. So with that, I will donate my time back. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. On with discussion, Senator Wehrbein. He waives the opportunity. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, just so that every part of the amendment is explained for those who might have an interest, the first part of the amendment addressed the question of the frozen benefit rate that would pertain in instances where the fund dropped below .4 ratio. In that instance, there are really two different circumstances. One circumstance applies to the near years where an emergency surcharge can be put on if it drops below .4, in which case the corresponding complement to that was to be that if the employer put in all of this additional money in an emergency surcharge, then the benefit rate would be frozen for that year. The problem, from my perspective, was that even beyond those years where an emergency surcharge under the bill could be levied, that benefit was frozen if the fund dropped below .4. In other words, in the year 2020, for example, if the fund dropped below .4, there's no authority in the bill to levy a surcharge. And, hopefully, there will never be a need to do that. But there's no authority in the bill to levy a surcharge, but under the bill as it currently is, the wage benefit would be frozen nonetheless. So all this does is simply make the freezing of the benefit correspond to the levying of the surcharge, which Senator Cunningham indicated was the original intent in the

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first place. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. (Doctor of the day introduced.) Senator Chambers, did you wish to speak?

SENATOR CHAMBERS: Mr. President, there's peace in the valley, and at this point it's unnecessary that I say anything else.

SENATOR CUDABACK: Senator Chambers, there are no further lights on, so in that case you're recognized to close if you care to.

SENATOR CHAMBERS: Thank you, Mr. President. And I did mean what I said when I indicated it's not necessary for me to say anything else other than to let you know what it is you're voting on now. This is the amendment that I had begun talking about first thing this morning, where we have met, reached an accord, and it is reflected in this amendment. I did say that I would touch on what the Speaker had done to bring us to this point. And let me tell you why I'm doing it. I want people to understand that you all have an active Speaker who is trying to facilitate and work to get things done. He is not being bullied and buffaloes by the lobby as has happened on occasion in the past, because I've been here and I've seen some Speakers capitulate. The Speaker made it clear--and some of you all may have heard it by way of the grapevine, the rumor mill, or the gossip network--made it clear that the work of the Legislature is going to be done by the legislators. Policy will be formulated on the floor of the Legislature and not in the lobby. The lobby can do anything they want to, say anything they want to, try anything they want to to influence individual senators. That's what they're paid to do. The strength or weakness of the individual senator will determine how much impact the pressure from the lobbyists will have. We know they're paid to do that. They don't have any interest or concern about good public policy. They are hirelings. They do what they do just because they're paid to do it. Whatever the client tells them to do they will do. If there are two sides on a given issue, the lobbyist is going to go to the side which will pay him or her the most money. You may have a lobbyist on two different bills; on one of them it might involve, say, public power doing something. And because that lobbyist was hired to speak in

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behalf of public power, the argument is made that the capabilities of this public entity should not be restricted, because of a bogus argument that there will be competition with the private sector. The private sector's interest cannot overbalance the responsibility of a public entity, so the lobbyist is arguing on the side of the public entity. Then there is another issue where there's a similar dispute, let's say with utility companies, and the lobbyist gets hired by a private gas company. Now that same lobbyist who argued out of the right side of the lobbyist's mouth in behalf of the public entity against the private interest now comes over here because he or she is hired by a private entity and given more money will talk out of the left side of the mouth and suddenly see the interests of the private entity as being unfairly compromised because the public entity is going to get involved in this area. So you have the lobbyist arguing both sides of a question because the lobbyist has been hired by two different clients. And that's the way lobbyists work. Don't let them tell you when you go out there, hang tough, stay in there, kick Ernie in the teeth. They're not in here. They don't ever attempt to hang tough when they talk to me face-to-face. They don't attempt to kick me in my teeth when they're dealing with me. They send you in here and they tell you...they won't say the term "dumbbell." They'll say,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...dumbbell, let's you and Ernie fight. But they're not going to fight me, except they're going to try to do it through you. Then if you get flayed, and if there is a pound of flesh taken from your hide, they're not going to be there to suffer the pain with you. You need to think and understand how things are done. But we reached the point where we did on this bill because the Speaker is perceptive. He knew I was not going to go away, and we have a session to deal with. So you all ought to be appreciative of the work that the Speaker did on this. The bill can now move to Select File if there are enough votes to do that. I still don't think the bill is in the form that it needs to be in. The discussion has not been completed. But in keeping with the bargain that I reached...

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SENATOR CUDABACK: Time, Senator. You've heard the closing on AM0939 which is an amendment to FA109 to LB 739. All in favor of adoption of the amendment vote aye; those opposed, nay. You're voting on the Chambers amendment, AM0939, which is the amendment to the first part of the divided committee amendments. Have you all voted on the amendment who care to? Record please, Mr. Clerk.

CLERK: 42 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment to the committee amendments.

SENATOR CUDABACK: The amendment is adopted.

CLERK: Senator Chambers, I now have FA116, Senator.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Mr. President, I will withdraw every other pending amendment that I have, or motion.

SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator Beutler, floor...I'm sorry, AM0890, Senator. I believe this was an amendment to FA109.

SENATOR BEUTLER: Mr. Clerk, I would withdraw every amendment I have filed that pertains to General File.

SENATOR CUDABACK: They are withdrawn, along with the Chambers amendments.

CLERK: Mr. President, that's all the amendments I have at this time to committee amendment FA109.

SENATOR CUDABACK: Continue discussion of amendment, FA109, the first part of the divided committee amendments for discussion. Seeing no lights on, Senator Cunningham. Senator Chambers, your light did come on. I'm sorry.

SENATOR CHAMBERS: Mr. President, just a statement for clarification. Because the bill is not in the form I think it

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should be in, I'm going to vote no. But I'm not going to argue against the bill, but that is why I'm voting no. Thank you, Mr. President.

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

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I appreciate everyone's patience through this. We've spent a long time on this. As you remember some of the early history of this, we got together starting last fall, and Senator Combs and Senator Redfield and Senator Bourne originally introduced me to some of the organized labor, and we've had a lot of meetings, a lot of back-and-forth. We've tried to do the best we could to get something together that was going to ensure the solvency of this trust fund well into the future. And that's the culmination of this bill. And now with Senator Beutler and Senator Chambers and also Senator Brashear's help in helping to craft this final amendment, we're at least at this point getting it on to Select File, and we can get on to something else. So I would appreciate your vote. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. You've heard the closing on the first part of the divided committee amendments, FA109. The question before the body is, shall FA109 be adopted? All in favor vote aye; opposed, nay. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 42 ayes, 1 nay, Mr. President, on the adoption of the first component of the committee amendments.

SENATOR CUDABACK: Committee amendment has been adopted. Mr. Clerk.

CLERK: Mr. President, the second component of the committee amendments is FA110. (Legislative Journal pages 996-997.)

SENATOR CUDABACK: Open for discussion the adoption of FA110. Senator Cunningham, did you wish to open on FA110?

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members.

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Because the question has been divided, we do need to briefly deal with this, so I will try to briefly tell you what's in each section. I think what we're going to do, instead of going into detail on each of these, I don't think most of you want that to happen because we've talked about many of these throughout the discussion of the first division, I'm just going to ask that you adopt this division. And if you do have any questions, feel free to press your light and we will try to answer those. And with...

SENATOR CUDABACK: Thank you, Senator Cunningham. We are open for discussion on those. Seeing no discussion, did you...he waives closing. The question before the body is adoption of FA110 to LB 739. All in favor vote aye; opposed, nay. We're voting on the second part of the divided committee amendments, FA110. Record please, Mr. Clerk.

CLERK: 41 ayes, 1 nay, Mr. President, on the adoption of committee amendment, FA110.

SENATOR CUDABACK: FA110 has been adopted. Mr. Clerk, next.

CLERK: Mr. President, the next component of the committee amendments is FA111. (Legislative Journal page 997.)

SENATOR CUDABACK: Senator Cunningham, do you wish to open on FA111?

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I will offer the same thing on this section. If anyone has any questions that they would like to discuss specifically with this section, we will be glad to answer those. With that, I will return my time.

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

CLERK: Mr. President, Senator Chambers would move to amend this component with FA106.

SENATOR CUDABACK: Senator Chambers, to open on FA106.

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SENATOR CHAMBERS: I would withdraw that amendment.

SENATOR CUDABACK: It is withdrawn. Anything further, Mr. Clerk?

CLERK: Mr. President, Senator Beutler would move to amend this component with AM0891.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Mr. Clerk, that should have been part of all the General File amendments which I previously asked to be withdrawn.

SENATOR CUDABACK: It is withdrawn.

CLERK: I have nothing further pending to committee amendment FA111, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Seeing no more discussion, Senator Cunningham, did you wish to close? He waives closing. The question before the body is adoption of FA111 to LB 739. All in favor vote aye; opposed, nay. Have you all voted who wish to? Record please, Mr. Clerk.

CLERK: 39 ayes, 1 nay, Mr. President, on the adoption of the third component of the committee amendments.

SENATOR CUDABACK: The third component, FA111, has been adopted. Mr. Clerk.

CLERK: The fourth and final component of the committee amendments, Mr. President, is FA112. (Legislative Journal page 997.)

SENATOR CUDABACK: Senator Cunningham, to open.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I'll make the same offer again, but I would say this section is pretty much all technical changes.

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SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator Chambers, FA107.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Withdraw.

SENATOR CUDABACK: It is withdrawn.

CLERK: I have nothing further pending to this component, Mr. President.

SENATOR CUDABACK: Open for discussion. Seeing no lights on, Senator Cunningham, do you wish to...he waives closing. The question before the body is adoption of the fourth component of the divided committee amendments, FA112 to LB 739. All in favor vote aye; those opposed vote nay. Voting on the fourth and final component of the divided committee amendments. Record please, Mr. Clerk.

CLERK: 40 ayes, 1 nay, Mr. President, on the adoption of the fourth component of the committee amendments.

SENATOR CUDABACK: Committee amendments have been adopted.

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

SENATOR CUDABACK: Open for discussion on advancement of LB 739 to E & R Initial. Open for discussion, Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I know this debate has been difficult for everybody because it's been a matter of dates and formulas and new indexes, and the relationship of surcharges to future dates, and freezing of caps, and all that sort of business. But if you're interested in what happens to the workers and what the responsibility of the employers will be on this bill in terms of what the focus of the Select File debate would be, it's going to be on one part of this whole big thing. So I would ask you to think about it if

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you want to really focus and see what you think about how workers are treated. And that part of the bill is on page 26, and it's a part of the bill that has to do with an adjustment to the individual's weekly benefit amount and the amount that they would then get paid. And it sets out an alternative, and we talked about this a little bit on General File. It says: An individual's weekly benefit shall not exceed the lesser of one-half of the state weekly wage--that's not a problem. Then it says: or the previous year's maximum weekly benefit amount plus \$10. Now when you look at those two factors, I think what you have to ask yourself is, on average, how...on average, year in and year out, how much will the one factor, the state average weekly wage, go up? You know, what would be the rate that that would go up normally? And then ask yourself the other question on the other factor: What is \$10? Well, on the frozen rate that we'll start with, \$10 is 3.4 percent. Okay? So that 3.4 percent is the cap, year in and year out, under that factor. But do you know what the other factor, do you know what the state average weekly wage goes up at? Well, the Department of Labor doesn't know for sure but it's very directly related to state total wages, and state total wages go up by 5.1 percent every year, on average, over the last 20 years, since they've been keeping the records. So that means that under this formula, almost every time, the part of the formula that will be applied will be the previous year's maximum benefit plus \$10. The problem with \$10 is twofold. One, it's not a percentage, so that after the first year when you've added \$10, then if you add \$10 the second year, it's not really \$10 because it's been undermined by loss of purchasing power. Four years out, at standard rates of inflation, it's 10 percent less, and so forth. So it shouldn't be stated in dollar terms to begin with. It should be stated in percentage terms, and that percentage should be closer to 5.1 percent instead of the 3.4 percent that's represented by the relationship of \$10 to the present maximum cap. In effect, there is built into this bill a very real factor that takes down what the worker is going to get year by year by year. It will no longer be 50 percent of the average...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...of the average weekly benefit. It will

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slowly decline to 49, 48, 47. And we fought long and hard to get away from that in previous years and to establish a constant relationship. And I predict that on Select File there's going to be a huge battle on this, so you all should take a look at it, talk to the people you trust and see what you think about how that should be structured. That's going to be the focus on this bill, I think, for the next round or two rounds of debate. Thank you.

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

SPEAKER BRASHEAR: Mr. President and members of the body, there were...at the point in time when I asked to speak, I...there was no one else going to address the body, and I wanted to rise in several acknowledgments. I think this is the best of the process, and I want to point that out. Numerous people have talked to me about what great work and hard work Senator Cunningham has put into this bill and how long he has labored and tried to be inclusive. And I know that has involved a lot of work for his staff. Senator Chambers' opposition has been informed and pointed, and has created a substantive debate. People talk to me about the evils of our off-floor negotiations and so on. Pardon me, but give me a break. If you can't pick up the...can't pick up from all these hours of debate what the issues among and between the contestants are, then you aren't listening. Senator Beutler has had a heavy involvement in the debate; Senator Redfield, and I'm probably omitting someone else. I think this is the best of the process, and I thank everyone for the cooperation and for the work product. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Cunningham, you're recognized to either speak or close. There are no other lights on but yours.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback. I will close.

SENATOR CUDABACK: You're recognized to do so.

SENATOR CUNNINGHAM: I would first address Senator Beutler. I

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hope that we don't have a long, hard-fought debate on Select File, because this is an area that, even though I may be...my numbers don't show the same thing that he shows, and I...but I maybe do agree with him at some point, and I'm hoping that we can sit down and work this out before Select File. So I'm hoping to allieve you...alleviate you of that pain later on. So Senator Beutler, I do want to sit down with you, so I hope you understand that and hope we can accomplish that. I do also appreciate the time that all of you have spent, and I especially want to thank Senator Combs and Senator Redfield for the many hours that they've put in helping me. Senator Brashear acknowledged my work and my staff's work, but if it wouldn't have been for those two senators and their offices, we wouldn't be where we are today. So I would just ask for your support for this bill. And hopefully, any other problems we have with it we'll have worked out before you have to deal with it again. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. You've heard the closing on advancement of LB 739. The question before the body is, shall LB 739 advance to E & R Initial? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 739. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 42 ayes, 1 nay, Mr. President, on the advancement of LB 739.

SENATOR CUDABACK: LB 739 does advance. Mr. Clerk, do you have any items?

CLERK: Not at this time, Mr. President.

SENATOR CUDABACK: Okay, thank you. Mr. Clerk, LR 12CA.

CLERK: Mr. President, LR 12CA is a constitutional amendment proposed by Senator Schimek. It would propose an amendment to Article III, Section 7, of the Nebraska Constitution. The resolution was introduced on January 11 of this year, at that time referred to the Executive Board for public hearing. Resolution was advanced to General File. There are Executive

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Board committee amendments pending. (AM0721, Legislative Journal page 785.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Schimek, you're recognized to open on LR 12CA.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. The bill is very simple as far as explanation is concerned. LR 12CA simply raises legislative salaries from \$12,000 a year to \$24,000 a year. And I would like for you to take a look at the yellow sheets that have just been distributed to you, to look a little bit about the history of legislative salaries. And you will see clear back into the Unicameral (sic) days, and in 1884, legislative salary of \$300 was put on the ballot, and that actually passed. In '86, \$5 per day passed. In 1912, \$600 a day (sic) passed. And then in 1934, of course, we had the creation of the Unicameral Legislature. In 1990...or 1950, I want to particularly call this one to your attention. The majority voted against this ballot provision, and it was compensation would be provided by law. And I don't know for sure if that provided an exact amount or not, but it did...would have allowed for the compensation be decided by the Legislature in future years. In '52, a majority voted for a salary increase. And in '58, they voted against; '60, voted for. And in '68, mid-term salary increases and an increase in salaries were both voted for. And then in '72, once again there was a provision to set salary by law, and again that failed. And then if you look at the next four ballot issues, it was pretty discouraging, I think. The majority voted against, four times in a row. And then finally in 1988, after it would have been 20 years, the citizens of this state finally granted an increase in legislative salary, and it increased it from \$400 to \$1,000. Now I think that we may have been a little negligent over the past few years in not putting anything on the ballot for people to look at, because if we chose to put a ballot issue on next year, and it passes, it will have been 18 years, and there's been nothing intervening for the voters to look at. So I wanted you to see that. Then the second thing I wanted you to see, so that we can discuss this, is the second sheet that was the white sheet, from the National Conference of State Legislatures. And I would like to call your attention to the salaries, not only

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nationally but particularly in the Midwest. And if you'll follow along and look at Iowa, their salaries are \$21,230...or \$21,380 a year. And then it tells what their per diem is. Kansas has a per-day, so that's hard to compare. Missouri, \$31,351; South Dakota, \$12,000--they're stuck where we are--Wisconsin, \$45,569; Michigan, I forget to mark that on my own copy, \$79,650; Minnesota, \$31,140. North Dakota is per-day; Ohio is \$54,942; and I forgot also Illinois and Indiana at the very beginning--\$55,788 for Illinois; Indiana is \$11,600 a year, and then they have a per diem in all of these. So if you look at it overall, the midwestern states, except for a few who are probably stuck where we are, pay significantly more money to their legislature. Now in all fairness, some of those are full-time legislatures. If you look at the states around us, you...look at Colorado, it's \$30,000 a year. And of course, we've already talked about Iowa and Kansas and Missouri and South Dakota. And then the other one would be Wyoming, and that, again, is a per-day, so it's a little hard to compare. I wanted you to think about these because I believe that it has been a long time coming, and that there are a number of reasons to put this on the ballot next year. One of the best reasons that I can think of is that this is the perfect time because most of us...or half of us approximately are not even going to be coming back in 2006, and so nobody could accuse any of those particular senators of any self-interest in voting for this particular proposal. In addition, the other, almost the entire rest of the Legislature, with a few exceptions, will be leaving two years later. So there's certainly no long-term benefit for any of us in approving such a ballot issue. I think it is an issue of fairness. I think that we need to think about it in terms of the term limits that are almost upon us and the need to recruit candidates to run for office. And I don't know how many of you have ever talked to people about running for the Legislature, but I have, and I know many of you have, and that is one of the big obstacles, particularly for people who live in the western part of the state, I think, who have to make great sacrifice. I also think that there is public support for doing something about legislative salaries. And we could argue here until kingdom come about what those legislative salaries should be, but I believe there is support. Last year when I sent out my newsletter, I did a survey and some of my constituents

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responded, and of those responding, 112 said that, yes, we did deserve a pay raise. Twenty-one of them said, yes but not now, meaning not while we were having a fiscal downturn. Sixty-six of them said, no; and another 16 of them said, no but later. In other words, the vast majority said that they thought that we needed that kind of...that we needed that kind of thing to happen. In addition, if you look at your committee statement, you'll see that the League of Municipalities, Common Cause, Nebraska State Education Association, all testified in favor. In addition since that time, I've received e-mails and letters and letters in my office from the Center for Rural Affairs, the Appleseed Center, the League of Women Voters, Nebraskans for Peace, who all support this. I also know that many other organizations, like the State Chamber, for instance, have been supportive of this kind of a ballot issue for a long, long time. So I think there is support out there. I would ask that you thoughtfully consider this. I think that we should put this on the ballot. I think we should put it perhaps on the spring ballot next year. And it could go either way. Of course, if you want to put it on the spring ballot, we have to have 40 votes to do so. If you want to put it on the general election ballot, it only takes 30 votes. So I'd ask you to think about all these different...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...issues as we discuss this this morning. Just remember, it really isn't about us. It really is about the institution. And I think that this is the right thing to do. Thank you, Mr. President.

SENATOR CUDABACK: Thank you Chairman...or Senator Schimek. There are committee amendments as stated by the Clerk. Senator Engel, as Chairman of the Exec Board, you're recognized to open.

SENATOR ENGEL: Mr. President and members of the body, this is a little unusual, but I'm going to ask that you vote no on the committee amendment to LR 12CA. The committee amendment was to...an attempt to modernize language in the constitution that is not relevant to today's employment practices. However, after further consideration after discussing the committee amendment

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with some of my colleagues, I am concerned that it may detract from our overall goal, which is to get a constitutional amendment passed to increase the salary for future members of the Legislature. While LR 12CA provided a vehicle to clean up some obsolete language, it makes more sense to have a constitutional amendment presented to voters that is straightforward and without distractions. Let me conclude by saying that with or without committee amendment, nothing changes for employees. They are employees of the Legislative Council and they will continue to receive their benefits. Again, I would ask that you vote no on the committee amendment. And I'd like to yield a few minutes of my time to Senator Brashear.

SENATOR CUDABACK: Senator Brashear.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. Thank you, Senator Engel. I, too, I think I even proposed this striking the language to do some housekeeping, as we often call it, in the Executive Board, and I voted for it, and I, too, rise asking you to vote against the committee amendment, defeat the committee amendment. Irrespective of your view on the LR 12CA, I join in asking you to defeat the amendment because that way we will have a very simple, very straightforward, clean issue to put before the voters, and that is, do they or do they not want to increase legislative salaries. And I think it's the way to provide leadership on a very important subject without bringing in a secondary or tertiary subject and confusing the issue. So I thank Senator Engel for the time and, again, irrespective of your opinion and decision on the primary portion, I would ask you to vote against the committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear.

SPEAKER BRASHEAR: And I'll yield...

SENATOR CUDABACK: Senator Engel, were you...

SPEAKER BRASHEAR: ...I'll yield the time back to Senator Engel.

SENATOR CUDABACK: Senator Engel.

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SENATOR ENGEL: Again, I'd like to ask you to vote no on this amendment, and I yield the rest of my time to Chair. Thank you.

SENATOR CUDABACK: Thank you. There were several lights on. If you do not wish to address the Exec Board committee amendments, you may pass over and I will keep your lights on. Senator Friend. He passes over. Senator Louden. He passes over. Senator Engel, did you wish to close? There are no further lights on. He waives...he does not wish to close. The question before the body is adoption of the committee amendments by the Exec Board, AM0721 to LR 12CA. All in favor vote aye; opposed, nay. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 0 ayes, 38 nays, Mr. President, on committee amendments.

SENATOR CUDABACK: The committee amendments are not agreed to. Mr. Clerk, anything further?

CLERK: I have nothing further on the resolution at this time, Mr. President.

SENATOR CUDABACK: Open for discussion on LR 12CA. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, yeah, you don't have to tell me twice to push a red button. Thank you. Thank you, Senator Engel. I look at this...I thought about this last night and I look at this thing and was all anxious. I actually couldn't even get to sleep. I'm thinking, what do I want to do with that thing? I have a tendency to lean yes on something like this, and part of the reason is because I look back at what I've tried to accomplish and what we've tried to all accomplish together, and I've looked at my attitude toward putting things on the ballot that I think the citizens have almost part of their obligation to make a decision on. This is one of them. So this is something that they can grab ahold of. We know they'll grab ahold of it. Who knows what they'll do with it. But I think that's important. It's how I've tried to maintain some consistency, and it's in general how I feel initially about this potential constitutional

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amendment. But there are various questions that I think need to be answered. Here's what I came up with. And it poses...it puts me in a position where I almost shy away. Some questions like whether it's justified or not; I think I could answer, sure, it's justified. I think anybody on this floor could answer it's justified. I think most of the people in Nebraska would say, yeah, this is justified. Do we need to do it right now? Why not. There's no good time for a politician to ask for...to ask the people for a raise, I don't think. It doesn't matter what the surplus or the shortfall looks like. What would this change do? What would be...what would this change do to the Legislature? What would the makeup of the body be like after we did something like this? Senator Schimek touched on a couple of those things, that it would enhance recruiting possibly. Other legislatures have done it. I don't know if it's changed their legislatures that much. Does this simply amount...does this simply...can we sum it up by saying this simply amounts to an employee asking their employer for a raise? Those questions, and then this statement...and it's almost like a Bob Knight, General Patton, whatever you want, a pep talk now. I don't care what kind of campaigns come up for me, if there are any. I don't care what kind of campaigns come up for you folks. What I would say is this, and this is...to me, is very important. We cannot give ourselves a pay raise. Talk show, radio hosts, whatever, they can say whatever they want. People out there can say whatever they want. We can't do that. We cannot do it by law. We all know that. We can only ask. Now is that an insult, to ask? We're going to find out, maybe. I would further say that do not let them hang the scarlet letter around your neck, because they'll try. They'll try to do it to me if I vote yes; they'll try to do it to Senator Hudkins; Senator Landis...well, he's already got the scarlet letter; Senator Heidemann, who's up? Senator Chambers, he's...yeah, the scarlet letter, he's...Senator Synowiecki. They will hang it around our necks. Okay? Let 'em.

SENATOR CUDABACK: One minute.

SENATOR FRIEND: Because it doesn't work, it doesn't fly. As Senator...it's important. Senator Kopplin, Senator Pahls, understand that it's irrelevant, totally irrelevant. You ask,

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they either accept or deny, and then we move on from there. Now the bottom line is, I don't know if I deserve a raise. I studied this thing for four years, I looked at it, I knew what I was going to get paid, and I said, yeah, looks good to me. Now, don't ask me that question now, but it did then, for \$12,000 a year. Would \$12,000 more help me and my family? Probably. But that's not how I'm going to base my decision, and I'm also not going to base it on politics. I hope you guys wouldn't either. That's all I had, Mr. President. Thanks.

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

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I think Senator Schimek needs to be applauded for bringing this amendment forwards. This is something that I think probably the time has come to do. When the state was under duress with their budget and that sort of thing, it wasn't exactly a time to be discussing wages. I think by improving it or increasing it...to the doubling it, is...which is what it is, to the \$24,000. And sure, it will help recruit people and make it a little bit more presentable for people in the...especially in the western part of the state to be able to come down here and serve in the Legislature. At the present time, why, anyone that probably lives 200 miles or farther from Lincoln cannot really carry on their business and still be in the Legislature at the same time. You have to have some mechanism to take care of your livelihood while you're down here because this is actually a full-time job for, you might say, six months out of the year. So I think by increasing the salary will help somewhat that those people that are interested in becoming legislators will have a little bit more to go on, and it will probably improve the type of people and those that...improve their standing, I guess I should say, for them to come down here and be a part of the Legislature. Another point that I would like to make, that when you put this on the ballot and people are voting for it, there are also...you're going to be a test of the respect that the Legislature has. If we...if this thing gets voted down 60 to 40 or something like that, we have our own work to do to cut out for our own public relations and to enhance the relationship that the Legislature has to the state of Nebraska. There's been legislation passed that many people

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have questioned, and we wondered why we did that. And so whenever some of this legislation comes up, I think you want to consider that. This not only will be a test to see if we increase the salaries of the legislators; it will also, I think, be a test to see what our public relations is and what kind of respect we have in the state of Nebraska. This is...the major government entity in Nebraska is the Legislature. They're very important. They wield enormous amount of power. When they're in session, they can usually do anything that they so desire as long as you have your 25 or 33 votes to go along with it. So they are the most powerful body in Nebraska. I firmly believe and I support this amendment that we raise the salaries of such. I'm sure there are people out there that would be interested in it but cannot figure out the way to come down here and live in Lincoln for six months out of the year, and then be able to continue their livelihood at home. When you compare some of the numbers to the other states, like your Colorado, some of those numbers are a little bit misleading because in Nebraska we do have a staff and an office, where some of the other states have to furnish their own staff and office. I would like to point that out on some of that. I think we've been very progressive with the Legislature in Nebraska by furnishing the senators a staff. And we have at our disposal some very good agencies around that bring us material that...on a timely fashion whenever we need it.

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: So with that, I certainly support this amendment and I'm going to vote for it. And as I go out into my district, I will promote this legislative amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Engel, followed by Senators Flood, Mines, and Chambers. Senator Engel.

SENATOR ENGEL: Mr. President and members of the body, first of all, I'd like to mention that there aren't any of us currently serving who should be complaining about the salaries and/or the benefits, because we knew what they were when we came in. And again, some of us are serving because it was the right time of life when we could afford to serve. And in my particular case,

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when I was appointed back in '93, my children were out of college, business was going well, and we've always felt this a service and so...but we also had to weigh whether we could afford to be here. Well, we decided we could, so that's why we're still here. So again, I'm not complaining about what I'm receiving. As far as Senator Loudon saying you might get a better quality (laugh) if you raise the salaries, well, I don't think we would get any better quality. How could you, with what we have here today? But you might have more of a selection is what I...the way I look at it. You have a greater selection. But again, I do believe we have to do this, raise the salaries, because there are so many people that can't afford to come down here. Either you have to be someone that has an established business, or you work for a company that is going to allow you all this time off, or you're a younger person who hasn't really established a family yet and has obligations and they can serve. So it is very difficult to serve down here at the \$12,000. And again, there are no benefits. Some of these other salaries in some of these other states, some of them are close to ours, but they do have retirement benefits, et cetera, et cetera, like I think Texas, it says \$7,200 a year. Well, I know a gentleman down there who just retired from the legislature after 20 years, and he's drawing \$5,000 a month in retirement. So there's a trade-off there. And we're not seeking anything like that. It's just a matter of bringing the salary up so that we...more people can afford to serve and still maintain a citizen Legislature; it will not be a full-time job. It's almost that now, but I mean as far as they would not be able to support their families and so forth on the \$24,000 either, but it would make it a little more palatable and we'd be able to get more people that really are interested in serving. And with that, I think they feel that they can afford to do it, because you only...you can only afford to give up so much to serve. You have to take care of your obligations. So with that, I certainly support the amendment and hope it's passed. Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. Senator Flood.

SENATOR FLOOD: Thank you, Mr. President and members. Well, here it is, my 50th day on the job and I'm already going to vote

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for a pay raise. That will go over well. I support this amendment for several reasons, and if elected...re-elected in four years, I will be here for eight years, seven more after this year. I think it's important to look at my situation. I ran unopposed for the Legislature. And I read the paper through the summer and through the fall and I saw all these articles about term limits, but that wasn't really the issue. There were people in Madison County that wanted to be down here or wanted to run for this job, but they simply said every time, I can't afford it. A single mom with two kids who's really invested in state policy, she can't be down here. A hard-working family with a mother and father that both need their jobs, they can't afford to be down here. A farmer west of Battle Creek who said, I'd love to be down there but I just can't make it work, he can't be down here. I ran for the job knowing it's \$12,000. And if there was an amendment on this that said I wouldn't get paid any more, but people that came to the Legislature and wanted this job when they knew how much it was would get paid, I'd be fine with it. But there are a lot of good people in Nebraska that we close the doors to state government to as members of the Legislature because they can't afford to be here. And I'm evidence that there's not a lot of candidates that want to run. I ran unopposed. I was the only one in the parade. People would say, why are you going to the parade, and I said, I don't know. (Laughter) I thought, like, I bought all these banners and I bought these signs and I got this neat-looking logo and I bought this blow-up version of the Capitol, I might as well walk down the Main Street with it. But I didn't have to. I didn't have to answer one question. In fact, I never had anybody really contradict any of my thoughts until I got down to the Legislature, because no one ever asked me where I was on some of these issues. It's refreshing to have somebody oppose you after you go through an unopposed election. But I knew it was \$12,000, and I guess that's kind of what I bought into. But look at the people here, look at the average age. Of the freshmen senators, you know, I may be the youngest but Senator Langemeier is not far behind. Lavon looks like he's a spry 35-year-old over there. I mean, we've got some young folks here. Deb...Senator Fischer is obviously very young looking, but obviously I'm the youngest. (Laughter) But I mean, look at the average age here. You're not going to get people my age

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down here very often because we can't afford it. Senator Langemeier is busy doing appraisals after 8:00 at night. I go to bed at night hoping that Shania Twain's new hit single will make more people listen to country radio in Madison County. But it's more difficult, and I think we close the doors to people if we don't pay them a living wage, and that's what this attempts to do. We shouldn't have any more situations where no one has an opponent. That's what happened in my case and it happened because it's \$12,000 a year. I don't need more than \$12,000, because I signed up for this...I need more than \$12,000, but...my wife says I need more than \$12,000, but I signed up for this knowing how much it was. Let's open the doors to this legislative chamber to everybody in Nebraska. And I would return the balance of my time. Thank you.

SENATOR CUDABACK: Thank you, Senator Flood. Senator Mines, on LR 12CA.

SENATOR MINES: Thank you, Mr. President, colleagues. Let me join the singing to the choir. I obviously support LR 12CA. And from my perspective, doubling my salary from \$12,000 to \$24,000 a year won't make a bit of difference to my...to the way I live. It won't make a bit of difference to the net amount of money that I take home to my family. You see, I'm one of the very, very few that are blessed in this body to have an employer that supports service to the state of Nebraska, that feeds my family, that continues to pay me. We adjust my salary based on how much I receive here. So if I receive another \$12,000, it won't affect my take-home pay a nickel. And I have to tell you, there are but a few of us in this body that have that luxury. My employer expects me to do my job. I show up early in the mornings. I work at night. That's...but I knew that going in, and we all knew what we were faced when we came into this body. Will \$24,000 a year attract Nebraska's best and brightest? Oh, I think we've got a good group of best and brightest right here. I don't think doubling the salary is necessarily going to increase or improve the amount of work that comes out of this body. It will not. What it will do is allow those that serve in the body, those that are fortunate enough or that are passionate enough to serve the public for \$12,000 or \$24,000 a year, it will make the product that comes out of this body

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better because those legislators will not be concerned as much about feeding their families with \$24,000 as they are with \$12,000. I still don't think it's enough. Senator Schimek, it should be more, but I understand the reality of trying to get something moved through this body as well as on the ballot. I don't think we need to compare ourselves to any state surrounding. I don't think we need to compare ourselves to anyone else in the country. The work we do here, ladies and gentlemen, is probably the best work that's done in the country, simply because we do it ourselves. We are beholden to no one but ourselves and our constituents. And if our constituents think enough of us to increase our salary to \$12,000 (sic) a year, I think that's great. But the body will continue to do what we do but we'll do it better if our salaries are increased to \$12,000 (sic) a year. And, Mr. President, thank you.

SENATOR CUDABACK: Are you finished, Senator Mines? Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you, Mr. President. I will be as brief as I can. I didn't even think there would be much discussion on the floor this morning because the ultimate decision will be made by the public. We will either vote to put it on the ballot or we won't. If it's on the ballot, the public will vote yes or no. There's very little of consequence that our discussion here will do this morning. But people have something to say, and that's the nature of our proceedings. But I do want to say this to give an example to those who say that maybe they shouldn't get any more money, they're not entitled to any more. First, they shouldn't put their limitations on everybody. Secondly, we should not always reduce everything to the lowest common denominator. Thirdly, very few people get a job and feel that that's going to be the salary level forever, regardless of how long they stay there. In athletics, teaching, even laboring, where you have a chance to try to have some incremental increases, nobody is expected to remain at the salary level that was there when they entered upon that work. When I was a barber many years ago...and to show you how long it was ago, Senator Connealy, Samson was looking for a haircut and I refused to give it because I knew the ramifications. (Laughter) But at any rate, barbers were not organized, and some of the younger men

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coming into barbering wanted to raise the price for haircuts. And some of these old geezers were saying, well, no, I don't think you ought to raise it. And one of them finally got angry and he said, well, each man knows what he's worth. So if there are people here who feel that they're not worth anything, we're going to drag you along because of the institutional status of the Legislature. In this society, value of an item or a person or work is determined by how much money is given in exchange for what that person or that institution is doing. Maybe it shouldn't be that way, but that's the reality. If we, as members of the Legislature, do not feel that the amount that is paid to people for being here is inadequate, why should the public think otherwise? We're in the position to know. If we believe that the salary is inadequate but we're afraid to put the issue on the ballot, then we get what we deserve. So I'm going to vote for this proposition. There have been groups and individuals who have already spoken in favor of a salary increase while condemning the Legislature for specific things that are done. So I'm hoping that we can get a yes vote from everybody on the floor. But that shows that I'm just an eternal optimist. It also shows that despite the times that I may feel it necessary to castigate my colleagues, that I retain a level of confidence in their ability to look at an issue, evaluate it, and make the right decision. The red votes will get a salary increase, just like the red votes when I was trying to get our expenses paid while we're in session. The ones who voted red got the expenses and they accepted them. Everybody ought to participate in putting this on the ballot. If they cannot bring themselves to vote for it, they at least should not vote against it. Nobody has to do anything that I say. Nobody has to accept a recommendation. But I'm talking about a strategy now. If you don't feel you're worth anything, if you're fearful, don't hinder those who are trying to bring some degree of dignity and respect to the Legislature as an institution.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: If you show that you are not voting, that should be enough for those who are going to vote yes or no on you being returned to the Legislature. But I can tell you that an issue such as that will not determine whether people vote for

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or against you anyway. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion of advancement of LR 12CA, Senator Janssen, followed by six others.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Every one of us in this institution endures a hardship to serve in the Legislature. You look at the makeup of this body. We have retired people, we have farmers, merchants, some teachers, ex-teachers, ex-law enforcement officers. It's a pretty good mix of occupations that most of us come from. Will this solve the problem of a very narrow window of who can serve in this body, doubling the salary? It will help. It will help, but I'm not too sure that \$24,000 a year is going to make that big of a difference. You know, I feel very fortunate that I've been able to be here for the last 13 years, but it's a sacrifice that my employees and my family have also made along with myself. You know, I live only 60 miles away, and I'm able to stay in touch with my business and my family, even at 60 miles. But you look at Senator Erdman, Senator Smith, Senator Louden, Senator Pederson, Senator Baker, and there are more. It is pretty darn tough. They have to move, either move their families down here or get an apartment and not being able to commute every night like I do. Senator Langemeier is far enough away that it's very hard for him to go back and forth every night. You know, I was unopposed the last two times I ran for the Legislature, and one of the main reasons was that the salary was not enough for some very, very capable people to even think about running against me. And I believe that, by putting this on the ballot, which we have to do, is going to give everyone in this state a chance to express their concerns about their elected officials. Whether it will pass or not, that...you know, at least we give them the chance and the opportunity to express how they feel about their elected officials, in that form. I'm glad that the Exec Board put the amendment out. And remember that the decision is...will be in the hands of your constituents. So with that, I think everything else has been said. I'll give the rest of my time back to the Chair. Thank you.

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SENATOR CUDABACK: Thank you, Senator Janssen. (Visitors introduced.) On with discussion of LR 12CA. Senator Stuthman, followed by Senator Beutler and others.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I've been listening to the discussion this morning, and I think this is something that realistically should be put out to the people. The thing that really concerns me is that, you know, what are the headlines going to be in tomorrow's paper? Is it going to say: senators want pay raise? Or is it going to realistically say that the legislative body is asking the voters, do you want to give your senator a raise? Do you want to...your elected official to be down here for X amount of dollars? The one that you want to represent you, is he only worth so many dollars for the sacrifice that has to be given? I think that is the main question. And I'd also like to echo some of the comments that Senator Chambers had stated. You know, we're not asking for a pay increase. We're letting the people. And the only way that we can do this is if we put it on the ballot. We're not saying we want \$24,000, or we want \$40,000. What do the people want us to receive, you know, for the services that we're giving them? Everyone down here, you know, knew what the salary was when they came down here. But I think we got an issue, with the term limits, that's going to realistically limit the amount of people that want to come down here and serve and have the financial resources to serve. I think we're only, if we pass this--and I'm totally in favor of passing this--what we're only trying to do is ask the voters, should the salary be increased for the people that represents them? Is it enough? It's been 18 years since it has been put to the people. So I think that is something we need to think about. Are the people that are voting on this, are they receiving the same dollars that they received 18 years ago? I'm sure gasoline prices weren't the same right now. I believe 18 years ago they were probably around 79 cents. You know, these are the issues. We're not asking one; we're doing the procedural part of it as putting it to the vote of the people, letting them tell us. If they vote it down, and that's all they want to have their representative receive that they elect, then we will live with it. And I'll return the balance of my comments...or, balance of my time to the Chair. Thank you.

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

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I'm probably going to be the only one to vote red on this. And I'm going to vote red on it for a particular reason, because I want to make a statement. And ironically, I want to make a statement in favor of this pay raise. I'm not going to be around, so this is not about me. But is \$24,000 enough? No, it's not. I'm in favor of twice \$24,000. We don't...and the irony of term limits is that you people who can serve only eight years, if you're going to learn faster to make up for the lack of experience--and that's what's going to have to happen if the quality of the Legislature as a whole is going to be maintained--you're going to have to spend a lot more time, quicker than was the case before, to retain the body of knowledge in the Legislature that is here now. That's the only way it can be made up, is if the senators who are serving shorter terms spend more time doing it. The irony of term limits is that it has pushed us toward a full-time Legislature, which those people who are in favor of term limits generally are...do not favor a full-time Legislature. And yet, they've created that kind of pressure. But I've become convinced over the years--and I started at \$4,800 a month (sic)--I've become convinced over the years that this system of one pay increase every 15 years or so is probably the most detrimental thing that happens to this institution. It is the one biggest thing, in my mind, that keeps us from functioning with the quality of people that we need, putting in the quality time to do the job. And so I am now and everlastingly against any pay increases that are dollar amount increases. This matter needs to be taken out of the constitution. And if I'm asked, I'm going to say directly to the face of the people of this state that they do a great disservice to themselves and to the senators by insisting that this be in the constitution and by insisting that this silly game goes on, where every 10 or 15 years the public decides whether the Legislature needs a raise. Each one of them, working in an organization, would never agree to a system that looked at a raise every 10 or 15 years. They would never agree to work for such an organization. And I want to put that

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message out there. And I lost this debate in the Exec Board, so I'm not going to pursue it unless other people are interested. But there is a possibility of having two constitutional amendments in one bill, put one on the primary and one on the November ballot, and at least make an effort to get it out of the constitution at one place...or, time or the other. And I would like to see that happen. But if the wisdom of the body is that we should only approach it one way, and that approach should be the old way that gets us in trouble again, then so be it, and I will vote the way I feel I need to vote. But believe me, I'll be arguing for you. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Brown, followed by Senator Landis and others. Senator Brown.

SENATOR BROWN: Mr. President, members of the Legislature, I was very touched by what Senator Beutler just said. And one part of me, the part of me that understands the logic of it, says that he's absolutely right. The part of me that's pragmatic says that we absolutely have to do something, and what we do is that which we can get done. And it's very unfortunate. But I just want to comment briefly about the sacrifice that I have seen made by the members of this body to serve, since I've been here, and how unfortunate it is when good people cannot do that because during their prime earning years they just cannot afford to do it. And they put their families ahead of their political ambitions, and...but some people continue to try to serve the state, even when it harms them financially very badly. And I just want my colleagues to know how much I appreciate the sacrifice that everybody makes to do this work. And it is far more than the public understands, I think, most times. And most...I'm continually surprised at how many people believe that we receive the same amount as congressmen or U.S. senators. And...but what we do, we obviously do out of a love for this state. And we've got to do that which we can do to make other people be able to do it, especially in an era of term limits. Senator Beutler is right. We should fix the system. But I think that we have to fix the problem that is in front of us right now. And pragmatically, I think that this is the way to do it. Thank you.

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

SENATOR LANDIS: You may file this away under "carking voice in the wilderness." For us to predict what the public will do and pass an amendment--not just put it on the ballot, but pass an amendment--we have to guess what the public will vote for. And we've overstretched the mark in LR 12CA. The public will not vote for \$12,000. It won't vote for it, because essentially, that's the average state wage. That's what the average worker in this state makes for a year's work. And when they sit in that voting booth, they're going to say to themselves, \$24,000 is an average wage for a year's work, and that's half a year's work, and it's too much. And my prediction is it will be voted down. Now, we jumped from \$4,800 to \$12,000. But when we did that...and though the numerics of that was, I mean, it was like a 250 percent increase, but we were still well below what the average person in the state received; \$24,000 will not be that same kind of a number. So when we have a 100 percent increase--because that's how it's going to get played on talk radio, a 100 percent increase--we'll also begin to approach the amount of money that many, many people in this state make for a year's labor. And that will be disqualifying. I wish it was more. But this is a futile exercise if it's not something that the public can be educated into supporting. You can move people by education. I don't think you can support...I don't think you--this is my prediction--I don't think you can get them to do a 100 percent increase that replicates an average full-time year-round job in this state, which is about a \$24,000 a year job. Why can't we get a commission, which is, I think, entirely rational? Two reasons. Number one: the federal government has a commission, and it allows--and the public has seen this--for House of Representatives members to vote against an increase given to them by the commission, which they then get to vote against, but, because there isn't enough of them voting against the commission, they get the increase. They see games played with the commission. And Senator Beutler's theory on the commission is that the public wouldn't work for somebody who treated them that way. That's true. They wouldn't. But the public isn't the worker, under the commission form; the public is giving up their position as making the decision, or being the CEO. And by giving it to the commissioner, they lose the power

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to make the decision they now have. The analogy is wrong. It's quite true the public wouldn't go to work for this system. But they wouldn't give up being the power broker, which they are now, by having the final say. Which is why they're not going to vote for a commission either. It means they have to give up their ability to say yes or no. And it's the one day when they get to tell government that they're the boss, not us. And the commission stops them from being the boss, and it says the commission is in the middle. And that's why the public is not going to do that either. I'll tell you two things that I think could pass. One: I think a number someplace in the middle. My best guess is, I think \$16,000 wins; I think \$18,000 is the maximum that you could persuade the public to go for. And secondly: to get to the problem of youth and families, I would try to pick up the problem with respect to expenses, and look for health insurance and day care, things that replicate the real needs of families, which everybody understands are things that are important, and that in fact makes families work, and so that if we went down that list that Mike Flood was going, we would say, these are people who in fact have health insurance needs and day care needs. So those are the ways that I think we get out of the problem that we're in. I...my best guess--and this is totally a political estimate--is that \$24,000 is too high. And by taking to the public a number that they will defeat,...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...it continues the dynamic that we're in. If our request was more modest, I think we would have a chance of success. My guess is that they will say, the Legislature is arrogant for asking for \$24,000. A task, a function that we know is not reasonable, a number that we know is totally justified. But we're not voting in that voting booth. The public is. And we have to live inside what they will do. My best guess is, this is too much.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Redfield, on LR 12CA.

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

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body. Seven years ago, we had this debate on the floor of the Legislature. The Speaker then, Doug Kristensen, introduced a bill, and we debated it through two rounds. I don't know if you recall that debate. But I know that today, citizens in Nebraska still tell me that we doubled our salary seven years ago. And we all know that that was not put on the ballot, that we did not in fact receive any kind of increase, and that there has not been an increase since 1988. What I will also repeat today in the debate is what I said seven years ago about the issue. The United States system of government is predicated upon three equal branches of government. And we have said that in our judicial system, that we will not be able to attract qualified people into the court system unless we pay them adequately. And we have set salaries that are more competitive. When it came time for the executive branch, and we looked at our Governor's salary, and we compared that, several years ago, to what governors were receiving in other states, we thought that we should make some adjustments. And we moved, actually, I believe, from 50th in pay up to 49th. But I will tell you that in that pay increase that we gave to the Governor, we actually said that our Governor was only worth two-thirds of the judicial branch. And the legislative branch, which is supposed to be an equal branch with the executive and the judicial branch, we have said is worth one-tenth. That's what our salary says. We're worth one-tenth of the judicial branch. Now, I don't think that's three equal branches of government. I don't believe the amendment that is before us today is three equal branches of government, when you're looking at the dollars and cents. Senator Beutler is wrong when he says that history says there's been a raise every 10 or 15 years, because in fact, if you look at the sheet that Senator Schimek distributed, we see that in the twentieth century, there was a raise that was actually approved by the people in 1912, and that was after 26 years. Then there was not another one approved again by the people for 40 years. And then there was this anomaly in the sixties. I don't know; maybe there were some drugs going around. But after the sixties, there was not another increase for 20 years. So we're probably getting close to that 20-year mark. But the mark is not every 10 or 15 years that the Legislature has received a raise. It's been longer. I would agree with Senator Beutler. I don't believe that this is something that should be in the

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constitution. I think that there should be some kind of growth factor, whether it is an inflation factor or whether it is pinned to the average wage in Nebraska. I think that we need another mechanism. I am really reluctant to put a dollar figure in our constitution and continue the system that we have, that actually puts us at a competitive disadvantage when trying to recruit good people for the Legislature. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Engel.

SENATOR ENGEL: I'd like to call the question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease? All in favor vote aye; opposed, nay. We're voting on ceasing debate for the advancement or LR 12CA. Have you all voted who care to? Have you all voted? Senator Engel, what purpose do you rise?

SENATOR ENGEL: Roll call vote.

SENATOR CUDABACK: There's been a request for...did you...

SENATOR ENGEL: Oh, not a roll...

SENATOR CUDABACK: ...request a call of the house?

SENATOR ENGEL: Yes. Call of the house, please.

SENATOR CUDABACK: Been a request for a call of the house. All in favor of the house going under call vote aye; opposed, nay. Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays to place the house under call, Mr. President.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators, report to the Chamber. The house is under call. Senators, please report to the Chamber. The house is under call. Senator Friend, check in, please. Senator Burling, Senator Cunningham, Senator Pahls.

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Thank you. Senator Beutler, Senator Brashear. Senator Brashear, Senator Burling, the house is under call. Senator Burling and Senator Brashear. Senator Engel, did you wish to have a roll call, or did you wish to accept call-ins? Senator Engel has authorized call-ins on the motion to cease debate. We're still on the motion to cease debate. And he has authorized call-ins. We have lost the machine vote that we had, so we must go to a roll call vote. Did you wish to wait for Senator Burling, Senator Engel? He is present. All members present or accounted for. Mr. Clerk, call the roll on the question, please.

CLERK: (Roll call vote taken, Legislative Journal pages 997-998.) 37 ayes, 7 nays on the motion to cease debate, Mr. President.

SENATOR CUDABACK: The motion was successful. Debate does cease. And I do raise the call. Senator Schimek, you're recognized to close on the advancement of LR 12CA. Senator Schimek.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. I will be brief. Senator Landis, I think you said there's no way that we can know for sure what voters will support. And I agree with you. And that is why I think it's important to have discussion on the floor at every stage of debate on this, if necessary. I don't agree with you, maybe, that this may be too much for the voters to bear. I don't know if you recall or not, but I was just reminded that Senator Maxwell had a bill last year that would have kicked it up to \$60,000 a year. And I think this may be a very modest proposal in comparison. But maybe that's not fair either. I hear all the arguments about the comp plan, and I hear the arguments about some kind of automatic indexing. And I believe that the Executive Board sincerely looked at all those issues, because there were bills like that before them. And I'm not necessarily opposed to those. Again, I think, going back to what Senator Landis said, we have to try to ascertain what will be realistic. I would hope that if we are able to put a salary increase on the ballot, and it is successful, that maybe we could talk about some of these other ideas at a later date. Meanwhile, I would just like

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to ask you for your consideration in advancing LR 12CA to E & R Initial. Thank you.

SENATOR CUDABACK: You've heard the closing on advancement of LR 12CA. All in favor of the advancement vote aye; those opposed, nay. We're voting on advancement of LR 12CA. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 31 ayes, 9 nays, Mr. President, on the advancement of LR 12CA.

SENATOR CUDABACK: LR 12CA does advance. Do you have items for the record, Mr. Clerk?

CLERK: I do, Mr. President. Thank you. Hearing notice from Natural Resources regarding gubernatorial appointments. An amendment, Senator Beutler, to LB 739. Reference report. And Business and Labor Committee reports LB 13 to General File with committee amendments attached. And that's all that I have, Mr. President. (Legislative Journal pages 998-999.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, LB 361.

CLERK: LB 361, a bill originally introduced by Senator Bourne. (Read title.) The bill was introduced on January 11, referred to the Judiciary Committee, advanced to General File. There are Judiciary Committee amendments pending, Mr. President. (AM0523, Legislative Journal page 871.)

SENATOR CUDABACK: Senator Bourne, you're recognized to open on LB 361.

SENATOR BOURNE: Thank you, Mr. President, members. LB 361 is a technical bill, and simply cross-references an exception to the county court's exclusive jurisdiction of probate matters. Under Nebraska law, county courts have exclusive jurisdiction to hear all matters of decedents' estates, including the probate of wills. However, Section 30-2464(c) provides an exception. That provision provides that for causes of action that survive the decedent, the court that would have had jurisdiction over the

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decedent's claim would hear the case. A bill identical to LB 361 was introduced in 2003 and advanced by the Legislature, but the time ran out for its passage. That is what LB 361 does, Mr. President.

SENATOR CUDABACK: You've heard the opening. Judiciary Committee amendments. Chairman Bourne, you're recognized to open.

SENATOR BOURNE: Thank you, Mr. President, members. As has been the practice of the Judiciary Committee in the past, we have put together a number of bills in the committee amendment to LB 361. I'll give you a brief summary of each of those bills, but...as advanced by the committee is LB...or, excuse me, included in the Judiciary Committee amendment, are the following bills: LB 446, which is Senator Jensen's; LB 755, of Senator Chambers; Senator Flood's LB 410; Senator Brown's LB 130; LB 110, introduced by myself; and LB 756. Each of those bills was advanced independently from the Judiciary Committee. And their individual committee statements are available on your laptops. I'll go through briefly what each of the bills does. And that, again, is included in the Judiciary Committee amendment. LB 446, introduced by Senator Jensen, would establish the Patient Safety Improvement Act. The purpose of this act is to encourage patient safety in the medical industry through the reporting of incidents of adverse health events and near misses to patient safety coalitions that oversees the information. The bill provides legal protection to providers and facilities that will allow them to review health information and collaborate on the improvement of patient safety, without that becoming an additional avenue for discovery in lawsuits. The bill does not change current avenues available to patients for legal redress. The committee amendment to LB 446 contains the following additional changes. It amends the definition of "patient safety work product." It explains that patient safety work product shall not be offered in the presence of a jury or other fact finder. It adds the Nebraska Academy of Physician Assistants to the Board of the Nebraska Coalition for Patient Safety. Changes the term "contaminated drugs" to "adulterated drugs." It allows for immunity for any provider furnishing services to a patient safety organization. The amendment clarifies that any person

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attending a meeting of the patient safety organization shall not disclose the actions, decisions, proceedings, discussions, or deliberations that occurred at the patient safety meeting. It adds a penalty provision that a person who knowingly violates the disclosure of information shall be guilty of a Class IV misdemeanor. Finally, the amendment allows the statewide medical associations participating in a patient safety organization to choose at least one representative to be on the board of the patient safety organization. I'm sure Senator Jensen has additional information regarding LB 446. The next bill is LB 755, introduced by Senator Chambers. This bill would prohibit the taking of a DNA sample from any person by law enforcement without probable cause, or with receiving the voluntary consent of such person in connection with the investigation of a particular crime. The bill also establishes procedures that law enforcement must utilize when obtaining consent to take a DNA sample; procedures for law enforcement agencies regarding the handling of DNA tests and samples...or, excuse me, DNA test results and samples; and it also establishes a right of action to persons whose rights under the act have been violated. The committee amendment to LB 755 changes the procedure for obtaining consent for a DNA sample, and removes the criminal penalty for violating the provisions of the act. The written declaration is amended to only require that a person be notified of their right to refuse the request to donate DNA, and that such a refusal does not constitute probable cause or reasonable suspicion that a crime has been committed. The requirements that the sample is knowingly and voluntarily given, and that no threat, pressure, or coercion was employed, still must be adhered to, but no longer have to be included in the written declaration signed by the donor. LB 410, as introduced by Senator Flood, would allow an affidavit or certificate of dissolution of marriage executed by the district court clerk, identifying the real estate and the person entitled to the real estate, to be filed with the register of deeds in the county of the real estate awarded in a divorce decree. This will allow the party who is awarded property to record the change in the deed without having to get a signature on the deed from a spouse who may fail or refuse to execute such a deed. The committee amendment to LB 410 makes corrections to the affidavit provided in the bill that identifies a person entitled to real estate in

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a dissolution of a marriage proceeding. The amendment provides a line for the interested party to be named in the document, and makes other technical corrections. LB 130, introduced by Senator Brown, repeals LB 625, which was an act relating to housing discrimination complaint procedures, that was passed last year. The language in LB 625 resulted in the Nebraska Equal Opportunity Commission being out of compliance with federal HUD requirements, and in the commission's ineligibility for a federal housing discrimination contract. The committee amendment to LB 130 brings Nebraska Fair Housing Act into compliance with the federal HUD law. The amendment exempts from public release all records compiled in the course of a conciliation activities related to housing discrimination investigations. The amendment also limits access to information derived from an investigation until after the investigation is completed. Current law allows the aggrieved party or respondent access to these records at any time. Any information released is subject to the Federal Privacy Act of 1974, as amended, and any other federal or state law limiting the release of such confidential information. LB 110 provides immunity from civil liability for a school nurse, medication aid, or nonmedical staff person who responds to life-threatening asthma or systemic allergic reaction protocols adopted by a school or educational program. All language in LB 110 is current law. The bill strikes the language that limits the effectiveness of the law until July 1, 2005, and extends it indefinitely. If an employee performs an act or omission which results in damage or injury that occurs when such employee is impaired by alcohol or any controlled substance enumerated in Section 28-405, immunity shall not extend to the employee, the school district, the educational service unit, or any early childhood education program. Lastly, LB 756 amends Section 29-3303 of Nebraska statute to require that police seeking a court order to obtain identifying physical characteristics from an individual must establish probable cause that the individual subject to the order committed the offense in question. Currently, Section 29-3303 requires law enforcement to establish probable cause that a crime has been committed, and that obtaining physical identifying characteristics from the individual in question may contribute to the identification of the offender. The Nebraska Supreme Court, in the case of State v. Evans,

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interpreted the fourth amendment to the Nebraska and federal constitutions to require probable cause that a person subject to such an order committed the crime in question before he or she can be required to submit to nontestimonial identification procedures. LB 756, included in the committee amendment, updates the language in Section 29-3303 to comport with the existing judicial interpretation of the statute. That is...or, those are the bills contained within the committee amendment. And if you have any questions, I would be happy to answer them. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on the committee amendments. (Visitors introduced.) On with discussion of the Judiciary Committee amendment, Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. Mr. Clerk, I would like to ask for a division of the question along the lines of the handout that I think has been around to some of the interested parties, including Senator Bourne. And as proposed, it certainly is okay with me.

SENATOR CUDABACK: Senator Beutler, why don't you and Senator Bourne come forward, please. The Chair does find that the question is divisible. Mr. Clerk, would you please read how the committee amendments were divided?

CLERK: Mr. President, there will be four components of the committee amendments. The first component will consist of Sections 1...well, perhaps let me do this, Senator. The first component will be FA125, which is essentially LB 446, as I understand it. If you want section breakdowns, I'll be happy to provide that to you. The second component is FA126, which consists of LB 110, LB 361, and LB 410. FA127, which will be the third component, is LB 130. And the fourth and final component, FA128, shall consist of LB 755 and LB 756.

SENATOR CUDABACK: Thank you, Mr. Clerk. You've heard how the committee amendments are divided. Senator Bourne. Senator Bourne, did you have anything else you wish to offer? You know, you have opened on the committee amendments once, but since they

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are divided, you have the opportunity to open again, if you wish to.

SENATOR BOURNE: Thank you. I'll just briefly discuss LB 446, which is the original...or, excuse me, is the sole component of the first committee amendment. So we are...in this division, we are talking about LB 446, that was introduced by Senator Jensen and supported by the medical community. And LB 446 would establish the Patient Safety Improvement Act. I'll just read briefly what the act does. The purpose of the act is to encourage patient safety in the medical industry through the reporting of incidents of adverse health events and near misses to patient safety coalitions that oversee the information. The bill provides legal protection to providers and facilities that will allow them to review health information and collaborate on the improvement of patient safety, without that becoming an additional avenue for discovery in a lawsuit. The bill does not change current avenues available to patients for legal redress. The committee amendment, which is reflected in this first division, does the following things. It amends the definition of the "patient safety work product." It explains the patient safety work product shall not be offered in the presence of a jury or other fact finder. It adds the Nebraska Academy of Physician Assistants to the Board of the Nebraska Coalition for Patient Safety. It provides immunity for any provider furnishing services to a patient safety organization. It clarifies that any person attending a meeting of the patient safety organization shall not disclose the actions, decisions, proceedings, discussions, or deliberations that occur at the meeting, and provides a penalty if those individuals do so. Basically, in a nutshell, what the bill does, it allows for the sharing of information by a provider to the patient safety organization on accidents or near misses that a hospital or provider may have had. The commission will then take this information and come up with procedures, processes designed to improve the medical community's actions. And if someone received a...perhaps was operated on the wrong body part or received a transfusion inappropriately, that information would be disclosed in confidence to the patient safety organization, who would then take that information and come up with a process by which Nebraskans would...who receive healthcare, would do it

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in a safer manner. I'd like to yield the remaining, if I have any time...could I yield time to Senator Jensen to discuss this?

SENATOR CUDABACK: You may.

SENATOR BOURNE: Senator Jensen, if...as it was your bill, and it was an excellent idea, and it had a very favorable review in the Judiciary Committee, if you'd like the remainder of my opening to discuss LB 446, it's yours.

SENATOR CUDABACK: Senator Jensen.

SENATOR JENSEN: Yes. Thank you, Mr. President, members of the Legislature. LB 446, I think, was a very, very important bill. As you may or may not know, somewhere between 44,000 and 98,000 people in the United States die from medical errors per year. Certainly, the medical community has been cognizant of this, and have been trying and endeavoring to provide a system where they could improve, within their own walls, patient safety. And that certainly is everything from prescriptions to medical errors that occur within the hospital setting, within the surgery setting. It would allow employees and others to record and to advise and...of near misses and of accidents that could happen, or could be prevented, to a safety...patient safety organization, whereby then, through education and through other endeavors, that you could lessen that. You know, I come from a construction industry, which, many years ago, did not have a great deal of safety requirements and safety measures. And through the years, they found out that there are things that could be done that would reduce accidents. And certainly, if you have employees that make suggestions, they should be allowed to do that without any repercussion whatsoever. And it contributes to the overall safety of the organization. The same thing is certainly within the medical community. And how can we provide for that, and how can we do that, without the...the immunity really is not changed all that much, other than, the employee or the person recording that or making recommendations can do this freely. And if he's not allowed to do it freely, you're not going to get full participation. So that is the reason for the bill. I really...I was asked to bring this by the hospital association, and I was very pleased to do that,

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because I think this is a way that all organizations should conduct themselves in trying to improve a system of care that can serve all of the public. I appreciate the Judiciary Committee in passing this bill out without any opposition. And I think it is good for the citizens of Nebraska that this be instituted, and would certainly ask that this portion of the amendment be passed. Thank you, Mr. Speaker...President.

SENATOR CUDABACK: Thank you, Senator Jensen and Senator Bourne. You've heard the opening on the first component of the divided committee amendments, offered by the Judiciary Committee, identified by FA125. Mr. Clerk, motion on the desk.

CLERK: Mr. President, Senator Beutler would move to amend this component with AM0936. (Legislative Journal page 1000.)

SENATOR CUDABACK: Senator Beutler, you're recognized to open on AM0936 to component FA125.

SENATOR BEUTLER: Mr. Clerk, members of the Legislature, this is the kind of bill where I, again, want to be careful when I start out to indicate to you that I think this is a great idea. Senator Jensen has provided some great leadership on the Health Committee in the last couple of years, and Senator, I think this is another very progressive step. It's one of those things, when you look at it, you say, my God, that's the right idea; now, why did they take such a little baby step? And the baby step means, you know, it's voluntary, you don't have to join it. It's not under the government, it's a nonprofit corporation, so there's very little meaningful regulation. Even when you join it, if you don't really want to participate, unless they make some internal rules about it, you don't have to participate, according to the statute. So it is in fact a baby step. But it's such a positive thing to do. I mean, it basically allows professionals to look at the mistakes that they make in an honest sort of way, and come to some honest conclusions, and make some changes in the way that they do things, without adding an extra evidentiary layer that can be used by lawyers in the courts. And I think that's very important, because those of us who have been around for a while, we know that excellent professionals make mistakes. Excellent professionals sometimes

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make big mistakes. And it's not just doctors. It's lawyers. We who work here in the Legislature sometimes blow it. And we all need a way of looking at these things and making improvements that are in addition to the legal system and the rough and adverse fashion in which it works. So I'm very much in favor of this. I am especially commendatory of the hospitals, if in fact they are the ones that are the guiding force here, or the underlying force. I think it can bring down insurance rates, possibly. You know, that's another good aspect of this whole thing. We have great hospitals here in Lincoln--Bryan and St. Elizabeth's. So everything about this is positive. I just want to talk about some things that I hope can be added to the bill, that are within the confines of this baby step, that don't go too far to scare people off from the idea. And I think that the things I'm suggesting to you this morning are okay from the perspective of the people interested in this bill. And maybe on Select File, and maybe not, there will be some additional things that they might as a group be willing to take on, or Senator Jensen might be interested in. But let me just tell you the two amendment...about the two amendments I have today, and see if they meet with your approval. The first amendment is, if you want to follow, on page 11 of the bill, Section 20. It says, the parent (sic) safety organization...now, the parent (sic) safety organization is this organization that's being...the nonprofit that will be set up when this bill goes into effect. And there will only be one of these, as I understand it, in the state of Nebraska. I would hope that that would be the case, and I would certainly encourage that, because we wouldn't want to see a situation where a proliferation of these types of organizations came into effect. That would be contrary to, I think, the purpose, the overall purpose of the bill. But Section 20 says, "A patient safety organization shall release nonidentifiable aggregate trend data identifying the number and types of patient safety events that occur." The bill makes a distinction between information that's identifiable to a person, place, or event, and that which is not, and which is part of an aggregate report. And that information, in its aggregate form, I think, very valuable to us all as a kind of yardstick to measure what's going on. And that particular sentence wasn't clear as to whether that information was to be released to the public. And

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so the first part of this amendment simply makes clear that it is to be released to the public. And I understand that to be...to comport to the intent of the people interested in the bill. The second sentence says, "A patient safety organization shall publish educational information from the summary reports that can be used by all providers to improve the care they provide." The summary reports are reports that come in from the different providers with respect to incidents that occur, or near incidents that occur, and they contain a kind of analysis and summary, and it's a probe to determine, what can we learn from this experience? What can we do different? What can we do in terms of recommending protocols and best practices to all of the hospitals or the different providers? So those summary reports, educational information from those is to be published. Again, the amendment makes clear that that information is to be available to the public. And it expands the educational information to include evidence-based information. That refers back to another section of the bill. And I wanted to reference that section, Section 7, subsection (3), that talks about evidence-based information. And as that term is used in that particular paragraph, that's what I intend to reference into Section 20. So that's really all that this amendment does. It's including the public a little bit more in the information that's being provided. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM0936, which is an amendment to the first component of the divided committee amendments. Open for discussion. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Senator Beutler, I believe that your amendment just adds some clarity to who the information goes to once it's been processed by the organization. I think it's a good amendment. I intend to support it. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Further discussion? Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. And likewise, I would endorse this amendment. It does add some clarity. And is

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this the first step? I think perhaps it is. And should we stop here? Probably not. But it's certainly, I think, a very good first step, and shows that the providers, those in healthcare, want to do the very best that they can. And so I would certainly endorse the amendment, and also the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. Seeing no further discussion, Senator Beutler. You wish...you're recognized to close if you care to. He waives closing. The question before the body is adoption of the Beutler amendment, AM0936, which is an amendment to the first component of the divided committee amendments. All in favor vote aye; opposed, nay. The question before the body is the Beutler amendment, AM0936, amendment to component FA125. Record please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment.

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

CLERK: Mr. President, Senator Beutler would move to amend this component of committee amendments with AM0937. (Legislative Journal page 1000.)

SENATOR CUDABACK: Senator Beutler, to open on AM0937.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this will be my last comment on, essentially, Senator Jensen's bill. In the bill, it says in a particular section that every provider...and these are hospitals, doctors, everybody that's required to file under certain provisions that already exist in our statutes, but includes most medical providers. It says, every provider subject to the act shall track, shall track and report occurrences of patient safety events. And then the bill goes on to identify, I don't know, 12 or 13 different kinds of events that have been historically problem kinds of areas in the medical practice, such as surgery or procedures performed on the wrong patient or wrong body part, foreign objects accidentally left in a patient, and so forth and so forth. And then in another section of the bill, it goes on to say that the

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organization can make changes, additions, and deletions to this list of reportable events that shall be reported. But when it says that they can make these changes, it doesn't say "shall be reported"; it says "may be reported." So all I'm doing is making the additions consistent to the original language, in terms of, once you decide to do it, then you shall do it. And then secondly, on page 10 of the bill, there was a provision that required that the analysis that has to be done of these occurrences by the provider, the pertinent provider, shall be completed within 45 days after such occurrence, and then it says, "and an action plan developed." Upon inquiry, it...everybody seemed to agree that both the analysis and the action plan should be done within the 45 days. And in order to make that read right in the sentence, we just switched around some language a little bit. And so if this meets with Senator Bourne's and Senator Janssen's approval and the body's approval, I'd recommend it to you.

SENATOR CUDABACK: Thank you, Senator. Open for discussion on AM0937. Seeing no lights on, Senator Beutler. He waives closing. The question before the body is, shall AM0937 be adopted to the first component of the divided committee amendments? All in favor vote aye; those opposed, nay. The question before the body is the Beutler amendment, AM0937, which amends the first component of the divided committee amendments. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment to this component of the committee amendments.

SENATOR CUDABACK: The amendment has been adopted.

CLERK: I have nothing further to this component, Mr. President.

SENATOR CUDABACK: Back to discussion of FA125. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I'm sure all of us could think of some additional things we

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would like to see in the bill that would encourage more work in this direction. But that perhaps is not appropriate at this time. But I just wanted to make the comment that I certainly hope all providers will participate in this. And I hope all of you will keep an eye on all your providers in your local areas, and ask the question of whether they're participating in this. And I hope the insurance companies will keep an eye on this, and to the extent that somebody is actually actively and in good faith participating in this process, that there might be some kind of insurance break for those people. Because I think, properly done, that this process can have a truly positive effect on preventing at least some of those occurrences that seem to be so repeating in these areas. And with that, Senator Janssen, I'm going to be...Jensen, I'm going to be supporting the bill. Thank you.

SENATOR CUDABACK: Further discussion? Senator Bourne, there are no other lights on. You're recognized to close on the first component.

SENATOR BOURNE: Thank you, Mr. President, members. I just wanted to state that I very much appreciate Senator Jensen's leadership on this. I know when the bill was referred to Judiciary, he was...I don't want to say uncomfortable with that, but he was, I think, concerned that such an important piece of legislation might get caught up in the black hole there. And with that, I would yield the remainder of my closing to him, as it's his bill. I'm delighted he has brought it to us. I think it's one of the best bills that I personally have seen in the Judiciary Committee with...in this year. I think it's going to help Nebraskans. With that, I'd yield the remainder of my closing to Senator Jensen.

SENATOR CUDABACK: Senator Jensen.

SENATOR JENSEN: (Microphone malfunction)...Mr. President. And thank you, Senator Bourne. And yes, I did have that apprehension when it got referred to Judiciary. But that's one thing I've found down here, that we have good heads in all our committees, and they do excellent work. And this is a very important bill that I think can do nothing but help our citizens

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and provide good safety any time that you go to a provider looking for healthcare. So I'd certainly urge the body to move on to this section and include this into LB 361. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the closing on FA125. The question before the body is, shall the first component of the divided committee amendments be adopted? All in favor vote aye; opposed, nay. The question before the body is component one of the divided committee amendments by the Judiciary Committee to LB 361. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of the first component of the committee amendments.

SENATOR CUDABACK: Component one has been adopted, FA125. Mr. Clerk.

CLERK: Second component, Mr. President, involves Sections 23, 24, 27, 28, 33, 34, 36, and 39 of the original committee amendment. It's FA126, I think consisting of LB 110, LB 361, and LB 410. (Legislative Journal page 1000.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) Senator Bourne, to open on component two.

SENATOR BOURNE: Thank you, Mr. President, members. As the Clerk mentioned, this next section, FA126, contains LB 110, LB 361, and LB 410. And just to remind you what they are, LB 361...and I might add that each of these bills was referred out of the Judiciary Committee individually, and the committee statements can be found on your laptops. LB 361 is a technical bill, and simply makes a cross-reference to an exception in the county court's exclusive jurisdiction of probate matters. This section of the amendment also contains LB 410, which was Senator Flood's bill, that would allow an affidavit or certificate of dissolution of marriage executed by the district court clerk identifying real estate and the person entitled to the real estate to be filed with the register of deeds if that real estate was awarded in a divorce decree. It would allow the party who is awarded property to record the change in the deed

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without having to get a signature from that individual's ex-spouse, who may fail to or refuse to execute such a deed. I'm sure Senator Flood has additional information on that bill as well. LB 110 strikes a sunset provision in an immunity provision of a...this is rather confusing. A number of years ago, actually I think it was last year or the year before, the school associations came to the Legislature and were concerned that if one of their teachers administered an epi-pin injection to a student, they wanted to make sure that even though that teacher or faculty member had some training, they wanted to make sure that there was some immunity if that administration of the epi-pin resulted in some harm. And at the time, they felt that it was an urgent need. And so the bill at the time did not have a hearing, and so the compromise was met that it would be added into an education bill with a sunset provision. Then they would...the teachers association would come back with a hearing. And that's what they've done. So LB 110 simply strikes the language that sunsets the immunity provision of an epi-pin administration so that it extends it indefinitely. And with that, Mr. President, those are the three bills in this section of the committee amendment. I'd be happy to answer any questions if you may have them. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on second component of FA126. Open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I want to talk a little bit with Senator Flood about Sections 23 and 24 of the bill. And as I understand it, this is Senator Flood's piece of the bill, which was a separate bill at one point in time. And the process that Senator Flood is suggesting with regard to a certificate is one that may be a helpful process. However, there is an existing process, and there are problems that pertain to the existing process. And then there's Senator Flood's new process. And the point of the conversation today is to explore the new process as compared to the old process a little bit, and talk about what some of the pros and cons are. And I indicated to Senator Flood, I certainly wasn't going to be interested in amending the bill until I had some firmer idea of what his intentions were and what his thoughts

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were as to the value of certain aspects of this. It has to do with the situation where there has been a degree of dissolution of marriage. And it only pertains to those dissolutions in which real estate is involved. And sometimes it's jointly owned; sometimes it's separately owned. But in any event, at some point in time, an order is entered, dividing the property. And that order can divide the property in any way that seems to...that fits fairness and equity. When that's done, as far as title to the property is concerned, in a strict legal sense, that order operates as by operation of law, automatically, giving the respective properties to the respective parties as delineated in the order. Technically, you don't need to file any quick claim deeds, you don't need to do anything at all. That order is entered in the clerk of the district court's office, and operates to transfer the property. Now, if the property and the dissolution order are in the same county, the problems related to this as far as transferring title down the line is concerned, getting evidence of what's happened, are not that great. Because the abstractor will simply go to the courthouse and will discover the dissolution agreement and will give the owner of the property on the title insurance in the proper way, as described in the order of dissolution. But I think Senator Flood is more interested in another situation, where, let's say, Senator Louden, we had a divorce in your district, but the property--and this is probably turned around--but the property is back here in Lincoln. And there's another piece of property in Gage County, and yet another one up in Senator Flood's Madison County.

SENATOR CUDABACK: Senator Flood, would you respond?

SENATOR BEUTLER: No, I'm not asking a question, Senator Cudaback.

SENATOR CUDABACK: Okay. Fine.

SENATOR BEUTLER: Do I have some time left?

SENATOR CUDABACK: You have 1 minute and 12 seconds.

SENATOR BEUTLER: Okay. So you have this dissolution decree way

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out west, and you have three pieces of property in other counties around the state. So let's say the person who was given the property in Gage County decides he wants to sell it, or she wants to sell it. Then that order, which is in Senator Louden's county, way out west, has to somehow be put on record in Gage County, so the abstractors can pick it up and properly reflect title. I think what Senator Flood is saying is that that process is going to be easier if instead of transcribing the judgment, that is, asking the clerk of the district court in Senator Louden's district to certify a copy of that order and send it to the clerk in Gage County--that's called a transcription of judgment. Instead of doing that, Senator Flood has laid out a certificate process, whereby the lawyer in the case...

SENATOR CUDABACK: Time, Senator Beutler. Now it's your turn, Senator Flood.

SENATOR FLOOD: Thank you, Mr. President, members. I'll yield just a little bit of time so you can finish that thought, Senator Beutler. I know you were just finishing up there, so.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Thank you very much. So Senator Flood's process is that the lawyer in Senator Louden's county would have the clerk there sign a certificate, and then the lawyer could have that certificate filed in Gage County, in Madison County, where there second piece of property is, and in Lincoln, where the third piece of property is, and that that has some advantages. And that's probably the proper point to turn it back to you, Senator Flood.

SENATOR FLOOD: Thank you, Senator Beutler. I guess the hard and fast application of this bill that I...that has now been incorporated in the committee amendment, does this. As a family law practitioner, and family law practitioners around the state, they will tell you, when you've practiced law, especially when representing a client in a dissolution of marriage, you have two people that obviously are not getting along. And oftentimes in the negotiation process, one party or the other will be the sole

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recipient of the house or the farm or the business real estate or grandma's farm that the husband got through marriage, and she releases her right on that property. Well, as the divorce goes on and things get more tumultuous, and things get heated, and there's anger, and there's emotion, I've sat there in the courtroom before where the court finally says, this is an equitable distribution, either by operation of a stipulation agreement or by a trial, and the court says, in the decree to the petitioner, his wife, you get the house. And so maybe the decree says, the house at 410 East Elm goes to the petitioner. Sometimes and sometimes not, it will say, the respondent shall execute a quick claim deed. And a quick claim deed from the husband says to the wife, I give you any interest whatsoever that I may have in the house at 410 East Elm Street, and it is now yours. I relinquish all right and title. Whatever I have, if anything, is yours. Because oftentimes, in a marriage, title...or, real estate is titled jointly with right of survivorship. And then what happens is, the judge says, well, you sign a quick claim deed. Do you know how hard it is to get a client to sign a quick claim deed after a divorce, when he or she is so upset at the other party, and this quick claim deed represents, in their own mind, giving up everything they've ever worked for? And so then you have this other party, the party that receives the real estate, trying to get a bank note fixed, trying to make changes on the real estate. And they don't have any...they don't have sole right, title, and possession of the real estate, when in fact the party, either the responder or the petitioner, has been ordered by a court to sign a quick claim deed. This allows the party receiving the real estate to have their attorney, not the clerk of the district court, draw up a certificate of dissolution of marriage, as outlined in the bill, take it to the county district court clerk, have them sign off on it, have the legal description there, say who the property concerns, and that the fact that it's being assigned to the other party, and then you file that with the register of deeds, and in essence, it serves as evidence that a court of competent jurisdiction has taken that real estate and given it to the party that was awarded the real estate. It is not a deed. It is not a quick claim deed. It is merely evidence of the fact that a decree from a district court judge in Nebraska says this real estate belongs in this person's name solely. There is

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another way to do this, and I'll describe that process. If you do have that situation, you can go ahead and file the decree. But if you do...

SENATOR CUDABACK: One minute.

SENATOR FLOOD: ...a good decree and a lawyer prepares a competent decree, you've got your kids' social security numbers in there, you've got your credit cards and the account number and the balance, you've got every single piece of property you own, you have all of your debts, you lay your entire life out there, your child custody, your visitation, and you file that with the register of deeds, and it becomes an even more public document, it's already filed with the district court. Now it's filed with your real estate. That, I think, is too much. Not to mention, you may get a decree that doesn't adequately describe the real estate. This gives your attorney the chance to list out in a legal description exactly what parcel of real estate we're talking about, where it's supposed to go. It's an easy, it's an inexpensive, and it's the right thing to do to make these family law situations work better. And lawyers across the state who practice in family law know what it's like getting the other party to sign a quick claim deed. That's why I brought this bill. I've been in this situation. There are...

SENATOR CUDABACK: Time, Senator.

SENATOR FLOOD: ...men and women that have been in this situation. Thank you.

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

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Flood has given you a strong rationale for the bill. Here's my principal problem with that rationale. First of all, I think there are some things that can be said about the privacy issue, especially in the sense that if you're...the court order is a public document to begin with. And by entering it in another county, you're putting it among the court records in another county. So it is less private. But you have to understand that that document is public to begin with. But

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here's the big question. The way that this is in the bill right now, this particular certificate that is being filled out by a clerk of the district court...and by the way, remember that these clerks of the district court are elected. They're not hired for their knowledge of law. They're not hired for their management skills. They are elected. And they may or may not have a good understanding of property law and what's involved. The filling out of this certificate is done by the attorney. Hopefully, the attorney will do it correctly. But nonetheless, the clerk of the district court is signing off on this certificate, and saying, yes, this is what's on record in my county. Now, the certificate part, in and of itself, seems very agreeable to me. But to sign off and say that this property is going to a particular person goes a little far and raises the question of the liability of the clerk of the district court. Not all of these decrees are easy to read. Believe or not, the lawyers don't always make it perfectly clear, and the judges don't always seek clarification if it's not perfectly clear, especially in cases where there are multiple parcels involved, and this party gets one; this party gets A, B, and C, and the other party gets E, F, and G. A lawyer, in doing this certificate, could make a mistake that's then signed off on by the clerk of the district court. Or the clerk of the district court could alter the certificate and be wrong about it. So what you're doing, it seems to me, is injecting the clerk of the district court into a process that they've never been in before, except in certifying a true copy of a judgment order. You're injecting them into the process. And I think we should be sure that if in fact we need to and want to inject them into the process, that we're not bringing on some responsibility that they then have, which is really not necessary, at least in my mind, given the way the matter can be handled under current law. So there's that question. And then, Senator Flood, you might comment, if you would, on that question, and also on the fee question. If the clerk of the district court has to review the certificate and look at the actual order and see that it's correct and then send it out, is there some fee associated with that process? And if you could respond...

SENATOR CUDABACK: One minute.

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SENATOR BEUTLER: ...to those two things, Senator Flood, I think everything else we can talk about off the floor, and have some discussion with the Bar Association, and certainly reach some agreement on how this should be handled. Thank you.

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

SENATOR JANSSEN: Thank you, Senator Cudaback. I give my time to Senator Flood.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Thank you, Mr. President, members. I appreciate Senator Beutler's attention to this. This is a little change, a little nuance that I think will be beneficial to family law practitioners, and help people in divorces make it through this very tough time, especially when it comes to who owns what real estate, and what's needed to take care of it. You and I agree, Senator Beutler, on one point, and it was just kind of lightly mentioned. We both support the idea of district court clerks being...and those offices being controlled by the Nebraska Supreme Court. But that being said, I do think that we have competent people as district court clerks across the state of Nebraska. And we have already entrusted these individuals to not only run the court from an administrative standpoint, day to day, while judges are out, but also to transmit information regarding child support. Obviously, we went to a state system. But they're actively involved in that. They assist members of the public filling out whatever affidavits are necessary in whatever situation it may be when it comes to domestic violence or a protection officer or pro se litigants. We have very competent people as district court clerks in the state of Nebraska. And no, it is not my intent to place a liability on the district court clerk. And no, they don't have to have a law degree, in my opinion, to look at the decree signed by the judge, compare it to a certificate of dissolution of marriage, as discussed in this bill, and sign the same. In fact, this bill has evolved over the past two years to change this in such a manner that it puts the responsibility on the licensed attorney, that hopefully carries malpractice insurance, licensed in the state of Nebraska, to draft this. Because I think, it's

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my intent to make them liable. And I'm willing to work with you on any amendment that would make that more clear, to say to the clerk of the district court, by signing this, you are merely saying that in your opinion this is a true and accurate statement, as opposed...as in comparison to what the decree says. So that's my intent there. As far as a filing fee, there's nothing in this bill that requires a petitioner or respondent--or I guess now it's plaintiff and defendant, after the rule change--a plaintiff or defendant, from paying the district court clerk anything. All that plaintiff or defendant would be responsible, by and through their attorney, for would be the fees to file the same in the county...with the county register of deeds. I don't envision a fee going to the district court. I don't think there should be. This is merely just a document that simply evidences exactly what the judge said in the decree, takes that, moves it over to the register of deeds, files it against the real estate. You know, you talked about a decree being a public document. You're right. It is a public document. But in my opinion, there's no reason to lay all that information out in another branch...in another office of the courthouse, or several courthouses through the state. That's private, sensitive, often emotional information, you know, information that concerns your children, where they're at in life and what they're doing and who pays for college. I don't think it has any business, personally, with the register of deeds. I think that's why we have this idea for a certificate. Plus, you can say to a party in a divorce, listen, you're not man enough to sign a quick claim deed that's been ordered by the court because you don't feel you were treated fairly, and you were represented by counsel or you weren't represented by counsel. Listen, the deal is done. Fill out the certificate of dissolution of marriage, on the other side, file the same, and forget dealing with people that are unreasonable, after they've had their day in court. That's what I say. And that's what this does. And I appreciate Senator Beutler calling this to my attention. I don't have any intent to put any extra liability on the district court clerks. Thank you. I return the balance of my time.

SENATOR CUDABACK: Thank you, Senator Flood. I take it you're waiving your third light? Your light was next. Thank you.

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Senator Beutler.

SENATOR BEUTLER: Senator Cudaback. Senator Flood, just a last quick comment, and a question. First of all, do all lawyers have to have malpractice insurance these days, or not?

SENATOR CUDABACK: Was that a question, Senator?

SENATOR BEUTLER: Yes.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: No, I don't believe they do. But if you don't, you probably shouldn't be a lawyer. Because you've got bigger problems if you're practicing. But I certainly have malpractice insurance.

SENATOR BEUTLER: Okay. Let me ask you this, in terms of your intent. This certificate that will be filed in Gage and Madison and Lincoln, when I'm a title company person in one of those counties, and the property is being sold, and I see this certificate filed against the property in my county, and it references the divorce decree and...but it also describes the property, as a title examiner, are you intending that I can rely upon this certificate that identifies the ownership to an exact, legally described piece of property, that I can rely upon this for purposes of determining title to a prospective buyer?

SENATOR FLOOD: I do not want the certificate of dissolution of marriage to operate as a deed evidencing the actual transfer of real estate, because I don't think it can in this situation, when the decree from the district court is actually the document...legal document that transfers that. So I think it would be in your best interest, if you were a land title association, to go back and grab the decree, and cross-check it again, if that's...

SENATOR BEUTLER: Okay. So they're going to have to go back to the original county, or, in Senator Loudon's country, to get a copy of the decree to facilitate that sort of transaction anyway?

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SENATOR FLOOD: I think that if you were doing your job, as most land title associations do very well, you would have to go that extra step. And I think you'd want to go that extra step if you did not feel comfortable looking at that document and relying upon it solely.

SENATOR BEUTLER: Okay. Thank you. Senator Cudaback, that ends my comments on this part of the amendment.

SENATOR CUDABACK: Thank you, Senator Beutler. There are no further lights on. Senator Bourne, you're recognized to close on part two, FA126.

SENATOR BOURNE: Thank you, Mr. President, members. I appreciate the dialogue. Senator Beutler, as usual, you have a positive perspective to give to drafting language. I appreciate that. What we're voting on in this portion of the committee amendment is LB 110, LB 361, and LB 410, each of which can be found individually on your laptops. I would urge your adoption of this component. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on the second part of divided committee amendments, identified as FA126. All in favor adoption FA126 vote aye; those opposed, nay. We're voting on adoption of FA126, second component of the divided committee amendments to LB 361. Have you all voted on the question who care to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: The motion was successful. Mr. Clerk, items for the record.

CLERK: One item, Mr. President. Senator Cunningham would like to print an amendment to LB 273A. (Legislative Journal page 1001.)

And I do have a priority motion.

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SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator Dwite Pedersen would move to adjourn until Tuesday morning, March 29, at 10:00 a.m., at 10:00 a.m.

SENATOR CUDABACK: Motion to adjourn till March 29, 10:00 a.m. All in favor of the motion say aye; opposed to the motion, nay. We are adjourned. Members, have a nice weekend, including Easter.

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