

APRIL 4, 2005

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April 4, 2005 LB 588

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain this morning is Pastor Jim Miller, Grace United Methodist Church, Hastings, Senator Burling's district. Pastor.

PASTOR MILLER: (Prayer offered.)

SENATOR CUDABACK: Thank you, Pastor Miller, for being with us this morning. Pastor Miller and Senator Burling is from the 33rd District. I call the fifty-fifth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please check in. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President. (See corrections, Legislative Journal page 1083.)

SENATOR CUDABACK: Messages, reports, or announcements?

CLERK: Mr. President, at this time I have neither messages, reports, nor announcements.

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) We now go to agenda item, Select File, 2005 committee first priority bill. Mr. Clerk, LB 588.

CLERK: Senator Flood, LB 588. I have Enrollment and Review amendments, Senator. (AM7061, Legislative Journal page 913.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 588.

SENATOR CUDABACK: The motion to adopt the E & R amendments to

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

April 4, 2005 LB 588

LB 588. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Senator Beutler would move to amend with AM0979.
(Legislative Journal page 1018.)

SENATOR CUDABACK: Senator Beutler, you're recognized to open on
AM0979 to LB 588.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, just to refresh your memory, this is a bill that is part of the effort in the legislative branch to build up the Performance Audit Committee and its ability to work with agencies and to get good information for us. And this particular piece of it is clarifying, pursuant to an Attorney General's Opinion that we got last year, indicating we needed to clarify the powers of the committee with respect to confidential information. And we worked through that on General File. Now there are two amendments that I would like to propose to you. Actually, one is Senator Smith's idea. And we haven't had a chance to talk about it here last minute, so we'll get together on that. But this amendment comes from the Department of Revenue, the one that's before you now. And it represents a curtailment, or limitation on the power of the Performance Audit Committee, to which the committee consents. Basically, you'll recall there are a couple of sensitive areas. One is in the area of income taxes and the review of income taxes. And we talked about that extensively on General File. And you may recall that there were a number of limitations on the Performance Audit Committee's ability to review income tax information. And then the Department of Revenue said, look, we have this provision that seems to be contradictory to the right of the Performance Audit Committee to look at our sales taxes, talking about sales taxes now. And that provision, the main part of it is shown on page 3 of the amendment, subsection (7), if you want to look at it. But basically, the argument is, we're not sure this is all very clear. We would like you to do one more amendment which limits the power of the Performance Audit Committee with respect to sales taxes, in some ways similar to the way they were limited with respect to income taxes. And we agreed to that. However, the amendment as it came from the Department of Revenue sought to apply these limitations not only to the Performance Audit

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

April 4, 2005

LB 588

Committee on the performance audit side of the matter, but would have included the Auditor of Public Accounts on the financial audit side of auditing. And there was...and when this amendment then was proposed to us, we obviously took a copy of it over to the Auditor of Public Accounts and said, is this all right for you to be included in this limitation, too? And she said, absolutely not, that she thought she had the power to look at anybody's records at any time by virtue of their constitutional rights, and that she didn't want anything to do with this particular amendment. So I then went back to the committee members and I said, okay, what do we do here? Do we just make this apply to ourselves, or do we make this apply to ourselves and Auditor...the Auditor's Office? Because when we went back to the Revenue Department, they said, okay, if the Auditor doesn't want to be in on this, that's fine with us, but she doesn't...she's not going to have any access to our sales tax records. So if we don't include the Auditor on this amendment, then down the line someplace there's going to be this enormous confrontation between two strong-willed women. And I'd like to be around for that, but...(laugh) but the fact of the matter is, we wanted to take care of our own business. The committee was split on how to handle it, so I took the advice of excluding the Auditor from this amendment. This limits us only. The Auditor's problem on the conflict with the Department of Revenue will have to be settled at some future point in time, either by legislation or by litigation. So that's essentially the substance of the amendment. If you want to look at the details of the limitations, they're on page 5 of the amendment, starting down, subsection (11) is the bulk of everything that's in the amendment. But again, it all represents a further limitation on the Performance Audit Committee. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM0979. Open for discussion. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. And I wish that I could have met with Senator Beutler earlier, prior to now. But I want to share with you some of my concerns about the entire issue. And I will say that...and I think that Senator Beutler kind of touched on this, but the issue here is income tax records, and the access thereto, and how that should

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

April 4, 2005

LB 588

be handled, who should have access, where should they have access, can they take papers wherever, or what are the qualifications of the person having access. And I want to emphasize the fact that I think we should move very, very cautiously. Perhaps that's because I'm conservative, and paranoid, maybe, Senator Schimek. But I have a concern with...and especially, even though I'm a member of the legislative branch of government, I have a concern of the legislative branch of government having access to records that are otherwise highly, highly confidential. If the Legislature passes a policy that's hard to enforce or hard to detect the effectiveness, that's our fault. That's our fault. But I just want to speak candidly to some of these issues. Now, in terms of the issue at hand, LB 588, and how we adopt the policies and qualifications of the Performance Audit Division within the Legislature, I want to be open-minded about how we do this. I also want to make sure that we do it consistent with national standards. And it's my understanding that Nebraska is one of a kind, not only with its unicameral approach, but also with this new division that we have, that being the Performance Audit Division within the Legislative Research Unit of the Legislature. And the peer review I think is an important aspect prior to the audit taking place. That is a way for us to recruit the opinions of other states, and the folks who work in the trenches. And this is really what this is all about--the folks working in the trenches, coming to us, telling us how our policies are being carried out, how they aren't, and so on and so forth. But let's also keep in mind the fact that the Department of Revenue has a job to do in keeping records and so forth. Let's let them do that. Let's look at the bottom line, many times. But again, I am wanting to move so very cautiously, in terms of giving the legislative branch, but only one person of the legislative branch of government, access to these confidential records. And I want to also point out the fact that I think this runs counter to the purpose of the legislative branch of government being all 49 of us coming from varying perspectives but with the same opportunity for information, same opportunity for coming together with a meeting of the minds, brainstorming, perhaps arriving at a compromise. But then all of a sudden, we kind of have this policy off to the side where one or two members of the Legislature have a leg up, so to

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

April 4, 2005

LB 588

...speak, and...in terms of access to information. So we'll probably have a recommendation from one or two...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...members of the Legislature that has more background information, just because of the position they hold in the Legislature, and their ability to obtain highly confidential information. Again, I emphasize, highly confidential information. And how are we supposed to come up with a good, sound, rational reason for public policy if we won't have the same information that one or two members of the Legislature have? And I know I'm speaking to LB 588 in general, and not necessarily the amendments at hand. But I think that is something that the Legislature should want to look at, in terms of the adoption and the formation of good public policy. So I look forward to the debate here and the exchange, and I hope that we can come up with something that does not infringe on a lot of taxpayers' right to...

SENATOR CUDABACK: Time, Senator Smith.

SENATOR SMITH: ...confidentiality in Nebraska, and the policies associated with that. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion on the Beutler amendment? Senator Smith. He waives his opportunity. Further discussion on Beutler amendment AM0979 to LB 588? Senator Beutler, there are no lights on. You're recognized to close on AM0979.

SENATOR BEUTLER: Senator Cudaback, I would just remind the members that this is a limitation on the powers that were in LB 588. So hopefully it's agreeable to Senator Smith and everyone. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. The question before the body is adoption of AM0979 to LB 588. All in favor of the amendment vote aye; those opposed, nay. The question before the body is the Beutler amendment, AM0979. Have you all voted on the question who care to? Record please, Mr. Clerk.

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

April 4, 2005

LB 588

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

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

CLERK: Senator...

SENATOR CUDABACK: Mr. Clerk, next motion.

CLERK: Excuse me, Mr. President. Senator Smith would move to amend, AM0942. (Legislative Journal page 1023.)

SENATOR CUDABACK: Senator Smith, to open on AM0942 to LB 588.

SENATOR SMITH: Thank you, Mr. President and members. AM0942 does have some of the things we agreed upon. And I just found out that there's a point to it that Senator Beutler does not like. But it...the operative language is, "Prior to conducting a performance audit involving the Department of Revenue, any external quality control review required by the generally accepted government auditing standards shall have been implemented and completed." So that's basically a peer review, where folks from outside Nebraska, with a more objective viewpoint--emphasis, more objective viewpoint--comes into our state and looks at the auditing division, the Performance Audit Unit, and says, okay, here's our recommendations. I mean, a typical peer review, as many of you are familiar with. I believe that that is important. I think it's a good idea, and that that way we can be certain that we're on the same speed as a lot of other similar divisions within other states, and so that we're not out here on our own entirely, like we are now. And I think that certainly I would be more comfortable with it, with that occurring, with the advancement of LB 588, if this were on there. But I do have strong reservations otherwise. And I would urge AM0942's adoption. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. You've heard the opening on AM0942. Open for discussion on that amendment to LB 588. Senator Beutler.

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

April 4, 2005

LB 588

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I'm opposed to Senator Smith's amendment here, AM0942. But I'm not opposed to half of...I'm not opposed to one of the two ideas that Senator Smith had in his amendment. And to show the good faith on that, there is subsequently filed an amendment that adopts, essentially, half of his amendment, one of the two ideas. The idea that is probably good for us, and I appreciate Senator Smith giving us a push, that is the idea that we should aspire to attain and conduct ourselves in a technical sense in accordance with generally accepted government auditing standards. We do that, but we don't do it with all of the peripheral kinds of safeguards that are necessary in order to technically be able to say you do it in accordance with generally accepted government auditing standards. That is, for example, we have not had yet, because of cost considerations for our new Performance Audit Committee, we have not yet gone through that outside peer review. A little sheet was passed out to you, describing how that works. And once we begin that process, which we've already begun, and once this outside group from the national organization comes in and looks at work that has been purported to have been done in accordance with generally accepted government auditing standards, and gives their stamp of approval, then, in a technical sense, everything we do will be in accordance with these standards. We already have adopted several parts of those standards, and operate in accordance with them. So what Senator Smith's amendment does in that regard is to simply encourage us to move faster, to ensure that we're moving right away, essentially, to go through this peer review process and get properly certified so that we can say that we're doing things in accordance with generally accepted government auditing standards. So that part, I think, is good. The part that is not good, from my perspective, with regard to Senator Smith's amendment, is indicating that we cannot do a performance audit with regard to the Department of Revenue using the committee and our standards and what we're doing right now. That is, he's putting a limitation on that would say, you can't do any more audits with regard to the Department of Revenue unless and until this two-year period has passed and technically we come into conformance. Will that make a practical difference? I don't know. None of you have put in

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

April 4, 2005

LB 588

a request to review anything in the Department of Revenue. As you know, that's how our process begins. But should any of you have an interest in it, I think we should be allowed to look at it. And if it rises to the top of the list under our ordinary processes, we should be allowed to do it. So what I don't like most of all about that part of the amendment is that it infers that somehow the work that's being done by the current Performance Audit staff is somehow inferior...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...in quality. And it is not. And I have no doubt in my mind but that when we jump through the hoops, they will be just fine, and will be approved, and there's not going to be any problem. But meanwhile, it's a bit insulting to the committee to suggest they don't have the capability to review the Department of Revenue or any other department. I mean, there are lots of other confidentiality statutes scattered all over our statutes. There's no reason in particular that I can think of to pick the Department of Revenue, for one thing. But on a broader and deeper sense, there is no good reason, in my mind, to suggest that what is being done now is inferior, and that they're incapable of dealing with the Department of Revenue in a professional manner. They most certainly can, this year, next year, and in future years. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Further discussion on the Smith amendment, AM0942, Senator Schimek, followed by Senator Smith and others.

SENATOR SCHIMEK: Yes. Thank you, Mr. President, members. If I could, I'd like to ask Senator Beutler just a question or two, Mr. Speaker.

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

SENATOR BEUTLER: Sure.

SENATOR SCHIMEK: Yes. Thank you. Senator Beutler, I just want to make certain that I understand this. You talked about a

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

April 4, 2005

LB 588

review by bodies such as NCSL and others. So when we're talking about an external quality control review, are we talking about only associations like that? Or is it conceivable that you would have to go into the private sector to get this kind of review?

SENATOR BEUTLER: No, it would not be a private sector review.

SENATOR SCHIMEK: It would always be a body like...

SENATOR BEUTLER: It would be by the association that basically kind of enforces these yellow book standards that are...

SENATOR SCHIMEK: Okay.

SENATOR BEUTLER: ...which they try to impose as a uniform set of standards on the whole country, which is all right.

SENATOR SCHIMEK: Okay. Okay. So am I to conclude from that that there...well, I can't conclude from that. Would there be additional expenses when we get into a systematic review process? I thought I got that indication from the remarks that you made.

SENATOR BEUTLER: I think there will be additional expenses, but I'm not sure how much.

SENATOR SCHIMEK: So...of course, how often are we going to review the...?

SENATOR BEUTLER: Yeah. There are two items that will incur additional expenses. You know, if this Auditing Committee comes in once every two years or three years, however often they come in, I think we pay all their expenses, as I recall, we do. And the other thing is that a certain amount of training is required for specified...every specified period of time. And there will be some additional expenses for training. We don't know yet how much of that might be done...might be allowed to be done in-house, and how much of it might not be. But we're not talking about hundreds of thousands of dollars, but we're talking about some additional expense.

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

April 4, 2005

LB 588

SENATOR SCHIMEK: Okay. That's helpful. Because I didn't have a clue, a reasonable clue as to how much we were talking about. So, thank you. I originally turned on my light to make certain that I understood what a..this review was. And I guess I thought, initially, it had to be done before the audit could take place. But I see it is a review. It takes place after the Performance Audit Committee has done their work.

SENATOR BEUTLER: Yeah. The idea is for them...for a period of time to expire, so that there is some body of work that we are identifying as at the appropriate level, that they can review and determine if in fact it is at the appropriate level.

SENATOR SCHIMEK: Okay. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Schimek. Further discussion. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. I was in discussion here, and perhaps missed some of the prior debate between Senator Beutler and Senator Schimek, or the questions and answers. But I want to emphasize the fact that what I am proposing is that prior to conducting a performance audit involving the Department of Revenue, any external quality control review, a peer review, be required by the generally accepted government auditing standards, and shall have been implemented and completed before this would take place. We're talking a \$15,000 expenditure, a pretty affordable point of information here that I think legitimizes our efforts in terms of using and applying the peer review in a much more appropriate manner and a more appropriate setting. Because we have, as I said earlier, some very sensitive information here. And I think, if anything, we should err on the side of caution, even if you're philosophically all right with the Legislature delving into confidential records. And not the Legislature, just a couple members of the Legislature. I mean, that is an issue separate from this. But what I am trying to do is legitimize our Performance Audit Unit within the body here, or within the legislative branch of government, by making sure that we have a peer review from outside sources. The folks from Nebraska, from

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

April 4, 2005 LB 588

the Auditor's Office, serve on peer review committees for other states quite often. That's part of the process, as I'm sure most of you are familiar with. And so I believe it's vital that we do this. And this could take place, actually, right away. It wouldn't have to even wait a long time. It would be up to us, basically, to have the peer review and get the input of others before we would just dive into these confidential records at the Department of Revenue. I think it's very reasonable. I don't think that you can say that this is a cost issue, when it's a \$15,000 expenditure. And that's a pretty small piece of the pie when you're looking at the impact that it can and will have. And I think this is very reasonable. And I hope that we can do this, because I think that, as I said, it legitimizes our efforts. And if anything, we really need that, because this, LB 588, is definitely a shift in policy statewide, not to mention the fact of how that fits in nationwide. But we're worried about Nebraska, and I understand that. But let's make sure that we have the mechanisms in place for the utmost of professionalism, the utmost of accuracy, and the utmost of ability to make sure we do the right thing. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Redfield, followed by Senator Erdman and others.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I rise in support of the language which would include generally accepted government auditing standards. I believe that we would want no less. I do have questions on the other language. And if Senator Beutler would respond, I would appreciate it.

SENATOR CUDABACK: Senator Redfield, who are you...?

SENATOR REDFIELD: I would like to ask questions of Senator Beutler.

SENATOR CUDABACK: Senator Beutler, would you yield to a question?

SENATOR BEUTLER: Yes.

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

April 4, 2005

LB 588

SENATOR REDFIELD: Senator Beutler, in the language here where it's talking about performance audits involving the Department of Revenue, would this be a performance audit of the Department of Revenue? Or would it be an audit which would involve the department in releasing tax records, in the language that you addressed?

SENATOR BEUTLER: Senator, are you talking about the language in Senator Smith's amendment?

SENATOR REDFIELD: Yes.

SENATOR BEUTLER: Well, as I read that amendment, it would apply to any program that we wanted to look at within the Department of Revenue. So it doesn't necessarily mean income taxes, it doesn't necessarily mean sales taxes. It could mean some of the other programs that they run. They have lottery funds, for example, that one might be interested in looking at.

SENATOR REDFIELD: So...I'm looking to you for guidance as to the scope and the ability of the existing staff, because we're looking at dollars here, and in the costs and the personnel. Would there be a project, such as studying the stacking that HHS was using in allowing people to qualify for certain programs such as the children's healthcare or some of the other programs? Is that the kind of program that you're looking at examining through the performance audit? And if so, that's why you need the tax records, to verify that people did in fact did qualify and that they've not been playing some games to comply with the legal law with a loophole? What's the goal here of the bill? I'm trying to figure that out.

SENATOR BEUTLER: The goal of the bill, generally, is to allow the Performance Audit Committee to work like performance audit committees work almost everywhere else, and to allow them, when necessary, which probably is seldom, but when necessary, to look at different types of confidential records, with safeguards that involve maintaining that confidentiality. But it could be in any department of government. It could be relating to the implementation of any statute that a senator was interested in

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

April 4, 2005

LB 588

and wanted to pursue, except insofar as it was a purely financial kind of audit. We look at numbers. We looked at the Medicaid reimbursement program, as you know. There's a bill coming up that relates to that. So we look at numbers, too. Don't think that just because it's not a financial audit, as such, of a whole department or a whole program, that when we're looking at the proper implementation of a particular statute it could go into figuring out numbers, certain kinds of numbers, and working with math, and that sort of thing.

SENATOR REDFIELD: When we first did the performance audit bill, I was very involved in that. And there was language, as I recall, that allowed a partnership, so that the Performance Audit Committee could utilize the services of the State Auditor and the CPAs there, so that they could get that kind of data and examine some of that data, so that we didn't have to duplicate and...

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: ...rehire more personnel in Legislative Research Office. Are we utilizing that service? Or would we then have to hire more staff to do that?

SENATOR BEUTLER: No, we're utilizing all the provisions that we put into statutes in prior years, to the extent that the Auditor has asked us to or allowed us to do that. But I think the position of the...well, I'm not going to speak to what the Auditor's position is. But the cooperative provisions, the provisions that provided for cooperation insofar as the relationship of the Performance Audit Committee to the Auditor's Office are concerned, we haven't had occasion to use them yet. But it's not because the Performance Audit Committee has in any way discouraged or inhibited that process.

SENATOR REDFIELD: Could we accomplish what you're trying to do here under...

SENATOR CUDABACK: Time, Senator.

SENATOR REDFIELD: ...the current framework? I'll ask you off

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

April 4, 2005

LB 588

the mike. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Erdman, followed by Senator Beutler, Schimek, and Smith. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, as a newly selected member to the Performance Audit Committee, I've had to learn quite a bit about how the process actually works. And I would offer to Senator Beutler that the amendment before you is not an insult or a question of the work product of those members on the audit committee or the audit staff. I don't see that as that whatsoever. And if that was the case, then Senator Beutler shouldn't be bringing his amendment, which also brings up the standards that would be required. I think what we're both trying to accomplish, or what both sides are trying to accomplish, is that we should hold them to the standards that generally are approved and accepted throughout the state, or throughout the United States, for different levels of auditing. So it's a matter of ensuring compliance. And I think as we look at this war between the executive branch, between the legislative branch, we have a responsibility to be as good, if not better, at what we hold the standards to be, in order to ensure the information that we're submitting, the information that we're presenting, meets those standards. And if in the event that that's the case, then the information that would be distributed or gained through the Performance Audit Committee would be able to be used by other auditors, and vice versa. And so that's part of, I think, the value of adopting either Senator Smith's amendment or Senator Beutler's amendment, is it validates what it is that we are asking to have done, and that is to have the same standards, the general accounting standards, held for our employees in the legislative performance audit side, as well as any other auditor who may want to seek any confidential information. And the question is the timing. Should it be done...should they meet those standards before they go and access that information? Or should we allow them to access that information and then, after the fact, ensure that they actually did comply? I'm going to err on the side of Senator Smith. And here's why. We look at the requests that are before the Performance Audit Committee

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

April 4, 2005

LB 588

right now. We have one request dealing with the Department of Revenue. It has absolutely nothing to do with confidential tax records. Senator Beutler pointed out, it deals with the lottery, whether or not the lottery funds are adequately appropriated, and where those dollars are going, and how we can access those. Now, I have inquired informally from the Auditor whether or not that information is available. I'm assured that it is. However, I haven't received that. And I will make a formal request to grant that. But within 18 months is about the approximate time line it would take to begin the process of going through a pre-audit, then having the audit, and going through that process. If Senator Smith's amendment is adopted, we're still fine, on the legislative side of things, to access the information in an appropriate time frame, because there isn't anything pending before the Audit Committee that would ensure that we need that access right now. So I see this as an appropriate safeguard. I see this as an opportunity for us in the legislative side of things to ensure that what our work product is is not questioned for any reason. There have been those that have questioned the work product, because of their own personalities, because of their own misgivings, whatever it is. I want to remove that option. I want them to be able to say that when a report comes out of the Audit Committee and the committee that I'm a member of and Senator Beutler is the Chairman of and the Speaker is a part of, when we sit down and we say, this is what we as a legislative side of government have reviewed within this department, we believe this needs to be resolved, here are some appropriate actions to take, we want those to be to the same standard as everyone else. And arguably, they are. Arguably, they are. And so why not go down that next step and ensure that those processes are exactly accountable to any other auditor? It eliminates that whole argument that people may have against whether or not this committee, or this council, is doing the job according to what everybody else is doing. I think it's wholly appropriate. So it's not a judgment on the work quality. And again, if it was, then Senator Beutler shouldn't have brought his amendment. But I don't think that's it at all. I think it's an effort to bring us up to appropriate standards. And I think the debate is the time line.

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

April 4, 2005

LB 588

SENATOR CUDABACK: One minute.

SENATOR ERDMAN: For me personally, I'm okay with Senator Smith's proposal. Looking at what's available for the Audit Committee to look at, what's been placed as a priority within the committee, I think this time frame is appropriate. My concern is that we go down this path and we're not positioned with all the checks and balances necessary in place. And it's not for those members of the committee that we work with directly. It's the other factors. And finally, I need to do some more research, but it's my understanding that we have exempted, and the reason why this amendment is here is, we have exempted our audit staff and the Performance Audit Committee from these standards. And we need to have this in place to ensure that we can go down this path, that that's a requirement that we as lawmakers hold for our employees. Because when they're accessing this information, we need to make sure that we're asking for what we specifically want them to do, just like we would any other agency, and when they comply with that, that we know that the work product that they have compiled is exactly according to standards and is beyond dispute from those who would challenge it.

SENATOR CUDABACK: Time.

SENATOR ERDMAN: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Further discussion. Senator Beutler, followed by Senator Smith.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, let me try to be clear as to what our auditors do right now. With respect to the manner in which they audit, and the principles that they follow, they do in fact now follow generally accepted government auditing standards. What don't they do that allows us not to be able to be certified, quote unquote? What they don't do are the items that are crossed out on the Smith amendment, down in lines 13 through 17. We don't comply with the general standards relating to continuing education. We don't do that. And we don't do that because we haven't had the money to do that until recent times here. But

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

April 4, 2005

LB 588

we're going to do that. The second thing is that we don't have the external quality control review. And we're going to do that. But contrary to Senator Smith's assertion, that does take a couple of years of time. But the way we conduct everything else, you may see up higher in the amendment, we were following the field work standards for performance audits, and the reporting standards for performance audits. So in the sense that somebody may assert that we aren't doing things in a professional manner, it's because of the continuing education expense, and because of the external review expense that this Legislature hasn't seen fit to take on yet, but which we will hopefully take on in the next couple years, and which we much take on under Senator Smith's amendment, whether you adopt his amendment or whether you adopt the subsequent amendment, which is, as I mentioned to you earlier, what is in my opinion the better half of his amendment. So in the way that we're conducting things, it is every bit as professional as what other people are doing. And for that reason, there is no reason to bind yourselves in terms of what kind of performance audits you may want done by the committee. There's no reason to bind yourself unnecessarily, whether it's with regard to the Department of Revenue or the Department of DHH, which has lots of confidential information under HIPAA, as Senator Johnson knows. There's no reason to single anything out and say, we're not capable of doing it now, because we are. And so again, it's just that piece of Senator Smith's amendment which I don't think is agreeable. This is the Performance Audit Committee, I remind you again, that is made up of the Speaker of the Legislature, the Chair of the Appropriations Committee, the head of the Executive Board. And so...and they are members of this committee by virtue of holding those offices. And so this is not a committee that would take on or be likely to take on, in any time or circumstances, something that would be considered by any of you to be radical or unwise or otherwise inappropriate. So again, I would encourage you not to adopt Senator Smith's amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. (Visitors introduced.) Further discussion. Senator Smith. And this will be your third time.

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

April 4, 2005

LB 588

SENATOR SMITH: Thank you, Mr. President and members. AM0942 to LB 588 is something that I can...if it's adopted, I can rest much more easily with LB 588. I will admit that it's something that has come up most recent that I haven't had on my radar screen as much as I would like to have. But given limited time resources, that's the way it is. But I would emphasize that if we expect to have...or, if we expect to legitimize the quality reports that we would have come out of this division, we need that peer review process first. Not sometime later when it's convenient. We need it now. And perhaps this is unfair, but I think it is our job to question the work product of anything that comes out of this branch of government. Ask questions, make sure it's the right thing. Everyone's human, and we all stand to err. And I know that Senator Beutler has basically accused me of not entrusting the work product, or the professionalism of those associated with the reports. And that's certainly not my intent. But if that's the by-product of what I'm attempting to do, then I'll live with that. Because I believe that we need to be very cautious when it comes to this, and we need to have something that other states can look at and say, this is the real thing, they've gone through the peer review. And we need to make sure that we do that. I've filed an amendment to this amendment, stating that it...two years must take place. And I can get to that on my opening of the amendment. But the fact is, this is very reasonable. This can take place very quickly, and we can move on, in terms of allowing the process to be carried out with the Performance Audit Division. This does not prevent them from doing their work in a relevant manner. But this merely legitimizes their work. And I believe that it is definitely the right thing to do. And when you look at Nebraska and how restrictive we are on the qualifications of various folks, whether it's massage therapists, whether it's tattoo artists, or whether it's all sorts of different professions, and how restrictive we are in requiring members of certain professions to be qualified and jump through all the hoops to maintain high quality, I think this is very reasonable. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Mr. Clerk, motion on the desk.

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

April 4, 2005 LB 588

CLERK: Senator Smith would move to amend his amendment.
(FA141, Legislative Journal pages 1083-1084.)

SENATOR CUDABACK: Senator Smith, to open on FA141.

SENATOR SMITH: Thank you, Mr. President and members. On AM0942, I am stating, in line 12, prior to the new language, where the word "Prior" appears, you would insert "2 years." So it would read: Two years prior to conducting a performance audit involving the Department of Revenue, the peer review must take place. It must be completed...implemented and completed. So this actually brings in a period of time where we can even have more time to get our ducks in a row, make sure that we're all on the same page. I think this is fair to taxpayers. This is fair to state agencies. This is fair to the legitimacy of the Performance Audit Division. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. You heard the opening on FA141 to AM0942. Open for discussion. Senator Smith, there are no lights on.

SENATOR SMITH: Thank you, Mr. President.

SENATOR CUDABACK: I will recognize...are you closing, then, on FA141?

SENATOR SMITH: Unless there's anyone wishing to speak to that.

SENATOR CUDABACK: Anyone wishing to speak to FA141? There are none, Senator. You're recognized to close.

SENATOR SMITH: Thank you, Mr. President and members. The...once again, I stated, in line 12, instead of immediately, this would be, two years prior to conducting a performance audit involving the Department of Revenue, any peer review required by the standards shall have been implemented and completed. I want to, again, point to the fact that we have a unique situation here. Nebraska, aside from its unicameral system, is a pretty unique situation. And I think that Senator Beutler is heading in somewhat the right direction in making sure that the Performance Audit Division within the Legislature follows some

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

April 4, 2005

LB 588

of these principles. But there's a caveat there. And I'm trying to eliminate the caveat by insisting on the peer review taking place before diving into the confidential records at the Department of Revenue. I think that is very important. We see reports flying around. And it's frustrating, I think, sometimes when we find out that we're not really comparing apples to oranges...or, apples to apples. It's different. It's difficult to sift through the information. But yet, we have these government auditing standards, and we want to uphold those. But Senator Beutler's amendments fall short of making sure that a peer review takes place beforehand, before they go into these confidential records. There are a lot of states that don't even allow it, period. But we're a unique scenario here, that even if we had a report, I fear...if we had a report without the peer review, it lacks the legitimacy that's necessary for others to say, this is the real thing. They would call into question, if for no other reason, absolutely no other reason than just the fact that it lacked the peer review. So all of a sudden, we've expended vast resources from the legislative branch of government, be they intellectual resources or financial resources, and that report doesn't have any legitimacy, again, if for no other reason than there was no peer review. This is reasonable. This is very reasonable, to have this peer review take place before sifting through the highly confidential records at the Department of Revenue. Mr. President, I would ask that FA141 be withdrawn. Thank you.

SENATOR CUDABACK: It is withdrawn. Back to discussing AM0942. Senator Beutler. And this will be your third time, Senator. Did you wish...further discussion on AM0942? Seeing no lights on, Senator Smith, you're recognized to close.

SENATOR SMITH: Thank you, Mr. President. I know that I've stated my case here. In my closing on AM0942, please know that I just dropped that two-year restriction, so that this would be immediately prior to conducting the performance audit. We could carry forward, if this is attached. Otherwise, I have grave reservations in terms of the application of LB 588. I want to be a team player here and move forward with something that the objective is well intended, trying to come up with good policy. But I ask, I beg, for caution in the handling of confidential

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

April 4, 2005 LB 588

matters, that anything we can do to make sure that we move cautiously...I'm not saying no movement at all. I'm just saying, let's move cautiously, so that we can come up and use information that is...has a solid foundation, and so that we can make good, sound decisions that, as...perhaps as it relates to economic development incentives, that companies from out of state can look at our reports and say, yeah, this was done the right way, according to the principles in every respect. Not just the piecemeal along the way, but in every respect. So I would urge the adoption of AM0942. Thank you, Mr. President.

SENATOR CUDABACK: You've heard the closing on AM0942. The question before the body is, shall AM0942 be adopted? All in favor vote aye; opposed, nay. The question before the body is adoption of AM0942, offered by Senator Smith. Have you all voted on the question who care to? Senator Smith, what...did you raise your hand, Senator Smith?

SENATOR SMITH: Yes, Mr. President. I would ask for a call of the house and a roll call vote.

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

CLERK: 23 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: Members, the house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. The house is under call. Senator Beutler, what purpose did you have your hand up?

SENATOR BEUTLER: Regular order, please, Mister...Senator Cudaback.

SENATOR CUDABACK: Senator Johnson, Senator Heidemann, Senator Cunningham, Senator Fischer, Senator Landis, Senator Schrock, Senator Kruse, and Senator Synowiecki. Senator Schrock, will you check in, please. Thank you. Senator Kruse, would

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

April 4, 2005 LB 588

you...Senator Landis, the house is under call, and Senator Cunningham. The house is under call, Senator Cunningham, Senator Landis, and Senator Kruse. Senator Kruse, Senator Landis, and Senator Cunningham, the house is under call. Senator Landis, would you please report to the Chamber. The house is under call. All members present or accounted for. The question is AM0942. There's been a request for a roll call vote, regular order. Mr. Clerk, call the roll, please.

CLERK: (Roll call vote taken, Legislative Journal page 1084.)
14 ayes, 26 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The Smith amendment is not agreed to, and I do raise the call. Mr. Clerk, next amendment, please.

CLERK: Mr. President, Senator Beutler would move to amend with AM1041. (Legislative Journal pages 1084-1085.)

SENATOR CUDABACK: Senator Beutler, to open on AM1041.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this amendment is really Senator Smith's idea. I think it's a good one. It pushes us to move a little faster with getting into the mode of generally accepted government auditing standards and bringing those about, bringing about the actual certification. I appreciate the fact that he's so interested in this topic. And he's had several constructive ideas, and this is one of them. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM1041. Open for discussion. Senator Smith.

SENATOR SMITH: I'm trying to think of the discussion that Senator Beutler and I had. And last I knew, it was, you know, I think I like that amendment. (Laugh) But he had to rewrite it and leave out an operative part to it. So that...I'm just shooting straight with you. And I'm taken aback by the fact that this is characterized as a well thought out compromise. It is not. Flat out, it is not. I think what I proposed in the last amendment was very reasonable. It's consistent with the practice of auditing standards. And I lost that last amendment.

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

April 4, 2005

LB 588

And I...again, I'll go back to my reservations on LB 588. I don't know what's happened with other members in terms of LB 588 and what a grand idea it is to let the legislative branch of government...no, excuse me, not the legislative branch of government, just a couple members of the legislative branch of government. This is a major shift in policy. I will remind you, it is a major shift in policy. And for us to craft our own little, let's do it on the cheap, way of performance auditing, because that's all we can do, then what effectiveness, what legitimacy do those reports have? There are a lot of questions to ask here that I believe are still unanswered. We have a separation of powers in government, whether it's at the state level or at the federal level, and oftentimes even at the local level. The beauty of the legislative branch of government, at whatever level, is that each member has the same vote, and basically, each member has the same access to the same information. LB 588 twists that. I hope it does not twist that to the point that it breaks. Because I heard earlier from a colleague saying, well, gosh, that Breslow, he just...he did not act responsibly in that office; therefore, let's change the policies about how whoever has that office behaves from this point forward. We're not about that. I hope we aren't about that. I may be considered crazy about this, but the fact is, we are treading on some soil that we haven't tread on before, that being confidential records and the access of a couple members of the Legislature to grant...or to achieve access, or obtain access to income tax records. We're not talking about access to just a few. I do want to clarify. Would Senator Beutler answer a question?

SENATOR CUDABACK: Senator Beutler, would you yield? One minute.

SENATOR BEUTLER: Sure.

SENATOR SMITH: Senator Beutler, this does subject all records of the...LB 588 does subject all records at the Department of Revenue to access by the Chair of the Performance Audit Committee. Is that accurate?

SENATOR BEUTLER: Senator, it's not accurate. I mean, first of

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

April 4, 2005 LB 588

all, there are certain records, like the actual income tax returns, that nobody can examine. Secondly, with respect to records that can be examined, they can be examined only under...only by staff, under certain specified conditions. Those conditions would also apply to the Speaker, or to the Chair of the committee. In those limited circumstances where one of those two individuals might have legitimate occasion to look at what the audit staff is doing, if a member of the Legislature...

SENATOR CUDABACK: Time, Senator.

SENATOR BEUTLER: ...cannot resolve...

SENATOR CUDABACK: Senator Smith, you may continue.

SENATOR SMITH: Thank you, Mr. President. Senator Beutler, are you saying that the staff of the Performance Audit Committee could very well have greater access to records than other members of the Legislature?

SENATOR BEUTLER: Well, of course, Senator. You're not going to be doing performance audits. And confidential information that is examined by the Audit Committee is not going to be revealed to any other member...to any member of the Legislature, in the ordinary course of matters. And so that's the whole point of confidentiality, that you don't...when you allow for a record not to be confidential, for purposes of a performance audit, it is a limited exception, to the extent that the auditors are able to look at the record, but they're not able to pass along the information in an individual record on to anybody else. They are under penalty, in the case of the Department of Revenue, of a felony offense if they do. The Chair of the committee and the Speaker of the house, in those limited instances where they would have access to the information, would also be under felony penalty if they misused it. So I...as for myself, I would never want to venture into that spot of exposing myself to a felony offense, unless it was absolutely required of me under my duties in the Legislature.

SENATOR SMITH: And if there was the unintended leaking of the

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

April 4, 2005 LB 588

information or something, certainly unintended...because it does happen. I know of a lot of folks who are labeled with a felony who were not intending to behave in that manner. But with the lack of intention, would they still be considered a felon in that case, or held to the felony standard?

SENATOR BEUTLER: Senator, let me find the actual language for you, if I can. It says: No officer or employee of the Auditor of Public Accounts--and remember, we're just getting the same access that the Auditor of Public Accounts has--shall disclose to any person whose official duties--dah dah dah--any return or return information in a form which can be associated or otherwise identify, directly or indirectly, a particular taxpayer. Any person who violates the provision of this subsection shall be guilty of a Class IV felony, and fired, and assessed the costs of prosecution. And the language is, "shall disclose to any person." It doesn't say "intentionally or unintentionally." It says, "shall disclose to any person."

SENATOR SMITH: Okay. And I...again, I would say that we're headed down the wrong road when we're looking at this. There could be...I suppose, very conceivably, there could be the scenario that there was immaterial information that was inadvertently leaked, and all of a sudden we have a felony case on our hands, and we're expending resources, whether it's the Legislature acting in good faith, or whether it's a taxpayer acting in good faith, and we have all sorts of litigation, because of the unintended consequences relating to immaterial information. And that's just the immaterial information. Let's look at the material information, the information of greater consequence, that being tax records, and how that's handled. I have grave reservations about that. Now, Senator Beutler, you mentioned that we're seeking to same...we're seeking the legislative branch of government to have the same access as the State Auditor. Now, they...the State Auditor is limited to financial auditing. Is that accurate? Senator Beutler states that that is accurate.

SENATOR CUDABACK: One minute.

SENATOR SMITH: But the Legislature wants to look at performance

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

April 4, 2005

LB 588

audit. Well, that's what you do with the financial information. So if there's concern that there's mischief from the other side of the building in the executive branch of government, that being the Auditor's Office, that's at a different...that's on a different whole concept, entirely different concept, because there's a difference between financial auditing and performance auditing. And we need that clarification. The last amendment helped in that clarification, with the peer review. And we decided that we didn't need the peer review to legitimize the reports that we have in the Legislature. So therefore, let's just move on. I have reservations. I continue to have reservations. And if you think that AM1041 is a compromise, it...

SENATOR CUDABACK: Time, Senator Smith.

SENATOR SMITH: ...is not, because there was no discussion of a compromise. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. (Visitors introduced.) On with discussion of AM1041. Senator Smith. This will be your third time, Senator.

SENATOR SMITH: Thank you, Mr. President and members. I will continue. Having served on the Government Committee for six years--and that was the committee which handled most of these issues--I came to learn a little bit of what was going on. But I became interested...and sometimes I'm embarrassed by some of these topics that interest me, because I never thought they would be interesting. But nonetheless, that's what service in the Legislature, I guess, brings about. But I was perhaps with the faulty impression that we were done with this issue that seemed to be a battle of turf, of what the Legislature should do, what the State Auditor's Office should do, shouldn't do, and otherwise. I thought this was resolved prior to this issue. But then we have LB 588, which would allow two persons within the Legislature, and their relevant staffs, members of staff, to dive into the confidential records. That is certainly outside of the scope of what I thought--perhaps I'm in error--but of what I thought was a compromise, and finally we agreed to disagree on various issues. And so here we are. I filed an

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

April 4, 2005

LB 588

amendment that we just voted down. And last I knew, that that was acceptable by Senator Beutler. And then this morning, just this morning--again I emphasize, this morning--in floor debate, I find out that it's not acceptable, based on that one point. I want the record to reflect that. And I want my colleagues to understand that that is what has transpired to date. I don't think that's an unfair characterization whatsoever. And perhaps Senator Beutler would want to speak to that. But to characterize AM1041 as a compromise, certainly I never saw it that way. But again, I just learned this morning that there was an objection to it, when the last word I had at the end of last week was that, you know, that isn't so bad after all. I'm not sure what the intent is behind that. But I do have concerns, as I am appropriately sharing with you. There is confusion of what's financial audit, what is a financial audit, what is a performance audit. There is a gray area. I think anyone who has studied this issue understands that there is a gray area. You know what? The peer review helps address the fact, or helps solve the questions of what's appropriate and what is not, or what is a financial audit and what is a performance audit. I will say that sometimes a financial audit means nothing without a performance audit. And we in the Legislature have been told today that we don't have the resources to do as many performance audits as we could and perhaps should, but let's just do a few anyway, meanwhile, prohibiting the State Auditor from doing performance audits. Fine. That's what we have ended up with, and I'll live with that. But as it relates to diving into confidential records, that's where I get nervous. This is outside of the scope of what I thought was an agreement...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...last year and the year before. And that's why I have grave concerns. I have additional concerns about the separation of powers. And we have the executive branch of government, and the members of that branch that are charged with the authority of enforcing the policies set forth in the Legislature. And again, if the Legislature adopts a policy that's difficult to enforce, then we need to adopt different policy. If that's too politically risky to do, and there's not the political will to do it, then we better live with our

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

April 4, 2005 LB 588

decisions. We'll have to live with that. But there is a separation of power, that being the policy making, and that being the enforcement of the policy we made here in the body, and the Legislature cannot and should not expect to do everything. Thank you, Mr. President.

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

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I do want to just relate to you the course of this particular amendment. Senator Smith proposed this amendment last week. I had the Performance Audit Committee staff take a look at it. Senator Smith grabbed me on the way out the door one day and said, what do you think of my amendment? And I said, it looks pretty good, but we need to talk about it. So then on Friday, the staff delivered, hand delivered to his office a copy of the amendment, proposed amendment that I had prepared, that is the amendment before you now, which I...in my mind, represented a compromise with Senator Smith. I didn't hear from Senator Smith on Friday, Saturday, Sunday. I called him early this morning, and he wasn't in yet. I had to go to two different meetings. When I got out of those meetings, there was a message from Senator Smith that said, I'll see you on the floor. When I got up to the floor, I immediately went to Senator Smith and suggested the compromise, and he didn't like the compromise. So I will just ask you, Senator Smith, do you want me to withdraw this amendment? If this is not a true compromise, and represents nothing to you, I will withdraw it.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, anything further on the bill?

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

SENATOR CUDABACK: Thank you. We're discussing the advancement of LB 588 itself. Anybody wishing to discuss advancement? Senator Preister, followed by Senator Smith.

SENATOR PREISTER: Thank you, honorable President, friends all. I'm not sure that the Chair interpreted what Senator Beutler was

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

April 4, 2005

LB 588

saying. So I just want to be clear. Senator Beutler was asking a question, I believe, of Senator Smith, and asking him if this represented nothing of a compromise, and did Senator Smith want him to withdraw it. Could I ask Senator Beutler a question, please?

SENATOR CUDABACK: Senator Beutler, would you yield?

SENATOR BEUTLER: Yes.

SENATOR PREISTER: Senator Beutler, is that a clear characteristic of what you were doing? Or was it your intent to actually at this time withdraw?

SENATOR BEUTLER: No, I was simply asking Senator Smith as to his view of the amendment. And I didn't hear his response. I'm not sure where we are here.

SENATOR PREISTER: Mr. President, could I yield my time to Senator Beutler, so that he could get a clarification, or get an answer to that question from Senator Smith?

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, I didn't withdraw the amendment. And I'm not sure on whose authority it is withdrawn. And I don't know...I don't care what the body does with this amendment...

SENATOR CUDABACK: Senator Beutler, we must have misunderstood. So that amendment still is pending.

SENATOR BEUTLER: Okay.

SENATOR CUDABACK: We must have misunderstood you. We're back to debating the Beutler amendment. Is there any further discussion on the Beutler amendment? Mr. Clerk, priority motion.

ASSISTANT CLERK: Mr. President, I do. Senator Smith would move to bracket the bill until...Senator, was it April 27?

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

April 4, 2005

LB 588

SENATOR SMITH: Yes. Prior to that, I do have a point of order. If I might understand...Mr. President, you ruled that the amendment was withdrawn. Have you withdrawn that ruling, then?

SENATOR CUDABACK: I did rule that way, but it was my mistake. Senator Beutler said he did not say withdraw.

SENATOR SMITH: Okay.

SENATOR CUDABACK: So I ruled then that it is pending. But your motion is a priority motion. You're moving to bracket. So that overrides AM1041.

SENATOR SMITH: Okay. Thank you.

SENATOR CUDABACK: You're recognized to open on your bracket motion.

SENATOR SMITH: Mr. President, I, obviously, propose that the bill be bracketed until April 27. That was the number that I could come up with, as fast as I could. There's nothing sinister about that. It's intended to go into negotiations with Senator Beutler, if he wants to discuss that. I hope that that would be the case. I will say that there are parts of AM1041 that are good. I just have reservations of adopting that and then sending LB 588 to Final Reading without some further discussions. And I apologize if...I left early to leave town Friday. Well, not really early, but at a time that was certainly reasonable. I didn't realize Senator Beutler had called me until just this morning. I returned that call just as soon as I could, when he was in the meeting. And so I would value, very appropriately so, the opportunity to discuss further with Senator Beutler the fact that we can discuss these things. And I look forward to that opportunity. If...I would hope that Senator Beutler would agree to this, as what I would consider a friendly bracket motion. If he's uncomfortable with the date, I'm certainly amenable to another date that would still allow us to go into a friendly negotiation. Thank you, Mr. President.

SENATOR CUDABACK: (Visitors introduced.) On with discussion of

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

April 4, 2005

LB 588

the bracket motion presented by Senator Smith. Senator Smith, followed by Senator Beutler. Senator Smith, did you wish to be recognized?

SENATOR SMITH: I would defer to Senator Beutler, if he would wish to speak.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, we all know this is not a friendly bracket motion. This bill has been compromised along the way in dozens of different aspects. It has the approval of everybody, with, I don't know, the possible exception of Senator Erdman, on the Performance Audit Committee. We have discussed it on General File. My sense was that people were generally satisfied with how it's now been constructed. I don't know of any outside groups that are opposed to this bill, with the exception of possibly the Auditor. This is in line with the most conservative principles you could ever espouse, that principle being that we ought to review the performance of the agencies that we work with, we ought to see that they follow through and execute the laws in the manner that they should, and we ought to have a mechanism from time to time for reviewing that. You're going to be hearing a bill by Senator Bourne fairly shortly here. It's a priority bill having to do with rules and regulations, and suggesting a little closer touch with the Legislature in that respect. Everything we've done to this point in time, in my opinion, has been totally reasonable. And this discussion has been elevated to a level that, in my opinion, it entirely inappropriate. And I hope you will dispense with the bracket motion and move this bill forward. Thank you.

SENATOR CUDABACK: Further discussion on the bracket motion. Senator Smith.

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

SENATOR CUDABACK: Senator Beutler, would you yield?

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

April 4, 2005 LB 588

SENATOR BEUTLER: Yes.

SENATOR SMITH: Senator Beutler, honestly, I sought to give us some time on this bill to discuss these issues. I mean, obviously, we haven't had the opportunity to discuss that. Do you object to that opportunity, or do you still wish to get your vote today?

SENATOR BEUTLER: Senator, you can discuss it as long as the body wishes to discuss it.

SENATOR SMITH: Is it your desire for us to meet outside of this before this bill moves forward? I thought that was the characterization when you were willing to withdraw AM...

SENATOR BEUTLER: Senator, I would entertain any ideas you have. The ideas that you've presented so far I have, in fact, entertained. I've indicated to you that one is acceptable in terms of my personal view of the matter, and the other is not. I've explained to the Legislature my rationales. They have made a judgment. I would have accepted the judgment had it gone either way in good faith and with a happy disposition, but there is no point...I don't want to delay this bill in order for...unless you're...if you intend to rehash old ideas that this Legislature has acted upon. If there are new ideas, that would be another matter, but it's a little late in the game, Senator, to be proposing new ideas at this point in time and holding up something on Select File, which hasn't moved particularly fast. We've delayed this for awhile now trying to accommodate the ideas of the Department of Revenue and others.

SENATOR SMITH: And, Senator Beutler, when your initial position was in objection to my amendment and then you came to me and you said, you know, I think I can live with that, and that was the last word that I had, am I being unreasonable to think otherwise?

SENATOR BEUTLER: Yes, Senator, you are, because an indication...a positive indication to you about your amendment in passing in the hallway is not an indication that I accepted each and every thing in the amendment, and I think anybody

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Transcriber's Office
FLOOR DEBATE

April 4, 2005

LB 588

that's been around here for a while would understand that. I didn't say I agreed to your amendment. I said it looks pretty good.

SENATOR SMITH: Okay.

SENATOR BEUTLER: And half of it was fine.

SENATOR SMITH: Right. Okay. Thank you, Senator Beutler. And I'm not going to hold up the body's time on this other than to emphasize that my amendment, many could say, using at least my interests, the amendment that was just defeated made LB 588, which I think is a bad bill, better. I didn't get that. AM1041 makes a bad bill a little better, but I still have some philosophical concerns with the legislative branch of government overstepping its boundaries in terms of enforcing the policies that we set. Enforcement is an entirely different issue, and I do not wish to delay this. I simply put up the bracket motion to try to go into some discussions. Apparently, I will not have that opportunity and, for that reason, I would ask the Clerk to withdraw my bracket motion while I continue here. But I want...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...the body to know that I'm not just trying to be obstinate here. I'm wanting the body to adopt some policy that is sound policy that does not alienate ourselves from the public. I realize we have a job to do and it seems that we whittle away and whittle away and whittle away, and we find ourselves with some policies that are either hard to enforce or people don't understand, and I think this adds to that. I do not wish to do that and that's why I frown heavily on LB 588, and I would like to have some safeguards in there. I lost that battle of having the safeguard, and I hope that the body will hesitate to advance LB 588 even with AM1041. And I will support AM1041, but I think the body really needs to hesitate on the advancement of...

SENATOR CUDABACK: Time, Senator.

SENATOR SMITH: ...LB 588. Thank you, Mr. President.

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

April 4, 2005 LB 588

SENATOR CUDABACK: Thank you, Senator Smith. Senator Smith, are you requesting to withdraw the bracket motion?

SENATOR SMITH: Yes.

SENATOR CUDABACK: You are requesting it? The bracket motion is withdrawn. We're back to the pending AM1041, offered by Senator Beutler to LB 588. Further discussion? Senator Beutler, there are no lights on. You're recognized to close on AM1041. He waives the opportunity to close. The question before the body is, shall AM1041 be adopted to LB 588? All in favor vote aye; those opposed, nay. We're voting on adoption of AM1041. 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 Senator Beutler's amendment.

SENATOR CUDABACK: The amendment has been adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Discussion of advancement of LB 588 to E & R Engrossing? Been a request for a board vote. Senator Beutler, for what reason do you rise?

SENATOR BEUTLER: I'd ask for a call of the house and a roll call vote.

SENATOR SMITH: (Microphone malfunction) Reverse order, please.

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

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 588, 664A, 664

the Chamber. The house is under call. The house is under call. Senator Kremer, would you check in, please? Thank you. Senator Chambers, would you check in, please? Senator Beutler, Senator Langemeier, Senator Cornett, and Senator Jensen, please. The house is under call, Senator Cornett. I'm sorry, you are coming. All members are present or accounted for. The question before the body is advancement of LB 588. There's been a request for a roll call vote in reverse order by Senator Smith. Mr. Clerk, call the roll on the question, please.

CLERK: (Roll call vote taken, Legislative Journal pages 1085-1086.) 26 ayes, 15 nays on the advancement, Mr. President.

SENATOR CUDABACK: LB 588 does advance and I do raise the call. Now go to Select File, 2005 Speaker priority bills. Mr. Clerk, LB 664.

CLERK: LB 664. Senator Flood, I do have Enrollment and Review amendments. (AM7067, Legislative Journal page 995.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 664.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 664. All in favor of the motion say aye. Opposed, nay. They are adopted.

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

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 664 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 664 to E & R for engrossing. All in favor of the motion vote aye. Those opposed, nay. LB 664 is advanced. Mr. Clerk, LB 664A.

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

April 4, 2005 LB 111, 274, 664A

CLERK: LB 664A, Senator, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

CLERK: No amendments, Senator.

SENATOR FLOOD: Mr. President, I move the advancement of LB 664A to E & R for engrossing.

SENATOR CUDABACK: Heard the motion, advance LB 664A to E & R for engrossing. All in favor of that motion say aye. And opposed, nay. LB 664A is advanced. Mr. Clerk, LB 274.

CLERK: LB 274, Senator, I do have Enrollment and Review amendments. (AM7068, Legislative Journal page 1044.)

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

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 274.

SENATOR CUDABACK: Heard the motion to adopt the E & R amendments to LB 274. All in favor of the E & R amendments vote aye or say aye. All opposed, nay. They are adopted.

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

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 274 to E & R for engrossing.

SENATOR CUDABACK: Heard the motion to advance LB 274 to E & R for engrossing. All in favor say aye. And opposed, nay. LB 274 is advanced. We will now move on to the next agenda item, Select File, 2005 senator priority bills. Mr. Clerk, LB 111, please.

CLERK: LB 111, Senator, I have no amendments to the bill.

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

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

April 4, 2005 LB 82, 111, 111A, 273

SENATOR FLOOD: Mr. President, I move the advancement of LB 111 to E & R for engrossing.

SENATOR CUDABACK: You heard the motion to advance LB 111 to E & R for engrossing. All in favor say aye. All opposed, nay. LB 111 is advanced. Mr. Clerk, LB 111A.

CLERK: LB 111A, Senator, I have no amendments to the bill.

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

SENATOR FLOOD: Mr. President, I move the advancement of LB 111A to E & R for engrossing.

SENATOR CUDABACK: The motion is advance LB 111A to E & R for engrossing. All in favor say aye. Opposed, nay. LB 111A is advanced. We now move on to General File, 2005 senator priority bills. Mr. Clerk, LB 273.

CLERK: Mr. President, LB 273, a bill originally introduced by Senator Cunningham, relates to economic development, adopts the Building Entrepreneurial Communities Act. Bill has been discussed on the floor on March 23, March 30, and March 31. I do have amendments pending. I do, however, have a unanimous consent request from Senators Brashear and Cunningham to bracket the bill until April 19, 2005.

SENATOR CUDABACK: Any objection? Seeing no objection, bill is bracketed. Mr. Clerk, LB 273A. LB 273A is also bracketed, as it goes along with LB 273. Mr. Clerk, LB 82.

CLERK: Mr. President, LB 82 was a bill originally introduced by Senator Janssen. (Read title.) Bill was introduced on January 6 of this year, at that time referred to the Transportation Committee. Bill was advanced to General File. I do have Transportation and Telecommunications Committee amendments pending, Mr. President. (AM0666, Legislative Journal page 865.)

SENATOR CUDABACK: Thank you, Mr. Clerk. In the absence of both

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

April 4, 2005

LB 82

Senator Janssen and Senator Baker, Senator Smith, you have been authorized to carry LB 82. You are recognized to open.

SENATOR SMITH: Thank you, Mr. President and members. LB 82 is a bill that was brought by Senator Janssen to the Transportation Committee and, as Vice Chair of the Transportation Committee, I rise in favor of the concepts of LB 82. We had some discussion in committee, but it relates to...the bill would exempt emergency vehicles from width, height, length, weight, and load restrictions, and it would also exempt an authorized agency vehicle or a vehicle being operated by a manufacturer or sales agent for purposes of sale, demonstration, exhibit, or delivery as an authorized emergency vehicle from the width restrictions of 102 inches; the height restriction of 14 feet, 6 inches; length restrictions in 60-6,290; and the load restrictions in 60-6,294; and the bill contains the emergency clause. And that's the basic gist of the opening and I would save comments to the committee amendments for subsequent introduction, if the Chair would advise. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. As Vice Chair of the committee, Senator Smith, you're recognized to open on the committee amendments to LB 82.

SENATOR SMITH: Thank you, Mr. President, members. Committee amendment, AM0666, replaces the bill. The committee amendment exempts authorized emergency vehicles operated by police and fire departments from the size and weight limitations. An emergency vehicle is exempt from the weight limitation in 60-6,294 if the requirements of 60-6,298 are met. Under the changes, a permit may be issued for an operation of an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery if the applicant or their designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over 60,000 pounds on a tandem axle. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. You've heard the opening on the committee amendments to LB 82. Now open for discussion on those amendments. Senator Smith.

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

April 4, 2005 LB 82

SENATOR SMITH: Thank you, Mr. President and members. I will advise the body that this is somewhat of a coming together of the interested parties. The original bill seemed to be a little too much for the comfort of state agencies and others, and so it is the formation of an agreement, again, with the interested parties, and I would advise its adoption and the subsequent advancement of LB 82. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion on AM0666, offered by the Transportation and Telecommunications Committee? Senator Smith, there are no lights on. Senator Smith waives the opportunity to close. The question before the body is the Transportation Committee amendments to LB 82. All in favor vote aye; those opposed, nay. Voting on the Transportation and Telecommunications Committee amendments to LB 82. Have you all voted on the question who wish to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: Committee amendments are adopted. Mr. Clerk, anything further?

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Open for discussion. Senator Beutler. Senator Beutler.

SENATOR BEUTLER: I waive, Senator.

SENATOR CUDABACK: He waives his opportunity. Any further...seeing no further lights on, Senator Smith, you're recognized to close on LB 82. He waives the opportunity to close. The question before the body is, shall LB 82 advance to E & R Initial? All in favor of the motion vote aye; those opposed to the motion vote nay. The question before the body is advancement of LB 82. Have you all voted who care to? Record please, Mr. Clerk.

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

April 4, 2005 LB 82, 351

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB 82.

SENATOR CUDABACK: LB 82 does advance. Mr. Clerk, LB 351.

CLERK: LB 351, Mr. President, by Senator Preister. (Read title.) Bill was introduced on January 11, referred to the Natural Resources Committee. Bill was advanced to General File. I do have committee amendments, Mr. President. (AM0794, Legislative Journal page 853.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Preister, to open on LB 351.

SENATOR PREISTER: Thank you, honorable President, friends all. LB 351 makes a few minor changes to the current membership of the Environmental Quality Council, otherwise known as the EQC. It adds two new members: a public health/environmental health specialist, and a biologist. It also exchanges the public at-large member for a representative of minority or low-income persons. The EQC would grow from a 16-member committee to an 18-member committee. The EQC is the regulation making body for the Nebraska Department of Environmental Quality, or the NDEQ. It is a 16-member council that has been in existence since the early 1970s. Each member is appointed by the Governor, confirmed by the Legislature, and represents a special interest. A term on the EQC is for a period of four years. The council meets four times a year and the members are paid a per diem for the days that they meet. The council reviews and approves regulations for all the programs administered by the Department of Environmental Quality. The purpose of this bill, LB 351, is to add members to the council that bring not only a health and science background, but refocuses the member of the public representative to include an EQC member from an underrepresented members of the population--low-income and minority citizens. A September 30, 2004, Lincoln Journal Star article reported that the estimates from the U.S. Census Bureau indicate that from 2000 through 2003 the state's total population increased about 1.5 percent, but minorities grew 10.1 percent. The white population grew just .3 percent during that same time period. The Hispanic population increased 12.2 percent, and increased in

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

April 4, 2005

LB 351

79 of 93 Nebraska counties. The Asian population increased 23 percent, and the African-American population increased 3.6 percent, and that was after increases between the 1990 and 2000 Census that also saw increases in the minority population in Nebraska. Given this growing minority population in Nebraska, it makes sense to have them represented on the EQC in order to give them input into how the standards are set for air, water, and siting issues in their communities. It makes even more sense when environmental justice issues are factored in, particularly given the impact of the number, location, and kinds of facilities which are sited in minority and low-income neighborhoods and communities. These changes do not delete any of the current industry-related member seats on the council, but only provide an opportunity for new voices to be heard. I believe this new proposal is a good faith effort to strike a negotiated compromise in the makeup of the body which sets environmental standards for all Nebraskans. I did pass out to you, that should be on your desk, a copy of the current membership on the EQC, as well as the proposed change to that. The bill, as introduced, makes several changes. The committee amendment will modify that. And my handout to you reflects the committee changes, which Senator Schrock will identify when we get to the committee amendment. You can see on the handout that we are leaving in place, as I stated, all of the current membership. You'll also see that the makeup is composed of eight regulated industry representatives and three additional professional specialists, all of whom are or have the potential of being regulatees, as do the government representatives. This proposal has been one that I have brought before the committee in the past, have introduced amendments and legislation, and at this point I feel comfortable with what the committee amendment will do and will support that. With that, Mr. President, I am open to any questions when we get to that point. Thank you. And I do support the committee amendment.

SENATOR CUDABACK: Thank you, Senator Preister. You've heard the opening on LB 351. Senator Schrock, as Chairman of the Natural Resources Committee, you're recognized to open on committee amendments.

SENATOR SCHROCK: Mr. President, members of the Legislature, I

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

April 4, 2005

LB 351

commend Senator Preister for bringing this bill to the Natural Resources Committee. Most of you know he was a long-time faithful member of the Natural Resources Committee, and he could never get a bill out of committee that would change the makeup of the Environmental Quality Council. So I guess, in memory of Senator Preister, as he went to the Revenue Committee, we've finally put a bill out. Now, it wasn't the original bill that he wanted, and he has proposed from time to time a complete overhaul of the Environmental Quality Council, and this is not a complete overhaul. I think it's some very minor adjustments that those of us on the committee decided that maybe it's time to take a look at this. The committee struck down the language referencing low-income persons, but kept the language substituting a representative of minority population for at-large position on the Environmental Quality Council. The committee also struck the addition of a public health/environmental health professional, but retained the addition of a biologist to the council. So what this does, it...the committee amendments say we're going from a 16-member Environmental Quality Council to a 17-member, and that we will strike the at-large position and we will add a biologist and a member of the minority population. And you can see by Senator Preister's handout the difference between the proposed one and the current DEQ makeup. So the committee did agree to this, and most people who are involved in livestock issues maybe aren't excited about this, but they've agreed to the change, at least have agreed...have agreed not to oppose the change. So that's where we're at, and that's the...that's the committee amendment. If I'm not mistaken, it was adopted by the committee unanimously.

SENATOR CUDABACK: Mr. Clerk, items for the record?

CLERK: Mr. President, Senator Schrock would move to amend the committee amendments with AM0885. (Legislative Journal page 975.)

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

SENATOR SCHROCK: AM0885 is a cleanup amendment. The amendment changes the reference to an 18-member council to a 17-member

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

April 4, 2005 LB 351
 LR 73

council, and strikes the reference to a low-income representative in another section of the bill since the committee amendment struck that alternative representation. So this is a cleanup amendment and I urge your support.

SENATOR CUDABACK: Mr. Clerk, items for the record?

CLERK: Mr. President, a new resolution: LR 73 is by Senator Combs; that will be laid over. (Legislative Journal page 1087.)

And I do have a priority motion, Mr. President. Senator Schimek would move to recess until 1:30 p.m.

SENATOR CUDABACK: Heard the motion to recess till 1:30 p.m. All in favor say aye. Opposed, nay. We are recessed.

RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon. Welcome to the George W. Norris Legislative Chamber. Senators, our afternoon session is about to convene. Please check in. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. Do you have any items for the record, or announcements?

CLERK: Not at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, where were we when recessed for lunch?

CLERK: Mr. President, the...LB 351 was before the Legislature. Senator Preister opened on the bill. Senator Schrock offered committee amendments, as well as an amendment to the committee

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

April 4, 2005 LB 351

amendments. AM0885 as an amendment to the committee amendments is now pending, Mr. President. (Legislative Journal page 975.)

SENATOR CUDABACK: Senator Schrock had opened on AM0885. So now we will go for discussion of AM0885 to the Natural Resources Committee amendments to LB 351. Senator Smith. Senator Smith waives the opportunity to speak. Senator Bourne.

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

SENATOR CUDABACK: Senator Schrock, would you yield?

SENATOR SCHROCK: Yes.

SENATOR BOURNE: Thank you, Senator Schrock. This is an area that I'm interested in particularly, because of the events that occurred this last summer as it relates to rules promulgated by DEQ. And I realize that this is the Environmental Quality Council, and it seems like a pretty innocuous change. But I'm curious as to why, on the committee statement, members from the Nebraska Cattlemen and the Agribusiness Association testified in opposition to this change. Do you have any additional information regarding their testimony?

SENATOR SCHROCK: Senator Bourne, I believe I can shed a little light on it. They were opposed to any change on the council. And of course, they're looking for a council that's friendly towards livestock production. And when we amended Senator Preister's bill to have the council go from 17 to 18, and...I'm sorry, from 16 to 17, instead of the 18 in the original bill, they still weren't thrilled about it, but they said they'd be okay with it. So I don't think they're working this bill.

SENATOR BOURNE: Okay. And just for clarity, Senator Schrock, did your...Senator Preister asked for 18 people, and adding a biologist and a minority. Now, does your committee amendment take the biologist away, or the minority member?

SENATOR SCHROCK: No, we add both of them on, but we eliminate the at-large position.

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

April 4, 2005 LB 351

SENATOR BOURNE: Okay.

SENATOR SCHROCK: And if I'm correct, the at-large position is now being filled by a person who operates a grain elevator.

SENATOR BOURNE: Okay. So again, the opposition to the bill was more along the lines of just a reluctance for any type of change, rather than anything specific in the bill?

SENATOR SCHROCK: That is correct.

SENATOR BOURNE: Thank you, Senator Schrock.

SENATOR CUDABACK: Thank you, Senator Bourne. The issue before the body is the Schrock amendment, AM0885, which is an amendment to the Natural Resources Committee amendments to LB 351. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I have some concerns about adding another individual or two individuals on this committee. I think this committee is probably way too large to start with. One of the concerns that I have is, you know, what is the real value of having a biologist on this Environmental Control Council? And maybe I could engage in a little conversation with Senator Preister, if he would, please?

SENATOR CUDABACK: Senator Preister, would you yield?

SENATOR PREISTER: Yes, I will.

SENATOR STUTHMAN: Senator Preister, of what value and...what would be the asset part of it of having a biologist on the Environmental Council? What would...what can he do? What information can he give to the Environmental Council that would be beneficial to the Environmental Council as far as, you know, making things, you know, friendlier, liveable, and workable on the decisions that are given by the Environmental Quality Council? So could you address that?

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

April 4, 2005

LB 351

SENATOR PREISTER: I would be happy to, Senator. One of the frequently heard questions that we get when we are in the Natural Resources Committee hearing hearings is that we need to base our decisions on sound science. A biologist brings sound science information to the discussion. We have an Environmental Quality Council that's largely made up of industry representatives, regulatees. And some of those individuals have a science background. A biologist brings more neutrality, brings information from a biologic perspective, and can, when you're talking about setting water standards or other kinds of standards or recommending those standards, bring that sound science background to helping in that process.

SENATOR STUTHMAN: Thank you, Senator Preister. And by having that sound science, I can live with that. The thing that concerns me is, you know, is he going to be advised by environmental groups? Is his decisions going to be made, you know, just because of special interest groups? That is a real concern of mine. But I am concerned with the number of people that are on this, and what happens. When we continually add that many people to...I mean, add just a couple people to a board, realistically, only one, but changing the description of the one, really concerns me. I have got some real problems with what we did pass last year on the DEQ, the environmental quality laws that we enacted. I'm a producer out there, and we're having a lot of calls. It's interpretation of the rules that were made last year. One interprets them one way; one interprets them another way. Got several calls this noon because we were discussing this bill. Seems like everything is a moving target. People don't know where they're at. So I have some real concerns with this. And if we could get to where we have decisions made on sound science, I can live with that. But I think I'm going to have a little bit of a concern, because of the environmental groups, special interest groups are going to have a...you know, a real influence on this sound science decisions, and the information that they can give to them. So with that, I'm concerned about this. And I'll listen to the testimony. And I'll return the balance of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Further

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

April 4, 2005

LB 351

discussion on the Schrock amendment. Senator Smith, followed by Senator Schrock.

SENATOR SMITH: Thank you, Mr. President and members. Would Senator Preister yield to a question?

SENATOR CUDABACK: Senator Preister, would you yield?

SENATOR PREISTER: Yes, I will.

SENATOR SMITH: Senator Preister, when we talk about a biologist, what are your...I know that we did not define it. What kind of qualifications do you see a quality appointment having?

SENATOR PREISTER: Senator, we don't have definitions for any of the Environmental Quality Council representatives, as you know. So this would not be any different than a chemical or petroleum representative, or a power industry representative. A biologist would be, in my understanding, someone who has a degree in biology by an accredited higher education institution. The traditional definition of a biologist would be somebody with the degree that preferably has experience and has worked in the area.

SENATOR SMITH: Okay. And I see where you're going with the comparison to the lack of definitions for representatives of other parts of the council. I would interject here and say that a representative of an industry is...we may not like that, perhaps, that it's too open-ended, but it is certainly, I think, meeting the intent and perhaps the qualifications. And I'm not sure yet how I want to address this. But saying someone is a biologist without saying that it's a degree or something is certainly a little more problematic than saying someone is a representative of agriculture or the chemical, petroleum industry, whatever the case may be, according to the council. But are...would you object to trying to define perhaps a biologist so that we can make sure the intent is carried out?

SENATOR PREISTER: My only concern would be that I don't know that we can single out a specific description for one particular

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

April 4, 2005 LB 351

representative on the council and not do similarly for 16 other people. I'm just not sure how you can do that in being fair.

SENATOR SMITH: Okay. I guess that answers my question. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Schrock, on your amendment.

SENATOR SCHROCK: I would remind the body that AM0885 is a cleanup amendment, and the crux of the matter gets to the committee amendment. But I want to talk a little bit about the Environmental Quality Council. The Environmental Quality Council is not a policy setting body. We pass the laws. We set the rules. They do implement rules and regulations, and they take input from the public. They are appointed by the Governor. And depending on who the Governor appoints, could mean it could be slanted towards the environmental community, or it could be slanted towards the industry that's being regulated. Senator Preister has always been concerned that it's been slanted towards the people who have been regulated. But I think those people are appropriately represented. The biologist, I think, is a good addition. And certainly they would have the proper education and be concerned about environmental issues. A member of minority, I think the thinking there is that if you take a look in Omaha at ASARCO with the lead contamination, that has probably unproportionately affected the minority community in this state. And I think that's where Senator Preister is coming from there. And that's been a terrible injustice inflicted on the citizens of Omaha, especially in the eastern part of the city. And so he has concerns there. And I think the committee listened to those concerns and responded. These people don't make laws. They implement regulations based on the laws we pass. We did pass LB 916 last year, Senator Stuthman. It was in response to EPA demands that we have our people who are in livestock production be in line with federal regulations. So they had to have a federal permit. And we did that with the least amount of disruption as possible. And we've had stringent regulations in this state on feedlots. And LB 916, I would argue, didn't change those regulations. Now, there's been some fines and so on and so forth. And when you dig down into it,

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Transcriber's Office
FLOOR DEBATE

April 4, 2005

LB 351

most of the fines have been addressed...have been tried to be implemented on people who have not been maybe necessarily good actors. And the livestock community, I think, is getting their act together. Sometimes I cringe at some of the fines that may have been levied. But if you work with DEQ and have some patience, I think most of our livestock people are finding out that the response you get from DEQ is, we're from the government and we're here to help you. We don't want to fine you, but we also want you to know that it's no longer appropriate to have discharges of this type of waste into our streams, and so on and so forth. Now, I don't want our state to become anti-livestock. We need to become livestock-friendly. And there is some problem, Senator Stuthman. I don't think this is going to affect that one way or the other. And so I don't think this should be portrayed as an issue that we're going to get tougher on livestock operations. I don't think that's what this bill is all about. It does add another perspective to the Environmental Quality Council. And they don't set policy, but they do help develop the rules and regulations based on the statutes we passed. So taking that into consideration--and certainly, I want our state to become livestock...to be a livestock-friendly state--taking that into consideration, I supported this bill in committee, as did the rest of the committee members. I don't think those of you who are concerned about livestock are going to see that this is going to make any change. I have concerns about some fines that have been levied, and some regulations. But if we don't do that on the state level, the Environmental Protection Agency will come in and do it for us. And so, you know, having said that, we need to urge our livestock producers in this state to get involved, make sure their feedlots, their confined animal facilities do meet specifications, and work with the Department...

SENATOR CUDABACK: One minute.

SENATOR SCHROCK: ...of Environmental Quality. So I hope that helps answers some questions. Remember, the Environmental Quality Council meets four times a year. They take input from the public, and then they help the Department of Environmental Quality develop rules and regulations based on the statutes that we pass.

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 351

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

SENATOR PREISTER: Thank you, honorable President, friends all.
I just wanted to elaborate a little bit on the conversation with
Senator Stuthman. I did hand out for your information a current
listing of all of the Environmental Quality Council members. If
Senator Stuthman thinks that this is going to be slanted to
having environmentalists take over, perhaps looking at this list
will help give some sense of...relief. (Laugh) Thank you,
Senator Beutler. It isn't even proportioned. This industry
makeup of half of the council has control now of any regulations
that they might establish. My concern is, we have almost
exclusively regulatees, people who are being regulated, setting
the standards, or recommending those standards. We don't have
environmentalists. There's not one environmentalist on the
council now. I'm not even proposing an environmentalist. This
council is appointed by the Governor. The Governor is certainly
interested in industry and ag issues. The Governor is not going
to to make this council all-environmentalist. There isn't even
one now, and there isn't even one proposed. Even the
conservation position is an NRD person. There is virtually no
one on this council even from Omaha, other than the
conservation, who's from outside, around the edge of Omaha.
There's only one person from Lincoln. We really don't have any
minority representation. We don't have anyone here who's being
impacted by the environmental problems that we have created
through our industrial society. I think it would be helpful to
have a biologist, who brings a science perspective, and a
minority representative, as the committee council...or, the
committee amendment would provide, who is being impacted.
They're the ones feeling the effects, particularly, as Senator
Schrock said, in Omaha, where we have the largest Superfund site
in a residential area of anywhere in the country. There should
be at least one representative who can bring that perspective to
the council. And right now, if you look at the sheet that I
handed out on your desk, you'll see the regulated industry,
directly regulated, has eight representatives. Professional
representatives compose three, and each of those is also
regulated. The government, or the public, have four, and I

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

April 4, 2005

LB 351

believe all of those are regulated. We really aren't even getting close to having any kind of control, Senator Stuthman. This isn't hardly a step even in that direction. It just brings the sound science, and it brings one representative of those people that are most directly impacted. And this is not nearly what I've proposed in the past, and not nearly what was objected to. To my awareness, there's no organized opposition, at this point, against these two minor changes. And I see that they are that, very minor changes. Thank you.

SENATOR CUDABACK: Thank you, Senator Preister. Further discussion. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. I do stand in support of AM0885, the amendment, and also the committee amendment, AM0794, and also the bill. I do believe that Senator Preister brought this bill to us in good faith. And we acted as a compromise. And he did suggest, as he brought the bill, to add a public environmental health professional and a biologist. The committee decided to adopt one of those. And then also...and that would be the new member. And then to change the public at large to the minority or low-income population. And we did have quite a discussion on trying to sort of target the low-income, decided that would be very difficult to define, and so went with the minority. Just a couple questions to Senator Preister. How many bills have you probably brought to our committee in...you know, in regards to this issue?

SENATOR CUDABACK: Senator Preister, would you respond?

SENATOR PREISTER: Yes, I will. Thank you, Mr. President. Thank you, Senator Stuhr. I have brought at least two bills to make major changes to the Environmental Quality Council over the last eight years. I've also introduced a number of amendments on the floor to make those changes, as well. So this is an issue I've been working on for at least the last eight years.

SENATOR STUHR: And do you...if you'll respond, Senator Preister, do you see that, just for the record, that you'll be proposing another bill next year, I've heard some concern then,

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Transcriber's Office
FLOOR DEBATE

April 4, 2005

LB 351

to continually change the council? At this point, it was sort of our understanding that for now, this is what you were asking.

SENATOR PREISTER: Senator Stuhr, I do not intent to introduce another bill next year, if this bill passes. And my intention is to provide some input onto the council. I've never tried to dominate. I've never proposed any semblance of even a balance, a split balance for having other people on the committee, compared to what it is now. I've only sought to have some representation by the affected people, and to bring a professional level of expertise to the council. So to answer your question again, it's not my intent to bring...this isn't the slippery slope that some people might think. I'm not intending to come back. I probably couldn't get another bill out of the committee, even if I brought it. And knowing the makeup of the body, this is the very best I could ever hope for. So I'm willing to compromise. This is, as you well know, having served on the committee and heard those bills, a very scaled back version of what I wanted.

SENATOR STUHR: Yes. And with those remarks, thank you, Senator Preister. And I will be supporting the amendments, and also the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Further discussion. Senator Kremer.

SENATOR KREMER: Thank you, Mr. President, members of the body. I'd just like to make a few comments, too. I serve on the Natural Resources Committee. And Senator Preister has brought us a bill many, many years to do this, to change the Environmental Quality Council. And this year he's come down to where, I think, with the committee amendments, it's a biologist and a minority group. I don't, I guess, have quite the same fears that he has because those on the council are the regulatees, because I have spoken to many of the people on the council, and just ask them if they feel like they are interested in polluting. I mean, they all really want to do the best what they can. And it's a very diverse group. If you look down the list, the petroleum industry, power industry, ag processing, livestock industry, ag activity, crop production, food

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

April 4, 2005 LB 351

production, automobile industry, heavy industry, and then you get the professional engineers, labor, physician, county governments, municipality governments, and the private metropolitan...or, municipal government representative, and the public at large, which will be replaced by the minority group. But I did support the bill and I will continue to support it. A biologist could add something to it. But I really feel like these are a diverse group of people, each representing a different industry. And they are not getting together to say, let's let one of these people pollute. I think they're all concerned. And we...and I know, in the agriculture industry, in livestock, are very concerned on make sure that we do not pollute. And sometimes we just get discussed over and over and over again how we're polluting, which I don't think we are, and putting more rules and regulations on. So I will support the bill. And Senator Preister has been very sincere in his efforts to do that, and we've come down to where it would be just adding of two. And I think it...the biologist could add something to it. So I will support the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. (Visitors introduced.) On with discussion. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. First of all, I'd like to engage in a little conversation with Senator Schrock, if you would, please.

SENATOR SCHROCK: Yes.

SENATOR CUDABACK: Senator Schrock.

SENATOR STUTHMAN: Senator Schrock, you...in your conversation before, you said that the Environmental Quality Council, that is the group that does the rules and the regulations for the DEQ? Would that be right?

SENATOR SCHROCK: Yes, that's correct. But as defined by our statutes.

SENATOR STUTHMAN: As defined by the statute. And you realize the problems that we're having now by the rules and regulations

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 351

that have been put into place a year ago, or during the past year, and you know what I'm talking about as far as the moving target with the feedlot operations, the permitting process, the major modification, and things like this. So realistically, this came from the Environmental Quality Council?

SENATOR SCHROCK: Senator Stuthman, I would say that was more driven by the Environmental Protection Agency, and the fact that our livestock producers needed a federal permit. They already had a state permit. And so we actually didn't change much, as far as what it takes to qualify. But we had to develop new laws so that they had a federal permit instead of a state permit. And...but I don't think our environmental laws, as they affect our livestock producers, have changed that much because of LB 916. And I don't think much of that has been driven by the Environmental Quality Council. The Environmental Quality Council pretty well, on that issue, is doing what our statutes tell them they need to do. No more, no less. It's a concern of mine. But with the Clean Water Act, and so on and so forth...and you know, I've been trying to move some people on this body when it comes to storm water. Because the cities are going to be next. And the livestock people are feeling somewhat of the brunt of it. But I will tell you, those livestock producers who have complied, they have their retaining ponds, and are doing quite well--and it takes some money--but they've met the requirements quite well.

SENATOR STUTHMAN: Well, Senator Schrock, though, I would probably not totally agree with you there. Because the people that...in my community, that are...you know, have gotten the approval and everything like that, have been up to snuff one year; the next year, they find they've got to do something else, and the next year something else, and then they've got to go to the federal permit. It just seems like what is happening out there, it's a moving target. My livestock operations, you know, don't know for sure, you know, when approval for a livestock feeding operation means an approval for it, end of story. But what's happening is, they get approved; another year, something else comes, they say, oh, you got to do that, or you got to do this, or you got to put in monitoring wells. And then they find out, you know, with these monitoring wells, the...where they

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 351

placed them, you know, everything was okay. But in the long run, what realistically, I think, is going to happen is that it's going to be the end of the livestock feeding operations in the state of Nebraska. And that's one thing we don't want to happen. We got to be very careful, you know, as to what is happening. We've never had so many livestock producers have so many concerns as to what's happening to them, the regulations that are pushed down upon them. They get approved on one thing, think they're all okay. Should be okay, but they're not. That's the thing that I have a real concern with. And I guess I'm not going to argue the fact that a biologist is not a thing to have on there. I think it probably is an asset to have on there. But I do not know--and probably because of lack of intelligence as far as the information--I don't know what the Environmental Quality Council...

SENATOR CUDABACK: One minute.

SENATOR STUTHMAN: ...realistically does do. I know they meet quarterly. But you know, what information, what positive information do they give out to our livestock industry, our crop production industry, our ethanol plants, all of that? You know, is there a real value for that? And with that, I'll return the balance of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Schrock. And this will be your third time, Senator. He waives his opportunity. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, the amendment which has been agreed to to put a minority person on this group is beneficial. But I got up to speak about something else. I was under the balcony, minding my own business, leaving this discussion alone. Then Arnie, of the "Ernie and Arnie Show," stood up on the floor and said something that drew me to this microphone, like a strong magnet will draw metal shavings. He is the man who supports a mandatory checkoff, although they want to call it voluntary. You take it from the producer, then he or she can file some papers and get it refunded. He didn't mention that today. But he's concerned about the producers. You know what Arnie, of the Ernie and

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 351

Arnie team, stated? Livestock producers are having so many things pushed down on them, and he doesn't like that. But he is not like me in applying the principle across the board. He doesn't mind pushing down on the livestock producers a program that he likes, which is to take their money against their will. He doesn't mind that. But...because that would benefit his activities by promoting beef. When it's something that may create an inconvenience, then he doesn't like the producers to have things pushed down on them. I'm going to fight against that checkoff. But I would advise my colleagues to mark well what they say, because I remember things that were said during previous debates, and I spend a lot of time analyzing, evaluating my colleagues. I think more of you all than you realize. I think more about you than you probably realize. Any wise person who's going to have to function in an environment is wise to understand the other inhabitants of that environment, their practices, their attitudes, what will upset them, what will calm them, what will frighten them, so that when it serves your purpose to bring out one reaction rather than another, you have an idea of which buttons to push. Since human beings, however, are not automatons, and they are not entirely predictable, what causes a human being to behave in one way today may result in a reaction the opposite of that tomorrow. Human beings are variable. Human beings are fickle. But there are some things which ought not to change, even when human beings are the ones manipulating them. One of those is a valued principle underscored in the U.S. Constitution and the Nebraska Constitution: No person shall be deprived of life, liberty, or property, without due process of law. Simply because something is written as a law does not mean that it is due process. Due process means providing a person his or her due, that to which he or she is entitled, that to which he or she has a right, a claim. People's money should not be taken...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...against their will, when that taking is not in the form of a tax or a governmental fee. When it's taken for the purpose of benefiting private groups, it's wrong. This bill, however, before us, is reasonable. It is measured. And in the same way that Senator Stuhr could not tell me with

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 351

precision what bills she may offer next session, Senator Preister probably cannot say with precision what he might do next session. He may attempt to do so. But if he is a wise man, and circumstances change, he'll simply have to acknowledge that circumstances alter cases, and when those circumstances change, different action must flow therefrom. I'm in support of the bill as amended. And I will then support the bill. Thank you, Mr. President. And thank you, Senator Arnie Stuthman, of the "Ernie and Arnie Show," for opening this opportunity for me.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Schrock, there are no more lights on for discussion. You're recognized to close on AM0885 to the Natural Resources Committee amendment.

SENATOR SCHROCK: Mr. President, members of the Legislature. Senator Chambers, I want you to know that I am pleased you think about me on the weekends. There are weekends when I think about you also. And I also have constituents who ask about you. And sometimes I agree with what they say about you, and sometimes I disagree. But let me say this about Senator Preister. Senator Preister was a valued member of the Natural Resources Committee for about eight or ten years. Ten years. And he brought a perspective to the committee that those of us...and you know most of the committee is made up of people in agriculture. He brought a perspective to the committee that was valuable to us. And he is missed. And he kept us on our toes, and something we needed to be. So I appreciate him bringing this bill. We have worked out a compromise. It's not everything Senator Preister wanted. But it's something that I think is going to be a positive change to the council. And I don't think it's going to affect livestock operations. If it does, I hope it does in a positive way. Most of you know that I come from a county that's very livestock-intensive. I come from an area of the state, Phelps and Dawson County are the second- and third-largest cattle feeding counties in the state. And when you have confined livestock, then you have waste problems that you need to deal with. And we need to deal with them in an environmental way. And I want the Department of Environmental Quality to have a positive influence on our livestock facilities. And I've heard Governor Heineman say the same. And so we need to work

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 351

together. And with that, I would ask you to accept this amendment, which is a technical amendment.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the closing on AM0885. The question before the body is, shall AM0885 be adopted? All in favor vote aye; those opposed, nay. We're voting on the adoption of the amendment to the committee amendments to LB 351. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the amendment to the committee amendments.

SENATOR CUDABACK: The amendment has been adopted. Anything further on committee amendments?

CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Open for discussion on the committee amendments. Seeing no lights on, Senator Schrock, as Chairman of the committee, you're recognized to close.

SENATOR SCHROCK: Mr. President, Senator Smith made a comment that I think we should address. He said if Senator Preister would object to more defining what a biologist is. I guess I wouldn't object to that. But I would tell you that on the rest of the committee members we don't define what a representative of the livestock industry is, we don't define what a representative of the ag processing industry is, and we don't go into detail about what a professional engineer is. And so I don't think it's necessary to define what a biologist is. I think the Governor will know what that is, and the people will appear in front of the Natural Resources Committee, and that we will forward their names to the body for confirmation. So I don't think that's necessary. I think it's understood. And you know, we don't define who a member of the heavy industry is. And so I think that's an interesting concern. I commend Senator Smith for raising that concern. But if it's a concern on the biologist, then we need to have that concern on the proposed 17 members of this, and I don't think we need to go there. So with that, I would urge you to adopt this amendment and advance

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 351

LB 351.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the closing on the committee amendments offered by the Natural Resources Committee. The question before the body is, shall AM0794 be adopted, as amended, to LB 351? All in favor vote aye; those opposed, nay. We're voting on the adoption of the committee amendments, as amended. Have you all voted on the adoption of committee amendments that care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: Committee amendments have been adopted.

CLERK: I have nothing further, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion of the advancement of LB 351 to E & R Initial. Senator Preister, I see no lights on. Senator Preister, you're recognized to close.

SENATOR PREISTER: Thank you, honorable President, friends all. I appreciate the discussion, even though much of it centered around other issues other than the changes in the bill that are proposed. I still view this as the Legislature and the Governor having virtual control, by virtue of the fact that the Governor has to make the recommendation, the Natural Resources Committee still has to approve any appointments to the Environmental Quality Council, and then this body has to vote the further approval. So for those people who may be concerned that this is somehow taking that authority and control away, it's still all vested where it was. The Legislature still has the opportunity to discuss and to vote up or down on these appointments. To just highlight, we are adding a biologist, again, someone with sound science background, which we frequently hear; and we're adding...we're changing...we're only adding one person to the makeup, and what we are doing is changing public at large to a minority representative. So we're not increasing at that level. There's only one new person added. And at this point, minority is taking the place of someone else. And from my view, a

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 161, 193, 276, 351, 389, 389A, 682, 709
739

minority would be a person of color, and not necessarily gender. But it could be a minority person of male or female persuasion. And with that, I would just ask the body to please vote favorably on LB 351. And if you have questions after the vote, I'm certainly open to discuss them, as I always am. With that, I would encourage your favorable vote on LB 351. Thank you for your attention.

SENATOR CUDABACK: Thank you, Senator Preister. The question before the body is, shall LB 351 advance to E & R Initial? All in favor of the advancement vote aye; those opposed, nay. The question before the body is advancement of LB 351, offered by Senator Preister, to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB 351.

SENATOR CUDABACK: LB 351 advances. Mr. Clerk, items for the record.

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 276, LB 682, LB 389, LB 389A, and LB 193 to Select File. Amendments to be printed: Senator Jensen to LB 161; Senator Cunningham to LB 739. That's all that I have, Mr. President. (Legislative Journal pages 1088-1091.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Next agenda item is LB 709. Mr. Clerk, please.

CLERK: LB 709, by Senator Erdman and others. (Read title.) Bill was introduced on January 19, referred to Health and Human Services Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0772, Legislative Journal page 850.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Erdman, to open on LB 709.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, LB 709 is a proposal that's before you. And as you

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Transcriber's Office
FLOOR DEBATE

April 4, 2005

LB 709

can tell, there are a number of cosponsors. The bill in its green form has been revised and replaced with the committee amendments. And I will direct my comments to that area. The question that I seem to receive a lot is, why are we doing this at this time? I guess the simple answer is, is that we probably wouldn't have to. We wouldn't have to address the issue today. We wouldn't have to address the issue four years from now. We probably won't have to address the issue seven years from now. But as you'll see in some of the handouts, eight years from now, we have a major problem. And I think we owe it to the citizens of the state of Nebraska to address this issue in a proactive manner. And so that's why we have LB 709 before you. That's why I've introduced the legislation. My intent is for it to benefit Nebraskans and to benefit all Nebraskans, both those who are currently dependent upon the system for whatever benefit, and those who are in some other capacity, whether they're financing it or providing those types of benefits. The bill is before you also in a response. We've had a number of discussions the last three years. The Appropriations Committee has gone through very difficult times in determining what our policy should be, what our priorities should be for funding. The Revenue Committee at the same time has also had to be a part of those discussions. And we've continually debated back and forth on, what should our goals be? What should our systems look like? And overall, what should the government of the state of Nebraska look like? You are having distributed to you two packets. The first packet has "Nebraska Medicaid Program" on the front of it. This packet was compiled out of a presentation given to the Department of...or, the Committee on Health and Human Services on February 9. And I will briefly go through that with you. The first couple pages of the handout deal with the definitions of the Medicaid program. And I will try to track the pages in this packet to the committee amendment, AM0772. The second page of the packet has "Medicaid Services" across the head...across the mast there, and it deals with mandatory and optional services. As you follow along with the committee amendment, you begin to read through some of the findings as far as where the Medicaid system has gone, some of the decisions that the Legislature had to make, and then ultimately what we should be doing in the future as far as reforming our system, and what that should look like.

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

April 4, 2005

LB 709

Furthering in that packet, you find some charts and graphs that deal with the current breakdown of spending in Medicaid. You look at the eligibility numbers as far as who is currently eligible, the amount of money that is currently spent in those areas. And you continue on through this packet of information. There's also the history of where we have come with Medicaid and where we're currently spending money and what decisions were made prior to this date, so, prior to December 4. You'll notice that there are different decisions that this Legislature has made recently to expand Medicaid. We have expanded Medicaid to allow for different individuals to receive insurance. There have been different decisions made on the federal level. And those are all outlined for you in that page. You'll also notice in that that there was a decision made by this Legislature in LB 8. And LB 8 was done during a special session to address a financial shortfall. And the simple answer, it appeared to the Legislature at the time, was we had to reform our system. But we did not have a thoughtful or comprehensive approach to doing that. We found an area, we attempted to achieve savings in that area, and we made a decision. That decision later resulted in a lawsuit, one in which the state lost. And we have had to deal with those decisions since then. And again, it was because of lack of effort or lack of planning that was able to be implemented. So you continue through here. The second-to-last page deals with the demographics of the state of Nebraska. And I bring this up because part of the committee amendment deals with the bill that Senator Cunningham has brought to us dealing with long-term care. No matter what we do within the Medicaid system, no matter what we do as far as public policy, we must address the issue of long-term care within the state of Nebraska and how it's financed. Absolutely must be part of this. And so I'm grateful that Senator Cunningham has introduced a proposal that we have included in our committee amendment. And it ties in pretty well with the demographics that are offered to you on the second-to-last page of the packet from the Department of Health and Human Services. In addition to that, I think it's important to look at the last page of that packet. It shows the level of insurance coverage currently provided to Nebraskans by their employer. Nebraska is well below the national average as far as employers providing health insurance to their employees. Now, why is that part of the discussion? We've had this

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Transcriber's Office
FLOOR DEBATE

April 4, 2005

LB 709

discussion in the Health Committee, and I think we should have it within the discussion of reforming Medicaid. We as a state should not be the position of rewarding businesses who drop their family coverage in favor of single coverage, and allow the state to pick up the cost of that. That should not be something that we encourage in the state of Nebraska, absolutely not, because essentially what's happened is the state of Nebraska is picking up the cost for those businesses who are trying to save money on their bottom line, shifting the cost to the taxpayers of the state of Nebraska. That should be a part of this discussion. And hopefully, through the course of the discussion on LB 709, you will see that that is my intent and that is also the intent of the Chairman of the Health Committee. The other packet that's been distributed to you is kind of a look forward. And it comes from the Department of Administrative Services, and their budget office. It projects where we have spent money, or shows where we have spent money, and projects where we're going to be spending money in the coming years, based on the current trends in our state budget. Page 3 and page 4 are very telling. As I mentioned, we really have some time. We really do. But we have a couple of things working against us. The obvious result of doing nothing is, by the year 2013-2014, the general fund tax receipts are estimated to increase \$221 million, while state aid to schools and Medicaid spending demand is estimated to increase \$228 million. So ultimately, at that date, which is four budgets from this budget cycle, we will be making decisions to cut agencies in order to fund those two programs. If you'll also notice that those members who were recently elected will also be term-limited out at that time. So we have eight years from now. Even the experience and wealth of knowledge that they will gain will not be around to make that decision if we delay this discussion until then. So I think we have the opportunity to address this concern or this opportunity now. If you look at the last page of the handout from the Department of Administrative Services budget office, you see a little better understanding of how the spending in these two areas and how that will affect state agencies. And I think the Chairman of the Health Committee will address that as well. Specifically, the amendment on LB 709, the committee amendment, is designed to create an open process. It is not my goal, it is not the Chairman of the committee's goal, it is not the members' of the

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Transcriber's Office
FLOOR DEBATE

April 4, 2005

LB 709

Health Committee, to create this discussion in a vacuum, because that is useless. This process is designed, and we have tried through the process of amendments--and I have offered another amendment today to further clarify that process--to ensure that this discussion is a public discussion statewide. Because we all have a vested interest in this outcome, no matter whether you're a recipient of Medicaid services, no matter whether you're a state senator who's trying to manage the system as far as the costs, or whether you're a citizen of the state of Nebraska who's out making a living and paying the taxes that we as Legislature have set. Specifically, as you go through the amendment, there are certain things that are designed to be purposes that we should accomplish through this discussion. We should be looking at providing alternatives and flexibility under our current Medicaid system. Where does that come from? I introduced an interim study, LR 318. LR 318 was designed to create a weighted system. We currently have individuals in the state of Nebraska who are trapped in the Medicaid system. Maybe you have a part-time job and you have some young children, your employer doesn't provide you health insurance. You turn to the state of Nebraska and Kids Connection for that health insurance for your children. But as you become more successful and as you move through the system, your income grows. Maybe it's a promotion at your job. And you get to the point where you lose all of your possible benefits under the Medicaid system because you have reached this drop-off level. And there is no encouragement and there is no incentive for you to advance, because our system is a deterrent from you being able to be successful professionally and still being able to meet the needs that you have personally. That should be included. That is in LR 318 that was introduced. On page 2 of the committee amendment, subsection...Section 3, sub (4): "provide alternatives to medicaid eligibility for Nebraska residents." We have some fantastic federally qualified health centers that can be a part of this discussion. I know because they have asked to be a part of the discussion. We have public health districts. We even have the opportunity, hopefully, through this discussion, to work with private insurance providers to determine if there is a more appropriate way to meet the needs of some of the individuals who currently have nowhere else to turn. The entire cost of the system must be reviewed as we go

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 709

forward with this process. As you continue on through this process, it outlines...

SENATOR CUDABACK: One minute.

SENATOR ERDMAN: ...how this will work. We will have monthly progress reports. It's my intent that they will be made public as this goes on. And Senator Beutler and I have worked to ensure that that is the case. And there will be amendments to that effect. Again, this needs to be an open, public process. The goal of this is not to create another study to sit on a shelf, but rather to look at possible opportunities with the experience that we currently have in the Legislature to draw on that expertise and to fit that into a proposal that at the appropriate time and at the necessary opportunity that we have those options available to us, and whether it's us, whether it's others that are part of this Legislature, that we have done our duty. This is a monumental undertaking. I have no illusions of that. But I believe that we are up to the task, and I look forward to the discussion this afternoon. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. You've heard the opening on LB 709. As stated by the Clerk, there are committee amendments. Senator Jensen, as Chairman of the Health and Human Services Committee, you're recognized to open.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I first want to commend my colleagues on the Health and Human Services Committee. This is one of the most difficult bills that we wrestled with as we worked through the committee. And I can understand that. And I can understand, certainly, some discussion on the floor as we move through this bill. And I thank my committee for their involvement and their interest in this very important issue. And the vote coming out of the committee reflects, I'm sure, the same view that perhaps the Legislature has. Probably most of you understand the importance of something...about doing something about Medicaid in order to protect the program for future generations. And so it is with that that we worked very hard and long on this particular subject before bringing that to the committee...or,

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 -LB 272, 709

bringing that to the Legislature. The committee amendment does replace the bill as introduced, and inserts, also, provisions of LB 272. The amendment revises proposed language in original Section 3 of the bill, to delete a subsection relating to reducing the number of persons dependent on medical assisted benefits, and changes "reduce the growth" of Medicaid spending to "control the growth." It also revises Section 5 of the bill to read as follows: The Governor and Chairperson of the Health and Human Services Committee of the Legislature shall each designate one person who shall be responsible to the Governor and the committee for the development of a Medicaid reform plan for the state of Nebraska. Such plan shall be developed in consultation with the Governor, the committee, the Policy Cabinet established in Section 81-3009, and the federal Centers of Medicaid and Medicare Services, referred to often as CMS. Public input shall be solicited, and at least one public meeting shall be conducted in each congressional district prior to the submission of the plan. Monthly reports shall be provided to the Governor and the committee during preparation of the plan. And such plan shall be submitted to the Governor and the Legislature no later than December 1, 2005, and shall include recommendations for the development of Medicaid plan amendments and waivers, and draft legislation necessary to supplement such plan. The committee shall conduct a public hearing on or before December 15, 2005, to receive public input regarding the plan. The amendment inserts provisions of LB 272, introduced by Senator Cunningham. The amendment also adopts a Long-Term Care Partnership Program Development Act, to require the development of a plan to create long-term care partnership program in Nebraska. The amendment contains the findings...or, contains findings. The amendment requires the Nebraska Health and Human Services System, the Department of Insurance, consultation with the Health and Human Services Committee of the Legislature, to prepare and submit to the Governor and the Legislature, on or before December 1, 2005, a plan for a long-term care partnership program. In preparing the plan, HHS, the department, are required to analyze partnership programs established by states prior to the enactment of federal restrictions on the development of such programs in the Omnibus Budget Reconciliation Act of 1993. The amendment requires the introduction of legislation in the Ninety-Ninth Legislature,

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 709

Second Session, to establish a program. The amendment does have an emergency clause. I would ask for the adoption of the amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the opening on the Health and Human Services Committee amendments to LB 709. Mr. Clerk, motion on the desk.

ASSISTANT CLERK: Mr. President, Senator Beutler would move to amend the committee amendments with AM1027. (Legislative Journal page 1056.)

SENATOR CUDABACK: Senator Beutler, to open on AM1027 to the committee amendments to LB 709.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think this is a bill where we should have a good discussion. I don't think anybody is in filibuster mode or anything. But make no mistake about it, this is a huge item. And I agree with Senator Erdman and Senator Jensen that absolutely a study needs to be done, and it needs to be well done. My concern is that the study will focus on, how do we cut these various programs, without focusing upon also the good that these programs do, and the factors that are causing people to load on to the Medicaid system. In other words, addressing the symptom without addressing the various causes of what we're observing and what's happening at the moment. So I want to talk about that some today, and offer you a couple of ideas. The first amendment that's being offered to you is really nothing that changes the substance of what the senators and the committee are offering. It goes to the findings of the Legislature, and adds an element that I hope is substantial in a tonal change, as opposed to substantively requiring change. But findings, as you know, are simply reflections of the Legislature that give an indication of why they've asked for a certain thing to be done. It doesn't...nothing in a finding requires any agency or anybody to actually do anything. The findings in the standing committee amendment are these: The Medicare assistance program has resulted in significantly increased expenditures by the state of Nebraska. Very true. In response to such increased expenditures, the Legislature has taken various actions

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

April 4, 2005

LB 709

affecting the availability and adequacy of medical assistance benefits to Nebraska residents under the program. True. As a result of such increased expenditures, the medical assistance program has become fiscally unsustainable. Now, there's an assumption that we can talk about. Has become or may become? I'm not sure what the correct verbiage is. It's a problem, in any event. And again, I'm thinking we should be talking about why these expenses have increased so dramatically, as well as simply focusing on the end result. And fourth, it says: Fundamental reform of the medical assistance program is necessary in order to ensure future sustainability of the program for the benefit of Nebraska residents. No doubt, if we look at such areas as...we will hopefully find some things that can be reformed, and programs that can be cut or reduced or restructured. The additional findings that I'm offering...not substituted a findings. They're not replacing it; they're just adding on to the findings. And they talk about, essentially, the benefits of the Medicaid program. And there have been enormous benefits, especially to rural Nebraska, which is having such a struggle at this point in time, and will continue to have a struggle for some time into the future. But they are basically this: The Medicaid program provides essential healthcare and long-term care coverage to low-income children, pregnant women, and families, individuals with disabilities, and senior citizens, serving over one in ten Nebraskans. We should be cognizant of the scale of this program and how many people actually rely upon it. The Medicaid program covers one in four children in rural areas. The Medicaid program is the largest single purchaser of maternity care, and pays over one-third of the births in the United States each year. Medicaid is America's single largest purchaser of nursing home services, and other long-term care, covering the majority of nursing home residents. And that's something that's often misunderstood. Everybody thinks long-term care is under Medicare. But a good portion of that is under Medicaid, which is what we're talking about here. In Nebraska, the elderly and individuals with disabilities comprise 23.3 percent of the Medicaid population, and represent 67.2 percent of Medicaid expenditures. In Nebraska, low-income children and their parents comprise 76.7 percent of the Medicaid population, but 32.8 percent of Medicare expenditures. These figures indicating to you that the

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

April 4, 2005

LB 709

bigger problem is on the side of our older citizens absorbing a great percentage of the expenditures. Medicaid pays for personal care and other supportive services necessary to enable individuals with disabilities to remain in the community, to work, and to maintain independence. Those are the things that I think should also be part of the findings, to give us a simply more balanced view of what's out there today. And it's no big deal to me whether we adopt these or not. As I indicated, they don't change the substance of anything. But I think what it does do is give notice to whoever is studying this that we're dealing with something that is very important and very critical to a great many people, and we should handle it with great focus and great care. Thank you.

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: Thank you, Senator Beutler. Senator Preister, your light is next.

SENATOR PREISTER: Thank you, honorable President, friends all. I stand in support of what Senator Beutler is working at doing. His language doesn't substantively change or add to the intent of the bill or the committee amendment. But it adds some clarity and gives some focus. And I think that's essentially what we need to do. The concept of looking into what we do to keep the program solvent is not a bad idea. I signed onto the bill, and my name is still on the bill. But how we approach it, what we do with it, is the important component. When Senator Erdman began his opening, part of what he said was that we have many employers in the state of Nebraska who are not providing health insurance, and therefore the state, somewhat by default, although that wasn't his word, is ending up picking up the cost of medical health insurance. From what I understand from the Department of Health, only 43 percent of the Nebraska employers actually provide health insurance. So when we have less than half of the employers providing that health insurance, where do these low-income people go to get their health insurance? They can't do it with low wages in low-paying jobs. So it becomes a real challenge for them. Those are the people that I think need to be a part of this discussion. And they need to be considered, which is essentially what Senator Beutler is

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

April 4, 2005

LB 709

attempting to do by the amendment that he's got proposed. He talked about where some of these people are. I want to add some numbers. In fiscal year 2004, an average of 125,298 children were served by the program. These are children, through no fault of their own, by virtue of their birth, have no health insurance, or no coverage, and likely are not going to get that. When we invest in these children's health, we allow them to have better health, and to be able to learn in school. They can do better in school, they can have a much more fulfilled life, when we address health issues when they're small and when they're first identified. And hopefully, we get early detection, so we can intervene. And then we have much less costly healthcare that we provide. There are an additional 26,016 adults who were recipients. Considering the whole state, 26,000 adults really is not that many. Considering how many people don't even have health insurance, I would say that's a pretty small number. But I would guess that those are some very needy people, and that they too need to be considered when we make changes. There's an additional 18,298 senior citizens. Again, considering the aging population in Nebraska, I would have expected that there would be a lot more than 18,000 people receiving that kind of assistance. There are a lot of other people that seem to be making it in other ways, and that the state is not providing that Medicaid funding for. State and federal government, that provides the funding. And one of the bigger categories, in fact, the second-biggest, is people with disabilities, those that can't provide for themselves; 27,546 people with disabilities are receiving Medicaid. These are the neediest among us. With these numbers, we're not really seeing what we might expect to see if we were thinking that people were taking advantage of the system. These numbers are spread across the state. They are people who...

SENATOR SCHIMEK: One minute.

SENATOR PREISTER: ...are in need of this service. Some additional numbers that I think are important--and I'll conclude--that the Medicaid program expenditures are growing more slowly in Nebraska than the national average. We are doing a pretty good job here in Nebraska. Only 4.3 percent increase in 2003 in Nebraska. Only a 4.3 percent increase, as compared

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Transcriber's Office
FLOOR DEBATE

April 4, 2005 LB 709

to, nationally, a 9.3 percent increase. Less than half the national average increase. And in private health insurance costs, the increases were almost 14 percent. So we're holding the line. Let's acknowledge that we're doing some things right, that we're doing some things good, and that the bottom line is, we need to make sure that we make any adjustments...

SENATOR SCHIMEK: Time.

SENATOR PREISTER: ...with these folks in mind. Thank you.

SENATOR SCHIMEK: Thank you, Senator Preister. Senator Cunningham is next, followed by Senators Erdman, Byars, Jensen, Chambers, Brown, and Engel. Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Senator Schimek and members. I'd like to thank Senator Erdman for bringing this bill. I think that if you've looked at the charts, and especially we that have been on Health and Human Services have seen...and Appropriations, have seen the amount of money that's being spent on Medicaid, and projected to be on...spent on Medicaid in the future, it's alarming. And there's an awfully lot of that that we need to do, probably most of it. But there's one area that has major concern for me. And the first year I was in the Legislature, we went through the first budget process. And that summer, I went to one of our conferences, and went to a long-term care program at the conference. And what alarms me, one of the biggest areas of Medicaid spending are seniors in our nursing homes. Now, don't get me wrong. We need to fund our seniors in our nursing homes that don't have the assets to do it for themselves. But it's alarming to me how many people are planning their estates...planning their assets, not their estates, but planning ahead and trying to get rid of their assets so they can be paid for by the state when they go to the nursing home. And I guess I would contend that we can't continue to go down that road, that those people, if they have the assets, they need to be taking care of themselves. And so in that first conference I went to, Indiana had a program, and it was called the Indiana...I don't even have it now. Indiana Partnership, it was called. And this is a little bit about what it did. Anybody that purchased an Indiana Partnership policy,

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

April 4, 2005

LB 272, 709
LR 9

with coverage that equals or exceeds the state-set dollar amount, would have total asset protection. If the individual exhausted their policy benefits and applies for Medicaid assistance, they would receive a total asset disregard. The state-set amount at that time was \$162,068. That was back in 2001. And they had increases of 5 percent annually. They had another option that was a dollar-for-dollar asset, basically that whatever...let me see, how did...I think it was basically, whatever amount of dollars they put in, they could protect that in their assets later on. But the federal Omnibus Budget Reconciliation Act of 1993 limited asset protection programs established after May 14 of 1993, and that states obtaining a Medicaid state plan amendment after such date could proceed with partnership programs, but they must recover from the estates of all persons receiving services under Medicaid, thereby resulting in the asset protection component of the partnership being in effect only while the insured is alive. Last year, I noticed that several states have memorialized Congress to remove that restriction on asset protection programs. Other states either created or are working on their own long-term care partnership programs, in the event that Congress does remove that restriction. I felt it was time to initiate that process in Nebraska. I met with Health and Human Services System, Department of Insurance, Governor's Policy Research Office, and Senator Jensen and his staff. I first introduced LR 9 to ask Congress to remove the federal restriction, and also LB 272, which is part of this bill, to direct Health and Human Services and the Department of Insurance, in consultation with the Health and Human Services Committee, to prepare a plan for a long-term care partnership program in Nebraska. Legislation then would be introduced, or could be introduced next year, to implement that plan, should Congress lift the restriction. I think Senator Jensen pretty much explained most of the rest of that bill. But I just firmly believe that we have an obligation...

SENATOR SCHIMEK: One minute.

SENATOR CUNNINGHAM: ...ourselves. If we can afford and we have the assets to pay our own way, we should be doing that, and we should not be relying on the taxpayer to do that for us. And the bill number, if you want to look it up on the gadget, the

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

April 4, 2005

LB 272, 709

previous bill is LB 272. Thank you.

SENATOR SCHIMEK: Thank you, Senator Cunningham. Senator Erdman, you're recognized to speak.

SENATOR ERDMAN: Thank you, Madam President. Members of the Legislature, I'm going to rise in support of Senator Beutler's amendment. I do--and I have discussed this with Senator Beutler--I think that we'll have a technical correction that will need to be done. Essentially, we would have two findings sections, both Section 2 and Section 3, the way that his amendment is drafted. But I think we can resolve that. I think what...I know what my intent is. And my intent is that this is a balanced approach, that this is an idea that, the way that this is drafted reflects the ultimate goal, and that is that we look at the system, to the benefit that it has provided, we look at the future obstacles and the future opportunities that need to be available to the system, and that we figure out a way to accomplish that. Obviously, legislative intent is important to outline what we think or what we have found as far as the facts that are occurring at that exact date. The discussion that Senator Beutler had earlier on the committee amendment, in Section 2, line 14, about whether the system has become financially unsustainable, or whether it is financially unsustainable, or whether it will become financially unsustainable, I think is irrelevant. I think the reality is, is that we know it's going to be a problem. When you look at the information that is presented to us, and we look at the decisions that we have had to make in response, they haven't been well thought out at the time. They may have been the best thing that we could have done at the opportunity that was presented. But again, look to the information that's handed out. By 2013-2014, we cannot continue to grow these two portions of the state budget at the rate that they're going and be able to afford it, without cutting state agencies. Now, I'll add this. When I say state agencies, I include the University of Nebraska-Lincoln, University of Nebraska-Kearney, the whole system, the community college system, the state college system. It's beyond just agencies and bureaucrats that sit in Lincoln or sit in offices throughout the state. And so we look at the numbers. And we can discuss whether it will be financially

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

April 4, 2005

LB 709

unsustainable, whether it is. The reality is, is that we need to be looking at the system to provide those alternatives and to ensure success for the citizens of Nebraska. And if we go through this process, it is important for us to clarify the intent of the Legislature as we see it. It's also important for us to keep our eyes on the target. And the target is that we look at the citizens in our state who need our help, we look at the individuals who are disabled, who are dependent upon the state for certain services, and we recognize that we are going to need to provide services in that area. We look at the long-term care. And if you look at the information handed out by the department...or, excuse me, by the Chairman of the committee, it talks about, there will be a 52.5 percent increase in the population of Nebraskans which are 85 and older between the years 2005 and 2030. That grows that portion of the budget. So I think Senator Cunningham is spot-on, that we have to look at these proactive ideas. And yes, we're going to need help. We're going to need cooperation from our friends in Congress. But I agree with Senator Beutler's approach here, that this needs to be a balanced proposal, both in the intent, and later you'll find in the amendment that I'm offering, to ensure representation in this process, and ultimately we will have a process in which people can have a say, they can have a part of of this, and ultimately they can help us direct the decisions that we'll have to make, whether it's those of us currently here, or those of us as a Legislature to follow. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Erdman. Senator Byars, your light is next.

SENATOR BYARS: Thank you, Senator Schimek. Thank you colleagues. I hope that those of you who haven't had a vested interest in this area are taking note of some of the statistics that are being given to you. I don't think there's anyone on this floor that would more like to see a fair Medicaid plan designed for the state of Nebraska than me. I don't think you start in building a plan like that with the premise that it's going to cost less money. I commend Senator Erdman. I think it took a tremendous amount of will and, I think, creativity on his part to bring this type of legislation. And certainly, I've

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

April 4, 2005

LB 709

always stood very strongly in support of my Chairman of the Health and Human Services Committee, Senator Jensen. And we all know that it's a very easy thing to stand up in front of a group of people, and they will concur with you because they think spending is out of control no matter where it is in the state of Nebraska, and say, we're going to develop a plan to reform Medicaid. And immediately the assumption is that when we reform that plan we're going to reduce the expenditures that the state of Nebraska makes for its poorest residents, for its disabled, and for its elderly, because that's the only place you can go, folks. Now, I'm not going to stand here and tell you I'm in opposition to this. I think the changes to the bill, the committee amendments, in bringing it back to this full body, which I asked for, rather than just implementing a plan without having us take legislative action, is a good step, one that's absolutely necessary. But think, folks, outside of the vacuum. Don't have tunnel vision on this. We can make light of the fact that, gee whiz, we don't know what Congress will do. And I mean, are we just going to sit here on our big fat fannies and do nothing, and wait? Or are we going to be proactive? And let's move forward and do something about Medicaid in this state. I'm one of those that honestly believes that you can't build a plan without knowing where Congress is going. It is a major initiative of the President of the United States to cut Medicaid spending in huge ways. The National Governors Conference has opposed this. The National Conference of State Legislatures is opposing this. The National Conference of State Legislatures and the NGA both have task forces in place right now to study, how do we make recommendations to the states to fit in and do side-by-sides with the President's proposal, and not knowing what Congress is going to do? Now, we can sit here and go ahead with our plan, and just do whatever we want, and then all of a sudden we'll come back again and whatever Congress does we'll have to make changes. I would prefer not to do that. I sit on NCSL's Medicaid task force, and we have...we're dealing with all the CMS people, all of the people from the President's staff relative to these issues, and we haven't even come close to coming to any kind of recommendation to our colleagues across the country. And I think Senator Preister made the point, and I want you to think about this, when we think about Medicaid in a vacuum. You can't reform healthcare just on the back of

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

April 4, 2005 LB 709

Medicaid. You have...

SENATOR SCHIMEK: One minute.

SENATOR BYARS: ...Medicare. You have the health insurance industry themselves. You have 52.3 percent of the employers in this state who aren't providing health insurance to their employees, even availability. That means people without. Shouldn't that be part of the discussion? Shouldn't that be part of the reforming of whatever we do? The insurance industry, what is their obligation? What should they be doing at the table? Shouldn't that be part of...what should the employers in this state be doing? What is their obligation? The people going on Medicaid aren't people that are ne'er-do-wells and people who don't want to work and have health insurance. Their employer doesn't provide it, and they're making minimum wage or barely over, and they can't afford to buy insurance. You look at our cost per individual, per person, not overall growth rates in this state, is very important.

SENATOR SCHIMEK: Time.

SENATOR BYARS: Thank you.

SENATOR SCHIMEK: Thank you, Senator Byars. Senator Jensen, your light is next.

SENATOR JENSEN: Thank you, Senator Schimek, members of the Legislature. And yes, Senator Byars, and I appreciate your comments that, should we wait until the federal government does something? Well, first of all, if you followed that as I followed it, I think you might say that I don't know that the federal government will make any changes whatsoever. It doesn't look that way, in my opinion. Let me just run through a couple of things. This is a budget, state of Nebraska, as presented by the Governor on January 13. If we do nothing...and let's look "back to the future." Michael J. Fox had a couple of those movies. Very interesting. Okay, so we start on page 12. Secretary of State, Auditor of Public Accounts, no money for that, 2014. Accountability and Disclosure Commission, Agriculture, Environmental, Natural Resources, Department of

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

April 4, 2005

LB 709

Natural Resources, Nebraska Game and Parks, Nebraska State Board of Health, State Fair, we don't have any money for that. Department of Labor, no money for that. Department of Economic Development, Engineers or Architects, no money for that. Health and Human Services we'll skip over for now. Go to the next page. Nebraska Telecommunications Commission, Coordinating Commission for Postsecondary Schools, that we might be able to fund. State Historical Society, Commission for Deaf and Hard of Hearing, we don't have any money for that in 2014. Nebraska Public Employees Retirement System, Public Safety, we don't have any money for that. Department of Corrections, Compensation Court, we don't have any money for that. Aid to counties, no money for that. Aid to cities, no money for that. Department of Motor Vehicles, no money for that. Department of Roads, no money for that. So there we go. Now, I just am thinking, where are we going to go in 2014? And yes, as Senator Erdman said, this is not a bill that we need to address this year. Maybe not next year. I do know that next year, 20 colleagues of mine will be off of this illustrious Legislature. And when we met at Platte River State Park, I made a few comments out there that I think it's time that the Legislature look globally at some of the circumstances that are before us here in Nebraska. Medicaid was one of those, education. We've done some good work in corrections. I think we've done the right thing in mental health reform. It isn't easy. Takes a lot of courage. I just want to present to you ten items that are not cutting eligibility, that are not cutting any dollars out of the system, that are not cutting reimbursements, that we can, and I think we should, look at. To increase the number of employers offering health insurance. That's already been said. To increase the number of families premium coverage paid for by employees. In other words, there are a lot of employees, they got coverage for themselves but not the entire family. We need to look at that. Increase the number of persons into private and employer insurance programs. There are a lot of companies out there that provide insurance that the employee is not participating in, but looking to Medicaid to do that. We need to incentivize and promote the purchase of long-term care insurance. What is it, I think five out of the last seven years I've introduced the bill in the Revenue Committee to incentivize the purchase of long-term care insurance. Never made it to the floor.

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

April 4, 2005

LB 709

Incentivize and encourage...or, excuse me, allow persons to participate in savings accounts to set aside dollars into tax-exempt status to provide for long-term care. That was a bill that Senator Redfield...

SENATOR SCHIMEK: One minute.

SENATOR JENSEN: ...introduced. I don't know where that is. Our college savings plan four years ago started from nothing; today it's got \$1 billion in it. If people had a method of setting aside dollars for long-term care, I believe that the citizens of this state would do that. Allow persons to set aside dollar...or, assets for long-term care, then allow them to either hold it or convey the assets to their family members, but also allow them to set aside dollars that would not be taxed that would be free from their estate. We need to increase our support for community health centers and the federally qualified health centers. We've done some of that. We need to do more of that. Again, that's that safety net out there that provide a great service for our citizens. Support and expand home-supported care. Eighty percent of the people in nursing homes say they would rather be at home. If we can expand that home care,...

SENATOR SCHIMEK: Time.

SENATOR JENSEN: Thank you, Senator.

SENATOR SCHIMEK: Thank you, Senator Jensen. Senator Chambers, you are recognized to speak.

SENATOR CHAMBERS: Madam President, because I know there's a tendency in this society to punish those least able to bear it for the sins of those who ought not commit them in the first place, every time I see a proposal such as this which is going to impact on the poor, I reread a terrible tract, or pamphlet, written by Jonathan Swift in 1729, called A Modest Proposal. And this is the subtitle: A Modest Proposal for preventing the children of poor people in Ireland, from being a burden to their parents or country, and for making them beneficial to the publick. And that proposal was to use them for food. And

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

April 4, 2005

LB 709

naturally, it would cost a lot, so only the better off people would be able to afford this delicacy, for example, landlords. And Swift wrote that since the landlords had consumed all of the parents, virtually, who better had title to the children than the landlord? But this document has been described as the most bitter and desperately sarcastic of anything written in English literature. And it dealt with a real situation. When you look at the original form of this bill, and you see on page 2, in lines 10 and 11, the words: reduce the number of persons who are dependent on Medicaid...medical assistance benefits," that shows the mind-set and the direction of this bill. No matter how it is sugarcoated or prettified, the aim is to put the burden on the poor. When I was talking against those lengthy disqualifications for unemployed workers, people wouldn't tie how Scrooge-like and gouging these employers are into the kind of issue we're dealing with today. They compartmentalize, and they don't bring the two together. But we're seeing that they do mesh. Business has been able to get along...away for too long. Senator Jensen was over there reading off various activities, programs, agencies, and he would say, no money for that, no money for that. But you're going to have enough money to give a \$30 million giveaway on top of what business is getting already. That's the incentive program, they call it, for business. The welfare program. As they pay less and less in taxes, who's going to pay more and more? The population base isn't increasing. But you don't want to tie that into what we're talking about here today, do you? Because this is a politically motivated move to give the appearance that something is being done that's of value. This study...I don't question Senator Erdman's motives. I've talked to him. I think his motives are pure. But there are others behind the scenes who are not pure. Senator Jensen mentioned certain things that, if they were done, we could reduce the reliance of people on Medicare. I just read the other day of a Spanish proverb: If my grandma had wheels, she would be a scooter. So things don't always follow. We could all speculate about what would make things better. But we are faced with a realistic set of circumstances, where the poor, once again, are to be victimized. But contrary to what Swift recommended, I wouldn't say, turn the children into food. Since the bulk of the money for Medicaid goes to old people, such as myself--I'm old now--and the

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

April 4, 2005

LB 709

disabled, we ought to make old folks and disabled jerky. Not beef jerky. And that would cut down the excess population, it would be a source of nutritious food,...

SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: ...and it would reduce the cost of Medicaid. You wouldn't have to worry about what to do with your infirm parents or grandparents. Just take them down to the factory, push them into the machinery, and out comes jerky. Not turkey jerky, old folk jerky. I needed to get some of those comments out of the way, because I have more that I'm going to say more directly on point, and perhaps not. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Chambers. (Visitors introduced.) Senator Brown, you are recognized to speak.

SENATOR BROWN: Madam President, members of the Legislature, I will be supporting the Beutler amendment, primarily because it puts into the bill some of the statistics about who is using Medicaid and what that means in terms of costs. There's a gentleman, David Osborne, who wrote a book about...on streamlining government, and has done a lot of work consulting with states on...it's a combination of a strategic planning performance approach that focuses mostly on prioritizing those kinds of outcomes that we think are the most important. As far as Medicaid is concerned, in working with the state of Washington, and they...and Washington was focused on cutting back their spending, because they were in a horrible hole financially. So that was a part of what motivated them. But in looking at it, the group that had a certain dollar amount allocation for Medicaid services wanted to focus on what they thought was the most important investment of that money. And the most important investment, they felt, was in the preventative services. We pay lip service often to preventative services. And we are always in something of a quandary about it, because how do you free up the money, let's say, from...in terms of early childhood education? We can show that early childhood education has a lot of long-term benefits. The highest dollar amount has to do with the prison system. But you can't free up money in the prison system right now, because of

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

April 4, 2005

LB 709

things that we haven't done in the past, in order to pay for the services for the kids that we know that if we pay for them now they'll be less likely to end up in prison in the future. We are somewhat in the same predicament with Medicaid. We have a number of individuals who have both personal financial issues that got them into Medicaid, but often high-needs, and...but we can't free up the money from those individuals right now to be able to invest in the young people, which may, in the long run, actually save us money. And I think that the Beutler amendment, even though it is intent language, gets at this...the balance of where we're spending the money within the Medicaid system, which is something that we really have to continue to discuss as we look at the broader overall. But in the broader overall, whether you believe that this is a...the imposition by the haves against the have-nots, Senator Erdman is correct that the numbers just don't work out long-term. So we've got to figure out something that we're going to be able to do. And part of that has to be...

SENATOR SCHIMEK: One minute.

SENATOR BROWN: ...in directing, I believe, more of our funding into prevention services, and also looking at whether the funding that we're...what we're paying for right now, if we're paying for things at the end of life that are sometimes...that there are methodologies of manipulating the assets in a way that causes it to...the state to carry out the services. And if I'm going to choose between a family hiding assets--and I don't know how often this happens, but I do think it happens occasionally--and us providing the services to the elderly person, or us providing...

SENATOR SCHIMEK: Time.

SENATOR BROWN: ...services to a young person, a child, I would rather choose the child. Thank you.

SENATOR SCHIMEK: Thank you, Senator Brown. Senator Engel is next, followed by Senators Thompson, Byars, Jensen, and Chambers. Senator Engel.

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

April 4, 2005

LB 709

SENATOR ENGEL: Madam President, members of the body, I have always been an advocate for those who are less fortunate than we are--the developmentally disabled, the poor, and those who are unable to take care of themselves. The situation that we're talking about...first of all, I'd like to commend Senator Erdman and others for bringing this bill before us, because I think it's very timely and very necessary. From the one chart he showed us, in the year 2025, if we don't do something, either get more income, more people, more jobs in the state of Nebraska, or decide...figure out a way to cut costs, we won't have anything to run the rest of government. And so we have...something has to be done, without penalizing those people who deserve the care. I know over the years, I sold insurance for many, many years. And I do not sell insurance anymore, so I'm not saying this so I can sell a policy to anyone. But I do know that there are many people out there that are uninsured by choice. They have the opportunity, they have the wherewithal to purchase health insurance, but they chose to gamble. And many times, you know, as gamblers go, as you know, some win, most lose. And many of these people have lost over the period of time. And as a result, they wind up with taxpayer support. Another thing is, what we have to look at, and I think Senator Jensen alluded to that, is long-term care insurance. I think that's one of the best investments that you can make as far as cutting back as far as what it's costing us to keep people in nursing homes. Because I believe, if I'm right, about 52 percent of the people in nursing homes are there funded by Medicaid. Now, that's why we have to come up with something to incentivize people to buy long-term care insurance. I bought it many years ago. Hope I never use it. I hope I'm just paying a premium for something to help keep other people's premiums down. But I do have it, because I feel my obligation to me and my wife is to take care of ourselves as long as we can. Any assets left over after that, the children are welcome to that. But my goal in life is not to see how much I can leave to the kids. I want to make sure that the kids don't have to take care of me. And I want to just allude to something there. I've had a bill introduced this year on homestead exemptions. And what it was is, everybody that qualified for homestead exemption would continue to qualify, except that there would be a lien against their property for when that house...when the property is

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

April 4, 2005

LB 709

finally sold, the last person it was intended for was out of the house, when that house was sold, we could recoup the losses. You'd be surprised the calls I got from people, the heirs, the potential heirs, and the people themselves, that I would...my intention was to leave this house, this property, to my sons and daughters. And I told them the same thing. I said, I want to leave mine something, too. But our first obligation is to take care of ourselves and not turn over our responsibilities to the state of Nebraska and the taxpayers, and still not take anything away from those who are deserving. That I will always fight for. Take care of those that really need this. Another thing I believe we need is more education. Because I think many, many people on Medicaid are really abusing it, through no fault of their own. It pays from the first dollar on up. They see all these advertisements, all this new medication, et cetera, et cetera. They get the sniffles, and they...and many go in, and let's...I want to try this new product. Where most of us, it might be a bowl of chicken soup or a bottle of Vicks or something like that. But if anything of a serious nature, you ought to make sure that they get the help, so that it doesn't develop into something worse for them. So I do believe that we do need to make some changes. We have to figure out how to do it without penalizing those people who need the help. But I do believe that if we don't do something,...

SENATOR SCHIMEK: One minute.

SENATOR ENGEL: ...there will be nothing left to help anybody. And as far as relying on the federal government, that always worries me. That always worries me, because they come up with plans, and then they take away the plans. They take away a lot of their support. And so therefore, a lot of times we're stuck with things that we never figured on being stuck with. So with that, I turn the rest of my time back to the Chair. And thank you.

SENATOR SCHIMEK: Thank you, Senator Engel. Senator Thompson, you are recognized to speak.

SENATOR THOMPSON: Thank you, Madam Chairperson, members of the body. I passed out to you an article that I read a year ago.

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

April 4, 2005

LB 709

And I think it's very helpful to our discussion. And it's from the State Legislatures publication, and it's called "Medicaid: ten fixes that work." Of all the reforms that states have tried, these are the ones that hold the most promise. And it's interesting that several people who have stood here have talked about some of the things that are recommended. And I'm just going to mention these, for those of you who may not have looked at it, and for those of you who are following the debate. One is to reform long-term care. And this was done in the state of Maine, by making sure they were taking care of the sickest people who needed to be in nursing homes, but also because they expanded their community programs so that people didn't have to be institutionalized. The emphasis on prevention that Senator Brown just talked about. And this was in the state of North Carolina, where focusing on Medicaid clients for preventative health checkups resulted in cost savings. I'm just on the first page. Another one was, focus on the sickest people. And this has to do with disease management, which is one of the hallmarks of all the work that's being done in this country to get, quote, the best bang for your buck. And you have to treat people, make sure they have consistent care, and help them manage their diseases, and you'll have less expenses. I kind of disagree with Senator Engel. I don't think it's sniffles. I think it's people managing the chronic illnesses that they come before...into our Medicaid program with, that we can save the biggest amount of costs, people with chronic disease. Hope you have a chance to look at this, because I'm looking at amending another section of this bill, because I'm not sure...I think with Senator Beutler's amendment, which we're debating now, which I support, we get to a broader vision of what the "whereases" are. But in terms of the end product, clearly, the Medicaid budget is eating us alive. But healthcare budgets are eating everyone alive. Whether you're on your private insurance and you have higher copays and higher deductibles, or whether you're a business that's looking at your bottom line, or you're state government in the Appropriations Committee figuring out how we're going to take care of our state employees, healthcare costs are eating us alive. And so we have to look not only to our narrow little perspective on it from the budget, but also to what will happen. And as I've used as an illustration many, many times on this floor, it's like putting

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

April 4, 2005

LB 709

down a piece of plastic wrap. And you say, well, we're going to cut our costs here, and we punch it down. Well, the people are still sick. They're still going to present themselves somewhere for care. So we're just shifting the cost then to providers and others in the community who may end up the hospitals, the doctors. And one of the concerns that we've had on the Appropriations Committee dealing with this, that our providers refuse to take anyone anymore. We're having trouble getting providers in the Medicaid program. So I hope this has a broader vision. And one of the other things that's going to be coming up in Appropriations, that Senator Jensen mentioned today, was using health centers more. Senator Erdman brought that up in his introductory remarks, about not having Medicaid pay, cutting the eligibility, and then having these people taken care of in health centers. And I'm going off a health center board. And I just searched through some old e-mails, because one of the things that I'd gotten recently was some information on the problems at this particular health center. This e-mail is from March 24. And this is the OneWorld Health Center in Omaha. They had to...

SENATOR SCHIMEK: One minute.

SENATOR THOMPSON: ...turn away 1,000 people last month for appointments, because they don't have the space and they don't have the providers. This is up double the number they've turned away since September of 2004, just six months ago. If we're going to shift--and this is what Senator Byars was kind of talking about--if we're going to start shifting these costs from our Medicaid program, the health centers have a request into the Appropriations Committee right now for additional funding to be able to take care of all the people, the Nebraskans who are uninsured. And they don't have a fund. They have some federal fundings for this. They have dinners, and they raise money from the private sector to try to take care of people. But we can't expect them to be able to pick up all the extra people that will come if we tighten up our Medicaid, so...cut the waivers and change the eligibility. I'm not in any way opposed to...

SENATOR SCHIMEK: Time.

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

April 4, 2005

LB 709

SENATOR THOMPSON: ...studying this. But we need to have a broad perspective as we do it.

SENATOR SCHIMEK: Thank you, Senator Thompson. Senator Byars, you're recognized to speak.

SENATOR BYARS: Thank you, Senator Schimek. I have so many things to say, I'm not sure exactly where to start. And I think what Senator Jensen said is very appropriate, if we look at this as we talked about, in a broad way. I don't think this bill, LB 709, even in the amended version, talks about most of the things that Senator Jensen made as points that we need to consider. If you look at Medicaid on itself, the only other thing in this bill besides that that he discussed was long-term care. Well, as far as I'm concerned, you can take the first six sections out of this bill, start on Section 7, and talk about long-term care, and I can support that. I think it makes sense. But I don't think we can take Medicaid and start talking about it and making...even though we talk that we aren't making assumptions, I agree with Senator Chambers, I think there are assumptions made before we even start here about what's going to happen. And that's the fact that you're going to start eliminating people from services. You're going to start cutting provider rates. You're going to start, in effect, then closing the doors of those individuals. And I don't mean to be disrespectful in that at all. But you start talking about insurance, you have to bring the insurance industry into it. A whole different set of circumstances. A whole different set of rules and regs. But does it affect Medicaid? Absolutely. You talk about employers and their obligation to their employees. Or do we give them credits? Do we...what kind of systems do we set up so they will provide insurance? That, again, is another subject. But it's not part of Medicaid. But it's something that needs to be considered. But let's...I want these numbers. I want you to think about this again. Medicaid is more efficient than Medicare and private health insurance. Nationally, from 1999 to 2004, per person costs, per person costs in Medicaid, increased only 4.5 percent, as compared to Medicare, which increased 7.1. Private healthcare premiums in that same period of time increased 12.6 percent. This is on a per capita basis. Now, if we look about the state of Nebraska

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

April 4, 2005

LB 709

going broke, yeah. But we can't do it on the back of Medicaid alone. All of these things have to be taken into consideration as a whole. That's not part of this study. I don't see that here. I see long-term care, and I support that. Do we need to look at these? Senator Engel made the point, the federal government mandates programs to us, and then we end up funding them. He's absolutely right. That's what I'm scared to death of. If Congress has its way, they're going to push \$50 billion to the states over the next six years. Then we've got to plan, I'll tell you for sure, folks. And where are we going to get the money? But we don't know that they're going to do that. Should we make a plan in a vacuum? Sounds great. Is that really good business? I'm not sure making a business plan that I took to my banker on building a new business or restructuring my business, and there was information out there that things were going to happen within the next 12 months that could, could dramatically affect that business plan, I'm not sure he'd loan me any money. And I think we need to keep these things in consideration. But think about that. Per capita, Medicaid has been cheaper than Medicare in private health insurance. And let's not mix them up. Let's think in terms of thinking globally. Let's not think in tunnel vision. Let's try to make decisions based truly on what's good for the people that we're obligated to serve. And understand,...

SENATOR SCHIMEK: One minute.

SENATOR BYARS: ...if you're going to reform this system and you're going to save a lot of money, with the amount of money that we're spending now on Medicaid, you've got to reduce services or you have to reduce the amount of money that you're going to pay to the people that provide those services. Thank you, Madam Chair.

SENATOR SCHIMEK: Thank you, Senator Byars. Senator Jensen, your light is next.

SENATOR JENSEN: Thank you, Senator Schimek, members of the Legislature. You know, one of the things that I've really noticed since being here in the Legislature is...and also, just in business, that we've seen a culture change that occurred in

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

April 4, 2005

LB 709

the nineties. In the early part of the nineties, if you had some assets and if you went to a planner, typically it was that, I need to plan for my long-term care. Should I ever go in a nursing home, I want to set dollars aside. That was done first, and then you started looking at what it's going to cost you to live until that appointed time, how many dollars that you would like to give to your heirs, your kids, or whoever that might be, how much you'd like to leave to your church, whatever that might be. That was in the early nineties. By the late nineties, it was, Medicaid will take care of me; I don't have to take care of myself. Matter of fact, what I really need to do is I need to become poor on purpose, poor so that I can qualify for Medicaid. And so we saw, rather than planning ahead for it, it was to get rid of everything so I don't have anything so Medicaid will take care of me. And you look at the chart, you look at this chart, and just see what happened from the early nineties until 2000. Tremendous growth, 2002. That is where, I think, a great deal of the cost is coming from. And if we can get people just to plan ahead, just to do a little setting aside of dollars, I think that would be one of the greatest things that we could do. Now, that's a culture change, which is one of the hardest things to do. But I think it can be done. I didn't get through my list of ten. But one of them was also--and we hear this in our Health Committee all the time, that I would really like to see a change--and that's those individuals who are on Medicaid, who would like to work a few more hours, but if they do, they get cut off their Medicaid, and so they are faced with, do I want healthcare or do I want to work? Well, I can't afford to work. And that just seems backward to me. That if we can allow those citizens...and in many times, it would be one of the better things that they could do for their own health, is to work more. And boy, I would never, ever stop anybody from working. But we're doing that in our society today. We have another issue that's coming up. Last year, we passed a prescription drug bill in the federal government, Medicaid Part D. Do you know how many employees that HHS will hire in order to provide for Medicaid Part D? Sixty employees. Sixty employees. Now, I've heard some of you say that HHS is a huge bureaucracy, it's a behemoth. Well, it's growing more, because of what the federal government put down upon us. Now, there are claw-back provisions, as they're referred to, that we're going to be able

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

April 4, 2005

LB 709

to get some of that money back from the federal government. That remains to be seen. I hope that happens. But it's just another one of those issues that the federal government has put upon us. Now, you know, shall we or shouldn't we? Should we do this now, or should we wait for the federal government to act? I think that any information that we can get from this study, from working through this, is going to help us, no matter what the federal government does, and will help us tremendously. So I don't...I say, now is the time to act, not wait until the federal government decides what they want to do, if they do anything at all. And that seems to be such a logjam back there anymore, I don't see how anything can come out of the federal government other than more cost to the states. So I am...

SENATOR SCHIMEK: One minute.

SENATOR JENSEN: ...concerned about that. I feel that now is the time to do this. I've got kids, grandkids that I want to ensure that, should they need services, that they're there for them. And I think we should all look at that. What are we passing on to the next generation? And so we can wait until 2010, we can wait till 2014 before we do anything. But at 2014, boy, there's a lot of things that have to happen. Either we have to cut everything else the state does and only fund Medicaid and education, or we can start to plan for that now. I think now is the time to do that. To delay, I think, is irresponsible. You're going to have to make that decision. I think that LB 709, the time has come for this legislation to move ahead. Thank you, Senator Schimek.

SENATOR SCHIMEK: Thank you, Senator Janssen...Jensen, I should say. Senator Chambers, you are next in line to speak, followed by Senators Erdman, Howard, and Byars.

SENATOR CHAMBERS: Madam President, the population in Nebraska is growing older. They are not productive, in terms of earning money and paying taxes. Nebraska's population is not growing; it's growing older. And you all are going to be talking about giving away \$30 million more to business on top of what you're already giving them away...giving away to them. There was an article the other day on the front page of the Omaha

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

April 4, 2005

LB 709

World-Herald, describing the appearance of a boom town in Omaha, but no jobs, no net increase in jobs has occurred in the last two or three years. So you're giving businesses all this money, no jobs being created. So where are all those new taxpayers? Nebraskans, especially in the Legislature, needs to view what it is we do as a government like a seamless web. Whatever affects one part of it reverberates through the web and affects other parts. But that's not the way we look at it. It happens whether we look at it or not. So you want to cut the poor people. I don't trust HHSS. I'm looking at the number of advocacy groups which have filed lawsuits on behalf of poor people who were unfairly knocked out of assistance by HHSS and the courts have restored them. That is the Scrooge-like, harsh attitude of the present administration, and the one that preceded it. This so-called study is designed to lay the way to further harm older people. I noticed a huge flag when I was coming down here, out by Mahoney Park, except it's on the south side of the road, at half-staff. Why? Because a religious man died. I wonder, if the Archbishop of Canterbury died, would the flags fly at half-staff? If the head of the Greek Orthodox Church died, would they fly at half-staff? The man who is being lionized happens to have headed a religion of which the Governor is a member, a lot of people in the Legislature here are members. More and more Catholics are members in the U.S. Senate, the U.S. House. More are governors. More are mayors. So you see recognitions by government of purely religious occurrences. I have told you all that the cause of death of the Pope would be massive failure...massive organ failure. Well, they found out in the Vatican that I had predicted it, so now they won't tell what the cause of his death was. I told you all they were just trying to keep him together long enough to bring together all these other political entities, so that they wouldn't fragment. The Pope could have died before they gave the announcement. This is a highly political organization. It's a highly politicized activity that is going on. And you all may treat this man like he was some kind of god, but he was just a man to me. And the policies and practices that he advocated are not the kind that I would want to fly the half-staff...the flags at half-staff for. He was one of the most doctrinaire people you found on the face of the earth. He was against contraception, against abortion, in favor

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

April 4, 2005

LB 709

of the subjugation of women, against ordaining women as priests. Yet the number of priests is diminishing. He acted very slowly and reluctantly on the sexual scandal in this city and state and country, where priests were sexually abusing little boys. So you fly the flag at half-staff. Well, if the head of some other religion dies, I want to see that happen.

SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: But if they keep that flag flying at half-staff more than today, I'm going to offer a resolution to stop it, and we're going to discuss it. You inject religion in this Chamber every morning with your prayers. Now the whole state has been inject...has had religion injected into what it does. Well then let that one thing that I consider a redeeming virtue for John Paul II. He talked about social justice. Why aren't you all lauding social justice and talking about some of that on this floor, instead of cutting out the ones for whom social justice, the concept, was created? You do things for convenience. That flag at half-staff betokens hypocrisy. But I'm going to talk about it on this floor. And whoever doesn't like it can leave. But I'm going to be here. And as long as we have time to talk and I have time on the clock, brothers and sisters, I'm going to use it the way I think that I should. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Chambers. Senator Erdman, you're recognized to speak.

SENATOR ERDMAN: Thank you, Madam President. Members of the Legislature, I expected the debate to be similar to what it is. And I can appreciate the concerns that people have, because frankly, if I knew, I guess, what some of my colleagues are claiming to know about what's going to happen, I would probably be opposed to it as well. And I would encourage individuals to read the language in the bill, and stop reading what it is that you're being sent. And here's my point. If you look at the language in the committee amendment, page 1, sub (3), Section 3, it's on the bottom of page 1: "establish priorities and ensure flexibility in the allocation of medical assistance benefits." Let's rewind, shall we? Let's rewind to LR 318, to study the

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

April 4, 2005

LB 709

overall structure of the Medicaid program. Now, I bring this up because it's my resolution that I had offered. And since I'm offering another proposal before you, it would make sense, or at least logically you could conclude, that some of those same ideas may follow into this proposal. And here's what that proposal was. "The study shall include examining ways to empower and reward individuals to be responsible clients of healthcare including medicaid, and exploring partnerships between the state, nonprofit organizations, and insurance providers that will balance the interests of the individual clients with those of the state." Again, "establish priorities and ensure flexibility in the allocation of medical assistance benefits." There it is. Now, if you bring a perspective to this debate that's contrary to that, fantastic. Let's work through it. Let's get to a common understanding of what our intent is. At least my intent. I can't speak for all members of the body, and I never would try. But at the same time, let's look also at future amendments. And I was going to wait to bring this up. But since this has become a discussion that needs to be had, we'll do it now. I have an amendment, AM1049, that would put healthcare providers, healthcare consumers, and advocates, it would also put business representatives, insurers, and elected officials, on an advisory council to discuss the progress of this plan. This is not done in a vacuum. There is no tunnel vision, except those that are being brought on this floor that are narrowly drawn to an interest of theirs. It's all on the table. If the language in the bill is not there, more than happy to work with you. Senator Beutler and I have had meetings, repeatedly. That's what AM1049 is a result of. How do we arrive at the intent and ensure the proper guidance and flexibility to solve the problem? This isn't an exercise in political process. This isn't, I can introduce a bill, I can get it out of the Health Committee. So what? We have a problem. We must look at those people who we're providing care for, and determine if it's appropriate. And at the time when we determine that there need to be alternatives, we need to be able to provide them. It's in the language of the bill. Future amendments will follow that will ensure buy-in, it will ensure discussion. It will put people at the table, and it will also ensure that those tables travel throughout the state. It's not done in Lincoln. It's done in congressional districts

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

April 4, 2005 LB 709

throughout the state. The discussion must be held statewide. We have a vested interest in the decision. Senator Chambers, Senator Byars, they have specific interest for individuals that they believe the state has harmed. And I would not disagree with them at all. We have made decisions in this body, based on circumstances beyond our control, that we were not prepared for. Did anybody that was here enjoy the vote on LB 8? No. Do we want to do that again? I don't. But it appears that that's more preferable to some. Let's get to the discussion. Let's gather these ideas that people have, to make sure that what's in the language of the bill and what we're going to direct a group of individuals who...

SENATOR SCHIMEK: One minute.

SENATOR ERDMAN: ...are accountable to us, let's direct them to solve the problem. And if it's not here, let's hear about what they are. Senator Beutler has been exceptional in stepping up and saying, I think this makes sense, I think this would be a good idea, I think this solves a problem that's perceived, knowing what your intent is. That's what this is about. Absolutely. And so I will continue to look forward to the discussion. On the amendment before us, again, I rise in support of Senator Beutler's amendment. I think it is wholly appropriate for us to outline the balance that must be achieved in order for this process to be fair. And I believe that Senator Beutler's amendment to point out the findings and the facts of the system and the value that it currently serves is wholly appropriate to be amended into this proposal. And so I rise in support of AM1027. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Erdman. Senator Howard, your light is next.

SENATOR HOWARD: Thank you, Madam Chairman...Chairperson. I have some deep concerns about this bill. And individuals have come to me and asked me why I did not vote to support it passing out of committee. Medicaid is a very large issue. And over the course of time, many programs have been put into place to address it, to hold down the cost, to keep down the number of individuals that would be eligible for services. There will

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

April 4, 2005

LB 709

always be a base of population that requires, if you will, a safety net of Medicaid. And who would we eliminate? Would we eliminate the foster children? Would we eliminate those who are in prisons? Would we eliminate the old? It looks to me like the face of the poor is changing. Senator Jensen touched on this. In the last few years, I've seen more children come into foster care whose parents weren't in the impoverished area of our society, but whose insurance programs no longer covered their children's needs. When they maxed out on those programs, they would go to the County Attorney and ask that that child be made a state ward. So it's not a simple matter. It's not a simple concern. I say we need to go down this road with caution. We need to really look at what it is we want to learn from this, and what we intend to do with the information that we gather. I respect Senator Byars. He has stood up. He has expressed concern. And I'm going to ask that the remainder of my time be granted to Senator Byars to continue. Thank you.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Thank you. Thank you, Senator Howard, for yielding to me. I was told about Senator Erdman's amendment right before the start of the debate. Senator Erdman had not shared this with me. Certainly, I feel it is an appropriate amendment, if we get to that point. I'm concerned that there...the committee is one, if I'm reading it right, that meets with the two designees of the Governor and of the Chairman of the Health and Human Services Committee. I don't see where they have any type of powers other than sitting and listening. I suppose they could share. But it...again, it's positive, it's positive to have more people involved. I think one of the things that we've wrestled with as a committee, and Senator Erdman brought up the point a number of times, is that we've had Medicaid reform committees in the past, and nothing has resulted relative to those committees being formed. And I think probably, as you bring together all of the individuals that have some connection with Medicaid, whether it be the bureaucracy, whether it be the providers, whether it be the consumers, whoever is involved, I think probably many times there haven't

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

April 4, 2005

LB 709

been any conclusions because they really haven't known where to go. They can have a lot of meetings, they can share a lot of information, but you still come back to the same point. What happens to the poor people of Nebraska, the people with disabilities in Nebraska, the elderly of Nebraska, without the safety net of Medicaid? You know, I think we've talked for years, all of us, about what...you know, what's the answer? I'm suggesting that we're always going to have poor people, we're always going to have disabled people, we're always going to have the elderly, but more of them, and we have to make absolutely certain that we fulfill our responsibility. Does that mean that every retirement home or assisted living facility in this state has 14 karat gold handles on all of their fixtures in the bathroom?

SENATOR CUDABACK: One minute.

SENATOR BYARS: No. Does it mean that we're going to just squander money on these individuals, and are we squandering it now, and are we way reimbursing more those people providing services than they deserve? No, we aren't giving them enough. We have people out in rural Nebraska who can't get any kind of dental coverage because dentists won't cover people that are on Medicaid. Why don't we cut a little bit more on the reimbursements, and then maybe we can make sure that more people don't get any kind of services. I think it's extremely important that we not forget what Medicaid is established for. Now, can we go on at the rate that we're going? I suggest we have to have many more changes in our whole culture, and not just Medicaid. I don't think people are abusing Medicaid. I don't think...the people that are providing services certainly aren't. Almost every one of them are providing those services without adequate reimbursement. So...

SENATOR CUDABACK: Time, Senator.

SENATOR BYARS: Thank you, Mr. Chair.

SENATOR CUDABACK: But you may...you may continue, Senator Byars. It's your time now.

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

April 4, 2005

LB 709

SENATOR BYARS: Thank you, Senator Cudaback. I appreciate that very much. Again I ask you, start to think about what Medicaid does in the state, and start thinking about what it is that's necessary if you start looking at reform. Can we reform the structure? You know, and I'm sorry, Senator Jensen, you know, when I hear that 60 person figure to implement Medicare Part D pharmaceutical thing, I think it's baloney. And over the years, as I've watched these figures come out of the fiscal folks over at Health and Human Services, who...most of which are absolutely wonderful, I watched them build a computer system that was supposed to do everything but provide services themselves; it was a flop. Now we're talking about spending millions of dollars to build a new system. Maybe we ought to start talking about the structure that we have of providing services at this point. I think probably there might be a little bit of frustration on the part of most of the members of this body. Should that be included in this? Are we going to relook at how we're providing services and what the structure is of our department? I don't think any one of you wants to force people to have to go to the emergency room of the hospital because they've got a toothache. That's what happens when you don't have Medicaid providers that are being reimbursed appropriately. I don't think it takes very much to look statistically at how much hospitals are writing off in indigent care right now. Between 40 and 60 percent of the revenue, average, of all the hospitals in the state of Nebraska, are written off because they're providing indigent care. That's to people who can't get Medicaid. That's to people who don't have access to insurance. And I'm scared to death...and maybe it's just my own paranoia, and tell me if I'm wrong, but I'm just scared to death that what we're going to try to come up with out of this plan is not something that truly reforms how we can better provide for the people of the state that have needs, but how we can find ways to provide less to them. I am really frightened that that is what we're going to do. That isn't the answer. That is not in my heart, and I hope it's not in the heart of the majority of the members of this body. Are we spending millions and millions of dollars, are we spending them all, every one of them, appropriately? I would guess that we can all say, no. I think we can go down into the trenches and we can find people who are abusing the system. I think you can find it everywhere you

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

April 4, 2005

LB 709

look. But I don't think that's going to save us the millions of dollars that you think we're going to save, unless we cut services, eliminate them for individuals that need them, and cut reimbursements for people who right now aren't even get reimbursed at the level of their cost. Senator Jensen has been the strongest advocate of services for people with mental health. He has found, and I think he'll stand up, and I hope he will, and say on this floor, the reason we're starting to move forward on building some community-based services and making some changes is because we're changing reimbursements to the people providing those services. And we aren't lowering them, and we aren't cutting people off the program. We're getting reimbursements to people so they'll start providing services again. Do you think people shut down their programs to provide services because of the fact they're making too much money? No, they shut it down because they couldn't even pay cost. How many times do they have to reach into the private pockets of all of the rest of us to pay for that? Or how often do they have to reach out to a foundation to pay for that? I don't think that's what this body wants.

SENATOR CUDABACK: One minute.

SENATOR BYARS: I don't. And I really don't think that's what Senator Erdman wants. I think he truly believes in his heart that we can reform this system somehow and that we can save millions of dollars, and that this state won't go broke in 10 years or 12 years, or whenever we're going to go broke because of Medicaid. I think he really believes that in his heart. But we can't do it without reforming what we're doing in the insurance industry. We can't do it without making sure that employers are responsible to their employees. And what role do they play in this? Our increases have been increasing. As the employer contributions have gone down, our participation has gone up. Doesn't that send you some sort of a message? It's not just there are more poor people. It's they're getting less services, they're getting less insurance coverage from their employers. Now, I understand business has to look at their bottom line. If they go broke, there aren't any jobs;...

SENATOR CUDABACK: Time, Senator Byars.

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

April 4, 2005

LB 709

SENATOR BYARS: ...there still isn't any insurance. Thank you, Mr. Chairman.

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

SENATOR STUHR: Thank you, Mr. President and members of the body. I, too, share the concern that we will always have those that need assistance. But it is evident that our state is going to have to look at and address the issue of our ever-increasing costs. And I wanted to share with you...and I want to thank Senator Erdman for bringing this proposal. This is an article that was in the NCSL March 2005 magazine. It points out the growth in total Medicaid funds from fiscal year 2004 to 2005. Nebraska, 22.3 percent. The thing that really caught my eye was looking at all of the neighboring states. Colorado, their growth, 2.2 percent; Iowa, 5.7 percent; Kansas, 11.3 percent; Missouri, 8.9 percent; North Dakota, 5.7 percent. There were only 11 states in the total 50 states that increased over 20 percent. Nebraska was one of those states. Now, I'm asking you, do you think it is too much that we look at some of the reasons? Why is Nebraska increasing at that large of a percentage, compared to our neighboring states that are not that much different? I know every state is different. But I just ask the question when I see numbers like this. And one of the senators from Illinois that is quoted in this article says, it's paramount for states to look at the growth in Medicaid, and to look for solutions. He says, the likely solutions for Medicaid growth lie within each of the states, and that there is no single solution. But I think what Senator Erdman is proposing is that we just look. Why are we having these increases, and how can we address them? Remember, I said, Nebraska, 22.3 percent; all of the surrounding states, under, except for Kansas was 11 percent. Those are my comments. And I'll be happy to pass this article out so everyone has a chance to see that. And I give the rest of my time back to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Chambers, on AM1027.

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

April 4, 2005

LB 709

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. And for Senator Stuhr, if the vast majority of the money spent through Medicaid is going to the aged and the disabled, that's where the increase is. So either have fewer disabled people, fewer elderly people, or expect those amounts to continue rising. And the population is increasing in this state. A few years ago, before the new class of senators came, I voted for a tax increase. Included in that tax package was an increase in the cigarette tax, which I had said prior to that I would not vote to increase again. I voted to increase some sales taxes, which it has been a principle of mine not to do. I did not vote for that tax increase to create a set of circumstances where business will suck \$30 million more out of the tax base, \$30 million more on top of what they've been getting anyway. Business can always be served. We're not talking about stopping that drain on the tax base, or from the tax base, that business is responsible for. They dare not be touched. Now, the record of this debate will let those people who wind up on this council know that they're under scrutiny. Since none of us is a seer, a fortune-teller, we are informed by our experiences. And my experience has taught me the hardhearted direction that the bureaucracy takes in Nebraska. Since they dare not touch business, and must continue to feed that ever-hungry beast, they have to find somebody else to exploit, and that's the poor. So as the top end gets colder, you have fewer people paying taxes. You have fewer entities paying taxes when you let business suck out \$30 million off the top. Then you wonder why we might have to increase the tobacco tax, the sales tax. You're going to try to take tax off business equipment. There has to be some point reached where we look at all of these activities. But what I would suggest--and Senator Stuhr might like this, and it would stop the increase so much in Medicaid--we should recognize that people in Nebraska simply live too long. They outlive their usefulness, and they become burdens on the state and those who are still earning money and paying to support them. So we should establish a cutoff age. And I would suggest that 70 would be the age, because people still have enough to get...you know, enough energy to get around. If they don't have enough food, they might can go steal some food off somebody's tree, or go in the store and slip something under their jacket. But when they reach that cutoff

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

April 4, 2005 LB 709

age, if they get any state support, you cut their rations by 50 percent immediately. You eliminate every surgical and dental procedure. They're so old now, it's not going to make any difference anyway. They're taking those services that should be for the young, who can benefit from them. And at 70, they're not going to live that much longer anyway. You should limit all of their medications which they get as a result of public assistance to antibiotics, provided they have an infectious disease. Other than that, no medication except aspirin and occasional Advil. If they wind up in a hospital, under no circumstances will there be any resuscitation. There will not be any artificial life support systems put in place. You all want to be practical? We need to be practical. Don't look away from the fact that older people are fueling,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...to a great extent, not only the current cost of Medicaid, but the increase in that cost. As they get older, they cost more. It takes more to keep an old car running than it does to keep a car that's not so old running. A point can be reached where you say, I'm going to run this jalopy, and when it breaks down, that's it, straight to the stone orchard. That's not what you say about the car; to the junkyard. The stone orchard is the cemetery. Pretty soon, with all these people dying, and people continuing to be born, you're going to run out of cemetery space. Where are you going to bury them? But if you're smart, you can calculate when the end of the world is going to come. Now, Senator Synowiecki, I'm sure, believes in the resurrection. You can estimate how large the earth is, how much each human body would take of that earth's substance to reform itself. Then when that amount of the earth's substance is taken up by the number of people who have been here, then the earth...world has to come to an end, or there will be some people who died who, when they're resurrected, they won't have a body.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: See how simple that is? Thank you, Mr. President.

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

April 4, 2005 LB 38, 165, 365, 401, 480, 503, 709

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

CLERK: Mr. President, your Committee on Retirement Systems, Chaired by Senator Stuhr, reports LB 365 to General File, and LB 165 indefinitely postponed. I have a series of amendments to be printed: Senator Bourne to LB 480; Senator Raikes to LB 38; Senator Raikes to LB 503; Senator Erdman, LB 709; Senator Beutler to LB 709; Senator Byars to LB 709; and Senator Friend to LB 401. (Legislative Journal pages 1091-1108.)

Mr. President, I have a priority motion. Senator Kruse would move to adjourn until Tuesday morning, April 5, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn until April 5, 9:00 a.m. All in favor of the motion say aye. Opposed to the motion say nay. We are adjourned until April 5.

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