

APRIL 25, 2005

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Pastor or Chaplain, rather, Patrick Davis, Alegent Health Pastoral Services, Omaha, Nebraska; Senator Thompson's district, which is District 14. Chaplain.

PASTOR DAVIS: (Prayer offered.)

SENATOR CUDABACK: Thank you, Chaplain Davis, for being with us this morning; appreciate you being here. I call the sixty-seventh day of the Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Any messages, reports, or announcements?

CLERK: Just one item. I have a communication from the state of Kentucky regarding House Resolution 191. That's all that I have, Mr. President. (Legislative Journal page 1279.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Speaker Brashear, you're recognized to speak.

SPEAKER BRASHEAR: Thank you, Mr. President. Members, if I might have your attention, please. I'm sure most of you think I always lose negotiations with the senior member. I don't feel like I always lose, but I want you to know that there has been a negotiation with regard to this and I have lost. But as the senior member would say, I, you know, nobody can take the microphone away from anybody and I will not begin this day without recognizing that as Senator Chambers begins his work here today he is the longest serving legislator in the history of Nebraska, and I think that needs to be recognized.

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(Applause) I would have done many things, you know. We could have had cake, (inaudible) cake, could have made him run up and down the center aisle, but this is what resulted. But it is a moment, it's a serious and pleasant moment, and we're at an interesting point in the agenda in the session and I did not want the moment to be unrecognized. Thank you, Senator Chambers, for all of your contributions for and on behalf of all of the people of the state of Nebraska and to the process.

SENATOR CUDABACK: Thank you, Speaker Brashear. And the Chair recognizes and congratulates you, Senator Chambers. We go to the first agenda item, General File, 2005 senator priority bills, the Bourne division. Mr. Clerk, LR 8CA. Inform the body where we stand.

CLERK: Mr. President, LR 8CA is a resolution offered by Senator Schrock proposing an amendment to Article I, Section 28 by adding a new Section 28. The resolution has been discussed on several occasions. Amendments have been offered. When the Legislature adjourned last Friday, Senator Chambers had pending FA41 as an amendment to the bill, Mr. President, as an amendment to the resolution I should say. (Legislative Journal page 629.)

SENATOR CUDABACK: (Visitors introduced.) Senator Schrock, would you like to take a moment and update us on LR 8CA?

SENATOR SCHROCK: Mr. President, members of the body, as you know, we've been on this proposal for a considerable amount of time. Certainly I would have rather seen us vote on this after about an hour or two of debate, but it continues. And I would note that Senator Chambers has distributed an article from the Omaha World-Herald. I did read it. It was in Saturday's paper. This is also the paper that says vote against gambling, but runs three large page ads for gambling every weekend in their magazine. And it's also the one who labeled us as the "dirty 30." And as Senator Schimek turns around and smiles at me, she was saying last year, just let the people vote. That's what we want to do today--let the people vote. I would say, if you're reading the article distributed, towards the end it says, "A constitution, rather, should contain the broad philosophical principles that serve as the basis for statutory law and court

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decisions." I will tell you that's exactly what LR 8CA does. It gives some broad principles in the constitution. And, Senator Chambers, if you want to talk about clutter, try Article XVIII for clutter. There's four pages of constitutional amendment for constitutional term limits parked there since 1996. I would say this is fairly brief, it's very concise, and I don't think it's cluttering the constitution. I would strongly disagree with the editorial in the Omaha World-Herald. We have an employee on our farm who's worked for us since last September. He's about 45 years old. He was in the Army and his job in the Army was being a sniper. And I'll tell you one thing, I am not going to challenge him to a shooting contest. If that deer is within 500 yards, he's going to shoot it and he's going to kill it. The man is good. He said he has a friend in Colorado. He said that friend in Colorado was a trapper. He said they never ever even thought there was a possibility that right could ever be taken away from them. And they did it in Colorado. The people who are criticizing what we are doing here would say this can never happen in Nebraska. And if it does, it's just in the constitution, they can take it out. I would acknowledge that. But this raises the bar, it raises the level of what we can and can't do. And so it would not be my goal to take a lot of time. I would hope most everyone has made up their mind on what they're going to do on this. And I do appreciate those of you who have supported it. This is also about sending a message, and I think it's a message we need to send in Nebraska. And to me it's a long-term message. This isn't short-term gratification. So with that, thank you for the opportunity to make a few comments this morning. I will be working with the Speaker to find out what the destiny of this is. And I hope that when the time comes I'll have the support necessary. Thank you.

SENATOR CUDABACK: Senator Chambers, would you like to review your FA41 to LR 8CA?

SENATOR CHAMBERS: Yes. Mr. President, it won't take long for me to do that. If you look on your gadget, you would see that this amendment would also protect creating, recreating, "conversating," and procreating. I don't think any explanation is needed to make clear what those four terms would refer to.

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Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Schrock. Your time now starts, Senator Chambers, as the first speaker, FA41.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, Senator Kermit Brashear forces me to be gracious this morning and acknowledge your expression of, well, your expression of something by applauding. But that was not on my agenda and I don't do anything that I do for anybody's approval, endorsement, or affirmation. Senator Brashear, being the Speaker, a grown man and able to use his time in the way that he chooses, chose to use it as he did. I'm not taking offense at it, but even in my community when people invite me to various affairs to give plaques and so forth, I do not go. I didn't stay in the Legislature all these years just to be the longest serving person. And had I known at the time I started that I would be here this long, I never would have run for the Legislature. The only thing that might give significance to my having been here as long as I have is the fact that I've not sat here like a knot on a log. I have been active, forceful, and effective for all of those years. So anybody who has a kind thought toward me because of that, thank you. I can sense it. You don't have to tell me. Mr. President, Senator Schrock and I are renewing our struggle. And despite what he said in criticism of past positions by the World-Herald, some of his comments with which I will agree, even the devil speaks truth on occasion. In this instance, the World-Herald's analysis is correct, and it is not the only newspaper which has taken this position on Senator Schrock's proposal. I handed out a rhyme, but I'm going to read it because I want it in the record to show just how silly I think this whole thing is. And if you all vote cloture, you can do it. This is titled "LR 8CA: A Paean to Nebraska Culture!" "Ain't got no di'monds; ain't got no gold / For them things, we ain't pinin' 'n' a-wishin'; / Nebraska has got some tremendous CULTURE: / HUNTIN' 'n' TRAPPIN' 'n' FISHIN'!!! / SISTINE CHAPEL? THE MONA LISA? / Maybe them things set Italians t' gruntin'; / We'll take Nebraska CULTURE any day: / TRAPPIN' 'n' FISHIN' 'n' HUNTIN'!!!! / Literature 'n' Drama 'n' Music 'n' Art -- / That keeps them

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snobs 'n' elitists a-yappin'; / Nebraska CULTURE is right down to Earth: / FISHIN' 'n' HUNTIN' 'n' TRAPPIN'!!!!!! / Nebraska CULTURE is a National anthem, / Settin' all fifty stars a-spanglin'! / Bringin' tears to patriotic eyes! / GOD BLESS HUNTIN' 'N' TRAPPIN' 'N' ANGLIN'!!!!!!" This LR 8CA represents your culture. Senator Schrock admitted that a correct rendering of his proposition would not say the culture or whatever of the people, but of some people. I cannot say I would not feel disappointed if the body supports Senator Schrock's proposal, but I would not be surprised. There are a lot of subplots and undercurrents associated with this proposal that Senator Schrock has brought to us. But I want Senator Schrock to know that when I was driving down here I lapsed into what might be considered sort of a trance. And like a person watching a television program, I saw Senator Schrock in a conversation...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...with a person I did not recognize. But Senator Schrock told this person that he'd rather be someplace else doing something that would be far more beneficial to him and would benefit his health than debating this issue with me. And when the person asked Senator Schrock exactly where would you rather be and what is it you'd rather be doing, and Senator Schrock responded, getting a root canal without the benefit of Novocaine. I'm opposed to what Senator Schrock is attempting. I favor my amendment. Thank you, Mr. President.

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

SENATOR STUHR: Thank you, Mr. President and members of the body. I haven't weighed in recently on this issue so I thought that I would do so this morning. I do stand in opposition to Senator Chambers' amendment. I do support the amendment that is before us. And I just had a couple letters that I would like to share with you in regards to the hunting and fishing and trapping experience that we are talking about. This one states: Although I'm not an avid fisherman or trapper, I'm very much an active hunter. I agree that hunting is quite a bit more than just going out and killing something. I have some of my best

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memories growing up as a child in Nebraska and hunting with my older brother and dad. We would spend the whole day out, just the three of us and our dog, trying to flush some quail or pheasant. Now that I'm older and have children of my own, one of the things that I'm looking forward to is to take my son and daughter hunting and spending some quality time with them. Another article stated that hunting is beneficial in many ways. It helps control the animal population, and I think we're all aware of that. It promotes love and concern for the land and its creatures. And it can be a wonderful bonding experience for family and friends. And many of the senators have shared those experiences with us on the floor. There's nothing quite like an early morning tramp through woods and tall grass or a long motionless wait in a tree blind listening for a wandering deer. This is nature close up. It engages all the senses, honing them to razor sharpness. It teaches resourcefulness, self-reliance and self-discipline, as well as outdoor skills. And I think that says a great deal about what we are talking about this morning. Also there have been some statements that we don't have to worry about this in Nebraska. Just to remind you that California has lost mountain lion hunting. Colorado has lost spring bear hunting. And if you think it can't happen in Nebraska, I believe you're wrong. The antihunters are already here asking that "catfishing" be stopped, and we talked about that earlier that there is a group that is asking that we no longer should catch catfish in Nebraska. So I stand in support. I think that this is one thing that we should let the people decide. And with that, I'll turn the rest of my time to Senator Schrock. Thank you.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Thank you, Senator Stuhr. Senator Schrock, you have 1 minute and 41 seconds.

SENATOR SCHROCK: Thank you, Senator Stuhr. The people I care about in the state when it comes to this type of activity are the people who belong to Pheasants Forever. They belong to Ducks Unlimited. They belong to Trout Unlimited. They belong to the Wild Turkey Federation. They belong to the Rocky Mountain Elk Association. They belong to the White-Tailed Deer

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Association. And working hand in hand with farmers, these organizations have done more for habitat for our wildlife in this state and more for fish restoration than any of us could ever do here in this body by legislation. I have a lot of respect for these people and they are the ones that are bringing this...

SPEAKER BRASHEAR: One minute.

SENATOR SCHROCK: ...issue forward and I am just a servant. Senator Chambers, I want to tell you my dilemma. The Omaha World-Herald writes an editorial opposed to what I'm trying to do. But I talked to the editor of the Holdrege Daily Citizen this weekend, and he's all in favor of what we're supposed to do. So what does the body do? Do we follow the Omaha World-Herald or do we follow the Holdrege Daily Citizen? That's the dilemma I have this morning. So I thought you might find that rather interesting. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Schrock. Yours is the next light. Would you care to continue? Senator Schrock waives the opportunity to speak. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I do not recommend that we follow either newspaper. I'm saying that the editorial in the World-Herald this...that appeared Saturday and which I handed out this morning is correct in its assessment and evaluation of this issue. There is no need that these words that Senator Schrock is trying to get into the constitution should be placed there. And I would like to ask him a question.

SPEAKER BRASHEAR: Senator Schrock, will you yield?

SENATOR SCHROCK: Yes, I will.

SENATOR CHAMBERS: Senator Schrock...

SPEAKER BRASHEAR: Senator Chambers.

SENATOR CHAMBERS: ...excuse me, Mr. Speaker. You have

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indicated from time to time your opinion as to the percentage by which this proposal would be adopted or approved by the voters if it were put on the ballot. Roughly what do you think the percentage would be favoring this if it were put on the ballot?

SENATOR SCHROCK: Oh, being the conservative individual I am, I would say between 70 and 80 percent.

SENATOR CHAMBERS: Senator Schrock, you stated several times that you're not worried about the Legislature doing anything to abolish trapping, hunting, and fishing. Is that true?

SENATOR SCHROCK: That is correct.

SENATOR CHAMBERS: You said your concern is that some of these groups, and I won't try to name them all, may launch a petition effort to get this done in that manner. Is that correct?

SENATOR SCHROCK: What they'll do, Senator Chambers, they'll take a little piece, like maybe trapping. They won't take the whole thing. They'll just take a little bit at a time. And so that's what my concern is.

SENATOR CHAMBERS: Will they do that through the Legislature then? On those little pieces, you don't have confidence in the Legislature standing against what they offer, or it's still the petition thing?

SENATOR SCHROCK: It's more the petition, although I don't know what this legislative body is going to look like 20, 30, 40 years from now. But I would rather suspect it would be the petition process that we need to be concerned about.

SENATOR CHAMBERS: Well, Senator Schrock, if it's your view that conservatively speaking at least 75 percent of the people in Nebraska favor what you're talking about, how would this group make inroads into that number so that it would turn around and go contrary to what you say they're going to do? That doesn't make sense to me. Does it seem realistic to you?

SENATOR SCHROCK: Senator Chambers, as the state grows from a

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more rural state to a more urban state, and most of the people who live in Lincoln and Omaha are one generation away from having an uncle or somebody that lives in a rural area or on the farm, but as those demographics change, then I think some of the attitudes have the potential to change. I'm not saying they will because there's a lot of people in Omaha and Lincoln who enjoy the hunting and fishing activities that we have in the state and certainly go to Lake McConaughy, Harlan County Reservoir, they're active on the open day of pheasant season, the opening day of deer season. And so I'm not as concerned about that as some may think.

SENATOR CHAMBERS: Thank you, Senator Schrock. Members of the Legislature, every argument that has been given to try to justify doing this has been run to earth. In the early days, Senator Schrock was concerned about the Legislature. The transcripts will demonstrate that and there have been news reports. I'm not condemning that or his moving to a different position. He wants to offer what he feels to be the strongest argument to persuade the Legislature. But none of the arguments is strong enough to justify this being done. They might give him cloture today. I think it would be a grave mistake for a number of reasons...

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...which I shall not detail here. We will just have to see how things proceed from this point onward if they proceed at all. This is not worth, when I say "this" I mean LR 8CA, is not worth the amount of time that has been expended on it other than the fact that an attempt is being made by myself and some other senators to protect the integrity and dignity of the Nebraska Constitution. I have conceded that it contains clutter already and it ought to be purged. But I've also emphasized we do not improve that document by adding additional clutter. Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Mr. Clerk.

CLERK: Mr. President, I have a priority motion. Senator Schrock would move to invoke cloture, pursuant to Rule 7,

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Section 10.

SPEAKER BRASHEAR: Senator Schrock, for what purpose do you rise?

SENATOR SCHROCK: I would like to have a call of the house and a roll call vote in reverse order, please.

SPEAKER BRASHEAR: You have heard the motion. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Have you all voted? Mr. Clerk, please record.

CLERK: 36 ayes, 0 nays, Mr. President, to place the house under call.

SPEAKER BRASHEAR: Members, the house is under call. Only authorized personnel should remain on the floor. Absent members not excused should report to the Chamber. Please check in. The house is under call. Would Senators Raikes, Foley, Mines, Preister, Thompson, and Bourne please report to the Chamber. Senator Preister, please report to the Chamber. The house is under call. Thank you. Members, we are voting on Senator Schrock's motion to invoke cloture. He has requested a roll call vote in reverse order. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal page 1280.)
36 ayes, 7 nays on the motion to invoke cloture, Mr. President.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. Members, cloture has been invoked. Senator Chambers' FA41 is now before you. All those in favor signify by voting aye. Senator Schrock, for what purpose do you rise?

SENATOR SCHROCK: I'd like a roll call vote in regular order.

SPEAKER BRASHEAR: Thank you. A roll call vote in regular order has been requested. We are voting upon Senator Chambers' FA41. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal

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pages 1280-1281.) 1 aye, 42 nays, Mr. President, on the amendment.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. The floor amendment is not adopted. Members, we will now proceed to vote on LR 8CA by Senator Schrock. The question is to advance or not to advance to E & R Initial. All those in favor signify by voting aye, those opposed nay. Have you all voted? Mr. Clerk, please record.

CLERK: 32 ayes, 9 nays, Mr. President, on the advancement of LR 8CA.

SPEAKER BRASHEAR: The measure is advanced. The call of the house is raised. Mr. Clerk.

CLERK: Mr. President, the next bill this morning, LB 40, introduced by Senator Redfield. (Read title.) The bill was introduced on January 6 of this year, at that time referred to the Revenue Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM0387, Legislative Journal page 505.)

SPEAKER BRASHEAR: Senator Redfield, you're recognized to open.

SENATOR REDFIELD: Thank you, Mr. Speaker, members of the body. LB 40 is a simple bill. It amends Section 76-901, 76-903, and 77-1327. It deals with the documentary stamp tax which currently is \$1.75. Under this bill, if it's accepted, it would then be \$2.25. This is a 50-cent increase in the documentary stamp tax and a little history is in order. Last year in revising our entire structure of delivery for services to those with severe mental illness, we had LB 1083. Within that there was a bill incorporated by amendment, committee amendment, which I had introduced last year which allowed the rental assistance for those with severe mental illness to be included as one of the purposes of the Affordable Housing Trust Fund. As a result of that, \$2 million a year were taken out of the Affordable Housing Trust Fund for other purposes and diverted to provide housing for those who had this need. We have certainly looked at the need of people who are in the regional centers.

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Sometimes we are spending up to \$500 a day. We know that by placing them under a roof in a rental that it may only be \$500 a month. So this was not wise and efficient use of the taxpayers' money and the overriding concern was where we could best deliver those kind of health services in the community near their family and friends and where they could continue to function in society, or whether it was best to put them in a regional setting. The bill was advanced last year. The bill was passed and adopted. One of the things that they talked about doing was putting an increase at that time of 50 cents into the doc. stamp tax. But because we had not had a public hearing on that purpose, I felt it was inappropriate to do so. So I asked the committee Chair to allow me to introduce a bill this year that would increase the doc. stamp tax by 50 cents, and that is the bill that is before you. It was heard in the Revenue Committee. It was advanced for your consideration. And the purpose of the bill is to make the Affordable Housing Trust Fund whole. Not only did we take out \$2 million a year for this purpose, but we also had a General Fund transfer of \$1.5 million a year for three years to deal with the fiscal crisis that we faced during the last budget crunch. So in fact we have taken a great deal of funding out of the Affordable Housing Trust Fund. And this is a bill which I intend to make them whole. That is the purpose. It is very simple. There is a committee amendment and I have an amendment following. Thank you, Mr. President.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Redfield. You've heard the opening on LB 40. As stated by the Clerk, there are Revenue Committee amendments. Senator Landis, as Chairman of that committee, you're recognized to open on AM0387.

SENATOR LANDIS: Thank you, Senator Cudaback. Members of the Legislature, this bill needed an operative date and the committee chose October 1, 2005. The committee amendment is that operative date. I would report that the bill came out 7-0. There was one present and not voting, that was Senator Baker. If you take a look at the committee statement, there's a long list of supporters of the bill. I happen to be one of them. I ask for the adoption of the committee amendment, and then I

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think Senator Redfield has been hard at work at coming up with another idea in an amendment that follows this one. Technical only, October 1 operative date, I ask for the adoption of the committee amendment.

SENATOR CUDABACK: Thank you, Chairman Landis. Mr. Clerk, motion to the committee amendments.

CLERK: Senator Redfield would move to amend the committee amendments with AM1227, Mr. President. (Legislative Journal page 1209.)

SENATOR CUDABACK: Senator Redfield, you're recognized to open on AM1227 to the committee amendments.

SENATOR REDFIELD: Thank you, Senator Cudaback, members of the body. First of all, I want to thank Senator Synowiecki. He has prioritized LB 40 and without that designation, this bill would not be before you today. And in the discussions I have had with Senator Synowiecki and also Senator Jensen, who coauthored this amendment, we have had a great deal of intense discussion as to the best use of the funds and how to designate them. What we discovered in our conversations was that, in fact, while we had set aside \$2 million through the appropriations process for rental assistance for those with severe mental illness, that, in fact, those dollars were still sitting in the Department of Economic Development. They found that they did not have the expertise in the health arena to actually set up the rules and regulations that they felt comfortable with. The Department of Health and Human Services said they were comfortable with the health arena, but they were not really experts in housing. And so they didn't feel that really they were the best distributors of these funds other than as a pass-through. In the conversations, we came up with a solution and that would be for HHS to be the pass-through for these funds to be distributed to the regions for behavioral health. And we know, in fact, that these people do know how to put a roof over someone's head and they do know how to deliver these community-based services. So the amendment that is before you contains some detail that we were asked to put in. First of all, it contains some definitions. On page 5, starting in line 7, you'll find that

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there are definitions. HHS asked us to put those in there. They felt that this made it very clear as to who these were for. It defines "adult with serious mental illness." It defines "housing-related assistance" to include rental payments, utility payments, security and utility deposits, and other related costs and payments. It also has a definition for "very low income," and that was at the request of HHS. The second thing it does is it divides up the funds. There was some concern. We know that any fund that we start has a growth. Any purpose that we find has a growth factor, and there was a concern among those who have been using the Affordable Housing Trust Funds that with the occurrence of mental illness in our society they may encroach and eat up that entire fund or certainly a great deal of that fund. So we divided the funds within this amendment that is before you. You'll find it on page 6 and 7 of the amendment, AM1227. It's Section 4. And it would designate that \$2.25 contained in the bill thusly: 50 cents to the county, as currently; 25 cents to the homeless fund, that is current; \$1.20 would go to the Affordable Housing Trust Fund; and 30 cents would be designated to the Behavioral Health Services Fund for rental assistance. The purpose is in Section 3 on page 4 of the bill. And because we have designated and broken the fund streaming, you will find that on page 3 the words "rental assistance" as an allowable use of the Affordable Housing Trust Fund is stricken. That is because now those dollars would flow through the Behavioral Health Services Fund. And then in Section 1 on page 2, lines 10 through 12, there is a one-time appropriation or transfer of \$2 million. Those are the dollars that I referred to earlier that are currently sitting in DED and we need to make sure that they would get them out to the regions, and they would be used to expand capacity. Since we would not want to do double the rental assistance in one year and not be able to continue that in following years, we thought the best use for those dollars sitting there would be, in fact, to allow them to increase capacity with some new construction. Those are the elements of the amendment. I hope that Senator Jensen and Senator Synowiecki may share with you their perspective on this amendment. We had a lot of players and a lot of input, and I want to thank everyone that was involved in putting together this amendment. I think it's a good solution, and I would ask your endorsement and vote in the positive.

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Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. You've heard the opening on AM1227 to the Revenue Committee amendment. (Visitors introduced.) On with discussion of AM1227, Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. And I do want to thank Senator Redfield for composing the bill and Senator Synowiecki for prioritizing it. This is something that we've been working on for some time. Actually the state of Nebraska did a statewide consumer housing needs study as prepared for...and it was prepared for the Nebraska Department of Economic Development, Nebraska Department of Health and Human Services. The study was completed in September of 2003, prepared by the Hanna:Keelan and Associates here in Lincoln. I do have a copy of that if anyone would want to see that. But what it did say is that there was a tremendous need for individuals with mental illness for housing. And also we took a look at the shelters that we have throughout this state and the tremendous need that they are providing. But housing is one of the most important components of people with mental illness. First of all, they are at a very low income. And so, as part of LB 1083, we tried to put some dollars into supporting the housing for people with serious mental illness, prolonged mental illness, and we did that as part of LB 1083. And I thank the body for that particular portion of providing a need. Along with that, yes, when we did that we actually did rob some money from the Nebraska affordable housing organization. And so through this bill now we are able to replace those funds and then also take some of those dollars and put those into supporting low-cost housing for people with mental illness. Now in one way I'm sad that this has taken so long to get to this point. But because we thought that Department of Health or Department of Economic Development could do this, they studied it for some period of time and then really felt that they're not in the position to look at those needs maybe perhaps as well as the Health and Human Services. And in January of this year they kind of put their...it was agreed that Health and Human Services should actually be the lead agency on this. And then now with this additional funding, we will be

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able to take these dollars, put them into housing immediately and there are contracts out there that are waiting to be entered into that the regions then will work through to find these individuals that need these services and then to provide those. So I think it is a win-win solution. We are taking care of the affordable housing. We are also taking care of those individuals with mental health needs, behavioral health needs that are in such a great need for these services. A lot of this is subsidy of rents to help these individuals get into a little better housing than what they can perhaps afford if they're on SSI, whether that be \$75, \$50 a month additional certainly would help. And then we will wrap services around those individuals. The services are not part of this bill. This is all done through the increase of the documentary stamps which comes from, yes, real estate transactions. But it's a small portion and I think it is a way that we can fund the needs of the citizens clear across this state that would certainly be an improvement for those citizens who are suffering from mental illness, for those who are in the very low income bracket and cannot sustain any better housing. With that, I'll return the rest of my time...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...back to the Chair, but encourage the support of the entire body for LB 40. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. Further discussion on AM1227, Senator Preister, followed by Senator Wehrbein and others.

SENATOR PREISTER: Thank you, Honorable President, friends all. I rise in support of the amendment, the committee amendment. I do serve on the Revenue Committee and appreciate the work of the committee. And I also stand in support of the underlying bill, LB 40. I, too, appreciate Senator Synowiecki's effort, as he works in this area, sees the need most directly, and certainly that of Senator Redfield who brings the bill to us from her concern and her long work in this area. I supported the concept and voted for it when it was originally brought to us, at that time a concept that came from Anne Boyle, who works on the

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Public Service Commission. And Anne saw the need and brought it to the Legislature, and the Legislature saw fit to pass and create the doc. stamp tax and go into the Affordable Housing Trust Fund. So by aggregating this money, we've been able to provide a lot of housing assistance to a lot of very needy people. I think that's important. It's a small amount of money that comes from each individual purchase and from the collective trust fund system of aggregating these monies, but it does a tremendous amount of good. As I support the concept, as I look at the issue, I come up with one area that concerns me, though. And I would like to ask Senator Redfield a question if I might. Senator Redfield, in the hearing in the Revenue Committee, you were there and there was a representative from the city of Omaha who also appeared and testified on the bill in support, but with some reservation. James Thele, who conducts the programs in Omaha, had a concern about the amount of revenue that Douglas County, in particular, pays into the fund versus the amount of revenue that the city of Omaha gets back in return. Senator Redfield, do you recall that testimony?

SENATOR CUDABACK: Senator Redfield.

SENATOR REDFIELD: I do.

SENATOR PREISTER: And, Senator Redfield, do you think that the current system of Douglas County receiving way less than half the amount of money that they even pay into the system compared to what they get back is a fair system?

SENATOR REDFIELD: Senator Preister, I supported an amendment in the committee because I do believe that there is a great need. When you have a large population, you certainly have more users. So I would support a more per capita-based distribution. And in the amendment you will find that there is a formula for the behavioral trust fund portion which would include a population base. And I would certainly hope that we see our funds distributed where the needs are greatest.

SENATOR PREISTER: Thank you, Senator Redfield. I would agree and I think the population base portion of the amendment does help to address that and it does help to bring some of those

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funds into a county that's having...or other counties as well, because I think Lincoln is in the same situation. Lancaster County pays more money into this fund than they get back as well. And I don't think the larger communities that are growing and that are generating many of these revenues are greedy in that they think they should get everything back that they pay in. But there should be some attempt at some equity so that they get at least much of the money back that they're paying into the trust fund and that's my concern. Just to give the body an idea, Douglas County paid over \$3.5 million...

SENATOR CUDABACK: One minute.

SENATOR PREISTER: ...into the doc. stamp tax in 2004 and received back only \$416,000, so not very large a return, less than a half a million dollars, when they paid in \$3.5 million. It was worse in 2003 when Douglas County contributed \$3 million into the fund and they didn't receive any funds back for their grants. So a very disproportionate system that I think does stand to have some correction. I'm not proposing an amendment now, but I think in this process it's something that we need to be aware of and perhaps on Select File we can have a more equitable distribution and an amendment that might help to address that. Thank you, Mr. President.

SENATOR CUDABACK: Thank you. (Visitors introduced.) On with discussion of AM1227, Senator Wehrbein.

SENATOR WEHRBEIN: Thank you, Mr. President and members of the Legislature. I want to talk a little bit about something else because...but it does have...pertains to this bill. I had a bill introduced, LB 565, which was called the Land Information System Program Act. And the reason I really wanted to make the body aware, this is a bill that...or the information in it has been around for a few years. And I was looking at some way to finance that, or several were, and it was going to use the doc. stamp, 50 cents of the doc. stamp. Realistically, we cannot raise the doc. stamp a dollar, and I recognize that. But I just wanted to call the body's attention to the fact that we do need some improvement and increase in information technology in the area of the land information system program. I did

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discuss with Senator Redfield the possibility of splitting this 50 cents that she's talking about. I understand and recognize that that is not a good process because the money is needed here. But we do have a problem, albeit in larger counties and to some lesser degree in smaller counties, of being able to update records statewide in the courthouses, specifically register of deeds and some of the other offices in modernizing their records. The purpose behind my bill, LB 565, was to provide access to money...provide money to go back to counties via grants for improving their technology in their county offices. I just simply want to call your attention to the fact that this...there needs to be progress made in this area. Some counties are doing that. Other counties cannot afford to do it because they're up against their levy limits. And so we are not making progress at the local level, specifically some larger counties, let's call them medium-size counties that are unable to afford to improve their technology and probably are having demands upon it. So I simply wanted to call your attention to this. I'm going to try to figure out something next year. This bill was not killed in committee. In fact, it was advanced...it's not been advanced but we're discussing it. And I will have to look at something else for another year, but it is something that is very important. But because we are going to probably be raising the doc. stamp here from \$1.75 to \$2.25, I think it's getting prohibitive to raise the doc. stamp any more. Perhaps this bill is more important than going with the information technology needed, and I won't go into details, but I do have more details if you want to look on LB 565 and look on the fiscal note to see where the money is going. Just simply to say we're going to have to look for some source. I reluctantly give up on Senator Redfield's doc. stamp bill for me, and I will be supporting her bill, but it hurts. Thank you. (Laugh)

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, I would like to ask Senator Redfield a question, well, some probably.

SENATOR CUDABACK: Senator Redfield, would you respond to a

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question from Senator Chambers?

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: Senator Redfield, your amendment would wipe out the committee amendment and the original green copy of the bill. Is that correct?

SENATOR REDFIELD: That's correct.

SENATOR CHAMBERS: And your amendment would then deal with the behavioral...tell me what it would deal with.

SENATOR REDFIELD: It actually would divide up the documentary stamp tax money, which would increase by 50 cents, into four separate funds. Currently you have 50 cents to the county, that remains the same; 25 cents to the homeless assistance, that remains the same; the documentary or the Affordable Housing Trust Fund would increase to \$1.20; and 30 cents would be available then to the Behavioral Health Services Fund for rental assistance for those with severe mental illness.

SENATOR CHAMBERS: So the Behavioral Health Services Fund is the only one where a difference in where the money goes will be effected by your amendment that you're offering now?

SENATOR REDFIELD: That would be the only new fund, but that purpose was established last year by statute in a bill that I introduced that was adopted in the committee amendment to LB 1083. So we are using it currently for that purpose. We would establish a fund for that purpose.

SENATOR CHAMBERS: Senator Redfield, is there anything in statute with reference to this Affordable Housing Trust Fund which declares that the money can be used only for the purposes stated in the act related to that fund, meaning these four divisions that you're talking about?

SENATOR REDFIELD: There is clear statutory language that delineates the purposes the Affordable Housing Trust Fund can currently use. And as of the adoption of LB 1083, we included

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one of the purposes to be rental assistance. We'll pull that out and put that in the 30-cent designation fund.

SENATOR CHAMBERS: Senator Redfield, how could money be diverted from this fund to help with what has been called the financial crisis if the money can be used only for the stated purposes that relate to the fund?

SENATOR REDFIELD: Senator, when we were in the budget crisis, there were a number of transfers from funds that had monies sitting in them. This is not the only fund that was raided during that time and they were transfers. And they were adopted by statute by the Legislature.

SENATOR CHAMBERS: Do you think something should be put in statute to guard this fund against similar raids and then the only way such a raid would be possible would be to strike that language and make it crystal clear that this fund is being raided?

SENATOR REDFIELD: I lost you there. I thought you wanted to put in language that would prevent it from being raided.

SENATOR CHAMBERS: Right.

SENATOR REDFIELD: And I would support that.

SENATOR CHAMBERS: And I'm saying if at a future date an attempt was made to do that, the only way it could be done would be to eliminate the prohibition to allow the raiding. Then it would doubly call attention to the fact that this fund is going to be put on the chopping block also.

SENATOR REDFIELD: I would support that.

SENATOR CHAMBERS: Currently, Senator Redfield, such a transfer could take place this session if we chose to do it.

SENATOR REDFIELD: Yes, it could and that's troublesome.

SENATOR CHAMBERS: Senator Redfield, would you be in favor of a

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change to this law to say that there would be a proportional return...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...from this fund so that the amounts paid in by a given area would be the amount received by that area from the fund?

SENATOR REDFIELD: I think we would have to be very careful in the wording. I don't know that you want to say this precinct gets the same dollar amount that was collected in that precinct, but certainly within the regions there is great need based on population and usage and the diagnoses within those regions. And I think that we would want to have a proportionate distribution.

SENATOR CHAMBERS: I'll stop now because my time is up for this time, but I have a few more things I'd like to discuss with you. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the Redfield amendment, Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. I very much appreciate Senator Redfield's work in this area and recognition of the value of this relative to those that are suffering with mental illness. When we passed LB 1083, which was our landmark mental health legislation authored by Senator Jensen, we very appropriately set aside \$2 million for the housing component of this reform effort. And it wasn't until I filed what I would characterize as an innocuous amendment to this bill back in February that I learned that the \$2 million that we had set aside, that out of that not one penny has gotten to a mental health consumer of services. It was after I found that out that I went to Senator Redfield and we incorporated obviously Senator Jensen into the dialogue and it became quite obvious to us that the Department of Economic Development does not have the specific expertise relative to this very unique population to adequately serve that population. I should remind the members of the Legislature that during debate on LB 1083

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this very issue was discussed. And as much as I hate to admit it, my seatmate here to the left, Senator Bourne, specifically during floor debate questioned Senator Redfield relative to the thought of diverting these funds and not giving them to the Department of Economic Development for the housing component of mental health reform, but rather wouldn't these funds be better situated with Health and Human Services given their more or increased or enhanced familiarity with this population? On the floor last year, Senator Bourne, in having a dialogue with Senator Redfield, indicated again his ongoing concern with giving this money for the housing component of mental health reform Department of Economic Development. He indicated that perhaps if, and I quote, agreeable to maybe an amendment on Select File if it seems if I can make a compelling argument to you that this is a more appropriate place for this, meaning HHS-run homeless assistance fund, rather than an economic development tool. That was a question to Senator Redfield. Senator Redfield's response on the floor was, I think that it might be preferable to wait until next year when we increase the documentary stamp tax and create that as part of that package. That would give us an opportunity to look at how the different departments are handling the funds and address it then so that it's in the right place. Well, I think Senator Redfield hit a home run in terms of her analysis of the situation for us to wait to see exactly how these funds are being spent and if they're done so appropriately and if they're getting in the pipeline to the consumers of mental health services, to kind of be cautious with this. Well, what we have learned is a year later now, more than a year later not one penny, not one penny of that \$2 million, which we very appropriately designated for the housing component of mental health reform, not one penny has gotten to a consumer. I think that the history on this has taught us that we need to streamline these things. We need to get these monies in the pipeline and we need to expedite this. We have consumers of mental health services that are now at our regional centers, particularly Norfolk Regional Centers, that are not being held there for therapeutic reasons. They're being held there essentially because they're homeless and they have noplac to go upon their discharge from the facility. So I want to again thank Senator Redfield for bringing this, for getting it on our radar screen again.

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SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: I think it's very important that we now have an opportunity to rectify this. I would challenge members of the Legislature to come up with a better way, a better method, of linking services and housing than to do it via our six regional behavioral health governing boards. I can't think of a better way to marriage the interest of the consumer of mental health services, services and housing, than to do it the way Senator Redfield is proposing in AM1227. I very much support the amendment. I was happy to work with Senator Redfield in its development, and I want to thank her again for bringing this. And I would encourage members to support the amendment. Thank you, Senator Cudaback.

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

SENATOR FLOOD: Thank you, Mr. President, members. I, too, want to commend Senators Redfield, Synowiecki, and Jensen for putting together what could have been a train wreck or disaster given all the different interests. This bill at first glance, before the amendment was put together, seemed to pit two very worthwhile state interests, that being affordable housing for the working poor against the behavioral health residential needs that Senator Synowiecki just talked about. A lot of members here may not be aware of what the Affordable Housing Trust Fund does, but it's a bricks and mortar program that gets the working poor into a house. And a house for the working poor is a dream come true. It's a sign of ownership, stability, comfort. It's a place to raise a family and you've got ownership. It's your own. That builds a better citizen and that connects someone to their community. One of my concerns is that two years from now somebody in this body or maybe a governor will come back and attempt to raid the bricks and mortar Affordable Housing Trust Fund again. And I think it's my intent that we stick to it and that we make sure this money is there for the folks that need it. My district and I'm sure across the state I see housing developments that are built with this money and it ties someone into the community. You want to talk about connecting folks to

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rural Nebraska or urban Nebraska, wherever it is, put them in a house, let them make that payment. Let them have the satisfaction of owning something when they're done. This is a bricks and mortar program that makes sense, and I hope that we protect this \$1.20. I think Senator Redfield did a great thing when she put this together. On the other side, Senator Synowiecki alluded to it, behavioral healthcare reform needs the money for this residential housing. If you don't do it here, you'll pay for it somewhere else. Your county jail will be housing these folks because the system won't have residential treatment available for them continuing care. In Norfolk Regional Center right now we have a number of patients, as Senator Synowiecki said, that are waiting to go to Region VI, but they don't have a place to go when they get there and the money may not be available. So this will help develop that as well. And I just want to stress the point that we need to protect the bricks and mortar. And I know the home builders certainly agree with this when it comes to the Affordable Housing Trust Fund. The last point I have, and maybe it needs a little discussion, the 50 cents that's reserved for the counties, it's one of my concerns that statewide we don't have register of deeds offices on-line. I know here in Lancaster County I can log on, I can find out who has the last deed of record, whether it was a warranty deed or a quitclaim deed or a survivorship deed. Across Nebraska we don't have that available. And I wonder if it wouldn't be appropriate to earmark that 50 cents, since we're tying down the money for those that are homeless and rental assistance in the Affordable Housing Trust Fund money and the behavioral healthcare money, what if we tied that 50 cents down so that the counties would use that for the information technology to get up and running so that county courthouses would be on-line when somebody checks a deed? That seems to make reasonable sense to me in this information age. It's also necessary to allow the public to find out who owns a parcel of property, to find out what the last assessed valuation was. I'm interested in taking that 50 cents. If we're going to give it to the counties in the form of state aid, then let's make sure it's used for a legitimate purpose outside of just the county general fund. Not to say that these funds aren't needed by the counties, but this would prioritize something that I know Senator Beutler has been

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talking about for some time and that is getting our register of deeds and county assessor's office on-line for the benefit of all Nebraskans. If anybody shares that concern or maybe sees value in earmarking that 50 cents, I would welcome the discussion, and I think an amendment would be appropriate. Thank you, Mr. President. I return the balance of my time.

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, I wasn't able to follow the discussion so some of what I'm interested in might have been covered. I would like to resume my discussion with Senator Redfield.

SENATOR CUDABACK: Senator Redfield.

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: Senator Redfield, this bill as it would exist now would cover only the Behavioral Health Service Fund and not any of the other funds by name that exist. Is that true?

SENATOR REDFIELD: It would increase the funds for Affordable Housing Trust Fund, but it does not change any of the distribution there.

SENATOR CHAMBERS: Would this be the place or would something have to be attached to each one of those funds to prevent each of those individual funds from being raided or money diverted for some other purpose? Or could it be done on the bill as you've drafted it, because you do talk about the distribution of that money to all of the others, don't you?

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: The amounts that they would get.

SENATOR REDFIELD: Yes. You could do it within an amendment to this amendment.

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SENATOR CHAMBERS: And I wouldn't try to do it right here because I would want it to be properly drafted. I had told you that I want to take some time with your bill and I'm going to. But I don't want to just take time, I want to get a clear understanding and a picture of what we have here. On page 2 of your new amendment, the one we have now, is the part that would require the State Treasurer to transfer this money from the Affordable Housing Trust Fund to the Behavioral Health Services Fund. Is this the \$2 million that had been discussed by others that was sitting someplace and not used?

SENATOR REDFIELD: Yes. That is this current year's appropriation that is sitting there that we want to make sure we get out and servicing people that need it.

SENATOR CHAMBERS: Is that money then currently reposing in the Affordable Housing Trust Fund but it's been authorized to be spent only by that other Department of Economic Development? Is that what the problem is?

SENATOR REDFIELD: The Affordable Housing Trust Fund is housed at DED, but within that Affordable Housing Trust Fund, through the appropriations process, we set aside \$2 million a year and this is that \$2 million.

SENATOR CHAMBERS: And when that money was set aside, it was supposed to be spent...

SENATOR REDFIELD: For rental...

SENATOR CHAMBERS: ...by DED?

SENATOR REDFIELD: For rental assistance, yes.

SENATOR CHAMBERS: And now it's going to go to the Behavioral Health Services Fund for that purpose?

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: Who is on the board, or whatever the governing body is, of the Behavioral Health Services Fund?

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SENATOR REDFIELD: Senator, you probably might want to address that question to Senator Jensen, because he has been far more involved in the coordination of those boards and how they function.

SENATOR CHAMBERS: Okay. Thank you. I'll ask Senator Jensen and then I might come back. Senator Jensen, would you answer a question or two?

SENATOR CUDABACK: Senator Jensen, would you yield?

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Senator Jensen, is there a separate board that manages the Behavioral Health Services Fund?

SENATOR JENSEN: No, there is not. That's the division of Health and Human Services. There's not a separate board.

SENATOR CHAMBERS: So why does not the Health and Human Services System manage that \$2 million which...first of all, if these funds are located in the Department of Economic Development, with this bill they will continue to be located there. HHSS, under this amendment, would administer the funds that will go for the housing pursuant to this Affordable Housing Trust Fund aspect...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...that goes to the behavioral...well, let me say they would...

SENATOR JENSEN: That is correct. They will administer those.

SENATOR CHAMBERS: Why can't they do that now?

SENATOR JENSEN: Well, when the bill, LB 1083, was passed, we had that portion going to DED, Department of Economic Development. And we thought that they're in housing that they would do that. But this is not really development of new

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housing as much as it was assistance. And they didn't have the system to check and see if individuals are qualified, what is their circumstance, that Health and Human Services does. And so...

SENATOR CHAMBERS: Before my time runs out, does this bill specifically say HHSS will manage this money?

SENATOR JENSEN: That is correct.

SENATOR CHAMBERS: And my time is out so I will stop now, but we may continue. Thank you, Mr. President.

SENATOR CUDABACK: You may continue, Senator Chambers. Your light is next.

SENATOR CHAMBERS: Thank you. Senator Jensen, without whatever the language is in this bill that would designate HHSS, DED was unable to request that HHSS assist them in this regard. Is that true or they just chose not to do it?

SENATOR JENSEN: Yes. And when I said division, I said division of Health and Human Services. It's really the behavioral health division that was created by LB 1083. In other words...

SENATOR CHAMBERS: Created by what?

SENATOR JENSEN: It is the behavioral health division that was created through LB 1083, would be the administrator.

SENATOR CHAMBERS: So when the word "division" is used, it's not HHSS that we're talking about but this one you just mentioned?

SENATOR JENSEN: It's division of mental...of behavioral health.

SENATOR CHAMBERS: And that division was in existence at the time DED determined that DED lacked the expertise to...

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: ...make use of this money. Why did they not

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ask that division? That's what I want to know.

SENATOR JENSEN: Initially?

SENATOR CHAMBERS: Yes.

SENATOR JENSEN: Well, you know, when we passed the bill we thought that perhaps...DED is always where affordable housing has been. DED is where housing has always been. Well, this was housing and then it was...however, it had a lot of other things along with it and that...the qualification of who would participate or who would be able to receive these funds, I think that better rely...or better is in the Health and Human Services behavioral health division.

SENATOR CHAMBERS: Was DED prohibited from using the benefits of this mental health division, or they just chose not to?

SENATOR JENSEN: They felt that it would be better if the behavioral health division administered this particular...these dollars.

SENATOR CHAMBERS: And they felt they could not ask the behavioral health division to do that without specific statutory authority, which apparently is being given in this bill. Is that correct?

SENATOR JENSEN: Well, this will be the statutory authority and I think it does; also, maybe would protect this more so that, yes, it would not be raided in the future.

SENATOR CHAMBERS: But here's what I'm trying to get at as to why we need to put this particular language in the statute, not the use of the money, and defining various terms. If DED was given...if this money was put in the Department of Economic Development because that's where affordable housing was located, and if there was to be money for people with behavioral health problems, whatever mental health, whatever that division was that existed, DED would have been able, if they chose to do so, to seek assistance and advice from that mental health division. Couldn't they have done that?

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SENATOR JENSEN: That probably could have happened. I do believe that this is a better solution, however.

SENATOR CHAMBERS: I'm understanding what you're doing now.

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Could DED...

SENATOR JENSEN: Could they have done it? Yes, they might have had to hire some people or consult and bring some more people in. I think Health and Human Services has a...behavioral health division, has a better opportunity to see these funds go where they're needed.

SENATOR CHAMBERS: Well, is this behavioral health services division a part of HHSS?

SENATOR JENSEN: Yes, it is.

SENATOR CHAMBERS: And HHSS and DED do not work together unless there's statutory authorization or direction to do so. Is that true?

SENATOR JENSEN: Well, they can work together. I think this lays it out a lot better.

SENATOR CHAMBERS: Thank you, Senator Jensen. Members of the Legislature, Senator Jensen and Senator Redfield have explained what they're attempting to do by this bill.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: But I'm still not clear on why it is necessary other than that DED was not of a mind to manage these funds in the way intended by the Legislature because DED felt it lacked the expertise. I need to ask Senator Jensen another question.

SENATOR CUDABACK: Senator Jensen.

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SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Senator Jensen, at what point did DED notify somebody in the Legislature that the money was not going to be expended in the way the Legislature anticipated because DED felt it lacked the expertise to do so?

SENATOR JENSEN: Someone in the Legislature...I guess I heard about it maybe in February.

SENATOR CHAMBERS: Did they contact you, or you heard it through the grapevine?

SENATOR JENSEN: I heard it from Department of Health and Human Services.

SENATOR CHAMBERS: But not anybody from DED.

SENATOR JENSEN: That is correct.

SENATOR CHAMBERS: So DED would have just left the money there and it would be still sitting today if you were waiting for them to say something.

SENATOR JENSEN: Well, no, I...

SENATOR CUDABACK: Time.

SENATOR JENSEN: ...they were concerned about the lack of inactivity.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on AM1227 to the Revenue Committee amendments? There are no other lights on. Senator Redfield, you're recognized to close on your amendment to the committee amendments to LB 40.

SENATOR REDFIELD: Thank you, Senator Cudaback, members of the body. I would like to take just a few moments during my closing

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to say that, in fairness, last year when we addressed this we thought that the Affordable Housing Trust Fund, which has always resided in DED and been distributed very well, was exactly the place for these funds. We thought they had the expertise and we knew that, in fact, the people who were most in need of these services were people who were, in fact, low income and, therefore, would qualify under the Affordable Housing Trust Fund rules. We did not realize how uncomfortable they would feel with determining the diagnosis or qualifications in other areas. So I believe that we did the best we could at the time in the discussions with the departments, both HHS and DED and the Governor's Office, in designating the funds last year. But without dividing the fund, as this committee amendment or as this amendment will do, there really was no way to designate part of the Affordable Housing Trust Fund to one department and one to another. This amendment does do that. It creates a separate fund for rental assistance. It would go through the Behavioral Health Services Fund. I ask for your adoption of the amendment. I believe that we have listened to all the parties and everyone is comfortable with the amendment as drafted. Thank you, Mr. Cudaback.

SENATOR CUDABACK: Thank you, Senator Redfield. You've heard the closing on the Redfield amendment, AM1227. The question before the body is whether that amendment should be adopted. All in favor vote aye; opposed, nay. Voting on the adoption of the Redfield amendment to the committee amendments. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of Senator Redfield's amendment to the committee amendments.

SENATOR CUDABACK: The motion was successful. The Redfield amendment has been adopted. Mr. Clerk, the next amendment to the committee amendments.

ASSISTANT CLERK: Mr. President, Senator Beutler would move to amend with AM1263. (Legislative Journal pages 1281-1282.)

SENATOR CUDABACK: Senator Beutler, to open on your amendment to

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the committee amendments.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I would like to open a conversation today on two separate topics. But they're both appropriate conversations at this point in time because of the nature of the tax in this instance and our circumstances as we sit here two-thirds of the way through the session or more and with the need to fund some big-dollar items down the way. So the one conversation is about earmarking funds. The other conversation is about where are we going to get the money for business incentives that I suspect most of us want to make? With respect to the earmarking of funds, I want to go back to Jerry Warner again, as we often go back to Jerry Warner, because Jerry Warner, before he was Chair of the Revenue Committee, for years and years and years was Chair of the Appropriations Committee. And with but one exception, he was adamantly against the earmarking of funds. And by earmarking of funds I mean taking a particular tax source and dedicating it to a particular use, as opposed to taking money from different tax revenue sources, putting it into the General Fund, and then making a legislative determination every two years about where that money would go, albeit usually it went to the purpose for which it was originally taxed. But the very great importance of Senator Warner's position on earmarking has rung true time and again as we've gone through the downside of revenue cycles. We get to the position where we don't store up enough money in the cash funds, in the Cash Reserve Fund, we don't store up enough money to hold us over to the good times again. And we don't do that for a variety of reasons that we can go back and discuss, but the fact of the matter is we never do. And so it became important to Jerry Warner that every time we got into the trough where there weren't revenues that we at least try to be in the position that we don't have to raise taxes. And so if the language in our statutes provided that money went to the General Fund or if it provided that even though it went to the Cash Fund it could be transferred into the General Fund at any point in time, then in the hard times we could take money out of different cash funds and preclude the necessity of raising taxes. Now the problem is today, for example, everybody is in favor of the healthcare rental assistance. Everybody is in favor of the homeless fund.

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Everybody is in favor of the affordable housing fund. I am very much in favor of all of those funds. And it becomes very hard to think of a cause you like and allow it to go into the General Fund. You want it, your natural inclination is to say, yeah, gee, we should earmark that. That's a really good use of that money. But then consider if you did that in all of the different funds that exist, some of which are not particularly important to you and you'd be okay with switching those into the General Fund, but then if you earmarked all those funds, your flexibility in dealing with a fiscal budget and particularly your flexibility in dealing with that budget in lean times means you might be forced in a position to raise taxes where otherwise you wouldn't have been. So Jerry Warner said no more earmarking. He went through a number of places where we earmarked funds and he knocked them all out. The only one he allowed to continue to exist was the Highway Trust Fund, and I don't know if he allowed that to exist because Jerry Warner loved highways, which he did, or whether he allowed it to exist because it got so far out there and became so established as a trust fund that any time you tried to take money out of it, it was called a raid. And I find it curious that my colleague, Senator Chambers, today is using the word "raid." In the context of this particular tax, let's talk a little bit about what this tax is. This tax you call a documentary stamp tax, a quaint set of words that really no longer pertains to anything except that there will be a tax at the point of sale when real estate transfers, when real estate is sold, and that tax is going to be per \$1,000 of a valuation. Does that sound familiar to you, a tax based on the price of what's sold? It's really a sales tax. It's a sales tax. A sales tax by any other name is a sales tax. But this sales tax is not 5.5 percent like the normal sales tax, or 7 percent, depending on where you're living. It's a sales tax of somewhere around .25 of 1 percent, .25 of 1 percent. It's not even 1 percent. It's .25 of 1 percent. But it's a sales tax. And I predict in the long term, many, many years, as years go by, what will happen is that this sales tax will increase until it's more like other sales taxes. But if you allow it to continue to be earmarked, as this process develops, then you're going to end up with a second Highway Trust Fund, and I submit to you that that would not be a good thing. When we went through the fiscal crisis of the last

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three and four years, and we asked for money out of the Highway Trust Fund to help us through this process, it was tough sledding, believe me. So why would we want to position ourselves and position future Legislatures and have them be faced with a large earmarked fund that cannot help us through the fiscal crisis? In our sales taxes, how many of our sales taxes, this is a sales tax, how many of our sales taxes are earmarked? One. Sales tax on motor vehicles goes into the Highway Trust Fund. It's the only sales tax that's earmarked. Shouldn't be earmarked, but it is earmarked. That's history. It's beyond our control even now, so strong is the lobby on that question. But it's bad policy and we ought not to go there with respect to this particular sales tax while we now have the opportunity to treat this like what it is, a sales tax. Put the money into the General Fund and then fund the programs every year, as we do out of the Appropriations Committee. And the big difference is that because it's General Funds, every year in the Appropriations Committee we will take a close look at whether that fund needs to be increased or not, and we'll compare it to all other funds and spending, and a decision will be made and a recommendation will be given to you and you can decide. But, generally speaking with regard to cash funds, if the amount of this revenue increases dramatically and you don't need that much money in there, it's harder to transfer it,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...whereas the Appropriations Committee might, if there were an excess amount in there, simply not appropriate so much to that purpose and put the rest aside in the Reserve Fund for future purposes, maybe in that area. So I would like for you to think carefully about the question of whether this money should be earmarked. I gave you a history, and it's been passed out to you, of how the documentary stamp tax was...what the processes it's gone through have been, and you'll see that originally it all went to the General Fund, that part that didn't go to the county. But slowly and surely two things happened. One, the folks who most want to use this money, of course, want to protect it to the maximum.

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

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Beutler. You've heard the opening on AM1263, which is an amendment to the committee amendments to LB 40. Discussion? Senator Redfield, followed by Senator Chambers and others. Senator Redfield.

SENATOR REDFIELD: Thank you, Senator Cudaback. Members of the body, I rise in opposition to the amendment that is before you. If you look at the second page of the amendment you see that transfers may be made from the General Fund to the Affordable Housing Trust Fund, the Homeless Shelter Assistance Trust Fund, and the Behavioral Health Services Fund at the direction of the Legislature. If we adopt the amendment, we would in fact be doing the exact opposite of what Senator Chambers was speaking of earlier. We would basically be putting this in the General Fund and leaving it at the discretion of the appropriations process whether in fact there was any money available at all for those in need of rental assistance or housing construction. My seatmate Senator Friend often stands up and talks about Economics 101, and one of the things he's often telling us is that in fact when you have an economic downturn you see a number of factors occur. One of the things you see is that people are out of work, and this is the time when the state most is in need of job creation. Construction projects create jobs. This is the time when we want our people to have the opportunity to build, whether it's affordable housing or indeed whether it's time to build a road, because it does keep our people working, and then feeding our General Fund with their taxes out of their salaries. Another thing occurs in an economic downturn. Generally, the interest rates decline. That's a good time to invest in infrastructure because money is cheaper. It's a good time to build homes. They don't cost as much. You can get more for your money. So I think in economics, when you look at the purposes of this fund, I think you would have to agree that it would be detrimental to our economy in the state in a downturn to in fact cut back on this purpose. You also have a greater need for housing at that time because, in fact, people who may lose a job or see a decline may struggle to maintain their housing. And so we would see, again, many more people who would qualify for these services. So I believe this is the opposite direction of the purpose of this bill. I certainly didn't offer a tax increase on the people purchasing real estate so that they

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could see it go into the General Fund. It is only that they may share their good fortune in providing housing for others who don't have the wherewithal. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Redfield. Further discussion on the Beutler amendment? Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator Beutler a question for clarification.

SENATOR CUDABACK: Senator Beutler, would you yield?

SENATOR BEUTLER: Sure.

SENATOR CHAMBERS: Senator Beutler, you're amending Senator Redfield's amendment, which was adopted. Is that...

SENATOR BEUTLER: Yes.

SENATOR CHAMBERS: So we should look at her amendment to see where yours would go, although you're adding new sections, and then you're changing some words relative to the General Fund. But because I couldn't get caught up on that, your aim ultimately is to take all the money from the documentary stamp tax and simply put it in the General Fund?

SENATOR BEUTLER: That's right. And then provide in the A bill to this bill that the exact amount of money that this bill would give to those four funds would be given by the A bill to those four funds, but it would be out of the General Fund, because the revenue from this tax source would go to the General Fund.

SENATOR CHAMBERS: But this money could be used by a Governor who would want to give more tax incentives to businesses, couldn't it?

SENATOR BEUTLER: That's the next part of my conversation, Senator Chambers.

SENATOR CHAMBERS: Oh.

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SENATOR BEUTLER: Yes, it could...it always...

SENATOR CHAMBERS: Okay. Thank you, Senator Beutler. Members of the Legislature, I'm going to say again, first of all, a tax, is a tax, is a tax. I've always said that. Whenever the government takes money from you and a sanction will be imposed if you don't give it up, it's a tax. They can call it a fee, a surtax, whatever they want to. It is a tax, and these euphemisms are designed to take away the political sting of voting to increase a tax. I have voted for increases in fees, which I would acknowledge were taxes at the time. I've agreed to vote for the increase in taxes, which were called taxes. I even voted to increase a cigarette tax after having said on this floor I will not do it, voted to increase some sales taxes, after saying I will not vote to increase the sales tax, because I had been persuaded that the plight of the state was such, with its revenues, its overall fiscal ill health, that taxes had to be increased and I voted to increase them. The Governor, who vetoed that bill, and we overrode the veto, came back this session and did not offer in his budget to take that money and give it back to the people, but he budgeted, with those increased tax revenues in mind, to have it both ways. I did not vote for those tax increases to help a Governor. I did not vote for tax increases to make money available to give away to these big companies, and I will not vote for Senator Beutler's amendment which would make it easier for those abominable bills which will be added to one bill which is an abomination, multiplied several times, that will be presented to us to give money away to these big businesses. There are people who cannot afford medical care. There are people who have trouble paying their utilities, ordinary everyday Nebraskans. I was talking to you all, when I was discussing Senator Schrock's LR 8CA, about the constitutional convention to draft the U.S. Constitution. The elitists were there. They wanted to build a system where the elitists would rule and what they referred to as the yeoman would do the voting and the drudge work. They'd do the work; the elitists rule. Nebraska has one of the lowest wage levels in the country. That's one of the reasons we're told that unemployment...

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...benefits are so low. With people keeping their nose to the grindstone, their shoulder to the wheel and all these other cliches, just trying to scrape by and eke out a living, this body is talking about making \$38 million available to these big shots who will have their Ak-Sar-Ben balls, look down their noses and in fact thumb their noses at the Legislature, because the body feels more concern about these big shots than the ordinary people who are scraping along, trying to make it. Senator Beutler's amendment I don't believe intends on his part to achieve that. He's looking at a broad principle, but in this case, because I know affordable housing does not hold a high level of interest by the Legislature as a whole, I will not support his amendment on this particular issue. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the Beutler amendment? Senator Flood.

SENATOR FLOOD: Thank you, Mr. President, members. I oppose Senator Beutler's amendment. The words "General Fund" don't do a lot for me when it comes to collecting these documentary stamp taxes, because I value very highly the aim of the behavioral health residential programs that are being set up in light of the Behavioral Health Reform Act passed last year, and the Affordable Housing Trust Fund, which is a bricks and mortar program that pays direct dividends back to Nebraskans. I very much disagree with this idea that we should give it back to the Legislature so that in tough times we can parcel it out to solve our problems. That's essentially why we're here today, because in 2003, Governor Johanns raided, used, appropriated, with our help, the money from the Affordable Housing Trust Fund to pay for behavioral health reform. We can't let that...we can't allow that to continue happening because the Affordable Housing Trust Fund is one government program that takes a member or a citizen of Nebraska that's working but can't afford a house and gives them the next step to buy into their community. I don't think that Senator Beutler at all disagrees with the Affordable Housing Trust Fund. We do disagree on this idea that the Legislature is in a better position than the individual

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communities across the state to see what's needed when it comes to finding homes for the working poor, so that's why I oppose the amendment. I do think that we should go a step further on this earmarking debate and require counties, that have not set up Internet sites with public records from the register of deeds office and the county assessor's office, to have that information available for the citizens of this state. In the long run, that not only steps us up in the information age; it will cost less money down the road to make those records available. So I see a benefit to being very specific about where this tax comes from, and there's nothing stopping the Legislature in 12 months, 3 years, 5 years from reappropriating the money that we are receiving from the documentary stamp tax. But at this time I just don't think that's appropriate, and I hope we never do go back and raid the Affordable Housing Trust Fund for any reason, because it's a bricks and mortar program that makes sense. I yield the balance of my time back to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Flood. Senator Jensen, on the Beutler amendment.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I reluctantly also oppose the Beutler amendment. Having been here through this last budget crisis and saw the raiding of funds, it does bother me a little bit. Yes, I want the...I want some flexibility for this body when we, however, go into those periods of downturn and depression, but this is a period of time where I think we absolutely need to ensure that there is housing for the poor; that our least of our citizens are...have the opportunity to find decent and respectable housing. You know, even our tobacco settlement dollars, which is it tax dollars? Well, it's coming off of...from the tobacco companies. When that came into the state and we set up the trust fund to allow \$50 million a year for healthcare issues, we had some unexpected fund..unexpended funds. And again the Governor, the last couple years, has tapped into those dollars and taken those away. Had those been present, perhaps there would have been some funds available from that trust fund also for housing, but it was not. Should we designate funds? I think that perhaps that we should. I recognize, and I was happy

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to have the fortune of being here in the body when Senator Warner was here, understood his position, but to take doc. stamps, which really come from housing transfers--yes, some are commercial transfers and other transfers--and put those into affordable housing is, to me, a somewhat painless way of helping our citizens who cannot afford decent housing. So...and I appreciate Senator Beutler's point here, but at this point in time I will not be voting for the amendment and would like us to carry on with the direction that Senator Redfield has laid out before us. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Further discussion on the Beutler amendment? Senator Beutler.

SENATOR BEUTLER: How soon we forget the fiscal crisis, how soon, and all of a sudden the individual programs out there take on these enhanced proportions. Senator Jensen, I would submit to you it is usually always the poor, in one form or another, who take the brunt of a cutback in a state budget, in part because decreased revenues, which is what business tax incentives are for our state budget, are really impossible to decrease in a short period of time and, therefore, are not effective tools in a time of fiscal crisis. So I know my problem here. My problem is to tell all of you that, notwithstanding the fact you love the Affordable Housing Fund and you love the Homeless Fund and you love all these funds, that the greater and better policy is to treat all of these funds equally under your annual appropriations process and distinguish them on the basis of annual needs, not in accordance with the amount that may haphazardly come in from a particular revenue source. But let me begin the second part of the conversation because it has to do with the fact that this tax is a sales tax. Compared to all other sales taxes, it's being levied at .25 of 1 percent, as opposed to 5 or 7 percent. You may not want to start thinking about it yet because it's still a week off and the Revenue Committee hasn't come forward with its package of business incentives yet. But let me assure you a crisis is in the offing. The Appropriations Committee has done what, of necessity, it must do in the absence of any identifiable business incentive package and it's identified the needs, the current ongoing needs of the state, and it has set

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aside \$20 million, \$10 million a year on an annual basis, for A bills, for new legislation, for the things that we want to do out there that we are not currently doing. And that amount disappears as A bills are passed, or it disappears as you decrease revenue sources. So compare the \$10 million a year that's available in this budget to the talk that we've heard so far that the business incentive package may be \$20 million a year, \$30 million a year, \$40 million, \$50 million, I've heard all the way up to \$80 million a year. Folks, the money is not in the budget for any business incentive package on the scale that's being discussed, so that means one of three things, or a combination of those three things. You cut spending in the recommended budget by huge amounts, and let me tell you that if you do that, you do two very damaging things. You shift spending back to the local government, which means increased property taxes; or two, you start cutting the university and the state colleges and the community colleges;...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...or three, you find another revenue source. You cut the budget, you find another revenue source, or you don't have business incentives. We're going to have business incentives. All of you want to do it. I want to do it. We know there's going to be tremendous pressure to have a substantial package of business incentives. So if you're not going to cut that down the other thing you can think about, God forbid, is increasing a tax to cover it. If there were a logical tax, a logical sales tax to increase, it would be the sales tax on real estate transactions. The uses to which we put that fund now--housing, affordable housing,...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BEUTLER: ...rental assistance--is similar to what we use business incentives for, and I'll talk about that in a bit.

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

SENATOR CHAMBERS: Mr. President, I listened to Senator Beutler

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with a divided mind. His logic is flawless. We are not dealing, however, in a vacuum where an economic principle, a budgeting principle can be laid out according to the rules of logic, then adopted. We are in a highly political and highly politicized set of circumstances. Senator Beutler said, and it makes logical sense, that these funds that constitute a revenue source should be treated equally for the purposes of budgeting. I'm oversimplifying, maybe not even stating exactly as he stated it. But as revenues are raised, they should go into the General Fund. Then, when budgeting time comes, make money available to each of those fund recipients on the basis of what their shown need happens to be at the budgeting time. That would be fine if all funds were created equal. It would be fine if the funds that go to the most vulnerable citizens had powerful ongoing organized lobbies. You hear Senator Beutler say that there will be a substantial give...I use this term, giveaway to the big shots. They've got the lobby. They're the ones putting the pressure. And because they can bring a political pressure to bear, the moral force of pressure that is supposed to reside in each person is going to be overwhelmed and eyes will be averted from our most vulnerable citizens in order that there can be the giveaways to the big shots who don't need it. Now, if that happens, again, it will happen over my strenuous opposition. And if a point is reached where it looks like the budget is going to be manipulated so that once again the poor and the vulnerable, the voiceless, the friendless are to be victimized by a supine, spineless Legislature, I'm going to use every delaying, obstructionist tactic I can to stop the budget from being enacted so we can come back for a special session. That's what I'm going to do. So let the business groups chortle because they control a majority of the people on this floor. At other times on other issues, for example, Senator Foley's that will be talking about assaulting a fetus that you can't even see, people will talk about moral values, family values, but they're one-issued, "one-ideaed" individuals. That's why I say their morality is a sham and it's bogus. They hide behind it because they don't want you to attack their issue. But I look at how they deal on matters such as this. We are talking about people in being, a society which pledges that at least the basic or minimum needs of the citizens will be taken care of by the government if they cannot, as individuals, meet those needs

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themselves; maybe not every need, but if we are going to scrimp on the poor, the widders, the orphans, the unemployed, the sick, mentally and physically, in order to give the chamber of commerce and those other vultures, buzzards and denizens, the scavengers, then you're going to do it, not over my dead body, because it's not going to be that easy for you, over my live,...

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...determined opposition. And since that's where we seem to be heading, I'm going to take time on every bill that comes before us. Even the eyeglass bill that's coming up, eye exam for kindergarteners, that's a bill on which I can take some time and I'm going to do it. Senator Beutler stated...although that wasn't his intent, I'm characterizing it...stated the lack of resolve, the lack of compassion, the lack of humanism that infects this Legislature. So, when the many will not do the job that needs to be done, the few or the one must just work harder, and that's what I shall do. I'm still, though, opposed to Senator Beutler's amendment. Thank you, Mr. Speaker.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB 193, LB 274, LB 276, LB 351, LB 361, LB 389, LB 389A, LB 503, LB 503A, and LB 739. Thank you. Mr. Clerk.

CLERK: Mr. President, Senator Thompson would like to print an amendment to LB 761. There will be a meeting of the Revenue Committee at 12:15 in Room 1524; Revenue at 12:15 today in Room 1524. (Legislative Journal page 1282.)

Priority motion, Mr. President: Senator Thompson would move to recess until 1:30 p.m.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. The motion before the house is the recess until 1:30 p.m. All those in favor signify by voting aye; those opposed, nay. I'm sorry. I beg your

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pardon. Those nay? The ayes it. We're in recess. Thank you.

RECESS

SENATOR CUDABACK PRESIDING

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

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

SENATOR CUDABACK: Mr. Clerk, any announcements?

CLERK: Mr. President, bills read on Final Reading on April 25 were presented to the Governor at 12:04 this afternoon. (Re: LB 193, LB 274, LB 276, LB 351, LB 361, LB 389, LB 389A, LB 503, LB 503A, LB 739.) That's all that I had, Mr. President. (Legislative Journal page 1283.)

SENATOR CUDABACK: Thank you, Mr. Clerk. It is 1:30 and past. We now go to General File, 2005 senator priority bills, the Combs division. Mr. Clerk, LB 70.

CLERK: Mr. President, LB 70 is a bill introduced originally by Senator Smith dealing with the Motorcycle Safety and Training Act. It changes and eliminates provisions relating to motorcycle safety and helmets. The bill was referred to Transportation, advanced to General File, has been discussed on the floor, Mr. President. When the Legislature left the issue last, Senator Jensen had offered AM1289 as an amendment to the bill. I did have a priority motion pending, Mr. President. Senator Chambers had moved to bracket LB 70 until May 17, 2005, and as a priority motion that is the matter currently pending.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Smith, would you like to give us a quick review or update on your LB 70,

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please.

SENATOR SMITH: Thank you, Mr. President and members. LB 70, as you know, is the proposal to require motorcyclists...or to enable motorcyclists, aged 21, with training or experience and protective eyewear, to decide for themselves whether or not to go without a helmet. And I will let Senator Jensen explain his amendments to...at least one of the amendments to LB 70. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. We will now go to the bracket motion. Senator Jensen, you may put your light on, if you care to. Are no lights on. Senator Chambers, did you want to review us on the bracket motion, please, if you would.

SENATOR CHAMBERS: To save time, Mr. President, I want to withdraw that motion.

SENATOR CUDABACK: The bracket motion is withdrawn. Senator Jensen, you may now have the opportunity to review your amendment that was offered earlier, AM1289. (Legislative Journal page 1256.)

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. AM1289 was introduced as somewhat of a...what I had hoped to be a compromise. It was to study the issue with a report coming back the last of this year. There was a great deal of comment on whose statistics were correct and what statements were correct. This amendment would set forth a study with five individuals being picked by the Transportation Committee, five individuals from the Health and Human Services Committee to take a look at the study, come back with a report, and then the Legislature would take action upon this next year. That's, in essence, what the committee amendment does...or, excuse me, not the committee amendment, AM1289.

SENATOR CUDABACK: Yes. Thank you, Senator Jensen. We are now going to an amendment to this amendment. Mr. Clerk, please.

CLERK: Mr. President, Senator Smith would move to amend Senator Jensen's amendment with FA182. (Legislative Journal page 1278.)

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SENATOR CUDABACK: Senator Smith, to open on your amendment to the Jensen amendment, on FA182.

SENATOR SMITH: Thank you, Mr. President and members. AM1289, the Jensen amendment, sought to strike the safety provisions that I have worked hard for quite some time on. I am not quite certain of Senator Jensen's motives for striking the safety provisions and I will refrain from speculating as to Senator Jensen's motives. In some discussions prior to last week's debate, (laugh) I was led to believe that the compromise was something that it turned out not to be. That's why I could not support the Jensen, quote, unquote, so-called compromise, and that is why I filed FA182 that is basically part of the Jensen amendment. It restores some of the safety provisions in the green copy, all of the safety provisions in the green copy, and then it would be 60 days ongoing, the months of July and August ongoing, and that way...(laugh) that I'm giving up quite a bit there, not that I absolutely have to do that, but I am anxious to hear from Senator Jensen as to his ideas on this. I would have one question for Senator Jensen.

SENATOR CUDABACK: Senator Jensen, would you yield to a question from Senator Smith?

SENATOR JENSEN: Yes.

SENATOR SMITH: Senator Jensen, is it your intent to not allow a vote of 25 to occur?

SENATOR JENSEN: That is correct. On your...on LB 70, that is correct.

SENATOR SMITH: Okay. Thank you. Okay, so I'm a little bit more understanding of Senator Jensen's intent with the amendments and certainly we can deal with that as we need to. I am looking for some ways to hasten the process, but we will get to that when we get there. So I would appreciate the body's patience in this and I apologize that we're having to take up what I believe is an unnecessary amount of time to make a decision. And with that, I would encourage further debate and

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discussion, and certainly would ask you to vote in favor of this amendment if it comes right down to that. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. You've heard the opening on FA182, which is an amendment to the Jensen AM1289 to LB 70. Discussion on FA182? Senator Thompson, followed by Senators Jensen, Beutler, and Chambers. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I know Senator Jensen is mulling this over but I do have a concern about extending this to two full months. I think the compromise was to be able to adjust for this year and see how it goes, not necessarily statistically but...as Senator Smith pointed out, but just to see how it goes operationally, and to extend it for two months is, I think, excessively long. Future dates of the rally, which is the Sturgis event, this year they're August 8th through the 14th; the following year, 7th through the 13th; the year after that, 4th through the 12th...6th through the 12th; year after that, 4th through the 10th and so on. If people are riding their motorcycles to get to the rally, they can do it in the month of August. And I think an extension for two months is a lot. I also think the multiyear extension is a lot for us to commit to. But I would be willing to support Senator Jensen in the efforts that he made last week to go ahead, even though a lot of us are kind of purists on this thing, would be willing to do the month, try it, see what...see how it works operationally, see if we get any extra tourism dollars. I don't think we can collect the statistics dealing with safety because it isn't a long enough period of time to generate that, but we should be able to get the revenue fairly simply. So I'm opposed to the floor amendment and think we should stick to the compromise, as proposed by Senator Jensen. And I would yield any time I have to Senator Jensen, unless he would like the time to think about it.

SENATOR CUDABACK: Senator Jensen.

SENATOR JENSEN: Thank you, Senator Thompson and Mr. President, members of the Legislature. The Smith amendment to my amendment

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really...well, first of all, the amendment is drawn incorrectly. It says strike amendment one and insert--I don't know what amendment one really is--the provisions of subdivision (13), Section 60-4,182 with respect to motorcycle and moped protection helmet violations and then goes into the others, shall not be enforced during the months of July and August. That's in...that's forever, if that's the way the bill would advance, and it doesn't...well, I really don't know what the amendment says. Like it says, it says strike amendment one. Does that mean it strikes all the language in AM1289, or just what does it say? I would need some explanation on that. Also, you know, I don't know that Nebraska or any other state should make provisions to help out necessarily another state in their activity, whatever that is. And to make special provisions to allow more people to get up to Sturgis to an event in South Dakota, unless South Dakota is willing to share, if there is any revenue or sales tax or whatever else is gathered, I don't know that any other state has been willing to allow events to happen in Nebraska that would...any other state would do that in their own behalf. So I have a little bit of a problem with that as we move forward. Also, you need to know that we did run through the statistics. Certainly July and August, August, number one, is the largest...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...month for fatalities in our state and so to take out that month, July is a close number two, June actually is a little higher with 15 fatalities and July has 13, so it's very, very close, but...and then to do that every year, it's like saying...having an ice cream stand and say that we'll be closed in July and August, that you just wouldn't do that. I mean that's the time when it's most prevalent to sell ice cream or those type of products. I had offered to take one month to take a look at this issue and also to examine that in the amendment, but I think the study is very, very important.

SENATOR CUDABACK: We're now on your time, Senator.

SENATOR JENSEN: All right. Thank you, Mr. President. This is an issue and, yes, we have taken time on this and time that I

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think is unnecessary in that we've also been at this issue. We were at it a year ago. Certainly, if Senator Smith wants to call for cloture any time, I'm fine with that. I'm not going to argue with that. But at this present time there's really one issue here and it is injuries, and if there was some way that the state of Nebraska and the providers and the hospitals and the professionals could receive full payment without tax dollars of the citizens for injuries and deaths and then all the things that go along with that, I would go away. Be glad to. But I'm concerned about the expenses. I'm concerned about the deaths. I'm concerned about the disabilities, the brain injuries. And so at that point in time I just cannot vote for a repeal of the motorcycle helmet law, particularly when we can look back and we can say, yes, lives have been saved. And if we repeal it, lives will be taken, injuries will increase, that it doesn't take a rocket science to...scientist to come up with those figures. Are the helmets that everyone is wearing, are they...are they the best there is? Well, absolutely not, but any helmet, a piece of plastic...you know, as a matter of fact, a towel around your head, if you're sliding across a brick pavement or something, would give some help as compared to the bare skin that is also doing that. So there is protection with headgear and if it wasn't so, you wouldn't see it on bicycle riders, those who are in sports, and everything else. There is protection in helmets and to forego that, I'm not ready to do that and I would hope the body wouldn't either. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Chambers, followed by Senator Erdman, on FA182.

SENATOR CHAMBERS: Mr. President, I dedicate this to Senator Smith. (Singing) Cloture, cloture, hallelujah; cloture, cloture, hallelujah. (Laughter) Or shall we say (singing) cloture, cloture; cloture, cloture; cloture, cloture; cloture, cloture; cloture? Members of the Legislature, that's the way we're going to legislate, and I'm for it. I like Senator Jensen's attitude. You all don't seem to be so upset with him as you do get with me though, huh, because some of you agree with his position. I don't agree with his position, but I'm going to help punish Senator Smith and the other "cloturites"

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that I get a shot at. He just happens to be the first one. But I want to show him he doesn't know how to negotiate. He voted cloture twice. Now what he ought to do is go get those two lists and, out of those two lists, there are over 66 people, maybe the same person more than once but nevertheless he should be able to collect at least 32, but he's not going to get them. And Senator Jensen has learned one of my tactics. He's challenging Senator Smith. Do your worst. I'm asking no quarter; I'm giving none, because he knows he's got it in his pocket. I stand alone. I work alone. But I haven't been completely alone because others have spoken out. On this bill my position with reference to motorcycle helmets has always been against the state mandating it. The state has mandated that people wear helmets. Senator Smith is trying to mitigate that to some extent. When he started out, he was pristine, pure, unsullied, maybe slightly soiled because nobody is perfect, but generally unsullied. Then he crossed a line, which was a direct challenge to me. When people challenge me, I rise to the challenge. So now I'm going to do all that I can to deny him what he wants in this bill. He wants it enacted into law. I'm going to help stop it. I don't believe he's got 33 votes. He may not have 25. But what he can do is find ways to test the water without having to move for cloture, but he doesn't want to do that. So I'm going to enjoy watching him squirm, if squirm is what he's doing. If, on the other hand, he is philosophical and realistic, as I must be, there's a certain resilience that you develop. You accept whatever comes as being an event you could not forestall, but the happening of that event is not the end of all things. He will not get his bill, but he can get shreds of it. He can get enough fragments to be able to campaign on the issue of motorcycle helmets, having opposed the mandating of wearing them by the state, but argue that the Legislature is so unreasonable, as those who wear helmets have discovered, that he had to move in such a way as to obtain what he could. By obtaining what he could, he established that the current law, as it exists, is inadequate. The Legislature is just not willing to give up everything right now. He can get that, but Senator Smith doesn't want that. No, Senator Smith doesn't want that. He thinks because he is young and Senator Jensen, like me, has hair that is white...mine is gray, his is white...that he's a good distance up the trail, that...

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...Senator Smith can overwhelm and overpower him. But sometimes these cubs need to be shown a thing or two by the old bears. We didn't get as old as we are without knowing something about survival. Cubs may not survive this long, but what they can do is die tonight and be resurrected tomorrow, because that is the nature of youth. Things may look very bleak and life decisions should not be made under the emotions of a perceived defeat. So if perchance Senator Smith does not get his bill, he should realize it's not the end of the world. That's just one of those things which happens. He has seen me soundly trounced twice in a few days, but I don't quit. All it does is provoke me. And I'm going to have more to say, Mr. President. I know everybody is waiting with bated breath, but whether or not they are, I shall speak. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Going on with discussion. Senator Erdman, followed by Senator Schimek and others. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, I'm going to rise in some limited form of support for Senator Smith's amendment when, in reality, I took very great interest in Senator Jensen's opposition to it when part of it was his own idea. The idea that we wouldn't enforce the state law for a certain time period was actually his proposal in LB...or in AM1289, so I found it kind of interesting that he would mock or make light of Senator Smith's proposal, and then obviously he backed it up with the facts. The other argument is kind of unique, that somehow by passing FA182 or some form of repealing our helmet law that it somehow helps South Dakota. Senator Jensen, they're going to get there one way or another. That's not the point. The point is whether or not they go through Nebraska, and I think that's been consistent with what Senator Smith has always pointed out. To argue that the reason that we should adopt this and then request South Dakota give us money I don't think is to the level of the discussion or the capabilities of Senator Jensen's arguments. It doesn't make

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sense on its face. The idea that we would pass this, one, provides the opportunity for citizens of the state of Nebraska to make that informed decision on their own, after they had some form of education. The idea that Senator Jensen brought to us was that if we don't pass this that people somehow won't go to Sturgis. That's not the case. They're still going to get there. The question is whether or not they go through Nebraska or not. And to some, they don't want them to go through Nebraska. That is fine. For others, the argument that our current helmet law is something that should be protected at all cost is quite unique. We received an e-mail from an individual that talked about his purchase. He purchased \$170 helmet, which was certified by the DOT sticker on the back. It was manufactured in 1999. It was recalled in the year 2004. So essentially, he wore the helmet for five years knowing...or unknowingly that the helmet was actually useless. It was the towel around his head that Senator Jensen talked about, but in reality that the DOT tests showed that it would crack like an eggshell on impact. The comparable argument would be is if we ensure that a certain number of seat belts failed and we required individuals to wear their seat belt. We're not protecting a law that on its face...and Senator Chambers is actually right in this situation, hard as it is to believe, he's actually right that the current law is a sham. It flat-out is. There's been no attempts to improve that. On the federal level there's been no intent to fix that fact that the DOT only tests a certain number of helmets and, of those that they test, they don't meet the qualifications. We're trying to protect something that realistically provides no benefit except the towel that Senator Jensen talked about. So the real question is, why do we want to protect a law that doesn't actually accomplish the goal, and that is the protection of the citizens? We wouldn't support a law, Senator Jensen, that said that you had to have a piece of yarn tied over your shoulder for a seat belt, but yet we'll support a law right now that says that if you wear this helmet that has a DOT sticker on it and it cracks like an eggshell, somehow you're protected. That's not a comfortable position for me to defend. That's not a state law that I think makes sense, but that's where we're at. That's the reality of the law. That's the reality of the equipment that's available and that's the reality of the individuals that engage

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in the activity of riding a motorcycle. Riding a motorcycle without a helmet is not the inherently dangerous activity. It's riding the motorcycle. And the individuals that ride them know that they're going to take a certain level of responsibility and risk and, contrary to popular belief, they have the insurance. Contrary to popular belief they are responsible citizens, like Senator Johnson, former surgeons, like other individuals who are attorneys, that I have discussed on the floor from my meetings with individuals when we were in Mount Rushmore this summer. But we have this mentality that these people are irresponsible, that they're somehow second-class citizens, that they're not intelligent enough to make this decision.

SENATOR CUDABACK: One minute.

SENATOR ERDMAN: That is not the case, that is absolutely not the case, and had we listened to Senator Landis' speech the other day we would have probably gathered that. But here's where we stand. We have a law that is enforceable that gives people this warm feeling that somehow we're protecting people from themselves when, in reality, the thing that we're mandating does nothing to accomplish that goal other than the towel around the head that Senator Jensen pointed out. That's it, plain and simple. We would not accept it anywhere else, but in this group of individuals that we are not a part of collectively, we're not going to afford them the opportunity to do the same thing that we do in a vehicle, and that's to make the decision whether or not we wear the equipment. Thank you, Mr. President.

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

SENATOR SCHIMEK: Thank you, Mr. President and members. I would like to ask Senator Smith a question about his amendment, if I might.

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

SENATOR SMITH: Yes.

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SENATOR SCHIMEK: Senator Smith, I am just looking at it and I'm not sure exactly what it does. Could you help me? Now I heard Senator Thompson talking about it and her objection to it was that it's for...it looks as if it's for every year from now on, and I have that objection, too. But I'm not sure what the rest of it says. When it says provisions of subdivision (13) of Section 60-4,182 with respect to the helmet violations, and sections blah-blah-blah, what does all that mean?

SENATOR SMITH: I took Senator Jensen's amendment and I restored...and Senator Jensen said he didn't understand why I put strike amendment one and insert the following, but I was using his amendment as the basis. See, he struck the safety provisions. I restored the safety provisions. And then our discussions off the floor in the negotiation, I was never told that it was a one-year 30-day period. It was...it was discussed as a 30-day,...

SENATOR SCHIMEK: Right.

SENATOR SMITH: ...and shame on me, I guess, for thinking that it would be every year, but that was kind of a bait and switch scenario.

SENATOR SCHIMEK: Okay. Okay.

SENATOR SMITH: But nonetheless, there is...this makes it 60 days every year and it restores the safety provisions that Senator Jensen struck from the bill.

SENATOR SCHIMEK: Okay. I appreciate that. I really didn't...wasn't sure that I understood that. Well, I am not, as I told you, going to vote for this because I don't want to do it every year. I want to see what's going to happen if we do it one year, and even that I don't want to do, but I will do, and if we can reach some kind of a compromise. But to project it out into the future, I'm not sure I want to do at this point. But regardless of what happens to your amendment or what happens to the Jensen amendment, I do hope that we can find a way to reach this agreement. And, Senator Jensen, I'm going to vote for your amendment because I think basically I support the ideas

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in it, but I've discussed with you off the floor and I guess...I guess I need to say something on the record about it. I have a little bit of a problem, and maybe it's just me and maybe I'm not thinking this through well, but I have a little bit of a problem with the Legislature appointing a task force. And, you know, I guess my question would be is if this is going to be a legislative study, then maybe we should just make it an interim study resolution rather than creating a task force. But the task force actually will be composed of people who aren't legislators, obviously, and in fact some of them will be members of the executive branch of government, and it seems to me that it would be better to have executive branch involvement in that kind of thing. It's generally how we make appointments. But I could be wrong and I'm willing to listen to the arguments pro and con, but I just don't remember that we've ever had much of this in the past. If it's to be a task force, it's generally appointed by the executive branch of government, maybe the judicial if it involves the law and the judiciary, but I'm having a hard time recollecting...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...when the Legislature, other than last year (laugh) and another one of your bills, other than last year when we did it, I just don't remember it. So I would hope that maybe Senator Beutler or Senator Chambers or someone who's been here longer than I could speak to that issue. But I am going to support your amendment, but what I'm saying is, if we do adopt the amendment, I might want to come back on Select File and discuss that particular part of the issue a little bit more.

SENATOR CUDABACK: Thank you, Senator Schimek. Further discussion? Senator Johnson, followed by Senator Chambers.

SENATOR JOHNSON: Mr. President, members of the body, the other day when Senator Jensen proposed this amendment to me as a means of compromise, I gave him my very reluctant agreement. One of the things that I thought would happen with this amendment is that we would get a disproportionate positive effect of how wonderful it would be to have all of this economic development going through our state. My feeling was that there would be no

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question that the different groups would advertise to go through Nebraska this year so they can see what they're missing out on by not coming through. I balance that against the fact that if we could get a unbiased statistical analysis of what is going on and what these other states' data mean, not picking out just one here and there, but the fact of the matter is, is that every state, every safety organization, every medical group, every one of these, what are there, 30 or 40 in this state, 30 or 40 other ones national, every one of them has the same message. These terrible, terrible helmets are the number one safety device there is when the accident occurs. The proponents of this like to carefully frame their sentence so they say it has nothing to do with prevention, wearing that helmet. That's absolutely right. But once that accident occurs, every one of these organizations says this is the biggest single device that there is. So I don't know if I can support any of these. Senator Jensen, I'm...have told you privately that I'm not sure that I can support this anymore. What I'm afraid will happen is the same thing as what happened down in the state of Florida. Florida had a bill of \$190,000 for a department in one of the universities in Florida to study this and come up with what the actual statistics were. Their statistics were the same as what every other group said, is that not wearing helmets is the cause for an awful lot of deaths and severe injuries, particularly the brain injuries. The first thing that the proponents of removing the helmets said were it was a biased study and the lady didn't like cyclists. I would argue that she likes them a lot. She wanted to keep them alive and well. One other thing...

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: ...that we must remember, and it hasn't been mentioned on this floor to this period of time, we're talking about minors. We're only going to take the helmets off of the adults. What happens when you take them off of the adults? The minors take them off as well. This has, again, been shown nationally. It happens all over. Take the helmets off of the adults; those less than 21 will take them off as well. So it's a very important decision that we're making and, Senator Jensen, I'm obviously against the FA182. I'm not sure I can support the other one anymore either. Thank you very much.

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SENATOR CUDABACK: Thank you, Senator Johnson. Further discussion? Senator Chambers, followed by Senator Jensen.

SENATOR CHAMBERS: Mr. President, members of the Legislature, various individuals who are considered to be powers in English literature have written graphic descriptions of hell, but since none of them has ever been there, I'm not persuaded that what they say is true. There are people who've worn motorcycle helmets in accidents and died. There are people who have been without helmets, were in accidents and lived. So it cannot be stated as an absolute that wearing a helmet will prevent a person from dying, being killed, in an accident. It cannot be stated as an absolute that the absence of a helmet will guarantee that a person will die if he or she is in an accident. The argument by some is that anything between the head and the concrete is going to do some mitigating as far as harm, but if wearing a helmet will not prevent death, the towel that Senator Jensen has mentioned, that Senator Smith has memorialized, will not necessarily serve any beneficial function. I would like to ask Senator Jensen a question.

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

SENATOR JENSEN: Yes, I will.

SENATOR CHAMBERS: Senator Jensen, it would seem to me that agencies of the federal government, various state legislatures, these very prestigious and competent organizations and their members are willing to accept any quality of helmet, just so that something is on the head when a person is riding a motorcycle. When we deal with the reality of the situation, isn't that basically the case as it exists? Whether it's desirable or perfect or not is not what I'm asking. Isn't that, practically speaking, what the circumstances are today?

SENATOR JENSEN: Yes, to wear a helmet. Now, certainly other states, I understand, enforce a DOT helmet, where Nebraska doesn't seem to do that.

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SENATOR CHAMBERS: And the DOT helmet does not guarantee that a person will survive a crash, does it?

SENATOR JENSEN: Doesn't. No, there are no guarantees.

SENATOR CHAMBERS: Did you see that little handout I gave?

SENATOR JENSEN: Yes, I did.

SENATOR CHAMBERS: Do you think the helmet that that individual is wearing would be satisfactory and suitable in Nebraska?

SENATOR JENSEN: Well, on that little thing that he's riding, perhaps it would.

SENATOR CHAMBERS: Little thing?

SENATOR JENSEN: Well, yeah.

SENATOR CHAMBERS: That looks like a motorcycle to me.

SENATOR JENSEN: Well, it's a baby motorcycle.

SENATOR CHAMBERS: But it's a motorcycle nevertheless, isn't it?

SENATOR JENSEN: Yes. Now, wait, you got to understand this fellow that you got this picture of, he's a clown.

SENATOR CHAMBERS: He's a what?

SENATOR JENSEN: Clown.

SENATOR CHAMBERS: Why? Because he's wearing a helmet?

SENATOR JENSEN: No. (Laugh)

SENATOR CHAMBERS: Wearing a helmet makes one a clown?

SENATOR JENSEN: No, no, no, no, no. No. I mean, you know, it just says he's a Keystone Kop with the Tangier Shriners. Those are kind of clowns. I mean...

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SENATOR CHAMBERS: Well, it doesn't say that in my caption. I don't see "clown" anywhere in there and...

SENATOR JENSEN: No, no, I don't either.

SENATOR CHAMBERS: ...I don't see any makeup on his face either, if you ask me, unless you consider whiskers to be makeup, in which case I would have to fall under that category, which I don't accept.

SENATOR JENSEN: Senator, what is your repertoire of pictures and like these?

SENATOR CHAMBERS: Well, that came from the legislative review, which everybody gets a copy of.

SENATOR JENSEN: Oh, okay.

SENATOR CHAMBERS: I guess I read things and others don't. (Laugh) But...

SENATOR JENSEN: I hadn't read that one yet.

SENATOR CHAMBERS: ...but that was all I was going to ask you, Senator Jensen, to establish that the quality of these helmets is not at issue. So when these organizations and groups are just saying passionately...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...that they favor people having to wear helmets pursuant to universal helmet laws can be misleading. They are not looking at whether or not the device or item worn on the head is genuinely going to contribute to the likelihood of survival; just so something is on the head. The federal government does not withhold funds anymore. Nebraska apparently does not have any standard that is enforced consistently around the state with reference to the protective ability of these helmets. Oh, how I wish Senator Smith had not challenged me. I could help him. But I can't because he made that impossible.

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Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Jensen, followed by Senator Friend.

SENATOR JENSEN: Thank you, Mr. President. I just want to reiterate a couple things that I passed out. There was...there's one organization that wants to eliminate the helmets--ABATE--and I can understand that. And they're saying what they want is, they don't want to eliminate helmets, they want freedom of choice, freedom of choice. If they choose not to wear one, they don't want to wear one. If they choose to wear one, they will wear one. Then you look at all of the other organizations that say that helmets should be worn. And whether they're the right helmet or not, by Nebraska instituting a helmet law, we have reduced deaths considerably, considerably, not just a little bit but considerably. So the handouts that we put out, 23 Nebraska organizations, which by no means is complete, they represent just a few of them; represent well over 60,000 individuals, those organizations. Remember ABATE, I don't know how many they represent, but there are 32,500 motorcycles registered in the state of Nebraska in 2004. Certainly not all those are driven on the road at the same time, but that's what the registrants are. Then in 2004 there was a survey that was done by a recognized organization, as well as AAA did a survey and their numbers were almost identical, and not only in District 1 and 2, where I reside, but in District 3. Seventy-nine percent favor maintaining Nebraska's current helmet law, seventy-nine percent. Boy, any time you can get 79 percent of the vote, you've got something that most of the people will certainly agree to. I happened to go Friday night to a medical function and the statement that several of the individuals came up to me and said, why don't you have a few of those senators that are proposing that we change this law come to one of our ERs on a Friday or Saturday night during the summer; why don't you have one of them go to one of the rehabilitation centers that we have? And they really felt that it would change things tremendously. You know, it's interesting, here the medical community, which you would think would say, hey, this is going to bring profit into our organization; we've got an ER, we've got doctors, we've got nurses, we've got bandages; this can

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bring money into our institution and we can repair these people sometimes. And, yet, every single one of them, every single medical organization out there and every single medical entity, says do not repeal the helmet law. I find that very interesting. And I'm a contractor and when we had storms occasionally, hail storms, wind storms, I actually, yes, made money on repair of homes that were damaged. And so to say, well, let's not have any storms anymore, not that I could do that, but it was a way of...for contractors to make money, and certainly down in Hallam and other places where we've had tornados contractors have come in and, yes, they have made some money repairing those. But here you got the medical community saying, we don't want the business; yes, it's business, but it's business that we do not want. And they have been there and they've seen young lives come in and then be damaged. And then it is kind of interesting, when you stop to think about it, what Senator Johnson...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...was saying, that we're going to eliminate the helmets in Senator Smith's bill except for the youth. And yet, I've also heard arguments that the helmets aren't any good or that they will cause neck injuries. Are we saying then that the youth are expendable? I would certainly hope not. But I do know, driving down the street, are you going to stop somebody who is 20 years old to check and see if they've got a license, a motorcycle license, to find out what their age is to see if they're going to be wearing a helmet? Now, it would just seem to me that if we're going to have a helmet law it should be for everyone. Certainly I will go for anything that will cause training. The eyewear is very important. I happened to watch over the weekend an individual driving down the road with, yes, a helmet on but it was not face covering and his eyes were squinted. I don't know how he could hardly see where he was going.

SENATOR CUDABACK: Time, Senator.

SENATOR JENSEN: Thank you, Mr. President.

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

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, I've been listening and, you know, I guess off and on, however long we've been having this debate, and I'm trying to shake some of this stuff out and one of the things that's occurred to me, or actually this occurred to me a long time ago, was that there's probably no possible way I would hop on a motorcycle without a helmet on. That said, it's interesting that we've had, I don't know, four or five hours of debate, six hours, whatever we're at...wherever we're at now, about whether...about whether or not helmets save lives. I'm going to assume...I'm just going to say for the sake of this analogy that I'm going to give you, I'm going to assume that they do because we've all had experiences, we've all seen, I think, that that could be...that that is the case. But here's the analogy, and I've used it. I actually used this on Senator Maxwell last year. I've used it a couple times with some of the folks out here on the floor individually. I walk up into that north balcony and I stand right on the edge, up on that marble, and Senator Schrock is standing right next to me, and I said, Senator Schrock, Ed...I call him Ed...let's jump off of this balcony; it's a rush; it's fun; I've done it; let's jump off together. And he said, Mike, you're...you know, I'm...I kill prairie dogs; I don't jump off of...I don't jump off of balconies. And I said, Ed, trust me on this; you'll have a blast; all you have to do is do it once and you'll never go back; you'll, matter of fact, let's do it right now. Senator Schrock says, well, I don't know. All right, Ed, here's a helmet; I'll put one on too; now let's jump off the balcony. And I said, we'll be fine; what could possibly happen? By the way, you have to do a flip before you hit the ground. And Ed looks at me really in a perplexed manner and says, Mike, that's insane; I'd like to have that rush, I'd like to have that feeling, but I want to see my grandkids and I want to kill more prairie dogs. And he says, you take your helmet; I'm walking down; you go ahead and jump. Senator Erdman and others have brought up the idea, and to me it's fact, the inherent...the inherently dangerous part of this whole thing is riding the motorcycle. You give me a helmet and say...with the experience that I have, and say, Mike, go 70 miles an hour up 480 over to

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Creighton University; you might slide right all the way over into the trauma unit, because that's what it's going to take for me; I'm going to crash. What's the point of this whole thing? We've talked over and over again about how it's probably, probably unrealistic to ban dangerous behavior. Well, somebody has got to start. We can incrementally encroach on this. We can keep doing these type of things. Somebody has got to start. And the funny thing is, I've brought it up before, they usually start it in California or New York. If motorcycles are that dangerous, and I believe they are, Senator Connealy, let's jump off the balcony; I'll give you a helmet. To me, this plays out. I'm not going to do that. I could probably survive. With or without a helmet, I'm not going to do it. Let's ban parachuting. Let's...talk to my...I've talked to my brother, I've talked to other people that have parachuted out of airplanes. You never get used to that...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: ...ever. It's an inherently dangerous thing to do. Now, am I afraid of dying? I don't know, maybe a little bit, but I do know this. If I hop on a motorcycle and I'm going 75 miles an hour down the Interstate, helmet or not, I'm rolling the dice. Even though we don't gamble in this state, I'm rolling the dice. Thank you, Mr. President.

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

SENATOR JOHNSON: Mr. President, members of the Chamber, you're absolutely right. If you're going down the Interstate, going 75 and hit a bridge abutment or something like that, there is no helmet, there never will be a helmet, that helps that. As a matter of fact, what happens is your heart keeps going and the attachment to your heart stop, and the two separate. But that's not what we're talking about today. We're talking about the type of injuries that do occur. The statistics are there. We just keep ignoring these statistics. We want to talk about something else. If I didn't have a statistical argument, I'd talk about something else too. The numbers are there. Every group says they're there. Now let's talk about something else here for just a second. One of the things that we keep hearing

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about is freedom. It's my right. It's in the constitution. Don't bother me with the facts. It's my head, my brain; I can do with it whatever I want. What did the United States Constitution have to say...or the U.S. Supreme Court have to say about this? Something kind of interesting: From the moment of injury, society picks the person up off the highway, delivers him to a municipal hospital and municipal doctors, provides him with unemployment compensation. If, after recovery, he cannot replace his job and if the injury causes permanent disability, as Senator Kruse said, to the cost of over \$200,000 a year, may...the public assumes the responsibility for this person and his family's sustenance for the rest...or possibly for the rest of his life. We do not understand the state of mind that permits the plaintiff to think only of himself is concern when he has one of these accidents. How many of you watched TV three or four weeks ago, played out almost 24 hours a day in Florida with the Terri Schiavo case? Now Terri Schiavo's brain...severe brain impairment was caused by something entirely different, but let me assure you this is the type of injury we're talking about--a severe brain injury. Doesn't make much difference which way you get it. Did that affect only the individual? My goodness, no. We were all caught up in this terrible tragedy. What was the right thing to do? I'm not here to talk about whether the right thing was done or not, but why in the world do we want to create more Terri Schiavos in Nebraska when we don't have to? I don't understand that. That's the one argument that is just beyond comprehension when we grant this freedom. How many brain injuries will this bill cause? I don't know. I don't know. Over a period of time, it's certainly going to cause some. Do we believe these statistics that we were given that the total cost to the taxpayers in Nebraska is around \$50,000 a year...

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: ...for everything, or do we believe Senator Kruse, who personally went up to Omaha, went to one of these rehab facilities and found out that for the severely injured ones it's over \$200,000 a year? A week or so we were talking about the economic development for rural Nebraska. One case like this three years in a row funds our rural economic

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development package. Which would you rather have, the safest motorcycle drivers in the world, or some of the least safe? I don't know what more you can say. The conclusion is obvious. If I was...

SENATOR CUDABACK: Time, Senator.

SENATOR JOHNSON: ...a judge, this would be a directed verdict. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator Baker, on FA182 to AM1289.

SENATOR BAKER: Thank you, Senator Cudaback and members. I was not going to get involved with this discussion again, but when we start talking about statistics and proponents of the bill not bringing them up, I go back to the hearing and...on this LB 70 and the one statistic that was never rebutted by anyone in the committee, and I asked the question of several opponents to the bill, was how do you account for us? I'm not going to argue specific numbers, but we have the highest fatality rate per 10,000 motorcycle registrations of any state in the Midwest, and we're the only one with a helmet law. And it just haunts as to why that statistic. And you can tweak the numbers a little bit, but we still have the highest rate by far. And I want to answer several questions here. I'm going to ramble a little bit. I am one of those people that brings those injured motorcyclists and drivers to the ER room. I'm an EMT. I carried my pager all weekend. Didn't have any motorcycle calls, thank goodness. But I am one of those people who picks the folks up in the ditches, mangled; tries to get their body parts put back together where we can get them to the ER and then they have the nice sterile environment to work on, in ER. And I was reminded about another motorcycle crash that I worked and it was a severed ankle. Helmets on the driver's (inaudible)...it was a passenger that had a severed ankle cut off by the chain on the motorcycle, and it was cut off just like you took a chain saw. And, luckily, when we got there the ankle was in a bucket of water...or the foot, but it was cut off at the ankle. I think I mentioned one compound fracture of the lower leg, fracture of the lower leg, and I remember that call well because it was a friend that said

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don't...a female, for goodness sakes, don't cut off my designer jeans. But I bring those people into the ER. I'm there, first person to render aid to those victims usually. If you want to talk about aid to victims, I'll tell you what's tough for me is having an alcohol-related crash who kills the innocent person and the drunk walks away. If you want to talk about lowering fatalities and problems, let's talk about alcohol, and I have had those accidents where the drunk walks away, the innocent victim driving down the road. And I have to admit I was involved in one of those as the innocent victim last summer. Run off the road by a drunk driver, subpoenaed. At least they found the person guilty of a second offense drunken driving, but no one was killed in that particular incident that I was involved with. What do we need to do? I'm going to go get my motorcycle endorsement on my driver's license and I may do it this week, but a motorcycle safety beginning rider's course. My point is education is what's lacking here and why we have such a high death rate per 10,000 motorcycle...registered motorcycles. This class starts on a Friday evening. First place, it costs \$150 to enroll, 12 students per class. It's conducted by Southeast Community College here in Lincoln, 8800 O Street, Room S4. Friday evening, introduction to motorcycling, preparing to ride; Saturday, all day Saturday from 6:00...can this be right...no, 6:00 to 8:30 p.m. Friday, and on Saturday I think it's from 8:00 a.m. to 4:00 p.m., and on Sunday it's 7:00 a.m. to 3:00 p.m. Saturday's, though, agenda is motorcycle familiarization, using the friction zone, starting and stopping drill, shifting and stopping, adjusting speed and turning, controls, skills practice, cornering, matching gears to speed, stopping quickly, and street strategies. That's Saturday's agenda. Sunday's is limited space maneuvers, pressing to initiate a lean, cornering judgment and negotiating curves, stopping quickly in a curve, obstacles and lane changes, and avoiding hazards. And reading over the manual to take the driver's...the written test on the motorcycle permit, there's all sorts of helpful hints in there, too. What are we missing? It's education. But I've said continually, from the time we started debate on this bill, if we're going to get the education in here we have to allow some freedoms. And Senator Johnson is not correct in that driving is not a right. It's not in the constitution at all. It's not a right; it's a privilege. It's

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never been in the constitution.

SENATOR CUDABACK: One minute.

SENATOR BAKER: And this, to me, is a privilege. If you want to go through the course, have eye protection, be over 21, then you have the privilege of making that judgment whether you want to ride with a helmet or not. I think those people that I've talked to, have taken the course, understand the benefits of using a helmet. Most of them are going to ride with a helmet after they've taken the course. But in order to get this death rate down from whatever it is, it's high, get this down, we need to include in a motorcycle permitting process to include the training course. Just, to me, it's a no-brainer. Here's what we're short in our law. Now we don't have this in here, but in order to get it in here we're going to have to do some compromising, and that compromise is going to be allow people the freedom of making the choice whether they want to ride with a helmet or not. I speak from my own practical experience without ever taking the course. I'm not going to ride without a helmet.

SENATOR CUDABACK: Time, Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Byars, followed by Senators Thompson and Johnson. Senator Byars.

SENATOR BYARS: Thank, Senator Cudaback. I think we're kind of back where we were in the beginning. Senator Baker is talking about education. I just couldn't agree with him more, and that has been a constant theme of his remarks on this floor. In addition to education, he thinks compromise includes making us less safe by taking away the helmets. This is where we disagree. I can easily, easily go with him and trust him, and believe he's absolutely correct--more education is going to save lives. More education is going to help motorcycle riders to understand that, yes, that helmet serves a purpose and it saves lives, saves traumatic brain injuries. It was interesting, and certainly not a scientific poll, but I think almost everybody in

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here peruses both the Lincoln and the Omaha papers, plus our local papers, but over the weekend the Lincoln Journal Star had their usual straw poll of the citizens on the street and asking them about repealing the motorcycle helmet law. And there were like six individuals that they asked the question of; five out of the six said no. It's logic that you should have helmets. These are people off the street. They haven't heard all our statistics and all our arguments. And the one person was adamantly for doing away with helmets. But I thought it was interesting. As you look at that thing, many times that is indicative of what the public has to say and what they feel on these issues. And then tragically what else did we hear about this weekend? We heard about a young man who was riding a motorcycle and he was doing it inappropriately, but he was doing it without a helmet. He was breaking the law. He crashed the motorcycle and he's in critical condition with what? Traumatic head trauma. Traumatic head trauma. No helmet. We can talk about education all we want. We've had an opportunity as a body to up or down vote doing that education piece, and those people who so strongly advocate education voted against it. I just think that we have to get this...unbelievably. The statistics show us very clearly that it is not only a lifesaver but a lifesaver for families, a lifesaver for individuals who are traumatically brain injured and who live with these conditions the rest of their life, and their family members also; not to talk at all about the economics of the situation. And I just, Adrian, that you know it looks like a compromise, these two months. I thought, after we had the debate at the end of last week, that they didn't ride to Sturgis except in July, when we had August in Senator Jensen's compromise, but I see now that's when they go. So I guess maybe we could defeat your amendment and go to Senator Jensen's amendment where we have the...give them a month to try it out in August and go to the study committee, and then we actually know whose facts mean what and we can come back to this body and, if that's what we need to do, and make decisions. But I'm for motorcycle helmets and I think we ought to keep them. Thank you, Mr. Chairman.

SENATOR CUDABACK: Thank you, Senator Byars. We're discussing FA182 to the Jensen amendment to LB 70. Senator Thompson.

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SENATOR THOMPSON: Thank you, Mr. President, members of the body. Since I've been in the Legislature, we've passed four major bills dealing with organ and tissue donation. I think three of them were mine and one of them was Senator Schrock's, and it gave me an opportunity to work a lot with the organ donor community and they refer to motorcycles, not all of them but a lot of them, as donor cycles. I guess if I were really...wanted to push getting more organ donors then I should be supportive of this bill, but I'm not. And I think there's a big difference. Senator Baker talked about a person who lost a foot, maybe they...I don't remember from the story if they bled to death or not, but if they survived they could get a prosthesis, they can walk again. But a head injury, a brain injury is someone who is going to need constant care for a lifetime. And we're seeing a lot more people riding motorcycles who are older now who may have...in addition to the younger people. So our numbers are going up and we're going to have greater challenges in our budget taking care of people who have been in this state for a long time, who will live for quite awhile. So even those 40-year-olds who are riding will still live for a long time in our nursing home, in our care facilities. This was good public policy when it passed. I sat on the Transportation Committee and on the Health and Human Services Committee in my beginning years in the Legislature, so I heard this from both sides. And with the committee I toured Quality Living in Omaha, which takes care of a lot of people who are the people who were injured without helmets, who are going to be there for a very long time because they're not that old when they get injured. As a member of the Transportation Committee, I heard all the testimony from people who would like to ride without a helmet and, you know, I understand all that, but we're deciding now whether to reverse a long-term public policy in this state, one that has kept our citizens safer, one that's kept fewer people from these very, very traumatic brain injuries, and I don't think there's anything that justifies changing that now. I suppose this particular amendment, which would expand to two months...that I passed out to the Legislature the rally schedule, if that's the reason we're pushing this, is for economic development purposes, that's when they would be coming through the state to get to the rally, would be in August. I don't see any reason to extend that to the month of July. And I do support Senator Jensen in

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his compromise, but in all reality I oppose this bill because I don't think it's good public policy. I agree with Senator Byars, we don't want to set the state back in terms of policy that keeps people healthy and gives their families the potential people who are saved by...from the severe head injuries, the trauma of the family and those who are trying to support them. So with that, I oppose this amendment, I don't think it should be two months, and support the Jensen amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Johnson, and, Senator, this will be your third time, followed by Senator Jensen.

SENATOR JOHNSON: Mr. President, members of the body, thank you. One of the things is let's get back to what I think we can all agree on. One is I think everybody says that we...they...goggles are a good thing. I think that there's no one in here that would object to having enforcement of the goggles. But education, I think this was another place where we can all agree. As a matter of fact, I think maybe the education doesn't go far enough, but at least let's get started with this and we can expand our education as time goes on. But let's not be fooled. Training and education are not the panacea. There's no question they will help prevent the accident, but there are many other parts to an accident than just you and your training. We're worried about the bug hitting a person's eye, but we don't seem to be worried about the deer running across the highway hitting you in the face. The other thing, I had an interesting experience a few years back. I was walking across Harvard University, particularly in the law school area, with a lady, acquaintance of mine, and she was showing me where she was going to school. The thing that I noticed were that all, or virtually all, of the girls were smoking. I said, how in the world can theoretically the smartest girls in the world at one of the most prestigious universities that there is be smoking? Oh, that's easy; they want to keep their weight down. So if you think that education and training is the answer, I don't happen to think it is. Where do we see binge drinking? Amongst college students. They're going to take more than the 20-hour course. They take that every semester and, yet, they're not above doing foolish things. Do we really think that some training is going to keep

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people from drinking and then hopping on their bike? No. Hopefully, with the training, we can get them to put on their helmet because it's the law and maybe save them and their families all the trouble that we've been talking about. How about Sturgis? I don't know. Do they...I've never been to Sturgis with the Motorcycle Rally. Do they drink up there? I don't know. I suspect a few of them might, with being so many people. Will they then not get on their bikes? Probably not. Why would they be any different than what we are down here? So let's just talk about some commonsense things that we can do. I don't think there's any question that the training will help. I haven't heard one...

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: ...word in this Chamber about not implementing the training bill. When Senator Jensen introduced his bill the other day, it was to preserve the training. We still need to preserve the training. Let's get that much done. I hope that the compromise will accomplish that. Let's get started with the training and do it now. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator Jensen, and this will also be your third time, Senator, followed by Senator Thompson.

SENATOR JENSEN: Thank you, Senator Cudaback. Members of the Legislature, just a couple things. Senator Baker had mentioned several times that Iowa is, on a per thousand miles, is much less than Nebraska on injuries, and of course I don't know what year Senator Baker was actually talking about, but in 2000 Nebraska's motorcycle fatality was 1.4 per 10,000 registrants, while Iowa's was 2.9 per 10,000. And, of course, that's one of the things that always happens, I suppose, if you pick out one year and make an example out of that. That was the reason for introducing this study. I was not...and in the study it wasn't all-inclusive, but it was just to do a study. I would hope that in this study that's what would have been taken care of. Again, on the Iowa situation, Iowa had a helmet law from September 1, '75, to July 1, '76. Fatality rates per 10,000 motorcycle registrants were 40 percent lower, 40 percent lower during that

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same period. Fatality rates during the helmet law were 30 percent lower than the same time in '76-77. That's, again, indicative. Oklahoma, each year approximately 750 persons are injured, approximately 30 die, approximately 82 percent of the persons killed are not wearing helmets. Approximately 70 percent of the nonhelmeted persons die from head injuries, compared to 36 percent for helmeted persons. And the study of motorcycle crashes injuries conducted in Oklahoma in 1994 found out that helmets were 70 to 75, excuse me, 60 to 75 percent effective in reducing moderate, severe and fatal head injuries. Nonhelmeted riders compared to helmeted riders were 2.5 to 5 times more likely to suffer fatal head injuries, 1.5 times more likely to require hospitalization and associated medical costs. It goes on and on. Again, why are we doing this? It's to allow a few people, a very small number of people compared with a state population, to go without a helmet, to take a risk and to increase that risk even more by not wearing a helmet. They call it a right to choose. They call it freedom to choose, whether they ride or whether they don't. It just doesn't seem any reason to me why the state of Nebraska should embark upon repealing of a law that has worked, a law that has saved lives, that will continue to save lives and reduce injuries. Senator Thompson mentioned the injury that occur. We can repair bones. It's just amazing what doctors are able to do, and they can repair injuries and lungs and everything else, but the brain is one that has been very, very difficult to repair, and those brain injuries are long-lasting and even many times after the trauma, 15-20 years later, there are instances where injury will occur or manifest itself in a different manner. This is not the time to repeal a helmet law, particularly without a study. You got to remember, Senator Smith's amendment takes July and August of not wearing a helmet into the foreseeable future...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...without any time period, without any study, and I just think that that would be the wrong thing to do, particularly when August is the highest time of the year for injuries. Why would we open that window? Why would we open that door? I was willing to do it for one month, one year to examine the effects, and I don't see any reason whatsoever just

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to open that unrestricted for the years in the future of July and August. Too many injuries, too many deaths will occur; no reason to go there. With that, Mr. President, I'll return the rest of my time back to the Chair.

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

SENATOR THOMPSON: Thank you, Mr. President, members of the body. Last week the National Highway Traffic Safety Administration released a report showing that more than 3,900 people died on motorcycles in the United States in 2004, up 7.3 percent from the year before, according to preliminary highway safety numbers, and that's the seventh straight year of an increase in motorcycle deaths on U.S. highways, for an 85 percent overall rise since 1997. In fact, the American Motorcyclist Association spokesman person said that they are lobbying Congress for \$3 million for a comprehensive nationwide study of motorcycle crash data, something that would be very helpful to the Legislature given the rise in the numbers, but also Senator Jensen's idea of getting the numbers in the study is also critical. Because at this point in our history as a state, this doesn't seem the most...the right time to be setting us back in terms of motorcycle safety. A majority of the increased deaths occurred in people over the age of 40, and that's 60 percent. And someone in the article is quoted, that advocates safety, as saying, well, we thought if we just had younger people have to wear the helmets...you know, the argument was always older people have better judgment and therefore they'll be safer, and if they take a safety course or they do whatever. Clearly these numbers that are being released don't reflect that. That's...those people are dying too. I think it's more appropriate, first of all, that we have the study; second, that if there's going to be a national study of what's happening and why so many deaths are occurring, that we wait until Congress completes its study. And also I don't support this amendment adding two full months for a lot of reasons. One is that I think the one month was a concession by Senator Jensen to attempt to reach a compromise on this bill, but I did pass out to you the schedule for the Motorcycle Rally which is the impetus behind why we should be lifting this law, or one of the

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arguments, because people going to the rally might be avoiding Nebraska when they are riding to the rally, if they ride. A lot of people tow their motorcycles on flatbed things and trailers and whatever else you use. Some rich people fly them up. But regardless of how they get there, if they would...we'd get some tourism from this. You know, we were...I think the Jensen amendment was an attempt to find some level of compromise, for a year, till we could get the study completed. I support the Jensen amendment. I think we should oppose this amendment. It's too broad. This is Senator Jensen's amendment. It's his attempt to be able to get the study done before we take action and I, again, oppose the amendment but support the Jensen amendment.

SENATOR CUDABACK: Thank you, Senator Thompson. Mr. Clerk, items for the record or announcements?

CLERK: Mr. President, your Committee on Judiciary, chaired by Senator Bourne, reports LB 218 to General File with amendments; LB 269, General File with amendments; LB 594, General File with amendments; LB 620, General File with amendments. Committee on Appropriations, chaired by Senator Don Pederson, reports LB 605 to General File with amendments. And a new study resolution, LR 88, by Senator Dwite Pedersen. That will be referred to the board. (Legislative Journal pages 1283-1287.)

Mr. President, with respect to LB 70, I now have a priority motion. Senator Jensen would move to bracket the bill until February 3, 2006.

SENATOR CUDABACK: Senator Jensen, to open on your bracket motion to February 3, '06.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I put in this bracket motion because I do feel that a study can occur. Senator Schimek mentioned, during an interim on a legislative resolution, that that's perhaps doable. Also, we are in...will be in Final Reading shortly on a Medicaid study and certainly this does affect Medicaid. It does affect Medicaid. Whatever portion of that could be found in a Medicaid study, could be found in a study that we would do during the

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interim. We have spent a number of hours on this debate. If I felt that there was some compromise, I would not have turned in this bracket motion. But it would allow us time to gather more information. It would also allow us time for the Medicaid study to be returned, and also I am concerned, as a number of other people are concerned, about the number of time, the number of hours that are being spent on issues. Here we are and 20-some days left in the session, that we have got a budget, we've got a number of bills. We've got the bill right after this is the methamphetamine bill which certainly needs time for discussion. We have other bills before us and then, when the budget comes, I think we've got a number of hours that are going to have to be spent on that issue. So with that, to do a bracket motion until February 3 of 2006 I think would certainly allow us time to look at the issue and also clear this from our agenda so that we can move on to other issues and discuss those. We have a number of bills yet to go and I think there are some priority bills that are not going to be heard if we don't move judiciously through that. So with that, I would certainly ask the body to go along with the bracket motion until February 3 next year. Again, we'll have, by the end of the year, the Medicaid study, which I think will reveal some things also pertinent to this issue of motorcycle helmets and also their part that they play in Medicaid cost. Senator Smith handed out a letter, or not a letter but a note, saying what the medical...Medicaid cost was from HHS. That is certainly not all-inclusive. The Hospital Association would come up with much, much higher numbers than that. And so I would just implore that the body...that we move ahead with this bracket motion, bracket this until February 3 of 2006. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the opening on the motion by Senator Jensen to bracket LB 70 till February 3, '06. Open for discussion on that motion. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. Obviously, I stand in opposition to Senator Jensen's (laugh) newest delaying tactic, and if it were a good faith effort to arrive at a compromise that would be fine. But I appreciate the conversation that I've had with several members here this

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morning. It's encouraging. And you'll see that I have filed an amendment to AM1289 that I hope that we can address here today. So I hope that we can move things along so that we can vote the bracket motion down and proceed to a compromise that I...I'll tell you right now that not every member will be happy with it on both sides, on both sides, but it is something that I believe is a good faith effort to move forward. We'll still have to come to a cloture vote. That's fine, and I believe that we could do that today and so we can move along. But I've been listening to a lot of the comments, and the training was somewhat mocked by some prior discussion, or in some prior discussions saying that the training is not a panacea. I agree. A helmet is not a panacea. And the training mechanism that wasn't even present in Senator Jensen's amendment is a lot better way to promote safe riding, defensive driving, which is typically necessary on a motorcycle, because the unwary vehicle driver oftentimes doesn't see the motorcycles. But I was reading some research on the prevalence of motorcycles in Iowa with harsh winters compared to the motor...the number of motorcycles in Florida, and Iowa actually, all things considered, even has more motorcycles on the road, and they have some statistics that are better than Nebraska. And I'm not isolating statistics when I say that Iowa's fatality rate is lower, and I will say significantly lower, as I've handed out earlier, than Nebraska; and even more significantly lower than Missouri, which of the neighboring states Missouri is the only one that has as strict a helmet as we have in Nebraska. Now we heard about this long list of opponents to LB 70. Yes, it is long. Did they all show up to the hearing? No. I call those "me too" groups. Oh, I'll sign on there. It's like passing a petition with some information. I mean, I think of the Nurses Association. They didn't show up to the hearing but apparently they signed the list of opposition groups to LB 70. I'll you what, it's a lot easier to oppose something passively than to oppose it up front. Now I'm not sure of their exact, like the Nurses Association, what exactly their objective was by not showing up to the hearing and then later opposing it, but I'll try to find that out later. And we heard about a survey. Senator Jensen talked about a survey and how a majority of Nebraskans want to mandate helmets but a minority of Nebraskans want to mandate seat belts. Well, I would argue that we

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shouldn't look to surveys for governance but if we're going to cite numbers, let's cite the whole survey, not just the one that supports our argument.

SENATOR CUDABACK: One minute.

SENATOR SMITH: I know that there are arguments that the helmet law saves lives, therefore, the government should mandate helmets. I will tell you again that if we took that philosophy, there will be several bills next year, and perhaps there will be anyway regardless of if it can be pulled off politically or not, to ban all sorts of substances, including saturated fat, because obesity kills. I'm concerned when we take the position of let's control, control, control rather than letting personal responsibility reign supreme. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion on the bracket motion, Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President and members. I rise in opposition to the bracket motion. I haven't been involved at all in this debate, but I was under the impression the other day that there was going to be some sort of compromise and, to be quite honest, I'm disappointed that there isn't. I think Senator Smith has done a good job of indicating what this bill actually does. I'm comfortable with his numbers, his statistics showing that the training is actually more beneficial than the helmet. I think he's made that argument over and over again. I think many of you who know me in here understand that I don't believe government should be involved in people's lives any more than it should, and I think if somebody wants to make that decision to not ride with a helmet, I think the training is probably better off...or probably better for us as a society than forcing a person to wear the helmet. I think this is a bill that Senator Smith has worked on for a number of years, and I think he's entitled to a vote. I know earlier in the session Senator Landis had mentioned the same thing, and I would urge you to vote against the bracket motion, and I still am holding out hope that there is some sort of compromise. I had worked...or talked to Senator Jensen the other day and I had optimism that that would occur. I'm not so sure it will now.

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But I think that's kind of what we're all about, is figuring out what works and coming to a compromise, and I think that's what the...the direction that we should work on. I'm going to oppose the bracket motion. I urge you to do the same, and hopefully Senator Smith and Senator Jensen and those others interested in the bill can work out some sort of a compromise that makes some sense. So hopefully, we can do that, but I will be voting against the bracket motion. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Further discussion on the bracket motion, Senator Johnson, followed by Senator Chambers and others.

SENATOR JOHNSON: Mr. President, members of the body, I thought it might be kind of fun to inject just a smidge of humor in here, and what it is, is this. Has any of you ever watched Dr. Tim Gay at a University of Nebraska football game. He's the professor of physics that provides some very interesting material that might apply to football. He might take about a player's helmet, for instance, and that a running back will be going at approximately 22 miles an hour or so, and then there will be a linebacker going the opposite direction, maybe running at 16 miles per hour or...and their helmets will collide, and he will go through all of the various foot pounds of energy expended when they collide and so on. Well, it makes for a kind of interesting halftime entertainment, beats some of the other things that are on. But here's a little thing that he did a little while back: Dr. Tim Gay, UNL professor of physics, performs a demonstration with a cantaloupe and a football helmet. The cantaloupe is selected as it contains similar physical characteristics of the human brain, not exactly a compliment but pretty true. Dr. Gay ascends a 10-foot ladder and drops the cantaloupe. It splits wide open. The impact at 10 feet, Dr. Gay explains, is still not that fast but not very great even though it is enough to split the cantaloupe. Dr. Gay then takes another cantaloupe, puts it in a football helmet, climbs this ladder and drops it the 10 feet again. The cantaloupe is completely preserved. Dr. Gay explains that the helmet could have been dropped from a much greater distance and still protect the valuable contents inside. Dr. Gay concludes that whether a person is engaged in a high-impact sports or

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simply riding a bicycle, the helmet is indispensable in protecting the brain from even minor impacts which hold enough force to cause considerable or moderate damage to the cantaloupe and the brain. Thank you.

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

SENATOR CHAMBERS: Mr. President and members of the Legislature, it is neither my wish nor my desire to see this bracket motion succeed. I don't want a cloture vote today either. I like this bill. I want us to be like Old Man River on this bill, just rolling along. But unlike Old Man River who doesn't say anything, we'll be saying quite a bit. But with Old Man River, it says he must know something but he doesn't say nothing. Now if you turn that around here, which I won't do, you can find a parallel to the Legislature that some people might draw. There's no need to bracket this bill. It should be disposed of this session, one way or the other, as it has been at other times. I'm opposed to this bill, but I'm more opposed to the bracket motion. I want time to be spent on this bill. And don't think that I cannot find other bills on which to spend a lot of time because we have one coming up. As the old people would say, we have one coming up directly. Now even if you manage to bracket LB 70, that does not automatically bracket LB 70A, so there will be ongoing discussion. Things sometimes have to be allowed to take their course. I'm enjoying the discussion of this bill by various members of the Legislature. There have been good points made on both sides, valid points made on both sides. The crucial issue that has been drawn, as I view it, is whether or not the government should dictate in this particular area that people do something which the government has concluded is in their best interest even if they who are involved and affected don't agree with the government. There are many times the government will order things which those on the receiving end of the government's action do not agree are in their best interest. I can give one right off the top of my head, and that's income tax. But if a person looks deeply into what that money goes for, it would be difficult to argue that no benefits whatsoever accrue to the person who pays incomes taxes, even though he or she may not desire to do so, because there are

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things which the government will do, even by accident, which will benefit all of the citizens to some extent. I don't know that requiring people to wear a motorcycle helmet would fit within that realm of issues that the U.S. government ought to act in, and the U.S. government has withdrawn from that area. It used to threaten to take funds from states that don't compel the wearing of helmets. So for some reason, and it's probably political, the federal government has gotten out of dictating in that area. Now it's left to the individual states. Senator Schrock is so worried that the people in this state are going to abolish trapping, hunting and fishing. He ought to have argued, well, they make people wear helmets. I'd like to ask Senator Schrock...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...a question.

SENATOR CUDABACK: Senator...is Senator Schrock...

SENATOR CHAMBERS: Oh, that's all right. He's occupied. I'll...

SENATOR CUDABACK: Senator Schrock, are you on the...

SENATOR CHAMBERS: Don't bother him now. I can do that later. I'm wondering if the right to wear a...ride a motorcycle without a helmet ought to be protected in the constitution. Oh, Senator Schrock is here but we only have a few seconds so I will pose that question the next time I'm recognized. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the bracket motion, Senator Byars, followed by Senator Smith and others.

SENATOR BYARS: Thank you, Senator Cudaback. You know, I know that Senator Smith has been very genuine in his debate and in his passion to do away with helmets in the state of Nebraska, and I don't think he intentionally stated in his last discussion on this floor the fact that the Nebraska Nurses Association or

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any other professional organization who are part of the strong helmet laws coalition, I don't think he really meant that they are a...that any of them are "me too" organizations. These are all wonderful professionals. They're very valuable to Senator Smith's district and my district, to everybody in the state, and I know that's not what he meant. And I think Senator Baker pointed out earlier on in the debate that the proponents of this legislation could have put hundreds of people in the room to come to testify and they did not. And they had one organization, they had ABATE. There were a strong number of professional organizations who did come in, in opposition, but that group also, very clearly, knew that they could have brought in hundreds of people also and did not. But I don't think Senator Smith meant to impugn those groups who did not come in or to question the fact that they have less passion in their opposition to doing away with strong helmet laws. He's a sensitive person and I know that. But I just wanted to make sure for the record and make it clear that, in my mind, I know that that's not what he meant, and he respects the professionalism of these organizations, and as certainly all of us do. And I would yield my time back to the Chair.

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

SENATOR SMITH: Thank you, Mr. President and members. I'm a nice guy. What can I say, Senator Byars? And I certainly believe that there are a lot of professionals on this list of organizations, but I do want to call your attention to the fact that there were organizations who didn't show up for the hearing but added their name subsequently to the list of opposition. And I want to emphasize that it's a lot easier to do that politically and logistically rather than coming in early on. So when you look at that long list, think of that and think of the fact that I deliberately limited testimony in favor of LB 70 in the interest of time. You all know that we could pack the hearing rooms on controversial issues and we can begin to repeat ourselves. And at the end of the day, what have we done? Repeated ourselves with the same information. That's why I wanted to hasten the committee hearing and carry on. But I will say that it was interesting that some of these organizations came in and equated an unhelmeted rider to a drunk driver, in

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terms of public safety. That's an unfair characterization and I would say that I would much rather be on the road with an unhelmeted motorcyclist than a drunk driver. So that's what some of these organizations have talked about, and I think that's important to note. And Senator Byars just used the term that Smith wants to do away with helmets. Come on, folks. Nothing in LB 70 or any of the amendments proposes a ban on helmets. It enables one who is 21 years old, takes safety training, wears protective eyewear, safety training or experience, to decide for themselves whether or not to go with or without a helmet. It is my effort to put the protective eyewear in the statutes because I think that's a good public policy decision based on public safety that we can gain a lot from in terms of motorcyclists' rights, oncoming traffic drivers' rights. That's a very reasonable thing to do. Please vote down the bracket motion. If you would like to know what...what I hope to do is vote down the bracket motion, take up the next amendment that I have filed, debate that for a sufficient amount of time, and then move on from there. So I'm showing some cards, if you will. I think that is the best thing that we can do and we can come up with something that is...that's good for all of us, I believe. Not everyone is going to like it, I'll tell you that right now, but it is something that is a compromise and I appreciate those who have given me positive feedback about that. Now HHS, they don't even track the expenses due to motorcycle accidents. Now I don't think there's a shortage of workers looking for information within the Health and Human Services System, but keep that in mind. If this is such a pervasive expense to the state, wouldn't you think that Health and Human Services would track it, and at best, they came up with some numbers that I've handed out to you that didn't even meet the level that I was expecting,...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...didn't even meet the level that I was expecting. Keep in mind, friends, friends all, I think...well, I won't go there. Anyway, keep in mind that anyone can still wear a helmet, even within the green copy of LB 70. And I don't think that...would Senator Byars yield to a question, for

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confirmation?

SENATOR CUDABACK: Senator Byars, would you yield?

SENATOR BYARS: Yes, I certainly will.

SENATOR SMITH: Very quickly, Senator Byars, you suggested that I wanted to do away with helmets. Did you really mean that?

SENATOR BYARS: Not in its entirety. I think the information that I have, 976 riders would still be required to wear helmets and 58,810 would not.

SENATOR SMITH: Be required to, but...

SENATOR BYARS: Correct.

SENATOR SMITH: ...but we can...could we expect more than that to wear helmets, even if they're not forced to?

SENATOR BYARS: I would certainly hope so.

SENATOR SMITH: Thank you.

SENATOR CUDABACK: Time, Senator.

SENATOR SMITH: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion on the bracket motion offered by Senator Jensen, Senator Engel. Senator Engel, on the bracket motion, please. Senator Engel, did...

SENATOR ENGEL: Oh, I'm sorry. Mr. President and members of the body, as far as talking about Senator Jensen's amendment that's creating a task force, I think every session since I've been down here this bill has come up. It's been discussed for many, many hours, and it's been voted on and it's been defeated. And so I think, the same way with his bracket motion, I agree with Senator Jensen most of the time, but I believe this is something that we might as well vote on because it's been up before and

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it's been defeated, and today we can find out whether it will pass or not pass in the first stage of debate, and there's other stages beyond this. So the parts of the bill where we added the education part of it, I think that's agreeable to everybody. I think it's very, very important to educate these drivers as far as how to ride one and how to drive very, very defensively. We discussed that before. But as far as I'm concerned, I don't go...approve the bracket motion because I think we should just go ahead and vote this bill up or down. And a task force, we've studied this to death, I believe, over the last several years and it's been discussed enough, I think we all know about it. We have enough information from both sides. And so I will not vote for the bracket motion. I will vote for cloture, if necessary. And, of course, I still will not vote for the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. Further discussion, Senator Langemeier.

SENATOR LANGEMEIER: Mr. President, I'd ask for...take a vote on this. Call the question, excuse me.

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

CLERK: 26 ayes, 1 nay to cease debate, Mr. President.

SENATOR CUDABACK: Debate does cease. Senator Jensen, you're recognized to close.

SENATOR JENSEN: Thank you, Mr. President. We're in our 67th day, the close of a 67th day, so we'll be in...tomorrow is our 68th, 22 days left. Certainly it's up to you how much time you want to spend on each and every bill. It's certainly my understanding that a number of them are going to require cloture motions, as our senior senator has mentioned. And so each of us need to decide how much time that we want to spend on each bill. I think that our agenda before us is heavy. If you don't want

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to bracket this and get...move this bill along, then we will spend the rest of today, and I don't know what the Speaker's arrangement is, but whether we spend tomorrow or the next day on it all depends on when a cloture motion is taken. But I think there is some time to look at this issue. Like I said, we have a Medicaid report that will be done by the end of the year. It will tell us, I think, how much Medicaid dollars are actually being spent on injuries, brain injuries. We can gather that information and have that available to you. I just offer at this point in time, before other amendments are drafted, before other amendments are dealt with as we move forward to vote to end debate and to move forward on to other bills. This would bracket this until February 3, give us plenty of time next year to work on this after the report comes down from Medicaid. We could also do a study during the summer. I'll leave that up to you as to how...you want to dispatch with this now or carry it on into the next several hours and days, whatever that might be, until a cloture motion is put forward. I would...it would seem to me at this point in time that a bracket motion is worthy, and I would just ask that you would vote to bracket LB 70 until February 3, 2006. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the closing on the motion to bracket until February 3.

SENATOR JENSEN: Call of the house in regular order, please.

SENATOR CUDABACK: There's been a question for call of the house. (Laughter) All in favor of the house going under call, vote aye; those opposed...

SENATOR JENSEN: I'm sorry. A call of the house and a roll call vote in regular order.

SENATOR CUDABACK: I guess I knew what you meant, Senator.

SENATOR JENSEN: Thank you.

SENATOR CUDABACK: There's been a request for a call of the house.

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SENATOR JENSEN: Thank you.

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

CLERK: 35 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. Senator Raikes, Senator Kruse, Senator Foley. Senator Raikes, the house is under call. All members are present or accounted for. Mr. Clerk, there's been a request for a roll call vote in regular order. Call the roll on the question, please.

CLERK: (Roll call vote taken, Legislative Journal page 1288.)
8 ayes, 33 nays, Mr. President, on the motion to bracket.

SENATOR CUDABACK: The motion to bracket was not successful. I do raise the call. We now go back to discussion of FA182, offered by Senator Smith to the Jensen amendment, AM1289, to LB 70. Senator Chambers, you're recognized and this will be your third time. Senator Chambers, on the Smith amendment.

SENATOR CHAMBERS: Mr. President, I would like to ask Senator Smith a question.

SENATOR CUDABACK: Senator Smith, would you yield?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, the only thing this bill...your amendment does, if I'm correct, is require the visor on the helmet, is it...or is there more to it than that?

SENATOR SMITH: The protective eyewear would shield the eyes entirely and not just the visor.

SENATOR CHAMBERS: Okay. But it's the eye protection that the amendment deals with?

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SENATOR SMITH: It does reinstate that. That's part of the amendment. There's more to the amendment, but actually I intend to withdraw this amendment and submit the next one.

SENATOR CHAMBERS: Oh, you're going to withdraw this and submit a different one?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Oh, then I will not discuss this one. I will put my light on for the next one.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Smith, you're recognized.

SENATOR SMITH: Thank you, Mr. President. At the beginning of my time, I would like to withdraw FA182 and replace that with AM1312.

SENATOR CUDABACK: You're asking for a substitution?

SENATOR SMITH: Yes, if that's necessary, but I don't believe it's necessary. Thank you.

SENATOR CUDABACK: Any objection? Seeing none, Mr. Clerk.

SENATOR SMITH: It's the next one in line.

SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator, you're withdrawing FA182. The next amendment I have pending to Senator Jensen's amendment is AM1312, offered by Senator Smith. (Legislative Journal pages 1288-1289.)

SENATOR CUDABACK: Senator Smith, to open on AM1312.

SENATOR SMITH: Thank you, Mr. President and members. I am proposing, through AM1312, to remove the relaxation of the helmet law in terms of who must wear a helmet, who must not, or must...not be required to, and it would...the thrust of AM1312

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is still the safety mechanism, so keep in mind that we are still going to require motorcycle registrants, those who register motorcycles, to pay an additional fee, so that will go into the fund to cover the course that a lot of folks are wanting to take. They're standing in line, literally, to take that right now. There are waiting lists around the state. But I would say the operative part of this, and it's a compromise that several of you have asked for, and that is the secondary infraction. I know that not everyone will like this. I especially know that because I know there's at least one member who is not happy with the secondary infraction nature of our seat belt law, but that came about...two, excuse me, two members of the Legislature, and I think even perhaps the only two Nebraskans sometimes, but I'm not quite certain. But this is considerably different, and I appreciate those with the input along the way. Again, not everyone is going to like this, but I am confident that more of you like this than the green copy of the bill--little disappointed in that, but I can live with that and so that we can move on. I know that we're still going to need 33 votes, and Senator Byars and Jensen, among others, will probably see to that. But I hope that we can maintain those 33 votes yet today so that we can take some action and move on. And I appreciate Senator Jensen's mention of the lack of time and I would hope that he would do everything in his control to make sure that this bill moves along and does not consume an inordinate amount of time. Again, AM1312 brings the safety mechanism back in, even though the Jensen amendment took it out. I hear from many of you that you want that in there, and I agree with you. I believe that that safety mechanism, as Iowa has shown with the number of people taking the safety training, that brings about some better statistics than we have here in Nebraska, when you compare apples to apples, if you will. And it does, however, leave the eye protection as a primary infraction on...for a motorcyclist. There is still the primary infraction of the protective eyewear because of its two-way nature involving other people or potential involvement of others. That is somewhat different from the helmet issue. Again, this is a compromise, something that I've had to think long and hard about. This is not out of desperation, but it is out of a willingness to compromise so that we can begin to move forward. Thank you, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Smith. You've heard the opening on AM1312 to the Jensen amendment. Open for discussion, Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I need to ask Senator Smith a question or two about his crawdad amendment.

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

SENATOR CHAMBERS: Senator Smith, do you know what a crawdad is?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: You do. Okay. What exactly does your amendment do, this version? Does this one have the eye protection with it?

SENATOR SMITH: It still does, yes.

SENATOR CHAMBERS: And there will be the motorcycle safety training that would still be a part of it?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: And what else is in it?

SENATOR SMITH: It would be the law of Nebraska that a helmet would be required but a motorcyclist must be pulled over for another infraction, a different infraction than simply not wearing a helmet.

SENATOR CHAMBERS: For example, crossing the center line.

SENATOR SMITH: Absolutely.

SENATOR CHAMBERS: Turning without signaling.

SENATOR SMITH: That's correct.

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SENATOR CHAMBERS: And that doesn't actually have to be done but a cop could say it and get the person, huh, especially if the cop was going to engage in racial profiling?

SENATOR SMITH: There...

SENATOR CHAMBERS: Isn't that true?

SENATOR SMITH: Unfortunately, there would be that potential.

SENATOR CHAMBERS: Thank you, Senator Smith. I don't believe that is Senator Smith's intent, but I have never supported any of these laws that would give the police, whom I do not trust, an excuse and the opportunity to pull black people over, because we have a way of winding up dead. I saw the other day in south Omaha where a white kid had a woman in a house with him, and he was armed, and the white police managed to bring him out. A Latino man was shot dead. Another Latino man was supposed to be suicidal. He wound up being shot dead by the police in his apartment. A black man was being chased. His car ran into a metal utility pole and he probably was unconscious, but stunned at best. The cop, in less than two seconds, was out of his car and had shot him dead, and was exonerated. Not long ago, a white guy went through miles and miles of Council Bluffs and Omaha, exceeding 70 miles an hour, chased by the white cops. He ran into a white police car. He had shot at the cops as they were chasing him. He's alive. And I'm going to give these murderous, vicious white cops who are criminals in uniform an excuse to kill black people? Absolutely not. Absolutely not. And the language I'm using is moderated, it is euphemistic, based on what I ought to call them. They are murderers and they get away with it. They know they're going to get away with it, and the record establishes it. And we who are black need not look for anything from the white community because they endorse what these rascallions do. But when you bring those kind of bills, I'm going to fight them. That will give you an idea of why I'm going to have something to say on LB 117 and this methamphetamine. There are certain things that can be used to so inflame the public that any kind of legislation can be enacted. So you're going to have, with that bill, some Mr. Peepers behind the counter and a scruffy fellow walks

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in--I'm dealing with the stereotypes now--nervous, eyes bloodshot, he's shaking like a leaf on a tree and he says, I want some Sudafed, and this man says, you got to give me some identification. He said, okay, well, I think I'll identify myself. You heard of these hyphenated last names? And the guy said, yes. He said, well, my...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...hyphenated name is Smith and Wesson; give me what I'm asking you for. That's what you want? You think that's not going to happen? You're going to say these are dangerous people on the very edge, then you're going to put these ordinary civilians in a position where they have to stop them and challenge them over some Sudafed? Preposterous. I don't care on this one what the World-Herald writes as an editorial. I don't care what the State Patrol says. I don't care what anybody says. That bill, LB 117 is going to get a working over, and you all could probably get cloture on it. I don't care really what you do on LB 70. I've had a chance to see time taken on it, but I will not support Senator Smith's amendment that he's offering for the reasons that I gave. The other day I offered to amend Senator Jensen's amendment to strike everything that he put in it except a provision...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...that would have prohibited enforcement all the way of these penalties, not a moratorium but abolish them. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion, Senator Smith. (Microphone malfunction)...waives his opportunity. Senator Byars. Waives his opportunity, Senator Byars, so you are next.

SENATOR BYARS: Thank you much, Senator Cudaback. I don't think it will probably be any great surprise to members of the body that I would be opposed to Senator Smith's amendment. I have been an advocate for years for stronger safety measures in the form of seat belts moving from a secondary to a primary law. I

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can go into all of the arguments relative to that issue. As a matter of fact, I don't want to harass Senator Smith's bill, but I have a few amendments here that probably would put mandatory seat belts into this discussion, but I'm not going to do that. I don't think that's fair. I believe in a strong helmet bill. I think we have one. I think the helmet bill we have has proven itself to save lives. I think it's proven itself to save devastating injuries to individuals. I think it's proven itself to save horrible circumstances to the families of persons who have been injured because they have not worn helmets. I think it's been proven that it is extremely expensive to society, to all of us in increased insurance costs, whether it be from riding a motorcycle, to our health insurance costs, to the costs that we bear as taxpayers. I think it's been strongly proven that that's a cost for not wearing a helmet. And I don't think anything that we do in the way of public policy to lessen what we're doing right now would be in the best interests of the citizens of the state of Nebraska. Am I taking away individual's freedom to choose? Yeah, I'll admit that. Do I feel I'm making good public policy in supporting arguments to do that? Yes, I do. Do I think that I should allow people to the right to choose? I think the state of California did that for a while, maybe the state of Nevada, and took away any kind of speed limit, with disastrous effects. I think we could take away all the stop signs on every corner and let people have the right to choose, whether they're the one that stops, whether they kind of yield to the person next to them. I think we could make the case that people can choose a lot of things, and we give them their freedoms and we, as government, shouldn't interfere. This is not a choice matter to me. I think it's public policy that I preserve the lives of the people of the state, I preserve the health of the people of the state, I keep families together of the people of the state, I preserve the tax dollars for the people of the state. That's my job. That's why I was elected to serve. And I will not abdicate that responsibility. I oppose this amendment, and I will continue to advocate for the strong helmet law that we have in place now. And I think all of those organizations who supposedly got in the argument late, I think they're pretty smart people, most of them quite well educated, most of them with, if not Ph.D.s, they're M.D.s or both, a fairly smart group of people. I know that they

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probably don't come to this just to hear themselves talk. I think they come to this issue because they believe passionately that they're right, and I believe the statistics show them to be right. Now, I'm going to ask you as colleagues, think hard, think hard before...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...you make this decision. I would yield my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Byars. (Visitors introduced.) On with AM1312 and the discussion thereof, Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, a crowd's method of motivating is moving backwards, and this would be a jet-propelled crowd amendment. It's not going to help the motorcyclists. If Senator Smith wants to salvage something from this bill, it should not be done in this manner. Even if there would not be racial profiling and white persons would be treated as unjustly as black persons, then there would be some high speed chases of white people. There are people who, when the police get behind them, will run. Numerous instances all over the country have shown that people without a warrant, who had never had a problem with the law, saw the flashing lights behind them and they ran. The question always afterwards, well, why did they run? Because they know what cops do to people. They fear the police. The police have behaved not only unjustly but murderously. This is a bad amendment. I doubt that it will be adopted. Senator Smith should make the body stay on this bill at least until tomorrow, just to show that he's got a little bit of moxie. Don't let them push him around just because he hasn't got the votes. How many votes did I get on any of the amendments I offered on Senator Schrock's abomination? Sometimes two. Once I might have gotten three, a sympathy vote, or somebody was distracted and thought they were voting for a call of the house or to cease debate. But I'm resilient. Senator Smith should stand firm. Now he may have 25 votes but I don't think he has 33. He should not mistake the 33 red votes up there. Some people may have voted against

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cloture who will vote for his bill, but I voted against cloture and I'm against his bill. There may be some people who voted for the bracket motion and will vote against his bill. That was a mixed vote up there. Sometimes when people hate individuals in the way that I'm well-hated in Nebraska, and I say I don't like something about Nebraska, they say, and they think it's so clever, well, vote with your feet, just get out of Nebraska. I tell them, now why should I do that when my being here upsets you so much? Just my being here upsets you that much, I'm not going anywhere. Now, maybe if you'd shown some kindness, which I'm not accustomed to receiving from your kind, maybe I'd become jumpy and leave the state. You've given me a stronger reason to stay here. Senator Smith has been put in a unique situation. Having supported the two cloture votes, he'll be the first one to fail. I don't know that he has 33 votes. It will be interesting to see. He just walked like a man on a mission up to the front of the room, coattails flapping behind him. And when you recognize the symptoms, you know what's about to happen. When the Speaker is in the chair, that means...

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...more than that. (Laughter) It means that we're about to see whether or not the Rubicon will be crossed or whether Senator Smith will jump in and drown. I would advise people to give Senator Smith a sympathy vote if nothing else. You've been running trash across the board just to give somebody a break or to do a favor. They want to get to Select File and they know they're not going any further. He's one of yours. Why would you treat him differently from the way you've been treating others? He hasn't offended you. He hasn't talked to you like I have. He has bent over backwards trying to accommodate you. You ought to give him this one vote. I'm not going to give it to him, but I'm different. You all are the same. You ought to give him his vote. Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Mr. Clerk, you have a motion.

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CLERK: Mr. President, I have a priority motion. Senator Smith would move to invoke cloture on LB 70, pursuant to Rule 7, Section 10.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. Mister...pardon me, Senator Smith, for what purpose do you rise?

SENATOR SMITH: Mr. Speaker, I would ask for a roll call vote in regular order. I would like to ask for a call of the house first, a roll call vote in regular order. Thank you.

SPEAKER BRASHEAR: Members, a call of house has been requested. All those in favor of a call of house signify by voting aye; those opposed, nay. Record, Mr. Clerk.

CLERK: 40 ayes, 0 nays, Mr. President, to place the house under call.

SPEAKER BRASHEAR: Thank you. The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Dwite Pedersen, Senator Preister, Senator Thompson, the house is under call. All members being present, the question before the house is whether or not cloture should be invoked. A roll vote in regular order has been requested. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken, Legislative Journal page 1289.) 35 ayes, 10 nays, Mr. President, on the motion to invoke cloture.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. Cloture has been invoked. Members, we will now proceed to vote on Senator Smith's AM1312 to the pending amendment. All those in favor signify by saying aye...pardon me, all those in favor signify by voting aye; those opposed, nay. A roll call vote has been requested. Mr. Clerk. Senator Smith, for what purpose do you rise?

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SENATOR SMITH: Reverse order, please.

SPEAKER BRASHEAR: A roll call vote in reverse order has been requested. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal pages 1289-1290.) 28 ayes, 19 nays, Mr. President, on the amendment to the amendment.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. The amendment to the amendment is adopted. Members, we will now proceed to vote on AM1289 by Senator Jensen. Senator Smith, for what purpose do you rise?

SENATOR SMITH: A point of order.

SPEAKER BRASHEAR: State your point.

SENATOR SMITH: That AM1289 is...takes the form of the last amendment. Is that in order? The last amendment becomes AM1289.

SPEAKER BRASHEAR: Senator Smith, under our rules, we will proceed as we will proceed. You have provided the amendment. The amendment will be what it is.

SENATOR SMITH: Okay.

SENATOR BRASHEAR: And I'm not trying to be unresponsive; I simply think that's appropriate. We will now proceed to vote on AM1289 by Senator Jensen. All those in favor signify by voting aye; those opposed vote nay.

SENATOR CHAMBERS: Roll call vote.

SPEAKER BRASHEAR: A roll call vote has been requested. In reverse order has been requested. A roll call vote in reverse order. Mr. Clerk, please.

CLERK: (Roll call vote taken, Legislative Journal pages 1290-1291.) 26 ayes, 14 nays, Mr. President, on adoption

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of Senator Jensen's amendment.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. Senator Jensen's amendment has been adopted. Members, we will now proceed to vote on the advancement of LB 70. Senator Smith, state your purpose.

SENATOR SMITH: Mr. President, I would ask for a roll call vote in regular order.

SPEAKER BRASHEAR: We've had a request for roll call vote in regular order. Members, we will now proceed to vote on the advancement of LB 70. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal page 1291.)
27 ayes, 20 nays, Mr. President, on the advancement.

SPEAKER BRASHEAR: LB 70 is advanced. Mr. Clerk. The call is raised.

CLERK: Mr. President, LB 70A is a bill by Senator Smith.
(Read title.)

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Senator Smith, to open on LB 70A.

SENATOR SMITH: Thank you, Mr. President and members. Very quickly, this is what allows the cash fund to be enhanced so that we can get the dollars flowing from the registrations of motorcyclists to the DMV so that they can provide the courses, or at least part of the courses, and we can move on with the safety training. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. You've heard the opening on LB 70A. Mr. Clerk.

CLERK: Mr. President, I have a motion. Senator Chambers would move to indefinitely postpone LB 70A. Senator Smith, you'd have the option to lay the bill over.

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SENATOR CUDABACK: Senator Smith.

SENATOR SMITH: Take it up.

SENATOR CUDABACK: Senator Smith is taking the bill up. Senator Chambers, you're recognized to open on your motion to indefinitely postpone.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I'd like to ask Senator Smith a question.

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

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, what is there that will cost...what is in this bill that will cost money?

SENATOR SMITH: The course of those registering to take.

SENATOR CHAMBERS: So your amendment does not alter the A bill at all.

SENATOR SMITH: That is correct because the safety course is still in the bill.

SENATOR CHAMBERS: And under your bill, now that the Jensen amendment, which became really yours because...first of all, I'll take it a step at a time. Your amendment that was adopted wiped out the Jensen amendment. Isn't that true?

SENATOR SMITH: Most if it, yes, I would say.

SENATOR CHAMBERS: It did not replace the Jensen amendment?

SENATOR SMITH: Excuse me, it did, Senator Chambers, it did.

SENATOR CHAMBERS: It replaced all of it.

SENATOR SMITH: Yes.

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SENATOR CHAMBERS: Okay. Now what does your amendment do as it exists now, the bill in other words?

SENATOR SMITH: On LB 70?

SENATOR CHAMBERS: Yes, LB 70, what does that bill do now that your amendment has been adopted?

SENATOR SMITH: It still requires that everyone wear a helmet in Nebraska.

SENATOR CHAMBERS: And what else?

SENATOR SMITH: And it adds the primary offense for eye protection and it restores all of the safety training that Senator Jensen sought to remove.

SENATOR CHAMBERS: When you said it provides the second offense for the eye protection, if a person has no helmet, that is still a primary violation?

SENATOR SMITH: No, it is not.

SENATOR CHAMBERS: So what does the eye protection have to do with that aspect? I'm talking about the enforcement now.

SENATOR SMITH: Right. The eye protection, you cannot be pulled over for expressly or exclusively not wearing a helmet. You must break the law in another manner and then eye protection would be primary offense, yes, Senator Chambers.

SENATOR CHAMBERS: So if you're wearing a helmet but you don't have the eye protection, that is a primary offense?

SENATOR SMITH: Correct.

SENATOR CHAMBERS: So it would be best to have no helmet at all, then it's a secondary offense. Is that true?

SENATOR SMITH: No helmet at all, yes, Senator Chambers.

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SENATOR CHAMBERS: Well, Senator Smith, does your bill say explicitly that you must have the eye protection attached to a helmet, or eye protection?

SENATOR SMITH: Eye protection alone.

SENATOR CHAMBERS: So then if you don't have a helmet, you don't have the eye protection, do you?

SENATOR SMITH: Well, a lot of helmets would offer the eye protection but not all of them, yes.

SENATOR CHAMBERS: So then if you're not wearing a helmet, that is still a primary violation because you don't have the eye protection. The absence of eye protection on a motorcycle is a primary violation. Isn't that true?

SENATOR SMITH: The absence of eye protection, yes.

SENATOR CHAMBERS: So if you don't have...

SENATOR SMITH: It would encourage those who wear a helmet to wear a helmet with eye protection. Those without must still wear some sort of eye protection.

SENATOR CHAMBERS: So if you wear a pair of sunglasses, there is no primary violation?

SENATOR SMITH: Correct.

SENATOR CHAMBERS: And that's what the body did adopt, isn't that true?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: So if a police officer saw somebody without a helmet but had on sunglasses, that officer cannot stop that person either for not wearing the eye protection and, since there's no primary violation, for not wearing a helmet also. That person cannot be stopped in other words. The sunglasses

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would be sufficient, correct?

SENATOR SMITH: If I understood you correct, yes.

SENATOR CHAMBERS: Does that make a mockery of this whole thing?

SENATOR SMITH: No.

SENATOR CHAMBERS: I'd like to ask Senator Stuhr a question.
Senator Stuhr,...

SENATOR CUDABACK: Senator Stuhr.

SENATOR CHAMBERS: ...did you hear the exchange between Senator
Smith and myself?

SENATOR STUHR: No, I did not.

SENATOR CHAMBERS: Well, I'm going to tell you what we talked
about. If a person has no eye protection, that is a primary
violation and a person can be stopped for that alone. For
simply not wearing a helmet, the only reason a person can be
stopped for that and punished is if there's a violation apart
from not wearing the helmet. To get around not wearing eye
protection, a person can wear sunglasses. Is that what you had
in mind for the eye protection a person would have to wear on a
motorcycle?

SENATOR STUHR: No, I would be thinking of something a little
bit more secure than sunglasses.

SENATOR CHAMBERS: Actually, you don't need to wear sunglasses.
You could be a person who needs regular glasses and you could
just be wearing your eyeglasses and that would be sufficient.
Had you thought of that when you voted for what you just voted
for? How do you think the public...that's all I will ask you,
thank you. I wonder how these people think the public is going
to react to what they voted for when they find out that if a
person is wearing eyeglasses that prevents failure to wear eye
protection from being a violation. In other words, a person
cannot, in effect, be stopped for not wearing a helmet; and

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wearing eyeglasses prevents you from violating the part that requires you to wear eye protection. No specifications. Maybe contact lenses would be sufficient eye protection. The body voted for what it voted for. But I'm wondering if the body was aware of what it was voting for. I think it's par for the course. I think it's typical. And I'm glad that they voted just the way that they did. It shows the lack of thought, the lack of consideration and how your rear end votes for you instead of your top end. You were tired, you wanted to get out of here so you voted in a way that is not only foolish and asinine, it is silly and stupid in my humble opinion. But there will be the opportunity to see how the public reacts to this. Now Senator Smith was very cagey. I give him credit for what he did in maneuvering the body into making such a fool out of itself. I haven't been that successful and I'll tell you why I haven't been. Because I tell you in front what it is that I'm doing. He didn't. And you didn't read the amendment. You didn't ask what was being done. And I'm complicit. I told you give him his vote. You obeyed me. (Laugh) That's power. Whether you obeyed me or not, the vote was stupid. That was grade school sandbox voting. And if you voted knowing that contact lenses would satisfy the eye protection, then nothing is wrong with your vote and I'm really giving you a way out, too. There's no specification of what constitutes eye protection and that's what this body has done today. But you got two successful cloture votes. And I think that's what happens sometimes when you legislate by cloture. You think you're teaching me a lesson. But what I'm doing is using this Legislature as a laboratory to teach the entire state an object lesson about this Legislature--how little thought, how little deliberation, how little understanding goes into votes when you can wear them out. And that is responsible legislating. If you were talking to a group of students from a civics class or a group of students in a university political science class and this issue came up, how would you rationalize your vote? You didn't even know what you were voting for, but you voted that way because other things were on your mind than behaving as a responsible legislator. That's why I always say if people want to send a mule skinner to represent them, they're entitled to do that. They know what it takes to represent their interests.

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: And I would give them a lot of credit for having sent the kind of people here that they did because they know what it is that they want, they know what it is that they need. The Chair told me I have one minute. How shall I spend it? Or shall I waste it? I think I shall stop at this point.

SENATOR CUDABACK: Thank you, Senator Chambers. You heard the opening on indefinitely postpone. Speaker Brashear, you're recognized to speak.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. I thought I'd try and redo some things I said last week because obviously I wasn't very clear, although I did mention something about air conditioning and we do seem to have it, so that worked. But when I said that now that... (laugh) good afternoon, Senator Schimek. (Laugh) Then, when I said that the Appropriations Committee would be done last week and that we would be extending our days, apparently that didn't... wasn't clear enough, so let me be very clear. Based on the number of inquiries I've had today, we're going to adjourn now but that's today only. A full day's work, a full day's work will be between 5:00 and 5:30 starting tomorrow, every day thereafter. And then we are working on targeting and identifying the nights that we will work, and a full night's work will be somewhere 11:59 or earlier because that's by law. We can't go into the next day. But I'm trying to tell you in a lighter vein I will have the nights that we're going to tentatively reserve for work out this week. And a day's work is 5:00 to 5:30 henceforth and forevermore. Thank you very much.

SENATOR CUDABACK: Thank you, Speaker Brashear. Mr. Clerk, items for the record.

CLERK: Mr. President, study resolutions: Senator Preister offers LR 89, LR 90, LR 91, and LR 92. All four will be referred to the Executive Board. I have an amendment to be printed to LB 70A by Senator Chambers. Senator Pahls would like to add his name to LB 117 as a cointroducer. (Legislative Journal pages 1291-1293.)

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And, Mr. President, a priority motion: Speaker Brashear would move to adjourn until Tuesday, April 26, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn to April 26, 9:00 a.m. All in favor of the motion say aye. Opposed nay. We are adjourned. (Gavel)

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