

APRIL 12, 2005

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April 12, 2005 LB 480

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Janssen. Senator Janssen represents the 15th District. Senator.

SENATOR JANSSEN: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Janssen, for doing that for us. We appreciate it. Would call the sixtieth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Any messages, reports, or announcements?

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

SENATOR CUDABACK: Thank you, Mr. Clerk. The first agenda item is General File, 2005 senator priority bills, the Combs division. Mr. Clerk, LB 480.

CLERK: LB 480, Mr. President, by Senator Thompson and others. (Read title.) Bill was introduced in January, referred to the Health Committee, advanced to General File. There are committee amendments. Bill was presented to the Legislature on the floor on April 7. Senator Jensen presented the committee amendments. Senator Thompson presented AM0948 as an amendment to the committee amendments, Mr. President. (Legislative Journal page 1078.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Thompson, would you like to give the body a quick review of LB 480?

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SENATOR THOMPSON: Yes, thank you. LB 480 is a bill that bans smoking in restaurants in Nebraska. That's the main part of the bill. It also includes definitions and improvements to the current act. Some of those were put in place by Bill Drafter and others, are part of the committee amendment to improve language. It also defines...eliminates the exception in state buildings. There are two that are left in the bill. One is for the State Fairgrounds and the other is for residential housing units on university and state campuses. Currently, the only campus that allows smoking is Chadron State College, and they are phasing it out, so that would...that section is what is current practice. We are on the first amendment to the committee amendments. That amendment has been agreed to. It's an amendment I put on there to put some language...take some language out of the bill. The committee amendment, the committee counsel and Chair have agreed to that. It's more technical in nature and we've been debating that amendment thus far. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Jensen, as Chair of the Health and Human Services Committee, would you like to give us a quick review of the committee amendments to LB 480? (AM0802, Legislative Journal page 861.)

SENATOR JENSEN: The committee amendments almost take the bill back to where it was introduced a couple years ago, again, by Senator Thompson, and it also allows a little differentiation on the bar portion of that bill, and that now has been amended. And I would just...we'll see how the measure moves from here. Thank you.

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

CLERK: Mr. President, Senator Thompson has her amendment, AM0948. That is the matter currently pending. (Legislative Journal page 1078.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Thompson, your light is first, so I'll give you an extra 30 seconds or so to review the amendment itself. Then we'll start your time. Thank you.

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SENATOR THOMPSON: Thank you, Mr. President. That amendment is language that was put in a previous bill. It was added back in by the committee in the committee amendment, but there is language farther on in the actual amendment that covers this and so we ask this information or this section be deleted. And I consider this technical in nature. Thank you.

SENATOR CUDABACK: You may continue on your time now.

SENATOR THOMPSON: That's essentially what I wanted to say. Senator Redfield had some concerns earlier on in the debate. We have discussed it and I would yield some time to her.

SENATOR CUDABACK: Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President. Thank you, Senator Thompson. Mea culpa, and had I scrolled down through the amendment I would have seen that, in fact, we had taken care of the provision for someone who was in their own office and they were the only worker. So, my apologies to Senator Thompson. I am very comfortable with the amendment and I ask for your advancement. Thank you.

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

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

SENATOR CUDABACK: Senator Thompson, would you yield?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Senator Thompson, we had a discussion, oh, I think it was the last time that we talked about this bill, I think it was on Thursday, and I got to be honest with you, I'm a little uncertain as to where or what the current status of the law is today, not counting LB 480. And so can you tell exactly what has to be smoke free today under current law?

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SENATOR THOMPSON: Under current law it...I don't...I am trying to think of...are you talking in terms of restaurants only?

SENATOR BOURNE: Well, I'll tell you that I had a...

SENATOR THOMPSON: Because we have smoke-free lots of things.

SENATOR BOURNE: Well, I guess under statute. I had a constituent call awhile back regarding a...it was an inquiry about a bowling alley, and then I came to find out, after looking into this problem, that bowling alleys are already supposed to be smoke free. So I guess what I'm saying is it seems to me there's some confusion, number one, in the current law as to what is and isn't smoke free, and then when you add your amendment and the committee amendment I get further confused. Because when we were talking about this bill on Thursday, we couldn't even determine whether or not a bar that sold popcorn or warmed-up pizzas would be considered a restaurant, and then you had given me some information that if they had a kitchen they would be...have to be smoke free. But if they had no kitchen they wouldn't be smoke free, or they could use their discretion as to whether or not they wanted to go smoke free. So I guess what I'm looking for is what is the current status of the law today,...

SENATOR THOMPSON: Okay.

SENATOR BOURNE: ...what has to be smoke free and what doesn't, and compare that with the passage of LB 480 and the committee amendment.

SENATOR THOMPSON: Okay. Most of it is on page 3 of this amendment of what currently is smoke free. Places that you're probably thinking of, if people are talking about bowling centers, are their requirements under current law to have...you can't have smoking in the common areas, so if they have...are under this law, if they have a restaurant, if they serve food, then they have to have a nonsmoking area in their restaurant if they're over a certain square footage. There were...there was a lot of confusion years ago when I introduced the first one of these where bowling centers thought they were coming

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under...didn't realize they were under the current law, so they've always been under the law. Some abided and some apparently let some smoking go on in places that were where the general public was. So, from the perspective of this bill, if a bowling center is a food service, if they have a kitchen area, and this is in the regulations currently, they have to have a nonsmoking area. If they...under the bill, the restaurant would be smoke free if they serve food. And then I know you have some other questions. Currently, I guess we're getting into old-fashioned definitions, but the legal definitions, the ones that have been through the regulatory process of the department, are if you have a kitchen and serve food then you are a restaurant.

SENATOR BOURNE: Okay, let me ask you about that. You had previously said if they have a kitchen they are a restaurant, and now...and I know this might be quibbling, but is it a kitchen and serving food, or if a bar simply has a kitchen are they considered a restaurant?

SENATOR THOMPSON: The...there was some discussion a few years ago,...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...because people thought that a bar that operated a kitchen in a separate...

SENATOR BOURNE: Okay...

SENATOR THOMPSON: ...doorway or something could circumvent the law, but they can't. If they have...

SENATOR BOURNE: Well, what...

SENATOR THOMPSON: ...a kitchen that's not operating, then they're not a restaurant.

SENATOR BOURNE: I don't...I'm not sure that that's true. I think under the regulations, if they simply have a kitchen but don't use it, they're considered a restaurant. And what I'm

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looking for is clarity. What you're asking us to do is to adopt a policy, and I want to know exactly what we're adopting. And I'm under the impression that if you simply have a kitchen in a bar then you are considered a restaurant for purposes of the Clean Indoor Air Act.

SENATOR THOMPSON: If that's the case under current law then the difference for them...and they would already have to have a nonsmoking area then. I don't...I would have to consult with the department and I don't think it's that...I mean, I will find out what the department says.

SENATOR BOURNE: Well,...

SENATOR THOMPSON: Wait a second. I have it. I have it.

SENATOR BOURNE: Okay. What my suggestion is...

SENATOR THOMPSON: Sorry, these are the regulations. Maybe I should pass those out, get those copied...

SENATOR CUDABACK: Time, Senator.

SENATOR THOMPSON: ...and pass them out.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: On with discussion. Senator Synowiecki, followed by Senators Bourne and Janssen.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. Senator Thompson, would you yield?

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

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: When we had the discussion relative to the committee amendment back a few days ago, I was...I had indicated some level of concern relative to page 3 and the fact that the

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presence of minors would be prohibitive in a bar as set forth in this definition. And I picked up a little bit from Senator Bourne's dialogue with you with reference to bowling alleys. As you may or may not know, I have within my district the only parish-sponsored bowling alley I think in the state, as well as one of the major bowling alleys in the city in my district. And, under the provisions of the amendment, as it's currently drafted, if they do not serve food and if they do allow smoking, youngsters wouldn't be able to go to the bowling alley. Is that a fair assessment, under the provisions of the committee amendment? Because neither one of these establishments prepare food, and I would suspect that they would elect to continue to let their patrons have a cigarette, I would imagine. I don't want to speak for them, but I would suspect that they would.

SENATOR THOMPSON: If they're a bowling center...by the way, I got corrected about...that it's supposed to be bowling center, because I kept saying bowling alley a few years ago. So I'm going to say...you can call...anybody can call it bowling alley, but I got reprimanded by the group and so I'll call it bowling center. It's a bowling center.

SENATOR SYNOWIECKI: But they have a liquor license. They serve alcoholic beverages.

SENATOR THOMPSON: Then they currently aren't under the Clean Indoor Air Act, except for the rest of the provisions of clean indoor air which may impact them. This bill is about restaurants, so I'm not real sure what...this is the section of the law that deals with restaurant Clean Indoor Air Act.

SENATOR SYNOWIECKI: Okay. For purposes of this section, bar means an establishment that serves alcoholic beverages,...

SENATOR THOMPSON: Right. This...

SENATOR SYNOWIECKI: ...may provide limited food service, which I think is packaged type food, and prohibits the presence of minors.

SENATOR THOMPSON: This is...this is dealing with places that

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have food, so you...I'm not an attorney, but I will defer to the Health and Human Services Committee attorney on this to answer your question. We're not dealing with bar sections of laws or bowling center section of law. We're dealing with the section of law that deals with the Clean Indoor Air Act as it impacts restaurants.

SENATOR SYNOWIECKI: I guess if...

SENATOR THOMPSON: So, for purposes of this section, a bar that serves food would be under this section.

SENATOR SYNOWIECKI: Okay, neither one of these...I think...

SENATOR THOMPSON: If you're...

SENATOR SYNOWIECKI: ...(inaudible) call it the ICC Bowlatorium and the other one is Chop's Bowling alley in my district. Neither one of these establishments, Senator, serve...they don't prepare food and...

SENATOR THOMPSON: Right, so they're not under this section.

SENATOR SYNOWIECKI: And they...and they're...and they have a liquor license. They serve alcoholic beverages. What...would they be included within the scope of the definition of a "bar" and, therefore, be prohibitive from allowing minors to come in to bowl? I mean that's my...the scope of my question.

SENATOR THOMPSON: They're a bowling alley, which is another business. They're not under...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...this act unless they serve food.

SENATOR SYNOWIECKI: Will they need a special exemption? I mean, as we move forward with LB 480, will we need to open up the statutes relative to bowling alleys and how they interplay?

SENATOR THOMPSON: No, I mean, what I suggest, Senator

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Synowiecki, is if you want to put an amendment up to take out the 21-year-old, the minors, that is something I was concerned about, having kids in bars. And I put that in this bill because it was brought to my attention by people who are concerned about the health of children, having asthma attacks and so forth. If that helps in terms of your concerns about this and you want to amend that, that's what I suggest you do. And if the body wants to do it that way, I'm...that's not my main purpose in this bill, and so why don't we just, if you would place an amendment up to take that minors part out, we can see what the body wants to do with it.

SENATOR SYNOWIECKI: Thank you, Senator.

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

SENATOR BOURNE: Thank you, Mr. President and members. Would Senator Thompson yield to continue our dialogue?

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Yes.

SENATOR BOURNE: And again, Senator Thompson, I have to be honest with you, I don't know what this covers and what it doesn't. I heard earlier that it does cover bowling alleys or that they are already included, and I think it's appropriate that we have some clarity, at least as it relates to who's going to be encompassed in this and who isn't. And I think Senator Synowiecki's questions regarding the age is a whole different matter. But before we do that, can I ask you a quick question about your amendment to the committee amendment?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Okay. And as I understand it, what you're doing is striking the language on page 2, lines 4, starting with, "which is usually frequented by the general public." You're striking that?

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SENATOR THOMPSON: Yes.

SENATOR BOURNE: So it would read: Any public place means any enclosed, indoor area of an establishment used by the general public or serving as a place of work, including, but not limited to, restaurants, retail stores, offices and other commercial establishments, et cetera. Okay. So then later on in the committee amendment, you simply banned smoking at, "smoking areas shall not be designated in an enclosed indoor area of a restaurant." So, basically, what the committee amendment does is ban smoking in restaurants.

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Okay. So what is the purpose of striking the language, as you've suggested in your amendment, AM0948? What does that do?

SENATOR THOMPSON: That puts the language of the law back to where it was.

SENATOR BOURNE: I don't...I don't follow.

SENATOR THOMPSON: Well, it's new language and it's covered...to be honest with you, we couldn't figure out where it came from. I mean, this is sort of from a few years back. It was brought to our attention. I'm not sure why it was in there, other than it may have been a concern of people about smoking in private offices, which...

SENATOR BOURNE: But if all you...

SENATOR THOMPSON: ...but it doesn't...it doesn't...that's covered in another section of the bill.

SENATOR BOURNE: In what regard? Are we...are we banning smoking in offices, or are we simply banning smoking in restaurants? I'm...

SENATOR THOMPSON: No, it's just in restaurants.

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SENATOR BOURNE: Okay, so...

SENATOR THOMPSON: This was language from a previous bill that covered more than that.

SENATOR BOURNE: But, again, what does it do? I mean, it says a (inaudible).

SENATOR THOMPSON: Oh, what the amendment does is just take us...it eliminates that language and it goes back to the original language of the Clean Indoor Air Act.

SENATOR BOURNE: And again, my question is why? I mean...

SENATOR THOMPSON: I...we aren't sure why that was in there. We talked to the committee. This...they...when they wrote their committee amendment, and maybe Senator Jensen could answer that better for you, they used language from a previous bill that was introduced a few years ago. There was more in that bill at that point in time, because private offices were a big bone of contention. I didn't choose to go there this year, and so the private offices are covered in a later portion of the bill.

SENATOR BOURNE: Okay. Let me ask you this. We had...in the Judiciary Committee, we had another bill and there were basically business owners came in and testified, and we had an individual who owned a welding shop and he was a sole proprietor and...meaning he was the only person that worked at this welding shop, and the Lincoln ordinance basically said because it was a place of employment he couldn't smoke in his own shop. Is that what we're trying to do here with you striking this language, "usually frequented by the general public?"

SENATOR THOMPSON: No, this is...this is language that was in a previous bill that dealt with a number of other issues that sort of accidentally got in this bill. This isn't my language. This would be the committee amendment. So if you want to...I'm amending it back to the original law.

SENATOR CUDABACK: One minute.

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SENATOR THOMPSON: That probably would be a question to ask Senator Jensen.

SENATOR BOURNE: Okay. And I understand that he's next, so I guess he can speak to that if he so chooses. So let me...okay, so then let's go on in the committee amendment, down on page 2, where we've struck lines 22 through 26. So if a person, just for clarity...so it not only bans smoking at restaurants. It also bans, say, Senator Cudaback wants to have an anniversary party or a birthday party for his mother or brother or family or whatever, and he rents a hall and the only people that are in this hall are the Cudabacks. And if all the Cudabacks smoke, for lack of a different way to put it, what this...what this provision here says, that because they're renting this hall, even though they all smoke, it's only their family, they can't do that. Is that accurate what this phrase does in lines 22 through 26?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: So not only are we banning smoking in restaurants; we're banning smoking in meeting...

SENATOR CUDABACK: Time, Senator.

SENATOR BOURNE: ...halls. Did you call time?

SENATOR CUDABACK: I did, Senator.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: Next speaker, Senator Janssen, followed by Senator Thompson.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Before we started this morning, my staff and I were talking about what would consist of prepared food in a restaurant or any bar and it was explained to me that prepared food could be sandwiches that are bought from Hero's deli or some place like that or the City Meat Market in Hooper, and taken to a establishment that serves alcohol. Well, that would

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not...that would not be consistent...considered food that was prepared inside of that bar. But now if you had a, let's say, a pizza oven in that bar and you put the pizza in that oven, you...then you prepared that food, even though it comes in wrapped and...but it is prepared in that establishment. Now that would...that would not be legal because you prepared it there. On the other hand, as I said before, if you bought some sandwiches that were wrapped, brought them in, unwrapped them, and then served them in that establishment, that would be okay. But if you prepared them in any way, if you put them in a microwave and heated them up, it would be different. Now, I'm not...I think I'm on the right track here. So there's going to be a fine line and I think you would have the health department or the Liquor Commission or whoever it is that is monitoring these establishments would have a pretty tough time defining what is prepared and what is not prepared. I just wanted to bring this to your attention that the possibility of a lot of confusion could arise with this piece of legislation. That's all I have to say right now. I give the rest of my time to Senator Bourne, if he'd like to have it. I know he wasn't finished yet.

SENATOR CUDABACK: Senator Bourne, about 2, 40.

SENATOR BOURNE: Thank you, Senator Cudaback. Senator Thompson, would you continue the dialogue?

SENATOR CUDABACK: Senator Thompson. Is she...yes, she is with us.

SENATOR BOURNE: So as she is making her way to the mike, so we've established, number one, that this would apply to restaurants, although we're still a little unclear as to what exactly is a restaurant. And now we've also established that if an entity, whether it be the chamber of commerce or the Rotary Club or any other group that you can think of, rents a hall and every one of those...say it's the cigar smokers' club and they rent a hall. They can't smoke in that hall. Is that correct, Senator Thompson?

SENATOR THOMPSON: Yes.

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SENATOR BOURNE: Okay. So that's the case there. So if you rent a hall, say a group of cigar smokers get together and they want to rent a hall somewhere, they can't do...they can't smoke in that hall. Is that accurate?

SENATOR THOMPSON: I'm sorry, Senator. Could you...

SENATOR BOURNE: (Laugh)

SENATOR THOMPSON: We're just conferring here with the regs.

SENATOR BOURNE: I understand. I understand. It is a confusing area and, I'll tell you, I've had a lot of constituent inquiries. They don't know what their obligations are under the law...

SENATOR THOMPSON: Okay. Here's...

SENATOR BOURNE: ...and...hold on a second, so then we're adding to it. And what I'm saying, I want to establish exactly what the bill does. So, number one, if an entity rents a meeting hall, say that every one of those people are smokers, nobody else will go into that other than smokers, this language on page 2, lines 22 through 26, say that you cannot smoke in meeting rooms. Is that accurate?

SENATOR THOMPSON: This is under the...yes, under the Clean Indoor Air Act. Are you talking about page 2,...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...lines 22 through 26?

SENATOR BOURNE: Right, it says...

SENATOR THOMPSON: Right.

SENATOR BOURNE: ...what we've struck, it says,...

SENATOR THOMPSON: Yes.

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SENATOR BOURNE: ... "This subsection does not apply in cases in which an entire room or hall is used for private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of such room or hall." So that was an exception. What this... what this said, if the language wasn't struck, it would have said that a person or an entity, a group, could rent a hall. Nobody else is there but the members of the group. They could smoke. Now, by us striking that in the committee amendment, we're saying they no longer can smoke in a private room. Is that right?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Okay. So restaurants, and we still need to establish what exactly a restaurant is, and meeting rooms.

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Okay. So did you get an answer from the department as...

SENATOR THOMPSON: Yeah, I can read directly to you...

SENATOR BOURNE: Thank you.

SENATOR THOMPSON: ...from the regulations.

SENATOR BOURNE: Now this is as it relates to if a bar has a restaurant.

SENATOR CUDABACK: Time.

SENATOR THOMPSON: Well, this is... I have my light on and I'll answer that when I get a chance.

SENATOR CUDABACK: Okay. (Visitors introduced.) On with discussion. Senator Thompson.

SENATOR THOMPSON: Thank you. I think we're getting beyond the

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amendment, and just to get moving on the amendment I'm going to ask Senator Jensen, and then we can get back to discussion of the bill. And so I'm going to yield my time to Senator Jensen, who's going to discuss the amendment to the committee amendment.

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

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. When Senator Thompson did bring this bill to us and the committee spent a considerable amount of time discussing this, we did make some changes and even went back to the bill that she had introduced a couple years ago and kind of blended the two, took mostly, however, out of the bill that was introduced two years ago. Then also in the indoor clean act that was...that has been into effect some time, we did not make too many changes on that with exception of this one here, which now Senator Thompson has introduced this amendment to make some changes and to take some of that out which I think adds clarity to it. I just might mention my mother-in-law, who lived with us for about six-and-a-half years and died a year ago in December, and we're constantly going through some of the things that she left and she was a collector of different things, and so this weekend, going through some boxes, and opened up this one box and here's a Reader's Scope, which really was the predecessor to Reader's Digest, 1946. I understand that was the same year that Senator Preister was born, 1946. The lead article in this is "Cancer Kills One Out of Eight: Cigarettes Cause Cancer," 1946. Today in America, cancer kills one out of eight people. At this...at this dread disease...as this dread disease takes its increasing toll, medical science fights a gallant but difficult battle. Medical authorities estimate that 17,000...17 million people now living will die of cancer. You or someone close to you may be the victim. Now scientific facts indicate that benzene and other cancer chemicals are released by smoking and drawn into the mouth, stomach and lungs of the smoker. Here are the dramatic facts. They are a challenge to tobacco manufacturers. They are facts which should lead every smoker to face squarely; 1946. How many people have died of cancer since 1946? And yet, we perpetuate this. And on top of that, people that have never smoked are breathing secondhand smoke again in places. You know, when I came into the Legislature 11 years

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ago...and I'll admit to you that the Health Committee was not my first choice. I wanted to be on the Revenue Committee. Never made that, but been on the Health Committee now for the last 11 years. And the more you read, the more you study and being on that committee and also the number of people that even are close to you that die from cancer, and then the tremendous cost that we as a state spend, not only in Medicaid costs, but just medical costs to treat cancer, which also comes from secondhand smoke, it would...it would seem to me that we should do as much as we can to reduce it. Now, at the hearing when Senator Thompson presented her bill...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...and we had opponents that came, I asked about four or five of them one question--what is the role of government? And there were certain statements, but to me the role of government comes down pretty simply to protect the safety and well-being of its citizens. We do that by our military. We do that in other areas. But this is one area to provide safety and security for its citizens' safety. That should mean to me that you should be able to go anywhere in the state, in any public facility, without breathing air that is foul. We would not allow a factory to...we don't allow factories anymore to emit carcinogens into the air. We have cleaned up a lot of businesses along the way. When I went to school, I took machine shop and I can remember all of the things that...

SENATOR CUDABACK: Time, Senator.

SENATOR JENSEN: Thank you.

SENATOR CUDABACK: Senator Jensen, your time is next, so you're recognized to speak, if you wish to. Senator Jensen, your light is next.

SENATOR JENSEN: I would respectfully call for the question on this amendment.

SENATOR CUDABACK: The question has been called. Do I see five

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hands? I do see five hands. The question for the...Senator Bourne, for what purpose do you rise?

SENATOR BOURNE: I think the rules say, Senator Cudaback, that there has to be a full and fair debate and, while we've had some debate regarding how smoking is bad for you, we still haven't been able to establish exactly what this amendment does, and so I don't think there's been full and fair debate.

SENATOR CUDABACK: Senator Bourne, we have had about...counting past and this morning, we've had probably 18 or 19, so I will rule that there has been a full and fair debate. The question before the body is, shall debate cease on AM0948? All in favor vote aye; opposed, nay. The question before the body is, shall debate cease on AM0948? Have you all voted who care to? Have you all voted? Record please, Mr. Clerk.

CLERK: 15 ayes, 18 nays to cease debate.

SENATOR CUDABACK: Debate does not cease. We now continue debate. Senator Friend, followed by Senator Baker. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature and friends one, let's make that clear, all right? I don't think anybody understood. Is anybody awake? I was wondering if Senator Thompson would yield to just a quick question. I was wondering about the Health and Human Services hearing.

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Sure.

SENATOR FRIEND: Thank you. Senator Thompson, when...during the hearing, in regard not...I guess, in particular, part of the reason that the committee amendments were created, was there discussion by either proponents or opponents about a potential licensing type of program in the state of Nebraska, included in the...included in the bill, or a possible amendment, that would...that would say, for example, that...similar to selling

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or to actually purchasing and distributing alcohol, the same type of thing for smoking? Was there discussion in that hearing related to that type of approach, and is that a fair question, I guess?

SENATOR THOMPSON: Well, everything is a fair question. I don't remember anything about that. Maybe Senator Jensen does. You currently have to be licensed to sell tobacco. You have to be licensed to run a restaurant. I don't know that anyone has to take a test to smoke, but...

SENATOR FRIEND: I...okay.

SENATOR THOMPSON: I mean, I'm not sure where you're going with it.

SENATOR FRIEND: Well, where I'm going is, and I thought, and I don't know if you would think it was also a good idea, I thought it would be a halfway decent idea to have an approach where you've created a moderately priced or even what would amount to eventually an exorbitantly priced licensing program in order for a bar, a restaurant, whatever, to allow smoking in that establishment. I mean I know other states have talked about it, but I just didn't know if Health and Human Services broached that subject in that (inaudible).

SENATOR THOMPSON: Well, I actually have never heard of that, but if you wanted to introduce that as a bill, you know, that might be something you could consider. But that's new to me. I don't...maybe Senator Jensen has heard of something like that; I haven't.

SENATOR FRIEND: I...thank you, Senator Thompson. I guess my point is this. This summer I had a couple of different discussions that really stuck out in my mind in regard to this issue. One, two proprietors, one a restaurant where I walked in with my family and we turned around and walked out and he said, you know, what...what's the deal? And we said, well, the smoke is too much. As it turns out, he had gotten that complaint several times and was very heavily weighing the possibility of just banning smoking on his own in that establishment. Another

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one, during one of my son's football games, a proprietor...a restaurant, owner of a restaurant had said to me, are you guys finally going to ban smoking in restaurants? And I said, well, I guess it's a possibility. And he said, well, I wish you would. And I said, well, just a quick question: Can you do that now? Can you just say no smoking in my restaurant? He said, well, yeah, sure, he goes, but I just don't want to make anybody mad. I guess that's our job. Here's the point. Is a licensure type of situation a happy medium? If we want to prohibit this, some of my comments the other day went to the public health aspect of this. If this is killing people, and I believe it is, I really do, ban it. Ban it. The problem is, alcohol kills more people than cigarettes every year. I don't have the statistics here, but I will find them and we'll prove that. We force people into situations where they have to, in order to purchase, from a wholesale standpoint, alcohol, they have to be licensed. In order to distribute it...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: ...they have to be licensed. In order to have people partake in that type of behavior in their establishments, they have to be licensed. So what I think we're doing here, or at least I think that maybe Senator Thompson is right, maybe I need to bring something like that...I guess my bust for not thinking of it before this type of stuff happened...I think this is an appropriate discussion. We tried to prohibit alcohol. We all know about that. What's going to happen here with this incrementalism is we're going to create a black market, we're going to create an underground, and it's coming if it's not already there. What I would say is if you establish moderate licensing type of procedures, what you could do is produce an environment where people can avoid it, they know where to go to avoid it, they know where not to go in order to avoid it.

SENATOR CUDABACK: Time, Senator.

SENATOR FRIEND: I just...thank you. Thank you for the time.

SENATOR CUDABACK: Thank you. Thank you, Senator Friend.
(Doctor of the day introduced.) On with discussion. Senator

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Baker, followed by Senators Bourne and Thompson.

SENATOR BAKER: Thank you, Senator Cudaback and members. I've been trying to take in this discussion this morning and I...if there's one thing I've gathered from it, it's complicated. I don't know whether public office, private office, meeting halls, workplaces, where we are right now. I'm with Senator Bourne. I don't...I don't understand exactly where we're headed with this, but I think maybe if we want to do it, and Senator Friend is a tough act to follow, let's just ban sales of tobacco in Nebraska and be done with it. We'll get it out of our budget, the sales...or the tax on tobacco. Let's just quit nibbling around the edges and ban it and see what happens. I'm not a smoker. I've never been a smoker. I don't particularly care to be around people smoking, but I own a business and, quite frankly, I'd like to be able to run that business as I see fit. Right now, the bill is...we're discussing, I can't tell exactly where we are. I'm a little bit like Senator Janssen. We have prepared food. We have some that's in wrappers. What if we did...what if we put it in a microwave? Is that prepared, then, and so on? We're licensed, I think, as a restaurant. We seat 32 people. We allow smoking in it. We sell tobacco. Kind of ironic, you can come in the store, a C-Store, buy tobacco; but, I'm sorry, you got to go outside if you're going to smoke. We take their taxes and gladly do it. But so far the discussion today has led me to believe this is so complicated I'm not sure how we're going to administer it. We're going to have tobacco police, obviously, coming around. I guess maybe Lincoln is doing it and maybe it's working. I don't know. But I, as a business owner, I'd like to be able to have that decision to be made, you know, my...make it myself. I don't want to have to decide whether I've got to quit selling prepared food and just sell sandwiches and pizzas in wrappers and then not let them heat it up. I'm not quite sure how this is all going to work out. But maybe we'll get an amendment drafted that just says we're going to ban tobacco sales in Nebraska. It would affect our budget like, what is it, \$50-\$60 million a year, something like that; take a hit there and be done with it and see where that goes. Senator Friend and I, I guess, thinking along the same lines. And Senator Erdman, I said...thought maybe he had an amendment drafted to that effect. But my bottom line is this

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bill is so complicated and misunderstood, what we have now, that I think it would be a travesty to try and force this upon whether it's a C-Store owner or a bar owner or a workplace or office building, whatever, to try and administer it. So I'm going to continue to oppose LB 480. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. I kind of want to go through the committee amendment again, and I think there it's important to understand what we're doing. I am comfortable with Senator Thompson's amendment, AM0948. The Health Committee's legal counsel explained it to me and I'm comfortable that that's not an issue. I think it's more of a clarification, which I think we sorely need in this area, because there's a lot of businesses that go about their daily business and they don't realize that they're included in this act, and they are. And so anything that we can do to add clarity is great. I will be supporting Senator Thompson's amendment now that I understand it, but I do think that since we have a little bit of time we might as well continue to discuss the committee amendment. And originally, if you recall, the only thing that this impacted was restaurants, and Senator Thompson did mention that it impacted the State Fair Park, but now we hear that if a family wants to rent a meeting room for a...for a family reunion or a family birthday, and they're all smokers, they can't smoke in that private meeting hall where no other, let me make that clear, where no other members of the public will be going in there. It's a private function and, as I read this amendment, smoking would not be allowed there. So you rent a...you rent a, you know, a hall at the local VFW or wherever their halls are; you can't smoke there. Senator Thompson, would you yield to a question or two?

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Could you discuss with me the language, the stricken language, on page 4, what we're attempting to do to State Fair Park? And I see that in lines 3 through 12 on

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page 4. So could you tell us currently what type of smoking is allowed at State Fair Park and contrast that with what type of smoking or what extent smoking would be allowed after the passage of the committee amendment?

SENATOR THOMPSON: Well, the quick answer is none would be allowed after the committee amendment. And I do have a little history of what's gone on at the State Fair Park that if...when we get to the discussion of the full bill, I will...

SENATOR BOURNE: Well, let...

SENATOR THOMPSON: ...do that. But a few years ago...

SENATOR BOURNE: Let me ask you...let me ask you this.

SENATOR THOMPSON: Okay.

SENATOR BOURNE: Is...State Fair Park is a part of Lancaster County but it's totally encompassed or surrounded by the city of Lincoln, but not a part of the city. Is that accurate?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: So if...so what is there at State Fair Park other than fair buildings? Are there bars or restaurants there?

SENATOR THOMPSON: This...I introduced this as a separate bill. I also introduced this as part of this bill. And at State Fair Park we have...we have pretty much banned smoking in all state buildings except for the two places on here that are listed that I'm now striking, so this would...this is bringing all state buildings under compliance.

SENATOR BOURNE: Okay, let's...

SENATOR THOMPSON: Currently at the State Fair Park, they have...and I haven't been physically present there but as it's described to me, they have this area now that was open occasionally throughout the year, and I had heard the State Fair Board was just going to take care of it, but it's turned out to

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be a revenue source for them, and now they're expanding and advertising to Lincoln, once the ban went in place, to get more smokers to come to the State Fair to this particular building and they have expanded...are expanding to keno.

SENATOR BOURNE: So, okay, so there is a keno facility there?

SENATOR THOMPSON: Well, I'm not sure. I'm going to give...I heard that there's big signs out there. I have to find out for sure.

SENATOR BOURNE: Okay, so...

SENATOR THOMPSON: I'm just saying it went from something small to something big once Lincoln passed their smoking ban. It's sort of poke in the eye to the voters of Lincoln.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: But I also think...

SENATOR BOURNE: Oh, okay...

SENATOR THOMPSON: ...that it's not good state policy to exempt them.

SENATOR BOURNE: Okay. So again, we have an area that's surrounded by the city of Lincoln that's controlled by a board and this...and the board has been promoting...okay, you can't smoke there at the bar or the restaurant across the street, but come into State Fair Park where we have keno and alcohol and food and you can smoke there. And they're using this to...this revenue to bolster the State Fair. Is that...

SENATOR THOMPSON: I...I guess. I'm just a purist on this and it has to do with our buildings, our state buildings; that this isn't a private board.

SENATOR BOURNE: So...

SENATOR THOMPSON: We made it a state agency because of a lot of

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things that happened...

SENATOR BOURNE: But is there...

SENATOR THOMPSON: ...that were contrary...

SENATOR BOURNE: Hold on.

SENATOR THOMPSON: ...to public policy.

SENATOR BOURNE: Senator Thompson, hold on. Is there...there's keno that's conducted on State Fair Park in state buildings?

SENATOR THOMPSON: Yes, that are leased to some private operator.

SENATOR BOURNE: Okay. Okay. So there would be no smoking in restaurants, and again we need...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. (Visitors introduced.) On with discussion. Senator Thompson.

SENATOR THOMPSON: Due to the recent discussion, I will go ahead and call the question again on this particular amendment.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on AM0948? All in favor vote aye; opposed, nay. Have you all voted on the question who care to? Voting on ceasing debate on AM0948 to the Health and Human Services Committee amendments to LB 480. Have you all voted who care to? Have you all voted? Record please, Mr. Clerk.

CLERK: 18 ayes, 12 nays to cease debate, Mr. President.

SENATOR CUDABACK: Debate does not cease. Further discussion? Senator Redfield, followed by Senators Mines, Aguilar, Chambers,

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and Janssen. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President. Members of the body, I had pushed my light off earlier in hopes that we can move forward because we have a number of other amendments to address, but I felt that it was important that in the discussion we talked about some of the other issues. I talked earlier about the impact on the worker and I don't feel that truly it is fair to say to a worker, oh, just get a job somewhere else. Because we have certainly a number of people, due to their circumstances, perhaps they're students trying to work their way through school, who find that these are the types of hours and employment that they can handle while they're going to school. So I don't think it's so easy and I won't be so flippant as to tell a worker, well, just go work somewhere else if you care about your health. But the other issue I have not addressed is the cost to the restaurant. And Senator Bourne has talked about the border issues, and there's clearly border issues under the system that we have right now. When you have a city that has banned it and surrounding areas that have not, you have a competitive issue. And I think that truly it would be in the best interests of the restauranteurs in this state if, in fact, we had a consistent rule so that they could all play by the same rules. In discussions with restauranteurs from some of the states that have banned smoking, it's interesting because they fought the ban initially. They were concerned about the bottom line and, in fact, they found that some of those smokers did not come to their restaurants initially. They found that there were new customers who did come because, in fact, they had avoided the establishments due to the smoke. So perhaps there was a trade-off. Perhaps there was a fall off initially. But certainly we have found in every state that has passed it, as time goes by, that they have found an interesting thing, that receipts have increased, and tax receipts, as a result of that, have also increased. Now, one of the things they told me, which was interesting, all of you who know smokers know that they go into a restaurant, they sit down, they relax, they have a cigarette or two. Then they get around to ordering. Then they sit around after dinner and they light up and they may nurse three or four cups of coffee and enjoy their cigarettes, and they take up that table for a good deal of time. And the

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restauranters have found that they can turn over that table now that there has been a smoking ban because, in fact, the driver, nicotine, has driven the smokers away from the table quickly. They come in, they eat and they leave, and they go outside so they can smoke, and that frees up the table for other customers. More customers means more dollars, more income, more tips for the workers and certainly more income for the restaurants. So we have not seen that this has been an economic disadvantage. Mr. President, I'd like to give the remainder of my time to Senator Thompson, if I could.

SENATOR CUDABACK: Senator Thompson, about 2, 08.

SENATOR THOMPSON: Thank you. I'd like to withdraw this amendment and refile it on Select.

SENATOR CUDABACK: AM0948 is withdrawn. So ordered. Mr. Clerk.

CLERK: Mr. President, the next amendment to the committee amendments, Senator Bourne, AM1052. (Legislative Journal page 1092.)

SENATOR CUDABACK: Senator Bourne, you're recognized to open on AM1052 to the committee amendments.

SENATOR BOURNE: Thank you, Mr. President. Members, if you can...I believe that this amendment is what was LB 730, and I'm scrolling down. I apologize. I didn't...I thought we were going to hear a close and have a vote, and I...actually, no, this amendment...this amendment would say that any...actually, it would say that a city of the primary class that adopts an ordinance that's more stringent than the state's Clean Indoor Air Act would not receive tobacco...would not receive the proceeds from the sale of cigarettes. As you know, there's taxes on cigarettes and this amendment would say if you adopt an ordinance that is more stringent than the state law you would not receive the proceeds of cigarette tax revenues. And I'll tell you the reason that I did this, and that's to encourage a consistent statewide policy. I didn't do this to be punitive. I didn't do this to make a point. I just simply tried to reflect what the federal government does constantly. And we've

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had bills from the Transportation Committee that, as you know, the state receives highway money and in millions of dollars, probably hundreds of millions of dollars in highway money on an annual basis, and the federal government says that we want a consistent highway policy and in order to do that we're going to use a stick and a carrot approach. We're going to say that if states don't adopt billboard regulations or, excuse me, laws regulating the clutter of billboard next to the highways, they won't be able to get as much in highway funds. If a state doesn't adopt some form of a seat belt law, they won't be able to share in the highway funds. If a state doesn't adopt standards regarding drunken driving laws, they won't be able to share in highway funds. And what...the reason that the federal government does that, and you can probably come up with another 10 or 12 examples, if not more, of what the federal government does to encourage uniformity, and this bill is simply trying to do that...or this amendment, excuse me. Now, I will tell you that somehow I must have been busy or something, I don't know, and to be quite honest this amendment is not as uniform as it could or should be, and Senator Erdman later on has an amendment that I fully support and I do believe that that adds the uniformity that I've discussed, in that it would say that any community that adopts standards, ordinances, they're free to do that regarding smoking, but they should also know that the state has, as a core principle of this policy, that it should be consistent. And the reason I'm saying that is when we were discussing the amendment here earlier it's...there's a area in Lincoln that's not part of the city of Lincoln, and that's the State Fair Park, and what we have is an inconsistent policy in that, while you cannot smoke in places of employment in the city of Lincoln, including bars, restaurants and other workplaces, you can go across the street to this pocket. And I don't know how big State Fair Park is, but you can go across the street and you can play keno and have, as Senator Thompson mentioned, dinner and you can smoke there. And the State Fair Board has cleverly encouraged people to attend their enclave there, or conclave, for lack of a better word, by allowing the smoking and actually advertising, hey, come here and smoke. And so that's a perfect example of an inconsistent policy. We have the small area within a city, within a county that, while every...the area around it doesn't allow smoking, this little area does, and I

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think that that's inappropriate. One of the reasons that I opposed the proposed ban of smoking up in Omaha is because of the disparate treatment it would have on businesses. Now, I'm not exactly sure where the city of Omaha ends as far as its boundaries. I know on the south the boundary is the Sarpy County line, but out west I'm not exactly certain where it is, but I will tell you it's at a particular street. So if it is on the east side of, say, 172nd Street and, again, I'm not sure 172nd is the actual boundary, but I'm...what I am saying is the proposed ban in Omaha was unfair, in that you could (sic) smoke on the east side of 172nd but if you had a...if you were fortunate enough to have a bar or restaurant on the west of 172nd Street, you would...you would be able to smoke there. And that creates an unfair advantage between those people within the city and those people slightly out of the city, those bar and restaurant owners. So similar to the policy that...or the problem that we're facing down here in Lincoln, in that there's a small area of smokers within the city, even though the city has adopted a smoke-free policy, that's inconsistent. And what I am, again, trying to do here is to say that there is an overriding state interest in a uniform policy, and I will tell you I am more than willing to listen to other points of view as it relates to uniformity. But I think that if...and I am a supporter of local control and, contrary to what the talk radio said, I am supportive of a community being able to do what they want. I support local control. I believe that the voters of Lincoln put this...this issue was on the ballot and whether they knew exactly what they were voting for, I don't know. I've heard there's some confusion as it related to how...what was included in the initiative or the referendum, but I don't know that. But the reality is, is that 62 percent of the voters in Lincoln said, we don't want smoking in our bars, restaurants, and places of employment, and I personally respect that. I did have a bill that said the Clean Indoor Air Act was the law of the land and it did disregard the vote of the citizens of Lincoln and I regret doing that; however, that bill was drafted prior to the vote and I simply just dropped the ball and I didn't change it, but I do have another amendment coming up that addresses that concern. But again, just for clarity's sake, what this amendment does is say that the state of Nebraska has an overriding state interest in uniformity and consistency as it

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relates to its smoking policy. And this amendment tries to create that uniformity through a stick and carrot approach, similar to what the federal government does, and it says that you localities, whether it be any, the primary class, and of course if Senator Erdman's amendment is adopted, the metropolitan class and, again, I support that amendment. I simply had a drafting error as it related to how far it went. If you want to have exercise...if you want to exercise local control and you want to adopt a policy where there's no smoking in your community, you're free to do that, but the state has an overriding interest in a uniform policy. I don't believe that having smoking in the city and then you can go to a small pocket in the center of the city is a good policy for the state of Nebraska. So I think consistency should be the goal here and that is the spirit of this amendment; is not, again, I want to clarify, because I did receive an e-mail from a constituent who is also opposed to government acting in this regard, meaning a statewide ban. It should be left up to communities and that's what I support. And this individual was listening to talk radio and she said that I...that the talk on talk radio was that I had introduced this to be punitive. That's not the case. I think we just need to be consistent in how we do this. The federal government, again, does it through highway money, and I'm sure if any of us thought of it, if Senator Jensen thought about it, I'm sure that they do the same thing as it relates to Medicaid. The federal government says if you want to...if you want to receive Medicaid funds, we want uniformity, and every state has to treat an individual that makes a certain amount of money the same way. Now, of course, there are waivers. The federal government gives waivers on some of these things. But, in large part, the federal government has recognized that there should be a consistent policy as it relates to highways, and they award highway money in that regard. They've said there should be a consistent policy, federal policy, in Medicaid dollars and how those are allocated to the states, and so they've established a set of uniform principles that states have to follow if they want to share in that proceeds. So again, I don't think this is unusual. I don't know of another example where the state...

SENATOR CUDABACK: One minute.

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SENATOR BOURNE: ...has used money, tax revenues in this...in this regard, to make a consistent state policy, but I'm sure if we thought about it that we could find several examples. But again, it's not designed to be punitive in any manner whatsoever. It's simply designed to say that, all right, if this is the best idea or the best goal or the best way to do this, have no smoking for our citizens, then we should do it in as uniform and a consistent manner as we possibly can. I fully expect that there's some folks from Lincoln that would be opposed to this and, quite honestly, I don't blame them. But I do think that this Legislature is known for its discussion on ideas such as this. I think that a uniform policy is the best way to do it, and I can't think of a better way to do it than the stick and carrot approach. However, if somebody has a better idea to adopt a consistent policy, I'd certainly be happy to listen and work with that individual to try to do that. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on AM1052, which is an amendment to the committee amendments to LB 480. (Visitors introduced.) On with discussion of the Bourne amendment. Senator Mines, followed by Senator Aguilar and seven others.

SENATOR MINES: Thank you, Mr. President, colleagues. Senator Bourne, you greatly disappoint me. I thought this amendment was punitive and I loved it. (Laughter) No, I'm teasing. Now that Senator Bourne has made his point about uniformity throughout the state and truly local control, this LB 152 (sic) does have some merit. I can understand where you're coming from now and I will support your amendment. I think it's a good amendment. But, more importantly, I just wanted to get up one time and explain my position and where I stand on the mainline LB 480. You know, it was Liza Minnelli that said smoking is the leading cause of statistics, and we have heard statistics and we will continue to hear statistics. One out of eight people die because of cancer, smoking-related cancer. I have no doubt about that. But I can tell you LB 480 isn't going to save anybody. If anyone thinks that eliminating smoking in public or privately owned restaurants is going to save someone's life, they're sorely mistaken. I don't have the statistics, but the

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opposition doesn't have those statistics either. I was a smoker for 25 years. I loved it. And I finally came to the realization that smoking is obnoxious and it was going to kill me, so I quit about 14 years ago. I grew up with parents that both smoked. That was the way it was. People smoked in the sixties and fifties. And today I find smoking objectionable. My family and I go to restaurants and we choose restaurants that either are no-smoking, or we sit in smoking sections and if it's too smoky we leave. My father died of lung cancer a year ago, and I've received more e-mail on this subject, pro and con; it's run at about 60 percent in favor of LB 480 and 40 against, and those that believe that I don't understand and that I need to change my mind because it's the socially correct thing to do simply don't understand. I side with restauranteurs. I side with those that run their own business and that want to decide if a legal activity, as in smoking, is permissible in their own private business. Whether I object to that activity or not is not part of the equation. In my opinion, this is about government intervention in private business, and it's a legal activity, and you can use all the statistics for and against but it all boils down to that, in my humble opinion. I will support LB (sic) 1052. It does make some sense, Senator Bourne. I will oppose LB 480 and if I have remaining time, Mr. President, I'd like to give that to Senator Bourne.

SENATOR CUDABACK: Senator Bourne, about 1, 40.

SENATOR BOURNE: Thank you, Mr. President. Members, I did forget to say a couple of things about what the amendment did, and I did want to get out on the record that...and I'm sorry, Senator Mines, that you're disappointed that this amendment wasn't punitive, although you're free to take it that way and vote in that manner. But I did leave out a couple things that the amendment does. The amendment also defines what a retail tobacco business means, and it's defined as a sole proprietorship, a partnership, a limited liability company, a corporation, or another entity in which the primary activity is the retail sale of tobacco, tobacco products and accessories; and (2) as to which the sale of other products or services is merely incidental. And the reason I added that is basically to exempt that out of the Clean Indoor Air Act, and I'll tell you

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why. In the city of Lincoln, again, I mentioned that we had a bill that...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...we had a bill in committee that would have basically overturned Lincoln's ban, and again, I don't think that's necessarily the right course of action now, but we had people come in and testify that they own cigar stores or cigarette shops and they can't smoke in those cigarette shops. Now, I'm a nonsmoker, have been for a number of years, long time. I've never...since I stopped smoking 15 years ago, whatever it was, I've never been in a cigar store or a cigarette store. So my point is, is that the only people who are going there are people who want to smoke, so why should they not be able to do that in that business? And where it says "merely incidental," service or other products, that would be a cigarette or cigar store that sells lighters or pipes or whatever else that would be related to smoking. So it would clarify that...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne and Senator Mines. On with discussion, AM1052, Senator Aguilar, followed by Senator Chambers.

SENATOR AGUILAR: Thank you, Mr. President. Members of the body, irregardless of what Senator Bourne says, his amendment does fly in the face of local control and I rise in strong opposition to it. Last Thursday he was getting up on the floor and talking about the involvement of big government. Well, what the heck does this amendment do? It's big government all over the place. It's taking away local control, some of the things that Lincoln has voted by a majority to put into place. It's no secret that Omaha wants even a stronger ban, so a lot of this conversation you're hearing today is designed to impact that down the road. I think it's sad that, you know, we have to be more concerned about the bottom line of bars in this state than

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we do with the health of Nebraskans. Senator Mines, I'm sorry, I can't be as flippant about people dying as you are. That really upsets me. In one breath you say, I quit smoking because I was afraid it was going to kill me; in the next you say LB 480 is not going to save anybody's lives. Well, I promise you it will help. It will cut down on Medicaid cost and I think that's what we're all about here and that's what we need to try to think about accomplishing. We need to stay focused. So far this morning we've had conversations that included welding shops, cigar shops, bars, a number of different businesses that are not in this bill. We need to stay focused on this bill. I've heard people get up and say they've heard from restauranteurs. I have, too, and the restauranteurs are telling me, we want you guys to do this; we want you to enact the ban. Because when you do it voluntarily you do drive away some of the business. But if a state does it all over, then there's no place else for those people to go. They don't have to get mad at the restaurant owner. It wasn't his fault. They'll remain loyal customers. This really is a commonsense approach, folks. I read something the other day that I think is really important to this discussion. The need, and I stress the word "need," to breathe smoke-free air has a priority over the desire to smoke. Think about that for a second. The need to breathe smoke-free air has a priority over the desire to smoke. What are we asking of people? What are we asking of smokers? Maybe they have to wait an hour to have a cigarette so that other people can breathe smoke-free air. That's a lot, isn't it? For heaven's sakes! If I have any time left, I would yield the rest of it to Senator Thompson, if she desires. Thank you.

SENATOR CUDABACK: Thank you, Senator Aguilar. Senator Thompson, about 2, 05.

SENATOR THOMPSON: Thank you. And thank you, Senator Aguilar. You did a great job of framing this issue. This is about public health. This is about public health. Senator Bourne has introduced an amendment which he says is a carrot and stick approach, and it's to poor public health. Instead of encouraging cities and any...and...of the whatever class this is, it's obviously just directed at the city of Lincoln, to encourage, as a lot of federal policy does, it encourages good

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public health. I have never seen anything like this presented to this Legislature to do something of this nature to encourage poor public health. This is an overruling of the voters of the city of Lincoln who chose public health as a priority, and they chose to breathe clean indoor air. That's their decision. That doesn't mean people aren't smoking in Lincoln. They're still smoking in Lincoln. They just aren't smoking for the hour that they're eating. They're accommodating the public. They're accommodating...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...the public, who wants to breathe clean air. And this amendment is an effort to continue or to expand and push poor public policy down the throats of people and of the city that made that decision. We should defeat this amendment and get back to the discussion of the main bill and talk about the importance of clean air. And the small thing we're asking of a few of the smokers, this isn't all smokers, we're just asking a few of the smokers to please accommodate the public for public health reasons. I'm astounded by the comments of Senator Mines about statistics. There is public health research from all the leading educational...

SENATOR CUDABACK: Time, Senator.

SENATOR THOMPSON: ...institutions in this country that supports the fact that secondhand smoke kills. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson and Senator Aguilar. On with discussion. Senator Chambers, followed by Senator Janssen and others.

SENATOR CHAMBERS: Mr. President, friends all, including Senators Mines and Bourne, civility, common courtesy, decency, respect for others, these are things taught in elementary school. Who would expect a spittoon to be put in a restaurant where people are eating and you'd hear the (spitting sound)? Cigarette smoking is worse than that. The spittoon and its accompanying sounds may turn your stomach, but they won't turn you into a corpse. I know people who have died from lung

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cancer. One young man I had gone to school with. His name was Ted Johnson. He was a research chemist for the Veterans Hospital. So it's not easy for me to listen to jesting about those who have died from this terrible disease. I find the comments of people like Senator Baker, Senator Friend and others who talk about banning tobacco to be disingenuous, because they know that's not going to happen. When others want to talk about tobacco being a legal product so why are you going to do this and that, alcohol is a legal product, too. And in my opinion it should not be, but that's the poison people choose. But it's one of the most highly regulated industries in this society. Senator Bourne and others work with the lobbyists for those substances. You're listening on the floor this morning to the lobbyists and their mouthpieces. If somebody had a person in their family with lung cancer or serious emphysema from smoking, those persons would not be joking on the floor about it. I can hear the same people who will jest about the right of the public to be free from carcinogens in the air they breathe almost shed tears when they talk about the need to give millions of dollars of taxpayer money to big corporations to make them come to Nebraska. I watch how people conduct themselves on different issues. Senator Bourne wants to talk about a uniform state policy. He and I have worked to get certain pieces of legislation, by way of amendment, that would apply to Omaha and benefit the citizens of Omaha, without having it apply to everybody in the state. Although, if those programs were beneficial to the citizens of Omaha, they'd be beneficial to all the people in the state. So, for the new senators, don't be misled by Senator Bourne's disingenuousness, and that's what it is. One of the reasons I was asking him about a bill the other day when he made inquiries as to what Omaha's position was when they showed up as testifying neutral on it, and asking would it make a difference to him what Omaha's position was, and he frankly acknowledged it would, and we all know it would. Which means that he's concerned about what's going to affect the city where he and his family live. Other people in Lincoln are concerned about their families. Senator Bourne and the lobbyists he is speaking for want to say that the people in the city of Lincoln, who have a higher level of civility, common decency and respect for others than is found in Omaha, should be brought down to the level of Omaha; that the lowest...

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...common denominator ought to be imposed on every city in this state. He wants to make it easy for the lobbyists by giving them one entity they have to deal with. They can more easily bully the Legislature instead of having to go around to these various cities and city councils where the people feel more of an attachment and bonding to the people because they are their neighbors. You don't see millions being spent to lobby city councils. They come here because if they can get the Legislature to do their bidding, they don't have to do it anywhere else. But the amendment before us, I think, is one that would take money from the city of Lincoln. I'm against that one and I'm against the other one, too, and I'm going to engage in this discussion and I'm going to be very blunt and forthright, because we are talking, literally, about life or death. And there are people who do take their children to these restaurants, and you can talk all you want to about irresponsible parents, but that is not the issue and those spokespersons...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...for the lobbyists know it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on AM1052 to the committee amendments? Senator Janssen, followed by Senator Synowiecki.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Senator Cunningham has a grocery store in Wausa, Nebraska, and visiting with him a little bit, I asked him if he had a deli in his grocery store and he said, yes, he does. I said, do you make sandwiches in your deli? He said, yes, he does. He also sells cigarettes in his establishment, and in a public grocery store like that I am sure that some of his customers do smoke while they are in that grocery store buying their groceries. I know they do in mine. I also have a deli. And with the way the bill is written, if that person buys a deli

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sandwich in that establishment, he would not, or she would not, would not be able to operate that deli. I see where this bill would not allow that to happen. You know, when we argue about the tax dollars that come from tobacco in this state, do you realize that every carton of cigarettes, the state and federal tax is \$6.40, and that's on an average of \$30 a carton, and I don't believe there are many cigarettes that you can buy for \$30 a carton now. But let's use that figure, that \$6.40 on that carton of cigarettes, that we clamor around in this Legislature trying to find homes for those dollars. Then you also have sales tax--\$1.50 on a carton of cigarettes that goes for the state sales tax. And you know what we do with the sales tax. We argue and fight about where that's going. So I just want you to bear in mind that there are other ramifications that are going to come about with this legislation. Now you could...I would imagine you could ban smoking in that grocery store, but if you're selling that product in there, that's kind of hard to do, too. How are you going to monitor everybody that goes in and out of the...of that store, make sure they don't sneak a cigarette while they're in there? Either that or you'd have to discontinue the deli section in your establishment. When I first started in the grocery business, there was no such thing as a deli. I mean, you sold the dry goods and canned goods and so on, and they left the store. Didn't have a deli. But, in order to compete with the large supermarkets, you had, the small operators, had to do this very same thing. Now there are Hy-Vee stores, so on, so forth, that have regular restaurants within those establishments. Will they be able to...they will have to ban smoking in that...in that large supermarket, also. So I just want you to remember that there are other ramifications that can come from this piece of legislation. I don't smoke. My family doesn't smoke. But when you start doing something that...people can take care of themselves, proprietors can take care of it themselves...they don't have to allow smoking. People don't have to go into a establishment that is too smoky. Here we are again telling people what they can and can't do. And with that, I'd give the rest of my time to Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Senator Janssen. I appreciate that. I've not been very vocal on this bill. I do stand up in

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opposition to the bill. I do support this amendment,...

SENATOR CUDABACK: One minute.

SENATOR CUNNINGHAM: ...I would say, but...what did you say, Senator Cudaback? One minute? Okay. Thank you. The thing that...

SENATOR CUDABACK: Senator Thompson.

SENATOR CUNNINGHAM: ...amazes me is Senator Janssen talked about freedom of choice, and the other day we were handed out a page and just in Douglas County there was eight eight-and-a-half pages of restaurants that are currently smoke free, eight-and-a-half pages, and I believe in Senator Bourne's comments the other day he talked about 3,000 restaurants statewide. I believe it's going that way already. It should go that way, but it should be the choice of the business. I think the antismoking groups should be out and they should be working with the businesses to convince them that they should ban smoking. It's amazing to me, reading the Lincoln Journal Star and the businesses downtown, the amount of volume they've lost since the smoking ban went in place.

SENATOR CUDABACK: Time, Senator.

SENATOR CUNNINGHAM: Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne (sic) and Senator Janssen. On with discussion. Senator Synowiecki, followed by Senator Beutler.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. I'm really unclear on Senator Bourne's amendment, but I do agree with a position of moving toward a consistent and uniform public policy relative to this issue. I agree with a statewide approach and I would support a smoking ban if we could arrive at a definition for these venues that makes sense, that is clear, and that it can be easily interpreted for the proprietors and for the customers. I do have an amendment on file that's a little further down that would perhaps more broadly define the

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definition of a bar for purposes of LB 480, and if we can work that into the bill and also have some sort of a preemption clause, in terms of Senator Bourne's approach to a uniform statewide policy, I would be on-board with LB 480. The...this disparate way that we seem to be going about it in our state with a smoking ban that was enacted in Lincoln, with a proposal that was in Omaha, I heard from my tavern owners and my bar owners. And particularly those that Senator Bourne indicated, when you're within close geographic proximity to another jurisdiction, them...as my district goes to Harrison Street so it goes to another jurisdiction, it goes to Sarpy County, my district goes to Bellevue, and I had bar tavern owners, entrepreneurs, that were facing a real competitive disadvantage if the city of Omaha would have proceeded with the enactment of that smoking ban. Literally, some of these taverns are walking distance, are a block or two, from another tavern that would have allowed smoking. And that would have placed them tavern owners at a competitive disadvantage in the marketplace. And I don't think a hodgepodge approach is the way to go with this issue. I think we do need a statewide, uniform approach. I would support LB 480 if we could get the definitions in place that make sense, that are easily interpreted, and that we preempt local municipalities from coming up with a more narrowly defined indoor act. I appreciate Senator Bourne's efforts relative to the amendment. I doubt that I will support it. But I do support the underlying philosophical backdrop that we adopt a statewide uniform policy. Senator Cudaback, I would give the rest of my time to Senator Bourne.

SENATOR CUDABACK: Senator Bourne, about two and a half.

SENATOR BOURNE: Thank you, Mr. President, members. Thank you, Senator Synowiecki. I appreciate the time. And again, this amendment is designed to encourage uniformity and consistency throughout the state. One thing I did want to say...and I appreciate Senator Synowiecki giving me his time so I could say this. I listened to Senator Chambers stand up and thump his chest and say, the disingenuousness of these people, and he pointed out Senator Baker and Senator Mines. And I'm sitting here and I'm thinking, you know, Senator Chambers has killed more bills in this Legislature than probably all the previous

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members put together. And yet somehow he's criticizing me and those people who are opposed to this bill, that somehow we're carrying water for someone. And that's nonsense. I'm going to point out a couple areas of hypocrisy of Senator Chambers. Who here has always worked to defeat the seat belt law? Now, I will concede that I've never supported the seat belt law as well. But I see that it's a little bit hypocritical that he is the one who has stopped the seat belt law from going into effect. And Senator Byars, if he cares to, could get up and say how many people are injured or killed every year through seat belts. And then I'm criticized because I don't believe government should be involved. I think that's inappropriate. If Senator Combs were here, she'd tell you that her concealed carry bill actually reduces the crime rate.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: And who has stopped concealed carry consistently? I'll again concede I haven't supported the concealed carry, because I represent an area of north Omaha. But I have not been as vocal as Senator Chambers in my opposition. I have a fundamental philosophical view that government should stay out of my life, and out of the lives of business owners. And for Senator Chambers to come up here and say, well, you're just carrying water for lobbyists, that's offensive. I've talked to one individual who owns a bar combination restaurant who's opposed to this and asked what I was going to do regarding the bill. And I said, I'm going to be consistent. In my six years, I've never supported this. And I won't support this today. But I do think it's a little hypocritical for Senator Chambers to accuse me and others of carrying water for someone, when he has...

SENATOR CUDABACK: Time, Senator.

SENATOR BOURNE: ...worked to kill more bills than anyone in here.

SENATOR CUDABACK: Thank you, Senator Bourne. (Visitors introduced.) Senator Beutler, discussion of AM1052.

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SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I oppose this amendment. And I think most of us in Lincoln will stand strong in support of the 62 percent of the people of the city of Lincoln who have voted to ban smoking in public places. But Senator Bourne has raised the issue of the advisability of a uniform policy in this area. And I think he deserves to be responded to at that level, because it is an argument that has a rational basis. It is a longstanding historical argument at the national level, and even at the local level. But I think where I depart from Senator Bourne on the question of uniformity is this. What generally happens with regard to uniformity is that a set of minimum standards are set. And those minimum standards are then often argued from the perspective of uniformity. But anyone that wants to make a standard that is of a higher quality than the minimum standard, they're allowed to do so, for a couple of reasons. But to give you the closest analogy to that, I think you should look at all of the rules made by the federal Environmental Protection Agency. What do they do with respect to clean air, which is for the protection of our health, clean water, which is for the protection of our health, everything they deal with, that is for the protection of the environment and ultimately for the protection of our health? They set minimum standards that everybody has to abide by. But if any one state wants to have a higher quality of cleaner air, cleaner water, they're welcome to do that. They don't prohibit that. What Senator Bourne is saying is that nobody, no local political subdivision, can make a rule that gives them a higher quality of life. And I think that's contrary to what we ordinarily think of in terms of a smart uniform policy. One of the reasons that we encourage people to be different, whether it's states or localities, goes all the way back to The Federalist Papers, and the argument that says, there is value to the laboratory of the states. That is, there is value to allowing each one of the 50 states to experiment with what might be the best way to live, or the best rules to have, or the best law to make. And by virtue, historically, of that experimentation that goes on over time, we discover better ways of doing things--higher qualities of life, better combinations of laws. And eventually, we all gravitate to and be...and what was a separate law becomes a uniform law, because we all have a consensus and a common understanding that this is better for our society. Likewise, at the state level,

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there is an argument to be made for the laboratory of the cities and the counties. Why should they not be able to experiment, unless there's some overriding reason why not? Why should they not be allowed to experiment with their own rules with regard to smoking, with their own rules with regard to a whole large number of things? That's why we value local control, isn't it? In part because it allows for this laboratory at the local level; in part because local people understand the attitudes of local people better. The city council in the city of Lincoln perceived that the city of Lincoln, the people of the city of Lincoln, after a long and tedious argument over the consequences of prohibiting smoking in...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...public places, decided that notwithstanding the disadvantage that some of their businesses might suffer, they thought for their community overall they wanted to do this. And why should they not be allowed to do that? Anything that is meaningful in terms of commerce and in terms of competition among the states, within the states, is already handled by the interstate commerce clause in the United States Constitution. The needed uniformity in that particular area is protected by the constitution. I see no overbearing reason why uniformity should be required in this instance. And in fact, I think the far stronger argument, for many reasons, is that uniformity should not be required.

SENATOR CUDABACK: Time, Senator.

SENATOR BEUTLER: And most of all, it should not be prohibited from having a higher standard.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Preister, followed by Senator Schimek. Senator Preister.

SENATOR PREISTER: Thank you, Honorable President, friends all. I'm glad that we've gotten some humor out of the "friends all" on this discussion, when we haven't on some others. Just a little aside before I visit. When I first came down here, I was deciding how to address the body. And I knew that there were

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going to be times like this when there were going to be polarizing issues that would cause me to see people and link them with their issue, rather than separate them from the issue and see their common humanity with me. I decided at that time it was for my benefit that I said "friends all," not for anyone else's, but that I would continue to focus on the relationship and the importance of that, rather than on the polarizing aspects of the various issues that would come up. So the "friends all," I still say it. I smile to myself. It's for me. And I'm glad we're having some fun with that. We can have fun and at the same time be about the people's business, which is very serious. I view this as a very serious issue. I view health and wellness as a very serious issue. We know that secondhand smoke, in addition to direct cigarette tobacco smoke, does kill people. Even the tobacco industry now admits that. That's pretty well established. From my perspective, I would like to prevent those consequences to people. I would like to prevent as many people as possible from getting the illnesses that are directly caused by tobacco smoke, and the ones that are secondarily caused by it, or that are exacerbated by it. Prevention saves the needless pain, the trauma to the individual, to the family. It saves the cost to the state, to the city, to all of us. We as a society pay those costs. We pay the human cost. We pay the financial cost. Cost is a factor indeed. And I want to save those costs. I want to be more frugal, and not spend so much Medicare money that we're concerned about, and Medicaid money. Those are truly aspects that do come into play here. Prevention, prevention, prevention. And when the city of Lincoln and the Health Department and the voters of Lincoln go on record as saying they, too, want to prevent illness, they, too, want to stand up and say, give us clean air to breathe and help us in our public places to be able to do that, I applaud them. I support them. I think that's the wise thing for them to do. And I'm glad they took the initiative and they did it. However we characterize this amendment, it's going to take money away from the city of Lincoln. It's going to say to them, you made this decision, therefore, we're going to make another decision, and we're going to penalize you by taking money from you. I don't want to do that. I oppose AM0802 (sic) because I see it hurting the city of Lincoln, when they have tried to do the right thing, taking

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away the issue of finances, largely, giving the people the right to vote on the issue, and the public making the statement that over 60 percent of them thought it was in their best interest, their children's best interest, the people who have asthma, the people who may not be afflicted with...

SENATOR CUDABACK: One minute.

SENATOR PREISTER: ...any illness, and those people want to maintain and prevent illness. I want to use my last minute to shift gears and make a comment about the beer garden in the State Capitol...in the State Fair Park. When I introduced the original legislation that banned smoking in all of the state facilities, I introduced it uniformly. It would have banned it in all state-owned and leased vehicles and facilities. In order to get that through, I had to compromise. I think it was about the third time I introduced the bill. Senator Schellpeper at the time wanted the beer garden to be excluded on the State Fair Park, because during the State Fair people smoked outside in the beer garden. The reason that the language was done was because of the committee legal counsel for the General Affairs Committee, who worked for Senator Schellpeper, drafted it in such a way that it's broader than even Senator Schellpeper had intended.

SENATOR CUDABACK: Time, Senator.

SENATOR PREISTER: And that's the reason we have that exemption, not because of uniformity.

SENATOR CUDABACK: Thank you, Senator Preister. On with discussion. Senator Schimek, followed by Senator Thompson.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. Senator Preister, when you said something about the beer garden in the State Capitol, there were a lot of heads going around like this, wondering where that was. (Laughter) Senator Bourne's amendment I have to stand up and oppose, of course. I have to stand up and oppose as hard as I can. Senator Bourne, I'm sure you don't have anything against we citizens who live in Lincoln. But I do remember it was your amendment on the State

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Fair bill that said that Lincoln would have to come up with some money if we were going to have the State Fair here in our city. And I voted for that, Senator Bourne, because I thought there could be a good rationale for doing that. In retrospect, I'm not sure I should have done that, because Lincoln is really strapped right now, and they are having trouble coming up with that money. But it did seem like a reasonable thing to request. I don't think this is a reasonable thing to request. For one thing, there's not going to be an end to smoking in Lincoln. There's going to be an end to smoking in those public areas, like restaurants and bars that serve food. There are still going to be people who buy cigarettes. There will still be an opportunity to tax them. And if I'm understanding the Bourne amendment, it would not allow taxes to be collected at all on tobacco. I think we have to be careful when we are advocating consistency, because we all try to be consistent. But I bet, if you followed any one member around, even Senator Chambers perhaps, there would be some times that we could argue, at least, that that person isn't being consistent. I think that consistency is all in the eye of the beholder. Senator Chambers may not support a seat belt law because he doesn't believe that government should be interfering. On the other hand, in the case of cigarette smoke, he may feel that that is a...more of a community issue, and one that affects other people as well. So maybe he isn't being so inconsistent after all. It depends on how you set your criteria. Senator Beutler said very well what I wanted to say, and that is that federal laws are mostly punitive towards states that do not pass certain laws. And that isn't...that is the case...that is not the case in this amendment that we're talking about. This amendment wants to punish local government for being more proactive on this issue. Yet we have other policies, examples of policies at the state or local level, that are more stringent than federal or state requirements. Consistent policy on No Child Left Behind, for instance, has attempted to be enacted across all the states. Yet, just this week, the feds have announced that they are relaxing rules and regs, and letting the states have more latitude and more say about what does happen at the local level, and to have more decision making. Now, how that all works out, one doesn't know at this point.

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SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: I do believe that State Fair Park probably should be made a part of the general overall ordinance, and that we should be more consistent in the application within State Fair Park. But whether that will actually happen or not, I don't know. I know that the State Fair Board and the city are talking about that. And that would probably be a good thing. The last thing I would like to say is, I do support this bill. I think Senator Thompson hit the nail on the head. And someone else, Senator Chambers, I think, also mentioned it. All we're asking about here is having people respond to the needs of other people in a very limited time frame. And it is a matter of courtesy, and it is a matter of civility. And I do think that we are not asking these people to quit smoking, the...

SENATOR CUDABACK: Time, Senator Schimek.

SENATOR SCHIMEK: ...citizens to quit smoking. We're asking them to be courteous. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Senator Thompson, followed by Senator Bourne and four others.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I oppose the Bourne amendment. I don't agree with the premise of the amendment, or...which is that we should be discouraging cities from enacting good public health measures. I also think, in terms of government policy, Lincoln still sells cigarettes, Lincoln...people still smoke cigarettes. They just are not smoking in public places and exposing other people to the secondhand smoke in those places. And taking away the cigarette tax that is earmarked for cities, I believe, is inappropriate. And I oppose his amendment to this bill. Wanted to come back to the reason for the overall bill, which this amendment would weaken, certainly. And I'm not even sure that it's germane. But adding a policy to this bill that penalizes cities for enacting laws...or enacting ordinances for smoke-free public places certainly would be contrary to the overall purpose of the bill. And I just want to remind you...because I continue to be surprised by remarks made about people...by people on this

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floor, about secondhand smoke. So I'm going to use information here from the Centers for Disease Control and Prevention. This is, as you know, funded by the federal government. Secondhand smoke has been classified as a known human carcinogen, or group A carcinogen. This classification is reserved for those compounds or mixtures that have been shown to cause cancer in humans, based on studies of human population. Secondhand smoke is a complex mixture of more than 4,000 chemicals found in both the vapor and the particles. I think there are a number of other things. And I could pass more paper out to you, but instead I'm going to just mention this, what the findings of the CDC are. The chemicals in secondhand smoke poison the heart muscle, interfere with blood vessels' ability to adjust themselves to control blood pressure and flow, and increase the buildup of blockages of blood vessels. Each year, secondhand smoke is responsible for approximately 35,000 deaths from coronary heart disease in adult nonsmokers. Every year, secondhand smoke is responsible for up to 26,000 new asthma cases in children, and up to 300,000 cases of bronchitis and pneumonia in toddlers, 7,500 to 15,000 which require hospitalization. Because their lungs are not fully developed, young children are particularly susceptible to the damaging effects of secondhand smoke. I'd also like to point out that the people who work in restaurant industry are a lot of teenagers, and a lot of women of childbearing years. And by enacting Senator Bourne's amendment, we would be discouraging cities from having a stronger, more enlightened public health standard for secondhand smoke than we as a state can probably pass. LB 480 is, I think, the best we can do as a Legislature, come together and get the 25 votes to get the job done. A number of you told me you're undecided on this issue. And this is always an uphill battle in this body, always an uphill battle. But...and you ask me why I continue to do this. Because I care about the health of the people of this state. Because every year, the evidence builds, the scientific evidence builds--this is harmful to people. And we set the public health standards. I oppose Senator Bourne's...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...amendment because it weakens our ability

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as a state to encourage good public health. And we shouldn't be putting in place these types of punitive measures against the people who vote for smoke-free restaurant and bar ordinances.

SENATOR CUDABACK: Thank you, Senator Thompson. (Visitors introduced.) On with discussion. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Thank you. I just wanted to respond to a couple things that I heard. And at the onset, I want to say that Senator Thompson and Preister and Beutler have been consistent in their efforts in this regard. And I don't fault them for that. I just have a philosophical difference of opinion...and Senator Aguilar as well. And I don't fault them for doing that. I just believe that government should stay out of people's lives. And that's why I'm arguing against this bill, but I am in support of this amendment. You know, I had...I keep talking about this hearing that we had in the Judiciary Committee on the statewide...basically LB 730, which says that the Clean Indoor Air Act is the law of the land. And we had, quite honestly...there was a few individuals that were opposed to my bill, and they wanted a ban, and they didn't want to trump Lincoln's law. And I appreciate them coming out and talking in that regard. But we had a lot of testimony from bar and restaurant owners who talked about how their businesses were impacted. And they consistently said--and I'm not criticizing anyone on the Lincoln City Council, but these bar and restaurant owners and business owners consistently said they were not heard, that they were not heard as it related to this ordinance. I do think that we should have a uniform policy, and I believe that this amendment tries to get us there. Could it be improved? Absolutely, as could every other piece of legislation that comes here. As Kermit Brashear often says, don't let perfection be the enemy of good. And I think this is a good amendment. But one thing I'll point out to you is, perhaps if politicians on city councils were faced with the loss of tax revenue, as they would be under this amendment, perhaps they would listen a little bit more to the business owners, who are also impacted by their conduct. It's hard for me to understand how we can say as a government, it's okay, business owner, for you to invest \$1 million or \$2 million out of your pocket to

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create a business to provide jobs, to provide tax revenue for the state and for the localities in which they're located, and then the government comes in and says, however, you can't allow this conduct. And we had business owners say that their businesses was down 30, 40, 50 percent. Put yourself in their shoes. Take \$1 million out of your pocket and open a restaurant, and then have some government come in and take half of your revenue. We had a guy that owned a cigar bar. He came in and he said, I am going to lose my business. Every penny I have will go down the drain because of this law. That's not appropriate. That's not what government should do. I think the people in Lincoln did vote for this. But I don't believe that the handful, or the dozens of business owners had appropriate input. That's why I'm here. I do want to talk a little bit about the science. Senator Thompson said it's clear and conclusive. And I'm no scientist. I'm not a doctor. But I was handed, by a colleague of mine, a copy of a British Medical Journal article that was published May 17 of 2003. The objective of this article was to measure the relation between environmental tobacco smoke as estimated by smoking in spouses and long-term mortality from tobacco-related disease. It studied the adult population in California, and it concluded, the results do not support a causal relation between environmental tobacco smoke and tobacco-related mortality, although they do not rule out a small effect. The association between exposure to environmental tobacco smoke and coronary heart disease and lung cancer may be considerably weaker than generally believed. Now, I'm not...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...I'm not a scientist, I'm not a doctor. I'm just saying that there was an article in the British Medical Journal that seems to say that maybe the correlation isn't as significant. Although earlier in the debate I conceded that secondhand smoke is not good, and I conceded that it's okay...you know, I kind of like going to a restaurant and not leaving there smelling like smoke. But I also see that there has to be a balance between the rights of the individuals who put money out of their own pocket into creating a business, and government intrusion or interruption. And I don't think it's

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appropriate. I do want to say again that perhaps if politicians were faced with losing tax revenue, maybe they would listen a little bit more to business owners prior to adopting a fairly, in my opinion, Draconian standard. And again, I'm not criticizing anybody. The people of Lincoln have spoken, and I respect that, and I'm trying to honor that in this amendment. And Senator Beutler, his words saying that this discussion is appropriate, I appreciated that. The federal...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. (Visitors introduced.) On with discussion of AM1052 to the committee amendments to LB 480. Senator Mines.

SENATOR MINES: Thank you, Mr. President, colleagues. The last time I spoke, I think some of you may have misunderstood my delivery to be flippant or whimsical. I consider smoking a detriment to my health and anyone else that smokes, anyone else that smokes; not secondhand smoke. I quit smoking because it was detrimental. I was a smoker. I wasn't involved in secondhand smoke. And I tend to...again, statistics. Senator Bourne has statistics saying that secondhand smoke isn't as detrimental. Senator Thompson is doing a nice job of proving her case that secondhand smoke is detrimental. Let's...again, let's make it very clear, we're not going to cure cancer by eliminating smoking in restaurants. What we are doing is imposing on private citizens, imposing the will of this body on private business owners to make a decision about a legal activity in their businesses. Now, Senator Chambers suggested that some of us are carrying the water for the smoking lobby. And Senator Bourne did a nice job of lighting a fire. Frankly, I've never spoken to a lobbyist about smoking. I don't take lobbyists...the smoking lobby...don't talk to them. I don't take their money. I have nothing to do with them. I'm opposed to LB 480 just because it's imposing our will on private business, and that is wrong. Now, you know, I guess I could shoot the messenger. I could...Senator Aguilar said something like, it's about a need to smoke versus the desire to breathe.

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I guess you could also say, it's not a need. We don't have, as a population, the need to go into a restaurant. We don't have the need to go into particular restaurants. The government is saying, well, some of us don't like to go in smoky restaurants, so let's just eliminate smoking, and that way those poor business owners won't have to make the decision themselves. I think it's about the business owners making the decision themselves. If they want to be responsible, if they want to be practical, they...they're allowed to do that. If they think smoking in their restaurant is fine, that's great. I don't think this body should impose our will on that. It's obvious this bill is going to take 33 votes. I don't know whether LB 480 has 33 votes. But the debate is interesting, and I will help continue that debate until we get to the point that we can all vote. Thank you very much, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Further discussion. Senator Byars.

SENATOR BYARS: Thank you, Senator Cudaback. Thank you, members of the Unicameral Legislature. You know, Senator Mines, I appreciate your philosophical difference of opinion. I respect everyone on this floor who has a difference of opinion. And I think that's what it is. And I maybe have the philosophy that all aspects of the whole smoking issue become a part, a serious part of public policy when we look at not only the millions, but the billions of dollars that are spent by this state because of the effects of smoking. It doesn't make a difference whether you talk about smoking per se, as Senator Mines talked about, whether you talk the effect of secondhand smoke, which affects every person who doesn't smoke. It's all a matter of public policy. The will of the people of Lincoln, I think, needs to be discussed, because I think it really jumped up and slapped all of us in the face to realize that probably this is the way the people of the state of Nebraska feel. I don't think anyone realized that the overwhelming vote that came out of the public, the voter in Lincoln, Nebraska, would be as overwhelming as it is. But I do think it comes down to an issue of smoking per se. And it is legal. I wish it wasn't. I would vote right now for it not to be legal. Will I support Senator Bourne's amendment? Senator Bourne is harassing the bill. He'll admit it if you go

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talk to him. I mean, this isn't...you know, doesn't make any sense. We give stuff to Lincoln, Omaha, outstate Nebraska. We do stuff for them all the time. It's a matter of public policy that we decide by this body. This same body can decide that we don't want secondhand smoke to affect employees and people in restaurants, bars, public places. We can make that decision. I'm a cancer survivor. I was diagnosed with esophageal cancer, that's cancer of the esophagus, in 1985. I was told by my doctor that I really would be lucky if I lived two years. I'm a survivor. I used to be a heavy smoker. I smoked until the first Great American Smokeout, November 20 of 1980, and I quit. My doctors told me, not only once, but dozens of times after my surgery, which helped me survive, at which at least twice over Sunday churches over two weeks my parents and in-laws were called out of church because I wasn't going to live through the day, because my lungs collapsed, and my doctors told me time and again, Denny, if you had not quit smoking, you never, ever would have survived. Now, what does that have to do with secondhand smoke? It has to do with smoking. Everything about smoking, everything about the secondhand smoke that we take into our bodies, is negative. It's bad for Senator Bourne. It's bad for Senator Bourne's son. It's bad for Senator Mines. It's bad for his family. It's bad for every member of this body, and every member of our families. And every possible way that we as public officials, making good public policy that can improve the public health of our citizens, it's our responsibility to do so.

SENATOR CUDABACK: One minute.

SENATOR BYARS: I have been consistent--and Senator Bourne is absolutely right--in my passion for protecting people, whether they be an occupant of a vehicle, whether it's wearing a helmet, whether it's secondhand smoke, whether it's smoking. I have been consistent in my absolute passion for public health. And I do hope that you will really, seriously think about this amendment, and defeat it when we bring it to a vote. And I say that with all due respect to Senator Bourne and the others on the other side of this issue. But I feel very passionately about this. Thank you, Mr. Speaker.

SENATOR CUDABACK: Thank you, Senator Byars. Mr. Clerk, do you

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have any reports or announcements?

CLERK: Mr. President, Enrollment and Review reports LB 548 to Select File with Enrollment and Review amendments. Confirmation report from Education. New A bill. (Read LB 542A by title for the first time.) And amendments to be printed: Senator Jensen to LB 70. That's all that I had, Mr. President. (Legislative Journal pages 1170-1173.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) On with discussion of AM1052 to the Health and Human Services Committee amendments, Senator Chambers.

SENATOR CHAMBERS: Mr. President, friends all, when Senator Bourne was talking about a consistent state policy, he did get it backward. Let me analogize to the federal government, because he mentioned how the federal government will do things on roads programs and so forth. When you're building a road, you want wherever that road goes to be treated the same way by that road throughout its length. You don't want to say that at this point the road is three feet wide, at the next point it's six inches wide. There are certain minimum standards the road must meet, and they're going to have to be met throughout. The U.S. Constitution lays out rights which no state may abridge. However--and this has been stated by the Nebraska Supreme Court, state supreme courts throughout this country, recognized by the U.S. Supreme Court--the protections in the U.S. Constitution are minimum. They must be accorded, and may not be breached. However, a state is free to provide a greater degree of protection to its citizens with reference to any right contained in the U.S. Constitution than is provided in the U.S. Constitution. Senator Schimek did a good job of explaining to my young colleague, "Sonny" (laugh), the difference between that slavish consistency, which is the hobgoblin of small minds, by showing that there are nuances, sometimes not so subtle, which will explain differences in conduct. What a person decides to do with reference to personal safety within his or her vehicle is, in my opinion, that person's prerogative. If that person wants to drive a vehicle with bad brakes, which would endanger others on the highway, and it's found out, that person should be called to account. I have not said the state

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should try to ban smoking in somebody's vehicle. But when it comes to the air that everybody must breathe, Senator Bourne and others have heard that expression over and over, that old saying, your rights end where my nose begins. And that is literally the case with secondhand smoke. There is no debate among reasonable, rational people about the danger of secondhand smoke. Senator Bourne and his ilk want not just to get Joe Camel's nose into the tent; he wants all of Joe Camel into the tent, wherever people congregate. Now, I'm not going to say with specificity who may be getting money from tobacco interests. But it would be good to look at the campaign statements or reports of people on this floor, because they may not have to get instructions from the lobbyists on every issue, because they have general marching orders--when this comes up, you go. I don't look at other people's campaign statements, but I've threatened to do it. It's just too much work for me and, besides that, I don't even care. We can determine from the discussions on this floor where people stand. On this particular matter that is contained in Senator Bourne's amendment, we're dealing with something that is designed to make a point. I'm sure he does not realistically think that this amendment, which would take money...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...from the city of Lincoln, would be adopted by this body. As far as his thinking I'm criticizing him and others for speaking at length, he did not listen to what I said. He's like the media sometimes. They don't get the sense, so they run off with what they thought they heard, and put their idea on paper and attribute that to me. So I've told those whose bills are being discussed, just take it easy, don't get heartburn, that's the nature of legislative debate. What I am critical of is not acting in behalf of the public health. And to oppose this bill, in my opinion, is to disregard the health of the public, and to do the work of the lobbyists, the purveyors of tobacco, alcohol, and other things that that old Satan, the Devil, would bring down this country by, and with Senator Patrick Bourne. Thank you, Mr. President and friends all.

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SENATOR CUDABACK: Thank you, Senator Chambers. Senator Aguilar, followed by Senator Smith and five others.

SENATOR AGUILAR: Thank you, Mr. President and members. Again, I'm still opposed to this amendment. Because number one, it is punitive, irregardless of what Doctor...I mean, Senator Bourne says. Sometime in May...I'm going to make a prediction here, not to be too Nostradamus-like, but sometime in May, I predict that the city of Omaha and the city of Grand Island are going to pass stricter smoking bans than what LB 480 allows. I don't think that's news to anybody. So that's what we're talking about. We're not talking about a small minority of people. We're talking about the three largest stand-alone communities in the state of Nebraska. And I'm not sure of the numbers, but I would rather guess that their population is probably more than half the state. That's the number of people that want stronger bans even than we have here. Senator Bourne's amendment wants to penalize them for having that desire. I think that is strictly wrong, entirely wrong. Senator Janssen spoke earlier about the loss of tax revenues from people not buying cigarettes. I'd like to point out that I used to be a smoker. I smoked two packs a day at one point in my life. And I hated it when people told me I couldn't smoke in a specific area. And I'm ashamed to say I was probably very selfish and very rude and not considerate of other people's feelings at that time. I'm glad that's all beyond me at this point. But anyway, to move on with this, when I would go to church, I'd have to quit smoking for an hour. At the end of that hour, I'd leave church, I'd light up a cigarette immediately, smoke it, and then probably light up another one, because I felt I needed to catch up for all that time I missed out while I was in church not smoking. So LB 480 does not make people smoke less. It does not cause a reduction in tax revenues that we're all so worried about. But what it does do is not allow innocent people to be impacted detrimentally by secondhand smoke. I think that's extremely important. And I think that needs to be where the focus of this discussion is. It is about the health of the people of the great state of Nebraska. Thank you, Mr. President. If I have any time remaining, I would offer it to either Senator Thompson or Senator Chambers, whoever chooses.

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SENATOR CUDABACK: Which...Senator Chambers, would you like to use Senator Aguilar's time?

SENATOR CHAMBERS: Thank you, Senator Aguilar. Thank you, Mr. President. There have been many speculations engaged in about this bill and its fate. What I am going to do, probably, is look at the lobby statements and see which are the lobbyists on this bill. And by that I meant the ones against it. They have interlocking interests. They work on other bills. So I'm going to find out which ones are on this bill, and I'm going to do some interlocking working of my own. I'm far more concerned about the interests of the public than I am any lobbyist, any lobbyist, or anybody who carries water for the lobbyists. Senator Bourne mentioned that I've killed more bills than anybody else around here. That's something I take pride in. If you read the bills that come before us, you'll see a lot of them are trash. A lot of senators don't know what's in the bills. They'll admit that they brought it because somebody asked them to bring it. And they're happy when I kill it, because then they don't have to stand up and do their job of telling constituents, this is unwise legislation, I'm not going to push it. But in their mind, they know it's something that I'm opposed to, and I'll do the dirty work of killing it. That's why I refer to myself as the garbageman of the Legislature, because many times,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Thank you, Mr. President. These are things that need to be done. And because I am concerned about the Legislature as an institution, I will undertake to do this. I mentioned the difference between the seat belt law and this bill, where the public at large is affected by the damage of secondhand smoke. The gun bill is one that endangers the public at large. If anybody wants to strap on a pistol, they can do that right now, so that is not a good example to bring into the discussion of this bill. But I, apparently, am so pure and so unassailable that people have to reach way on the other side of the universe and pull something on the other...from the other side of the moon, and say, I got Senator Chambers here. So when somebody acts like they're going to attack me, a great silence

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comes over the body. Then, when they get through, they thought I was going to be hit with a cannon, and it turns out to be a water gun...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...filled with rose water, people express great disappointment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Aguilar. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. As we are discussing the weighty issues of the day, I think we would be remiss if we did not wish our presiding officer, Senator Cudaback, a happy birthday.

SENATOR CUDABACK: Time.

SENATOR SMITH: And we look forward to a healthy snack this afternoon. Thank you. (Applause)

SENATOR CUDABACK: Thank you, anyway. On with discussion. Made my face red. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. Senator Bourne, I'd like to ask you a question.

SENATOR CUDABACK: Senator Bourne, would you respond?

SENATOR BOURNE: Yes, certainly.

SENATOR THOMPSON: Do you know who funded the study that you cited?

SENATOR BOURNE: No, I have no idea.

SENATOR THOMPSON: Do you know if there was any government money involved in that study?

SENATOR BOURNE: No idea.

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SENATOR THOMPSON: Okay. Thank you very much. Well, I have the answer to that question. (Laugh) The study...this is a news release from the American Cancer Society, dated May 15, 2003. The American Cancer Society today strongly criticized a misleading tobacco industry-funded study that compromises society data by using flawed methodology to falsely conclude environmental tobacco smoke may not affect lung cancer. Dr. James Enstrom, the author of the study published in the British American Journal (sic), received funding from a tobacco industry group linked to coordinated attempts to confuse the public about the dangers of secondhand smoke. And there is more information. But this is a tactic. A lot of the tactics we're hearing on the floor are typical of how these progressive efforts to protect the public from a known carcinogen, to protect the public and public health, are confused by things that have been published by the...by funding from the tobacco industry. This particular...president of...okey-dokey, epidemiology and surveillance research mentions that this grant failed to get a government grant, which is kind of unusual in the study of secondhand smoke. So don't be confused by these minority reports. There is so much evidence. It really just comes down to the issue of, what is the role of government in protecting public health? And we do it all the time. We do it all the time in the restaurant industry. We do it all the time in business, a lot of businesses, to protect public health. We protect restaurant patrons by having sanitation requirements, safety requirements. We protect the employees in numbers of ways, regarding their rights as workers. But we are putting this worker segment in a very dangerous situation by having to work eight hours, if that's their shift, or even longer for some people, in an atmosphere of secondhand smoke. It is dangerous. We set the standards. We're not asking a lot. We're just asking that small minority of smokers to not smoke in a restaurant while the public is present. There are...there is information from...I call it the organ information. Whether it's heart, lung, whatever, there's tremendous body of evidence, and all these organizations are supporting these smoke-free workplace bans, because it helps people be healthier. This triggers strokes, heart attacks, asthma. We have so many things that we can improve, and so much health that we can improve by

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passage of this bill. I oppose Senator Bourne's amendment that would create public policy at the state level to discourage good public health policy from happening in our local communities. We should be setting the floor, not the ceiling. We need to work to encourage local communities...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...to have healthy public health ordinances. And we as a body should be setting the standard here in the Legislature for what is clean air that the public should breathe in public places. That's what this is about. And I oppose the Bourne amendment to penalize the city of Lincoln for having a smoke-free workplace ordinance.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Howard, on AM1052.

SENATOR HOWARD: Thank you, Mr. President. Where does government belong in the lives of people? I've spent 34 years asking myself that question on a daily basis. Where does government belong in the lives of people? And I've not yet had a parent whose child was critically ill, whose child could no longer breathe healthily, say to me, no, we really don't need any government help to pay this hospital bill, or to be there for our child, to see them through. Never. Never has that happened. And yet, in the 60 days that I've been here, I've started to wonder, is this legislative body here to give permission and to walk away when it can no longer afford to meet costs for Medicaid? Are we going to form committees to study this to see who we can eliminate from these benefits? It comes down to, what is the purpose, what is the true mission, what is...what are we here for? I'd really like an answer to that. And I'd really like to know, who is it that's going to be there to support these children, these families, with the rising Medicaid costs that people seem to feel we can't afford to do any longer? There's a direct correlation between people's behaviors, the message the state gives, and what we're going to follow through on. And on that note, I'd like to say I'm very grateful that Senator Byars is still with us, and that he did give up smoking. I think he's such an asset. He's certainly

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been a wonderful mentor for me, and I'm grateful that he is here still. So thank you. And I would like to grant the remainder of my time to Senator Thompson. Thank you, sir.

SENATOR CUDABACK: Thank you, Senator Howard. Senator Mines. And this will be your third time, Senator. I'm sorry. You did yield to Senator Thompson. I did not hear you. Senator Thompson.

SENATOR THOMPSON: Thank you. Just one other thing, to clarify issues that have been brought up about the approach that Lancaster...that Lincoln did to its approach to passage of this bill. I received this information: Lancaster County Health Department sent out over 3,000 letters to businesses in 2003 that they thought would be affected by the ordinance. They then held five community meetings with the businesses. There were two public hearings by the Lincoln City Council, instead of the usual one public hearing. One public hearing, Senator Bourne, went till 3:42 a.m. So they did...you know, the statements are made that Lincoln did this without thought or listening to people or providing them input. I think the five community meetings, adding an additional public hearing, and not cutting it off and letting it go till 3:42 in the morning,...I watched the newspaper accounts. There was plenty of discussion. And again, I think we should oppose the Bourne amendment, as directing the state in the wrong direction on public health. And I thank Senator Howard for the time.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Landis. The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on AM1052? All in favor vote aye; those opposed vote nay. We're voting on ceasing debate, AM1052. Have you all voted on the question who care to? The question is ceasing debate. Have you all voted? Senator...have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 25 ayes, 6 nays to cease debate, Mr. President.

SENATOR CUDABACK: Debate does cease. Senator Bourne, you're recognized to close on AM1052 to the Health and Human Services

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Committee amendments to LB 480.

SENATOR BOURNE: Thank you, Mr. President, members. I will go through what the amendment does. And I am going to take it to a vote. One might say this is a barometer. I don't know. Again, the amendment defines what a retail tobacco business is, and says that a cigar store or a store that sells cigarettes would not be under the Clean Indoor Air Act. It does say that a city that adopts...excuse me, a city of the primary class that adopts an ordinance that's more stringent than the state law can't share in tobacco revenue proceeds. And one thing I did neglect to mention is that that money then is put into the Rural Development Cash Fund. And you know, we had some debate about, well, this is a backwards stick and carrot, and...or carrot and stick. And I don't think that's the case. I think that we should craft a policy that provides smoke...a smoke-free environment to those who desire it. And I think what we have today--and this is not a slight against Senator Thompson or anyone else who has worked on this legislation--is we have a cobbled-up mess as it relates to what the Clean Indoor Air Act is. And again, I'm not criticizing Senator Thompson. Actually, LB 480 adds some clarity to it. We have a number of businesses that are under the Clean Indoor Air Act that don't even realize they are, or are violating the law and don't realize it. I told you about a constituent who owned a bowling alley, and there was an issue there, and then we come to find out that they're already under the act. Again, with all respect to Senator Thompson, we don't understand if it applies to bars that have kitchens, or bars that have kitchens that serve food. What is incidental? Is popcorn preparation? Is pizza beyond an incidental preparation, such that it would require a bar to be...or it would basically say a bar is a restaurant? My point is, is that I think this is an area that is very confusing. I do think this amendment adds some clarity to it. I would suggest that you look at the amendment, you pay attention to what it does. It just says the Clean Indoor Air Act is the law of the land. It retains communities' local control, but there is a price. And I think that a consistent policy in this regard is appropriate. I think it's an appropriate state conduct. We've done it before. I'm certain we'll do it again. The federal government does it. I would urge you, if you're

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supportive of the bill, vote this amendment down. But let's see where we're at. I would urge your adoption of this amendment. It makes sense. It's fair. I think it's appropriate. I think it treats business owners who invest their money in a way they should be treated. I think it protects the public. I think this is a good policy. I would urge your adoption of AM1052. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on AM1052. The question before the body is, shall AM1052 be adopted? All in favor vote aye; opposed, nay. Voting on the adoption of AM1052, amendment to the committee amendments to LB 480. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 13 ayes, 27 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The amendment is not agreed to. Mr. Clerk, next motion, please.

CLERK: Mr. President, Senator Bourne would move to amend with AM1051.

SENATOR CUDABACK: Senator Bourne, you're recognized to open on AM1051 to AM0802.

SENATOR BOURNE: Mr. President, I'd like to withdraw that amendment and file it at the bottom.

SENATOR CUDABACK: So ordered.

CLERK: Mr. President, the next amendment I have to the bill, Senator Synowiecki, AM1056. (Legislative Journal page 1117.)

SENATOR CUDABACK: Senator Synowiecki, you're recognized to open on your amendment to the committee amendments to LB 480.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. My amendment attempts, I think, perhaps--of course, I can't speak for Senator Thompson or Senator Aguilar--to arrive at a goal of the underlying intent of the bill. And that is, I think we're

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looking at family restaurants, where the consumption of food is the primary purpose of patronage. I think, members, there is a discernible difference between locally owned taverns that may or may not serve food, and family-oriented restaurants such as Chili's, an Applebee's, a Perkins type of environment. These destinations...you know, you go to a Perkins, you go to an Applebee's, these type of places, for the primary purpose to eat a meal. And you don't necessarily hang around and converse with...and it's not seen as a social gathering place, as, perhaps, a tavern environment. And I think we need to have this difference in venues recognized in our public policy. As it stands now, the...for purposes of the committee amendment to LB 480, a bar means an establishment that serves alcoholic beverages, may provide limited food service--and there's been much, much debate relative to the potential inconsistencies with that, and Senator Bourne spoke to that in his closing on the former amendment--and prohibits the presence of minors--which, that gives me a little bit of heartburn, which I discussed last week. And limited food service means the service of only snack items or commercially prepared and wrapped foods that require little or no preparation. My amendment would change the definition of a bar to include any establishment that holds a license issued under the Nebraska Liquor Control Act to sell alcoholic liquor at retail for consumption on the licensed premises, and is a pickle card operator or has keno. And I think, when I speak of these kind of family-oriented restaurants, it's not within their corporate culture at all to sell pickle cards. A Perkins is not going to have a keno operation. An Applebee's is not going to have a keno or pickle card operation. What we're trying to do here, I think, is target locally owned entrepreneur type of establishments, where individuals come, they may or may not eat a meal, but the primary purpose of the venue is a social gathering place, where people come to watch a ball game, and again, may or may not eat a meal. It may not be included within it. But I think the current approach under the committee amendment to define a bar is way too limited. I think there's provisions in there that are overreaching and unnecessary. This is my attempt to begin a dialogue so that we can then proceed, I think, with a more fluid, a more rational approach to the underlying goal of LB 480. I offer this amendment, you know, for a discussion

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piece at this point. Perhaps we could develop this and, again, arrive at...and my intent here is to arrive at a meaningful definition of a bar that recognizes the discernible difference between a tavern-style oriented environment and a family restaurant. And that is my bottom line goal. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. You've heard the opening on AM1056. Open for discussion. Senator Johnson. Is Senator Johnson present? Yes, he is. Senator Johnson, followed by Senators Chambers and Bourne.

SENATOR JOHNSON: Mr. President, excuse me for being late. I was visiting with the doctor of the day. I guess the reason that I'm standing up is, I've been amazed at the discussion this morning. I really didn't think that there was anybody in the state of Nebraska, let alone in the Legislature of Nebraska, that didn't appreciate the devastating health effects of smoking, both directly and secondhand. I just was amazed at some of the statements that have been made. I won't go any further than that. What I think we really need to talk about here this morning is this: How can we come up with reasonable public policy that does take into account these devastating effects of both direct and secondhand smoke, but do it in a businesslike manner so that we protect...let's put it differently, so that we make our decisions so that they do not discriminate against one business against another? How can we reasonably accomplish this? We're never going to do it perfectly, but how can we reasonably do this? This is what I think we should be talking about. Let's not talk about alcohol. When you have someone having a drink next to you, do those fumes affect you like smoke does? Of course not. We don't need to be talking about things like that. We don't need to be about...talking about smoking ban all over. We tried that with alcohol in the thirties. It doesn't work. We don't need to be talking about that. We're never going to do that. Let's talk about reasonable public health legislation, about how we can do this and not discriminate against one business against another. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator

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Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I want to divide the question. And I will divide it because the first part of the amendment talks about racetrack enclosures; the second part talks about bars. And I would like to divide it on the basis of those two separate issues. And I hope this is not going to take away all opportunity I have to speak. But should we...

SENATOR CUDABACK: Senator Chambers,...

SENATOR CHAMBERS: ...should we approach?

SENATOR CUDABACK: Why don't, Senator Chambers, you and Senator Synowiecki please come forward, and we'll discuss it further.

SENATOR CHAMBERS: And should we bring knives, guns, or boxing gloves? (Laughter)

SENATOR CUDABACK: You will be searched. The Chair will rule that the question is divisible. Mr. Clerk, please read how it was divided.

CLERK: Mr. President, the division is in two pieces. The first amendment to be considered will be lines 3 through 10 of Senator Synowiecki's amendment, lines 3 through 10. (FA157, Legislative Journal page 1174.)

SENATOR CUDABACK: Senator Synowiecki has decided to take up the second part first. Senator Synowiecki, would you like to reopen on the second part of the divided question?

SENATOR SYNOWIECKI: Senator Cudaback, thank you. Members, thank you. The part of the amendment that we'll be taking up, which is being designated as FA157 on the board, indicates that a definition of a bar, for purposes of LB 480, would be a licensee issued under the Nebraska Liquor Control Act to sell alcoholic liquor at retail for consumption on the licensed premises and (b) is a pickle card operator, as defined in Section 9-316, which sells pickle cards on the licensed

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premises, a licensee which conducts a lottery under the Nebraska County and City Lottery Act on the licensed premises, or both. So essentially, what we're...we're trying to arrive at the definition of a bar, would be one in which sells pickles or has keno or both. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. The Synowiecki amendment has been divided, and Senator Synowiecki has opened on the second division. Open for discussion on that division of the divided amendment. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Quite honestly, I don't know if I support Senator Synowiecki's amendment or not. You know, I think it does illustrate what's wrong with the Clean Indoor Air Act. And I had mentioned in my closing on the first bill, or the first amendment, that it's a cobbled-up mess. Nobody knows...think about this, members. Do you know what is entailed, right now, under the Clean Indoor Air Act? We're being asked to vote on something and expand the scope of a policy of this state, when the majority of us probably don't even understand who's under its scope right now. I asked Senator Thompson several questions, and she didn't...in fairness to her, it's a confusing area. And I've looked at it, and I can't ascertain exactly who's covered and who's not. But we don't know. We don't know who's covered. And then I read this amendment, and I tend to support it, I guess, because it seems to weaken the Clean Indoor Air Act. It says that if...a person wouldn't be under the Clean Indoor Air Act if they hold a license issued under the Liquor Control Act to sell liquor at retail for consumption and is a pickle card operator or...it looks like, or a licensee which conducts a lottery. So it appears to me that if an entity...say the bill goes. It would ban smoking in restaurants. But it appears from this that if they sell pickle cards, the ban wouldn't extend to them. Would Senator Synowiecki yield to a question or two?

SENATOR CUDABACK: Senator Synowiecki, would you respond?

SENATOR SYNOWIECKI: Yes.

SENATOR BOURNE: Senator Synowiecki, is that your assessment of

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what this amendment...this division of the amendment does?

SENATOR SYNOWIECKI: I need to find my original.

SENATOR BOURNE: I think it's FA157 of the divided component.

SENATOR CUDABACK: The second component, Senator Synowiecki.

SENATOR SYNOWIECKI: Senator Bourne, what I'm attempting to do is, on page 5 of the original committee amendments, as it relates to the definition of a bar, for purposes of LB 480. And currently, Senator Bourne, a bar means an establishment that serves alcoholic beverages, may provide limited food service, and prohibits the presence of minors. And limited food service means,...and it goes on to define limited food service. My...what I believe is that that's an oversimplistic attempt to discern the difference between a family-oriented restaurant atmosphere to a tavern type of atmosphere. And I'm attempting to...I'll admit firsthand, it broadens the definition of a bar relative to LB 480, or the committee amendment.

SENATOR BOURNE: Okay. And you're just basically distinguishing between...you had mentioned a Chili's or an Applebee's. And I think those facilities are smoke-free already, voluntarily, I might add. At least I think they are. I don't know. But what you're trying to do is establish that if a person wants to go to a bar and he or she goes there by themselves, it's not a family type venue, that they should be able to smoke in that place should they and the proprietor determine that it's appropriate to do so?

SENATOR SYNOWIECKI: Yes. I think, Senator Bourne, there is a difference between a family-owned (sic) restaurant, such as a...or, a Chili's, an Applebee's, and a Perkins, where the primary purpose of patronage is eating; and then you have other venues in which you might go for a ball game, or...I talked about, in debate last week, after a ball game, a Little League Baseball game, you may want to go to a tavern type style atmosphere and get a burger. And the parents might have a cold beer and the kids might have a cold pop. I think there's a difference between them two.

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SENATOR BOURNE: Yeah, I tend to agree with you, Senator Synowiecki.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: And thank you for answering those questions. And I'll tell you, what Senator Synowiecki is trying to do is add clarity to this issue. And again, I wanted to point out that we talked about, in Judiciary Committee, people that were included in the Lincoln's...in Lincoln's ban, that were welding shops. And I know Senator Aguilar had some questions about that. But I think what Senator Synowiecki is trying to do with this amendment is add clarity to a very confusing section of statute, and delineate, or separate between what would be construed, or could be construed as a family restaurant, versus a bar where adults go and consume legal products that actually we have decided as a policy are essentially adult products, in that you can't buy alcohol or cigarettes unless you're a certain age. So I am going to support this division of the committee amendment. Although I do think, if you step back and you think about it, it does demonstrate what a poor section of statute that we are dealing with originally here, and that there's a lot of confusion, there's a lot of people that are required to comply with it that don't even know it, or if they do know it, they don't know how to comply. So I think it...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: ...does demonstrate that this whole section needs to be redone.

SENATOR CUDABACK: Thank you, Senator Bourne. Further discussion on the second part of the divided amendment, Senator Thompson.

SENATOR THOMPSON: I'll waive at this time. Thank you.

SENATOR CUDABACK: Senator Thompson waives her...Senator...

SENATOR THOMPSON: I'm sorry. I'm sorry. Sorry. I'm sorry.

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SENATOR CUDABACK: Senator Landis. Senator Landis, did you wish to speak?

SENATOR LANDIS: Thank you very much. I appreciate that. I was in conversation here. I oppose the Bourne amendment. I'm going to oppose the amendments that are not acceptable to Senator Thompson, so that she gets a fair shot at her bill. But then I'm going to vote against LB 480. By the way, there are plenty of lobbyists on all sides. It's not like there's just one side that has the crass set of lobbyists. There's a whole lot of money and a whole lot of suits out there on both sides. These are two very powerful, effective lobbying groups. With respect to the issue of public health, I think public health is a legitimate goal and a valuable one. It is one of several competing values at play here. And one of the ways of responding to public risk is notice, is notice. For example, there's a notice on a bar that says, alcohol...drinking alcohol by pregnant women is dangerous to women. It doesn't say you can't do it. It doesn't say, bartender, you can't...you have to ask if they're pregnant or not. We do that public entity by notice. I think notice is a fair way. And by the way, there is inadequate notice. I think employees who are going to be around secondhand smoke should have fair notice. I think anybody who is going to come in contact with secondhand smoke should have fair notice. I think, for example, the notion of, would you like to be in the smoking or the nonsmoking section, is bogus. You know why? Because it's all the smoking section. That's all a smoking section. And there is no such thing as a no-smoking section just because you call it that. Because if you're sitting in that section and there's a smoker in the smoking section, you're in the smoking section. So there's the problem with that approach. I don't mind, however, that we separate those two. But I do...I think it's inappropriate to call anything a nonsmoking section when there's a smoker present. On the other hand, you can take this too far. You can have a room full of all smokers, with employees who have been given notice and are there willingly, and LB 480 would say, yeah, but you can't do that. We don't care that everybody there is there by choice, we don't care that everybody there is a smoker, we don't care that there's a nonsmoker not present--you can't be in that

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room. That room can't exist. And the people in that room can't smoke, because it's possible that a nonsmoker might walk into that room that's marked "smoking lounge." There might be a nonsmoker who walks into Cliff's Smoke Shop next to the humidor of the cigars. I would think there would be some reasonable accommodations we can achieve, and let me tell you what I think those elements are. I think fair notice is one. Number two, anything that says a nonsmoking section when you're in area that has a smoking section is bogus, and I don't think you should be able to claim that it is a nonsmoking section, because that's not fair notice. Separate your customers, fine. But tell everybody, this is a smoking establishment. Tell them that they have that risk. Third, remember that in fact the vast majority of people are nonsmokers, and that's a lot of power. In the marketplace, that's a lot of power. All they have to do is walk with their feet, and you'll be surprised at what's at risk here. I think it's oftentimes claimed this is against smokers versus nonsmokers, in which case the smokers win, because they have the higher interest. But the...I think the problem is between the nonsmokers' rights and the property owners' rights as to determining the use of their property, so long as they do it in a reasonable way. It seems to me that it...we should be able to have a structure that says, this is a smoking lounge, and people that come here are going to be subject to secondhand smoke. Notice is given to you now. When you walk in here and buy a drink, this place will be filled with smoke. And you let people do it. Because the flip side of public health is also a pretty powerful one, and that's...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...the freedom of choice, including the freedom of choice of making bad personal decisions. I think that's a fair choice to make. In other words, what I'm looking for is a non-absolutist position. I'm looking for something that allows for accommodation. I'm looking for a situation which, there's a room full of people who are voluntarily, knowing that they're there and want to do this, that they...we do not have a state law that says they can't. Where there's not even a smoker...a nonsmoker present, that the smokers can't get together in a place and be able to do that, that we deny them that freedom in

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the name of public health of somebody who's not even in the room--that's overreaching. I think minds who are not absolutist should be able to find some reasonable set of accommodations. And I don't find them coming from either party. Because I think the public health one says, public health trumps everything.

SENATOR CUDABACK: Time, Senator Landis.

SENATOR LANDIS: Then there's a notion over here on freedom, and I say they say it trumps everything. And those two values ought to be balanced,...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...and they're not in LB 480, which is why I am voting no.

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

CLERK: Mr. President, an amendment to be printed to LB 480 by Senator Thompson. (Legislative Journal page 1174.)

And a priority motion: Senator Byars would move to recess until 1:30 p.m.

SENATOR CUDABACK: Motion to recess till 1:30 p.m. All in favor of the recess motion vote...say aye. All opposed, nay. We are recessed.

RECESS

SENATOR CUDABACK PRESIDING

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

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ASSISTANT CLERK: There is a quorum present, Mr. President.

SENATOR CUDABACK: Mr. Clerk, do you have any items for the record or messages?

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LB 193 as correctly engrossed; LB 276, LB 389, and LB 389A, all correctly engrossed. That's all I have at this time. (Legislative Journal page 1175.)

SENATOR CUDABACK: Thank you, Mr. Clerk. It is 1:30 and past. We now, as the agenda states, will go to General File, 2005 senator priority bills, the Bourne division. Mr. Clerk, LB 673.

ASSISTANT CLERK: Mr. President, LB 673 was introduced by Senator Louden and others. (Read title.) The bill was read for the first time on January 19 of this year, referred to the Agriculture Committee. That committee reports the bill to General File with committee amendments attached. (AM0867, Legislative Journal page 931.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Louden, you're recognized to open on LB 673.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I'm introducing LB 673 and that's a bill to manage black-tailed prairie dogs in Nebraska. Two critical events have led me to introduce this bill: a prolonged severe drought, and the absence of colony management for several years. Management ended when the black-tailed prairie dog was placed on the candidate list for being named an endangered species. The U.S. Fish and Wildlife Service concluded last year that the species and its habitat were not threatened and, therefore, should not be placed on the endangered list. At the same time that the species was being considered, drought hit the western United States. Lack of management, combined with drought, created overpopulation of the species and we now have a crisis. Some counties in the western part of Nebraska are considering changing the classification of agricultural land to wasteland

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for taxing purposes because of the devastation done by overpopulation of black-tailed prairie dogs. Thus, the overpopulation of black-tailed prairie dogs has lowered the taxing base of some counties and school districts that are in the 49th Legislative District. When an area becomes overpopulated with black-tailed prairie dogs, the vitality of the grassland ecosystem is jeopardized. During years of drought, the habitat can no longer support the population of a colony, and the species resort to any means to survive. Not only do they eat all the vegetation. They also eat plants' root system. In the worst of the circumstances, they will cannibalize their young, which they have done in western Nebraska. The devastation of all plant life in an area comprises...compromises water quality when precipitation does fall. Without vegetation, water will cause silt and debris to enter streams, degrading water quality. The black-tailed prairie dog creates colonies that alter topography and vegetation, and may extend over hundreds of acres. Black-tailed prairie dogs burrowing, foraging, and clipping of vegetation affects soils, water transport, and plants. Grassland ecosystems in areas traditionally used for wildlife habitat, recreation, and grazing may be destroyed if black-tailed prairie dog colonies are not managed. A management plan for black-tailed prairie dogs would address these problems and control them before they create the disastrous situation we now have in areas of northwest Nebraska. LB 673 is a tool to manage a wildlife situation that is out of control. It is a management plan to be used when a species begins to encroach into areas where it is not wanted, or areas it can cause harm to the environment, such as a watershed or forage producing areas. This bill is written to address a problem of encroachment onto adjacent property. LB 673 has been amended in advance by the Agriculture Committee. As amended, the bill will allow counties to choose to adopt the black-tailed prairie dog management plan. Section 3 of LB 673 addresses a procedure that counties use to adopt the act. A county may adopt by resolution and carry out a coordinated program for the management of black-tailed prairie dogs. It is not mandatory that any county in Nebraska adopt the plan. If a county adopts a management plan, it will be eligible to apply to the state Department of Agriculture for funds to assist with the cost of management. The committee amendment

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states the legislative intent to appropriate \$1,000 in fiscal year 2005-06, and 2006-07 to the Animal Damage Control Fund. I have filed an amendment to the committee amendments that would remove this legislative intent language. That was Senator Chambers has mentioned that the Legislature cannot appropriate the money without an A bill. LB 673 carries an A bill which would appropriate the money, and we can have a discussion on that when the A bill is on the agenda. The committee amendment also states that the director of the Department of Agriculture may provide up to \$25,000 in fiscal year 2005-06 and 2006-07 to counties that have adopted a management plan and that apply for funds through the department. LB 673 is not an extermination plan. It is designed to allow citizens, who want black-tailed prairie dogs to live on their property, to do so. The bill in no way suggests that prairie dogs should be completely eradicated. LB 673 doesn't change any of the existing restrictions on the use of poison to control prairie dogs. Federal law restricts the time of year when poison may be used. Poison is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act. Poisons regulated under this act may be used only by persons licensed to apply them. LB 673 changes none of the restrictions on poisoning of prairie dogs. People who work with grassland agriculture know that the ecosystem has to be kept in balance, and that is what I want to accomplish through LB 673. With the management, ecosystem can be maintained for the benefit of all: the black-tailed prairie dog, grazing animals, and other species in agriculture. At this time, I will conclude my remarks so that Senator Kremer, Chair of the Agriculture Committee, may introduce the committee amendments to LB 673. That would be AM0867. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. You've heard the opening on LB 673. As stated by the Clerk, there are committee amendments. Senator Kremer, as Chairman of Ag Committee, you're recognized to open on AM0867.

SENATOR KREMER: Thank you, Senator Cudaback and members of the body. I think Senator Louden has maybe alluded to a few of the changes, but the committee amendments actually strike the original sections and become the bill. The amendments make several substantive and technical changes, generally described

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as follows: The authority and duties of the counties under the act are permissive under the committee bills...committee amendments. They more narrowly and objectively define the purpose of the bill as preventing uncontrolled expansion of prairie dog colonies to neighboring property. They revise the duties of agriculture...the Department of Agriculture to largely an advisory role. The authorities of the animal control...Animal Damage Control Fund, to be utilized toward specific objectives, such as prairie dog management, and there are technical and clarifying amendments to enforce these mechanisms. A little bit of the details: The primary change is the authorities of the prairie dog management become permissive authorities and may be...and may, let me emphasize that, be assumed by counties that apply only to land within counties that opted to exercise that authority. The original bill imposed prairie dog management responsibilities upon any county where prairie dogs were present. Now it's just on the counties that have this management plan. Section 3 of the amendment authorizes counties to adopt a prairie dog management plan consistent with the regulations of the Department of Agriculture. The county which adopts a plan assumes authority that are set out in the remaining part of the bill. The authority that's responsible to the counties, in Section 5 of the amendment, specifically lists those authorities that may be utilized. They can employ personnel. They can cooperate with federal, state, and local governments. They can issue general and individual notices. They can examine property. They can request and receive state aid from the Animal Damage Control Fund. Other authorities in the act that the counties may assume was included in Section 8, the right to enter and perform activities authorized by the act; in Section 7 (sic), establish a county black-tailed prairie dog management fund. Under the amendment, the Department of Agriculture, as I said, become mostly advisory. And Section 9 assigns duties and authorities to the department to develop expertise in prairie dog management; Section 10 they are...they can convene an advisory committee with membership consisting of state and federal land management agencies, the Institute of Ag and Natural Resources, and other organizations with expertise on prairie dog and land management. Section 11 adopts regulations to guide counties in implementing the authorities made available under the bill, and

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they include the regulations for developing a county management plan for methods of prairie management, for issuing general notices, and for procedures, and requesting state aid made available in Section 15 of the amendments. Also, it redefines the enforcement management goal. The committee amendments redefine the management prairie dog colony as one confined to one landowner. This is a standard that's much less subjective than originally, which was a problem with some of the county commissioners in the counties that were involved with prairie dogs. Number two, the counties would have less need for...to enter the property to view the colonies, and that was one thing that the county commissioners did not want to get involved in, in having to go onto the land and make subjective decisions. It also is consistent with the ultimate purpose of the bill and it greatly reduces the instances where the county intervention is required. There's also a number of cleanup and clarifying revisions that are made in individual notices that may be served to the landowners, and I will list those. It changes the duty of the county to serve notice when reason to believe the landowner has allowed colonies to expand to adjacent land. It changes the duties of the landowner notified to employ management interventions within 60 days of the date of the notice; that they have to respond to the requirements within 60 days. Number three, clarifying that the landowner's right to challenge is...has to be within 15 days of the notice. It clarifies the right to challenge an individual notice and it's available in either type of the notice, and there's two types of notice. One would be a notice that was imposing a fine, and the other would be that the...to enter property to perform the management actions and charge the landowner for the costs of that. And so he could, the landowner, could challenge either one of those types of notices. Also, it requires the landowner to request for a hearing in writing. If he wants to have a hearing, he has to do that in writing. The amendments retain the right of the landowner to protect any amount of fine...or to protest any amount of fine or management cost imposed against the property, and to appeal any decision of the county to the courts. One other thing, and Senator Louden mentioned this, in...there's a revision in 81-2,237; states the legislative intent to appropriate \$100,000 toward a Damage Control Fund for each year of the upcoming biennium, and Senator Louden, I think,

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has an amendment that would remove that language. It also authorizes up to \$25,000 per year in fiscal years '06-07 and '07-08 to be expended as aid to counties that have adopted a prairie dog management plan. The Agriculture Committee staff and Senator Louden and I know NACO representatives worked for some time to try to come to a compromise where people felt comfortable with this, especially the county commissioners in the counties. We did have a video hookup with Chadron State College where people out in the western part of the state was able to come and testify, and we had many people testifying. Some of the counties did not want to start getting involved, some of them did, and so that's why the committee amendments were pretty extensive that it made it permissive that they could do this if they...if they had had a written plan. With that, I think I will...I'd like to turn the balance of my time back to Senator Louden, if he wants to expound on the committee amendments any. Thank you.

SENATOR CUDABACK: Senator Louden, did you wish to utilize some of the Chairman of Ag Committee's time?

SENATOR LOUDEN: Yes. Thank you, Senator Kremer, and thank you, Mr. President. I guess I would mostly want to mention on the handout that was handed out that it gives some of the things that is done by this bill, and it includes the Department of Agriculture, the counties, and the landowners. And, of course, the Department of Agriculture is...be one of the higher bodies in the state, would probably adopt rules and regulations, and that's a part covered in the bill. And as far as the counties, they may adopt this management plan. This isn't something that has to be done. It's optional. If they don't have any prairie dog problem in their county then it isn't necessary for them to adopt this plan. And, of course, the landowners in counties that have adopted this plan, they can manage the colonies in their...in their...on their land, and this is kind of important so that you have a concerted effort against prairie dogs or whatever if they are encroaching on someone. Then one of the other things that we mentioned when Senator Kremer mentioned the laws and how they will be...the notices and that sort of thing. This was all patterned after the noxious weed law, so the laws and how they're set up for notices and that in there isn't

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anything new that we don't already have in statutes. We thought by going with something similar to the noxious weed law would be...wouldn't be any problem to implement; that people were already familiar with it, too. So, at this time, I would ask for the advancement of AM0867 to the...to the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden and Senator Kremer. Mr. Clerk.

ASSISTANT CLERK: Mr. President, I do have amendments to the committee amendments. The first is offered by Senator Louden. This is AM1007. (Legislative Journal page 1140.)

SENATOR CUDABACK: Senator Louden, to open on your amendment, AM1007.

SENATOR LOUDEN: This is a simple amendment and it's clear at the back, on page 12 of the committee amendment, and is mostly...strikes the wording for...that the Legislature to appropriate \$100,000. My understanding is, from listening to Senator Chambers since the beginning of this year, we've had a couple bills come up and it's been...that type of wording has been in there, so I thought to clarify the matter we would strike that matter out and discuss the matter when we got to the...to the A bill. While we're talking about the thing, that \$100,000 would go into the Animal Damage Control Fund. So, as we get to the A bill, we'll probably have more discussion on it later. So I would ask for the adoption of AM1007 to the Agriculture Committee bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. You've heard the opening on the Louden amendment, AM1007, to the Agriculture Committee's amendments to LB 673. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I could say (singing) where often is heard a discouraging word. (Laugh) What I'm going to do with this bill is listen to the proposed amendments and then I'm going to offer an amendment to strike each individual section and force a discussion of every word in this bill. I'd like to ask Senator Louden a question

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first, and he may deter me from that course. Senator Louden, would you yield to a question or two, if the President would let us engage in a discussion?

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

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, in your opening, you had mentioned something about prairie dogs encroaching into various areas where human beings are doing various things to earn a living. Did you make a statement similar to that?

SENATOR LOUDEN: Yeah, I guess it would be. I said this is a bill for encroachment of prairie dogs, whether the people are there making a living or whether it's a watershed area or whatever, but...

SENATOR CHAMBERS: Okay. Now, who was there first? And this is not a facetious question. Were the prairie dogs first there, or these people you're trying to protect?

SENATOR LOUDEN: Some places the people were there first. I mean, prairie dogs weren't every four feet all over the United States in the early days. There were prairie colonies then, such as they are now. There were places that there aren't any prairie dogs.

SENATOR CHAMBERS: So the prairie dogs were there first.

SENATOR LOUDEN: In some places, but some places people were probably there first.

SENATOR CHAMBERS: So there were some places in Nebraska where no prairie dogs existed at the time people came there. Is that what you're telling me?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Okay. Now, in those areas where the prairie

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dogs were there first, the people encroached on their terrain. Isn't that true?

SENATOR LOUDEN: Well, I guess...yeah, I suppose you could call it encroachment probably.

SENATOR CHAMBERS: Well, then why are you going to call what the prairie dogs do encroachment when they, in fact, were there first? So let me ask you, what do you mean by encroachment?

SENATOR LOUDEN: An encroachment would be when they start spreading over into property where they're not particularly wanted. I guess the reason, when you say people encroached on the prairie dogs, they not only encroached on the prairie dogs. They encroached on the buffalo. They encroached on the Indians. They encroached on any other wildlife. There are no more elk around Broken Bow. How many Native Americans have a reservation around Omaha? Those are all encroachments, I guess, when you talk about encroachments.

SENATOR CHAMBERS: But what I want to do, because you opened such a broad realm of discussion, I want to restrict it to the bill that you presented to us. There are areas where the prairie dogs who would be affected by this bill were there before human beings came. Would you agree with that?

SENATOR LOUDEN: Probably so, and that's the...

SENATOR CHAMBERS: Okay.

SENATOR LOUDEN: ...reason we put in there that if they so...if they're not bothering anybody then they won't be managed there. That's in the bill.

SENATOR CHAMBERS: Okay. I'm going to still take it step by step, despite the fact that your answer gave a little more than what I asked for. When we talk about prairie dog colonies encroaching onto other property, the only way we know that the property is, quote, other, is that some artificial line or boundary was fixed by somebody. Isn't that true?

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SENATOR LOUDEN: Yeah, I suppose that would be...yeah, that would be true statement.

SENATOR CHAMBERS: Okay. So if it was found that a boundary had been incorrectly drawn and when it was properly drawn prairie dogs were not encroaching on other property but was really on the property of the person who did not mind, if that person whose property they are on had been ordered to enter a management program, that program would be...that order would be nullified. Is that correct?

SENATOR LOUDEN: Well, I don't know if I quite follow you according to the bill, because if they got...if they're on property and a person...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...doesn't mind having them on that property, they can stay there. That's up to the property owner to decide.

SENATOR CHAMBERS: But if the adjacent property owner had a property line that was not properly drawn and, in fact, these animals were still on the property of the person who wanted them there, and when the line was properly drawn it would be shown that they were not on the adjacent property but on that of the person who wanted them, when that line was properly drawn and they were found not to be encroaching, if an order had been given to the one who wanted them there to manage these animals, that order would be nullified, wouldn't it? Well, our time is up so I will...

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: ...turn on my light. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion. Senator Louden.

SENATOR LOUDEN: As I turned my light on, it was mostly discussion to continue asking for support for this bill. This is something that is probably a necessary management tool for

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the western end of the state out here. At the present time, you don't have a management or a prairie dog problem in Lancaster, Douglas County or some of the neighboring counties, but I do know there are prairie dogs in this area and if they're not a problem then they don't have to be managed and the counties don't have to adopt a plan. But they are in areas that have rather complete devastation. I just call...got a call from a lady out in Harrison that said the other day they had a fire call and they went out north of Harrison because they thought they had a prairie fire and it was a prairie dog town. The dirt was blowing on the prairie dog town so it looked like it was a fire. And if any of you ever lived out in the country in places like that, I can attest to that. Whether it's alkali lakes that are bare or whether it's a prairie dog town that's bare, these are something that needs to be managed. It isn't any different than your deer or your wildlife. At the present time, there's hunting season on deer and that uses a management tool. Nobody seems to be concerned of that. There's quite a revenue attached to it. It just so happens nobody eats prairie dogs and they're not able to be managed. We have gopher problems. There's management plans that it isn't necessarily county ones, but gophers are handled in the same...in the same manner, only on gophers they usually try some complete eradication in areas that they're not wanted. That's done in areas where I live, usually down in the meadow land or something like that or an alfalfa patch. The gophers usually have the hills and the people have the valleys, is the way it's being worked. This LB 673, of course, with the committee amendment onto it, has changed the outlook of it. We worked with NACO, the county officials organization, to come up with a plan that they were more comfortable with so that the counties didn't think they would have to put out a lot of money to implement this thing. The idea is to try and implement it without a huge cost to counties or state, for that matter. It's up to the landowners and, of course, on managing and working with prairie dogs, this is usually a labor-intensive project and usually there's a lot of folks who will get a few people together and they go out and do what they can if the prairie dogs are so moved into an area that they're not wanted. With that, I still would ask for the acceptance of AM1007 to the AM0867. Thank you, Mr. President.

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

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage in a little bit of a conversation with the introducer, Senator Louden, if he would be willing to discuss a few items that I have a concern with, please.

SENATOR CUDABACK: Senator Louden, would you yield?

SENATOR LOUDEN: Yes.

SENATOR STUTHMAN: Senator Louden, were these prairie dogs in the area, you know, many, many years ago, or were they, in your area, introduced into that area by the Game and Parks at one time?

SENATOR LOUDEN: No, I...they weren't introduced. This is on...a lot of it is on federal land up around the Harrison area and, as far as I know, there have always been some prairie dogs there all the time and they usually cohabitate with people until they get...the last few years when there was such a drought and then they got overpopulated and the ecosystem couldn't take care of them anymore. So consequently, they've increased to where they're a problem now. And it is...there is concern that the valuation of the land will have to be lowered on these, where these colonies are.

SENATOR STUTHMAN: And how many prairie dogs would there be in a colony, or how many would you be talking about, or how much area would they be encompassing what we're talking about as far as a management area?

SENATOR LOUDEN: Well, as...it depends on the size of the colonies. For instance, like the Oglala Grasslands they talk about, and that's probably where the only place is an accurate measurement, is there's about a little over 2,000 acres of just prairie dogs on that...on that area. Some of the other places the federal people have measured it off quite closely. On federal lands, there's probably around 30,000 acres of prairie

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dogs. On the Game and Parks, I don't know if I have any information right handy on the amount of prairie dogs there are on Game and Parks, but usually I think somewhere around there we have something that's there a...about 200,000 acres, I think it is, of prairie dogs in the state.

SENATOR STUTHMAN: So, in other words, you know, when you're talking that many acres, there's going to be thousands of prairie dogs is what we're talking about, or is it just a small area of prairie dogs?

SENATOR LOUDEN: Well, when you go the state over, yeah, there's thousands of prairie dogs. Of course, they...this isn't eradication. It's a management plan. There will be areas that they'll probably...nobody will bother them. I understand there's some starting right out here outside of Lincoln now. Now, whether or not anybody decides to manage them or not, I suppose it depends on how big the colony gets and whether they have rattlesnakes.

SENATOR STUTHMAN: But this, your plan in your bill, is just a management plan? It's not a eradication plan?

SENATOR LOUDEN: No, it's a management plan. If the prairie dogs aren't bothering anyone and people are satisfied with where they are and what they're doing, they don't have to eradicate them or do anything with them. Don't have to do a thing with them.

SENATOR STUTHMAN: How many...how many counties, Senator Louden, you know, would realistically be in this or could adopt a management plan? Is it all up in your area, or there's some in the northeastern part of the state?

SENATOR LOUDEN: That I...how far northeast I don't know, but I know down through the southern part of Nebraska there's a lot of counties in there that have them. And then, of course, in the western part of the state nearly every county has prairie dogs. In some places they are a problem, so with the APHIS map that I've looked at, there's, I would say, oh, close to half the counties probably contract with the Animal, Plant, and

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Inspection Service, which is APHIS, which under their department is the animal damage...wildlife animal damage control, and they are the ones they usually contract with to eradicate...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...predator animals and that sort of thing.

SENATOR STUTHMAN: Okay. You also mentioned in your opening statement that possibly counties would adopt a management plan similar to the noxious weed control plan, what they have on county level. I am...I'm not very much impressed with the noxious weed control issue. We've been working with it for a long time and really have never accomplished the goals that it was intended for. How do you feel this will work in tandem with that? I mean, do you think...are we going to ever get anywhere?

SENATOR LOUDEN: Well, I think, the same as the noxious weed control or this prairie dog management plan, that depends upon the county officials. If they want to go ahead and make it work, they can introduce it and they can...and follow through with it. The same way with your noxious weed. If the county officials or county boards or county commissioners don't want to do much of anything, then nothing ever happens. And I'm sure you're familiar with that,...

SENATOR CUDABACK: Time, Senator.

SENATOR LOUDEN: ...being on county boards.

SENATOR STUTHMAN: Okay. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Further discussion? Senator Schimek, followed by Senators Chambers and Schrock.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Louden, I have a couple questions. I'm not going to take too much time and I'll be glad to give you my time when I am finished. But could you answer a couple of questions for me, please?

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SENATOR LOUDEN: Yes, I think so.

SENATOR SCHIMEK: First question is, I read in a Lincoln Journal Star article about your bill that the U.S. government, the U.S. Forest Service, actually, is in the process of doing a study on this issue, this problem, and the results of that are expected some time maybe this summer. Is that accurate?

SENATOR LOUDEN: Well, the input statements have to be in by April 18, which is this Friday, and then they have however many days it is to act on it, which I thought was until the 1st of June, or something like that.

SENATOR SCHIMEK: When you say the input statements, what do you mean?

SENATOR LOUDEN: Well, whenever the federal Forest Service or anybody has problems like that, they usually go out and solicit input from anyone that's...wishes to send them anything on the problem and what to do about it. And so they've been through that process since, I think, the 1st of January, and it was supposed to be due here. Those have to be in by April 18.

SENATOR SCHIMEK: Okay. And do you anticipate that there will be any monies that come with any of the recommendations they might make?

SENATOR LOUDEN: From the federal people?

SENATOR SCHIMEK: Right.

SENATOR LOUDEN: I couldn't say on that. I have no idea what the Forest Service will decide to do on that. My observation would be it's a question of whether or not the Forest Service will control prairie dogs on forest land. I think that's mostly what their state...

SENATOR SCHIMEK: Okay.

SENATOR LOUDEN: ...what their statement is about.

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SENATOR SCHIMEK: Then I want to just ask you about your amendment, because your amendment strikes, on page 12, lines 8 through 13. And those...that's the language says that it is the intent of the Legislature to appropriate \$100,000 to the fund in each of those years. So you're taking out the legislative appropriation and, yet, down on line 14 it continues by saying, and this language is left in: To the extent that funds are available in the fund--which is a little awkward--the department may expend up to \$25,000 from the fund for each of fiscal years, and then the next two fiscal years, as aid to counties. And my question is, if you take out the language that tells that there isn't...there's no intent, then, to appropriate money, how do you have any money in a fund from which you can expend up to \$25,000 in aid?

SENATOR LOUDEN: Okay. The Bill Drafters had mentioned to us that this...this part in the bill, and it's...and you've noticed, too, that that comes in part of the bills and it's usually...is considered amount...several...a considerable amount of debate in that. So that was the reason that was struck out of there. The A bill that I have with this is to appropriate that \$100,000 to the Animal Damage Control Fund, which the state of Nebraska has had for years. Some years they appropriate money into it; right now they haven't appropriated any money into it for several years.

SENATOR SCHIMEK: Okay. Shouldn't we then be more specific about what fund we're talking about that these monies could come from? I mean it, to me, it's not clear at all where this money would come from. And maybe it...is it mentioned other places in the bill or in the committee amendment?

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: That I don't know. We'll have to look it over for a little bit. I was thinking it was probably mentioned in the A bill what fund it would be...it would be appropriated to.

SENATOR SCHIMEK: Well, that could be, but if this language is in the bill and people are wanting to know about these funds,

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they're not going to find out about it from an A bill. They're going to find out it from the statutory language. So I see that Claudia is standing here and she probably has an answer to my question. And I'm sorry I took more time than I meant to, but I probably don't have any time left to give you, Senator Louden. But thank you for your responses.

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Louden a question or two.

SENATOR CUDABACK: Senator Louden, would you respond?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, if a county, by resolution, adopts one of these plans, then fails to execute, what happens to the county?

SENATOR LOUDEN: Well, I don't suppose they have much of a...okay, if they adopt the plan, the local landowners can take care of part of their...part of the problem if they have a problem. They just adopt the management plan to allow the local landowners to have a method of managing their prairie dogs.

SENATOR CHAMBERS: But if the local landowner wants the animals to stay on his or her property, are you telling me that the adjacent landowner, if the county adopts the plan, can then go on to that other person's property and do something to those prairie dogs?

SENATOR LOUDEN: No, I don't think that's anywhere in the bill.

SENATOR CHAMBERS: It isn't. So here's what I'm asking. If the county adopts a management plan, then takes no action whatsoever, what is done to the county? Because the bill said once it adopts this program it shall assume all the duties and responsibilities. If the county refuses, after adopting this resolution, what is done to the county for its refusal to

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comply?

SENATOR LOUDEN: I don't know as anything would be done to the county. It works the same way as the noxious weed deal and you just heard Senator Stuthman talk about the noxious weed, that they have problems at times, and I pointed out that that usually depends on what the county officials want to do. The law is no...

SENATOR CHAMBERS: So then why...why, if the county chooses to do nothing, nothing is done to the county, but if the landowner is served a notice and does nothing, then there are penalties that this person must pay, including the costs entailed by the county in entering that land and doing something? Why do you hold the landowner to a higher standard of responsibility than you do the county?

SENATOR LOUDEN: Now, if the landowner doesn't do anything, then that's where it's the duty of the county to see to it that it's done.

SENATOR CHAMBERS: But if the county chooses not to do anything, nothing happens to the county, and nothing then happens to the landowner. Isn't that true?

SENATOR LOUDEN: I suppose. I suppose you could charge the county commissioners malfeasance of office or something like that (inaudible).

SENATOR CHAMBERS: Is that in the bill?

SENATOR LOUDEN: No, that isn't in the bill, but it doesn't have to be in the bill.

SENATOR CHAMBERS: Well, I think it would. But let me ask you this. The opposite of up is down. The opposite of in is out. The opposite of hot is cold. The opposite of hard is soft. What is the opposite of gopher?

SENATOR LOUDEN: I suppose one of these pages around here.

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SENATOR CHAMBERS: "Comepher." (Laughter)

SENATOR LOUDEN: Well, they're...

SENATOR CHAMBERS: So you learned something on your bill. That's all I'll ask you for now, Senator Louden. Thank you. But that might give people an idea what I think of this bill. Oh, here's a question I want to ask him. Senator Louden, it's important that we know what we're talking about. What animal are we talking about?

SENATOR LOUDEN: The black-tailed prairie dog.

SENATOR CHAMBERS: Now, when they talk about wildcats or lynxes, there's a *Lynx canadensis* and a *Lynx rufus*. Now, I want to know the name of this critter so that he will be distinguished from other prairie dogs, because obviously there's more than one type. Or, is there only one type of prairie dog in Nebraska?

SENATOR LOUDEN: I think there's only one type of prairie dog in Nebraska. There are five species of prairie dogs.

SENATOR CHAMBERS: In Nebraska?

SENATOR LOUDEN: No, in the United States, but as far as I know there's only the black-tailed one in here. Right now, I don't have the (inaudible).

SENATOR CHAMBERS: Okay, so if that is the only type prairie dog, if there are other types, this bill does not affect them, does it?

SENATOR LOUDEN: Exactly. That isn't the idea. Right now the problem is with the black-tailed variety and that's what the bill is...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...designed to manage, is the black-tailed variety.

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SENATOR CHAMBERS: So I could import all of the other types, all of the four other species, and turn them loose on my land and they can go everywhere they want to, onto anybody's land, and this bill will not affect it. Isn't that true?

SENATOR LOUDEN: Well, this bill wouldn't, but the Game and Parks would, because I don't think you can move prairie dogs more than, what, 200 feet or something like that.

SENATOR CHAMBERS: Well, you've never seen me...

SENATOR LOUDEN: There's a ruling on what...

SENATOR CHAMBERS: ...you've never seen me operate. Just like when they say Rome wasn't built in a day, had I been the foreman that might be a different story. But that's all I'll ask you for now, Senator Louden. Thank you. Mr. President, since my time is almost up, I'll stop now. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, what I'm going to speak about has very little to do with this bill, but I would like to relate to the members of this body what happened to the Natural Resources Committee when, about four years ago, we had an interim study hearing at Chadron State Park and the issue was noxious weeds on Game and Parks' property and what they were doing to control them and if they were controlling noxious weeds. Well, as I recall, and if there's other committee members that can help me here, about 15 to 20 people showed up. We never talked one time about noxious weeds. We ended up spending two hours talking about prairie dogs and Game and Parks and their lack of control. My suspicions on this bill are that unless you live in Senator Smith or Louden or Erdman's district, or probably Senator Fischer's district, this doesn't concern you too much. Sure, there's a few prairie dogs out there. We controlled them on our pasture a few years back, probably ten years ago, and they weren't back for six or eight years. But, guess what, there's a few back now, so I suppose we're going to have to take some action. Because I would love

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it if we could have 20 prairie dogs on our property and it would stop there. They're cute. They're kind of...I mean, you know, they're kind of fun, and if you're like I am, it's a pretty good sport to do some target shooting. But you can't just have 20 prairie dogs on your property. They multiply, folks, and they do a very good job of it. And if you're riding a horse or you're out in that pasture in a prairie dog town, it becomes a dangerous issue. So we're probably going to take some action on it. I don't want to eliminate prairie dogs on our land, but I'd say those four districts in this state are the ones where the farmers and ranchers really get concerned about prairie dogs. So I'm going to kind of watch and see how Senator Louden and Senator Fischer and Senator Erdman and Smith vote on this, and I'm going to vote with them, because it is a real issue with ranchers in that area of the state. And so that's my comments. We were just amazed. The ranchers out there didn't want to talk about noxious weeds. They wanted to talk about Game and Parks and prairie dogs, and that's what we listened to for two hours, and it had nothing to do with the interim study resolution that we introduced. So thank you for your time.

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

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I will say that I did sign on with Senator Louden on this bill and I am very concerned because of those individual property owners that have a concern about the prairie dogs and what the prairie dogs are doing to their valuation and property. I think in developing a management area, I don't know what they have in mind, but I realistically think, you know, the value of their property, if there are colonies upon colonies of prairie dogs, you know, that does affect the valuation, that does affect the income earning ability of that property, which in turn, you know, relates to the value of the property. I think people that are...have property in these areas, you know, there is probably only one or two methods of generating income from that property, and that's through grass and through livestock, and that's how they generate their income. If there is no grass or they've ruined the area, you know, there will be no income on there. But we must remember that those areas are still on the valuation

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of a county. You know, they're taxed the same way as anything else, and I don't think they want to change that as far as valuation base of a county. But it does...but it does change the income ability of the property owner. You know, I know a lot of us...you know, have no concern, are really not affected by this bill. We, in my district, I don't think I've ever seen a prairie dog. The only dogs we see are what we call the dump dogs that come out and they're in the road ditches, running around. Our personal dog right now and the last four or five that we had were what we called the pickup dogs. They end up being fairly good dogs, but they were dumped there. They were hauled out to the country in the community and released, and we've taken a, you know, taken a good approach and tried to, you know, make a good home for those animals. Those are the regular dogs. But, you know, we're dealing with an issue of the prairie dog, you know, which I'm sure a certain amount of them are probably cute, probably not a major problem. But when they get into colonies and affect the income earning ability of that property, then I think it's an issue. And I think I want to be very...I'm concerned with the people that have the property there and what they can do with that property. So I am...I am supporting Senator Louden with this just for the fact that I think, you know, something needs to be done as far as the management of it so that they can control it, so that they can still have revenue from their assets, you know, so they can pay taxes so they can have an honest living. So those are my comments for right now and I'll turn the balance of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Further discussion? Senator Howard.

SENATOR HOWARD: Thank you, Mr. President. If Senator Louden would allow me, I would like to ask him a question, as I have no experience in this area and would appreciate some clarification.

SENATOR CUDABACK: Senator Louden, would you yield to Senator Howard?

SENATOR LOUDEN: Yes.

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SENATOR HOWARD: Senator Louden, when you talk in terms of management, what exactly does that mean?

SENATOR LOUDEN: Well, that would mean you could keep them...if they're encroaching on someone's property, there's various ways to manage them. You can put up fences, and that's what the Wildlife Service is...National Wildlife Service, Forest Service, is doing now. They're putting up fences because it happens to be this time of year they're not allowed to do anything else. They can be loaded up and trapped, but when you do that then you have to have some other place to release them. And, of course, they can be eradicated. Now, if they're diseased or something...and they do carry bubonic plague. It isn't uncommon for them to have that. Right now, there's a colony in Wyoming that does have bubonic plague in them. So there's various ways of management. You don't always have to eradicate them. You just have to control them and keep them on your own property.

SENATOR HOWARD: What would you envision to be the most likely scenario in terms of management? Would it be corralling them and transporting them?

SENATOR LOUDEN: If it's an...the Forest Service, I think that's probably what they're looking at, at the present time. They're looking at different ways to move them out. My understanding is in Colorado, in some of the city area where Denver is moving out over the prairie dog areas, some places they have left the prairie dogs to have a certain amount of room. But again, if they ever are a problem, they do have some type of a vacuum thing. They pick them up and load them up and trap them and then I don't know where they...in Colorado, perhaps you don't have to have a permit to move them a distance.

SENATOR HOWARD: So you're suggesting a no-kill for the prairie dogs?

SENATOR LOUDEN: Is it a what?

SENATOR HOWARD: This would be a no-kill, in fact, for the prairie dogs?

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SENATOR LOUDEN: A no-kill? Not necess...

SENATOR HOWARD: They would be vacuumed up and transported?

SENATOR LOUDEN: Well, that part would be, yeah. That would be...okay, that's two options that they would...that is available that I know of.

SENATOR HOWARD: What would be the most likely?

SENATOR LOUDEN: Well, usually, where it's landowners that live around them all the time and they don't have any place to release them, usually by eradicating some of them, the rest of them don't bother that much. I don't know if you're familiar with deer or if you're familiar with coyotes. We have coyotes all the time. Soon as they're thick then they become a problem. We cohabitate with coyotes all the time. When they get to be a problem around the house, why, we usually do something with them. If they get to killing animals, then they're usually done something with. But the idea is to keep them down at a manageable number so they're not causing a problem.

SENATOR HOWARD: Does "do something with them" mean poison or shoot?

SENATOR LOUDEN: Yeah, either way I suppose, whatever method is available that the people can have. If it's a private landowner, they can do probably anything they want to on the land where that prairie dog is. This management plan really doesn't affect what a private landowner does with prairie dogs on his own land. This is more or less a bill in case they get to encroaching on other people's land.

SENATOR HOWARD: So management, the term "management" would really be up to the choice of the individual landowner himself.

SENATOR LOUDEN: True. The people...if someone has prairie dogs on their land and they so desire to keep them, then they don't necessarily have to...have to eradicate them or destroy them. If they can keep them on their land then that's no problem to anybody else. That's how they...that's their option.

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SENATOR HOWARD: To help me to better understand this, is it conceivable that if poison were used other animals could come along, eat these prairie dogs and succumb...

SENATOR CUDABACK: One minute.

SENATOR HOWARD: ...themselves? Thank you, sir.

SENATOR LOUDEN: Well, at the present time, there's...the poisons that are available and certain times of the year that they're not available. The reason for that is like this time of year, when raptors are migrating, you're not allowed to poison them because they may eat those...may eat dead animals. Different...there's different ways of doing it. They have a gas cartridge that's used all the time. That's a regular prairie dog eradication measure. And then, of course, in South Dakota, where they have a bill to eradicate them, why, that's one of the options they have.

SENATOR HOWARD: Well, thank you for explaining this to me. I return the remainder of my time.

SENATOR CUDABACK: Thank you, Senator Howard. Senator Chambers. This will be your third time, Senator.

SENATOR CHAMBERS: Thank you. Mr. President, I recognize it's my third time on this one, but it's not my last time to speak this afternoon. You all are going to be treated to my singsongy voice probably until the middle of May on this bill. Senator Louden, I'd have a question or two to ask you.

SENATOR CUDABACK: Senator Louden, would you yield?

SENATOR LOUDEN: Yes, go ahead.

SENATOR CHAMBERS: The landowner may use methods of management, to use that nice term. Suppose the landowner would say, I'm going to use leashes on all the prairie dogs on my property. Would that be acceptable, put all of them on leashes?

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SENATOR LOUDEN: (Laugh) Well, they're his dogs. He can do whatever he wants to with them.

SENATOR CHAMBERS: I meant if there's a management order given to him or her, he or she can say I'm going to manage the dogs on my land by putting leashes on all of them. Could that be allowed?

SENATOR LOUDEN: Oh, I suppose, if you...if he...whatever he does to keep them off of neighboring land if the neighboring landowners do not want them on there.

SENATOR CHAMBERS: If he tied them up, would that be okay?

SENATOR LOUDEN: Why, you tie them up, they'd starve to death, I suppose.

SENATOR CHAMBERS: But you feed them.

SENATOR LOUDEN: Well, that's up to him.

SENATOR CHAMBERS: How much time does a person have to implement a management program?

SENATOR LOUDEN: I think it's a certain amount of days in here in the bill. What is it? I don't know, 60 days or something like that. I'd have to look at it.

SENATOR CHAMBERS: That's to start, I think, but how much time is that person given to complete whatever he or she is ordered to do to keep the animals from encroaching on the adjacent property?

SENATOR LOUDEN: Well, I'd have...okay, I'll have to look the bill over a little bit closer, because I have some of my days mixed up. Some of that, I think they get so many days notice and then they have so many days to implement it or something like that.

SENATOR CHAMBERS: But "implement" I think means to begin, the way I read it. I didn't see anything that said they have to

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have it completed by a certain...within a certain number of days. I thought you might know. But I haven't had a chance to thoroughly read the bill so I can't answer that. If he named all of them Belevedere and they learned that that was their name, and when he said, Belevedere, come here, boy, and all of them would come running, "boogidy, boogidy, boogidy," would that be acceptable? And if he showed the county that this is what happens when he says that, here they all come, would that be acceptable to the county?

SENATOR LOUDEN: Well, I suppose it would be, but if he could do that he could certainly get a big job if he could runaround prairie dog colonies and naming him Belevedere and get him to follow him. That'd be like the Pied Piper or something like that. I mean, that's great. If you can find somebody to do that, why, let me know because I'm sure he'd be available.

SENATOR CHAMBERS: You may be talking to him, but we won't go into that right now. We have much more territory to cover before we sleep. I want to ask you a question, Senator Louden. What do you call a group of prairie dogs? What is the term applied to a group of prairie dogs?

SENATOR LOUDEN: You mean a colony?

SENATOR CHAMBERS: I want to ask...no, not what I mean. What do you mean? What is it? What do you call a group of prairie dogs?

SENATOR LOUDEN: A colony.

SENATOR CHAMBERS: Well, when I look at the definition, it says "colony" means the series of burrows and tunnels created by the black-tailed prairie dog where black-tailed prairie dogs live. A colony is the burrows and tunnels, so that's not what the dogs are called. So how would you manage? A managed colony, if the colony consists of the burrows and the tunnels, all I have to do is go on the adjacent property and fill those tunnels with dirt. Isn't that true? That's all that I can be required to do under this bill.

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SENATOR LOUDEN: Okay. That's in Section 2, (1), and that's says where colonies are burrows and tunnels where prairie dogs live. So if there are tunnels there and prairie dogs lives there, then that's the colony.

SENATOR CHAMBERS: The colony is the burrows and the tunnels, so if I fill up those burrows and tunnels, that's all I can be required to do. Isn't that true?

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: It doesn't say anything about a colony constitutes a group of prairie dogs. A colony is the burrows and tunnels, just like saying a condominium...you don't say a condominium consists of the people who live there. The condominium is the structure. According to the definition...and we're in court now. The prairie dogs are my clients. They're about to be exterminated. Your Honor, if it pleases the court, the colony is the burrows and tunnels, and if my client fills the burrows and tunnels you cannot touch these animals and you cannot make my client do otherwise. I want Senator Louden, on his time, to show where what I've said is untrue based on the definition in his bill of what is a colony. How much time do I have, Mr. President?

SENATOR CUDABACK: You have about ten seconds, Senator Chambers.

SENATOR CHAMBERS: Just long enough to say (stutters) that's all, folks.

SENATOR CUDABACK: Senator Smith, followed by Senator Stuthman.

SENATOR SMITH: Thank you, Mr. President and members. The issue of prairie dogs is certainly greater than the appearance of the little creatures themselves, and I believe that Senator Louden's plan is a well-thought-out plan that addresses reality. A few years ago the federal government came down with an order or started to come down with an order that suggested that there were not enough prairie dogs in Nebraska, and I believe they sought to return the prairie dog populations to the approximate 1850s population. So we're talking a long time ago here. The

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populations were perhaps quite different. But the fact is there are a lot of prairie dogs in Nebraska and it is somewhat of a public health concern. I know that northeastern Colorado has had some problems and there are efforts in Colorado. In fact, Colorado defines prairie dogs as rodent pests, and I think Senator Louden's bill is a lot more complimentary of prairie dogs than that. But nonetheless, it is a reasonable approach to addressing a concern that many landowners, ranchers in particular, have had. I know that my district has probably the most...some of the most protected prairie dogs on the planet. In fact, I would argue that some prairie dogs in my district are protected more so than humans because those prairie dogs happen to reside on national park ground. And if those of you who are familiar with national park property, you'll know that those naturally occurring creatures demand and receive...perhaps they don't even demand but they certainly do receive protections that are quite considerable. But I know that they also realize, even on those properties, that...they understand that prairie dog towns can swell, that disease can become a major issue, and for those reasons we need to look at this with a balanced approach, and I think Senator Louden's proposal is a balanced approach and I appreciate the fact that he has brought this forward. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion? Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President. Members of the body, I think there is possibly a federal program or the federal government is trying to develop an impact study. Maybe I could engage in a little more conversation with Senator Louden, if I could, please.

SENATOR CUDABACK: Senator Louden, would you respond to a question from Senator Stuthman?

SENATOR LOUDEN: Yes.

SENATOR STUTHMAN: Senator Louden, is there anything in the works of the federal government that's going to have an impact study, or when would that ever take place, or would that benefit

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you? Should we be, you know, maybe waiting a little bit with this? Or give me a little update on that.

SENATOR LOUDEN: Well, yes, the federal...the National Forest Service is working on their impact statement. Like I mentioned to Senator Schimek, it...the input deadline is April 18, which is this coming Friday. And then after that they study the input that they got till they make up a plan, and then I think that has to be in by the 1st of June. And then, of course, they probably, the Forest Service, probably won't do anything till in the fall because their guidelines are they don't do any eradication or anything until I think the 1st of September or something like that, for whatever reasons. Where that I don't know is holding this up any, because if this bill passes, which I presume it will, it doesn't take effect till 90 days after the session ends, so it will set it up pretty much the same time as what the Forest Service, the National Forest Service, will be going to work on their program. Now at the present time, South Dakota passed bills and theirs was an eradication program and they didn't fool around with it. They didn't manage them or nothing. They want them eradicated and they want the National Forest Service to do the same, especially on their Buffalo Gap National Grasslands. There's 26,000 acres of prairie dogs up there and the state of South Dakota wants them eradicated. And my understanding is they're probably going to go to court to see if they get the National Forest Service to carry out that order.

SENATOR STUTHMAN: Well, thank you, Senator Louden. Also, you know, if we do get this, you know, the federal government with their impact statement, with their plan, if they do enact that, do you feel that ours is going to be a lot greater, or are we doing something now already that we wouldn't necessarily have to be doing? And would we be putting an additional burden on county commissioners or supervisors, you know, to try to develop something that would hopefully be passed down from the federal government?

SENATOR LOUDEN: No, I don't think so, because we're talking about mostly private lands and state-owned lands or something like that. What the National Forest Service is doing, they're talking entirely about the land that they're responsible for,

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which is, oh, like the Sam McKelvie National Forest and Pine Ridge Ranger District, and those two areas don't have any prairie dogs. The ones they're concerned about are mostly the Oglala National Grasslands, which is in Nebraska, and then, of course, the two in South Dakota where there's a huge amount of prairie dogs up there in that area. So I don't think...we tried to write this thing so it would be compatible with the federal government.

SENATOR STUTHMAN: So, realistically, you think that even if, you know, if we got this passed in this legislative session, you know, that it would...it would be beneficial, you know, to the federal one that would come and and we would be just, you know, proceeding in a timely manner and try to get things done? I'm always concerned, you know, when the federal government gets involved nothing really happens. Yes, they have the comment period and everything. By the time they ever get something developed is a long time down the road and we...

SENATOR CUDABACK: One minute.

SENATOR STUTHMAN: ...we may have greater problems. So...but the thing that does concern me is, you know, is this going to be workable, you know, with the county commissioners, the county supervisors? Is this something that's going to be political suicide when they develop a management plan, just as a planning and zoning livestock management plan that they have for counties that have planning and zoning? I'm really concerned with that, though, that it's not going to be workable. But, like I say, I don't have the problem in my area, but I have sympathy for the property owners that, you know, have the problem in that area. I also was very interested in some of the information that Senator Smith, you know, gave that, you know, they wanted to introduce more prairie dogs so that, you know, get it back to the 1800s. What I've seen in Montana right now, they're introducing the wolves again. They're killing calves on a regular basis. The elks, there's no calves on the elk. There's...

SENATOR CUDABACK: Time, Senator Stuthman.

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SENATOR STUTHMAN: Thank you.

SENATOR CUDABACK: And that was your third time, Senator. Senator Louden, your light is on. There are no other lights on. If you wish to close, you can, or you may speak. It will be your third time.

SENATOR LOUDEN: I'll close, Mr. President.

SENATOR CUDABACK: You're recognized to close on AM1007.

SENATOR LOUDEN: Okay. Thank you. Well, I appreciate the dialogue and the questions and the discussion that we're having on this, and I'm sure there's a lot of you don't know that much about prairie dogs or never thought about that much. You probably know more now than you did at 12:30 today. There are five species of prairie dogs and, as Senator Chambers pointed out, what other species were here wouldn't be affected, and that is very true. The five species we have is, of course, the black-tailed prairie dogs and there's also the white-tailed prairie dog, which is usually in western slopes and live up to 10,000 feet. There's Gunnison's prairie dogs that live up to 12,000 feet. There's Utah prairie dogs which are mostly confined to Utah, and there's a Mexican prairie dog which is into Mexico. This isn't something to eradicate all prairie dogs. They were named as the black-tailed variety because I think this is the part we have. Now, as far as the amendment, why, this is something that we wanted to clear up the language in the bill and I would certainly appreciate a yes vote to advance this part of the bill and to the amendment, AM1007. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. You've heard the closing on AM1007, which is an amendment to the committee amendments to LB 673. The question before the body is, shall the amendment be adopted? All in favor vote aye; opposed, nay. The question before the body is the Louden amendment to the committee amendments. Have you all voted on the question who care to? Record please, Mr. Clerk.

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

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Senator Louden's amendment to the committee amendments.

SENATOR CUDABACK: The motion was successful. The amendment was adopted. Mr. Clerk, next motion.

CLERK: Senator Beutler would move to amend with AM1185. (Legislative Journal page 1175.)

SENATOR CUDABACK: Senator Beutler, to open on AM1185 to AM0867.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Louden, let me first say that this is the most rational and the most sophisticated effort to deal with the prairie dog problem that I've seen in all my years in the Legislature, and I'm glad you're thoughtfully coming up with something that is not just some kind of flat-out eradication of the prairie dog or some other solution that's really not appropriate to our time and place. So I want to start out by indicating to you, I think this is a good bill in many, many ways. The first amendment really has to do with the right of the county commissioners to come onto a person's land and snoop around for prairie dog towns. Under the provisions of the bill, as I understand it, once that general notice is filed annually, they can, the county commissioners or any one of them, can come onto your land unannounced and simply search around for prairie dog towns on their own initiative or on complaint by somebody else, which I suppose is the way it has to be. But I thought it might lead to a more civil process if you put a provision in that said that before they came on the land they ought to give 48 hours' written advance notice of entrance so that the property owners knew that they were coming and knew who these people were out walking around their property. And since, in the case of prairie dog towns, there doesn't seem to be any particular emergency action sort of necessity, nor does there appear to be any reason not to give notice. You can't hide your prairie dog town, for example. So I was just making this suggestion and I've...I have three amendments and, as I indicated to you earlier, since I couldn't get around to getting them drafted until just this morning and didn't have a chance to talk to you, I'll withdraw one or all of them if you want a chance to think about them or to look at them in more detail. But that's the

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point and the objective of the first amendment, is to give landowners some notice.

SENATOR CUDABACK: You've heard the opening on AM1185. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Just a line from...part of a line from Edgar Allen Poe. He said: Keeping time, taking time, time, time, / In a sort of Runic rhyme. We're going to be on this bill a long, long time. These little critters cannot speak for themselves. They have nobody to speak for themselves. Senator Beutler, however, has brought us an amendment which is eminently reasonable. That's why it has no place on this bill. Senator Beutler is cunning, clever, cagey, savvy, and wily. Sometimes he doesn't realize all that. But did you notice that soothing, insinuating way he had of getting the "King" to drop his guard and begin to kind of smile and bask in the glow of these compliments about what a wonderful bill it is? But Senator Beutler did put in a qualifier--considering all the other things he's seen when...since he's been here--so that's like going into the violent ward of one of those places where they have mattresses on the walls and people wear jackets without any buttons on them and tell them why you're the most logical person here that I've seen, and so then this person says, compared to what? Senator Beutler was sincere and I think he is correct in saying that the way this bill is drafted...but this bill has an appearance. The devil comes as an angel of the light. I know about these things. I'd like to ask Senator Louden a question. Senator Louden, would answer a question, please?

SENATOR JENSEN PRESIDING

SENATOR JENSEN: Senator Louden, would you yield?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: And I think Senator Louden is going to be on his feet almost as much as I am so he can see that it takes a little bit of stamina to go on, and on, and on. Senator Louden, is this bill, in fact, an eradication program masquerading as

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something else, and the purpose is to put the cost of this eradication on the individual landowner?

SENATOR LOUDEN: No.

SENATOR CHAMBERS: Is that what we're really dealing with here?

SENATOR LOUDEN: Yeah. No, that...no, it isn't.

SENATOR CHAMBERS: (Laugh) You almost made a Freudian slip. You start, you say, yeah, no.

SENATOR LOUDEN: No, I did not. I said no, and then I thought you asked another question or I heard something else on the microphone.

SENATOR CHAMBERS: Well, you wouldn't have heard it on the microphone. You've have heard it on your "earphone." But here's a question. You answered that no. Senator Louden, if my property abuts your property, could I have my management program consisting of digging a trench that goes to the center of the earth and then putting a wire mesh down in that trench between your property and mine and electrify the fence. Would that be sufficient management, do you think?

SENATOR LOUDEN: If it would keep them back, yes, it would. I'm sure it would.

SENATOR CHAMBERS: How would they...how would they overcome that? We...I'll put the fence 100 feet high and it goes to the center of the earth and it's wire mesh. How could that not be enough to keep them on my property?

SENATOR LOUDEN: I didn't say it was. No, I said it would be acceptable. That's what the Forest Service is doing now. The Forest Service is putting fence up now to keep them on their property.

SENATOR CHAMBERS: How deep do they sink their fence into the ground, Senator Louden?

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SENATOR LOUDEN: I don't think they do. I think they set it on the ground and it isn't that high. They've tried various measures. Some of them worked and some of them didn't work.

SENATOR CHAMBERS: Are these burrowing animals?

SENATOR LOUDEN: Usually.

SENATOR CHAMBERS: Well, burrowing means to pass through underneath the surface of the ground, so if the fence is sitting on top of the ground, how deep would the animal have to burrow to get under that fence?

SENATOR LOUDEN: Well, not very deep, but usually then when they get outside the fence...and that's where the LB 673 comes in. You've got to keep them from encroaching.

SENATOR CHAMBERS: So then these fence...

SENATOR LOUDEN: It's up to you. If you don't want them to go outside there then dig it to the center of the world or dig it to China. Wherever you're going, that's up to you. You can dig as deep as you want to, I guess.

SENATOR CHAMBERS: Well, you don't have to dig to China.

SENATOR JENSEN: One minute.

SENATOR CHAMBERS: You'd go all way through the center the earth and come out on the other side, Senator Louden. Let's be reasonable, for heaven's sake.

SENATOR LOUDEN: Well,...

SENATOR CHAMBERS: By the way, Mediterranean means center of the earth, center of the world. They thought when they named that sea that they were dealing with what constitutes the center of the world. That's what Mediterranean means. But, anyway, to get back to this, how deep would you think a fence would have to be sunk in the earth to deter these animals from burrowing under it? Do you have any idea?

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SENATOR LOUDEN: Well, other than the fact that they are known to dig 15 feet into the ground, but whether you'd have to dig that deep or not, that would be up to your own solution, I guess. There's probably other ways it can be done. I don't know, but my guess is I suppose you'd have to dig way...very deep in order to keep them from digging under it.

SENATOR CHAMBERS: Could you give them a curfew and tell them they can only dig during the daylight hours in the first three days of April if they're going to think about going on somebody else's land?

SENATOR LOUDEN: Well, you'd have to get...

SENATOR JENSEN: Time, Senator.

SENATOR LOUDEN: ...to join the union, I suppose, if you did something like that.

SENATOR CHAMBERS: I think, Senator Jensen, did you say time?

SENATOR JENSEN: Yes, I did.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR JENSEN: Senator Louden, your light is on and next to speak.

SENATOR LOUDEN: Yes. As we're talking about Senator Beutler's bill (sic) and I have no problem with his bill (sic). It isn't something that was in the noxious weed bill, which we patterned this after, but if he wants to give 48 hours' notice and I don't know if that's quite feasible. I presume...he's a lawyer, I guess, and he probably knows whether or not that works in various ways. So I just wanted to say that I have no problem with his amendment if he wishes to put it on there. This is something that probably, whether you have it on the bill or not, doesn't make that much difference to it, but if he's more comfortable with...by putting that amendment on there, then I'm willing to accept it and I'll probably...would vote for it if

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that's what Senator Beutler wishes to do. I guess I would probably ask Senator Beutler a question if he would yield, please.

SENATOR JENSEN: Senator Beutler, will you reply?

SENATOR BEUTLER: Sure.

SENATOR LOUDEN: Now, Senator Beutler, I presume your ideas are not to dilute this bill or kill it. I presume you're trying to improve the bill with...I see you got three different amendments on there and, as I look them over, some of them I think are probably all right and some of them I probably would somewhat object to. But is your idea to improve the bill?

SENATOR BEUTLER: Senator, it is. Let me...but let share with you my entire philosophy on the matter so that you can understand to what extent they are to improve the bill, and to what extent they are to modify the bill to some extent. All of the amendments, with one exception, I think, are in line with your general philosophy in what you're trying to do, and I very much believe that some form of cooperative management systems is what is called for, not only on this but on other questions where agricultural production is face-to-face with animal habitat and Game and Parks' interests and the other interests of society. I think we can work out management systems where everybody can happily coexist, and I think that's what you're trying to do here and I think your efforts are entirely reasonable. Now, the part where you and I may part company, and we may not, is with respect to what is the role of the state in animal damage control. And, generally speaking, my whole legislative career, whether it's something that came out of southeast Nebraska or Douglas County or Lancaster County, I think that the general cost and expense of animal damage control or insect damage control or any kind of control like that should, first of all, be the responsibility of the landowner, and you've done that, by and large, in this bill. You've made that the fiscal responsibility of the landowner. And to the extent that there's any government involvement and government cost, I think it should be local government expense and cost. So you will note, if you've looked at my third amendment, that I

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try to keep the state out of this just as much as possible. I don't want to encourage another bureaucracy at the...up here in Lincoln, whether it's agricultural or anything else, for that matter. And so the effort of the...

SENATOR JENSEN: One minute.

SENATOR BEUTLER: ...third amendment is to suppress those elements of your plan that tend to draw the state in.

SENATOR LOUDEN: Thank you, Senator Beutler. I do wish to point out that we're not creating another bureaucracy because there's already an animal damage control in the Nebraska Department of Agriculture. At the present time, they use that to control coyotes, fox, and other predatory animals, and also it can be used for European starlings on...in the city of Omaha. The reason for that money in there is usually it can be used to access federal funds and usually the APHIS part of the wildlife damage control area gives you...I think if you put in about twenty-some thousand dollars you get a lot more in-kind service in that. They're the ones that take care of coyotes and animals like that, that are bothering.

SENATOR JENSEN: Time, Senator. Thank you, Senator Louden, Senator Beutler. Senator Hudkins.

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I would like Senator Chambers and Senator Louden to pay attention because I can tell you something about the prairie dog that maybe you don't know, and you're all ears. The largest social unit of the prairie dogs is indeed called a colony or a town. The towns, then, are divided into wards, and then the smallest social group of prairie dogs is called a coterie or a harem. And this small group is made up of 1 male, 1 to 4 females, and any of their offspring that are less than two years of age, so they could be about 40 animals. The largest prairie dog colony or town is one in Texas that's about 100 miles by 240 miles, and it has an estimated 400 million animals. So there I have added to your knowledge about prairie dogs this afternoon. Thank you, Mr. President.

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SENATOR JENSEN: Senator Chambers is up next.

SENATOR CHAMBERS: Mr. President, I have something still to look at in the bill with the new information that Senator...

SENATOR HUDKINS: Hudkins.

SENATOR CHAMBERS: ...Hudkins gave to us. (Laughter) Oh, we're having so much fun this afternoon. I wanted to be sure she was watching, because she called my name and made sure I listened, which I did, and I did learn something. But I'm going to give the definition of "colony" in this bill. No matter how scholarly or how scientific any other publication may be, we are bound by the definitions in the bill. I read the following on page 1 of the committee amendment, in lines 7 through 9: "Colony means the series of burrows and tunnels created by the black-tailed prairie dog where black-tailed prairie dogs live." The colony does not refer to the animals. According to this definition, the colony means the series of burrows and tunnels created by the animals. A duplex, as the presiding officer Senator Jensen knows, being a contractor, is built by people, but it is not people. So if you're going to stick by this definition, then some of the other things in the bill won't hang together. I want to make it clear, though, I support Senator Beutler's amendment, but I ought to vote against it to keep this bill in the bad condition that it's in, and some of these guys will go tromping through people's corn and get maybe a hind end full of rock salt. I don't want anybody killed because they're going out here to kill these little animals. But I would like to ask Senator Louden a question in the area that Senator Beutler's amendment is dealing with. Senator Louden, can you take the floor?

SENATOR JENSEN: Senator Louden, would you reply?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, in this segment that Senator Beutler is talking about there is language which says there are rules and regulations adopted and promulgated under the act, and if these people who go on the land comply with those rules and

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regulations they are not subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised. Does that mean reasonable care to destroy the crops, or just what does it mean?

SENATOR LOUDEN: Well, I suppose it would mean reasonable care to not destroy the crops, is what we mean.

SENATOR CHAMBERS: Well, but if they destroy them...is it possible then--I'll rephrase the question--to use reasonable care and still destroy these crops?

SENATOR LOUDEN: Well, first of all, if you had a prairie dog colony on there and then they had to be something done with them, there probably isn't any crops to amount to anything on there anyway, because they usually have the ground quite bare and they usually just work in where they are. You...

SENATOR CHAMBERS: Senator Louden, if I may interrupt without seeming rude and crude, I'm looking at the language in your bill. I don't want you to go away from your bill and talk about what is not. I want you to talk about what is, based on your bill. Your bill says growing crops. If there are no growing crops, why don't we just strike that language? Would you be in favor of striking that language...

SENATOR LOUDEN: Well,...

SENATOR CHAMBERS: ...about growing crops?

SENATOR LOUDEN: ...I suppose we could, yeah.

SENATOR CHAMBERS: So...so...

SENATOR LOUDEN: It wouldn't be anything that would affect that much...that much. I think this is probably...

SENATOR JENSEN: One minute.

SENATOR LOUDEN: ...language that comes out of the noxious weed control law.

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SENATOR CHAMBERS: So sometimes it's not good to just take language from one place and put it into another and expect it to fit there appropriately. Would you agree?

SENATOR LOUDEN: Well, I agree. And, of course, like I said that time when we were discussing this on...in the Ag Committee, Committee, I am not a writer of legislation and I usually rely on other people. We probably plagiarize some of the other areas of the statutes in order to get this done. If there's something you see that needs to be improved on this bill, why, I suppose we would certainly be willing to look at it.

SENATOR CHAMBERS: Okay, and as we go section by section, when I get to take over the stage, then we'll have an opportunity to deal with some of the things that I think perhaps are worth looking at, for purposes of modification, but thank you, Senator Louden. Thank you, Mr. President. Thank you, Mr. President. Thank you, Mr. President.

SENATOR JENSEN: Thank you, Senator Chambers. Senator Chambers, your light is on next. This is your third opportunity to speak.

SENATOR CHAMBERS: Thank you, Mr. President. (Laugh) This bill gives me the opportunity to mention that I like all living things, even my colleagues. Now I might even say some things that seem kind of harsh on this floor, but I take umbrage at others who do that. They don't know you like I know you. They haven't been annoyed, vexed, irritated by you in the way that I have, so they don't have the right to say about you and to you the things that on occasion I feel are necessary to stir up your minds and stimulate some thought on these subjects. But this bill is going to be a lot of fun for me. I do care about all living things. I read a column by Rainbow Rowell in the World-Herald about a bat that had come into her house and her husband had caught it with a towel and taken it outside. It made me think of how I do all the time. I catch bats, and they're not in my belfry, referring to my cranium, Senator Arnie Stuthman. I could hear your wheels turning in your head. And I take them outside and I release them. I don't kill spiders. I don't eat with them, but I don't kill spiders. I don't have

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roaches. When I was growing up, I saw them. But if you don't leave food around, they don't want to be where there's no food. And when you're a bachelor, sometimes there's no food for you around either. In fact, if there were any, they probably held a conclave and said, this guy doesn't know what's going on. Let's get out of here. Because even if he dies, we don't eat him; we'll let those other things that eat carcasses take care of him. So I don't have those. When those cute little lady bugs come in...this sounds like a digression, but it relates to living things. We're going to be on this bill so long, anyway. I have one that I think lived all winter where I live. I'd see it periodically, then I wouldn't. Then I'd see something out of the corner of my eye flying, and I'd look up and there she would be, by the light fixture. And I would just watch for a while, and apparently she was there because there was warmth. Then I would go back to what I was doing. I'd look up and she is gone other whither. But never would I raise my hand or anything else to kill her. If a bee gets in the house, I try to disable it enough for me to catch it, not with my bare hands, because that might have stimulated aggression, and turn it loose. I don't get pleasure out of killing anything. I think it was Blake who wrote: A robin redbreast in a cage puts all Heaven in a rage. I don't want these animals killed for the convenience and enjoyment of human beings. If people have decided to try to conduct some kind of activity on land where prairie dogs already were, or can be expected to locate, that should be a part of their doing business. This is, in effect, an eradication program called by a different name. And they want to put the cost of it on the individual landowner. And the threat that would make that landowner take some action is that we're going to come on your property or send somebody on your property to do something, and we'll destroy everything you got growing, and the law says that if we exercise care in destroying your crops, then you can't get us for trespassing or damage or anything else. So the landowner would say, well, if that's the alternative, I guess I got to do something.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: So based on what Senator Louden said, and Senator Schrock may have suggested it, you can go out there and you can shoot them. You can use poison. You can use gas. I don't know if you can use weapons of mass destruction. Now maybe, Senator Louden, the prairie dogs were the ones hiding those weapons that the President couldn't find in Iraq. You didn't think about that, did you? Clever little animals, those prairie dogs. But at any rate, if they have them, I can understand why they would have them when I look at bills like this and see what you have in store for them. And I think they might use them, and then we'll see what happens. I think Senator Beutler's amendment, however, is appropriate because before the state or its agents come onto somebody's property, that person should have notice. And 48 hours is not too much of a burden on the county to provide a landowner. And I think that notice ought to include exactly what these storm troopers...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...intend to do. And they should have to wear a distinctive style clothing, too, or a uniform of some kind, preferably with a swastika.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion, Senator Howard.

SENATOR HOWARD: Thank you, Mr. President. And I, too, support Senator Beutler's amendment to this bill. But I also have another question now for Senator Louden, if he would allow me.

SENATOR CUDABACK: Senator Louden, would you respond?

SENATOR LOUDEN: Yes.

SENATOR HOWARD: Thank you. Thank you. Now that I better understand the concept of management of the prairie dog, can you explain to me who will be bearing the cost for this management program?

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SENATOR LOUDEN: Well, the primary cost would fall on the landowners that have them on their property. That's the idea of the bill, to be locally controlled and locally funded. Where the problem comes in, as Senator Chambers has talked about and Senator Beutler's amendment, is when the...and there are local property owners that don't want to comply or don't want to keep track of their animals. No different than if you have a junkyard or something else like that. It's up to you to keep them on your property

SENATOR HOWARD: In that case, who does that fall to?

SENATOR LOUDEN: Pardon?

SENATOR HOWARD: In the case if the property owner themselves don't take the responsibility, then who becomes responsible?

SENATOR LOUDEN: That's it, that's the reason we put it on the duty of the county board or the county commissioners. They're usually your highest governing local entity in a county, is the county commissioners.

SENATOR HOWARD: Well, I've been handed this information and I'll read from this if I may: The counties do not have the expertise nor the financial resource to develop the expertise, to develop the biological and ecosystem impacts of prairie dog colonies. So I am quickly coming under the impression that they're not interested or not willing to assume this responsibility. Is that true?

SENATOR LOUDEN: Okay. I didn't get all of what you said, but I presume you said where the counties don't have...don't feel like they have the money to do that. Is that what you're saying?

SENATOR HOWARD: In essence, yes.

SENATOR LOUDEN: If you'll notice in the bill there that they can assess the cost of the program, whatever they do on that property, can assess it to the landowner in...such as taxes or something. It isn't a mechanic's lien but they can put

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assessment on the property to pay for the work that they've done on that property. Same way as your noxious weed bill; if they come on your land to spray your noxious weeds, you know, if you're...it's up to the landowner to control them and so you have...if you don't do it, then the county can do it and send you the bill for it.

SENATOR HOWARD: And the folks in your area are agreeable to that, that plan, that payment plan?

SENATOR LOUDEN: Pardon?

SENATOR HOWARD: The individuals that live in your county understand and are agreeable to that type payment plan?

SENATOR LOUDEN: Well, I suppose those that comply all the time and want to do something about management probably are. It's no different than, getting back again to the noxious weeds, if they don't want to comply, then something has to be done so you have to leave it up to someone to do it. The county will be reimbursed for whatever they do, so it doesn't matter whether the county has the money or not, they will be reimbursed for what they do. Now the next thing is, how many...which counties are you talking about? If the county doesn't implement this management plan, they don't...they're not responsible to do anything. The county board has to implement this plan in order to be responsible for any of it. If they don't feel like they can afford the responsibility, then they just don't implement the plan. And all they have to do is implement it by resolution.

SENATOR HOWARD: So they would be able to opt out or choose not to participate.

SENATOR LOUDEN: Well, they wouldn't have to opt out. They actually have to opt in.

SENATOR HOWARD: Okay. Well, thank you so much for that clarification. I appreciate that, and I would be happy to grant the remainder of my time to Senator Chambers.

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SENATOR CUDABACK: Senator Chambers, you have about 1, 13.

SENATOR CHAMBERS: Thank you, Senator Howard. Mr. President, members of the Legislature, this bill has a number of things that do need to be addressed, and I'm just kind of using a scattergun approach at this point because ultimately, as I've stated, I'm going to take it section by section. But I will tell you something I see here. On page 1, in line 14, it says: "Managed colony means a colony that is confined to land owned by one person." So if the colony consists of the tunnels and burrows that are made by this animal and those burrows go onto the other person's property, you would have to go on that other person's property to manage those burrows. To fill them up, you'd have to go on the other person's property. If the other person does not let you on that property, you cannot comply with this bill, and the law cannot require a person to do something which is impossible of being carried out. I will go into that in more detail later. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Your time was up but, Senator Chambers, your light was on, but you have spoken three times.

SENATOR CHAMBERS: I tried.

SENATOR CUDABACK: Thank you. Senator Beutler, there are no further lights on, so you are recognized to close on AM1185 to the committee amendment.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, when a county commissioner goes onto private property for this purpose, he is attempting to ferret out the prairie dog towns. And you might be interested to know, some of you may have followed the fact that the black-footed ferret is, in fact, on the endangered species list. And the black-footed ferret used to live off of big prairie dog towns, and they are thinking of reestablishing the black-footed ferret in Nebraska at some point in time in the not-too-distant future. The black-footed ferret, along with the rattlesnake and the larger birds were what kept the prairie dog towns in check when the ecological system was more in balance. But for purposes of ferreting out prairie dog

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towns, with respect to county commissioners, this provision simply asks them to give some notice to the landowners before they come onto the land. As you might expect, as you would be yourself, I imagine, somewhat sensitive to individuals roaming around on your land and you have no idea who they are or why they're there, especially...even though the county commissioners, when they enact a management plan are obligated to give a general notice on or before May 1 of each year, that they have this plan in existence. The bill provides that, should they fail to give that notice, the plan is in effect nonetheless. So it's possible that they can give the notice and a person wouldn't see the notice. It's a general publicized notice in the newspaper. Or it's possible they may not give the notice at all. The management plan, if they enact a management plan, will still be in effect and nobody in the county may particularly know about it. So in light of those possibilities and as encouragement to, I think, what we would consider to be a common courtesy in terms of coming onto somebody's land, I would encourage you to adopt this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the closing on AM1185, which is an amendment to the committee amendments offered by the Agriculture Committee. All in favor of the amendment vote aye; those opposed, nay. The question before the body is the Beutler amendment, AM1185. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of Senator Beutler's amendment, Mr. President.

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

ASSISTANT CLERK: Mr. President, Senator Beutler would move to amend with AM1186. (Legislative Journal page 1176.)

SENATOR CUDABACK: Senator Beutler, to open on AM1186 to the committee amendments to LB 673.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, this, again, is intended as a very friendly amendment and I

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believe in accordance with what Senator Loudon is attempting to do. The central duty imposed upon a landowner is succinctly put in Section 4 of the bill. It says: It is the duty of each person who owns or controls property within a county that has adopted a coordinated program for the management of the black-tailed prairie dogs, under Section 3 of this act, to effectively manage black-tailed prairie dog colonies present upon his or her property to prevent the expansion of colonies to adjacent property. Now what the bill doesn't say anywhere is, but what if the owner of the adjacent property is okay with the dog town expanding a little ways onto his or her property? And so what this amendment says that is that if the owner of the adjacent property is okay with it, it's no business of the county's to snoop into their conjunctive business, to their conjunctive agreement, than it is for the county to snoop onto the owner...the original owner's land, so long as it wasn't jeopardizing adjacent property. So in short, it simply further defines in what cases the advancement of a colony onto an adjacent property is something that would trigger county action. And county action would not be triggered with this amendment, if the adjacent landowner had no objection to the colony being there. That's all it does. By the way, according...the Game and Parks Commission was in the act of doing a fairly extensive series of studies on prairie dogs in Nebraska until they reached a certain level of public objection to their involvement in it, and then they started to curtail their action. But they get done a basic survey of prairie dogs in Nebraska, and by their estimate, which is the very best one that we have, there are about 137,000 acres of prairie dog town in Nebraska, so they're not nearly extinct, nor are they in the numbers of several millions that they were originally. So it's someplace in between, and obviously we need to control them to some extent, as this bill purports to do.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM1186. Open for discussion on that amendment, Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, again Senator Beutler has offered an amendment that I'm going to support, and again I must ask, rhetorically, what is a sensible

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amendment like that doing on a bill such as this? But because it is so reasonable and rational, it ought to be added to the bill. It should not be enough for these snoops to go around and I...Senator Beutler used a version of that word "snoopers," for these snoops who have nothing to do because their counties might have six people in them and they got to find something to do so they go snooping around on people's property and they come on Senator Arnie Stuthman's property and say, aha, you have some tunnels and burrows made by prairie dogs going onto Senator Chambers' property, so I want you to get this management plan going. And if you don't do it in 60 days, you're in trouble, buddy. And Senator Arnie Stuthman says, you apparently have not watched the Legislature. He and I make a team, a very effective team known as the "Ernie and Arnie Team." And we both know what happens on our property. He has no objection to this. Did you ask him if he even cares? And the snoop says, well, you know, I hadn't thought about that because the bill doesn't require me to do that. I only do what the law requires. I'm a law-abiding Nebraska citizen, and they won't let me carry a pistol hidden but, by God, I will enforce this prairie dog bill. And that law says if I find prairie dogs that encroach on somebody else's property, they got to do something about it. Senator Stuthman, get busy or you're in trouble. And for every day you don't stop this encroachment, you are guilty of an infraction and you are hereby fined \$100 a day for 15 days, if during that 15 days you haven't corrected this. So I see these strange-looking snoops with their hunched shoulders; that's what happens when you snoop. I think it was Ralph Waldo Emerson who said, if you conduct your business in a certain way, nature is not slow to dress you in the proper livery that shows what it is you're about. So they get these stoop shoulders, that neck with kind of a little dip in it, and their hair falls out in the top and they got a little fringe of hair right around the sides by their ears, and they look like those birds that sit on fence posts and just wait for something to die. So I say, Arnie, what are these snoops doing? He says, well, Ernie, they're going to make me do something about these burrows that go from my property to your property. I say, they're going to do what? I like that. Arnie, why would you do this to me? Arnie says, I don't want to do it; the snoops are making me do it. So I then address myself to them, why are you making him do this? Well, by God, the law

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that the Legislature passed says that when I find these burrows going onto somebody else's property, I'll make the one who originates them on his property do something about it, and that's what I'm here to do. I'm here to enforce the law. Are you going to interfere with the carrying out of the law? I say, Arnie, he might have us here, so maybe we'll have to take it to a higher court. And Arnie says, well, what court would you suggest? I'd say, well, based on what Senator Jeanne Combs believe in, have you got that duo in your house? He said, what duo is that? I say, Smith & Wesson. Well, the snoop knows what that is so he takes off running and goes to get the sheriff. And the sheriff comes back. He says, well, what's going on here, fellas? And I say, Arnie, it starts with you so you tell him. Arnie says, well, I got some little critters that made tunnels onto Ernie's property. And he says, well, Ernie, how do you feel about that? And I say, I like them. So then he turns to the snoop; he says, what did you bring me out here for? Then he goes through this thing about what the law says. The sheriff says, fool, you're supposed to use some judgment. Now get off these men's property before I arrest you.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: So he gets off the property and he runs and picks up the telephone and calls the operator--I want you to find the telephone number of Senator LeRoy Louden because I got something to report to him. He says, Senator Louden, and he tells him the story. Senator Louden says, well, I side with the sheriff, use some judgment. And this snoop says, well, Senator Louden, I would suggest that you put in the law what you mean next time because I'm doing what you told me to do. Members of the Legislature, I think you ought to protect all of us from what I've just described by adopting Senator Beutler's amendment. Thank you, Mr. President.

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

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I have to agree with Senator Chambers. I support this amendment, too. I'm never one to do away with a good idea, and

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whenever someone has a good idea, I'm willing to accept it, and I think this probably clarifies some of the language in there. I think as we were progressing through these things over the years, or over the year, you might say--we've been working on this since way last summer--there was at one time an...wording in there that if adjacent landowners agreed, that there was no problem. With some of the earlier versions we had, we had buffer zones in there to try to address that problem Senator Chambers is concerned about, where they burrow under onto adjacent property. But we decided that a buffer zone would be more trouble to patrol and maintain than what it was worth, so we mostly settled on the bill that would just have a management area and people would be responsible for the critters on their own land. I think Senator Beutler's bill will probably clarify that part a little bit, and I'm sure it'll help clarify the language in it. As we work through this thing, why, as some of the amendments are presented, this is one of them that I would support. Some of Senator Beutler's amendments I may not support, but at the present time I would certainly support this one and would plan on voting green on this amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Chambers, on the Beutler amendment to the committee amendments.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I would like to ask Senator Louden a question.

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

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, who owns wild animals in this state?

SENATOR LOUDEN: The state of Nebraska, as far as I know.

SENATOR CHAMBERS: Who owns these prairie dogs?

SENATOR LOUDEN: I suppose the state of Nebraska. It ain't any

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different than if we have fish in our lakes up there, we're not allowed to fish unless we have a fishing license because the state of Nebraska claims them unless you have a title to them.

SENATOR CHAMBERS: Why are you placing a financial responsibility on the landowner to do something about animals owned by the state?

SENATOR LOUDEN: Because I'm sure you wouldn't vote to put the financial responsibility on the state of Nebraska. We have enough problems as it is. Usually the landowners are right there at where the...close to the problem, and the case with the landowners, like I mentioned before, this is something that's labor-intensive and they can usually do the job a lot cheaper than anyone else.

SENATOR CHAMBERS: That's a long answer, but I call that a "Fred Astaire" because you tap-danced around the question.

SENATOR LOUDEN: Okay. Ask the question again.

SENATOR CHAMBERS: The animals are owned by the state. The state would, therefore, have the responsibility to do whatever is to be done with those animals. Wouldn't you agree on the principle that's expressed?

SENATOR LOUDEN: Well, I guess when I get down to it, then where do you put coyotes and foxes...

SENATOR CHAMBERS: I don't want you to answer a question...

SENATOR LOUDEN: ...and that sort of thing?

SENATOR CHAMBERS: I don't want you to answer a question with a question, if you don't mind, Senator Louden. If you don't mind, I would appreciate your answering the question.

SENATOR LOUDEN: Okay.

SENATOR CHAMBERS: Okay. If it belongs to the state, whose responsibility is it to do something about it?

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SENATOR LOUDEN: I suppose, when you got down to the last part, it would be the state.

SENATOR CHAMBERS: Okay, and I agree with you. And this is a principle everywhere and it's why, as you pointed out, people cannot do whatever they want to with animals that happen to be on their property that are wild. Now, this bill is designed to put the cost on the landowner to do something about that which the landowner does not even truly own. Isn't that true?

SENATOR LOUDEN: That the landowner doesn't truly own?

SENATOR CHAMBERS: Yeah. The landowner doesn't own these wild animals.

SENATOR LOUDEN: Oh, you mean they don't own these wild animals,...

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: ...theoretically? Say that question again. I forgot the first part...

SENATOR CHAMBERS: Okay.

SENATOR LOUDEN: ...when you...

SENATOR CHAMBERS: Okay. We've agreed that wild animals are owned by the state. We agree that these prairie dogs are wild animals. If something is to be done about these wild animals owned by the state, the responsibility is the state's to do something about them. Isn't that true? Doesn't that follow from the earlier principles we agreed on?

SENATOR LOUDEN: Okay. Yeah, I'll concede that.

SENATOR CHAMBERS: Okay. Now you're bringing this bill because you think the state does not want to assume the responsibility of footing the cost for dealing with animals that the state owns. True?

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SENATOR LOUDEN: Right, because they haven't up to now.

SENATOR CHAMBERS: Okay, let's stop there because you...

SENATOR LOUDEN: I have to go on...

SENATOR CHAMBERS: ...you answered the question.

SENATOR LOUDEN: ...their track record. No, they haven't done anything to control prairie dogs.

SENATOR CHAMBERS: Do you think it's fair to put on the ordinary citizen a responsibility that is the state's,...

SENATOR LOUDEN: Well, we do it all the time.

SENATOR CHAMBERS: ...in principle? Well, that's not good enough. Do you believe...we're trying to establish a principle here. Do you believe that the ordinary citizen should be burdened with a responsibility that belongs to the state?

SENATOR LOUDEN: Okay. When...

SENATOR CHAMBERS: Do you?

SENATOR LOUDEN: ...you're talking about prairie dogs?

SENATOR CHAMBERS: Anything.

SENATOR LOUDEN: Okay, when you're talking about prairie dogs, I have no problem with it. When you're talking about something else, then I do have a problem. These are...

SENATOR CHAMBERS: Oh, you are a man with those...

SENATOR LOUDEN: ...more or less considered rodents.

SENATOR CHAMBERS: ...you're a man with those sliding principles.

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Whatever the circumstances call for, your principles adapt to those circumstances. So if I were to draw a picture of your principles, they'd look like a snaking river. Correct?

SENATOR LOUDEN: No, I don't think so. I've never seen a snake in the river, but...

SENATOR CHAMBERS: A river snake...

SENATOR LOUDEN: ...I think if you looked at my principles, they'd probably look a little better than that.

SENATOR CHAMBERS: A river snake like a shape...shaped like a snake.

SENATOR LOUDEN: No.

SENATOR CHAMBERS: So your principle...but you said it's all right to apply that where prairie dogs are concerned, but you wouldn't want to apply it someplace else. So those are shifting, adaptable principles, aren't they?

SENATOR LOUDEN: No. I think when you get down to it, you're talking about...you're talking about animals that are a problem. And whether they're owned by the state or who they're owned on...these prairie dogs are actually owned by the state because you can't hunt...you can't come from out of state and hunt them without a permit, so the state does have a certain claim to them. But whether they want to do anything to manage them is the next question. They don't do anything to manage our gophers. There's a lot...

SENATOR CUDABACK: Time, Senator.

SENATOR LOUDEN: ...of animals the state doesn't manage and it's left up to the landowner...

SENATOR CUDABACK: Senator Louden, I'm sorry, but...

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SENATOR LOUDEN: ...to take care of.

SENATOR CUDABACK: Senator Louden, I'm sorry, but Senator Chambers' time is up.

SENATOR LOUDEN: Thank you.

SENATOR CUDABACK: Thank you. Senator Chambers, you're recognized and this will be your third time.

SENATOR CHAMBERS: Thank you, Mr. President. The third time is so charming. Mr. President, here's what I'm getting at. Wild animals are owned by the state. Prairie dogs are wild animals, therefore, prairie dogs are owned by the state. That's known as a syllogism. You give the major premise, the minor premise; both are valid so the conclusion is inescapable. Prairie dogs are owned by the state. It is the state's responsibility to deal with those things that the state owns. If something is to be done with that which is owned by the state, the state should do it. How many people would agree that if your house is within 300 yards of the interstate, if there develops a defect in the interstate highway, you have to go out there and pay to have that fixed? And the highway doesn't belong to you. You can't go out there and paint on the highway what you want to paint on it. You cannot put a fence to stop traffic from moving by during hours when you want peace and quiet. No, it's under the direction and dominance and jurisdiction of the state. So when it becomes convenient, all these conservatives suddenly want to make the private citizen assume the responsibility of the state. And I'm going to make it very difficult for you to do that, no matter how alluring the language is that you use to accomplish this feat of legerdemain. I'm going to make you work to get it done, and we're going to work and work and work. Now some people were made for work and they love to work. I'm one of those people. I work hard but I'm paid to work. I'm not paid well but I'm paid, and I'm going to earn that money and I'm going to make you earn yours to the extent that I can. These are wild animals. Senator Louden does not want to put the responsibility on even a political subdivision, which at least is a part of government. He doesn't want to do that because the

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county is not going to assume that cost, either. So who is the sucker who always is the residuary that has to receive and hold everything, like the residual clause in your will? Everything I didn't provide for, I just dump it in there and this is what we'll do with all of that, all of the miscellaneous. So you all are talking about your constituents as though they're residual containers. Whatever you can't get the state to do that is the state's responsibility, whatever you can't get the county to do that is the county's responsibility, you're going to make the individual citizen do it, even though my gold-digging friend, Senator Heidemann, is talking about property taxes not unjustifiably being raised. And he sits there quiet, like a lump on a log, while those private citizens' property is going to be assessed to pay for that which the state has an obligation to do but it chooses not to do. Where are those who are concerned about property tax increases? Well, they are concerned when it operates on a level big enough to affect enough people to perhaps affect an election. But when it comes to the individual, then it's a different story. I thought that responsible public officials are concerned about the individual.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: The society is composed of a collection of individuals. You mean to tell me that individual number one has less right to be protected than individuals two through ten? Because there are nine of them, their right is superior to that of number one, and you can disregard number one because it doesn't affect the other nine? Preposterous. But that's the way the Legislature operates, but I'm going to make it extremely difficult. You're not going to get this bill done easily. However, I do support Senator Beutler's amendment that he has before us at this point.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Beutler, there are no other lights. You're recognized to close on your amendment, AM1186.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, just to recap the amendment briefly. In the bill, it says that the county has the right to come in and stop the expansion of a

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prairie dog town if it starts to expand on adjacent property, and it has the right to do that whether or not the adjacent property owner is okay with the expansion of the prairie dog town. And what this amendment says is that if the adjacent owner is okay with the expansion of the prairie dog town onto his or her property, then the county has no right to come in and insist on some kind of remedial action. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the closing on AM1186. The question before the body is, should that amendment be adopted to the committee amendments? All in favor vote aye; opposed, nay. Have you all voted who care to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: AM1186 has been adopted. Mr. Clerk, next motion.

CLERK: Mr. President, Senator Beutler has the next amendment, AM1187. Senator, I understand you would like to withdraw AM1187 and offer, as a substitute, FA161.

SENATOR BEUTLER: That's right, Mr. Clerk.

SENATOR CUDABACK: Any objection? Seeing no objection, so ordered.

CLERK: Senator Beutler would offer FA161 as an amendment to the committee amendments. (Legislative Journal page 1176.)

SENATOR CUDABACK: Senator Beutler, to open.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I had indicated to Senator Louden that I would withdraw any amendment that he didn't agree with, since he hadn't had an opportunity to look at it. And this third amendment I think he does have some objection to, and so this will give everyone a chance to think about that amendment before Select File comes up. And I have substituted another amendment that is simply,

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again, a correction of a technical matter, and here is what it does. If a person...Senator Louden's bill essentially allows for two different paths that the county commissioners can take if they want to curtail the expansion of a prairie dog town and engage the landowner in that business. And the one thing that they can do is insist that he or she take the remedial action, and if they don't do it, they can do it themselves and then assess the costs against the landowner. And the other method that they have is to simply get the county attorney to fine him, him or her, when they don't take the appropriate action. Now if it's a fine, it's an infraction and it's of the nature of a criminal action and there's a certain appeal process that pertains to that sort of remedy. Under the bill, it's suggested that a fine could follow the appeal path of the Administrative Procedures Act, and that is simply not the case. So it eliminates the words "or fines" from the appeal process that relates to the charges against the landowner. In other words, if you choose to go against the landowner by simply the county doing the work and there are certain charges, then, yes, you can charge it and the landowner can object to it and they can have a hearing before the county board. And if there is still disagreement, then it can be appealed through the process that we described as the administrative appeals procedure, Administrative Procedures Act. But you can't do that, you can't go that route with fines, to my knowledge. And so this simply clarifies that that route is not available if the county commissioners choose the alternative of fining the landowner, as opposed to going in and making the corrections and charging him for the costs. And that is all that the amendment does. Thank you.

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Beutler. Senator Kremer.

SENATOR KREMER: Thank you, Mr. Lieutenant Governor, members. I would just like to rise and support this amendment. It was inadvertently put in there as we took the language from the noxious weed program, and it should have only referred to one type of appeal. And as Senator Beutler mentioned, that would be the appeal on where they would come in and control the prairie

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dogs and charge the landowner for that. So it was a mistake and this does correct that. I would just like to make a few other comments, I guess, and I have a book here that's Black-Tailed Prairie Dog Conservation and Management of the Nebraska National Forest. The forest...the national forest people are already doing this. What we're doing here in this bill or what Senator Louden is seeking to do is something that's similar, that the Forest Service is already doing. And it talks about management and conservation, and I think we kind of...it seems like we're drawing so much on the management but it's also conservation, too. And I know that Senator Louden's intention was that, not to eradicate prairie dogs as they were put on the endangered species, but, of course, about a week before they were put on the endangered species, they were trying to be eradicated by the FDA (sic), or the federal government, I think. But the objective is to manage them. And I would just like to mention at the hearing we had...of course, I did mention that we had a closed-circuit video hookup with Chadron, and there was about, I think, 10 or 12 people in support. We had two people came in and testified in opposition. One was the NACO because they felt like the county did not have the expertise to do this and they did not want to get into the business of going on to making these decisions and subjective decisions, and something that it's not very fun to do for county commissioners. The other person that objected, as he was testifying, we said we thought you were objecting to the bill, but he was really talking about how bad the prairie dogs were. And he said, well, yes, the bill doesn't go near far enough; we want to eradicate them altogether; we don't want to manage them. So that was the other person in opposition. And I don't know how many of you know "Buffalo Bruce," but he is a person from the Chadron area that comes down and testifies many times, and he was in neutral position because he felt like the bill really is written in that we was to...we were to manage the prairie dogs in a way that we kept them here but just not to let it get completely out of hand. And that's really the intent of Senator Louden's bill, is to manage them so that they do not become objectionable to the neighbors, and I think that's all we're trying to do. And much of this is already being done by the Forest Service to control prairie dogs on their property. They...I think they allow them on their property, but to control them so they don't go over

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into the neighbor's property. So, Senator Beutler's amendments, I think, have been good amendments, and the notification of 48 hours, I don't think there was ever the intent that people just run out on the property to do this, and I think practically most of the time, or all the time, it would have happened. But it's good to have it in statute so there's no misunderstanding. So I support Senator Beutler's amendment again. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Kremer. We have Senator Louden, followed by Senator Chambers. Senator Louden.

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. I would support Senator Beutler's amendment, of course, and as usual with his expertise and that, he can usually improve legislation, improve bills considerably. So I put a lot of stock in his expertise and what he comes up with and does for these bills. So I would certainly support his amendment, which is a clarification of something that was inadvertently put in there. I wanted to thank Senator Kremer as he mentioned the Forest Service. And this is what the idea of the bill, the underlying bill, after it was amended by the committee and also when we were drafting it to start with, is something that will be compatible with what the federal government is doing. We want...we don't want to get into a lawsuit such as South Dakota is doing now. They have their...they've introduced legislation and passed it to eradicate them and they want them off of there, so they're in the process of filing a lawsuit on the federal government to eradicate the prairie dogs on some of the federal lands. Whether they win or not will be another question. But this is something we're trying to set it up so that the prairie dogs are not eradicated, so that there are areas that they will be. If there are other species that are compatible with the prairie dogs and they're in certain areas, why, this bill will address that matter, too. Again, I point out that this is something that the counties really opt into. And Senator Chambers' district, I imagine Douglas County probably won't opt into it because I don't think they have any land left over there for a prairie dog to grow on. He'd probably starve to death around there. We'd have to find some that are willing to be urbanized a little bit more and work off of people's lawns. So this is something that if counties don't want to do...want to do

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this plan, why, it's not mandatory. It's something they can adopt and, of course, again I would support Senator Beutler's amendment to the Agriculture amendment, AM0867. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Chambers, you're recognized on FA161.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I again support Senator Beutler's amendment. It appears that some good work is being done on the floor that may have been done in the committee, except that it apparently was believed that by taking language from the noxious weed bill and just bringing it over here into this bill dealing with living animals would be sufficient and acceptable. But it is not. I've been talking about some things that go to an attitude that I have toward living things, the incompetency of government, and the attempt by the conservatives in the Nebraska Legislature to shift onto individual property owners that which is the responsibility of the state. And I think this ought to be declared forthrightly in the name of this bill, and I'm going to offer an amendment to that effect. There is not truth in labeling in this bill. If you look at page 1 of the committee amendment, beginning in line 3 it says, "Sections 1 to 13 of this act shall be known and may be cited as the Black-Tailed Prairie Dog Management Act." No, no. It should be called "dump the state's responsibility on the individual landowner act." That is what you're doing. Why, if you have the gall to do something, don't you have the honesty to call it what it is? If you didn't know before the exchange between Senator Louden and me that wild animals belong to the state, you know it now. The state has the final say-so as to what a person is allowed to do with these wild animals. The state, as the owner, has the responsibility. This bill says that a landowner has certain responsibilities by virtue of being the owner of the land. So if the landowner, by virtue of being the owner of the land, is going to have to assume certain responsibilities relative to that land, why are you not going to apply the principle to the state and say that the state, by virtue of being the owner of these wild animals, has the responsibility to do whatever the state feels is necessary to be done with them? And the state should bear the cost. But you all don't want to bear the cost.

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You are the ones who determine what the state is going to do by the laws that you enact. You determine the policy of the state. I have said it, I've said it again, and I'll repeat it now, Legislatures have the lazy practice of compartmentalizing issues so that they need not be discussed in a unified, coherent, logical manner. If we were talking about property taxes, you'd have people jumping up on this floor like jacks and jills in and out of the boxes. I don't want to raise property taxes. No, I'm not going to raise property taxes. When I ran, I said I wouldn't vote for a property tax increase. Heavens no, I won't vote for a...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...property tax increase. And those who are a little saltier would give the name of the place opposite of Heaven to let you know how determined they are not to have a property tax increase. So we come to something that's going to burden the property owner with the responsibility that belongs to the state, and you sit here like corpses in a tomb. This is like the valley of the dry bones. There needs to be a wind going through this valley of the dry bones, make them stir. Join the foot bone to the ankle bone to the shin bone to the knee bone to the thigh bone to the hip bone to the back bone to the shoulder bone, and right on up to the head bone, and hope you put something in the head to think with. And you're not thinking. You're not being consistent, you're not being true to the promises you made. You don't care about the property owner, do you? I do. And you've been told over and over, they don't even live in my district. They live in you-all's district, the good people, the ones with all the principles, the "ruralies," the simple way of life, the bonding to God and nature. And you don't care about your own property owners.

PRESIDENT SHEEHY: Time.

SENATOR CHAMBERS: Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you Senator Chambers. (Visitors introduced.) Senator Louden.

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SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. May I ask Senator Chambers a question, please?

PRESIDENT SHEEHY: Senator Chambers, would you yield?

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: Senator Chambers, as I've listened to your discussion this afternoon, you feel that it shouldn't be put on the property owners. Do you really...are you...do you think that there is a problem with black-tailed prairie dogs in western Nebraska? Do you really...have you ever been out there to check them out? Do you know what the problem is all about?

SENATOR CHAMBERS: I've been in western Nebraska but not to investigate the prairie dog situation.

SENATOR LOUDEN: Okay. Now do you feel that if they're devastating areas and those...and that property has to be taken off the tax rolls as grazing land and reduced down to wasteland, do you think that that is something that should be allowed to happen just because the animals are out there devastating that? Do you think that would be...help the property owner?

SENATOR CHAMBERS: Senator Louden, I believe that things have a starting point and I would start by saying, who was occupying the land first? If the prairie dogs were there first, they're entitled to stay there.

SENATOR LOUDEN: Okay. Now, along with that, since you're not familiar with what the prairie dogs are doing to the livelihood and that...and to the people out in western Nebraska that are having this problem with it and devastating part of the ecosystem and probably the water quality in different places, now, by using that same...the same method or methodology or same line of thinking you have, do you think, then, that we should give the city of Omaha back to some of the Indian nations?

SENATOR CHAMBERS: Well, I didn't say Omaha, but I did have a bill to give Fort Robinson back.

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SENATOR LOUDEN: Yeah, but that isn't where you live. You want to...I want to do it in Omaha. I don't want to do it out west.

SENATOR CHAMBERS: I'll tell you what. You offer the bill and I'll cosponsor it with you. I'm serious.

SENATOR LOUDEN: That we give Omaha back to the Indians?

SENATOR CHAMBERS: Absolutely.

SENATOR LOUDEN: Okay. We'll sure enough do that.

SENATOR CHAMBERS: Okay.

SENATOR LOUDEN: Thank you, Senator Chambers. At least I know where you're coming from. You're probably not familiar with what's going on out in western Nebraska, the fact that it is affecting these people's livelihood out there. And this is something that needed to be done. I certainly support Senator Beutler's amendment. It's a clarification with that, and with that, I would ask that you vote yea on Senator Beutler's amendment, FA161, to the committee amendment. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. I would like to ask Senator Louden a question or two about his bill.

PRESIDENT SHEEHY: Senator Louden, would you yield?

SENATOR LOUDEN: Yes, I would.

SENATOR CHAMBERS: Senator Louden, I'm looking at some of the language in this committee amendment, on page 2, in line 11, talking about the expansion of these colonies. It says...well, let's go to line 10, "to prevent the expansion of colonies to adjacent property." When you come to, that means you're up to the property line. You have the right to let anything in your property come up to that property line. Then when you get on page 3, in line 27, you're talking about a colony that has expanded onto adjacent property. If you're going to talk about

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requiring a landowner to manage these colonies that have just come up to the adjacent property, that's preposterous. It should not be done. So let me ask you this. On page 2, in line 11, should we strike the word "to" and put "onto" to make it clear that you're not talking about just coming up to the line that separates your property from somebody else's, but it has to cross the line before any duty can be imposed on you? What do you think of that?

SENATOR LOUDEN: Well, if you think it's better legislation to put "onto" rather than "to," I guess, as far as I know, I'm not that much of a lawyer, thank God, but anyway, I would, you know, have to ask somebody if it makes any difference. If it doesn't make any difference, I'll take your word for it. If it's possible that it doesn't make any difference to it and improves the language in it, I would accept it.

SENATOR CHAMBERS: Senator Louden, I refer to you as the king because of your name. "King," come let us reason together. Let's say that your property line is the front of your desk, and by the front of your desk, I meant that part which is closest to the Clerk. Is there a difference between something coming up to the front of your desk and something coming onto the top of your desk? Is there a difference?

SENATOR LOUDEN: About a quarter inch, probably.

SENATOR CHAMBERS: But is there a difference?

SENATOR LOUDEN: I suppose there would be.

SENATOR CHAMBERS: So if you say, don't come onto my desk, if I come up to your desk, have I violated that order you gave me?

SENATOR LOUDEN: You say onto?

SENATOR CHAMBERS: If I come to...

SENATOR LOUDEN: Oh, no,...

SENATOR CHAMBERS: ...your desk?

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SENATOR LOUDEN: ...if I said..."to" and "onto" would be different propositions.

SENATOR CHAMBERS: So if I say...if I just come to your desk, I haven't violated your order not to come onto your desk. Right?

SENATOR LOUDEN: True.

SENATOR CHAMBERS: Now, if I break that imaginary line and stand on your desk, then I violated your order. Right?

SENATOR LOUDEN: Right.

SENATOR CHAMBERS: Do you see the difference between coming to adjacent property and coming onto adjacent property?

SENATOR LOUDEN: Oh, yes. I see that, yeah.

SENATOR CHAMBERS: So should that word be changed from "to" to "onto"?

SENATOR LOUDEN: I would accept that, yeah.

SENATOR CHAMBERS: Okay. And you're still not a lawyer, right?

SENATOR LOUDEN: I'm still not a lawyer.

SENATOR CHAMBERS: But you see the light.

SENATOR LOUDEN: Well, yes, I'm a Christian.

SENATOR CHAMBERS: (Laugh) Senator Louden, you shouldn't have said it. Thank you very much. Members of the Legislature, you know you should not open that door that lets me start talking about the "Bibble." But I don't have enough time this time, but I'm sure before we finish the discussion I'm going to get into that. But those are some of the things that I see in this bill. No court in the land is going to tell me that if I want these prairie dogs on my land, I cannot let them come up to that other person's property. I cannot be ordered by the Legislature to do

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anything with these animals on my property if they're not encroaching on anybody else's.

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: But this bill says if it expands "to" the adjacent property, not "onto." They need to correct that. Grammar is more than some esoteric, whimsical something that says you're going to nitpick with words. Words have a meaning. Why is there a word "onto" as distinguished from the word "to"? Because they mean different things, and you all are going to pass laws about education? Am I frustrated? Not really. You're frustrated when things happen that you don't expect and have no reason to expect. But when that which I expect happens, how can it frustrate me? Look, this is what I mean. I throw this pen up, it comes down. I'm not frustrated because it came down. Now, if I threw it up and it stayed there, I'd be frustrated. So what is happening on this floor with the lack of concern about words...

PRESIDENT SHEEHY: Time.

SENATOR CHAMBERS: 4:02, Mr. President. (Laughter)

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Further discussion from the floor? Senator Beutler, you're recognized to close.

SENATOR BEUTLER: Mr. Lieutenant Governor, members of the Legislature, I think you all will recall that this is simply a technical amendment that takes the words "or fines" out, because in the appeal process that's described in that paragraph, you cannot appeal fines in the manner suggested. So that's all it does to change the process. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Beutler. The question before the body is, shall FA161 be adopted? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment to the committee amendments.

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

April 12, 2005 LB 673, 708

PRESIDENT SHEEHY: FA161 has been adopted. Do you have a motion at the desk?

CLERK: Mr. President, I do. If I may, some items for the record. Mr. President, your Committee on Natural Resources reports LB 708 as indefinitely postponed; that signed by Senator Schrock. I have a series of amendments to be printed to LB 673, by Senator Chambers. (Legislative Journal page 1177.)

Mr. President, a priority motion: Senator Langemeier would move to adjourn until Wednesday morning, April 13, at 9:00 a.m.

PRESIDENT SHEEHY: There is a motion before the body to adjourn until Wednesday, April 13, at 9:00 a.m. All those in favor vote (sic) aye. Opposed? We are adjourned.

Proofed by: GSK, J. Hurlbut