

APRIL 13, 2005

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

April 13, 2005 LB 82, 351

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain this morning is Father Lloyd Gnirk, St. Pius X Church, Omaha, Senator Bourne's district. Father.

FATHER GNIRK: (Prayer offered.)

SENATOR CUDABACK: We thank you, Father, for being with us this morning. He represents the 8th District. I call the sixty-first day of the Ninety-Ninth Legislature, First Session, to order. Senators, please check in. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Are there any corrections for the Journal?

CLERK: Mr. President, there is. (Read corrections, Legislative Journal page 1179.) That's all that I have this morning.

SENATOR CUDABACK: Thank you, Mr. Clerk. Are there any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and engrossed LB 82 and LB 351. That's all that I have, Mr. President. (Legislative Journal pages 1179-1180.)

SENATOR CUDABACK: (Visitors introduced.) On with the first agenda item, legislative confirmation report, Mr. Clerk, Natural Resources Committee.

CLERK: Mr. President, Senator Schrock, as Chair of Natural Resources reports on three appointments to the Environmental Trust Board. (Legislative Journal page 1158.)

SENATOR CUDABACK: As Chair of the committee, you're recognized to open, Senator Schrock.

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

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

April 13, 2005

good morning to you. The Natural Resources Committee held a hearing on April 7 for three reappointments to the Environmental Trust Board, and I would have to say my editorial will be that they're excellent appointments. The first one I will talk about is Paul Dunn from Omaha. Paul has served on the board for six years, representing the Second Congressional District. He is a graduate of the University of Nebraska-Lincoln and is the recycling coordinator for the city of Omaha. Paul serves on the American Planning Association, the State Recycling Association; has been a presenter for the Virginia and North Carolina Recycling Association annual conference. And if my memory serves me correctly, he is current chairman of the board, of the 14-member board. Gloria Erickson is the second one I will talk about. She is from Holdrege. Gloria is a personal friend. She has served on the board for six years, representing the Third Congressional District. She graduated from Midland Lutheran College and has taken graduate course work in wildlife management. She is secretary-treasurer of Erickson Land and Cattle. Gloria is a former member of the Nebraska Game and Parks Commission and is a member of the Safari Club International, the Nebraska Council of Sportsmen's Clubs, and many other wildlife organizations. She has been awarded several professional honors, including Business and Professional Women's Club, Woman of the Year; Safari Club International President's Award; and the National Shooting Sports Foundation; and Budweiser Outdoorsman of the Year. The third one I will report on is Susan Seacrest. She's no stranger to those of you in Lincoln and those of you who have been involved in water issues. Susan has served on the board for 12 years, I think one of the original members, representing the First Congressional District. She received her bachelor's degree from St. Olaf College and a master's degree from the University of Rochester. Susan is founder and president of the Groundwater Foundation. She has served on the U.S. EPA Office of Children's Health Protection Advisory Committee; the Judicial Nominating Commission; U.S. EPA National Environmental Education Advisory Council; the U.S. EPA National Drinking Water Advisory Council; and the National Arbor Day Foundation Board of Directors. The committee's vote was unanimous on all three, and I don't know how the Governor could have selected three better people to be reappointed to the Environmental Trust Board. I would appreciate your positive

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

April 13, 2005 LB 480

vote on advancing these three people forward.

SENATOR CUDABACK: Thank you, Senator Schrock, you've heard the opening on the confirmation report by the Natural Resources Committee. Open for discussion on the report. Anybody wishing to address the report offered by the Natural Resources Committee? Senator Schrock, I do not see anybody wishing to speak. I will recognize you to close. Senator Schrock waives closing. The question before the body is the report offered by the Natural Resources Committee. All in favor of the report vote aye; those opposed, nay. The question before the body is the report offered by the Natural Resources Committee. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 1180.) 31 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: The report has been adopted. We now go to the next agenda item, General File, 2005 senator priority bills, the Combs division. Mr. Clerk, LB 480.

CLERK: LB 480, a bill by Senator Thompson and others, relates to the Nebraska Clean Indoor Air Act. It has been discussed, Mr. President, on April 7 and again on April 12. The committee amendments as offered by Health and Human Services have been presented, are pending. When the Legislature left the issue yesterday, Senator Synowiecki had pending FA157 as an amendment to the committee amendments. (Legislative Journal page 1174.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Thompson, would you give us a quick review of LB 480 itself?

SENATOR THOMPSON: Yes. LB 480 amends the current Nebraska Clean Indoor Air Act that was enacted in 1979, and it extends protection of public health beyond that act by including all restaurants that are currently under the act becoming smoke-free. It also extends the public buildings that the state owns to be smoke-free. Most of them are. There's one that isn't. And that will be included in this bill also, and then

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

April 13, 2005 LB 480

some other smaller suggestions that are a part of the bill that have come from people who work in this area. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. The Synowiecki amendment was ruled divisible. Senator Synowiecki, would you give us a quick review on the...on your FA157?

SENATOR SYNOWIECKI: Yeah, thank you, Senator Cudaback. The amendment was divided, and FA157 is to address the definition of a bar. As it was originally written in the...or presented in the committee amendments, whether or not your establishment is a bar was contingent upon the preparation or nonpreparation of food in an establishment. There was a lot of discussion yesterday relative to the questions surrounding what is and isn't the preparation of food, and so forth. And FA157 attempts to more broadly define a bar by indicating a bar is an establishment which sells...is a liquor retailer and sells pickle cards or has a keno at their establishment. In a nutshell, that's what the amendment addresses, or at least this division of the amendment speaks to the definition of a bar for purposes of LB 480. Thank you.

SENATOR CUDABACK: Thank you, Senator Synowiecki, for the review. Open for discussion on FA157, Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. Senator Synowiecki and I have been discussing this amendment and I'm willing to go part way, not on this division, however. I think if we make some accommodation to the racetracks and keno and allow them to continue to be...have smoking but they still have to be under the Clean Indoor Air Act. So if they serve food and are over a certain size, they already have to have a smoke-free area. So that...nothing would change in that regard for some of the restaurants. But I draw the line at pickle cards, because what would happen is restaurants, in order to avoid the Clean Indoor Act, would get pickles, and I think we'd see that spread and just become a way to get around and circumvent the law. However, I do know a high number of smokers do gamble, and would be willing to support the division of the amendment for the horse racing tracks as long as they're not on state property. And I'd also be willing to

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

April 13, 2005 LB 480

support where keno is played. And...but they would still...the amendment doesn't change that. Senator Synowiecki, one of the concerns that we have, because we looked at this before, is how do you define a bar that doesn't have pickle cards, under your amendment? What do they become in terms of definition?

SENATOR CUDABACK: Senator, are you asking a question, Senator Thompson?

SENATOR THOMPSON: Yes, please.

SENATOR CUDABACK: Senator Synowiecki.

SENATOR SYNOWIECKI: The definition of a bar would be, as is stated in the amendment, that they would be a liquor retailer...for purposes of the exemptions, they would be a retailer and have pickle cards and/or keno. If they did not have pickle cards and/or keno, they would not fit the definition of a bar, and therefore they would fall under the auspices of LB 480.

SENATOR THOMPSON: Which would be if they serve food, they would be under the Clean Indoor Air Act as they currently are.

SENATOR SYNOWIECKI: Senator Thompson, as I understand the amendment that I presented, it takes out the contingencies relative to food for purposes of the definition of a bar and centers it solely on whether or not there is a pickle card operation and/or keno operation within the facility. It does not go into the aspect of food preparation or nonpreparation, as I think Senator Janssen spoke many times on the issues of defining what is and isn't food preparation. So we take that out of the equation in an effort to be a little bit more simplistic and in an effort to provide a better level of interpretation relative to the bill.

SENATOR THOMPSON: So you're...just for purposes of clarification, I want to make sure then that any bar that serves food, even if they...that is not selling pickles, not keno, then would still be under LB 480 and have to become smoke-free.

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

April 13, 2005 LB 480

SENATOR SYNOWIECKI: I...as I understand it, the way...what you have just described, they would be considered a restaurant.

SENATOR THOMPSON: Okay. I just want that for clarification. Thank you, Senator Synowiecki. Since this is divided, I will vote for two things in regard to gambling. I'll vote for racetracks that aren't on state property.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: I'm willing to vote for keno, not pickle cards. I see that as a big compromise on my part, but I would agree with Senator Synowiecki to that extent. I will see how these two things play out. I think if we get into the pickle card area, we're just shooting this whole bill full of holes. And I think that's going way too far. But I would be willing to support smoking in the gambling places to some extent, and will support the division...or the concept of racetracks as long as they're not on state property, and that would include the keno place that's now gone into business on the State Fair Park...on our state property at State Fair Park that's in the city of Lincoln. It's in the heart of the city of Lincoln, even though it's state property.

SENATOR CUDABACK: Time, Senator Thompson.

SENATOR THOMPSON: Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Further discussion, Senator Bourne.

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

SENATOR CUDABACK: Senator Janssen, would you yield?

SENATOR JANSSEN: Yes.

SENATOR BOURNE: Senator Janssen, thank you for yielding. I was going to ask you a couple of questions about how an entity becomes either a licensed pickle card dealer or a licensed keno

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

April 13, 2005 LB 480

facility. And again, I think that, as we mentioned the other day, that the Synowiecki amendment tends to show how convoluted and confusing this entire section of statute is, because we're trying again to carve out exemptions from the Clean Indoor Air Act. So can you tell us, Senator Janssen--as Chair of the General Affairs Committee, I thought that you'd be the one to go to, the expert on this--can you tell us, what does it take to become a pickle card operator?

SENATOR JANSSEN: First of all, you have to be issued a license to be a pickle card operator. Most generally, they are fraternal organizations like Legion Clubs, so on and so forth, and then they will go around and pick up what you might say dealers. They'll get an organization to sell or a local vender to sell them, such as a bar or a liquor store. I know the Knights of Columbus in Fremont have a...they are a licensed dealer. And there are several liquor establishments that sell those pickle tickets for that organization which, in case of Bergan, they help a lot with their sporting activities and so on. But that's the way it normally works. They apply for an operator's license and then have satellite throughout that community.

SENATOR BOURNE: So a pickle card operator does not have to be a nonprofit? I know there's one component of the pickle card scheme that you have to be a nonprofit organization to receive the proceeds, but that's not the operator?

SENATOR JANSSEN: No. And I'll check with counsel about that, Senator Bourne, but I believe that's the situation.

SENATOR BOURNE: So basically, are...or let me ask you this. Are there any limitations on any entity becoming a pickle card operator? Could a restaurant become a pickle card operator? Could any bar or any facility become such an operator?

SENATOR JANSSEN: And you mean, they would be the person or organization that would have satellite throughout that community? Is that what you're talking about, who would become the operator? A vendor could be anyone, any organization. I know the Golf Club in Hooper has pickle machines, but I believe

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

April 13, 2005 LB 480

that they run them through the Legion Club there in Hooper.

SENATOR BOURNE: Okay. So there's a difference between a pickle card vender and a pickle card operator?

SENATOR JANSSEN: Yes. Senator Bourne, if you'd give me a few minutes, I can get that verification for you, though.

SENATOR BOURNE: Okay. I'd appreciate it that, Senator Janssen.

SENATOR JANSSEN: Certainly.

SENATOR BOURNE: Thank you very much.

SENATOR JANSSEN: Uh-huh.

SENATOR BOURNE: Because again, I think we need to know exactly what we're voting for, and I'm trying to determine in the pickle card scheme, there's pickle card vendors that have to be nonprofits, I guess; or pickle card operators, there's some of them have to be a nonprofit entity. And I'm just trying to determine if a restaurant or a bar could become a pickle card operator and then be exempt from the act under this division of the Synowiecki amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bourne. (Doctor of the day introduced.) On with discussion, Senator Chambers, followed by Senator Thompson. Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. I would like to ask Senator Synowiecki a question.

SENATOR CUDABACK: Would you yield to a question, Senator Synowiecki?

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: Senator Synowiecki, does every bar sell pickle cards?

SENATOR SYNOWIECKI: No.

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

April 13, 2005 LB 480

SENATOR CHAMBERS: So then if a bar does not sell pickle cards, it would not be exempted under your amendment, would it?

SENATOR SYNOWIECKI: That's correct.

SENATOR CHAMBERS: Why did you put both of those requirements, which you may have explained but I didn't hear?

SENATOR SYNOWIECKI: It's either/or, either have pickle cards or a keno operation. And the purpose and reason behind that, Senator Chambers, is that I think there's a discernible difference between a kind of a social gathering venue and a restaurant, a family restaurant where the main purpose, maybe the sole purpose of patronage is to consume a meal as opposed to a venue that may offer games of chance such as pickle cards and/or keno that are more of a social gathering type venue than have them discernible qualities as compared to a family restaurant atmosphere.

SENATOR CHAMBERS: Does every bar sell either pickle cards or lottery tickets? Does every bar sell one or...if you looked at every bar, you'd find that every bar sells either one or the other or both. Is that true?

SENATOR SYNOWIECKI: Practically speaking.

SENATOR CHAMBERS: But there...

SENATOR SYNOWIECKI: While not every bar in the state may have pickle cards, I would say an overwhelming majority of them do.

SENATOR CHAMBERS: But a majority is not all. Isn't that true?

SENATOR SYNOWIECKI: That's true.

SENATOR CHAMBERS: And you don't care about the ones who still could not allow smoking, even though they are a bar? In other words, you and Senator Bourne were talking about a uniform state requirement. This would not have uniformity across the state in determining which operations can allow smoking. Isn't that

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

April 13, 2005 LB 480

true?

SENATOR SYNOWIECKI: It would.

SENATOR CHAMBERS: Well, how can...

SENATOR SYNOWIECKI: It would mitigate the difficulty in interpretation of what is food preparation and what is not. I think it makes for an ease of interpretation.

SENATOR CHAMBERS: But the fact is, the way you define a bar for these purposes, what everybody would recognize as a bar would be excluded. Isn't that true? Let's say a bar sells nothing but liquor. That's all that it sells. It would not be a bar under this definition for the purposes of smoking or nonsmoking, would it?

SENATOR SYNOWIECKI: For purposes of this definition, an establishment that sells liquor only, as it stands now--and I stand to be corrected--would be considered a restaurant.

SENATOR CHAMBERS: If it sells only liquor?

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: Now under your definition, because I'm going to let others talk about that, when I say it sells only liquor, I mean it sells no pickle cards, no lottery tickets. That facility that sells only liquor to be consumed on the premises would not be allowed to have smoking, would it?

SENATOR SYNOWIECKI: As it stands now, obviously I would be open to an amendment that would...

SENATOR CHAMBERS: No, no. I'm not talking about amendment. I meant the way you have it written now.

SENATOR SYNOWIECKI: The way it's written now, yes. Yes, you're right.

SENATOR CHAMBERS: I'd like to ask Senator Bourne a question

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

April 13, 2005 LB 480

before he heads for the hills,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...brothers and sisters.

SENATOR CUDABACK: Senator Bourne.

SENATOR CHAMBERS: I had sisters. Hills Brothers was a coffee and I don't want you to make you think that's what I'm talking about. Senator Bourne, you were very strong on this uniformity across the state. Do you support Senator Synowiecki's amendment?

SENATOR BOURNE: Well, Senator Chambers, if you had listened earlier, I was trying to determine in that dialogue I had with Senator Janssen what exactly a pickle card operator is. And so, to be quite honest with you, I'm not certain yet. And when you accuse me of heading for the hills, I was simply going back to the statute books so I could see what the definition of pickle card operator is, so...

SENATOR CHAMBERS: And if you know what I meant by "hills," you wouldn't have taken offense because the statute books are the hills of knowledge and wisdom. I was trying to give you a compliment.

SENATOR BOURNE: Well, Senator Chambers,...

SENATOR CHAMBERS: You're so sensitive, so defensive.

SENATOR BOURNE: ...Senator Chambers, it's 9:30 in the morning.

SENATOR CHAMBERS: I know.

SENATOR BOURNE: I haven't had any coffee yet, so...

SENATOR CHAMBERS: I'm sorry.

SENATOR BOURNE: ...I'm a little slow.

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

April 13, 2005 LB 480

SENATOR CHAMBERS: So maybe he was heading for the Hills Brothers coffee. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. It's also, members, a little noisy in here so if you could hold it down in respect for the speakers, we can think a little more clearly maybe. So thank you for that. (Visitors introduced.) On with discussion of the FA157 offered by Senator Synowiecki to the Health and Human Services Committee amendments to LB 480, Senator Thompson, followed by Senator Chambers.

SENATOR THOMPSON: Thank you, Mr. Speaker, members of the body. In working on this bill before the session, the suggestion was made to us, and I think Senator Synowiecki is running into the same problems that we had in trying to figure out how you could do this, how you could write this amendment, because...and it wasn't that we were necessarily going to do it, but part of the preparation you have is to take all the ideas that are out there and try to work with them. But I asked Senator Synowiecki earlier, and I'm not sure that's right, I think that this further discussion by Senator Chambers points up the fact that bars...we're trying to in this bill get to the issue of restaurants and not all bars in Nebraska, and largely because public health improvements are incremental. There are people who are mad at me because I'm not doing everything, and I'm just doing what I think is reasonable public policy in the year 2005 here, and maybe others will come after me who are able to do a complete smoke-free ban. But with this amendment, for those of you who are kind of in the middle on this bill, you might bear in mind that this would...the only bars that would have an exemption that serve food who...that are currently a bar or restaurant under the current Clean Indoor Air Act would now be exempt only if they sell pickles or pickle cards, and I think that's discriminating against those bars that don't serve food who currently are not a part of this bill and now they're going to be in for this definition because of the way this amendment is written. And I'm not sure we can write that any different way if you're trying to just take care of the pickle card places only. I don't think it's the view of Legislature that we want to force bars to sell pickle cards. I mean, I'm sure there are some interests out there that would benefit from that

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

April 13, 2005 LB 480

financially because they'd sell more pickle cards, and that might be helpful to them. But that's certainly not why we're here and what we want to do today. So I'd urge you to defeat this division of the amendment for two reasons: one, because philosophically I think we're opening the whole bill up to way too much by making this exemption for pickle cards and for places that are food service restaurants; and second, I don't think the amendment as it's constructed is good public policy. It's difficult to write this amendment, and I don't think we should enact this because then it puts all the other bars that aren't pickle card operators under this act as unexempted and, therefore, they would be smoke-free. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Further discussion, Senator Chambers, followed by Senator Janssen. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I need to consult with my counsel for a second, first. Yes, Mr. President, I know that my time was running. I'm aware of that, and I haven't relinquished my time yet. But sometimes those of us whom people look at and think are very arrogant are not unwilling to acknowledge that somebody may have a bit of information that can shed light on a subject which is under discussion, and we will seek that information. I should speak for myself. That characterizes me. I will do that. This amendment makes no sense to me. I know that there are people who don't like the bill. If I'm going to draft a preposterous amendment, I make it crystal clear, or attempt to do so, in order that my colleagues won't take it seriously and think that I've taken leave of my senses, even though I often say that they have taken leave of theirs. When they offer what they call serious amendments and they are preposterous, and they are now known to have a sense of humor, it causes me to believe that somebody is pulling their chain and deliberately putting them in a position to look ridiculous. Here's what we're looking at, a definition of a bar. The Legislature can define a bar. You don't have to put gambling into the amendment as we have it here. Senator Bourne and others have talked about giving a competitive edge to operations just outside the boundary where there's no smoking allowed. This is an amendment which, on its

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

April 13, 2005 LB 480

face, gives a competitive edge to some bars. If I have a bar and I sell only alcohol but no gambling, nobody can smoke in my bar. And everybody who saw it would know it's a bar. Senator Synowiecki's bar, "Dingley-Mee's" or whatever it's called, will serve liquor and allow gambling. And we sit side-by-side, so if they want to smoke, they go to "Dingley-Mee's." But mine is more of a bar than his because mine is purely a bar where only liquor is sold to be consumed on the premises. He also allows gambling and smoking. So the closer the establishment defined as a bar in Senator Synowiecki's amendment approaches to being a den of iniquity, the more favored that bar is by the state, so that it is given a competitive edge. You go over there and you can drink, smoke, and gamble. If in my bar all you can drink is wine and whiskey, which makes you frisky, and rum, which make you dumb, and wine, which may be a mellow drink but it'll keep you on the run,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...you cannot smoke in my establishment. If I want to allow you to smoke, you cannot smoke. But in Senator Synowiecki's "Dingley Mee's," den of iniquity, you can do all of them. That's what his amendment says. That's why I know things that are being argued on this floor are not being argued in sincerity or seriousness. This is primarily a health issue, and I hear arguments that are on behalf of those who are purveying substances that are harmful to the health, and I think that is not the direction we should go. Thank you, Mr. President.

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

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Senator Bourne, I was pretty darn close on my explanation of who is a manufacturer, who is a distributor, and who are the Option II (sic) organizations that can sell pickle tickets. Right now, licensed manufacturers sell only to a licensed distributor, and then a licensed distributor sells to organizations such as the Boy Scouts or a church or something like that. And then those organizations, those Class II licensed organizations, can sell to other organizations such as

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

April 13, 2005 LB 480

a bingo...at bingo games, churches, designated organizations on their premises, bingo parlors, so on and so forth. So that's what...that is the way the licensing comes down and which I had explained to you, I was awful darn close. But last year in 2004, there were 353 organizations and they sold to 1,153 places, so you see there is quite a bit of revenue gained by some of these organizations to help those causes through the pickle tickets. And I hope that explains the procedure that we have set forth in the statute. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Further discussion, Senator Schimek, followed by Senator Bourne and others. Senator Schimek.

SENATOR SCHIMEK: Thank you, Mr. President and members, and I apologize if I am being repetitive here. But I guess I'd like to ask Senator Thompson a question.

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

SENATOR THOMPSON: Yes.

SENATOR SCHIMEK: Senator Thompson, as I'm reading the Synowiecki amendment...and for those of you who haven't clicked on it lately, it's a little bit longer than it originally showed up on your screen. But as I'm reading it, the two parts...there are definitely two parts to it. And if you would simply delete the last part, which sells...which says "which sells pickle cards," then you would have left the part that says if you have a liquor license, you would be able to really designate your bar as either smoking or nonsmoking. That's the way I'm reading it. And is that the way you're reading it?

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: I'm going to have to...I have just...I'm holding the amendment and I need to get to where it inserts...

SENATOR SCHIMEK: Well, if that were true, Senator Thompson, if that is the way this amendment reads, first of all, it

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

April 13, 2005 LB 480

allows...as far as I can tell, it allows all bars to basically say whether they want to be a smoking area in their entirety or not. And then the second part of it brings in the pickle card thing. If you just took out that pickle card thing and left it that bars would choose one way or the other, then how do you feel about that?

SENATOR THOMPSON: Well, bars, as defined currently...I mean, it depends on what you mean as a bar. If it's a bar that sells...

SENATOR SCHIMEK: No, this doesn't...

SENATOR THOMPSON: ...serves food, then it's already under the Clean Indoor Air Act and it would not be impacted. So you would not...I think Senator, if you'll permit me...the way this...the current law is, if you are a bar that has food service,...

SENATOR SCHIMEK: I understand that.

SENATOR THOMPSON: ...then you're...this amendment would not impact that bar. This would only impact those bars that serve food are considered restaurants for purposes of the Clean Indoor Air Act. So if what you're saying and what you want to get to is, if you are a bar that doesn't have food service currently, you're already not...this law does not apply to you.

SENATOR SCHIMEK: But in the committee amendment we take out the restaurant...

SENATOR THOMPSON: We define a bar...

SENATOR SCHIMEK: ...or a restaurant having a serving area of less than 1,200 feet or a restaurant having its...yeah, of 1,200 feet. So the language left in the committee amendment just says: No public place other than a bar shall be designated as a smoking area in its entirety.

SENATOR THOMPSON: Correct.

SENATOR SCHIMEK: If a bar is designated as a smoking area in its entirety, such designation shall be posted conspicuously on

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

April 13, 2005 LB 480

all entrances. That's the way the committee amendment reads. And then this would change...

SENATOR THOMPSON: And so, I guess what you're saying is, currently, the first part of that Section 3, for purposes of the Section A,...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...is, up until the word "prohibits the presence of minors," is currently regulation language. Bar means an establishment that serves alcohol beverages and may provide limited food service, period. That would be current.

SENATOR SCHIMEK: Okay.

SENATOR THOMPSON: I have an amendment up later that will take out "prohibits the presence of minors."

SENATOR SCHIMEK: Okay. I just...I'm really puzzled why we would insert pickle cards into this. I mean, it just...it adds a whole new, a huge new, element, because then you're going to be hearing from different bars that don't sell pickle cards. And I understand, I think...I think I understand what Senator Synowiecki is trying to do, and maybe I should have asked some questions of Senator Synowiecki, too. But I just need to look at the language more carefully, I guess, and I think that may be true of everybody on the floor. So, thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Further discussion, Senator Bourne, followed by Senator Janssen.

SENATOR BOURNE: Thank you, Mr. President and members. I'm fresh back from the hills of knowledge. And so what I have now is I have the definition of a pickle card operator, and that's in 9-316. "Pickle card operator shall mean any sole proprietorship, partnership, limited liability company, or corporation which sells individual pickle cards on behalf of the licensed organization." So I think what Senator Synowiecki has done in this amendment, which I intend to support now that I think...now that I understand it, he is actually helping

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

April 13, 2005 LB 480

charities is what he's doing because, as I read it, if you are a pickle card operator, meaning you contract with a nonprofit and you sell pickle cards at your establishment, you would be exempt from LB 480, should it pass. I think that's an accurate statement. And so what I think we're going to have is more...we are going to have more pickle card operators or retailers of pickle cards, and I think that's great for the charities in the state of Nebraska. When we...we've had discussions in the past on gaming, casino gaming, expansion of pickle card...or excuse me, expansion of keno. We've talked about expanding how pickle cards are distributed. And in all those discussions, we've heard from the charities who have seen their revenues decrease substantially since the casinos came to Iowa. So I think this is a great amendment, that what Senator Synowiecki is trying to do is help the charities, and I think we all can support that, and so I intend to support this component of his...or this division of his floor amendment. I think it makes sense, so, as I understand it, and hopefully Senator Synowiecki will correct me if I'm wrong, but it does allow anyone who is a pickle card operator, meaning basically a retailer of pickle cards, to be exempt from the act. Senator Chambers, would you yield to a question or two?

SENATOR CUDABACK: Senator Chambers, would you yield?

SENATOR CHAMBERS: Yes, I will.

SENATOR BOURNE: Senator Chambers, you are a very learned individual. Do you recall, during the Watergate scandal what...there was somebody that was passing information on to one of the reporters.

SENATOR CHAMBERS: Deep Throat.

SENATOR BOURNE: Excuse me?

SENATOR CHAMBERS: Deep Throat.

SENATOR BOURNE: Deep Throat. Thank you, Senator Chambers. Yesterday, I was reading from a study from the British Medical Journal. And I'm going to say this was given to me by a unnamed

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

April 13, 2005 LB 480

person, Senator Synowiecki, that we'll call Deep Throat. And Senator Thompson criticized the study, saying that it was funded by tobacco, but I just want to tell you exactly what this study did again. And the objective of the study...and it was, as Senator Thompson says, it was funded by tobacco interests. But I will tell you that most studies that are put in journals, whether they be the medical journal here in the States or abroad, are funded oftentimes by pharmaceutical companies. So I don't really see a difference between a study that says a particular drug is good, if that study was funded by Pfizer or Wyeth or some other drug company, versus a study that was printed in the British Medical Journal that was maybe in part, according to Senator Thompson, funded by tobacco. And again, this study, I want to talk about it. It was...the objective was to measure the relation between environmental tobacco smoke as estimated by smoking in spouses and long-term mortality from tobacco-related diseases. And they studied the adult population in California. And this article was printed or published in the British Medical Journal in 2003, so it's fairly recent. And what they basically concluded is that the results do not support a causal relation between environmental tobacco smoke and tobacco-related mortality. The association between exposure to environmental tobacco smoke and coronary heart disease among cancer may, and I guess it does say may, be considerably weaker...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...than generally believed. So I...yesterday when I talked about this study that was given to me and when Senator Thompson indicated that it was funded by tobacco, "Big Tobacco," I think is the term she used, at first I thought the individual that gave it to me was actually a supporter of the bill instead of being an opponent as they said they were. But then as I reviewed it a little further, I think that...I think this is a valid piece of study and I'm not certain that there is a correlation or at least it's as extensive as people have made it out to be. But again, I am going to support Senator Synowiecki's amendment and urge you to do so as well. Thank you.

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

April 13, 2005 LB 480

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

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. I hope you all recall that in November there was an election last November. There were a couple of issues on the ballot that would have expanded gambling, and the people of Nebraska voted against that. It was shortly after that that I heard that perhaps the alcohol industry could support a smoking ban if certain entities would be allowed to be exempt from that smoking ban; if, again, those entities also either were keno parlors or if they sold pickle cards. So it seems to me that this is a way to perhaps circumvent what the voters of Nebraska did at the election polls in November to, in a way, expand gambling, if you call pickle cards gambling, if you call keno gambling, which I do. And so it would seem to me that we are kind of by the back road, back way, saying, well, we will allow a smoking ban if we, our little entity here, can have smoking which would then bring more people into our doors and also they can do pickle cards, keno, whatever the gambling entity might be. I certainly stand in opposition to this amendment, because I think it does two things. First of all, you're allowing one entity something that you would not allow another entity. And as Senator Chambers remarked that if you were a bar, stand-alone bar, if you didn't have pickle cards, if you didn't have...weren't participating in keno, that you would certainly go out and get those pickle cards and you would certainly try to get keno into your facility so that you could bring in customers that would smoke, being they're denied smoking privileges somewhere else. I'm always a little concerned when we do this, but I hope that the members can see what is happening here. Mr. President, I would render the rest of my time to Senator Chambers, if he would like that.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Senator Bourne went to the hills of knowledge but he failed to understand what he read. I'd like to ask Senator Synowiecki a question, because...

SENATOR CUDABACK: Senator...

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

April 13, 2005 LB 480

SENATOR CHAMBERS: ...he sits next to Senator Bourne and maybe they've had some off-the-record discussions. Senator Bourne, is your amendment...I mean Senator Synowiecki, is your amendment designed to benefit charities? Yes or no.

SENATOR SYNOWIECKI: Senator Chambers, let me me just say, the main intent was to attempt to clarify what a bar...what isn't a bar so it would be easily ascertainable. There may be...

SENATOR CHAMBERS: And so we're talking about a bar.

SENATOR SYNOWIECKI: ...there may be a collateral benefit for increased revenue to nonprofits throughout the state. That is a possibility.

SENATOR CHAMBERS: It's my time so that's why I'm doing this. Not to be rude, to cut you off. Senator Synowiecki,...

SENATOR SYNOWIECKI: It's actually Senator Jensen's time.

SENATOR CHAMBERS: Is it? But he gave it to me, and that which is given to me is mine. Senator Synowiecki, one thing is sure, it's not yours. (Laugh) Is the purpose of your amendment...let me ask it a different way. Which charity asked you to bring this amendment?

SENATOR SYNOWIECKI: None, Senator.

SENATOR CHAMBERS: Which charity has contacted you to say they support this amendment...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...because it will help them?

SENATOR SYNOWIECKI: None, Senator.

SENATOR CHAMBERS: Name me the charity that will be helped by your amendment which also conducts...operates a bar. What charity, let me ask you that, operates a bar, that you know of,

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

April 13, 2005 LB 480

other than when they're serving communion at church, but then they don't charge you for it. So what charity do you know that operates a bar?

SENATOR SYNOWIECKI: None.

SENATOR CHAMBERS: So how is your amendment supporting and helping charities, Senator Synowiecki? I'm asking you because it's your amendment. I'm not going to take something from the "peanut gallery."

SENATOR SYNOWIECKI: Senator, there might be a collateral benefit to enhance or increase the number of pickle card outlets for nonprofits.

SENATOR CHAMBERS: Give me a nonprofit that operates a bar.

SENATOR SYNOWIECKI: Well, the nonprofits don't operate the businesses. They...the businesses are used as a tool to get the pickle cards dispensed to the public.

SENATOR CHAMBERS: You're talking, in your amendment, about...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Jensen. (Visitors introduced.) On with discussion, Senator Thompson, and it will be your third time, Senator Thompson.

SENATOR THOMPSON: Mr. President, I'd let Senator...oh, excuse me. I was going to let Senator Chambers continue his thought. But I rise to oppose this division of this amendment for several reasons. First of all, I think this expands it way beyond the scope of what the intent of the bill is. I'm willing to compromise in some narrower areas, but to open bars to...that are food service areas to, and encourage them to become pickle cards sellers, to circumvent the law just doesn't make good public policy. Also, because the amendment as we look at it a little more carefully, pretty much has a bar definition that

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

April 13, 2005 LB 480

would leave some bars kind of out in the cold and require them to sell pickle cards in order to have an exemption, and I don't think that's good public policy either. So I would encourage you to defeat this division of the amendment. I do have a compromise amendment that I filed if you want to look at it, that does allow some expansion. It does not include pickle cards. And hopefully, we'll have an opportunity yet this morning to discuss that. Thank you.

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

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Lobbyists, by and large, lack ethics entirely. They will do anything, they will say anything to get what their client wants. No senator would bring an amendment such as Senator Synowiecki has, talking about bars, and try to give the impression that that amendment is designed to help nonprofit charities. So here's what the lobbyist tells the water carriers: Run in there and say that these bars will now start selling pickle cards for the Boy Scouts out of the bar, so this amendment really is designed to help the Boy Scouts. You all buy that? I bet we got kids in the balcony too smart to swallow that. It gives them the opportunity to see how far afield lobbyists can make senators go to make a point. Senator Synowiecki told us his amendment was to help these bars. Now it is transmogrified into an amendment to help nonprofits. We're talking about selling hard liquor and allowing smoking. But now it has become a amendment to help the nonprofits. And that's what you all are going to vote for in front of these young people you are supposed to be setting an example for about how intelligent we are, how deliberative we are? It's good that they have the opportunity to see how some of these lame-brain nonsensical laws get into the books. They are engineered by lobbyists who will get legislators to take leave of logic and their senses. Those who have listened to the discussion of this amendment will know that the one who brought it was talking about bars. He wants to separate bars from restaurants. He wants to talk about those places that serve hard liquor on the premises so that they can allow smoking if all they do is serve hard liquor. Well now the amendment is different. We're not

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

April 13, 2005 LB 480

talking about hard liquor. We're not talking about smoking. We're talking about helping nonprofits: Boy Scouts, Girls Club, churches, community organizations. And you all are going to swallow that. You know why a whale has such a small throat? First of all, to show you that a whale didn't swallow Jonah...and the "Bibble" does even say a whale, it says a fish, and a whale is not a fish. But the reason a whale has a small throat is because it has a small brain. Nature had to equip a whale with a throat so small that it couldn't swallow anything large enough to choke it to death, so it thrives on plankton. Now a shark has a huge throat and it will swallow anything that it can get into its mouth, doesn't even have to chew it up. It rips, slashes and tears but it doesn't chew for the purpose of mastication. Why does a shark have a large throat? Because a shark has no brain at all. All it is is an eating, reproducing machine. Well, actually the shark does have a brain. If people will swallow what we've been told about this amendment benefiting nonprofits, we would have the throat the size of a hippopotamus and a brain the size of a gnat. A gnat, if its full mental power was converted into liquid,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...there would not be enough to baptize a flea. And that's what you're being asked to adopt, is what you're being put in a position to discuss seriously. It is not a serious discussion. It is nonsense. When I bring up nonsense, I make it clear. That has not been made clear this morning other than by what I've said, and it's not my amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Bourne, and this will also be your third time, Senator.

SENATOR BOURNE: Thank you, Mr. President and members. Senator Chambers, would you engage in a dialogue?

SENATOR CUDABACK: Senator Chambers, would you...

SENATOR CHAMBERS: Did you say dialogue or diatribe?

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

April 13, 2005 LB 480

SENATOR BOURNE: Whichever you...whichever you care to characterize as.

SENATOR CHAMBERS: Whichever you want to do I will engage in it with you.

SENATOR BOURNE: After your using of the word "transmorfification" this morning, I think...

SENATOR CHAMBERS: Transmogrification.

SENATOR BOURNE: Yeah. Senator Chambers, okay, if you have a facility, and I'm going to take this slow...

SENATOR CHAMBERS: Slowly.

SENATOR BOURNE: Slowly.

SENATOR CHAMBERS: Yes.

SENATOR BOURNE: (Laugh) Very much so. And I'll try not to "transmorfification" it.

SENATOR CHAMBERS: "Mogrify."

SENATOR BOURNE: That, too.

SENATOR CHAMBERS: That's the way we deal with each other sometimes. So before the media runs out here and say that the next thing that was going to happen was that Senator Bourne and Chambers would go to blows, understand the spirit in which we're doing this.

SENATOR BOURNE: And you also recognize this morning that I'm being far more generous with my time than you...with you than you were with Senator Synowiecki.

SENATOR CHAMBERS: No, I don't recognize that at all.

SENATOR BOURNE: Okay. If you read Senator Synowiecki's amendment where it says, basically you would agree that if this

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

April 13, 2005 LB 480

amendment is adopted to LB 480 and LB 480 goes, that a pickle card operator would be exempt from the requirements of the bill. Do you...is that how you understand this amendment?

SENATOR CHAMBERS: If the...if it was also a bar.

SENATOR BOURNE: Correct. But you...that's the way you understand it. If they are a pickle card operator and they are a bar, and this bill passes, that they would be exempt from the requirements found elsewhere in the bill?

SENATOR CHAMBERS: With reference to smoking, yes.

SENATOR BOURNE: Correct. Okay. So if...who does a pickle card operator sell pickle cards for?

SENATOR CHAMBERS: It depends on who the pickle card operator wants to sell them to...for.

SENATOR BOURNE: In general, is there one common denominator with all of the entities that a pickle card operator sells pickle cards for?

SENATOR CHAMBERS: I don't know. I genuinely don't.

SENATOR BOURNE: Well, if I told you that the one common denominator was that they were all nonprofits, would you accept that?

SENATOR CHAMBERS: No, not in the context of this discussion. But for the point you're making, I'll say that I'm not saying you're not telling the true based on your understanding.

SENATOR BOURNE: Okay. So you've agreed that, when I state that the only entity that a pickle card operator can sell pickles for is a nonprofit, and are you aware, are most charities nonprofit organizations?

SENATOR CHAMBERS: That depends on how you define them. And, Senator Bourne, before it seems like I'm being evasive, you know that I have a different concept of what is a nonprofit and what

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

April 13, 2005 LB 480

is a charity. So tell me what you mean by it in the question, and I will answer it on the basis of your understanding, not my attitude toward these operations.

SENATOR BOURNE: Understood.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: I understand your predisposition against these entities.

SENATOR CHAMBERS: For example, I don't think churches are nonprofit and I don't think they're charities.

SENATOR BOURNE: Okay. So let's say for sake of example that...well, they have to be a non...a 503(c) corporation, so they can't be a profit. Whether...they have to be a nonprofit company to sell...or corporation to see the pickles.

SENATOR CHAMBERS: But we define profit differently, because you can give exorbitant salaries, you can talk about high overhead expenses, so a very small percentage of the money taken in under the guise of charity actually goes to benefit those for whom the so-called charity exists.

SENATOR BOURNE: Understood, but...

SENATOR CHAMBERS: You know that and I know it, so these are not charities and they are not nonprofits, in my view.

SENATOR BOURNE: Understood, but under...

SENATOR CHAMBERS: In the strict legal sense, okay.

SENATOR BOURNE: ...under the law they are termed nonprofit charity organizations.

SENATOR CHAMBERS: Okay, I buy that. I'll accept that.

SENATOR BOURNE: So we've...so we've established that in order to sell pickle cards, whether or not you agree they are

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

April 13, 2005 LB 480

nonprofit or charitable, the law says they have to be.

SENATOR CHAMBERS: Got you.

SENATOR BOURNE: Okay.

SENATOR CHAMBERS: Yes, I will agree with you.

SENATOR BOURNE: So if, all of a sudden, the way an entity could become exempt from the Clean Indoor Air Act and allow smoking in their...at their bar/restaurant is to become a pickle card operator, do you agree with that?

SENATOR CHAMBERS: Yes.

SENATOR BOURNE: So if charities and nonprofits are the only ones that can contract with pickle card operators, doesn't it seem logical...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...that there would all of a sudden become more pickle card operators if this were...

SENATOR CHAMBERS: Undoubtedly.

SENATOR BOURNE: ...excuse me, if this were to become placed into law?

SENATOR CHAMBERS: No question about it.

SENATOR BOURNE: Okay. So if there are more retail outlets selling a charity's product, do you think that their sales would increase?

SENATOR CHAMBERS: The sales of the lott...the pickles, and so forth?

SENATOR BOURNE: Correct.

SENATOR CHAMBERS: Yes.

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

April 13, 2005 LB 480

SENATOR BOURNE: Okay. So that when I said earlier that what Senator Synowiecki is doing, whether he knew it or not...now he might not have recognized what he's doing, but do you think that it seems to be a logical connection that, whether directly or indirectly, Senator Synowiecki is helping charities by increasing the number of pickle card operators in place?

SENATOR CHAMBERS: You changed the point of discussion. You said the purpose of this amendment is to help charities, and that's what I laid on. That is not the purpose, never was the purpose, and that would just be incidental.

SENATOR CUDABACK: Time. Thank you, Senator Bourne. Senator Howard.

SENATOR HOWARD: Thank you, Mr. President and members of the body. I appreciate the opportunity to address this amendment, and I would like to grant the remainder of my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, about four and...

SENATOR CHAMBERS: Thank you, "Lady Howard." Mr. President, members of the Legislature, I will answer questions directly when the question is phrased in such a way that it's clear what I'm responding to. As phrased by Senator Bourne, I answered all of his questions directly. Senator Synowiecki never intended this bill to benefit nonprofits. The only interest some people have is defeating this bill. When I stood on the floor yesterday and suggested that a management plan for prairie dogs was to name every one Belevedere, teach every one that its name was Belevedere, and the landowner would holler "Oh, Belevedere, come here, boy," and all of the prairie dogs would come, nobody thought, I hope they didn't, that I was offering that as a serious proposal by which prairie dogs could be managed. So the very nature of some of the arguments that I make stamps them as being satirical, mocking, taunting. When somebody stands on this floor and offers seriously and with a straight face the notion that an amendment offered for the purpose of bars and allowing them to be exempt from the nonsmoking requirements to

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

April 13, 2005 LB 480

say with that notion that the purpose of that amendment is to benefit charities, is preposterous. Everybody knows we're not talking about charities this morning. But what we are talking about, and I brought up the gambling aspect of it, is the expansion of gambling, giving a premium to bars that do not engage in gambling enterprises an incentive to do so by telling them, if you want to be able to have smoking in your bar, you sell pickle cards or get involved in keno and the lottery and whatever else you can do under the law, and you can allow smoking. This person can become a keno operator and not sell one piece of paper. You don't have to do that. All you have to do is get a license to do it. Do you think these bars would run out to get these licenses to sell pickle cards? How many of you are that naive? Why would they go by a license? Because they want to allow smoking. It would be a way to evade the law. Senator Bourne knows it. The lobbyists who suggested this strategy knows it. And everybody on this floor knows it, and everybody in the balcony above six years old knows it. But this is how legislating occurs. I just feel that when I make an argument that I'm seriously presenting, I have to have facts and not nonsense. But I will use satire and ridicule to show that something another person is presenting makes no sense and lacks validity. That's what Senator Synowiecki's...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...amendment would be if he had stood on this floor and said, I'm offering this amendment for the purpose of benefiting the nonprofits. I want to ask Senator Synowiecki a question since he's back.

SENATOR CUDABACK: Senator Synowiecki, would you respond?

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: Senator Synowiecki, if I have a license to sell these pickle cards, I don't actually have to sell a single one, do I, to be exempt from smoking under your amendment, to be exempt from the nonsmoking requirement?

SENATOR SYNOWIECKI: The way I understand it, Senator, they

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

April 13, 2005 LB 480

would have to be present within your location...

SENATOR CHAMBERS: But I don't have to sell a one?

SENATOR SYNOWIECKI: ...and you have to have signage indicating that you're a pickle card retailer.

SENATOR CHAMBERS: But I don't have to sell a one, do I?

SENATOR SYNOWIECKI: I don't...I don't know.

SENATOR CHAMBERS: Well, if nobody comes in and buys it, then I'm going to be punished because the people at my bar don't want to buy these things? According to your amendment, all the person has to do is be an operator. It doesn't say successful, it doesn't have to...it doesn't say you have to sell so many.

SENATOR SYNOWIECKI: The nonprofit would not retain you as a retailer if you weren't selling them.

SENATOR CHAMBERS: Thank you. Thank you, Senator Synowiecki. I could set up..

SENATOR CUDABACK: Time. Time, Senator.

SENATOR CHAMBERS: ...a bogus...thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Synowiecki, there are no further lights on. I recognize you to close on FA157 to the divided amendment.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. I very much appreciate the comments. You know, there's differences, there's discernible differences in public establishments within our state. I don't think there's any disagreement in that. We have locally-owned, kind of ma and pa tavern-type operations that may or may not serve food. And then we have venues that could be characterized as a family restaurant where kids frequent. I was under the assumption all along that LB 480's target, if you will, are the venues that attract young kids, minors, to their establishments for prolonged periods of time, perhaps for a meal

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

April 13, 2005 LB 480

and so forth. What I'm attempting to do with this mechanism, FA157, this part of the division, is to recognize in public policy, in public health policy, that there is a discernible difference in venues in terms of those that serve as a place of eating almost entirely, where a family comes in, has a dinner. What I'm speaking of here is your Applebee's, your Chili's, your Perkins-type of atmosphere. And then you have your locally-owned pubs or taverns, again, that oftentimes they serve a cheeseburger or a hamburger at lunch, and that those places, the latter places, often serve as a social gathering place where individuals come and they play keno; they may play pickle cards, and they're often often frequented by individuals that smoke. This would essentially kind of give a competitive edge, if you will, to our locally-owned proprietors that fall within what I would describe as our tavern-type of an atmosphere or environment. What we're attempting to do here is better define also...also, yesterday during the debate, there was a lot of discussion relative to the current definition within the committee amendment relative to a bar. This will clean all that up. You...it would be very easily defined as to whether or not you fit the definitions of a bar and, therefore, are exempted from the provisions of LB 480. Very simple: Do you sell pickle cards or do you have a keno operation? If you have one of them two things, if you incorporate that within your business structure, you're exempt, you're a bar. You still maintain the right to have a nonsmoking establishment. Now also, the bill serves them purposes, to more easily define, more easily interpret it, what is a bar and what is not, and it recognizes that the difference, the discernible differences in our venues relative to restaurants and bars. With that, Senator Cudaback, I would close and I would appreciate your support for this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Synowiecki. You've heard the closing on FA157 of the divided amendment to the committee amendments to LB 480. The question is, should that amendment be adopted? All in favor vote aye; opposed, nay. Voting on adoption of FA157. Have you all voted on the amendment who care to? Have you all voted? Record please, Mr. Clerk. Senator Synowiecki.

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

April 13, 2005 LB 480

SENATOR SYNOWIECKI: Senator Cudaback, I'd request a call of the house, please. Roll call vote.

SENATOR CUDABACK: We have not recorded yet, so the house...

SENATOR SYNOWIECKI: Regular order.

SENATOR CUDABACK: ...is in order. There's been a call of the house. All in favor vote aye; opposed, nay. Record please, Mr. Clerk.

CLERK: 21 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. The house is under call. Senator Langemeier, please check in. Senator Cunningham, Senator Louden. Senator Raikes, would you check in, please. The house is under call. Senator Louden. Senator Louden, the house is under call. All members are present or accounted for. There's been a request for a roll call vote. Mr. Clerk, please call the roll on the question before the body.

CLERK: (Roll call vote taken, Legislative Journal page 1181.) 19 ayes, 20 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The motion was not successful. FA175 has not been adopted, and I do raise the call. (Visitors introduced.) Mr. Clerk, next motion. Senator Synowiecki, for what purpose do you rise?

SENATOR SYNOWIECKI: Senator Cudaback, I'd request unanimous consent to withdraw the second element of the division. (AM1056, Legislative Journal page 1117.)

SENATOR CUDABACK: You've heard the request. Any objections to the request to withdraw the second portion? Senator Chambers, for what purpose do you rise?

SENATOR CHAMBERS: A question. The...

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

April 13, 2005 LB 480

SENATOR CUDABACK: It has been divided.

SENATOR CHAMBERS: And can it be withdrawn now?

SENATOR CUDABACK: It can be with unanimous consent, Senator Chambers.

SENATOR CHAMBERS: So that means I'm in a position to prevent that from happening, if I would object?

SENATOR CUDABACK: Yes, Senator Chambers, you could, and Senator Synowiecki would have the opportunity to move to withdraw and...

SENATOR CHAMBERS: In the interest of being collegial, I go along with what Senator Synowiecki wants to do with his amendment.

SENATOR CUDABACK: Thank you, Senator Chambers. So ordered. Mr. Clerk, next motion.

CLERK: Mr. President, the next amendment to the committee amendments, Senator Thompson. FA151, Senator.

SENATOR CUDABACK: Senator Thompson, you're recognized to open on FA151.

SENATOR THOMPSON: It should be to the bill.

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: That's to the bill, isn't it, not to the committee amendment?

CLERK: Well, okay. That's fine, Senator. The committee amendments are a rewrite of the bill, but if you want to treat it that way, that's fine. Just however you...Mr. President, next amendment I have to the bill is Senator Erdman. Senator, I have a note that you want to withdraw your amendment.

SENATOR CUDABACK: Senator Erdman. It is withdrawn.

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

April 13, 2005 LB 480

CLERK: Mr. President, Senator Bourne, AM1051.

SENATOR CUDABACK: Senator Bourne, to open on AM1051 to the committee...

SENATOR BOURNE: Mr. President, I'd like to withdraw that amendment and file it on Select File, please.

SENATOR CUDABACK: So ordered.

CLERK: Mr. President, Senator Thompson, AM1179. (Legislative Journal page 1174.)

SENATOR CUDABACK: Senator Thompson, you're recognized to open on AM1179.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. This is in response to discussion yesterday on the floor, Senator Synowiecki's concern about prohibiting minors from bars under the definition for this act. It would delete that and take it back to the language that's currently in regulation. Second was an issue brought by Senator Bourne about people who lease entire rooms or halls for private social functions. And this would...is kind of a...not a total...totally back to the way it is, but I think is a reasonable accommodation to Senator Bourne. It would allow the proprietors of places in which an entire room or hall is used for a private social function to make the decision on whether smoking is allowed in the entire area. Currently, it's the person who rents or the...who gets to do that. This is an issue that has been brought to me regarding places that have multiple uses. Sometimes a hall is used, for example, as a childcare center during the week. If the person who owns that hall doesn't want to lease it so that there's smoke in it and the particulates are there and it's a problem for the childcare center, they would still, under this law, since they own it, be allowed to determine whether or not, under this amendment, smoking would be permitted. So again, these are two things that were raised to me by Senator Synowiecki and Senator Bourne that are accommodations. Again, the first would strike the bar definition from the language defining a bar that

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

April 13, 2005 LB 480

prohibits minors from frequenting bars. And the second is to allow the proprietor of a place that leases or rents an entire room or hall for a private social function to make the decision on whether smoking is allowed in the entire area.

SENATOR CUDABACK: Thank you, Senator Thompson. Open for discussion on AM1179. There are no...Senator Bourne, your light came on.

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

SENATOR CUDABACK: Senator Thompson, would you a question of Senator Bourne?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Could this...this amendment goes to lines 22 through 26 on the committee, page 2.

SENATOR THOMPSON: Correct.

SENATOR BOURNE: Why...can I ask why we didn't just say, strike the...or reinstate the stricken language? How is this different...how is your amendment different than...excuse me, the language that was in the original version of the committee amendment?

SENATOR THOMPSON: Under the original version, it says: This section does not apply in cases in which the entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or the person in charge of the hall.

SENATOR BOURNE: So again, what...

SENATOR THOMPSON: So the difference is it allows the proprietor to make that decision.

SENATOR BOURNE: Oh, I see. Where the original, the committee amendment...or excuse me, the original language of 71-5707 would

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

April 13, 2005 LB 480

say that if a proprietor wanted to lease out a hall, then whoever leased the hall would decide whether or not there was smoking in that...the day of that event.

SENATOR THOMPSON: Right. Right.

SENATOR BOURNE: Is that right?

SENATOR THOMPSON: Right.

SENATOR BOURNE: And what you're...what you're simply saying is that the owner of the establishment may say there may be smoking or may not.

SENATOR THOMPSON: Right. As it's now designated, it would have to be smoke-free under the committee amendment.

SENATOR BOURNE: Okay, if...

SENATOR THOMPSON: So I'm striking...so the language stays stricken and says it can't be smoke-free unless the proprietor chooses to make it a nonsmoking.

SENATOR BOURNE: Okay. Say that again. Under your amendment, it's...I think you said it backwards, didn't you?

SENATOR THOMPSON: Okay. Could be.

SENATOR BOURNE: Is the presumption on no smoking and the proprietor may allow smoking if they so designate?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Why wouldn't we say there in line 3 of your amendment, the proprietor may decide whether or not to allow...whether to allow smoking or not? I mean, so what you've done is you've said there's a predisposition that the proprietor has to affirmatively say you can smoke. Is that correct?

SENATOR THOMPSON: Correct.

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

April 13, 2005 LB 480

SENATOR BOURNE: That is accurate?

SENATOR THOMPSON: Yes

SENATOR BOURNE: Okay. So again, it's different in that the proprietor can choose whether or not to allow smoking if your amendment is adopted, versus the way the committee amendment said that there would...that it would be up to the person who rented the hall.

SENATOR THOMPSON: No, this is...the language that is being deleted means that it would be smoke-free automatically under the committee amendment because that isn't in there. So what you...so if you defeat my amendment, which is the compromise, then it goes back to not allowing smoking in rented halls.

SENATOR BOURNE: Okay. I'm just...again I'm trying to add clarity. So that if I own a building and I lease out a particular hall to private events, if your amendment, AM1179, is adopted to the amendment, assuming everything goes through, then the proprietor then would make the decision whether or not to allow smoking in his or her particular room that he's letting out?

SENATOR THOMPSON: Correct.

SENATOR BOURNE: Okay. That seems like a fair compromise. I just wanted to make sure that it wasn't banned. But it is...probably I guess you could characterize this as the ultimate local control, the business owner getting to decide whether or not there's smoking allowed in his or her facility. Is that accurate?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: All right. Thank you.

SENATOR THOMPSON: For a leased hall.

SENATOR BOURNE: Thank you, Senator Thompson. I will support the Thompson amendment, AM1179, but I will continue...I will

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

April 13, 2005 LB 480

vote green on this, but I'll continue to oppose the bill. I just, again, as we talked about yesterday, I just have a fundamental belief that government should stay out of people's lives as much as possible. And while this amendment...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...makes it better, again, what it would do is say that the person who owns the venue can decide whether or not to allow smoking. And I do think that's fair, more fair than saying no smoking whatsoever or forcing the owner to lease a building or, excuse me, a room in a building where they might not like to have smoke there, and I think there's an argument that you could make that they would be required to allow smoking unless the Thompson amendment was adopted. So I intend to support AM1179, but I will be opposed to the bill as well...or continue to oppose the bill. Thank you.

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

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, and thank you, Senator Thompson, for your overture here relative to the amendment, LB (sic) 1179. I was wondering though...was wondering if you could yield to a question.

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: In my district, and I would suspect across the state, it is not entirely uncommon for a family, for a wedding, funeral, any type of family social event, that they would have this function in a local bar and that they would essentially lease out or utilize a local venue, which would include a bar under the definition, as it's currently written in AM0802, for purposes of the social event. With this now, smoking would be allowed if a bar is utilized for the event...

SENATOR THOMPSON: No.

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

April 13, 2005 LB 480

SENATOR SYNOWIECKI: ...relative to an exemption under AM0802. Is that...is that a fair assessment?

SENATOR THOMPSON: A bar can have smoking under this bill, period. I mean, nothing changes for a bar.

SENATOR SYNOWIECKI: A bar that does not serve food.

SENATOR THOMPSON: Right.

SENATOR SYNOWIECKI: So if a family is having a gathering and they go to a local pub that serves food, for purposes of having a ceremony and a social gathering, the proprietor can then designate that as a...they could smoke at that event.

SENATOR THOMPSON: If this is an entire room or hall used for a private social function. That's what this amendment is about.

SENATOR SYNOWIECKI: Uh-huh. So a family can lease out an entire establishment and then smoking would be allowed in it.

SENATOR THOMPSON: Well, you know, I hadn't really planned on, you know, funeral dinners discussion. (Laugh) I'm...this is...I'm not...I'm confused about what you're asking. Let me just get to this. What this amendment specifically deals with is the concern about the leasing of a hall.

SENATOR SYNOWIECKI: And I guess my question...

SENATOR THOMPSON: And so I, you know, I can't...

SENATOR SYNOWIECKI: Senator, I'm sorry if I'm...

SENATOR THOMPSON: ...accommodate all...

SENATOR SYNOWIECKI: And I'm sorry if I may be unclear, but the leasing of hall could potentially include a bar. I mean, a family could lease...I mean, a proprietor of a tavern has the ability to lease his establishment for a private gathering. Isn't that true, they can do that? They can close to the public

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

April 13, 2005 LB 480

and have a...and be open for the specific purpose...

SENATOR THOMPSON: For a private party?

SENATOR SYNOWIECKI: For a private party.

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: Okay. And then smoking would be allowed under them instances...and it would at the proprietor's discretion.

SENATOR THOMPSON: Well, I'm not...you know, this would be a sneaky way for people to get around having smoking by just declaring it private. You know, I...I am not...I would have to have an attorney answer your question because...and I will check with legal counsel, because the section that I'm getting to is already the current law and it was stricken in the committee amendment, and this amendment is just putting it back in to say that the proprietor of that hall. That's different from what you're asking in terms of what this is, so I'm going to have to check with committee counsel.

SENATOR SYNOWIECKI: I just wanted to be...

SENATOR THOMPSON: I don't want to, on the floor, create a record that if somebody...

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: I wanted to be clear that...

SENATOR THOMPSON: ...needed to have smokers at their funeral...

SENATOR SYNOWIECKI: ...liquor...they have to have a liquor license at the...or many of these halls have liquor license, just as a bar or a tavern has a liquor license, and that a bar...a proprietor of a bar reserves the right to lease out his venue for private events. That's something that's done quite normally. And that it would then be up to the proprietor whether or not smoking is allowed for them gatherings within his

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

April 13, 2005 LB 480

or her establishment. I just...that's my understanding of the amendment and, unless I'm corrected, that is how we're pursuing with this amendment under that thought, and that is that if you're the proprietor of a local establishment you can lease the entire establishment out and smoking would be allowed, and that the question of whether or not smoking is allowed is designated...the discretion is designated to the proprietor. I just...I'll just state it that way for the record...

SENATOR CUDABACK: Time, Senator.

SENATOR SYNOWIECKI: ...and...thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Thompson, there are no further lights on, so I will recognize you to close on AM1179.

SENATOR THOMPSON: Thank you. Just to follow up with Senator Synowiecki, I have talked with legal counsel to the Health Committee. If you would like, on Select File, to amend "bar" into this definition, that may make it clearer. He's standing off to the side if you want to include that. But right now this is a compromise amendment based upon two concerns. One was Senator Synowiecki's concern that he wanted children to be able to go to bars and not be prohibited under the law from doing that. This takes that language out of the bill. The second would allow the proprietor of...and it's defined in the law currently and in the amendment, of an entire room or hall used for a private social function. Would probably need clarification. Senator Synowiecki, that might be something you would want to consider, adding "bar" to that. You can...you can put an amendment up next or we'd be happy to work with you on Select File. I'm not sure, you know, of how far you want to take this, if this is just defining what this section is about, but this section has been in the law since it was passed in 1979 and it refers to the private halls that people lease out. So if you want to, now that the discussion is, can a bar turn itself into a private hall for...to allow smoking for a funeral luncheon or something like that, we probably need to define that in this amendment more clearly for that purpose. So that's what this amendment is about. It's not the original language. It's

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

April 13, 2005 LB 480

a compromise on two issues, and I'd ask your support.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the closing on the Thompson amendment, AM1179, to the committee amendments to LB 480. All in favor vote aye; opposed, nay. The question before the body is the Thompson amendment, AM1179, an amendment to the committee amendments. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 1 nay, Mr. President, on the adoption of Senator Thompson's amendment.

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

CLERK: Mr. President, Senator Thompson would move to amend with AM1190. (Legislative Journal pages 1181-1182.)

SENATOR CUDABACK: Senator Thompson, to open on AM1190 to the committee amendments.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. This is another compromise amendment, based on the discussions of Senator Synowiecki and Senator Bourne yesterday. This amendment would amend the committee amendment to strike language...wait a second, I'm passing it out, (inaudible) got the wrong one...to allow restaurants that provide keno and restaurants that are located within a licensed racetrack enclosure, other than those on state property, to designate smoking areas until January 1, 2015. So this would put this in place for the next ten years as kind of a step-in way to deal with the concerns about restaurants that primarily cater to people who gamble and...because a lot of people who gamble also smoke. So...and I don't...this kind of gets to the issue that Senator Synowiecki and Senator Bourne were talking about of the general public and the thought being that we can't accomplish everything here. But for those of you who are still thinking about this, this is an accommodation to the part of the restaurant industry that is also active in gambling, in addition. So we can't get to 100 percent, but we can protect lots of workers by getting to the other parts of the bill. We

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

April 13, 2005 LB 480

can protect children, we can protect people with health issues, and we can protect the general public from the exposure to the carcinogens in secondhand smoke. This is...as all public health issues are, we do things incrementally. This certainly isn't anything I'm jumping for joy over, but I am willing to accommodate the opponents on this in hopes of a good faith response to being supportive of the bill. And with that, I will close on the opening.

SENATOR CUDABACK: You heard the opening on AM1190 to the committee amendments. Open for discussion. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Would Senator Thompson yield to a question or two regarding AM1190?

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Yes.

SENATOR BOURNE: And, Senator Thompson, thank you. Now what you're saying is that if it's a restaurant that conducts a lottery on their premises or are located within a licensed racetrack enclosure that's not on state property, they're...oh, it's exempt from these provisions until January 1, 2015.

SENATOR THOMPSON: Correct.

SENATOR BOURNE: So if they do a lottery or if they are a licensed racetrack, then they can be a restaurant/bar facility and they can smoke until January 1, 2015.

SENATOR THOMPSON: Correct. They all...they were already, if they are, have to have a nonsmoking area and we're...so that doesn't change.

SENATOR BOURNE: Okay, so it would...

SENATOR THOMPSON: It just doesn't put them under this bill till 2015.

SENATOR BOURNE: Okay, so it would basically maintain the

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

April 13, 2005 LB 480

status quo...

SENATOR THOMPSON: Correct.

SENATOR BOURNE: ...as it relates to the Clean Indoor Air Act if they are either a lottery or a licensed racetrack enclosure.

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Okay. Now, I want to ask you, does the lottery include...is it simply lotto or are there other...are there those scratch tickets or scratch cards that are included in the lottery?

SENATOR THOMPSON: This is keno.

SENATOR BOURNE: Oh, it's keno.

SENATOR THOMPSON: Yes. When you said lottery, I'm sort of not...I mean, I can sort of play poker, but I'm not real familiar with what...if keno is called a lottery, too, but it's keno.

SENATOR BOURNE: Okay. So, under statute, the keno is defined as lottery?

SENATOR THOMPSON: That's the Nebraska city, county lottery act, and what that allows is for the cities or the counties to set up what we know as keno.

SENATOR BOURNE: So what do we, under the statute, call Powerball? Isn't that a lottery as well?

SENATOR THOMPSON: Well, it's not...I'd have to look at that statute back in the hills here, but this is the Nebraska...under...that licenses under the Nebraska County and City Lottery Act, which is the law that Nebraska passed to allow keno in local subdivisions.

SENATOR BOURNE: Okay. Well, my sense of it is, is that this would include keno, it would include Powerball, and it would

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

April 13, 2005 LB 480

also include those scratch tickets. So if a facility had the scratch tickets, they'd be exempt as well.

SENATOR THOMPSON: Um...

SENATOR BOURNE: But let me...but I guess we'll have to check that, because I didn't realize that lottery was...or keno was actually called lottery.

SENATOR THOMPSON: Well,...

SENATOR BOURNE: Okay. And then you've also indicated...so that's the one thing. We're not certain if it's keno only or keno, scratch tickets, and Powerball, but the other is if you're a licensed racetrack enclosure. Now, is "licensed racetrack enclosure" a defined term in statute?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: And so...and that is, I assume, a horse racing venue or a horse racing track.

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Okay. Now there is also a horse racing track that is here in Lincoln and it's at State Fair Park. Is that accurate?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: But what we would have is that the horse track out in Grand Island, I think it's Fonner Park, there's a horse track in Omaha, they would be...they would have, for lack of a better term, they would be status quo and, yet, the racetrack here in Lincoln would be under LB 480, should it pass.

SENATOR THOMPSON: That's because it's state property, yes.

SENATOR BOURNE: Okay. So do you see any issues with treating...I...okay, here's my question, and maybe some other lawyer...lawyers will be involved, but I see two issues with

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

April 13, 2005 LB 480

that. One, you're interfering with the contract between the state and the entity that leases the racetrack there...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...in State Fair Park, so you got an interference of contract issue and, again, maybe I'm wrong, but you also would have...wouldn't you have an equal protection issue where you're treating, say, the racetrack in Fonner Park, you're exempting them and, yet, you're treating Lincoln differently? So you would have similarly situated entities treated disparately.

SENATOR THOMPSON: Senator, we have banned smoking in all state buildings and we also may lease state buildings to other places and we ban...we don't allow smoking in those leases. So this would be no different from what we already do in terms of our state property.

SENATOR BOURNE: But isn't this a unique situation in that we have a state entity that is leased to a private vendor? And I don't know what the terms of that contract would say, but aren't we interfering in the contract, as a Legislature, between the state and that private vendor in saying, the contract can say anything you want, however, it can't say anything...or you can't smoke there?

SENATOR THOMPSON: I think it'd be similar to hundreds of contracts that we have as a state. We have the power to decide what we're going to allow and not allow in...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR THOMPSON: ...in our public property.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Thompson. Senator Thompson, you're recognized,...

SENATOR THOMPSON: Oh, I'm sorry.

SENATOR CUDABACK: ...followed by Senator Smith, Chambers, and

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

April 13, 2005 LB 480

Bourne.

SENATOR THOMPSON: Powerball is in a different section of law, just to clarify for Senator Bourne. This is the part of the law that allows cities and counties to set up keno. And this is a compromise that would allow the places that serve gamblers, that tend to have more people smoke, to continue in that vein. This is sort of Senator Synowiecki's amendment minus the pickle card. So it would allow that. Other states that have passed smoke-free workplace bills, a few of them have allowed a similar accommodation, and I consider this part of the compromise that has to go on to reach some center ground where we can help make sure that people are healthy, that their public health is protected. We can't protect the public health in these places but perhaps that's mainly...it's mainly adults and not children, and tends to attract a different clientele than your general restaurant clientele. So I'm willing to make this accommodation to the opponents of this bill and that's the purpose behind it. It is keno and it's specific to keno. Senator Bourne, I just checked on that. And as far as the issue with the State Fair Park, that bill...that was advanced in this bill and by the Health and Human Services Committee, that provision. I just wanted to make sure that this provision didn't conflict with the other portion that is still in the bill. So that's to stay consistent with the committee amendment and all...that they advanced and was also part of the original bill, and also to make sure that if we extend...that we can extend to horse tracks. If that's going to be a problem, I would be happy to divide the question if people would like to do so. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. (Visitors introduced.) On with discussion of the Thompson amendment. Senator Smith, followed by Senator Chambers.

SENATOR SMITH: Thank you, Mr. President and members. If this amendment were adopted with my knowing that it would slow the bill down or even get the bill pulled, I would think about supporting it. However, it appears that it might be a compromise that I think makes a bad bill worse. I think that it sends a terrible message to the public. I find it interesting that this issue is characterized as a public health issue, but

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

April 13, 2005 LB 480

it sends the suggestion that if you smoke and play keno at the same time, all of a sudden it's okay. I also have a problem with the exemptions down the list of suggesting that consuming alcohol and tobacco at the same time seems to be healthy. And I understand the political implications here of compromise and so forth, but what messages are we sending? I get questions about this bill, LB 480, and its impact and, you know, we want everything to be smoke-free. I understand that. That's my personal desire as well. In fact, here in Lincoln there have been some establishments that have received my business that would not have otherwise, but that's a personal issue for me. But when we start adding loopholes and exemptions down the line, we're not being honest with the public. We're not saying that there is a ban, a smoking ban, because all a restaurant has to do is add keno. I could be incorrect on that, but in my reading of the issue, all a restaurant has to do to allow smoking is to add keno. Is that what we want to encourage? I don't think it is. I have a bit of a problem with this self-righteous attitude of the Legislature saying this is a public health issue, but let's whittle away at what we're intending to do. I don't know. Perhaps it's because we can say we did something. I'm not sure. It's not my desire to stand in the way of a vote of this bill, a vote on this underlying bill, but I think we need to really take a close look in how honest we are being with the general public in suggesting that this is a smoking ban, because it truly is not. If you want a smoking ban then you do what the city of Lincoln did. They had the political courage to do it, perhaps; others didn't. It went on the ballot. Fine. There's a local decision...a local decision authority already on the books. Can't we live with that? Let's live with that and move on. That allows for the smaller towns that have a quasi-restaurant-bar situation to not have to look more like a bar, more like a keno parlor, so as to allow smoking, and I think encouraging a less family-friendly environment, in their effort to maintain smoking, rather than simply accommodating smoking. People don't have to go there, but I would say a restaurant that simply accommodates smoking and does accommodate minors is a lot better situation than a restaurant that encourages more alcohol consumption and certainly the playing of keno at the same time, which happens to be a boring game anyway. But nonetheless, what are we about today? Are we about a true

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

April 13, 2005 LB 480

smoking ban or are we not? Thank you, Mr. President.

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

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

SENATOR CUDABACK: Senator Smith, would you respond?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: "Mr. Congressman," I was watching the vote on Senator Synowiecki's amendment because it was by a roll call. You voted yes on Senator Synowiecki's amendment, didn't you?

SENATOR SMITH: Yes, and that was with the understanding, or at least the assumption perhaps, that it was going to encourage the bill to be pulled.

SENATOR CHAMBERS: Nevertheless, you would have been giving the message to those who observe your vote that you believe in carving out an exemption based on a gambling proviso. Isn't that true?

SENATOR SMITH: That is correct.

SENATOR CHAMBERS: But now, because there's a gambling proviso, you feel you should vote no.

SENATOR SMITH: That is correct.

SENATOR CHAMBERS: Is that what political foes refer to as flip-flopping?

SENATOR SMITH: Call it what you would like.

SENATOR CHAMBERS: No, I'm not calling it that. I'm asking you, is that what political foes refer to as flip-flopping? If you saw your opponent take a strong position saying one thing, then took an equally strong position saying the opposite thing, would you describe that as flip-flopping by your foe?

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

April 13, 2005 LB 480

SENATOR SMITH: I would look into the matter a little further.

SENATOR CHAMBERS: So then in your campaigning, if your opponent takes opposite positions you will not refer to that as flip-flopping. Is that true?

SENATOR SMITH: I'll have to wait and cross that bridge when I come to it, Senator Chambers.

SENATOR CHAMBERS: Spoken like a true candidate for Congress. Thank you, Senator Smith. Members of the Legislature, that's what I mean about the nature of legislating. If people genuinely have a position based on principle, they can make that clear and their vote would be consistent with that principle. If it's not based on principle but just going whichever way the wind seems to be blowing, that should be made clear, too. Then any observer who has an interest in trying to analyze and understand why a public official does whatever he or she does, or refrains from doing, will recognize that an issue is before that individual which means not a great deal and he or she could as easily vote yea or nay. So circumstances will determine the vote rather than any entrenched principle. But if somebody states a principle against smoking, gambling, drinking, and say that is one of those moral principles based on a moral conviction, you would expect that person's vote to be consistent. If I see a senator vote at 10:57 a certain way, then a half-hour later vote the opposite way, I would say that person does not have a solid principle guiding the vote on that particular issue. So I would not accept Senator Smith's guidance, as he has offered it this morning, because you must understand when somebody is running for a higher office they have to say things that are conducive to inducing voters to vote for that individual. On this particular amendment an argument could be made to counter what Senator Smith just offered as a rationale. He said that restaurants might...the operators might run out and obtain a license to engage in this kind of gambling. The other alternative is just as viable. A restaurant, which under the current law can have smoking...

SENATOR SCHIMEK PRESIDING

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

April 13, 2005 LB 480

SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: ...if there's a no-smoking portion, may, if it deals in keno or whatever kind of gambling is allowed, may cease to do so, then can point out that the state law prevents smoking. I have had more than one restaurant operator or proprietor tell me that if there were a ban by the state or in Omaha by the city it would be helpful because then they could tell those people who wanted to smoke that it's the law that there can be no smoking. Other enterprises, such as barbershops, have said the same kind of thing. So there is more than one way to look at what the impact of this amendment that Senator Thompson is offering. I would rather it not be there, but I've always told you all there are issues which I think cannot be consumed in one gulp...

SENATOR SCHIMEK: Time.

SENATOR CHAMBERS: ...and they must be handled incrementally. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Chambers. (Visitors introduced.) Thank you, Senator Chambers. Senator Bourne's light is next.

SENATOR BOURNE: Thank you, Madam President. Members, I just want to clarify exactly what I interpret this amendment as doing. It says that any entity that has keno can continue to allow smoking in their bar/restaurants until January 1 of 2015 and...but it also says that State Fair Park or at the fairgrounds, I guess there is a racetrack there, I've not been to that racetrack, but there is a racetrack on state property there and you...it would ban smoking there, but it would not ban smoking at other racetracks located in Nebraska. So if you have a bar/restaurant that sells keno, you could still smoke. The bar next to it that does not sell keno, you...or, excuse me, the restaurant next-door, bar/restaurant next-door to the keno parlor, could not smoke. Any licensed racetrack--and I assume that's as of the passage date of the law; I don't know if there's plans to build additional racetracks--but any licensed

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

April 13, 2005 LB 480

racetrack other than the racetrack that's on State Fairgrounds, you could allow smoking in there. So again, this kind of goes back to some of the things that I've been saying about the bill itself, that it's a cobbled up mess. And I understand that Senator Thompson is trying to be accommodating and I'm sure the keno folks are appreciative of that, and those horse track operators, other than the one on State Fairgrounds, are appreciative of that. But I think it further illustrates what a mess this Clean Indoor Air Act is. And then also with the provision that they can smoke in these facilities until January 1, 2015, I don't understand the logic of that. But just for clarity, so we all understand what this does, if you have a bar/restaurant and you sell keno, you can continue to smoke there. If you go across the street to the bar/restaurant that does not have keno, no smoking. And if you are a racetrack in Grand Island, you can smoke. If you are the racetrack in Lincoln, you cannot smoke. I think that that is undeniably unfair and it's almost worse than the original version of the bill, notwithstanding that Senator Thompson has made an effort to try to be accommodating. I guess I'm not trying to criticize her. I'm just trying...I'm just saying this illustrates the mess that this bill or this...the underlying bill is. I think what I'm...I'm going to vote no on this amendment and urge others to do that as well, but I think maybe we should see if Senator Thompson has the votes to move LB 480 across and maybe we can get to a vote this morning. I have withdrawn my amendments and filed them on Select File, and I do believe the bill needs a significant amount of work and I'll be filing some additional Select File amendments and we can take up those issues should the bill have enough votes to advance. I would hope it does not, but I do think that there is some additional debate that needs to be done on LB 480. I will be, again, voting no on this amendment because, notwithstanding Senator Thompson's efforts, I think it simply makes a bad underlying section of statute even worse. Thank you.

SENATOR SCHIMEK: Thank you, Senator Bourne. Senator Louden, your light is next.

SENATOR LOUDEN: Thank you, Madam President and members of the body. I haven't gotten into the discussion on this LB 480. I

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

April 13, 2005 LB 480

stayed out of the discussion on the amendments because most of them were considered...were being considered for towns that were a lot larger than the ones in my district. I have the problem with LB 480, the way it's put together, I guess. We have a few establishments in my district in western Nebraska where dinners are served, suppers are served, and drinks are served also. I can literally name off every town that has one good eating place. You can start with Hyannis and, of course, there's the hotel, as we call it, and they serve suppers and meals there. If you don't...if something comes about by this bill that they can't be serving meals there, then there probably won't be anyplace to eat for somewheres around 150 miles on Highway 2. Lakeside has the Cattlemen's there and that is posted now as a smoking area in its entirety because the proprietor himself is a chain-smoker, so he set it up like that. They do work around it. They put...they have two ends of the building and they usually try and work around it, and people have been quite satisfied the way they've handled it. So that hasn't been a problem with smoking in that area. You can talk about McGrew and the Pink Palace, a very good place and prime rib is on Friday and Saturday night. Some of it is smoking areas. They do the same thing. Most of these small establishments that are run by proprietors out in those areas try to accommodate everyone the best they can, and for the most part it's been working out quite well. If you leave people alone without regulations, many times they'll work out a system that benefits everyone involved. So I have a problem with the LB 480 because I think all through the district there we will be losing these establishments and they serve a very needed purpose. Not only do they bring in some money from outside for people traveling through, but they also serve a purpose for local people to have areas where they can go and have their suppers. Most of these areas, like Lakeside, probably serves an area that's probably 30 miles in diameter...or in the radius of 30 miles. Would be 60 miles in diameter, 30 miles every direction from Lakeside is the area they serve. Now, when you stop and think of that, you'd be...you'd be driving out there on the other side of Seward or someplace for someplace to eat, and if that's the only one you had, why, I'm sure you would want to protect it the best advantage you could, especially when they're doing a very good job of taking care of their clientele. So I, as far as the

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

April 13, 2005 LB 480

amendments, I'm seeing the one that I thought probably perhaps that Senator Thompson had that would maybe improve it, but I have a real problem with the complete bill. I applaud her for bringing this forwards because I, myself, am not a smoker, I never have been, and I, far as I'm concerned, the state could be smoke-free or wherever. But I really do think that this is something that should be decided by the cities and towns and the proprietors involved. I don't think this is something that state law should get into. We, the first place I've ever went that was all smoke-free I think was in Fort Collins, Colorado, and in every restaurant there was smoke-free because the city of Fort Collins had designated it so. So I think, such as the city of Lincoln is started...has the lead...

SENATOR SCHIMEK: One minute.

SENATOR LOUDEN: ...in nonsmoking bars and restaurants and public places, I think this is something that should really be left up to the cities. I hope that this isn't a bill being brought forward so that some city someplace can say that they're not the ones that passed this legislation and blame it on the Legislature. We have to be very careful about that, that we don't take the blame for something that belongs for duties that other people have to have. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Louden. Senator Smith, you're recognized to speak.

SENATOR SMITH: Thank you, Madam President and members. As we are weighing our options here I again want to emphasize the fact that if we're going to have a smoking ban we better be straightforward about it and not start exempting this and that and encouraging various things to happen or discouraging various activities to happen within the private sector. But I think back about how...and it was stated earlier in this discussion on LB 480, that bowling centers have fallen under the Clean Air Act for several years. I would ask you how smoke-free you believe bowling centers to be. Oh, if you serve alcohol in bowling centers then there's a little less restriction, which is most bowling centers. I appreciate those few that are not complemented, if you will, with alcohol. But most bowling

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

April 13, 2005 LB 480

centers are smoking environments. But, yet, we say that they fall under the Clean Indoor Air Act, but the practice certainly and perhaps the enforcement is a major issue? I have concerns, but I think this amendment that would encourage a restaurant who very well may have good ventilation right now and has a more legitimate nonsmoking area than others, then they would have to take keno as an operation within their establishment so that they could allow smoking, and it soon becomes a tangled web. I hope the body does not buy into this. I urge a no vote on this amendment and so that we can eventually have a vote on LB 480. Thank you, Madam President.

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

SENATOR CHAMBERS: Madam President, members of the Legislature, Senator Bourne had talked about some issues related to equal protection under the law. Now, unless Senator Combs has her pistol on her, I'm going to ask her to whisper so that I can talk and be heard. (Laugh) Members of the Legislature, I don't think there are any equal protection of law issues here whatsoever. The state can determine restrictions that must be complied with before its land is allowed to be used. So it is not a situation of similarly situated enterprises being treated differently. You have a privately-run racetrack and you have a racetrack on state property. The state can do whatever it wants to in the way of writing its contracts, and by exempting these other tracks from rules and regulations that apply to those enterprises on state property is completely allowable. The legal principle found in the U.S. Constitution and mirrored by Nebraska related to a prohibition against impairing the obligation of contracts relates only to contracts in existence at the time a law is passed. The law cannot overturn existing contracts. That is how you impair the obligation of contracts. There can be no obligations based on contract if no contract exists. So the state, when entering a contract with anybody or any entity, will lay out what the requirements are. For the term of that contract, unless something else is stated to the contrary within the contract, its terms cannot be modified by action of the Legislature. All of these other arguments that Senator Bourne made pointed out that he opposes the bill no

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

April 13, 2005 LB 117, 480

matter what form it takes. There are some people who feel about this bill the way I feel about the gun bill. There's no way you can make that acceptable to me, if we ever get to it this session. There are a couple of other ringers in the Combs division that may pose problems for some people. It's interesting that the next bill up is Senator Bourne's and it attempts to put a burden on a person making a purchase of a legitimate over-the-counter medication, not because there's any harm in the medication but because some mountebank might buy it and do something else with it over in his barn or somebody else's yard. So we're going to have fun discussing LB 117, just like others have had fun discussing LB 480. There are no equal protection law...of laws issues involved in Senator Thompson's proposed amendment. There is no question relative to the impairment of contracts involved with Senator Thompson's amendment. Senator Bourne is merely doing everything he can to muddy the water, and he has made that clear. He has never pretended that anything could make him support this bill. I just wish that he would study my methods and become a bit more clever, a bit more...

SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: ...entertaining, since all he's trying to do is oppose the bill, but it will show those who try to do this that, although I make it look easy, it is not as easy as it might look to somebody on the sidelines. Gymnasts make those contortions and flips that they execute look easy, but that's because they have such great skill that they can do something which would be impossible for the rest of us and make it look like a march or walk in the park. There are no problems with Senator Thompson's amendment, except that it gives these entities a longer time before they come under the law. But moving incrementally on a problem which may be...must be addressed in that way, I will support her amendment and continue to support the bill.

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

SENATOR SYNOWIECKI: Thank you, Senator Schimek. Senator

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

April 13, 2005 LB 480

Thompson, would you yield to a couple questions relative to AM1190?

SENATOR SCHIMEK: Senator Thompson, would you yield?

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: Senator, as I understand it, if a bar acquires keno they would be exempt from the provisions of the bill, as outlined under the committee amendment. Is that right?

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: Now the question I have is, if I'm a bar owner, I sell burgers over the lunch hour, and my clientele consists of 90-95 percent smokers, and that's just the nature of my clientele, it is not entirely my decision as a proprietor as to whether or not I get keno. Don't you have to apply to have keno at your establishment?

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: I mean, it's awarded by the vendor that the county or the municipality...for example, in Omaha I believe it's Big Red Keno, they have the Big Red Keno contract, and it is ultimately a decision that rests with Big Red Keno as to whether or not you get keno at your establishment.

SENATOR THOMPSON: I'm not familiar with Douglas County on this issue.

SENATOR SYNOWIECKI: So that if we have an establishment, serves burgers and has a liquor license, and they wish to be exempted because an overwhelming majority of their customers and their clientele smoke, it really is not a decision that rests entirely with the proprietor. You have to get...acquire a license for keno and so forth, and then that decision, that decision, rests with the keno operator as to whether or not you get a keno operation.

SENATOR THOMPSON: Right. I mean, the current law for that same

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

April 13, 2005 LB 480

establishment is they have to have a nonsmoking area.

SENATOR SYNOWIECKI: Right.

SENATOR THOMPSON: So that's the current law that they're under.

SENATOR SYNOWIECKI: Right.

SENATOR THOMPSON: Under the law with this amendment, if they wanted to not have to go smoke-free, that would...I'm trying to accommodate you, Senator Synowiecki. This is what you had mentioned earlier and, quite frankly, that's the reason I put this in the bill.

SENATOR SYNOWIECKI: Senator Smith spoke of perhaps this amendment transforming the environment of current bar/restaurant type atmosphere, so that they implement keno so that they can allow their patrons to continue to smoke in their establishments, and that this might serve as an incentive to install keno. Now, my earlier amendment had pickle cards as a mechanism to be exempt. Isn't that right?

SENATOR THOMPSON: Yes.

SENATOR SYNOWIECKI: And isn't the sale of pickle cards a less conspicuous gambling environment than a keno operation and that? If you have keno, you have to have the TV screens. You've got cards on all the tables and little crayons that you mark your numbers on and all these sorts of paraphernalia associated with keno. But that degree of paraphernalia, gambling paraphernalia, is not associated with pickle cards, isn't it? Isn't it a less conspicuous...

SENATOR THOMPSON: Yes, but it's less expansive. This is a narrower, smaller group of people. Pickle cards, I think, set itself up for all sorts of shenanigans to be able to continue to have smoking in restaurants, so this is narrower. It allows some accommodation and it was...I did this for you.

SENATOR SYNOWIECKI: Relative to uniformity, not all municipalities and counties of the state of Nebraska offer keno

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

April 13, 2005 LB 480

games. Is it...

SENATOR THOMPSON: No.

SENATOR SYNOWIECKI: Are pickle games...are pickle cards offered throughout the state?

SENATOR THOMPSON: You know, this...the pickle card issue was your amendment and I'm not familiar with pickle cards.

SENATOR SYNOWIECKI: Okay. It's my understanding that, relative to uniformity, not every municipality in the state, not every city, not every county has...

SENATOR SCHIMEK: One minute.

SENATOR SYNOWIECKI: ...has keno availability. And relative to the...Senator Smith somewhat spoke to this issue of transforming what are now neighborhood friendly establishments that have a set-aside nonsmoking area and some may do it very successfully and divert the smoke out of the nonsmoking area very successfully, would now, in order to continue to offer to their patrons that may want to smoke, and if they think it's in their best economic interest as a private business owner to continue to let their patrons smoke, they would have to convert their establishment to a keno hall, to a keno hall. And my previous amendment would have given that same proprietor the opportunity to sell pickle pull-tab cards, which is a much, much less conspicuous gambling environment and incorporates much less gambling paraphernalia. I kind of...while I appreciate the overture by Senator...

SENATOR SCHIMEK: Time.

SENATOR SYNOWIECKI: Thank you.

SENATOR SCHIMEK: Thank you, Senator Synowiecki. Senator Bourne, you're recognized to speak, and I believe this is your third time.

SENATOR BOURNE: Thank you, Madam President. Members, I didn't

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

April 13, 2005 LB 480, 730

intend to speak on this because, again, because, like I mentioned, I think that maybe it's time to take a vote and see if Senator Thompson has the support to move the bill to Select File. But I also mention that there will be a number of amendments on Select as well, because I don't believe that this is the right course of action. And I know Senator Chambers mentioned that and I've not made that any secret. I don't believe that this is the right thing to do, and so I won't support the bill no matter what or no matter how it's amended or changed. But I did want to talk about the impairment of the contract issue and I do think there's an impairment of contract situation here, notwithstanding what Senator Chambers says. And while I tell I'm not...I've never litigated an impairment of contract issue, it just seems to make sense, when you have a private entity that has contracted with the state with one set of expectations, and then all of a sudden a law is passed that changes those and reduces the value of that contract, I think it's an issue. And I'll tell you, let me read you a definition of what an impairment of the obligation of contract is. To impair the obligation of a contract within prohibition of Article I, Section 10, of the United States Constitution is to weaken it, and here's where I think it violates the contract obligations, in that it lessens its value or it makes worse in any respect or in any degree. Any law which changes the intention and legal effects of the parties impairs the obligation of the contract. So we had, and I mentioned this yesterday, we had a hearing on LB 730. We had a number of bar and restaurant owners come in and they talked about how their incomes are down 30-40-50 percent. If we adopt this amendment what we have said is that we are...we are saying there's no smoking on the State Fairgrounds, and I am arguing that that lessens the value of the contract between the vendor who's running that horse track and the state. We...it is documented. I can read you the testimony if we want to take some more time. A bar or restaurant, at least here in the city of Lincoln, and maybe it's temporary, I don't know, I've heard other people say it is temporary, but it is...I don't think anyone can argue that their revenues are down. There was an article in the paper yesterday that a billiards store closed, I think it was Big John's, and the reason...it was a bar. The reason it closed, the owner said, was absolutely because of the smoking ban. So

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

April 13, 2005 LB 6, 480

what I'm saying is if you are reducing the value of that contract, and we have seen that bar revenues go down when the smoking ban went in, we are impairing the obligation or we're impairing the contract between the state and that vendor. And, you know, whether Senator Chambers agrees with that or not, I think the definition is pretty clear. I believe that there will be a lawsuit by the vendor of that establishment, because we are going to impair the contract there on the State Fairgrounds. With that, I would urge your opposition to this amendment. Thank you.

SENATOR CUDABACK PRESIDING

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

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, I'm also going to rise in opposition to the amendment that Senator Thompson is offering, and I don't think it's any secret about where I've stood on this issue in the Health Committee or in this Legislature. And my opposition to her amendment isn't necessarily based on my underlying position on the bill, but I do have some information from the hearing on LB 480 that I think is quite interesting. And actually, the hearing on LB 480 and the hearing on LB 6 were held jointly, so this testimony is from both of those...both of those bills. There was an individual that testified from the city of Lincoln and he actually is an employee of one of the health departments here, and this was his comment about why it is that we should pass LB 6, which indirectly or directly deals with this provision of not exempting state properties that have the licensed racetrack. And this is his quote: A smoke-free requirement on State Fairgrounds would also be consistent with Lincoln's smoking regulation act that requires all businesses, except those in private residences, to be smoke-free. He continues on: Although it is widely known by Lincoln and Nebraska officials that the State Fairgrounds are not within the city limits, that is not commonly known to our citizens. Most of the 62 percent of Lincoln voters who wanted Lincoln's businesses to be smoke-free were probably not aware smoking would continue at the State Fair Park. In honesty, that is the

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

April 13, 2005 LB 6, 480

single most compelling reason why LB 6 should be passed or why LB...or AM1190 should be adopted, and that is that we had people in Lincoln who didn't know that the State Fair was not in the city limits. And to say that by passing the city ban that it somehow...this law would then bring that into consistency, the city of Lincoln doesn't have jurisdiction over it. As to the policy reasons, Senator Aguilar has a community that has a licensed racetrack in its community as well, and under this amendment we will give an exemption to Fonner Park or in Omaha to Horsemen's Park, but as a state facility we won't give that same right, even though it's the same principles that govern the exemption here but, yet, because Lincoln passed an ordinance that they had no idea, or some did and they recognized they weren't able to reach that far, we should adopt this amendment and prohibit it. It's interesting to me that we as a state, who have an obligation financially at the State Fairgrounds to fund buildings and other things, would be willing to potentially give up, if there is, revenue or other things in order to subsidize or provide an unfair opportunity to Omaha and Lincoln's (sic) facilities. In honesty, I would be fine if we just eliminated the whole opportunity for that type of gambling in the state of Nebraska. So, from that standpoint, I also don't rise in opposition because of that, but just it doesn't make sense. So, from the standpoint of what we're doing publicly and as far as policywise, there are some ironies in here that seem to be interesting. I'm going to oppose the amendments. I'm going to oppose the committee amendment. The bill, I believe, also has some problems. But I had an amendment filed. I was willing to withdraw that to see where the body may be this morning, and I think we should proceed with that effort. Thank you, Mr. President.

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

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, Senator Bourne told me he was going to take me to school on the issue of impairment of the obligation of contracts. Senator Bourne took me to school, but his school would not be certified. He wound up talking about impairment of a contract. The term is impairment of the obligation or

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

April 13, 2005 LB 480

obligations of a contract. If the state, by entering that contract, is obligated to allow this entity to conduct horse races for a certain number of days and the state said we're going to reduce the number of days after the contract was in effect, the state could not legally do that. That impairs the state's obligation to allow that number of days. If the state said you can no longer conduct horse races, that impairs the state's obligation to allow the conducting of horse races. Senator Bourne talked about impairing the value of a contract. That is not a constitutional principle. No contract guarantees a certain amount of income to the other party unless that is specified in the contract. There is nothing on the part of the state by way of an obligation to ensure that anybody who conducts horse races will make a profit. But there is an obligation on the part of the one who made that contract with the state to pay whatever amount was agreed to be paid. This talk by Senator Bourne of some pool hall person saying he had to shut down because there's no smoking, that wouldn't stand up in court. If he's going to try to sue somebody, he'd have to give facts and evidence to prove that's why he went out of business. He goes out of business, he says not smoking is what caused it, and Senator Bourne swallows it; no court would. Also, how many people on this floor, when it comes to gambling, will tell me that they think some gambler is going to stop betting at the racetrack because he can't smoke? He doesn't go there to smoke. Many of them cannot afford to buy cigarettes at the cost of them if they want to play the horses. But I'd like to ask Senator Bourne a question. Senator Bourne, are you telling me that you believe a gambler will cease gambling because he can't smoke, when he will not cease gambling at the risk of losing his family?

SENATOR CUDABACK: Senator Bourne, would you yield?

SENATOR BOURNE: Yes, I'll yield.

SENATOR CHAMBERS: That's the question. Do you think not being allowed to smoke will cause a gambler to cease smoking when he will not cease gambling at the risk of losing his family?

SENATOR BOURNE: Well, Senator Chambers, I know that you're

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

April 13, 2005 LB 480

going to jump and squeal about me taking your time, but...

SENATOR CHAMBERS: No, take it.

SENATOR BOURNE: ...that's not what it says. It says within a licensed racetrack enclosure. There's nothing here that says that individual has to gamble while they're partaking of an adult beverage and having dinner and they want to smoke at the same time. So what you're saying doesn't even make sense.

SENATOR CHAMBERS: Senator Bourne, why do people go to races, racetracks?

SENATOR BOURNE: Well, I'll tell you that I've been to the one in Omaha and I've never...I've never bet on anything, but I've had a hamburger and a beverage and so I go there for...I've been there once or twice for social aspects. I've never gambled.

SENATOR CHAMBERS: Do racetracks makes their money by selling hamburgers, hot dogs, and other condiments?

SENATOR BOURNE: I would assume that they do.

SENATOR CHAMBERS: What are racetracks in business for?

SENATOR BOURNE: I think all of those things. They're there to allow people a venue to bet on horses and sell food and drink in a social atmosphere.

SENATOR CHAMBERS: Is it primarily a gambling operation?

SENATOR BOURNE: Well, I would assume that it is, but I don't...

SENATOR CHAMBERS: Is it?

SENATOR BOURNE: ...know. I'm not privy to their financial records. I don't know.

SENATOR CHAMBERS: Thank you, Senator Bourne.

SENATOR CUDABACK: One minute.

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

April 13, 2005 LB 480

SENATOR CHAMBERS: Members of the Legislature, don't...because Senator Bourne is naive about why racetracks exist, let me explain to you that they exist so that people can come there and gamble, and it's not to compete with McDonald's or Arby's. And people who bet the horses...I know this from having a lot of friends who have done it. They don't listen to me or anybody, or their family. If they go there and smoke at the same time and the only thing different is that they can't smoke, they will not stop going to the track. If stopping smoking would stop gambling, I then would bring a bill to abolish smoking throughout this state anywhere, and we'd solve a much more difficult problem. Because there are families that are not broken up from smoking necessarily, but they are destroyed because of gambling. So this notion that not allowing people to smoke at a racetrack will stop them from gambling is preposterous. And, Senator Bourne, your license to run a school is hereby revoked forever. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) Senator Thompson, there are no other lights on. You're recognized to close on AM1190.

SENATOR THOMPSON: Again, this amendment was offered as a compromise. It would allow restaurants that provide keno and restaurants that are located within a licensed racetrack enclosure, other than those on state property, which is our current law, except for the exceptions that are removed in the main amendment of the bill and the bill itself, to designate smoking areas until...they're given a ten-year window, till 2015, to become smoke-free.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the closing on AM1190 to the Health and Human Services Committee amendments. The question before the body is, shall those amendment be adopted? All in favor vote aye; opposed, nay. Voting on adoption of the Thompson amendment, AM1190. Have you all voted who...Senator Thompson, for what purpose do you rise?

SENATOR THOMPSON: A call of the house, please.

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

April 13, 2005 LB 480

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

CLERK: 25 ayes, 1 nay to place the house under call, Mr. President.

SENATOR CUDABACK: The house is under call. All unexcused senators please report to the Chamber. Unauthorized personnel please leave the floor. The house is under call. The house is under call. Senators, please report to the Chamber if you're not excused. Senator Schrock, would you check in, please? Senator Brown. Senator Bourne, for what purpose do you...?

SENATOR BOURNE: Could I have a roll call vote in regular order, please?

SENATOR CUDABACK: Senator...Senator Schrock. Senator Brown, would you check in, please? Thank you. Senator Schrock, the house is under call. We can't seem to locate Senator...I spoke too soon. We can see him. Sorry about that. All members are present or accounted for. There's been a request for a roll call vote on the question. Mr. Clerk, call the roll, please.

CLERK: (Roll call vote taken, Legislative Journal page 1182.) 15 ayes, 14 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The motion was not successful. The amendment has not been adopted. And I do raise the call. Mr. Clerk.

CLERK: I have nothing further pending to the committee amendments, Mr. President.

SENATOR CUDABACK: Back to discussion of the committee amendments themselves, offered by the Health and Human Services Committee to LB 480. Open for discussion. Seeing no lights on, Senator Jensen, I will recognize you to close on the committee amendments.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, the committee amendments do become the bill now, as

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

April 13, 2005 LB 480

amended. I would ask for its adoption.

SENATOR CUDABACK: You've heard the closing on the committee amendments. All in favor of adoption of the committee amendments to LB 480 vote aye; those opposed vote nay. Voting on adoption of the committee amendments to LB 480. Have you all voted who care to? Voting on adoption of the committee amendments, offered by the Health and Human Services Committee to LB 480. Senator Thompson, for what purpose do you rise?

SENATOR THOMPSON: (Microphone malfunction)...please.

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

CLERK: 33 ayes, 0 nays to place the house under call, Mr. President.

SENATOR CUDABACK: The house is under call. All members please check in that are not excused. The house is under call. Senator Langemeier, will you check in, please? Senator Byars, would you check in, please? Thank you. How did you wish to proceed, Senator?

SENATOR THOMPSON: Roll call.

SENATOR CUDABACK: You can either have a roll call or a call in. Senator Thompson. Senator Jensen, rather.

SENATOR THOMPSON: Roll call.

SENATOR JENSEN: Roll call vote in regular order, please.

SENATOR CUDABACK: Roll call vote has been requested in regular order. Mr. Clerk, call the roll, please, on the question before the body.

CLERK: (Roll call vote taken, Legislative Journal page 1183.)
23 ayes, 19 nays, Mr. President, on the amendment.

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

April 13, 2005 LB 480

SENATOR CUDABACK: It was not successful, LB...Senator Schimek, for what purpose did you rise?

SENATOR SCHIMEK: Mr. President, was that accurate on the board just now? I heard the Clerk say "Senator Combs, no," but it got recorded as a yes. Am I mistaken on that?

CLERK: Do you want me to respond?

SENATOR CUDABACK: Yes, respond please, Mr. Clerk.

CLERK: Senator, you're absolutely correct. I misrecorded Senator Combs' vote. I will repair it. So the vote will actually reflect 22 ayes and 20 nays. Thank you.

SENATOR CUDABACK: Vote was not successful. LB 480, the committee amendments are not adopted. I do raise the call. Mr. Clerk.

CLERK: Mr. President, Senator Thompson would move to amend the bill, FA151.

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

SENATOR THOMPSON: I'll withdraw that amendment.

SENATOR CUDABACK: The amendment is withdrawn.

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

SENATOR CUDABACK: Discussion of the bill itself? Open for discussion. Senator Thompson, there are no lights on. You're recognized to close on advancement of LB 480.

SENATOR THOMPSON: Thank you, Mr. President. Members of the body, this bill is about public health. It's about the importance of protecting the public from a very dangerous substance. It's about taking one of the last places that we have that are public places in the state, doing what other countries in other states have done, and protecting the health of our citizens. I'm just going to leave you with three

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

April 13, 2005 LB 480

pictures in your mind before you vote on this, because this bill is fine straight up without the committee amendments. It's fine to vote for this bill because this bill is...has been before this body several times. All these issues have been discussed. But when we are elected to the Legislature, we're elected to represent the people. I have heard from so many people about this bill so I'm just going to pick three of them. The first was a little boy and his mother called my office because he wanted to weigh in. He has asthma. He can't go out to a restaurant, go to a birthday party. Senator Synowiecki, he can't go to those parties that they have if they hold them in a bar that has smoke in it because he has a disease that 10 percent of Nebraska children have, and the number is growing. We have a huge problem with asthma in Nebraska. So he has to stay home, miss out on all those childhood things that are so important, to accommodate a minority of the smokers in the state who don't want to abstain from smoking while they're eating. The second picture I'd like to put in your mind is that of a restaurant worker. She's a young woman, been looking for a job for several weeks, got offered a job in a restaurant; said to me, gee, I really hope that bill passes. She's a young woman who has a small child, but she and her husband would like to have another child, and she's worried. She's worried about working in an atmosphere with smoke, but she needs a job and she depends on us. The third one is an e-mail that I got from a woman with a baby, and this gets to the issue that Senator Erdman said, well, what are people doing taking their children into a restaurant, making them sick from the secondhand smoke? Well, I have several e-mails from people, parents, who took small children to a restaurant to go out to dinner, just like all the rest of us like to do, but they weren't able.. they did not know until the attack was triggered by the secondhand smoke that there was a problem for their child. And I have several people who have written to me on this issue. So what do we do as public policy? Even the study that Senator Bourne referenced, the author of that study did not dispute the fact that secondhand smoke is dangerous, did not dispute that. That still is fact, according to that researcher. Just the numbers in the United States in some studies is what he did. We all know that it's not good to breathe other people's smoke. And remember, secondhand smoke is exhaled smoke, but it's also the

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

April 13, 2005 LB 480

smoke that comes off the end of the cigarette. It's a known carcinogen. It's known to have many properties that you can't get rid of just by dividing an area with a plant. It's like we've heard the old adage many times on this floor--it's like peeing in a swimming pool.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: You can't control where it goes. So those families with children in the state have no idea what's going to happen if they take their child out to eat and be like the rest of us. And if all of those of you are chatting now because you know that this bill is defeated, I hope that you will think about that young woman, that you'll think about that baby and that young couple, and you'll think about that young boy, and think about public health when you push your light red or green on this issue. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the closing on the advancement of LB 480. The question before the body is, shall L...Senator Thompson, for what...

SENATOR THOMPSON: I would like a call of the house, and actually I'd like a voice...a roll call vote in reverse order. Thank you.

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

CLERK: 38 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators please check in. All members are present or accounted for. There's been a request for a roll call vote in reverse order on the question. Mr. Clerk, please call the roll on the question.

CLERK: (Roll call vote taken, Legislative Journal pages 1183-1184.) 19 ayes, 26 nays, Mr. President.

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

April 13, 2005 LB 117, 480, 673, 709

SENATOR CUDABACK: The motion was not successful. LB 480 does not advance. And I do raise the call. (Visitors introduced.) Mr. Clerk, items for the record, please.

CLERK: Mr. President, thank you. Amendments to be printed: Senator Erdman to LB 480; Senator Beutler, LB 709; Senator Beutler to LB 117. (Legislative Journal pages 1184-1189.)

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

SENATOR CUDABACK: Heard the motion to recess till 1:30. All in favor of the motion say aye. Those opposed nay. We are recessed.

RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: (Recorder malfunction)...Legislative Chamber. Senators, the afternoon session is about to reconvene. Please record your presence. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Do you have any announcements or items?

CLERK: I have nothing at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. It is 1:30. As the agenda states, General File, 2005 senator priority bills. The Bourne division. Mr. Clerk, LB 673.

CLERK: LB 673, Mr. President, by Senator Loudon. (Read title.) The bill was discussed yesterday. At that time, the committee amendments as presented by the Agriculture Committee were

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

April 13, 2005 LB 673

offered. A series of amendments to the committee amendments were considered, some of which were adopted. I do have other amendments to the committee amendments, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Louden, could you give us a quick review on the contents of LB 673, please.

SENATOR LOUDEN: Certainly. And thank you, Mr. President and members of the body. LB 673 was a bill that I introduced to manage black-tailed prairie dogs in Nebraska. Two critical events led me to introduce this bill. It was the prolonged drought, and the absence of a colony management for several years. The management ended when the black-tailed prairie dog was placed on the candidate list for an endangered species. And finally, 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 of the counties in western Nebraska are probably going to have to consider changing the classifications of some of their rangelands, because of the devastation, and change it...instead of grazing land, it will have to be changed down to wasteland. It's a...LB 673 is a tool to manage a wildlife situation that is out of control. It is a management plan used when a species begins to encroach into areas where it is not wanted, or areas that can cause harm to the environment, such as watershed or forage-producing areas. This bill is written to address a problem of encroachment onto adjacent property. LB 673 has been amended and advanced by the Agriculture Committee. And this is what we're looking at now, is the agricultural amendment as it was amended in committee, which has changed the bill considerably. The intent is still there. But some of the wording has been taken out on how it would be implemented. And a county...as amended, the bill would allow counties to choose to adopt the Black-Tailed Prairie Dog Management Plan. A county may adopt the plan by resolution and then carry out a coordinated program for the management of black-tailed prairie dogs. And it is not mandatory that any county in Nebraska adopt the plan. If a county adopts the management plan, it will be

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

April 13, 2005 LB 673

eligible to apply to the Department of Agriculture for funds to assist with the cost of the management. LB 673 is not an extermination plan. It is designed to allow citizens that 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, and poison is regulated by Federal Insecticide, Fungicide, and Rodenticide Act. People who have worked with grasslands, agriculture, know that the ecosystem has to be kept in balance. And that is what I want to accomplish through LB 673. I've...amendments have been added to it. And I've worked with Senator Beutler on some of the amendments that he has planned, and we've agreed that we would do some cleanup language on the bill and work with it and advance it and put the amendments on it and fix it up on Select File.

SENATOR CUDABACK: Okay. Thank...

SENATOR LOUDEN: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Kremer, did you have anything to add about the committee amendments, that Senator Louden did not touch on?

SENATOR KREMER: Thank you, Mr. President. No, I don't think so. Just...and I think he covered these. The main things are that it's permissive, that Department of Agriculture is usually largely for advisory, and a few other minor changes. And it more narrowly brings down the objective for the purpose of the bill, is just to control the uncontrolled prairie dogs. If somebody wants them, that's fine. It's really management and control both together. Management is fine, and the preservation of them, but the control from expansion. So I think Senator Louden really did pretty much cover all those areas. So thank you.

SENATOR CUDABACK: Thank you, Senator Kremer. Mr. Clerk, next motion.

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

April 13, 2005 LB 673

CLERK: Mr. President, the first amendment this afternoon to the committee amendments I have is by Senator Chambers. FA159. (Legislative Journal page 1177.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA159 to the committee amendments.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, when I make a promise to this body, I carry it out, unless something happens of a compelling nature which makes it unnecessary. The promise that I made was that I was going to offer a motion, an amendment, to strike each individual section, to force a discussion--not of every section; I said, of every word in this bill. And that's what I'm commencing to do. There are three fates, f-a-t-e-s: Clotho, Lachesis, and Atropos. I've told you who they are. I'll tell you what they do, but I won't tell you what each one does except the last one. Senator Erdman, thanks to the fact that he brought some young people down, or invited some down here yesterday, heard me explain what these individuals do. One of them weaves or spins the thread of a person's life. The second determines how long that thread will be. And Atropos, the one with the scissors, determines when those scissors will snip that thread, after a determination has been made of how long it is to be. When you reach Atropos, there is no negotiation. No crying, sighing, pleading can make any difference. When the thread falls between the blades of the scissors, there is no way for that thread to leave that position, other than having been snipped in two. So Atropos is at work this afternoon on LB 673. And I have nothing but time, I have boundless energy, and, I think, an inexhaustible supply of stamina. And I'm going to have the opportunity to see whether that is really so, as I believe it to be, as I look at some of the atrocious bills that are on the agenda confronting us in the Combs division and the Bourne division. A standard was set somewhat by the way we dealt with the anti-smoking bill. That bill dealt with the health of our fellow citizens. And the lobbyists won on that one. The purveyors of tobacco, which kills over 400-and-something-thousand people a year, and alcohol, which is involved in I don't know how many driving accidents that kill I don't know how many people per year. But the purveyors of those substances prevailed on the Legislature

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

April 13, 2005 LB 673

to turn its back on the health concerns of the public at large. That is my assessment. Others may disagree. My conduct is based on my assessment, not anybody else's. Now, I don't know if Senator Louden has 33 votes to dump a state responsibility on individual landowners. But I said yesterday, if you do it, it's not going to be done easily. This first amendment, which would strike lines 3 and 4 from the bill, would result in this language being removed: "Sections 1 to 13 of this act shall be known and may be cited as the Black-Tailed Prairie Dog Management Act." That is bogus. I'd like to ask Senator Louden a question or two.

SENATOR CUDABACK: Senator Louden, would you respond?

SENATOR LOUDEN: Yes, of course.

SENATOR CHAMBERS: Senator Louden, you got a good little bit of exercise in sitting down and standing up yesterday afternoon, didn't you?

SENATOR LOUDEN: No, I didn't notice any more difference than having to milk a bunch of cows.

SENATOR CHAMBERS: Hey, very...then you're going to be with me throughout on this exercise, right?

SENATOR LOUDEN: Well, I hope so.

SENATOR CHAMBERS: Not hope so, you know so. If you can punch and milk cows for days on end, certainly you can stay here for an afternoon.

SENATOR LOUDEN: I'm sure I can, yes.

SENATOR CHAMBERS: Thank you. Now, Senator Louden, although we're dealing with the committee amendment, that will become the bill if the committee amendments are adopted. Would you agree?

SENATOR LOUDEN: Yes. AM0867, yes.

SENATOR CHAMBERS: Yes. And so you'll be aware of where I am,

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

April 13, 2005 LB 673

on the first page, lines 3 and 4 of AM0867, I want to strike that language I read. The word "Management" is used in the title of this act. What we're really talking about, ultimately, is killing whatever number of these animals need to be killed to keep them from going into somebody else's property and burrowing, tunneling, and doing whatever else they do while on that other person's property. Isn't that true?

SENATOR LOUDEN: No. It...this is a management act. We don't have any place in there where we talk about they have to be eradicated. Because South Dakota and some of the other states pass bills that eradicate them. There's other areas that rodents are eradicated. So this is a management act. However they want to keep them on their own property is up to them.

SENATOR CHAMBERS: Has there...?

SENATOR LOUDEN: There's various ways...

SENATOR CHAMBERS: Is there any program related to prairie dog management currently existing in the state of Nebraska?

SENATOR LOUDEN: No. There's nothing in the state of Nebraska. This is all new ideas and new ways to do it.

SENATOR CHAMBERS: The Department of Agriculture for the state has no program for prairie dog management. Is that true?

SENATOR LOUDEN: Okay, what they do, the...are you saying the Nebraska Department of Agriculture or the USDA?

SENATOR CHAMBERS: I'm taking it a step at a time. The Nebraska Department of Agriculture.

SENATOR LOUDEN: No, I don't...as far as I know, they don't have any plan. Because what plans are being utilized are through the...at the county level.

SENATOR CHAMBERS: And the U.S. Department of Agriculture is what I will ask you about next. Does that department have a prairie dog management program?

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

April 13, 2005 LB 673

SENATOR LOUDEN: I don't know if you'd call it a management program, but they are the ones that counties usually contract with if they have predator problems, and, some cases, prairie dog problems. They were the ones that were contacted. And that's, of course, a federal operation.

SENATOR CHAMBERS: But the U.S. Department of Agriculture has some kind of program or protocol for managing prairie dogs when they are contracted with by a county. Is that true, or is that false?

SENATOR LOUDEN: No, that's true. They have a system, whatever they set up. They can be contracted with private individuals, or they...I think First National Bank in Omaha has a contract with them to take care of European starlings. I think Game and Parks Commission has...is contracting with them to take care of their feral pigs. The counties...some of the western counties put a certain amount of money in and contract with them to have their services for...usually coyote control is the major, coyote and fox, and then at times rabid skunks.

SENATOR CHAMBERS: And they would be able to do something with a prairie dog problem. Isn't that true?

SENATOR LOUDEN: Yes. They...I mean, they are set up to do it. They're like anybody else, they're usually underfunded and undermanned. But they do have a man out in the western...well, they have several men scattered around the state that take care of various animal problems, be they prairie dog or rats or rabid bats or...

SENATOR CHAMBERS: Whatever.

SENATOR LOUDEN: Whatever wildlife, yeah.

SENATOR CHAMBERS: Okay. Now my next question. Counties, to your knowledge, have utilized the USDA's services, or have not, when it comes to prairie dogs?

SENATOR LOUDEN: On prairie dogs they haven't utilized them very

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

April 13, 2005 LB 673

much, because the persons involved is...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...there isn't enough people to go out and work with prairie dogs. Most of the prairie dog work in the last few years, and especially when it was under federal regulations and considered on the endangered species list, or a candidate for the endangered species list, they were federal people, so they weren't always allowed to work at that, as far as my understanding.

SENATOR CHAMBERS: Was there a time when some counties paid to have the prairie dog problem addressed?

SENATOR LOUDEN: Yes. I think...oh, let's see, probably back in, what, somewheres around '57 or '60, back in there sometime. It's been a long time ago. But they...at that time it was a federal program, and they were out...they'd literally eradicate them. I mean, this wasn't a management plan; this was a get rid of them plan, back then. And of course, that's been nearly 50 years ago.

SENATOR CHAMBERS: And they've come back, right?

SENATOR LOUDEN: Oh, yes.

SENATOR CHAMBERS: Okay. And I know our time is up. Thank you, Mr. President. Thank you, Senator Louden.

SENATOR CUDABACK: Thank you, Senator Chambers. You heard the opening on the amendment, FA159. (Visitors introduced.) Mr. Clerk, an announcement, please.

CLERK: Retirement Systems, Mr. President, will meet at 2:00 in Room 2022.

SENATOR CUDABACK: Thank you, Mr. Clerk. You've heard the opening on FA159. Open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature,

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

April 13, 2005 LB 673

I just wanted to indicate to you quickly that Senator Louden and myself have had a meeting on this, and we're going to try to reconcile several things in the bill, and come to some mutual agreement. And Senator Chambers and anybody who's interested in sitting in on meetings, please let us know, and we'll try to work things out as best we can before Select File. To the extent that the bill is reconcilable in terms of the various philosophies, we're going to make an effort to do that, and try to keep some of it off the floor, anyway. Thank you.

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

SENATOR CHAMBERS: Mr. President, friends all, Senator Beutler's last words struck a chord with me. He said, keep it off the floor if possible. He was referring to the negotiations, the complicated arguing, and so forth. But what I applied those words to was an expression I saw in a movie or a sitcom: blood on the floor. Figuratively speaking, there will be blood on the floor this afternoon. The question is whether it will be the blood of the prairie dogs or the blood of the two-footed predators who want to kill them. And before anybody applies it to an individual in here, scientists brand human beings the most deadly, indiscriminate predators on the face of the earth. When the ecosystem falls out of balance, as is happening in Nebraska--and the problem of prairie dogs will establish it--it's because human beings have intervened and thrown nature's balance out of whack. They're the ones who are religious. They believe God had some kind of plan. But they don't respect God enough to let God's plan stay in effect. They know better. No, they don't know better. They want money. I'd like to ask Senator Louden a question before I proceed, because he has more knowledge on these things than I do. Senator Louden, would you answer a question or two, please?

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

SENATOR LOUDEN: Yes, of course.

SENATOR CHAMBERS: Senator Louden, are cattle indigenous to

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

April 13, 2005 LB 673

Nebraska? Or were they brought here, bred here, and introduced to Nebraska and this region of the country?

SENATOR LOUDEN: No, they were brought here from various areas. Yeah.

SENATOR CHAMBERS: And when you introduce a new species, especially one that consumes a lot of the native vegetation, that can throw the ecosystem out of balance. Is that true or false?

SENATOR LOUDEN: Now, it depends on what you're talking about. If you're talking about the Nebraska Sandhills, that I'm familiar with and where I live, there's more grass in the Nebraska Sandhills now, after it was "populized" by homesteaders came in, than there was at the time when the homesteaders first came. And I can verify that, because my parents were both homesteaders, came in there in the early days, and told how much there was nothing but strictly sand.

SENATOR CHAMBERS: Were you born when your parents first became homesteaders? In other words, did they bring you here? Or you were born later?

SENATOR LOUDEN: I was born later. I'm the youngest of the family.

SENATOR CHAMBERS: So you don't know what was going on before you were born, do you?

SENATOR LOUDEN: Other than I'd certainly take the word of my mother. (Laughter)

SENATOR CHAMBERS: I'm not going into that. Good Lord. That's very dangerous territory, on which even I don't tread, and I'm not afraid of anything ordinarily. Senator, that's all I will ask you. Thank you. Because you answered the question that I needed. Cattle come here because they were brought. And some of the dispute over prairie dogs is that they eat grass. They were eating grass before cattle came here. If the cattle were not here, and if there was not such a poor job of husbanding the

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

April 13, 2005 LB 673

environment by these people who raise cattle, who put in confinement feeding for hogs...and by the way, one of those shaky operations was just hit by the Nebraska Supreme Court because some wrongdoing county board members, some mountebanks running that huge pig feeding operation, tried to circumvent the law, but they were stopped dead in their tracks. So not only do they not care about the natural flora and fauna, they don't care about human beings. The people whose life was ruined...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...by these huge pig operations were not given consideration. So the court stopped in and said, you will come to this line and you will come no further. And that's what I'm going to say on the prairie dogs, unless you all can find a way to trample me into the ground. You raise cattle. Practice what the cattle showed you. But remember, prairie dogs are a lot smaller. And from what I've been told, they can dig in such a way that a cow might sink into the ground up to his or her chest. The reason I say "his or her," because some people use the word "cow" to designate male and female bovines. So they're worried about the grass that the prairie dogs eat. If the cattle were not here, we wouldn't have this problem. So they've created the problem, they threw things out of whack, and they're not going to solve it by exterminating the animals that were here first, the animals, for Senator Louden's information, that the Creator in whom he says he believes put here, and they were here before Senator Louden came.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: The first shall be last, Senator Louden. Thank you, Mr. President.

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

SENATOR LOUDEN: Yeah. Thank you, Mr. President. And Senator Chambers was questioning me about the amount of grass in the prairie system, the ecosystem, and what the homesteaders accomplished by moving into the Sandhills. I really think it needs to be more explanation, because this is an area that I've

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

April 13, 2005 LB 673

lived in all my life, and I'm quite familiar with it, and I hold that area quite dearly to me. It's a special breed of people, and it's a special area. It's a...around 20,000 square miles of the biggest sand dune area in the western hemisphere. It covers...it's mostly...the only sand dune area that's entirely grassed over. Now to get back to what it was like when the homesteaders came. I grew up around homesteaders all the time--my grandparents, my neighbors, all of them. So I know what they tell you and what they see. And word of mouth and firsthand observation is probably...can't be beat, as far as these people were concerned. But when they came to the country, my...as I said, what my mother told me is, where they homesteaded, the only green grass there was on the whole section of land that they homesteaded was a little strip around the lake. There was nothing but sand. Now, the reason for that was between the prairie dogs, the prairie fires. The buffalo had been off of there for about 25 years. These were all something that, in the grasslands of Nebraska, on that part of the area, had ruined the ecosystem. Prairie dogs...and like I tell people that want prairie dogs, I wish you would have them, but remember, rattlesnakes go with them. And my dad always told about that when they had the prairie dogs around there, why, they had rattlesnakes all the time. And this is how the kids, when they walked back from school, usually amused themselves, was throwing cow chips at prairie dogs so that they'd get to striking themselves and that sort of thing. So this is how it was done back in the early days. I think this is something that we have to remember that, sure, these are rodents. And that's the reason I'm not mentioning an eradication program. They need to be managed. They're no doubt part of the ecosystem. But you have to remember that when they become overpopulated, it's like any other animal on the face of the earth. They become overpopulated, and Mother Nature will find a way to eradicate them completely. Now, the problem usually is, is bubonic plague. If they get overpopulated, usually that's what goes into them is something like that. And when that happens, then it wipes out the entire colony, not only to say that it is a detriment and a danger to the...to people that are near those areas, because bubonic plague can be contracted. We know there is that in the area in southwestern...or, southeastern Wyoming. Last summer, there was a person who contracted bubonic plague

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

April 13, 2005 LB 673

and was treated in Denver. And the thinking was, or the investigation was that he picked it up in southeastern Wyoming there. And they have, of course, a lot of prairie dog colonies in that area. So this is something that...it isn't just worrying about these cute little creatures. This is something that has to be managed. You can't let them overhaul the entire continent, and they will, because the predators aren't that thick. They never were. The things are made sort of like lemmings, that take off and run to the ocean and drown themselves when they get to be too many. Prairie dogs don't do it. They just keep expanding and expanding, until they get a disease in them, and then they're over and done with. This isn't anything uncommon. At the present time, the coyotes out in the area have a mange that makes them...the value of the pelts aren't probably of any value, if there is a value to pelts. But this is something that kills the animals if they're not...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...controlled or managed. This is what the Game and Parks tries to do with the deer population. They try to manage them through their hunting. Otherwise, there would be an overflow of deer and they would be downtown here eating your flowers in your yard. Many of the towns around, when you drive through them at night, have deer right in town. And of course, anybody that's ever hit one with a car knows what the expense is. So this is a management plan. And there's no way of calling it anything else. It isn't eradication. It's a way to manage them. And it's probably one of the forefront ideas that's come about. I know that there are other states that are interested in how we are doing this. Because we had a lot of contact with South Dakota while we were working on this. The problem South Dakota had was, their Legislature was ahead of ours, so they had to go ahead and introduce separate legislation, which is an eradication program, and which has caused them to be in court. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. On with discussion. Senator Chambers.

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Louden and I discussed this idea that I have. If you all will make the counties responsible, and you will take the money out of the Rural Development Cash Fund, you're through with me on this bill. If the county does it, the county will contract with somebody, maybe the USDA, or some expert who will know how to get rid of these animals without harming the rest of the environment, not using poisons that may seep into the ground water, not poisons that may affect other animals. But look what you all are doing with the bill as it's written. I started talking about it yesterday, and I'll talk about it more as the afternoon wears on. The county has the responsibility, not the state, because wild animals belong to the state. The state can make the county responsible for this. The state can delegate duties and requirements to the counties, and let them be the ones to do this managing, as it's called euphemistically. If you are barely scratching out a living on your farm, and you have debts already, and you get a notice from the county that if you don't get this program underway and get rid of these groundhogs...these prairie dogs, the county is going to do it and we're going to assess your property. And somebody may not know how to do this, and they will either not respond at all, or tell the county they will have to do it, because I, the individual landowner, have no idea how to go about this. So the assessment is made. The prairie dogs stay. And another assessment is made. And pretty soon, this person has additional debt on the farm. You all talk about being against raising the property tax, when it is not going to be as hard a hit as what this program will be on the individual landowner. But you don't care. I do. Now, there's one landowner that I'm not worried about, because I think that one can take care of itself. I'd like to ask Senator Louden a question.

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

SENATOR LOUDEN: Yes, of course.

SENATOR CHAMBERS: Senator Louden, this bill includes the federal government as a landowner, doesn't it?

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

April 13, 2005 LB 673

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: So if the federal...

SENATOR LOUDEN: I think it says something about state and federal lands in it, doesn't it?

SENATOR CHAMBERS: Now, if the federal government is included in the definition of "person," and every person can be brought under this bill, if the federal government has land and there are prairie dogs that are encroaching from its land onto some county land, how are you going to make the federal government do this? And how are you going to assess something on the federal government and make them pay? How are you going to do it? The South tried it. You going to take your little county and secede from the United States, or from Nebraska? How you going to do it? That's what I want to know.

SENATOR LOUDEN: Well, I'll tell you how we did it. I went over to the director over at Fort Collins, and in Denver there was a head honcho for the Rocky Mountain National Forest Service, and told him what the problem was. And he has his people in the Ogallala grasslands area as we speak, I presume, because I got a letter a while back that they were proceeding to fence in their areas around there to hold the prairie dogs into the Ogallala National Grasslands.

SENATOR CHAMBERS: And how do you know they're staying there, since you told me they set the fence on top of the ground; they don't sink it into the ground?

SENATOR LOUDEN: I suppose they have people in there that are supposed to be educated in this matter, and they figure they can get it done.

SENATOR CHAMBERS: They're like border patrol...

SENATOR LOUDEN: If you want to be silly about it, I'll tell you what they did a few years back. They run around and built little electric fences about three inches off the ground all around that. So there's various ways.

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

April 13, 2005 LB 673

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: But...

SENATOR CHAMBERS: And they can't jump over a three-inch fence?

SENATOR LOUDEN: I...okay, I'm just telling you what the federal government and what some of their guidelines and what some of the people that run the National Forest Service come up with for solutions and ideas.

SENATOR CHAMBERS: But you can't make the federal government do anything it doesn't want to do, can you?

SENATOR LOUDEN: Probably not. We'll wait and see now. South Dakota has a lawsuit they're filing against the federal government, to see if they will eradicate the grasslands on...I think it's on that...oh, the one by Buffalo Gap National Grasslands, I think, where that 29,000 acres of prairie dogs are.

SENATOR CHAMBERS: Was that my third time, Mr. President, this time?

SENATOR CUDABACK: It is, Senator.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: Senator Louden, you're recognized.

SENATOR LOUDEN: Thank you. Since Senator Chambers has had his third time, I wouldn't want to, you know, set it up so he didn't get a chance to speak. So I'm wondering if he would answer some questions, please.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Yes, I will.

SENATOR LOUDEN: Senator Chambers, you were talking about, you

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

April 13, 2005 LB 673

know, people having to eke out a living, they couldn't afford it, and that the counties would get them to make them pay to have these prairie dogs. How do you handle, I suppose, what do you call them, Norwegian rats in Omaha or Douglas County? How do you handle that situation in there? A prairie dog and rats are comparable size. What's the process that Omaha uses?

SENATOR CHAMBERS: It depends on where they are. If they're on property such as that Gene Leahy Mall, which is a city park, the city brings in, and maybe in conjunction with the county, somebody to get rid of them, however they go about doing that.

SENATOR LOUDEN: And who pays for that?

SENATOR CHAMBERS: It would be out of the public funds. Tax money.

SENATOR LOUDEN: Okay. Now supposing they find them on landowner property. Who pays for that?

SENATOR CHAMBERS: Live and let live.

SENATOR LOUDEN: My understanding is that the landowner is responsible for that, and that the city charges them to get rid of them if they don't do it. Or, I mean, if the city has to come on there and do it, then they get rid of them. I think...

SENATOR CHAMBERS: Well, maybe...

SENATOR LOUDEN: ...it comes through the...what, the county health department or something.

SENATOR CHAMBERS: I have not seen that happen. So maybe it's a program they say exists, but I'm not aware of its being operational. And to be completely frank with you, I have seen areas in the city of Omaha where there are rats, vacant lots. Although there are owners, there is no structure there. Lots where there are condemned houses, and rats are there. But the city is not out there doing anything about the structure or the rats or other creatures that come there.

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

April 13, 2005 LB 673

SENATOR LOUDEN: Then perhaps you would like to have some type of a Norwegian rat management plan for the city of Omaha, then, to do something like that. Would that be correct?

SENATOR CHAMBERS: Well, I don't think so. Because practically anything from Europe raises the culture level in the state of Nebraska.

SENATOR LOUDEN: Well, from what other name...do you know what the species of rat is called that you have in Omaha?

SENATOR CHAMBERS: They say they're the Norwegian rats. And Norway is one of those highly advanced European countries. So I think even the rats, in eating the...whatever they eat in Norway, would pick up something that would enhance their intellectual capabilities, which in turn could benefit Nebraskans.

SENATOR LOUDEN: (Laugh) Okay. Thank you, Senator Chambers. But as we looked up the Omaha Municipal Code...and it...they call them "nuisance," I think, like that. And of course, that comes under the county health director. And they're charged with taking measures to get rid of these nuisance on public and private property. And my understanding is that the county health department has the right to enter premises to administer and enforce the Municipal Code. So when we talk about what you're trying to do for western Nebraska with our management of our prairie dogs out there, you're talking about something that is altogether different than what Omaha does. And I think that probably, as we go from the prairie dogs and go to our Norwegian rats in Omaha, I think...you know, what would you...cliche be, whatever is sauce for the goose is sauce for the old gander. And I think this is something that, as we look through the statutes for Omaha, that any unpaid costs may be placed as a lien on property. So this isn't anything new about having landowners responsible for animals on their property. Now, the difference is, with the bill that I have in place, we don't say you have to kill them or eradicate them or anything. You have to control them, keep them on your property, do whatever you wish to do with them. So, thank you, Mr. President.

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

April 13, 2005 LB 673

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

SENATOR HOWARD: Thank you, Mr. President and members of the house. After our interesting discussion yesterday, I became even more curious about the prairie dog, and went to the National Geographic web site. It was very interesting. And I just wanted to share this with you. In 1900, an estimated 5 billion prairie dogs lived in North America. Unfairly, and this is according to the National Geographic, ranchers have viewed prairie dogs as pests that compete with their livestock for food. The prairie dog population has plunged by 98 percent. The Mexican prairie dog is endangered, and the Utah prairie dog is threatened. Without a doubt, humankind is the prairie dog's worst enemy. Having said that, I would like to give the remainder of my time to Senator Chambers. Thank you.

SENATOR CUDABACK: Senator Chambers, about four minutes.

SENATOR CHAMBERS: Thank you, Senator Howard. Thank you, Mr. President. Ted Turner is buying up land in certain parts of Nebraska. And I've, through the newspaper, kept a general idea of what he is doing. I'm not aware of him having talked about getting rid of prairie dogs. Maybe he has had somebody come in and scope the land, and buys only that which has no prairie dogs. But I know he's reintroducing one type of animal, called the buffalo, which the Nebraskans had just about eradicated. So it takes somebody from outside to introduce those animals which are native to this part of the country. Prairie dogs have been here, and they're going to continue to be here. Senator Louden pointed out how five decades ago, there was an eradication program which was deemed to be successful, but obviously it wasn't, because the prairie dogs are here again. If Nebraskans stopped growing cattle, they wouldn't care how many prairie dogs were here. There are only certain parts of the state where they are deemed to be a problem. The animals belong to the state, and the state, through this legislation, is not going to shift the cost to the individual landowner. I'd like to ask Senator Louden a question.

SENATOR CUDABACK: Senator Louden, would you yield?

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Because I'm not sure if Senator Schrock is here. Senator Louden, if the landowner is required to manage these prairie dogs because we pass a law saying that, we could pass a law saying that the landowner owns any wildlife on his or her property. We can do that, can't we?

SENATOR LOUDEN: Well, I think...what is it, when a Legislature is in session...well, I won't finish it. But yeah, I think you can do anything when the Legislature is in session.

SENATOR CHAMBERS: So we could give ownership to any deer or other creature on any landowner's property. We can do that, can't we?

SENATOR LOUDEN: I suppose you could.

SENATOR CHAMBERS: Haven't you told us, in the process of the discussion, that sometimes the deer population needs to be managed?

SENATOR LOUDEN: True.

SENATOR CHAMBERS: Well, why not let the landowner be responsible for that and decide how he or she will manage the deer population on his or her property? You said, what's sauce for the goose is sauce for the gander. What's sauce for the prairie dog is sauce for the deer. Isn't that right?

SENATOR LOUDEN: Okay. You want me to answer that?

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: Okay. I would probably vote for something like that. I'll tell you why. We're starting fee hunting and that sort of thing. It's getting to be a big business out there in the Pine Ridge area in western Nebraska. And yes, that's beginning to be a problem, because a lot of the people out there are managing those deer so that they are on their lands in that area, by feeding and having habitat for them. And the Game and Parks is beginning to have a problem, my understanding,...

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

April 13, 2005 LB 673

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...and I won't quote anybody from the Game and Parks, but they can't always manage these deer, because they've changed the way the habitat and the way the deer migrate around the part of the countryside. So yeah, if you wanted to give all the deer to some of those landowners, I'm sure you could get plenty of support for it.

SENATOR CHAMBERS: Would you be willing to strike everything from this bill and convert it to that? And then it might be easier to get something done on prairie dogs.

SENATOR LOUDEN: Well, no. I think while we're on prairie dogs, I would like to stay on the same subject.

SENATOR CHAMBERS: Oh, that's the kind of guy you are? (Laugh) Okay. Thank you, Senator Louden.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Howard. Senator Louden. And this will be your third time, Senator.

SENATOR LOUDEN: Okay. Thank you, Mr. President. And I wanted to...oh, perhaps I'd like to ask Senator Howard a question, since she's brought the subject up.

SENATOR CUDABACK: Senator Howard, would you respond?

SENATOR HOWARD: Yes, I would.

SENATOR LOUDEN: Senator Howard, am I correct, you work in social work and that sort of thing, in Omaha?

SENATOR HOWARD: No, I don't.

SENATOR LOUDEN: Do you have contact with people in these areas that would be in housing or in problem areas? I guess my question is, do you know anybody in your line of work that observes what they do with the rats in Omaha, and where...you know, do you have to inspect houses or anything for that?

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

April 13, 2005 LB 673

SENATOR HOWARD: I don't. That's not my division. Or, that wasn't the field I came from.

SENATOR LOUDEN: Okay. Then you're just mostly in child welfare?

SENATOR HOWARD: That's correct.

SENATOR LOUDEN: Okay. I was under the impression that when social workers were in there, they usually worked in various areas. I'm not familiar with social work. And so I thank you for your answers. But to get back to what we do with them in Omaha, and how many there were, sure, there was a lot of them. The rats, I suppose, increase. If you don't control them, you'll have more rats than you know what to do with. It isn't any different with rats or prairie dogs. They need a management system. And this is what my bill is all about, is managing the prairie dogs. Senator Chambers' amendment is something that I can't support. So I would want to tell him right now that I'll probably vote no on his amendment. Thank you, Mr. President.

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

SENATOR HOWARD: Thank you, Mr. President and members of the house. In my research on prairie dogs, I learned they have their own web site. And I was very surprised to find this. But there is a quote in here: If the prairie dog goes, so goes an entire ecosystem. Prairie dogs create diversity. Destroy them, and you destroy a varied world. Having said that, I would like to grant the remainder of my time to Senator Chambers. Thank you.

SENATOR CUDABACK: Senator Chambers, about four and a half minutes.

SENATOR CHAMBERS: Thank you, Senator Howard. Thank you, Mr. President. And you can see that we're going to be on this bill for a long time. Well I'll be. I just got word. Late-breaking news. Ted Turner is introducing prairie dogs on his land. He's smarter than the Nebraskans. You know why I say

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

April 13, 2005 LB 673

he's smarter? Have you got as much money as Ted Turner? Can you go out and buy land out from Ted Turner? He can buy your whole state. He's smarter than you are. And he knows what it takes to restore a balance to nature, which Nebraskans have destroyed. And you will get a chance to destroy it, three years and a few months hence, because I won't be here. And there are a lot of other things you'll damage and ruin as a result of my not being here. But while I'm here, you're going to have a very difficult time doing it. There was a cartoon...well, it was an advertisement, but it was like a cartoon. It's not nice to fool Mother Nature. Well, what it said really was, it's not nice to fool with Mother Nature. If there is a Mother Nature, I am one of Mother Nature's children, and I want to make Mama proud of me. So I'm going to make it as difficult as possible for those who want to damage what Mama has brought into being. Put your little smudgy hands on the best table linen. Think that a delicate cup is not to hold tea, but to throw at somebody or something. You don't know what the purpose of things are, so you misuse them. You use them contrary to their purpose. And with all this praying every morning, I'm surprised you don't do a little studying to see what your responsibilities are as the stewards of your Creator's creation. You destroy everything you put your hands to. You create a problem. Then, when it bounces back and you suffer the consequences, you want to destroy some other living thing, because you feel that will take care of your problem. And you destroy that living thing, and you create another problem. There's an interconnectedness with nature and throughout nature. And the only time you care is some...is when some bungling that you did produces consequences that you must bear. And what is always your proposed solution? Kill something. Destroy something. But never modify your conduct. Why are there rats? Because human beings live in a way that produces an environment that is rat-friendly. Rats are what they are because human beings are what they are. Roaches are what they are because human beings are what they are. But rather than modify your conduct, you think you can eradicate everything that you don't like. That's what got you in trouble in Iraq. You can run over there with a few men. These chubby-cheeked white guys told Bush, they're cowards and they'll run. Well, after all these months, going into years, thousands...

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

April 13, 2005 LB 673

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...who have died for nothing, because you couldn't eradicate those little handkerchief-head-wearing people, as you might consider them. You underestimate everybody in your arrogance and your belief that violence or the threat of violence can carry the day for you all the time. Well, make a threat against me. I'm not going to run. I'm not a prairie dog. I'm the defender of the prairie dog. I'm the defender of the underdog. And the prairie dog, literally, is the underdog, living under the ground. And I'm going to do all I can to make it possible for them to live. And if they're not going to live, the state and the county are going to pay to have it done, not the individual landowner. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Chambers, there are no further lights on. You're recognized to close on FA159.

SENATOR CHAMBERS: Thank you, Mr. President. Am I naive enough to think that my colleagues will eradicate these two lines that my amendment seeks to eradicate in the way that you want to eradicate these little animals who are considered offensive and pestiferous because of what you are and what you do? No, I don't expect you to do that. But I'm not deterred. There are a lot of lines in this bill, and I have a lot of opportunities to offer amendments. And that's what I intend to do. You're going to see that when you are dealing with somebody who is your even change, who can stand up to you, who is not going to run from you, who is not going to be threatened or intimidated, you're going to find out what it means to be in a struggle. Here we just struggle with words and ideas. If you don't want to struggle with me, analogize it to a boxing ring, don't jump in the ring with me and then say, Ernie, you're being unfair, because I won't just stand there and let you punch me all upside the head, because you're not a good fighter and you think that I am. And you say that I'm taking unfair advantage. I didn't tell you to get in the ring. You jumped in the ring and slapped me. When you bring these bad bills, you know how I'm going to react. And you're not wrong, because I certainly intend to do

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

April 13, 2005 LB 673

that. I'd like to ask Senator Louden a question about something that I had mentioned he and I had discussed earlier.

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

SENATOR LOUDEN: Certainly.

SENATOR CHAMBERS: Senator Louden, would you support an amendment to take the money to pay for a prairie dog management program from the Rural Development Cash Fund? Would you support an amendment to do that?

SENATOR LOUDEN: Well, I haven't looked at...I suppose it would be all right. I don't know if there's any money in that cash fund. If there isn't any money in there, it isn't any different than what we have a wildlife management cash fund now in Department of Agriculture that doesn't have any money in it.

SENATOR CHAMBERS: Then why don't you work to get some money, instead of trying to dump it onto the individual landowner? It's easier to attack the individual landowner, isn't it?

SENATOR LOUDEN: No, there's a...in this bill, there's an A bill and that sort of thing. We are trying to work to get some money to put into that fund to help out landowners and counties. The counties right now are the ones that are footing the bill for any predator control. And at the present time, they don't have the money to take care of the prairie dogs. The state don't have the money to take care of the prairie dogs. But there's still a problem, so someone has to take care of it. And there's a lot of landowners that are willing to do that, and are doing it, you know, at the present time. The problem is, you don't have a management plan, so that everybody is working in the same direction.

SENATOR CHAMBERS: Well, Senator Louden, we don't have to do that with a state law. The counties can do this, can't they? If they have landowners who want to do this, can't the counties just gather them all together and put a plan together, (inaudible)?

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

April 13, 2005 LB 673

SENATOR LOUDEN: If everybody agrees to it, they probably can, by resolution. Some of the counties are trying that. But it's been questionable whether...if someone doesn't want to do that, whether or not they have to.

SENATOR CHAMBERS: Right. And you want to make that landowner who doesn't want to participate be forced to participate. And if the landowner still refuses, the county will do it and assess the cost to the property of the landowner. Right?

SENATOR LOUDEN: That's pretty much correct. Right.

SENATOR CHAMBERS: And you think that is just?

SENATOR LOUDEN: Well, it happens with everything else we do, whether we're talking about weeds or whether we're talking about nuisance rats in Omaha, or whether we're talking about...

SENATOR CHAMBERS: But I'll ask the question that I was seeking an answer. You consider that to be just, correct?

SENATOR LOUDEN: Yeah, I would consider it to be just.

SENATOR CHAMBERS: You consider it to be just just, or just "injust"...unjust?

SENATOR LOUDEN: Okay. I would...I don't have any problem with doing it that way. If we're going to have a county and governmental agencies, I would like to see it done on a local level, which is the county level. They're the ones that usually are...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...closer to the problem, so they're more familiar with it.

SENATOR CHAMBERS: If you, Senator Louden--because this bill isn't going anywhere today--if you want to talk to those who are supporting this bill with you, and they're willing to make the

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

April 13, 2005 LB 673

county responsible for the cost of this, they can put together any plan they want to that the county will pay for, and I will support it and help you push it through.

SENATOR LOUDEN: Now, one question. Who's going to pay for it? Are...

SENATOR CHAMBERS: The county.

SENATOR LOUDEN: Where's the county going to get the money?

SENATOR CHAMBERS: Where do they get any money that they have?

SENATOR LOUDEN: Well, they are...most of them are up near their levy at the present time. So I know if we do that...

SENATOR CHAMBERS: Well, say (inaudible)...

SENATOR LOUDEN: ...it...by doing that, Senator Chambers, it would actually kill the measure, because there isn't that much money out there to do that.

SENATOR CHAMBERS: So if the county doesn't have money, you think the individual landowner will?

SENATOR LOUDEN: Like I said earlier on, this is more labor-intensive than it is money-costing.

SENATOR CHAMBERS: If you don't know how to eradicate these animals, you'll just be out there digging holes and spreading poison. And that's acceptable to you?

SENATOR LOUDEN: No, not necessarily doing that. There's other ways to doing it. There's gassing and various ways. Most generally,...

SENATOR CUDABACK: Time, Senator.

SENATOR LOUDEN: ...when they do this, they...

SENATOR CUDABACK: You've heard the closing on FA159 to the

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

April 13, 2005 LB 673

committee amendments, AM0867. Senator Chambers, what purpose?

SENATOR CHAMBERS: I would ask for a call of the house.

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

CLERK: 15 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. Members, please check in. The house is under call. Senators Jensen, Cunningham, Pahls. Senators Don Pederson, Hudkins, Stuhr. Senators Schrock, Kruse, Baker. Senators Synowiecki, Erdman, and Thompson. Senator Don Pederson, Senator Hudkins, Senator Jensen, Senator Synowiecki. Thank you. Senator Erdman. Thank you. Sorry, I didn't see you. Senator Hudkins. Senator Chambers, Senator Chambers' office...I'm sorry. I spoke too soon. All members are present or accounted for. Senator Chambers, how did you wish to proceed?

SENATOR CHAMBERS: I'll take a roll call vote.

SENATOR CUDABACK: A roll call vote has been requested on the question, FA159. Mr. Clerk, call the roll, please.

CLERK: (Roll call vote taken, Legislative Journal page 1190.)
2 ayes, 11 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The motion was not agreed to. FA159 does not pass. I do raise the call. Mr. Clerk, next motion, if you have time.

CLERK: Mr. President, the next amendment I have to the committee amendment, Senator Chambers, FA160. (Legislative Journal page 1177.)

SENATOR CUDABACK: Senator Chambers, to open on FA160 to the

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

April 13, 2005 LB 673

committee amendments to LB 673.

SENATOR CHAMBERS: Mr. President and members of the Legislature, before you laugh at this amendment, if you look at it, give me an opportunity to explain why I'm offering it. This portion of the bill is talking about a person who has received notice and has not acted in a way that is deemed appropriate. This is what the language would say, beginning in line 19 on page 6: "you may, upon conviction, be subject to a fine of \$100.00 per day for each day of noncompliance beginning on"...whatever that day would be..."up to a maximum of fifteen days of noncompliance," then, in parentheses, "(maximum \$1,500)." I would strike "\$1,500" and insert "\$15,000." That can be done. Obviously, this is not a formula which is presented by the words, which will tell you the maximum amount that can be charged. It's saying that the maximum may be \$1,500. Why put \$1,500 if the maximum is the number of days times \$100? You know that 100 times 15 is 1,500. So by virtue of putting \$1,500 in parentheses after the word "maximum," it means it can be more than \$1,500 if we choose to make it that. And we can do so. And that's what I'm doing. I'm taking this as seriously as Senator Louden, as the others who may have signed on to this bill. If one of these scofflaws is not going to do what he or she has been directed to do by the legally constituted authority of the county, make him or her pay. I'd like to ask Senator Louden a question.

SENATOR CUDABACK: Senator Louden, would you respond?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, where did you come up with the \$100 per day fine?

SENATOR LOUDEN: Well, I don't know whether we plagiarized that out of something else. It could be in a weed deal. The idea was not to make this...you're not going to break somebody because they...that's got land in the county, that's probably trying to do something about it, that more or less needs just a little bit of nudging. So most of your laws like this have a maximum fine. I don't know what some of your class...different

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

April 13, 2005 LB 673

classes of misdemeanors and that stuff usually have a certain fine up to a maximum amount.

SENATOR CHAMBERS: Would you be willing to accept \$15,000 as the maximum that somebody must pay who has been out of compliance for 15 days, knowing that they're supposed to comply?

SENATOR LOUDEN: Well, I would...when you got on to that, I mean, you could put the maximum on there. But I would like to see some other kind of a...I guess with a minimum, or something like that. I don't know as we really need something like that, because this is part of the law that we really don't hope we have to use.

SENATOR CHAMBERS: Then are you willing to strike all of this language that talks about any kind of a fine? First of all, Senator Louden, if a person does not implement a program, the county is empowered, after giving notice pursuant to Senator Beutler's amendment yesterday, to go on the land and implement a management program. Isn't that true?

SENATOR LOUDEN: If the county has passed by resolution to opt in to the Black-Tailed Management...Black-Tailed Prairie Dog Management Plan, yes.

SENATOR CHAMBERS: And if the person does not pay, or is unable to pay, the cost of that management plan, whatever it is, will be an assessment against that person's property. Isn't that true?

SENATOR LOUDEN: Yeah. Same as what we read for the rats in Omaha. It's assessed against the property the same way.

SENATOR CHAMBERS: Is there anything in that ordinance you read and that you're placing reliance on from Omaha that says \$100 per day fine for every day you're out of compliance, up to however many days? Is that in there, too?

SENATOR LOUDEN: I'll have to look at that. I've just got a bullet sheet on it here. But yeah, we can look up the ordinance to see what it has. I...

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

April 13, 2005 LB 673

SENATOR CHAMBERS: So let me ask you, other than the ordinance, wouldn't this be a double whammy on the property owner? If the county is going to go on the land, they can destroy growing crops, and then assess the cost of this management plan to the landowner. Isn't it a double whammy if you add on top of that a fine of \$100 per day for 15 days?

SENATOR LOUDEN: Okay,...

SENATOR CHAMBERS: Isn't that excessive?

SENATOR LOUDEN: Well, first of all, this would probably be someone that refuses to do anything about it. So I suppose they're going to have to have some kind of an incentive, and that would be one incentive. If there are people that are unable to do that themselves, then the county will go ahead and do it and send you the bill. That's what happens with our weed control now. We don't have machinery to take care of weeds. We usually have the weed district come down and spray our weeds, and they send us the bill. Simple as that. It isn't anything that's out of the ordinary.

SENATOR CHAMBERS: How many people do you know who would have the understanding of how to construct a prairie dog management program?

SENATOR LOUDEN: I guess I don't know what you're getting at.

SENATOR CHAMBERS: Do you know people who would know how to put together a prairie dog management program, private landowners? Do you know landowners who would know how to do that?

SENATOR LOUDEN: Well, yes.

SENATOR CHAMBERS: (Inaudible)

SENATOR LOUDEN: There are people lived out there with prairie dogs all the time. I mean, they're way more knowledgeable about prairie dogs than I ever hope to be.

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Well, that doesn't...that's not saying much. Because if you don't know anything, it doesn't take much to know more than that. What I'm getting at is what's required under this bill. You have people out there who know how to restrict prairie dogs to a certain piece of ground? That's what you're telling me?

SENATOR LOUDEN: Yeah, there's people out there know how to...

SENATOR CHAMBERS: How do they do it?

SENATOR LOUDEN: ...how the management. I...whatever way they want to. Now, if their land is good enough that it can be tilled, you can plow furrows, or plow a tilled area around a pasture or something like that. Prairie dogs usually don't go into a tilled area, and that's one of the management plans they have in areas where the soil is heavy enough to be farmed, is they just farm the soil, plow them up, and the prairie dogs either plowed under, or wherever they go. I don't know if they move under, or whatever they do. But I know you usually...in the land that's been tilled, they don't have that much of a problem with prairie dogs.

SENATOR CHAMBERS: Well, if they live next door--under this bill, now, I'm talking about--if they live next door to property which cannot be tilled, then they would leave the tilled area and go next door, wouldn't they?

SENATOR LOUDEN: Probably would.

SENATOR CHAMBERS: Then the one who's doing the tilling has to put together a program to bring them back home, right?

SENATOR LOUDEN: I don't know if he'd have to put the program, but I'm sure he'd have to have some kind of understanding with his neighbor. If he's chasing all the prairie dogs onto him, I'm sure they'd be a problem there.

SENATOR CHAMBERS: Okay. Now, let's say that the prairie dogs were run onto the neighbor's property and the neighbor doesn't want it. How is the county going to make the person who has

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

April 13, 2005 LB 673

tilled the land and run the prairie dogs onto somebody else's land going to go on that other person's land to start a management plan? How is that going to happen?

SENATOR LOUDEN: Okay, say that all again?

SENATOR CHAMBERS: Okay. You till your land. Your prairie dogs run into my land, which is not tilled. I file a complaint with the county. They tell you to do something about that, and you tell the county they are not on your land, you have no prairie dogs on your land. And the county will tell you, but they were on your land, and you ran them onto Chambers' land; now you do something about it. Is that a situation that your bill would cover?

SENATOR LOUDEN: No, I don't think there's...I don't think anything in the bill to cover something like that. Usually, if there's prairie dogs on one part, there could be prairie dogs on the other.

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: But I don't know as that...

SENATOR CHAMBERS: So my management plan could be to run them onto my neighbor's property, and that would be all right under this bill, wouldn't it?

SENATOR LOUDEN: This bill doesn't address that. I suppose you'd have to go to court over that. No different than if you let floodwater run, or something like that.

SENATOR CHAMBERS: Well, if it's natural for prairie dogs to be in that area, how can you...well, okay, you don't know what a court would do, and neither do I.

SENATOR LOUDEN: You're right.

SENATOR CHAMBERS: But I want to make it clear that these circumstances that I'm talking about are not covered under your bill.

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

April 13, 2005 LB 116, 123, 322, 444, 507, 535, 572, 633
673, 677, 713

SENATOR LOUDEN: Well, there...

SENATOR CHAMBERS: Your bill only deals with prairie dogs that are still on your land, and you're the one who is deemed to be the problem maker. You want prairie dogs; your neighbor doesn't. The only thing you're responsible for is to keep those dogs that are on your land now on your land. Is that true?

SENATOR LOUDEN: That's the way the management plan is. You can do whatever you want to with them, as long as they're on your land.

SENATOR CHAMBERS: Well, suppose you say, mine are not leaving my land, and your neighbor says they are. It's up to your neighbor to prove that those dogs that are on his or her land have come from your land.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Isn't that true? They couldn't just say it. Oh, you said time?

SENATOR CUDABACK: I did, Senator.

SENATOR CHAMBERS: Oh, I'm sorry.

SENATOR CUDABACK: Mr. Clerk, items.

CLERK: Mr. President, your Committee on Judiciary, chaired by Senator Bourne, reports LB 507 to General File; LB 116, General File with amendments; LB 123, LB 322, LB 444, LB 535, LB 572, LB 633, LB 677, LB 713, all to General File, all with committee amendments attached. That's all that I had, Mr. President. (Legislative Journal pages 1191-1194.)

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

SENATOR CHAMBERS: Mr. President, here's what I'm getting at. Others have stood on this floor and talked about how

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

April 13, 2005 LB 673

well-crafted this bill is. But it really is not. It hasn't taken into consideration the reality about how these animals move. These prairie dogs do not honor artificially drawn boundaries. Maybe Senator Louden has had the surveyor come in and lay out a perfectly square piece of land that constitutes his property. Mine abuts his property. There are prairie dogs on his land; there are prairie dogs on my land. I like the critters, and I'm going to let them stay there, and won't let anybody come on my land to harm them. Senator Louden does not like them on his land. He is going to allege that the prairie dogs are leaving my land and coming onto his land. So the county goes out to try to settle this dispute. And I'm not going to go into how difficult that's going to be, or how unlikely it is that that can be done. But assume, so that I can go on with my example, that a determination is made that prairie dogs are leaving my land and going to Senator Louden's land. They tell me, put in place a plan to manage these prairie dogs on your land, so they don't go onto Senator Louden's land. And that's when I tell them that every one of my prairie dogs is trained to respect other people's property, and they will not leave my land and go onto Senator Louden's property. And I defy Senator Louden to tell you that he has seen one of my prairie dogs come onto his land and take up residency there. But let's say somehow the county establishes that they did. What is the plan that I'm to put into effect? Am I supposed to do something that would stop any more from going to his land? Or am I supposed to do something to correct the condition created by those on his land already? That's not even considered in this bill. Trying to keep prairie dogs on one piece of land when it abuts another piece of land which is prairie dog-friendly would be like saying you have underground water reserves, and I can somehow keep the water under my land there, and it will not cross that imaginary boundary line between my property and somebody else's. Unless there is something that extends through the earth from the surface of my land to the core of the earth, there is no way we can say with certitude that the prairie dogs on my land will not go on Senator Louden's land. He says, well, build a fence, or whatever it is, from one edge of your property to the other edge. Well, suppose Senator Louden's property is wider than mine. So even though I take my fence to the edge...both edges of my property, there is still some of Senator

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

April 13, 2005 LB 673

Louden's property beyond my fence, so my prairie dogs just go around that fence, and they're now on the property of the other person next to me. So that person would say, well, build another fence. So I build a fence that makes a right angle. It goes this direction, then it goes east. It goes north and south, then it goes east. Then I have to do that all the way around my property. But I can't sink it to the core of the earth. So these dogs dig under and go to this other person's property. Then what does the county say? Sink the fence deeper. And I tell them, you're crazy, I'm not going to do anything else. So then they start trying to corral these dogs, and they can't either. So every time they come out,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...they assess a cost to me. And I can't pay it, so it's an assessment against my property. At some point, if I don't pay those assessments, I wonder if the county would ever try to foreclose. Whether the county would or not, I'm not going to let that kind of situation come into being. The best way to avoid that is to let this bill go nowhere, or let it go somewhere with the responsibility on the state or the county to manage these wild animals. Because they belong to the state, not to the property owner. Was that my opening, Mr. President?

SENATOR CUDABACK: That was your second (inaudible), Senator Chambers.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: You may continue. And it's your third.

SENATOR CHAMBERS: This is the third coming up? Thank you. And I'm not at the point where I have to do any reconsidering yet, because I have plenty of other amendatory opportunities. Mr. President and members of the Legislature, what this amendment does is to boost the maximum amount that a landowner can be fined from \$1,500 to \$15,000. I say, go ahead and stick it to them. That's what you all want to do. But you play around the edges, and you pussyfoot. You don't really mean that you want to do something about this person. If you want to

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

April 13, 2005 LB 673

deter inappropriate conduct, then you have to make the threat of punishment so severe and so sure that the person would rather refrain from that conduct than engage in it and pay the cost. Fifteen hundred dollars. If the person hasn't got \$1,500, it may as well be \$15,000. But if it's \$15,000, that may seem so overwhelming that the person may try to come up with some of the money, or negotiate, or try to work something out. This might be a tool to give the county leverage to persuade this person to do what you want that person to do. I'd like to ask Senator Louden a question or two.

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

SENATOR LOUDEN: Yes, certainly.

SENATOR CHAMBERS: Senator Louden. (Laugh) I wish I could levy a fine on Senator Bourne, but I can't. Have you met people during your life who could not be made to do something he or she did not want to do simply by threatening that person? Have you ever met anybody like that in your life?

SENATOR LOUDEN: I don't know. Have you raised teenagers?

SENATOR CHAMBERS: (Laugh) Four of them. They're grown and gone.

SENATOR LOUDEN: I suppose I've raised teenagers, too. That would be my first observation, I guess.

SENATOR CHAMBERS: Okay.

SENATOR LOUDEN: I don't think that's the answer you wanted, but (inaudible).

SENATOR CHAMBERS: No, but...no, I said anybody. And it reaches what I'm talking about. Some people are not going to be made to do what they don't want to do simply because you utter a threat. Isn't that true?

SENATOR LOUDEN: Oh, true, yeah.

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Now, we're dealing with adults here. Do you think that a person would be more likely to do what you want that person to do, or refrain from doing what you don't want the person to do, if you threaten that person with a \$15,000 fine, or with a \$1,500 fine? Which threat, if a threat was going to have any impact, would have the most impact, in your opinion?

SENATOR LOUDEN: Well, I'm sure the \$15,000 one, because that would put some people out of business in no time flat, that's for sure.

SENATOR CHAMBERS: Bam. You got it. Are you going to support my amendment?

SENATOR LOUDEN: I don't know if I'm that ruthless.

SENATOR CHAMBERS: Do you want action, or not?

SENATOR LOUDEN: Yeah, I think we can get action. But I would like to see something more on a common sense level. I don't think that we need to make this so harsh that people can't afford to live by it if they do have a problem once in a while. And there will be people that have problems various times. And the bill is kind of written in here so that the county or somebody can do this. It's...does about the same thing as...like I say, we get right back down to the ordinances that the city of Omaha used on their rats. It...you do the same thing.

SENATOR CHAMBERS: Okay, let's forget Omaha. We're talking about prairie dogs. You are a compassionate man. I am a compassionate man. Neither of us wants to put a burden on a person which he or she cannot bear. Since the county can go on the land, do the work, and assess the cost to the person's property, there is no need for this additional fine that we're discussing, is there?

SENATOR LOUDEN: You mean \$15,000?

SENATOR CHAMBERS: Fifteen hundred dollars,...

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

April 13, 2005 LB 673

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the original amount in the amendment...in the bill; \$100 per day for 15 days. That is not really necessary, is it?

SENATOR LOUDEN: I don't know. I'd have to get some legal counsel on that. Because I presume that's...whenever you have a duty that somebody has to do, I suppose you have to have an incentive in there of some sort. I mean...

SENATOR CHAMBERS: But the incentive is to do it or have the county do it and the cost be assessed to you, and if you don't pay the cost it's assessed against your property. Isn't that enough of a hammer over somebody?

SENATOR LOUDEN: Yeah, I'm sure that's...you're correct on that. Yeah, if it's written in there plainly that if you don't do it, the county will, (inaudible)...

SENATOR CHAMBERS: It is there. We talked about it yesterday.

SENATOR LOUDEN: ...and assessed in there, then yeah, you...that would certainly be some incentive.

SENATOR CHAMBERS: But it's your bill. You know that it's in there, because it's your bill.

SENATOR LOUDEN: Right.

SENATOR CHAMBERS: I know it's there, because I read your bill. So if the county can go in and do it, I think at some point one of my amendments will be to just strike this language altogether. But right now,...

SENATOR CUDABACK: Time, Senator. Senator Howard.

SENATOR HOWARD: Thank you, Mr. President and members of the body. A point of clarification. I was confused about the reference to rats and Omaha, and looked this up on another web

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

April 13, 2005 LB 673

site. And in fact, the black-tailed prairie dog is described as a rather large, chunky, ground-dwelling squirrel, with upper parts pinkish-cinnamon, mixed with buff, tail sparsely haired, tipped with black. A squirrel. In Omaha, we don't have a squirrel extermination program. And actually, the prairie dog is considered to be a squirrel. That said, I would like to grant the remainder of my time to Senator Chambers. Thank you.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Howard. Thank you, Mr. President. And now maybe some of the city folk can more easily identify with these little critters. They are of the squirrel family. But wait a minute. If they are members of the squirrel family, Senator Bourne, maybe I can understand why some of my rural friends are scared of them. Because we know what squirrels eat, don't we? We know what squirrel food is, don't we? Now, if somebody gives a description, and a person applies that description to himself or herself, the person who applied the description is guilty, not the one who stated the description. I said, Senator Bourne, that we know what squirrels eat. They eat nuts, don't they? If you were walking down the street, would you worry about a squirrel seeing you as food and chasing you?

SENATOR CUDABACK: Is that a question, Senator Chambers? Or did you...?

SENATOR CHAMBERS: Yes, I think it will be. Senator Bourne, would you respond?

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Yes.

SENATOR CHAMBERS: Oh, you would...oh, you mean you'll respond. That's what the yes...

SENATOR BOURNE: Oh, yeah. I'll respond.

SENATOR CHAMBERS: Okay. Here's the question. If we know what

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

April 13, 2005 LB 673

squirrels eat, have you ever been pursued down a street in Omaha by a squirrel?

SENATOR BOURNE: Never.

SENATOR CHAMBERS: And do you expect that that would ever happen?

SENATOR BOURNE: No, I don't expect (inaudible).

SENATOR CHAMBERS: Now, if a squirrel for some reason saw you as squirrel food, then you might have a different problem, right?

SENATOR BOURNE: Absolutely.

SENATOR CHAMBERS: And do you think squirrels in Omaha are able to distinguish between a nut and you? I meant, that's why they don't go after you, because they know the difference, right?

SENATOR BOURNE: It would be a large nut, wouldn't it?

SENATOR CHAMBERS: Yes. Now, if I, on the other hand, were pursued by squirrels, what would that be saying about me? How would the squirrels view me?

SENATOR BOURNE: As if you're nuts.

SENATOR CHAMBERS: Thank you, Senator. We know why people in the rural areas fear squirrels. That's what I'm getting to. Now, I didn't know that prairie dogs were predators. And I certainly didn't know that their prey was human beings, those that I would consider to be human beings. But we know that animals have perception abilities that human beings don't. So here I may be looking at my colleagues, thinking they're one thing; but I ought to watch and see how the squirrels and the prairie dogs treat them, and I'd get a little insight into what I'm really dealing with. This that I'm talking about is not off the subject. Look at how this bill is written. This is squirrely, nutty, doesn't need to be there. They're going to say, somebody is, there's another law somewhere that talks about weeds, and the weeds bill may not make sense. Now, I don't

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

April 13, 2005 LB 673

think anybody will...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...accept this amendment. I'd like to ask Senator Combs a question.

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

SENATOR COMBS: I got a feeling I know what he's going to ask.

SENATOR CHAMBERS: Senator Combs,...

SENATOR COMBS: Certainly.

SENATOR CHAMBERS: ...would you allow us to amend this bill into your bill, if we gave prairie dogs the right to carry guns, if they wore helmets?

SENATOR COMBS: (Laugh) Well, that sounds like a Chambers amendment. Certainly does. But probably...I guess I'm probably going to have to take anything you offer. If I got 24 hours of debate, I probably would let you put it on. I wouldn't vote for it or support it. But what can I do? If you want to write it, golly, I think you will.

SENATOR CHAMBERS: And here's another question I would like to ask you, in view of the fact that you gave a number, and the amendment I'm dealing with talks about numbers. Where do you get the idea that you're going to get 24 hours of debate?

SENATOR COMBS: Oh, well, I thought it went eight, eight, and eight for filibuster.

SENATOR CHAMBERS: Have you talked to the Speaker, and he's guaranteed you that you'll get...

SENATOR COMBS: No, I'm just...

SENATOR CUDABACK: Time.

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

April 13, 2005 LB 673

SENATOR CHAMBERS: ...three shots at...?

SENATOR COMBS: No, I'm just talking about...

SENATOR CUDABACK: Time, Senator.

SENATOR COMBS: Oh, thank you.

SENATOR CHAMBERS: Which one? Both of us?

SENATOR CUDABACK: Yours.

SENATOR CHAMBERS: You're going to kill two birds with one stone. (Laugh) Thank you, Mr. President.

SENATOR CUDABACK: Senator Howard's time, but she gave it to you, Senator. And there are no further lights on, Senator Chambers, so you just do have a closing coming, if you wish to use it.

SENATOR CHAMBERS: Yes, I would, Mr. President. And I appreciate that. Members of the Legislature, there are other bills that I dislike even more than I dislike this one. And Senator Combs happens to be the guardian of one of them. So she has an opportunity to prepare herself for what is in store. I don't need to use the military tactic of surprise. I can meet my foe head-on and prevail anyway. And that's what I intend to do. We're approaching that part of the session where the niceties have been done away with, in terms of easy bills. I doubt that there will be another consent calendar. So now we're going to have to deal with each bill. There are committees bringing out what we call Christmas tree bills. And there will be an attempt to build Christmas trees on the floor. That's where other bills are amended into bills. I've gone along with that process this session. I have not stood in the way of consent calendar being used. In fact, I helped...well, I put together a motion, and the senators helped adopt that motion, which moved a multitude of bills across the floor on one vote. So I've been accommodating, I have been facilitating, and sometimes obfuscating, and that's not a bad word unless you're

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

April 13, 2005 LB 673

one of those who gets obfuscated. But all of that is going by the boards now because we're getting into the type of bills which, in my view, do not constitute sound public policy. Being the garbage man of the Legislature, I have to clean up these bad bills and get rid of them. I had heard on the news that they're working on some kind of a substance that can get rid of amaloid plaque. It gets rid of it in the brains of "meeces" and rats, and amaloids are those brain-destroying elements that are found in Alzheimer's and in mad cow. They destroy the brain. They are the Atropos. They cannot be reasoned with. They cannot be treated. They cannot be eradicated, except in those lower animals. Why would Mother Nature make it possible for those that human beings describe as the lower animals to have certain diseases, disease-producing organisms flushed out of their body and they can live, but it won't work for those higher animals known as human beings? Why? Because human beings victimize so many of nature's creatures which are helpless vis-a-vis human beings that they need to be given help. And in making the battle fair, nature allows things to happen to human beings which, once they happen, cannot be corrected. For all your piety and wit, nothing can be done. Nature is purging her creation of a pathogen--you all. That's what nature is doing. All of these brand new diseases you've never heard of, you don't even know where they come from, let alone what to do with them. And when you get an idea of what might work,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the organism that causes it mutates and laughs at you. And then, when you go after that one, it mutates. They cannot even determine, and by "they" I meant the best scientists and medical people, which strain of the flu to try to provide a vaccine for. Mr. President, I would ask for a call of the house.

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

CLERK: 14 ayes, 0 nays to place the house under call, Mr. President.

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

April 13, 2005 LB 673

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. Members unexcused please report to the Chamber. The house is under call. Senator...Senator Cunningham, Senator Schrock. Senator Brown, would you check in, please? Thank you. Senator Brown, would you check in, please? Senator Kruse as well. Senator Smith, Senator Synowiecki. Senator Synowiecki. Senator Kruse, the house is under call. All unexcused senators please return. All members are present or accounted for. Senator Chambers, how did you wish to proceed on your question?

SENATOR CHAMBERS: Straightway and forthwith, a machine vote.

SENATOR CUDABACK: Machine vote, a machine vote has been requested. All in favor of FA160 being adopted to the committee amendments vote aye; those opposed vote nay. Voting on adoption of FA160, offered by Senator Chambers to the Agriculture Committee amendments to LB 673. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 2 ayes, 21 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The amendment was not agreed to. I do raise the call. Mr. Clerk, next amendment, when you get time.

CLERK: Mr. President, the next amendment, Senator Chambers, FA162. (Legislative Journal page 1177.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA162 to the committee amendments.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I will read this amendment into the record. On page 1, after line 6, we would insert "In no event shall eradication be an option." I would like to ask Senator Louden a question.

SENATOR CUDABACK: Senator Louden, would you yield?

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

April 13, 2005 LB 673

SENATOR LOUDEN: Yes, of course.

SENATOR CHAMBERS: Senator Louden, we both believe in being as accurate in describing something as we possibly can. Would you agree?

SENATOR LOUDEN: Yes, I would think so.

SENATOR CHAMBERS: I object to Senator Friend leaving.
(Laughter)

SENATOR FRIEND: (Microphone malfunction) (inaudible).

SENATOR CHAMBERS: (Laugh) Touche. Mr. President, people just mess with me. Senator Louden, did you say that this is not an eradication bill?

SENATOR LOUDEN: It's a management tool, yeah, is what I've said, yes, all along. It's a management act.

SENATOR CHAMBERS: No, but I don't want to talk about management. I want to use the word "eradication." You said this is not an eradication bill. Didn't you?

SENATOR LOUDEN: Right.

SENATOR CHAMBERS: Now, my amendment says, "In no event shall eradication be an option." If this is not an eradication bill, my amendment simply makes that clear. Wouldn't you agree?

SENATOR LOUDEN: Okay, it would make it...are...I'd have to decide whether or not it makes it clear just in the bill, under the management act there wouldn't be, or where eradication wouldn't be an option in the state of Nebraska. Because, as we're passing...doing this legislation, this is something we certainly don't want to take away as a tool, to manage them, a certain amount of eradication. If you have a bunch of them getting sick and that sort of thing, there's going to have to be some drastic measures taken. It isn't any different than we get right back to your Omaha rat. You have an eradication program down there.

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Don't say my...

SENATOR LOUDEN: It's a lot...it's a lot...

SENATOR CHAMBERS: Don't say my Omaha rats. I'm not trying to eradicate them. They're on a little island. I don't think they bother anybody. Let human beings stay off the island. They can walk on the bridge, walk all around the place, and the rats are on the island. Let them stay there. Why not? I didn't say eradicate them. But let's stick with what you and I are talking about. You said this is not an eradication bill.

SENATOR LOUDEN: Right.

SENATOR CHAMBERS: Do you want to change that statement and let us know that in fact it is an eradication bill?

SENATOR LOUDEN: Okay, as I call an eradication bill is one something similar South Dakota put into effect, and that, they just plainly put in there that they were to be eradicated. In fact, we had testimony from one person that his problem was this bill didn't go far enough. He wanted them eradicated. But that isn't what we want to do with it. It's set up so there's some people that want to control them, have them on their property. I think Senator Schrock said he's got a few and they don't mind it. If they're not bothering anybody, why set up anything that would disturb that? So it's wide...it's pretty...I wouldn't say wide-open, but it covers a lot of area there. It gives the people an opportunity to use different plans and different methods without being critical to the ecosystem or the habitat.

SENATOR CHAMBERS: Senator Louden, your answer reminds me of a Harry Belafonte song: It was clear as mud, but it covered the ground, and the confusion made me brain go-round. So I grabbed a boat and I went abroad, and in Baden, Germany, I met Sigmund Freud. He said, son, from your sad face remove the frown. Put the body upon the couch. I can see from your frustration a neurotic sublimation. Love and hate are psychosomatic. Your Rorschach shows you're a peripatetic. So if Mount Everest doesn't move, I'm positive that it will prove. Do you

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

April 13, 2005 LB 673

understand what I was talking about?

SENATOR LOUDEN: Well, I was...

SENATOR CHAMBERS: Would you talk into the mike, please?

SENATOR LOUDEN: I was waiting for Belafonte. I was always kind of a fan of Belafonte, but I didn't catch...

SENATOR CHAMBERS: The words...

SENATOR LOUDEN: ...catch the tune, I guess.

SENATOR CHAMBERS: Right, and the words didn't really give you the message, did they?

SENATOR LOUDEN: Not really.

SENATOR CHAMBERS: So now I'm going to ask the question more directly. Senator Louden, is this bill an eradication bill or is it not an eradication bill?

SENATOR LOUDEN: It is not an eradication bill. There's nothing in there that says the prairie dogs have to be eradicated.

SENATOR CHAMBERS: Okay. Now, my amendment says, "In no event shall eradication be an option," in this bill. That statement would accurately reflect what you have been telling us, wouldn't it?

SENATOR LOUDEN: Okay, when you put that in there, that changes the outlook of the bill because then that takes away a management tool, if it's so necessary to use.

SENATOR CHAMBERS: So then eradication is contemplated under this bill as a way to manage them, isn't it?

SENATOR LOUDEN: Let's see...okay, you put in there, in no...that eradication is not...not to be an option. Is that...

SENATOR CHAMBERS: Yes.

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

April 13, 2005 LB 673

SENATOR LOUDEN: ...what I see on my machine?

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: I've not put that in there. I think that that should be in there. I think that should be one of the tools of management if it's necessary.

SENATOR CHAMBERS: So then this is an eradication bill.

SENATOR LOUDEN: Not completely. It has part...

SENATOR CHAMBERS: If a county decides that eradication is the thing, a county can order a person to eradicate these animals, can't it? It has the power to do that under your bill, doesn't it?

SENATOR LOUDEN: If they're not encroaching on anybody, no, the county doesn't have the power.

SENATOR CHAMBERS: No, let me set it up like you have it. The animals are encroaching on somebody else's property. That other person doesn't want them on his or her property. The county can order that person to eradicate those animals. Isn't that true?

SENATOR LOUDEN: The county can order that other person to manage them so that they are not encroaching on the property. Now, whether they eradicate them or whether they use some other methods, that would be up to them.

SENATOR CHAMBERS: No, no, not another method. The county can determine the method. The county can order this person to eradicate those animals. Isn't that true?

SENATOR LOUDEN: No.

SENATOR CHAMBERS: Why is it so hard for you to say? You said you want it as a tool. It's there as a tool. The county uses it and orders eradication. The county, under your bill, can order eradication. Isn't that true?

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

April 13, 2005 LB 673

SENATOR LOUDEN: Okay, yeah, they can order eradication, I presume, yes.

SENATOR CHAMBERS: Okay, so this is an eradication bill as well as any other thing you've talked about, isn't it?

SENATOR LOUDEN: No, I don't agree on that. It isn't...it isn't anyplace in there that says all the black-tailed prairie dogs will be eradicated.

SENATOR CHAMBERS: You leave it up to the county. The county can order that, can it not?

SENATOR LOUDEN: If there is a problem, that is one of the tools that they can use and that's the reason I probably won't...I won't support your amendment.

SENATOR CHAMBERS: Thank you, Senator Louden. Members of the Legislature, this is an eradication bill. Rather than be forthright and put it in the statute, Senator Louden is going to do the Fred Astaire and tap-dance around it until I force him to say that what he has been telling us is not really accurate. He said this is not an eradication bill, so I said let's say that. He said, no, because I want eradication to be available. And the county can order eradication. And it does not say that eradication must be a last resort. It can be the first thing and the only thing that a county orders. That's why this bill is not going anywhere. It is not a truthful, straightforward bill. So what you're going to punish me by doing is making me hold this bill right where it is until it comes off the agenda. You all didn't mind doing that with the antismoking bill. Didn't bother the majority of you, so what I'm doing shouldn't bother you. But I'm different. I don't care whether it bothers you or not. You're talking about killing prairie dogs. I'm talking about not killing them in the way you want to. I'm going to stop calling Senator LeRoy the "King" simply. I'm going to call him the "King of the Terminators." See, he was able to rook me in once to draft an amendment that would allow the killing of feral pigs, even though I felt that those animals were not culpable and should not be handled in that way. He and

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

April 13, 2005 LB 673

others persuaded me that this creation of human beings had reached such dangerous proportions that a threat was posed to human beings. And even though the blunderings and the cruelty and the shortsightedness of human beings created the hazard, I didn't want their children and others to suffer. So I crafted an amendment,...

SENATOR STUHR PRESIDING

SENATOR STUHR: One minute.

SENATOR CHAMBERS: ...offered it and supported it, that would allow those animals to be killed. He's not going to get me twice. I'm going to show you that I could have done what that feral pig bill what I'm going to do with this one. You're not going to keep coming in here and finding ways to kill off these animals because of the blunderings of human beings. So you got me to deal with for three more years and the rest of this session, and I assure you that I am not going to get tired of what I'm doing. I will have enough energy to resist every inappropriate piece of legislation you bring. Even though it's not going to be one of you bringing all that bad legislation so you have to stand up and battle me, it will be me conducting the battle all day, every day, against all of you, who are in favor of that bad legislation, and you'll have a chance to see if a man nearly 70 years old can hold off the Legislature and stop this bad legislation.

SENATOR STUHR: Time. You've heard the opening of Senator Chambers, and I believe your light is on next and you may continue.

SENATOR CHAMBERS: Thank you, Madam President. Your voice kind of caught me off guard and I had to make sure that I'm not dreaming, that I'm still merely in the Legislature. That was a heavenly voice, but I know that, had I died, that's not the voice I would be hearing unless they misrepresented the place where I'm supposed to be going. But if the place that I'm supposed to be going, whatever it's called, has a voice like that, I say, death, where is thy sting? (Laugh) Madam President, now don't blush, members of the Legislature, my

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

April 13, 2005 LB 673

amendment is designed to bring truth to this discussion. Senator Louden has been compelled at last to tell the truth. He had been standing up here saying, this is not an eradication bill; South Dakota or one of them has an eradication bill, but this is not an eradication bill. Knowing Senator Louden to be an honorable man, I took him at his word. And because others had not been discussing this in the way that Senator Louden and I have, and because people don't pay attention, I wanted to put words into the bill that reflected the notion expressed by Senator Louden repeatedly. And what was that notion? This is not an eradication bill. So, inspired by Senator Louden's high-mindedness, I simply reduced the words that he had been speaking to an amendment that says, simply, "In no event shall eradication be an option." If it's not an eradication bill then eradication is not an option. But when Senator Louden heard the truth coming back at him, he decided that what he told us originally was not really the truth and he had to change it. He had to do a 180 and go back to where he had come from and acknowledge that what he said is not what he meant, and that illuminates what I've been telling you all lately, that you pray for something and if your prayer is answered you get what you ask for, but you didn't get what you wanted. I gave Senator Louden back what he gave to us, and now he denies that which he created. That's like a father denying his son, a mother denying her daughter, Nixon denying that he's a crook. Senator Louden, oh, Senator Louden, I now have a heavy...if I had a heart it would be heavy. Where have all the honorable people gone? I wish I knew the answer. I might have to be like that guy who filled his mouth up with sand, rocks, and went down by the seashore and tried to speak intelligibly over the roaring of the sea, and then he got a lamp, walking around, trying to find an honest person and he never found one. And you can see him walking to this day, occasionally, if you're in a swamp or someplace. They call it the will-o-the-wisp. You see this strange light and as you approach to where you thought the light was, it's not there but it's off in the distance. Next thing you know, if you're in a movie, you're in the quicksand and it's over. Senator Louden has let me down. The anchor, Senator Howard, that I could hold onto when everything else seemed to be unstable was Senator LeRoy Louden.

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

April 13, 2005 LB 673

SENATOR STUHR: One minute.

SENATOR CHAMBERS: When all other things seemed to be failing, Senator LeRoy Louden was there, and now he crushes me. I offered an amendment that I was sure he could accept, something that would bring him and me together on his bill. I didn't try to use trickery. I used the language that Senator Louden had been using. If I cannot arrive at an accord with one of my colleagues by putting into an amendment the words that my colleague spoke, I don't know how I can reach an accord. This is not something I manufactured. This comes from Senator Louden. I expect him to stand up and explain this situation so that I can understand it. Thank you, Madam President.

SENATOR STUHR: Thank you, Senator Chambers. Senator Louden, you are next.

SENATOR LOUDEN: Thank you, Madam President and members of the body and Senator Chambers, of course. Senator Chambers has been talking about honor, I guess, worrying about that someone isn't standing up to their word and that sort of thing. And of course things like that, sometimes where I come from, you take it rather personal, but down here in this Chamber I guess you shouldn't take it personal. So, anyway, when I've ask him, he's complained about what is happening to the landowners out there and how unfair it would be if they had to pay for their prairie dog control, so that's when I decide to find out what he does in his own home district or what happens to those people down there. And as we look through that I found out that the city of Omaha, for instance, and of course Lincoln and some of these other larger cities, I suppose they all do about the same thing, but they're a lot more vicious than we ever thought to be on our landowners out there with prairie dogs. At least we give them a chance to manage them and keep them around and regulate them. The city of Omaha, down here, if you don't take care of your rats on your property, you get fined \$500 and a jail sentence of six months, and then each day of that violation is a new separate offense. So they're a lot tougher than...when you put somebody in jail, that doesn't help them get to work very well. And, of course, 500 bucks a day and get sent to jail every day is something that's way more severe than what we are doing with

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

April 13, 2005 LB 673

this bill that is trying to be a management program out in the western end of the state where these animals have multiplied to their own detriment. You worry about their killing...about killing them. Why aren't you worried about them cannibalizing their young? This is something that, to me, is something that I don't like to see in any species. I think it's "abhorable" that something like this happens, because we...we're around wildlife considerably and always respect something like this. But when they've overproduced, overpopulated to the point they have nothing left to eat, they're starving to death, then there is going to have to be some type of management plan. And if there are too many, then eradication probably will be one of the options. But it is not the first method of managing these prairie dogs. The idea is that if there are people that so desire to have some around, that's fine. You're going to be having some around. My understanding is there's some just outside of Lincoln here that are starting in on the area. If they're not bothering anybody then there's no problem with them. They can be managed. They can probably be...have some type of barrier put around them, and that's what management is all about. But to put into the bill that takes away one of the tools that may be necessary to control wildlife isn't what I would think would be a good idea. When you talk about eradication, right now you've got some wasting disease in the deer population in Nebraska. They go out and here a couple years ago, I think in the area out west there, they went out in the wintertime and shot 100 deer there to check them out for chronic wasting diseases. This was some type, if they would have found them, they would have eradicated them. There was a complete elk herd on an area up there in northwestern Nebraska. They eradicated several hundred head of the animals off of there because some of them had CWD. They were all buried on the landfill up there in that area. So this isn't something that we should legislate a tool...

SENATOR STUHR: One minute.

SENATOR LOUDEN: ...away from someone that could...perhaps is going to need that in the future when you're managing wildlife. This is something that's being done on a regular basis. When Senator Chambers talks about the feral pigs, the idea was with

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

April 13, 2005 LB 673

feral pigs you had to decide which was a feral pig and which was a stray that was taken...was under control of the Brand Committee. Thank you.

SENATOR STUHR: Thank you, Senator Louden. Senator Chambers, you are recognized to speak, and this is your third time.

SENATOR CHAMBERS: Thank you, Madam President. I'd like to ask Senator Louden a question or two.

SENATOR STUHR: Senator Louden, would you yield?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, you can read about ordinances in Omaha. They're not enforced. There are people in my community who call in complaints about trash being dumped, the streets not cleaned by the city as they're supposed to be. So those are just words on paper. When the state puts something in place, I take that seriously because I'm a part of the lawmaking machinery, and I'm not going to put something on the books that can be selectively enforced and which will place a responsibility on individuals which should be assumed by the government. There's the difference. Now, you mentioned these elk that have that chronic wasting disease. Did you say they were found near a landfill, in the area of a landfill?

SENATOR LOUDEN: No, I said they were...they were eradicated and disposed of in a landfill.

SENATOR CHAMBERS: All right. Now, are there any creatures who could dine on the carcasses of those elk that had been disposed of in this landfill?

SENATOR LOUDEN: As far as I know, they were buried. Now, whether they were covered with a slack, lime or something like that, I don't know, but I'm sure they did them the best they could to keep anything from something like that happening, because it could possibly spread the disease more if there was something like that went on.

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Okay. So when we're dealing with a diseased population of animals, there are acceptable methods of killing these animals and disposing of their carcasses so that the disease will be kept in check. In other words, you're not going to dispose of them in a way that will spread it to other animals. Isn't that the plan when you have a diseased group?

SENATOR LOUDEN: Yes, it was for them. Yes, I suppose.

SENATOR CHAMBERS: Okay. Now, you and I, in your bill, are not talking about diseased animals, are we?

SENATOR LOUDEN: Well, we're talking about places where they're getting overpopulated and there has to be some management tools used.

SENATOR CHAMBERS: But if the animals are diseased have you heard me say at any point that if animals posed a threat to the well-being of human beings, I don't mean the convenience of ranchers and farmers, but to the health and well-being of human beings, that I would oppose doing something about that? You've never heard me say that, have you?

SENATOR LOUDEN: No, I didn't.

SENATOR CHAMBERS: And I wrote the amendment that let them kill off these feral pigs under those circumstances, didn't I?

SENATOR LOUDEN: Okay, you mean...

SENATOR CHAMBERS: When we were talking about the feral pigs.

SENATOR LOUDEN: Feral pigs? And you wrote the amendment how?

SENATOR CHAMBERS: So that they could be killed in the way that you thought should be allowed.

SENATOR LOUDEN: Yes. On that,...

SENATOR CHAMBERS: Okay.

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

April 13, 2005 LB 673

SENATOR LOUDEN: ...on that amendment.

SENATOR CHAMBERS: Right. Now let's move on from there.

SENATOR LOUDEN: Okay.

SENATOR CHAMBERS: What we're talking about here in your bill are not diseased animals. You mention them, but that is not a requirement before this bill comes into play, is it?

SENATOR LOUDEN: No, overpopulation is.

SENATOR CHAMBERS: Now, you said you do not believe that eradication would be a first step or the first measure undertaken, but probably a last resort. Is...did you say something to that effect?

SENATOR LOUDEN: No, I said that if this was...I...okay, your amendment is to do away with it; it wasn't an option (inaudible).

SENATOR CHAMBERS: But I meant, forget my amendment. I want to hear what you say about when eradication should be resorted to.

SENATOR LOUDEN: I should it shouldn't be...it should be...it could be used as a tool for the management of them.

SENATOR CHAMBERS: Then would you accept an amendment that says eradication should be...should be a last resort?

SENATOR LOUDEN: Oh, I think it...I think it would be hard to say...

SENATOR STUHR: One minute.

SENATOR LOUDEN: ...what was the last resort. I mean, that would...where I'd have the problem with is, who's going to decide where the last resort? Are you going to put that back on the state, are you going to put that back on the county, or are you going to put it up in the air and flip a coin, or how do you decide what's the last resort?

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Well, the county is required, if they adopt one of these management programs, to draw up rules and regulations, and the county is the one that would do it.

SENATOR LOUDEN: Oh, you want me to answer that?

SENATOR CHAMBERS: Uh-huh. Oh, there may not be time, so I'll wait until I get a chance to speak again. Then we can resume. Thank you, Madam President.

SENATOR STUHR: Thank you, Senator Chambers. Senator Howard, you are recognized to speak.

SENATOR HOWARD: Thank you, Madam President and members of the body. Well, I have learned recently that it's only a short step to the left from management to eradication, and in studying this I realized that Texas has an on-site devoted to the black-tailed prairie dog, and in reading their information I learned that large concentrations are really now a thing of the past due to the extensive use of poison grain to kill the animals in land conversion for agriculture. The black-tailed prairie dog is currently an endangered individual...animal in some areas and is under consideration by the U.S. Fish and Wildlife Service for listing as being threatened under the Endangered Species Act. Having shared that bit of information, I would like to grant the remainder of my time to Senator Chambers. Thank you.

SENATOR STUHR: Thank you, Senator Howard. Senator Chambers.

SENATOR CHAMBERS: Thank you, Madam President. Thank you, Senator Howard. Senator Louden, here's what I want to know, so I will ask, Madam President, would Senator Louden yield to a question or two?

SENATOR STUHR: Senator Howard, do you...

SENATOR CHAMBERS: Senator Louden.

SENATOR STUHR: Senator Louden.

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

April 13, 2005 LB 673

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, your bill says that when a county, by resolution, adopts one of these management programs that the county...and you can look at page 2 in line 2, and it's not my bill, it's yours...the county shall assume the authority and duties provided in this act. And one of the duties is to draft up these rules and regulations. Now, could not the county lay out alternatives available for managing these animals and declare that eradication shall be a last resort? That means if none of these others work then you go to eradication, but you don't go to eradication immediately because it seems cheaper and easier. They could do that. Couldn't the counties provide for that under the authority given them pursuant to this bill?

SENATOR LOUDEN: Well, yes, the counties, if they adopt this management plan. First of all, that's their option, is whether they want to adopt it. But if they adopt it, why, then they have a coordinated program for the management. So that's left up to the counties what they want to do to coordinate a program of management and that's...

SENATOR CHAMBERS: And the state can give them some guidance?

SENATOR LOUDEN: ...that's putting it back down to local control.

SENATOR CHAMBERS: We're...since the state is creating this program, the state can give the counties guidance. Isn't that true?

SENATOR LOUDEN: Yeah, I think it's in here that, yet anyway in the bill, that the director of Department of Agriculture has the authority to also give guidance.

SENATOR CHAMBERS: So we could put in the statute that the intent of the Legislature is that eradication be a last resort. You...we can do that if we choose to, can't we?

SENATOR LOUDEN: Yeah. We could also put in there that the intent of the Legislature is to have a management program for

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

April 13, 2005 LB 673

black-tailed prairie dogs.

SENATOR CHAMBERS: And that's what the whole bill is saying. But we would make it clear that when you adopt this program of management, eradication is the last resort in carrying out the managing of these animals. Why don't you want to do that?

SENATOR LOUDEN: Well, like I said before when you asked me about it, when you talk about a last resort, that...I don't know if that can legally be defined what a last resort is. (Inaudible).

SENATOR CHAMBERS: Well, if there are other people who do not have as much trouble understanding it.

SENATOR LOUDEN: What? A last resort?

SENATOR STUHR: One minute.

SENATOR CHAMBERS: Yes. Would you be...

SENATOR LOUDEN: Don't kid yourself. If you put that in there, those people that don't want those prairie dogs, they'll...right now the first thing they'll say, well, that's the last resort, and they'll be out there doing whatever they so desire. So, I mean, I don't think putting that in as such as a last course...

SENATOR CHAMBERS: Okay, let's say the county says, gas them, that's what you have to do, and they try the gas and it doesn't work. Then can the county require them to do anything else, or shall we say the county gets one shot? The county cannot run them through several hoops. The county, after they tell them how to do it, if the person attempts to do it that way and it doesn't work, the person is off the hook. Will you agree with that?

SENATOR LOUDEN: Yeah, you'll have to say that all again because I...

SENATOR CHAMBERS: If the county tells the person, when the notice is served, that the method you must use is gas, and the

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

April 13, 2005 LB 673

person uses gas and the animals are still doing what is not desired, should the county be able to come in and say, since the...

SENATOR STUHR: Time.

SENATOR CHAMBERS: ...gas didn't work...thank you, Madam President.

SENATOR STUHR: Thank you, Senator Chambers. Since there are no other lights, Senator Chambers, you are recognized to close.

SENATOR CHAMBERS: Thank you, Madam President. Senator Louden, I would like to continue, if you will. Come on, you can. It's okay. I was just being excessively polite to my female colleague.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Senator Louden.

SENATOR LOUDEN: Okay. Thank you, Senator Cudaback.

SENATOR CHAMBERS: Senator Louden, how many bites of the apple should the county get? If the county orders a landowner to use...let's say the methods available are four, whatever they are. They could be shooting, gassing, trapping, transporting. If the county selects one of those after its investigation and says, you must do this, and the landowner does what the county orders, but the animals are still able to carry out what is considered unacceptable...are you wish me so far?

SENATOR LOUDEN: Well, yeah. I...

SENATOR CHAMBERS: Should the county then be...

SENATOR LOUDEN: ...I'm trying to figure out whether that's even in there, if the county has to specify what has to be used.

SENATOR CHAMBERS: It says the county can specify. It's your bill. I wish you'd read it like I do. Then you know exactly

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

April 13, 2005 LB 673

where it is. But it is in there.

SENATOR LOUDEN: Well, you're a word man and I'm a cattleman, so it takes me a little bit longer to look this stuff over.

SENATOR CHAMBERS: Okay. Let's go to page 4, line 16.

SENATOR LOUDEN: You want to remember we're both nearly 70, so it takes a little while.

SENATOR CHAMBERS: Speak for yourself, sonny. I won't see 70 again unless I look over my shoulder.

SENATOR LOUDEN: (Laugh) I said near.

SENATOR CHAMBERS: Huh? Oh, okay, but you didn't say on which side.

SENATOR LOUDEN: No.

SENATOR CHAMBERS: Okay. If you look in line 16, page 4, "The method of management recommended by the county board is as follows."

SENATOR LOUDEN: Okay, that's in the official notice, I suppose.

SENATOR CHAMBERS: Right. And that...and the person gets that notice and uses the method that the county recommended, and it doesn't work. Should the county then be able to come back and say, well, you've got to use another method now? Or should they get one shot at the landowner and make sure that they have adequately reviewed the situation before they tell the landowner the method that the county is saying should be used?

SENATOR LOUDEN: Okay. Okay.

SENATOR CHAMBERS: Should they get one shot, in other words?

SENATOR LOUDEN: Yeah, on this official notice. I would presume when they send out the official notice that that's...they probably mention options that are available. And also on the

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

April 13, 2005 LB 673

same notice said, or other appropriate management methods are acceptable if approved by the county board. And this is when the...

SENATOR CHAMBERS: Here's what I'm getting at, Senator Louden. The county states a method. The landowner feels the county has been out here investigating. They've talked to people who know about this. The method they suggest is the one that I'm going to use. They have put more time into investigating it than I have. So the person follows the method that the county suggests and it doesn't work. Remember, the cost can be assessed...will be assessed the person and, if the person cannot or will not pay it, it's an assessment against the property. How many times are you going to let the county make a recommendation that turns out to be wrong, it doesn't work? Shouldn't they only get one chance to do that?

SENATOR LOUDEN: Well, I would presume so.

SENATOR CHAMBERS: So why don't we take away the county recommending anything and the county maybe saying, you may use any of these methods, but only have to do one of them?

SENATOR LOUDEN: Yeah, okay, you...on line 16, you mean you want to take away...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ..."recommended" or something like that? Is that what you're telling me?

SENATOR CHAMBERS: Either do that, or make it clear that if a person follows the recommendation of the county...

SENATOR LOUDEN: Let's see...okay.

SENATOR CHAMBERS: That's away from my amendment that I'm offering. I know you're not going to accept that.

SENATOR LOUDEN: Okay. I was going to say this...you're closing on your amendment, FA162. Right?

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

April 13, 2005 LB 673

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: Yeah.

SENATOR CHAMBERS: But I'm...because I know your attitude on that, I'm talking about something else that would lead me to my...that caused me to offer my amendment. If a person does what the county recommends and it doesn't work, shouldn't the person then be off the hook and there is no more demand the county can make of the person, even if the animals are still there carrying on?

SENATOR LOUDEN: Probably for a period of time.

SENATOR CHAMBERS: Thank you. That's all I will ask you because the time is running out. But the point I'm making, and I'll make it for the record, the county should not be allowed to continue stacking up costs on the unwilling landowner. The landowner didn't want to get into this program in the first place, but the county...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President. I would ask for a call of the house.

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

CLERK: 16 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. The house is under call. All unexcused senators please report to the Chamber. Senator Schimek, Senator Kopplin, Senator McDonald, Senator Baker, Senator Thompson. Senator Schimek, Senator Kopplin, Senator McDonald, and Senator Thompson. The house is under call.

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

April 13, 2005 LB 673

Senator Thompson and Senator...Senator Schimek. All members are present or accounted for. Senator Chambers, how did you wish to proceed?

SENATOR CHAMBERS: I would like a roll call vote on this one.

SENATOR CUDABACK: Roll call has been requested. Mr. Clerk, please call the roll on the question.

CLERK: (Roll call vote taken, Legislative Journal pages 1194-1195.) 3 ayes, 24 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The motion was not successful. FA160 was not adopted. Mr. Clerk. I do raise the call first.

CLERK: Senator Chambers would move to amend with FA163. (Legislative Journal page 1177.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA163.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, on page 1, in line 4, strike these words, "Black-Tailed Prairie Dog Management," and insert "Dump the Responsibility of the State of Nebraska onto the Individual Landowner." That's what this bill is about. You all don't want to acknowledge it, but it's going to be in the Journal, printed, to tell the truth about this bill. And this then is how lines 3 and 4 will read: "Sections 1 to 13 of this act shall be known and may be cited as the Dump the Responsibility of the State of Nebraska onto the Individual Landowner Act." This talk about managing prairie dogs is bogus. You won't accept this amendment, but I'm not going away. My other amendments now are going to be offered for the purpose of mocking and taunting those geniuses who put together this language that you all love and think is so perfect and so well constructed. But right now I'm still in a good mood and am trying to accommodate my colleagues by giving the opportunity to properly label a thing what it is. So the record is clear, we're talking about wild animals. Wild animals belong to the state. The state owns wild

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

April 13, 2005 LB 673

animals. If there is something which is to be done to manage these animals, whatever that word will mean, it is the state's responsibility to do it. When Senator Louden first brought his bill, he had a different approach from the one in this amendment we're discussing. I'd like to ask Senator Louden a question or two.

SENATOR CUDABACK: Senator Louden, would you yield?

SENATOR LOUDEN: Yes, of course.

SENATOR CHAMBERS: Senator Louden, in your original offering of this bill, the county would have played a much different role in the whole process than would be the case under this amendment. Isn't that true?

SENATOR LOUDEN: In the green copy?

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: Yes, I think it did, I think after it got out of committee. I'd have to look through it again because it's been awhile back since I've looked through the green copy.

SENATOR CHAMBERS: I'm not going to ask you specific things, because that would be difficult for any of us to do. The county didn't like...the counties didn't like it because they didn't want the kind of involvement they would have had under the green copy. Isn't that true?

SENATOR LOUDEN: I didn't think that. I thought the duty of the county wasn't changed that much other than the fact that we put it so they could opt into the management program.

SENATOR CHAMBERS: Which meant, under the green copy, it wouldn't be an opt-in scheme, would it have been?

SENATOR LOUDEN: I...right now I don't remember, Senator Chambers. I'll have to...

SENATOR CHAMBERS: Okay. Then if the...

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

April 13, 2005 LB 673

SENATOR LOUDEN: ...I'll look.

SENATOR CHAMBERS: ...counties' role has not changed then they're still in opposition to this bill. Wouldn't that be true?

SENATOR LOUDEN: Say that again.

SENATOR CHAMBERS: The counties spoke against the green copy of the bill, didn't they?

SENATOR LOUDEN: Some of them did, yes.

SENATOR CHAMBERS: So if this...

SENATOR LOUDEN: NACO was one of the ones that protested because their idea was that there wasn't enough money in here to fund it and they was afraid they would have to do something. Most of them didn't understand that they didn't necessarily have to. But that was their concern, there wasn't enough money in here to fund it.

SENATOR CHAMBERS: And that was changed so that the counties don't have to fund it. Isn't that true?

SENATOR LOUDEN: Well, the counties really never had...never did have to fund it. They thought they had to be the ones to do the inspection. The county that I'm most familiar with, their idea was they thought they was going to have to hire a man and buy pickup to run around and inspect prairie dogs, and there was nothing in that bill at all to indicate that, and that was part of the reason they were against it. They were against something that wasn't even in the bill.

SENATOR CHAMBERS: So then you feel the counties now would be in favor of the green copy, since you've explained to them that they don't have anything to worry about. Is that true?

SENATOR LOUDEN: Well, we went ahead and worked with some of the county organizations to try and find something they were

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

April 13, 2005 LB 673

comfortable with. And, no, I wouldn't go back to the green copy now. I'd stay with the committee amendments we...and I think as we've worked on that thing and gotten...made some progress on it, I think that can be fine-tuned a lot better shape than starting all over again on the green copy.

SENATOR CHAMBERS: But if the counties were the ones who spoke against it...

SENATOR LOUDEN: Not all counties, now.

SENATOR CHAMBERS: ...and they...

SENATOR LOUDEN: Don't...don't...

SENATOR CHAMBERS: Well, NACO represents the counties. Is that true?

SENATOR LOUDEN: They...true, and I don't...and there was a lot of division on how that was done. So not all counties, because I have several counties in my area that are waiting for this to go through so they can implement it, especially where they have some Forest Service land and state-owned lands around.

SENATOR CHAMBERS: State-owned lands and Forest Service lands. The Forest Service would refer to the federal government or the state government?

SENATOR LOUDEN: National Forest Service.

SENATOR CHAMBERS: That would be federal.

SENATOR LOUDEN: State-owned lands I would consider state-owned lands.

SENATOR CHAMBERS: Okay. And you feel that the state, once this would be put in place, would begin to manage these prairie dogs on the state land. Is that true?

SENATOR LOUDEN: Okay, the way this is set up, and if we, as we progress forwards with this bill and the federal government at

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

April 13, 2005 LB 673

the present time or the Forest Service is having input statements into their...into their program that they're trying to implement or going to implement, these were parts that they would incorporate into their management plan or...

SENATOR CHAMBERS: Did they say that they would incorporate into their plan anything the state adopted, or you're assuming or hoping they would?

SENATOR LOUDEN: Okay. As we put this forward, this is what they want, is the input from it. And somewhere along the...I've been told, and I haven't looked up the law, not, but if some of these plans are adopted, the federal government has to...has to recognize them, is my understanding. I've been told that, yes, if we have a prairie dog management plan then there is something some places that the federal government has to recognize it. Now, having said that, that was part of the reason that we started forwards with this prairie dog management plan way last summer, is because while they were working on theirs and were still under the federal guidelines that they couldn't manage their prairie dogs, they kept telling us that Nebraska didn't have a management plan so there was nothing that they could coordinate from the state of Nebraska to control or manage their prairie dogs,...

SENATOR CHAMBERS: Now...

SENATOR LOUDEN: ...because that was part of the reason that this bill was brought forwards and that was part of the reason that we've written it in such a manner that it's optional for counties that don't have prairie dogs and that the federal government would have...play a part in it.

SENATOR CHAMBERS: All right. I didn't want to cut you off, but I have another question I want to ask you. Could you have your staff find for us whatever federal law or binding regulation says that whatever plan a state adopts must be incorporated into anything that the federal government comes up with and the federal government is bound by the state law in this area? If you could get that information for me then I'll accept it as being the case,...

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

April 13, 2005 LB 673

SENATOR LOUDEN: Okay.

SENATOR CHAMBERS: ...but I haven't seen anything like that and I won't accept it just on your say-so, not that you're being dishonest.

SENATOR LOUDEN: Not.

SENATOR CHAMBERS: But sometimes things might be read but they're not binding on the federal government, and I'd like to see some binding federal authority that binds the federal government to go along with whatever the state adopts.

SENATOR LOUDEN: Yeah.

SENATOR CHAMBERS: I haven't seen that.

SENATOR LOUDEN: Okay. Yeah, I would like to...

SENATOR CHAMBERS: So I...

SENATOR LOUDEN: ...I would like to have something written from them myself. Now, when do you want that? I mean, are you talking about...

SENATOR CHAMBERS: Well, we're going to be on this bill forever, so whenever you can get it.

SENATOR LOUDEN: Well, I've got plenty of time then.

SENATOR CHAMBERS: Yes.

SENATOR LOUDEN: So, yeah, I'll...we'll work on that and find out. (Laughter) Ever is a long time, you know. Ever, in fact, is a little bit longer than never. Anyway, we'll be working on this and, yes, we'll get to staff because we have contacts with the Forest...

SENATOR CUDABACK: One minute.

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

April 13, 2005 LB 40, 161, 361, 382, 401, 503, 551, 673
739

SENATOR LOUDEN: ...Service personnel in Denver and that sort of thing. It isn't that hard to find out that information.

SENATOR CHAMBERS: Okay. Now, here's what I'm going to get back to in terms of my amendment. Well, I'll put my light on because this time is just about up. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA163. Mr. Clerk, items for the record?

CLERK: Mr. President, Senator Beutler has an amendment to LB 40 to be printed; Senator Chambers, amendments to LB 673. And your Committee on Enrollment and Review reports LB 161, LB 361, LB 382, LB 401, LB 503, LB 551, LB 739 as correctly engrossed. (Legislative Journal pages 1195-1198.)

Mr. President, I have a priority motion. Senator Stuhr would move to adjourn until Thursday, April 14, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion...

SENATOR CHAMBERS: (Microphone malfunction)...call vote.

SENATOR CUDABACK: ...by Senator Stuhr.

SENATOR CHAMBERS: Roll call vote.

SENATOR CUDABACK: There's been a motion to do a roll call vote on the motion to adjourn until April 14, 2005, 9:00 a.m. Mr. Clerk, call the roll on the motion to adjourn.

CLERK: (Roll call vote taken, Legislative Journal page 1199.)
24 ayes, 6 nays to adjourn.

SENATOR CUDABACK: The ayes have it. We are adjourned.

Proofed by: AEG