

APRIL 26, 2005

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

April 26, 2005 LB 70A

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Father Paul Witt, from St. Mary's Catholic Church, in Lincoln, guest of Senator Foley, 29th District. Father.

FATHER WITT: (Prayer offered.)

SENATOR CUDABACK: We thank you, Father Witt, for coming over and being our chaplain of the day. Appreciate you being here. I call the sixty-eighth day, 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: Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Reports, messages, or announcements?

CLERK: I have no messages, reports, nor announcements at this time.

SENATOR CUDABACK: Thank you. We now go to General File, 2005 senator priority bills, the Combs division. Mr. Clerk, first bill will be LB 70A.

CLERK: Mr. President, LB 70A was a bill introduced by Senator Smith. (Read title.) Senator Smith presented the bill yesterday. Following that, Senator Chambers offered a motion to indefinitely postpone. That motion is currently pending, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Chambers, did you wish to say anything prior to our going to...thank you. We'll open the indefinitely postpone measure up for debate. Senator Beutler, followed by Senator Chambers.

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

April 26, 2005 LB 70A

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I'm not really speaking to this motion. But I wanted to ask you to seriously think about one thing as we move to Select File. We have now made not wearing a helmet a secondary offense. And that means, of course, that law enforcement cannot enforce the law unless they find fault with the driver for...or, the rider, for another purpose. I'm going to take a look at, and I hope you'll take a look at, everywhere where we do this secondary offense business. Because I think it's probably bad practice wherever we do it. And I know we're doing it in the seat belt law. And now we're proposing to do it with helmets. It seems to me that there is at least one difference between a secondary offense with respect to seat belt law and a secondary offense with regard to helmets. And that is, with regard to seat belts, you don't necessarily know, law enforcement doesn't necessarily know whether a lap belt is attached, or a shoulder strap is attached. So at least in a...in one sense, the police officer doesn't know if there's a violation until the car is stopped. And the fact with respect to helmets is that the police officer knows, the police officer actually knows that the law is being violated, and cannot stop the violator of the law. And I would ask you to think about, as I'm trying to sort through in my own mind, what this means in terms of respect for the law. What is the law? What are we teaching our kids when we see somebody go by without a helmet, and the kid says, he's breaking the law, and maybe he's standing on the corner with the policeman, and the policeman says, yeah, he is, but there's nothing I can do about it? My point is that I'm thinking that this whole area, secondary offenses, is ill-thought-out, and that it breeds disrespect for the law, that perhaps we ought to either make something the law and enforce it, or not make it the law. And especially, especially in a case where the violation is obvious. I don't know how we can really view this whole matter as a society and go forward, where we say we are creating new kinds of law where the violation of the law is obvious but we're not enforcing it. And I'm going to try to deal with that between now and Select File. And I hope that's a matter that is of some concern to you. Because I think it ought to be. It's a condition that's...

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

April 26, 2005 LB 70A

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...detrimental to the rule of law. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers, on your motion.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Smith some questions.

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

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, I want to see what we have here in this bill. So I want you to help me out.

SENATOR SMITH: Any time.

SENATOR CHAMBERS: In this bill, a person does not have to wear...a person is required, ostensibly, to wear a helmet when riding a motorcycle, but that person cannot be stopped and cited for that unless the rider is first stopped for some other violation. Is that correct?

SENATOR SMITH: That is correct.

SENATOR CHAMBERS: If a person is stopped for another violation and has a helmet on, but no visor, that person can be ticketed for a helmet with no visor, even without the second...without the first violation. Isn't that true?

SENATOR SMITH: I'm not sure where you get "visor," Senator Chambers.

SENATOR CHAMBERS: Well, eye protection.

SENATOR SMITH: That...okay, eye protection. That is correct.

SENATOR CHAMBERS: Okay. So now I want to put that together. If a person has a helmet but no eye protection, that person can

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

April 26, 2005 LB 70A

be stopped without a second...without a different violation, because the failure to have eye protection is a primary violation. Correct?

SENATOR SMITH: That is correct.

SENATOR CHAMBERS: So a person with a helmet can be stopped without eye protection; but a person with eye protection and without a helmet cannot be stopped. Isn't that true?

SENATOR SMITH: That's conceivable, yes.

SENATOR CHAMBERS: So what we have here is that it's better for your head to have no helmet than for your helmet to have no eye protection. Isn't that true?

SENATOR SMITH: I can't say that, Senator Chambers.

SENATOR CHAMBERS: Well, if you have no helmet on your head, you can't be stopped. But if you have no eye protection, you can. Isn't that true?

SENATOR SMITH: I...you can paint that however you would like. I mean, I...

SENATOR CHAMBERS: No, I don't want to paint it how I like. I want to paint it according to your amendment. You ought to know what's in your amendment.

SENATOR SMITH: Right. I said that...

SENATOR CHAMBERS: Do you know what's in your amendment?

SENATOR SMITH: I said that it's conceivable that something like that could happen.

SENATOR CHAMBERS: Okay. Now, it would be better to have no helmet at all than to have a helmet without eye protection. Isn't that true?

SENATOR SMITH: I won't go that far, Senator Chambers.

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

April 26, 2005 LB 70A

SENATOR CHAMBERS: As far as enforcement is concerned, a person would be better off with no helmet at all than to have a helmet without eye protection. Isn't that true?

SENATOR SMITH: That's an editorial comment on your part, and I won't necessarily agree with that.

SENATOR CHAMBERS: Let me ask it a different way. If a person has no helmet at all, but eye protection, that person cannot be stopped for a primary violation. Isn't that true?

SENATOR SMITH: I'm sorry, Senator. I was...

SENATOR CHAMBERS: That's okay. Members of the Legislature, Senator Smith doesn't know what's in his amendment, and you all don't know what you voted for. If you knew, you would be embarrassed. My questions point out what you have done. And we have educated people, supposedly, who have voted for that amendment. And I'm going to lay it out for you. If a person has no helmet, but eyeglasses on, that person cannot be stopped. And this is supposed to be a safety...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...provision that we're talking about. So no helmet, but eyeglasses, and you cannot be stopped. If you have a helmet, but you forget your eyeglasses, you can be stopped and ticketed for no eyeglasses. So if the safety focus is on the helmet, why should it be a set of circumstances, ever, where if you have a helmet you can be stopped and ticketed with a helmet on but without your sunglasses? So although Senator Smith doesn't want to admit it, it's better for your head to have no helmet than for your helmet to be unaccompanied by eyeglasses. More protection for the helmet than for your head. It's better to have...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

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

April 26, 2005 LB 70A

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the motion to indefinitely postpone, Senator Smith, followed by Senator Chambers.

SENATOR SMITH: Thank you, Mr. President and members. I probably don't need to remind the body that we made a policy decision yesterday on first round, and subject to rounds two and three, obviously. If the attempt to defeat LB 70A is engaged today...I hope that's not the case, because we have an A bill to support a bill that was advanced yesterday. And we made a decision. And the bill, as I have stated clearly all along, and the amendments thereto, speak for themselves. And I know that Senator Beutler mentioned some things of a policy nature. That was more relevant yesterday than today, because it's the A bill here today. But we made a decision yesterday, and we need to support that decision with the logistics of the process. And if we want to belabor what happened yesterday, I guess that fits within the rules of the Legislature. But I really believe that we should move on and talk about other things. But certainly I'll take questions or concerns today, if there are any. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Chambers, followed by Senator Johnson.

SENATOR CHAMBERS: Mr. President, I'm not going to have to ask Senator Smith any questions. But in view of that hodgepodge, messed-up thing that was passed yesterday, why should this money be spent by the state? Why? It should not be. If the underlying bill is unwise, the A bill is totally unjustified. We don't need this A bill. And I'm going to try to have us kill it. There is all of this talk about motorcycle safety courses. That should not be funded by the state. I have not seen where money from motor vehicle license fees are put into some kind of fund to have driving courses for people who may drive an SUV, which could roll over, or for anybody to have a driver's education class, or any of the other types of things might contribute to highway and vehicular safety. This whole bill, the underlying bill and the A bill, constitute, taken together, a sham and a hoax on the public. I had said Senator Smith was going to wind up taking a watered down bill, run home with it,

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

April 26, 2005 LB 70A

and claim victory. I said that days ago. He said in the paper he didn't accept this crowdad amendment out of desperation, but that's exactly why he accepted it. And it was a desperate amendment. But I don't fault him for doing that. He should have done it sooner. When you have what is called a compromise, and it holds the Legislature up to ridicule, it can be called a compromise for those who participated to try to salvage their ego and a shred of credibility. But as far as the light it places the Legislature in, a word other than "compromise" would be appropriate. I intend to spend some time on this A bill. The Speaker has already said, so everybody knows it, that there will not be eight hours required to invoke cloture on an A bill. I don't care. I will take whatever time the Speaker gives. But he needs to think well of what he does. We all need to think about what we're doing. He has his agenda, as the one who has to try to get the ship into port. My agenda is to knock barnacles off that ship, and I'm going to do that with as much determination as he manifests in trying to get this ship into harbor. And by the ship, I mean the session. You all saw a movie called the Titanic. A huge ship called the Titanic actually did have a confrontation with an iceberg. And those who built the Titanic were of the impression that God himself couldn't sink the ship. Well, they didn't know that God was an iceberg. They thought God was a spirit or a ghost somewhere floating around in disordered people's deranged minds. But God really was an iceberg, and God said, so you're challenging me? You think that because steel is harder than ice you can insult me and get away with it? Well, you're going to find out that you underestimated the old boy.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Or the old girl. Or the conglomeration that taken together constitute God. And down went that mighty, majestic Titanic, which symbolized the arrogance, the overweening pride of flawed men. We're going to see if the Legislature, as the Titanic, will make it safely to port. This barnacle that I'm attempting to scrape off the hull is small potatoes. So it doesn't matter who provokes me. We will have a contest of wills, and I am not going...

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

April 26, 2005 LB 70A

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...to fold. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion, motion to indefinitely postpone, Senator Johnson, followed by Senator Smith.

SENATOR JOHNSON: Mr. President, members of the body, yesterday after the vote, as I was leaving the Chamber, two people came by me and said, what did we pass? And I said, I don't know, I didn't vote for it; you did. I'm trying to find out this morning what we passed. Senator Chambers seems to have investigated it a little bit more than the rest of us. And therefore, I give my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Johnson. Members of the Legislature, some of this information is based on what Senator Smith has stated. To sum it up, before I go into my usual method of discoursing on a proposal that I'm opposed to, if a person has no helmet, even though there's a requirement under the law to wear a helmet, that person cannot be stopped by an officer simply because he or she has no helmet. If some other infraction or violation is alleged by the officer--and all the officer has to do is allege it--the lawyer can then...the cop can then stop the rider and ticket for the underlying offense as well as not having the helmet. If the same situation exists, where the person has no helmet, but eyeglasses, the officer cannot do anything to that person for not having a helmet. If the person has a helmet and eyeglasses, the person is safe. Now, it is preposterous to have a set of circumstances where safety is supposed to be the uppermost item, yet more emphasis is placed on eyeglasses than on the helmet. People have not alleged that those in motorcycle accidents die because their eyeballs are punctured or exploded as a result of the accident, or that they have the accident because some foreign object wound up in their eye, causing them to crash. This was a desperate, silly amendment which the Legislature adopted. And the theme song should be: Where are the clowns? Bring in the clowns.

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

April 26, 2005 LB 70A

Don't bother, they're here. Now, what the A bill attempts to do is to set money aside to pay for some kind of safety courses. But don't you see some kind of disconnect here? Isn't there something out of kilter and out of joint, when you're going to pay money for safety courses, yet you have an underlying bill which is so preposterously drawn that it flies in the face of the very safety courses the A bill is supposed to pay for. I think the A bill should be killed. Senator Smith is not really interested in what the A bill pays for anyway. He's interested in doing away with the requirement that people wear helmets. He has effectively accomplished that, unless you have the types of officers on these streets and highways which I alleged yesterday are out there. They'll manufacture or fabricate some other...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...violation. They do it on the interstate when they want to stop certain people whom they have profiled. They'll say the person changed lanes without signaling. It's that person's word against the cop's word. The cop will say that the wheel of the person touched the center line, and that is strictly enforced as a violation. Then the vehicle is stopped, searched, and people may be placed under arrest. So it is not out of the question or out of police practice to fabricate pretextual reasons for stopping a person. So rather than uncomplicating the life of the motorcyclist, this flawed abomination that was moved off...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...first reading,...thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Smith, followed by Senator Beutler and others.

SENATOR SMITH: Thank you, Mr. President. Very briefly, there will...I will predict--or maybe I don't need to--that there will be some distractions thrown up to try to discredit what we did yesterday. It's very clear. If you look at the amendment, it will show you what we did. And aside from that, if you need

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

April 26, 2005 LB 70A, 70

further clarification, I'm happy to help you out, and we'll go from there. Thank you, Mr. President.

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

SENATOR BEUTLER: I'd waive.

SENATOR CUDABACK: Senator Beutler waives his time. Senator Chambers, followed by Senators Schimek and Jensen. Senator Chambers. This will be your third time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I am concerned about the types of bills that the Legislature puts its name behind. And this bill makes the Legislature the "behind." Such a thing as this is unworthy of the Legislature. Was it a so-called compromise to make it possible to break the impasse and move anything? I look around this floor, and I know who voted for that, because I got the Journal this morning, and it also was listed in the paper, perhaps, the list of those who voted for it. They don't know what's in it. Now, how do they even know that what I'm saying is a correct statement of what the bill is? They don't know. They can't challenge a word that I said, nor can Senator Smith. They don't read this. The whole green copy is still before us. Senator Jensen's amendment would have stripped everything out of the bill and substituted his two-page amendment for that. Senator Smith came along and stripped out of Senator Jensen's amendment the part that would have stripped all of the provisions out of LB 70. So you need to go back and read that bill and the amendments that were adopted by you all in that mad dash to vote cloture and everything else that was pending. And now you don't know what you've done. There is more in the bill than what I've talked about. But do you know what it is? Did you read the bill? I'm not going to say you didn't. I'm going to say you read it, but you did not understand it. Or when you read it you were distracted and you did not attend to what is actually in the bill, so you don't know what you voted for. I don't want the money that is in LB 70A to go for a piece of legislation such as that. So I'm going to try to kill LB 70A. That's what my motion is for, to indefinitely postpone LB 70A. Senator Smith put some provisions in the underlying bill as the

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

April 26, 2005 LB 70A

carrot to get you all to agree to do away with the requirement that a person wear a helmet. If he could have brought a simple, straightforward proposal to repeal those provisions, that's what he would have done. I'm now explaining this whole thing better than he or anybody else has done, because I've watched it all. He felt that he had to give the carrot. So this talk of a task force, the safety programs, the requirement of eye protection, are just sops for the suckers. And they worked. Senator Smith is the one who should have been speaking for the hunting-fishing thing that would go into the constitution. He understands how to catch the fish better than Senator Schrock. Senator Smith went home, figuratively speaking, with a string...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...of fish to show, which he had landed. He can take them to the taxidermy rather than to Mrs. Smith and have her cook them up and served prior to one of her delicious pies. I help the Smith family balance their budget. I buy Mrs. Smith's apple pies and cherry pies. Can't beat them. But the fish, I will not eat the fish. And the fish that Senator Smith landed yesterday will not be eaten. And someday, as with Santa Claus and his reindeer, I will read the names of these fish, because each one has a name, so that they can be memorialized in our legislative proceedings. And this string of fish is getting awfully heavy. Nevertheless,...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: (Microphone malfunction)...Mr. President.

SENATOR CUDABACK: On with discussion. Senator Schimek.

SENATOR SCHIMEK: Thank you, Mr. President and members. I'm getting in on this discussion this morning a little bit late. But I just wanted to say a couple of things. I do think that everybody was confused up here yesterday. And perhaps the reason is that the amendment doesn't really tell you anything in itself, because it's all...it's striking things and adding a few words back in here and there. And it's very unusual, because part of this amendment goes to the bill itself, and the other

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

April 26, 2005 LB 70A

part goes to the amendment. And that's not something that you see very often. In fact, I had to ask the Clerk this morning if we've ever done that before. And he said, yes. But I just didn't recall that we've done things like that before. And I guess what I would like to do with my time, Senator Smith, is just go over, step by step, what this amendment actually does, if you would help me out, please.

SENATOR CUDABACK: Senator Smith, would you yield...or respond?

SENATOR SMITH: Yes.

SENATOR SCHIMEK: Okay. Senator Smith, just so that I can help clarify for myself, and maybe for some other people as well, what your amendment did yesterday on the green copy was to add in the eye protection words on page 16, and strike the part that says, except as otherwise provided in this section? And then it struck all of the language that applied to the exemptions for people who were over...or, let's see, over 21 years of age...?

SENATOR SMITH: Who had met the conditions for what was going to repeal part of the helmet law, yes.

SENATOR SCHIMEK: Right. And that would have included grandfathering. And you struck all that language in the green copy.

SENATOR SMITH: Yes.

SENATOR SCHIMEK: And then the only other thing you did in that was to renumber sections. So that's...those are the changes you made in the green copy. I have one question about the green copy, since eye protection becomes a more important component now. It says it covers the...eye protection means glasses that cover the orbital region of the operator's face, a protective face shield attached to a protective helmet, goggles, or a windshield on the motorcycle. So in other words...well, my first question is, an orbital region, I assume that this is something that kind of goes around the head in a circular fashion, right?

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

April 26, 2005 LB 70A

SENATOR SMITH: The orbital regions are your...

SENATOR SCHIMEK: Oh, your eyes.

SENATOR SMITH: ...your eye sockets, yes.

SENATOR SCHIMEK: So it doesn't necessarily wrap around your head and attach that way.

SENATOR SMITH: That is correct.

SENATOR SCHIMEK: Okay. And then that last part is the windshield on the motorcycle. So in essence, you really don't have to have glasses or any kind of covering for your eyes if you've got that windshield up there. Is that...that's correct?

SENATOR SMITH: Yes.

SENATOR SCHIMEK: That's (inaudible).

SENATOR SMITH: It accomplishes the same thing, virtually.

SENATOR SCHIMEK: Okay. And then the rest of your amendment yesterday, your amendment to the amendment, dealt with the Jensen amendment. And the only thing you really did to that was you struck all of...or, struck the language, as Senator Chambers said, that strikes the original bill. So in fact, we reinstated the bill with the amendment. Okay. So one other thing, then. At the very end of your amendment yesterday, it talks about, the provisions of this shall not be enforced in the month of August 2005.

SENATOR SMITH: That was stricken.

SENATOR CUDABACK: One minute. One minute.

SENATOR SCHIMEK: So now there's no provision for riding during the months of August, or whatever, August,...

SENATOR SMITH: Without a helmet.

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

April 26, 2005 LB 70A

SENATOR SCHIMEK: ...because we don't need that provision anymore, according to you, because it's now a secondary offense?

SENATOR SMITH: Right. I mean, that's...

SENATOR SCHIMEK: So...

SENATOR SMITH: That was a consistency that I think is necessary. I came from the...a philosophical standpoint that I think law enforcement has better things to do than pull someone over for merely not wearing a helmet and that alone. So that fit with my philosophical standpoint. I'm not getting as much as I, obviously, originally wanted. But there are several folks who suggested that this would be a good, consistent way. We get an 80 percent, an 80 percent compliance rate with seat belts as a secondary offense, 80 percent. And I know some folks aren't happy with that. I...

SENATOR CUDABACK: Time, Senator Schimek.

SENATOR SMITH: ...am very happy with that.

SENATOR SCHIMEK: I'm sorry, did you say time?

SENATOR CUDABACK: Your time is up. I did.

SENATOR SCHIMEK: Thank you, Mr. President.

SENATOR CUDABACK: On with discussion. Senator Jensen, followed by Senator Bourne.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. And I wasn't going to speak on this this morning. But an A bill should reflect the cost or implementation of a bill or statute. That's the reason that we have these. I've at one time or another argued that the A bill was too high, or didn't reflect, perhaps, the cost. But...and I also believe that when you pass a statute, the A bill should also be passed along with that. I mean, that's generally common knowledge. And there are very, very infrequent times that I would ever vote not to pass an A bill along with the bill, as set forth in the

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

April 26, 2005 LB 70A

previous bill that was passed. However, if the A bill should reflect the cost of implementation, I think you also need to think, what is that cost of implementation? Now, you all know I'm a contractor. Matter of fact, I started in the construction business in '51, and started my own business in 1960. And as part of the construction process, and particularly if you're bidding on projects...now, the largest project I ever done was probably about \$5 million. These were low-rise buildings. So the actual cost of safety was not too much. But if...certainly, in looking back at the construction of the Hoover Dam, San Francisco Bridge, high-rise buildings--we have one in Omaha; I'd love to see if it was included in the estimate of construction costs. But you would put in there, in estimating cost, the cost of injury and, yes, death, because that is a cost that can occur on a construction project. And so when Hoover Dam was built, I think they estimated that about a half a dozen people would die. I can't remember what the exact number was. San Francisco Bay Bridge, of course, there were several that did die during there. But it was in their estimate, because it was planned that to do a project of that size there would be injury and, yes, there could be death. I just want the body to think--and I'm not going to speak on this again this morning--the cost of injury and death by the passage of LB 70. Because there will be some. And then to say that, yes, eyeglasses give you more protection than a helmet, I think is ludicrous. Matter of fact, in some cases, eyeglasses, if you fall down...and I have not fallen down, but I've been hit in the face with a board, or construction...from a construction project, that broke my glasses and cut my face. And so I wonder if eyeglasses are going to give you more protection or less protection. However, you do need them. When we talk about windshields, how high is the windshield? We know what Ninja bikes are, those ones that are...you crouch down on. They have a windshield about, oh, four or five inches tall. Not enough to give you coverage. That's not in this bill. But I do want the body just to think a little bit about that, about the A bill, about the cost of implementing this bill. Because I think that someday we may look back and say, wow, we've had additional injuries, we've had additional deaths, we've had additional...

SENATOR CUDABACK: One minute.

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

April 26, 2005 LB 70A

SENATOR JENSEN: ...brain trauma injuries. What is that costing society? And was that in the original A bill? Because I think it should be. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. (Visitors introduced.) On with discussion, motion to indefinitely postpone LB 70A. Senator Bourne, followed by Senator Kruse. Is Senator Bourne on the floor this morning? I do not see Senator Bourne. We will pass over Senator Bourne. Senator Kruse.

SENATOR KRUSE: Mr. President and members, thank you. I oppose the indefinitely postpone motion, and stand for the bill. We're talking about different things today than we were yesterday. This bill is the best part of all that we have been talking about, as I see it. It's where those who are riding motorcycles pay the cost of education. If we can get education of our motorcyclists, we are going to be a long ways ahead of wherever we are. Let the helmets to the side, and eyeglasses, and all the rest. We need education. My daughter has taken that, as an enthusiastic biker. She has taken that education. She was very impressed. It made a difference. She said, it probably saved my life. Because it was very thorough, it made her think about and imagine and know what else might be happening to her. We also have the statistical references that I've studied, in other states, looking at the helmet piece. I was impressed with a far greater factor in safety of riders was the education piece. So here's a way in which the education piece is forwarded. It doesn't cost us a thing. It costs the bikers, who are the ones that appropriately should pay for it. And it is going to save us a lot. As Senator Jensen indicated, there are dangers down the road. The education bill will reduce that. Very hard to project that kind of a thing. But certainly, an education component to this, a good, solid one--to my mind, it is a good, solid one--is the very least that we should do. In fact, it's the best part of the whole mix, as I see it. I stand for the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Kruse. Senator Bourne, are you with us this morning? I thought I saw him walk in. Maybe I didn't. Seeing no further...there are no further lights

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

April 26, 2005 LB 70A

on. Mr. Clerk. Senator Chambers, you have spoken three times. You are recognized to close.

SENATOR CHAMBERS: Thank you, Mr. President. And I stand on my feet all the time, so it doesn't mean necessarily that I expect to be recognized to speak. But this time, because it is my motion and I'm closing, I am going to speak. Senator Kruse gave his reasons for supporting the A bill. I think Senator Jensen indicated he is not going to support it. A motorcycle needs at least two wheels that are operational to move in the way intended. Senator Kruse constitutes one of those wheels. There will be others, I'm sure, who will support the A bill. But I will not. I do not automatically support every A bill that goes along with a bill that has been moved across the floor. If I don't support the bill, why should I support funding it? The money is the lifeblood. So my philosophy is not to just have a blanket position of supporting every A bill. I had said that Senator Smith landed a string of fish yesterday, and that I would read the names, perhaps. And I think I should. These are the ones who supported Senator Smith's amendment, which says that wearing eyeglasses is more important than wearing a helmet: Aguilar, Baker, Bourne, Brashear, Combs, Connealy, Cornett, Cudaback, Cunningham, Erdman, Fischer, Flood, Friend, Heidemann, Hudkins, Janssen, Kremer, Kruse, Landis, Langemeier, Louden, McDonald, Mines, Raikes, Schrock, Smith. Twenty-six fish on the line. I really should say just 25, because Senator Smith is the angler. There is no way to discuss an A bill without discussing the underlying bill that is to be funded. I will say again and again that it was a foolish vote on a foolish proposal. Some of us were just waiting with bated breath, almost hoping that that amendment would be adopted which would purport to suspend the enforcement of a criminal law for a couple of months. That is so unconstitutional that only somebody who would support putting hunting, trapping, and fishing into the constitution would support something like that. LB 70 is a mockery. The intent that I would have if I had succeeded in getting the body to adopt that foolish amendment is to discourage any and all enforcement, because it is simply too difficult. Senator Smith himself said that law enforcement people have too much to do to be bothered with enforcing a helmet provision.

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

April 26, 2005 LB 70A

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: This is more complicated than the original. Now there are decisions which must be made, that take time. And the utilization of that time will militate against enforcement of the motorcycle helmet bill...law. It would be better to just repeal it outright. You should have voted to repeal it outright. But to do something like this is a travesty. I'm going to continue to discuss this issue. And along the way, I will talk about my concerns for the types of legislation that the Legislature considers and then enacts into law. Mr. President, I would ask for a call of the house, please.

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

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

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. Members, please wait a moment before we try to check in. We've got a little bug or a virus in our system. So please bear with us. Thank you. Members, please check in now. Thank you for the delay. The house is under call. All unexcused members please report to the Chamber. The house is under call. Senator Janssen, would you check in, please. Senator...all members are present or accounted for. Senator Chambers, how did you wish to proceed?

SENATOR CHAMBERS: Roll call vote.

SENATOR CUDABACK: Been a request for a roll call vote. The vote is the majority of those voting. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken, Legislative Journal pages 1295-1296.) 3 ayes, 30 nays, Mr. President, on the motion to indefinitely postpone.

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

April 26, 2005 LB 70A

SENATOR CUDABACK: The motion was not successful, and I do raise the call. (Visitors introduced.) Mr. Clerk, next motion.

CLERK: Senator Chambers would move to amend, FA185. (Legislative Journal page 1293.)

SENATOR CUDABACK: Senator Chambers, to open on FA185 to LB 70A.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is an amendment which may appear to be inartfully drawn. And I will tell you why I say that. In the A bill, it talks about \$120,000 being appropriated from the Motorcycle Safety Education Fund. Before I go into this, I want to ask Senator Kruse a question or two, if I can tap into his expertise as a member of the Appropriations Committee and a supporter of the A bill. Mr. President, if Senator Kruse would yield to a question or two, I would appreciate it.

SENATOR CUDABACK: Senator Kruse, would you yield?

SENATOR KRUSE: Yes.

SENATOR CUDABACK: I'm sorry, Senator Chambers.

SENATOR CHAMBERS: That's all right. Senator Kruse, you are a member of the Appropriations bill...I mean, Committee, aren't you?

SENATOR KRUSE: All day.

SENATOR CHAMBERS: I thought...(laugh) right. After day, after day. Senator Kruse, you had mentioned that the motorcyclists pay the money into the fund from which this appropriation of \$120,000 will come, and that fund is the Motorcycle Safety Education Fund. Is that correct?

SENATOR KRUSE: Yes.

SENATOR CHAMBERS: How is money obtained from the motorcyclists for placement in that fund?

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

April 26, 2005 LB 70A, 70

SENATOR KRUSE: Through the registration.

SENATOR CHAMBERS: When they register, there's a certain amount of money that automatically must be anted up or their registration will not be accepted, and part of that money would go into this Safety Education Fund. Is that correct?

SENATOR KRUSE: That's my understanding.

SENATOR CHAMBERS: You may not know this. How much does it cost to register a motorcycle?

SENATOR KRUSE: I do not know. The extra fee here is \$5.

SENATOR CHAMBERS: Okay. So we know that for every motorcycle registered, five additional dollars will be taken to go into this fund.

SENATOR KRUSE: Oh, yeah.

SENATOR CHAMBERS: Okay. Now, in Section 1 of the A bill, there is a Department of Motor Vehicles Cash Fund. Does the money in the Motor Vehicle Cash Fund come from motorcyclists, or from people at large? Where does that money come from, in other words?

SENATOR KRUSE: That would come from motorcyclists, as I understand it.

SENATOR CHAMBERS: Only motorcyclists, in Program 70? Is that true? Because I don't know. And I hope they're not calling it Program 70 because the number of the bill is LB 70.

SENATOR KRUSE: There are some other sources for that, as I remember it. I'm just going off of memory here, Senator.

SENATOR CHAMBERS: Okay.

SENATOR KRUSE: But I think there are other purposes for that fund.

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

April 26, 2005 LB 70A

SENATOR CHAMBERS: Okay. I would like to ask Senator...is Senator Baker here?

SENATOR CUDABACK: Senator Baker.

SENATOR CHAMBERS: As he makes his...

SENATOR CUDABACK: He is.

SENATOR CHAMBERS: ...way to his seat, Mr. President, I'm going to pose the question. Where does money come from which goes into the Motor Vehicles Cash Fund? So if Senator Baker is at his mike, I will ask that he yield to a question or two, if he will.

SENATOR CUDABACK: Senator Baker, would you yield?

SENATOR BAKER: Yes. In this case, it comes from the motorcycle registration, the \$5 (inaudible)...

SENATOR CHAMBERS: So...oh, excuse me.

SENATOR BAKER: ...registration fee.

SENATOR CHAMBERS: So the Motor Vehicle Cash Fund is divided into separate segments? Is that true?

SENATOR BAKER: That's true.

SENATOR CHAMBERS: And the program numbered 70 is based strictly on money that comes from motorcyclists, and no other persons?

SENATOR BAKER: I don't...it would have a number, but I don't think it's 70, Senator Chambers.

SENATOR CHAMBERS: Well, this says Program 70.

SENATOR BAKER: Well, it might be. I don't...

SENATOR CHAMBERS: Okay. For Program 70.

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

April 26, 2005 LB 70A

SENATOR BAKER: ...see that. That could be. Then if that's what it says, that's where...that is the number, then. I'm sorry.

SENATOR CHAMBERS: Okay.

SENATOR BAKER: I don't have the A bill in front of me.

SENATOR CHAMBERS: I misstated it. It says, money will come from the Department of Motor Vehicles Cash Fund to go into Program 70.

SENATOR BAKER: Okay. (Inaudible)...

SENATOR CHAMBERS: Now, is Program 70 this motorcycle training...

SENATOR BAKER: Yes.

SENATOR CHAMBERS: ...operation?

SENATOR BAKER: Yes.

SENATOR CHAMBERS: Okay.

SENATOR BAKER: That would be correct.

SENATOR CHAMBERS: Now, money goes into the Motor Vehicles Cash Fund from sources other than motorcyclists. Isn't that true?

SENATOR BAKER: Yes, that's true.

SENATOR CHAMBERS: So what Senator Kruse said in terms of this not costing anybody except the motorcyclists is not strictly accurate, is it?

SENATOR BAKER: Well, the only money that would go into the Motorcycle Training Fund would be generated from motorcycle registrations. That other money comes from registrations is split between counties and political...the Highway Trust Fund

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

April 26, 2005 LB 70A

and Department of Motor Vehicles Cash Fund. But it would not go into Program 70. It would go into a different program.

SENATOR CHAMBERS: Well, this says money will come from the Motor Vehicles Cash Fund for Program 70. What is that about, then?

SENATOR BAKER: Well, it's saying...I think what it's saying is, the money that will go into Program 70 will be channeled through the Motor Vehicle Cash Fund. But the only money that will be channeled on through it is that that's generated, in this case, from motorcycle registrations. I think I'm correct. I could check, but I'm just certainly that's...certain that that's the case, Senator.

SENATOR CHAMBERS: So where do we see language that would say money will come from the motorcycle registrations into the Motor Vehicle Cash Fund and then be sent from that fund into Program 70?

SENATOR BAKER: I don't think you're going to see that language in statute. I think it's going to be in DMV regulations that say money generated from vehicle sales goes into certain funds, and motorcycle registrations goes into, in this case, Program 70, and so on.

SENATOR CHAMBERS: Well, in Section 2, back to that, it says, \$120,000 will come from the Motorcycle Safety Education Fund from...and \$60,000 from the Motorcycle Safety Education Fund--that's \$60,000--and \$60,000 from the Motorcycle Safety and Training Fund. And that gives it for various fiscal years. Then it says, for Program 644. So money is going to Program 70 and to Program 644. Do both of those programs deal exclusively with motorcycles?

SENATOR BAKER: That I can't answer, Senator Chambers. I'm going to have to get an answer for you.

SENATOR CHAMBERS: But you can, without too much trouble?

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

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

April 26, 2005 LB 70A

SENATOR CHAMBERS: Okay.

SENATOR BAKER: I will.

SENATOR CHAMBERS: So at some point, I would appreciate that.

SENATOR BAKER: I will get an answer for you on that.

SENATOR CHAMBERS: Thank you.

SENATOR BAKER: You're welcome.

SENATOR CHAMBERS: And it might be possible for me to dig out that information. But it's not my A bill. And there are people who understand these programs, how the money gets into them, and how the money gets out of them. If there's money in a fund, I know that it takes an appropriations bill for the Legislature to appropriate money for any program. But that brings me now back to my underlying argument. If that which is being funded is not good, the funds should not be forthcoming. If Senator Kruse is still at his desk, I would like to...

SENATOR CUDABACK: Senator Kruse, are you present?

SENATOR CHAMBERS: That's all right. I look back and I don't see him. So I can proceed without that. If I understood Senator Kruse correctly, he is willing to swallow the absence of a helmet in order to get the safety program. If people take the safety program, that doesn't mean that they're going to be safer. I had said I wouldn't ask Senator Smith questions, but if he's back there, I have to ask him one at least.

SENATOR CUDABACK: Senator Smith, would you yield?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, is this safety program mandatory for all motorcyclists?

SENATOR SMITH: No, it is not. But the only reason the A bill

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

April 26, 2005 LB 70A

exists is because of the safety program.

SENATOR CHAMBERS: If a motorcyclist takes the program, who provides the actual training?

SENATOR SMITH: An accredited organization that meets the standards of a national safety training foundation.

SENATOR CHAMBERS: But it's not the state that provides that training?

SENATOR CUDABACK: One minute.

SENATOR SMITH: That is correct. Although some community colleges would provide it. It's...

SENATOR CHAMBERS: Well, I'm thinking of the Department of Motor Vehicles.

SENATOR SMITH: No, the Department of Motor Vehicles is not involved in the training. They contract it out, if you want to call it that.

SENATOR CHAMBERS: And if a person wants to take the training, he or she pays for it?

SENATOR SMITH: Yes. And there...well, but there is some subsidy from the state, and that's why this A bill exists.

SENATOR CHAMBERS: And that subsidy would come from the Motorcycle Safety Fund, is that true?

SENATOR SMITH: Yes. Yes.

SENATOR CHAMBERS: That's all I will ask you. Thank you, Senator Smith. Mr. President, I know my time is up. So I will stop at this point. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA185 to LB 70A. Further discussion. Senator Chambers.

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

April 26, 2005 LB 70A

SENATOR CHAMBERS: Mr. President and members of the Legislature, the people who don't want to wear a helmet are not going to take that safety program, in my opinion. They feel they know how to drive well enough to navigate the streets and highways of Nebraska without the need for a helmet, because it is not their intent, nor do they anticipate an accident occurring. So what this bill does, in effect, is to take away the requirement that a person wear a motorcycle helmet. That statement is not completely accurate. The requirement to wear a helmet is still there. If the law said that you must wear a helmet, the law is clear. Whether you like it or not, it's clear. When the law says that you must wear a helmet, but really you don't have to, then it becomes murky. If a person wears glasses...and the reason I keep talking about glasses, because "glasses" is a word that is found in the bill. I'm not making that up. Glasses. See these that I'm putting on? I'm safe from being stopped by the police if I'm on a motorcycle without a helmet. But here's a question I do have to ask Senator Smith. Senator Smith, would you yield to another question?

SENATOR CUDABACK: Senator Smith, would you respond?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, if a person has glasses, of whatever variety, or a windshield...I want to get past that, for my purposes, the windshield and all these other things. Let's...I want to stick to the glasses. If a person has glasses and no helmet, and is stopped for speeding, that person, even though he or she has glasses, can be ticketed for not having a helmet.

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Isn't that true?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Okay. But the person should understand that the glasses requirement is distinct and separate from the helmet

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

April 26, 2005 LB 70A

requirement. Everybody should have that clearly in mind, if we can put it there. Would you agree?

SENATOR SMITH: I'm sorry. I didn't (inaudible).

SENATOR CHAMBERS: That they're independent of each other. The glasses component is separate from the helmet component. You can be guilty of one without being guilty of the other, or you can be guilty of both.

SENATOR SMITH: That is correct.

SENATOR CHAMBERS: Okay. That's all I will ask you. Thank you. Members of the Legislature, if I wanted to beat this law, I could just wear eyeglass frames. And do you think a cop is going to stop everybody who's got eyeglass frames on his or her face, is going to stop to see if there are glass...there's glass in the frames? It won't make any difference. It creates a lot of opportunities to play cat and mouse, to mock the law, and to mock law enforcement. Which may not be a bad thing, all things considered. But when you're behaving as a responsible lawmaker, it could create some problems. When a law such as this one, if it becomes law, is in place, then you have contempt created for all the law. Now, brothers and sisters, friends, enemies, and neutrals, I'm going to shift into another gear. I'm going to...

SENATOR CUDABACK: One...

SENATOR CHAMBERS: ...gear it down and slide on in, not...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...to the old home filler-up and keep on truckin' cafe, but into politics. I can just see Governor Heineman running against Tom Osborne. And he signed a piece of trash like this. I want this to get to his desk, and I want to see what "General" Heineman is going to do. Why do I say "General"? He's the commander in chief. He's got to have an eye to his campaign. You're going to send something as nonsensical as this over there? Now, he can say, the senators are foolish, the senators are silly, the senators are

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

April 26, 2005 LB 70A

simple-minded. They don't read bills, they don't know. But the Governor won't have that excuse. The Governor knew that he was creating problems for law enforcement, and he signed it? Why, what kind of nonsense is that?

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: He vetoed the bill...oh.

SENATOR CUDABACK: You may continue.

SENATOR CHAMBERS: The Governor vetoed the bill that would allow people who had committed felonies and served their time to vote after their debt to society had been paid for a period of two years. He vetoed that. And he's going to sign something like this? I...if I were a reporter, I would be praying, and if I believed in fasting, I'd be fasting and praying. I'd wear a hairshirt. I would get a scourge and whip myself with it, if that would persuade whatever God Senator...Governor Heineman believes in to get him to sign this, if it gets to his desk, so that I could grill him. Mr. Governor, are you aware that under this law, it's better for your head to have no helmet than for your helmet to have no visor? Are you aware of that, Governor? Well, I don't want to talk about that. You can say that's what it means if you want to. Oh, so you'd rather not answer that question? Then I'll proceed to the next on, Mr. Governor. But I'll just say this about that: wow, such logic. Mr. Governor, under this bill you signed, it's better to have no helmet at all than to have a helmet without a visor. Because if you don't have something on your eyes, even though you got the helmet, you'll draw the cop and be arrested. Well, the way you phrase that, it's hypothetical. But Governor, under the law that you signed, isn't that possible? Well, yes, it's possible, but I don't know if it will happen. So then when you signed it you didn't take into consideration the problems you could create for law enforcement, the confusion on the part of the public? You didn't consider that? And you want to be Governor again, against Tom "Knut Rockne" Osborne? Mr. Governor, I need you to help me out. What is the benefit to the state and its citizens for you to sign into law a bill that weakened a measure whose safety had been established? Well, what do you mean by

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

April 26, 2005 LB 70A

"safety"? I apologize, Mr. Governor. I wasn't as precise as I should have been in asking my question. Why did you sign into law a provision that weakened the requirement to wear a helmet, when all of these various health and other safety-conscious groups have gone on record saying that the helmet helps to save lives and mitigate the degree of injury? Why did you, Mr. Governor, sign that? And your job is to enforce all the laws faithfully and efficiently, pursuant to the constitution. Why? I'm the Governor. You can ask me what you want to, but I don't have to answer you, and I ain't going to answer that question. Next question. Mr. Governor, do you recognize me? Yes. Well, my question is the same one you refused to answer. And I refuse to answer you, too. I hope this gets to the Governor's desk. But it's going to have a little trouble getting there. And I think the reporters ought to go over there and camp on his door and ask him if he's going to sign this. See, I've got an ace that I can keep. You got to know when to hold 'em, know when to fold 'em, know when to walk away, and know when to run. Senator Smith took off running yesterday. And now the Governor has got a decision to make, if this gets to his desk. Is he going to know when to hold 'em? Is he going to know when to fold 'em? He can easily veto this. If he vetoes it, he's maintaining status quo. He is not hurting anything. Is he helping anything? Why, he would be lauded by all of these surgeons and physicians and others who individually have contacted us,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...those who are members of these organizations and those who run these organizations, who have signed a list opposing doing away with the helmet requirement or weakening it substantially. He would have the praise of all of those. What about the motorcyclists? Will they vote against him? Perhaps. But if they do, are they a sufficiently large voting bloc to turn the tide? On the other hand, if he signs this and brings down upon his head the ire of all these groups and others, what then? Well, a Governor is not going to fear that amorphous electorate out there that he cannot see. But a Governor may fear those pointed questions from reporters and those with television cameras, who can zoom right in so close

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

April 26, 2005 LB 70A

that they can see the sweat as it first peeks out of the pores and...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...begins to cut a trail down his face. Is that my third time, Mr. President?

SENATOR CUDABACK: It was, Senator.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: Thank you. Senator Combs.

SENATOR COMBS: Mr. President, members of the body, friends all, I hesitate to get involved in this discussion. I know how...what my beliefs are, my core beliefs about this issue, and personal freedom and balanced with the possibility of severe injury, and stupid people making stupid choices, like the kid did two days ago, without a helmet. Without the helmet law...I mean, with the helmet law being in effect, he should have had one on. But he's stupid. I mean, this is not going to prevent stupid people from doing stupid things. And the "King Cobra" is using a lot of venom on this issue, so, you know, I hesitate to get in the fray, because then I'm right in the middle of the target. But I don't mind defending my position. And yesterday, I did know what I was voting on, because I believe that you are more likely to be injured by having things fly in your eye than you are wrecking your bike and hitting your head. I mean, it stands to reason. You have bugs and all kinds of dirt and crap that are flying around on the...wherever you're driving. You must protect your eyes from that going into your eyes. So I do believe that you are more likely to be hurt from things flying in your eyes, causing you to have an accident, than you are from actually falling over on your bike and hitting your head and, you know, not having your towel on at the time, or, you know, the other things we discussed yesterday, and being killed. So yes indeed, eye protection is more protective than a helmet in terms of preventing accidents. Of course, that's my opinion, and that's my take on this. I do go back to what Senator Bourne was talking about yesterday, and that is a bit more of a

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

April 26, 2005 LB 70A

libertarian view, in any legislation that we do, and that is that people have to have personal responsibilities and make choices. We educate them the best we can. But you look. In spite of the helmet law, we had the kid that's laying in the hospital right now. I don't know what his insurance plan is, but that didn't prevent that from happening. People are stupid and they do stupid things. You cannot legislate and prevent stupidity. Sorry. I do err on the side of libertarianism in this case, as I do on many other issues. And I do believe that the secondary violation is very much in tune with what our current law is on seat belts, which I know he picked up some support on the floor--you can correct me if I'm wrong--when that came into being because other people agree with me that, yes, that is in concert with our current law. So this is what I believe. And I did want to stand up and explain, some of us, what we believe about eye protection versus head protection, and the potential for injury and accident due to stuff flying in your eye being much more likely to happen than falling off your bike and busting your head in an accident. In fact, it could engender or cause that accident to happen, by virtue of the fact that you do not protect your eyes. Thank you.

SENATOR CUDABACK: Thank you, Senator Combs. Further discussion on FA185? Senator Chambers, seeing no lights on, the Chair recognizes you to close on FA185.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would that you were hot or cold. But because you are lukewarm, I will spew you out of my mouth. Revelations, quoting Jesus' attitude toward those people who are neither one nor the other, neither fish nor fowl. You should either keep intact that requirement to wear a helmet, or you should repeal it. During the debates on the underlying bill, when Senator Jensen's amendment was before us, I offered an amendment that would have repealed all of the enforcement parts of the motorcycle helmet law. You would not have had to wear one. I discussed it with Senator Smith on the mike, and he opposed that. Either have it, or do away with it. This does neither one. But it does put law enforcement personnel in the position of deciding to just let it go. The Legislature has created an unenforceable scheme. It's beyond philosophy now. I stated

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

April 26, 2005 LB 70A

mine in the beginning. I've always opposed mandated helmet wearing. Even when the federal government's threatened...with the federal government's threatened withholding of funds, I opposed it. And I showed the legislators at that time that California and Illinois had defied the government, had refused to pass such bills; their money had not been taken. And Nebraska should do the same thing; and they couldn't get Nebraska without getting Illinois and California. From the standpoint of philosophy, I say, do away with the mandate. But as a member of the Legislature, and looking at the type of law that is being passed, this is different from even the seat belt law. The seat belt law does not say, if you're wearing eyeglasses you don't have to wear a seat belt. It doesn't have anything like that. This that you all voted for yesterday is neither fish nor fowl. If you want the opportunity to undo what was done, don't pass this A bill. I know some people will rationalize, as my good friend Senator Kruse did, that you're having these safety programs, and that makes it palatable to do away with the requirement that you wear the helmet. What is the purpose of the safety training? To try to create safe riding of motorcycles. If, as has been argued, at least at lower speeds, a helmet can prevent death or serious brain injury or other head injuries that may not go all the way to damage to the brain, if those considerations are true, then people can give a rationale for supporting mandated helmet wearing. There is a plausible...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...argument for that. There is no plausible argument for what the Legislature did yesterday. And people can pop up on this floor like sweet tarts and say whatever they want to say. That was stupid that the Legislature did yesterday. And I'd venture to say, if I had grilled anybody on this floor after they did it, they could not have told what they voted for. Now that I've explained it, they can pretend that they knew. They didn't know what they did yesterday. They didn't even pay attention to what was going on. And the way those votes came in quick succession once a determination was made to invoke cloture, people didn't know for sure even which amendment they were voting on. Senator Smith tried to circumvent the rules by explaining what was left and what was done to Senator Jensen's

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

April 26, 2005 LB 70A

amendment. And that's why Senator Brashear wanted to be in the chair. He said, the amendment will say what the amendment says. The amendment will do what the amendment does. And there was not going to be any attempt allowed to lobby for a favorable vote...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...during cloture. Thank you. Mr. President, I would ask for a call of the house.

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

CLERK: 18 ayes, 0 nay, 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. All unexcused senators please report to the Chamber. The house is under call. Senator Janssen, would you check in, please. Senator Hudkins, Senator Heidemann, Senator Stuhr, Senator Schimek, Senators Wehrbein, Burling, and Price. Senators Foley, Erdman, and Aguilar. Senator Stuhr, the house is under call. And Senator Burling. Senator Wehrbein, please report to the Chamber. Senator Wehrbein, Senator Burling, Senator Stuhr. The house is under call. Senator Wehrbein, Senator Stuhr. Senator Chambers, we cannot locate, at the present time, Senator Wehrbein or Senator Stuhr.

SENATOR CHAMBERS: Do we have the power to enlist the aid of the State Patrol?

SENATOR CUDABACK: I think they may be on their way.

SENATOR CHAMBERS: That's all it takes, is a little incentive.

SENATOR CUDABACK: There you go. Thank you. All members are present or accounted for. Senator Chambers, how did you state

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

April 26, 2005 LB 70A, 326
 LR 8, 77

you wish to proceed?

SENATOR CHAMBERS: Roll call vote.

SENATOR CUDABACK: Been a request for a roll call vote. The question is FA185. Mr. Clerk, call the roll on the question, please.

CLERK: (Roll call vote taken, Legislative Journal pages 1296-1297.) 1 aye, 33 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The motion was not successful. FA185 has not been adopted. Mr. Clerk, items for the record.

CLERK: Mr. President, an amendment to be printed, Legislative Bill...to LB 326, by Senator Cornett. And Mr. President, your Committee on Enrollment and Review reports they've examined LR 8CA and recommend it be placed onto Select File. That's all that I have, Mr. President. (Legislative Journal pages 1297-1299.)

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 77, and only LR 77. Mr. Clerk, you have a motion on the desk.

CLERK: Mr. President, I do. Senator Smith would move to invoke cloture on LB 70A, pursuant to Rule 7, Section 10.

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

SENATOR SMITH: I'd like a call of the house and a roll call vote, regular order.

SPEAKER BRASHEAR: Members, a call of the house has been requested. All those in favor of a call of the house signify by...we're still under call? All those in favor of a call of the house please indicate by voting aye; those opposed, nay.

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

April 26, 2005 LB 70A, 117

Mr. Clerk, please record.

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call.

SPEAKER BRASHEAR: The house is under call. All unexcused Senators should report to the Chamber. All unauthorized personnel should leave the floor. The house is under call. Senator Foley, please check in. All members being present, the question before the body is whether or not cloture should be invoked. We have had a request for a roll call vote in regular order. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal page 1300.) 33 ayes, 7 nays, Mr. President, on the motion to invoke cloture.

SPEAKER BRASHEAR: Members, cloture being invoked, we will now proceed to vote upon LB 70A and its advancement to E & R Initial.

SENATOR CHAMBERS: (Microphone malfunction) Roll call vote.

SPEAKER BRASHEAR: We've had a request for a roll call vote. Mr. Clerk.

CLERK: (Roll call taken, Legislative Journal pages 1300-1301.) 42 ayes, 2 nays, Mr. President, on the advancement of LB 70A.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. LB 70A is advanced to E & R Initial. The call is raised. Mr. Clerk.

CLERK: Mr. President, the next legislative bill is LB 117. It's a bill originally introduced by Senator Bourne. (Read title.) Bill was introduced on January 6, referred to Judiciary. The bill was advanced to General File. There are committee amendments pending. (AM0712, Legislative Journal page 871.)

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Bourne, you're

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

April 26, 2005 LB 117

recognized to open on LB 117.

SENATOR BOURNE: Thank you, Mr. President, members. This is a bill that many of us are aware of. I think any of us that read the paper or listen to the news realize how significant a problem methamphetamine use and manufacture is in our communities and in the surrounding states. I'd like to thank Senator Aguilar for his interest in the bill, and Senator Stuthman for prioritizing it. And as you know, I introduced LB 117 on behalf of the Governor and the Attorney General, and I think that it is a bill that makes sense. It is a compromise from what we had in the green copy of the bill. We took input from the hearing and the process worked as it should. We made the bill better in a lot of ways and we responded to the requests and input from those present at the hearing. The idea of LB 117 is to put up a roadblock for those folks who manufacture methamphetamine here in the state of Nebraska. If we can get local labs under control here, we can put more resources towards fighting the imports of those...that methamphetamine coming from other states and even other countries. There is one ingredient that is common in the manufacture of methamphetamine and that is pseudoephedrine or...pseudoephedrine or ephedrine. There's a lot of different things that a meth cook can use, but the one common ingredient is pseudoephedrine or ephedrine, and the purpose of LB 117 is to control access to that one common input and stop or curtail or limit the amount of meth that's available here in the state of Nebraska. I'll go through and tell you what is in the green copy of the bill. Although the committee amendment has modified it significantly, I do think it is important to let you know where we started and what we're suggesting that we do or end up at with the committee amendment. In the green copy, in addition to increasing the penalties for meth production and trafficking, the original version of the bill would limit the access of products containing pseudoephedrine, and again, under the green copy of the bill, and I think it's important that you understand what's in the green copy so that you can tell how much or to what extent we have gone to compromise, I didn't say weaken the bill, I said compromise, to the interests of the retailers and the pharmaceutical companies and the pharmacists. The green copy of the bill stipulated that these products containing

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

April 26, 2005 LB 117

pseudoephedrine must be sold in a pharmacy by a pharmacist, pharmacist intern, or a pharmacist tech. It said that the products must be stored in a pharmacy behind the counter or in a place inaccessible to customers. It indicated or stated that a person may not purchase more than nine grams of pseudoephedrine in a 30-day period, and it required a person to show identification and sign a logbook when purchasing pseudoephedrine. That, colleagues, is what was in...or was in the green copy of the bill. And with that, I'll yield the remainder of my opening to Senator Stuthman, as he is the individual that prioritized this bill, and I thank him for that.

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

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. First of all, I would like to thank Senator Bourne for introducing this bill, and I want to give you a little bit of the reason why I decided to prioritize this bill. I think that this bill and the effects of what we're talking about, the addictions of methamphetamine, you know, is probably the most important issue that we should be dealing with this year. We need to get a start on trying to curb the use of the pseudoephedrine, the meth. What it's doing to our young people, what it's doing to the middle-aged people that are utilizing this drug, how they're getting addicted to it just by a little pill or something that someone gives to them just to make them feel good for a day, but that is only the beginning of a real disaster to happen. Yesterday morning Senator Langemeier and myself did attend a meth meeting at Aquinas High School in David City telling about the effects of meth, how it affects the people, how it affects how they react and what it does to the families, and I think that's one of the most important things that we have to really consider, is what it's doing to the people that are associated with the people that are addicted to this meth. I think one thing about the meth, the meth addiction, it's something that gets to your body, to your brain, and when this happens you don't care about anything else. You don't care about your children. You don't love your children. You don't hug your children. You only care about the next high that you can get with meth. I want to give you a little information that really concerns me about meth, and I think if

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

April 26, 2005 LB 117

we could get this problem solved we would solve a lot of our other problems, and that would be in the information that was given by the Nebraska Department of Correctional Services as to the inmates and why the inmates are there in the prisons. For drugs--29.4 percent of the inmates are in there because of drugs. But also because of drugs, you know, I'm sure some of the other offenses are also linked to that--robbery, burglary and theft--and those added together are about 27 percent also. So, you know, there's over 50 percent of the people that are in the penitentiaries possibly because of drug addictions and the effects of drugs. I was informed a year ago by an individual that was in the women's reformatory, women's division in York, that 80 percent of the people there was because of a drug conviction, and that is really sad that that...that we have to, you know, penalize people for doing this, doing this that is a poison to their body, and we have to put them in a facility and house them. But I think also because of this meth addiction, yes, there's treatment, treatment for this. Who is going to pay for the treatment? It's going to be the state. Treatment doesn't come easy, doesn't come cheap for the treatment of this, and as of now I don't think there's very many treatment facilities that actually treat and get an end result where they're totally off of meth. So this is...this is a major concern of ours, major concern of mine, because of what we're doing to the rest of the public, the rest of our population. If we look to the future of Medicare, Medicaid, a lot of the baby boomers will be on Social Security, on Medicaid, Medicare. This group of people that are drug "addicters," they will be on Medicare. They will be institutionalized. Who is going to be the ones that are going to be paying all these bills? So I think...I don't know how much time I've got left,...

SENATOR CUDABACK: About two minutes, Senator.

SENATOR STUTHMAN: ...but then the thing that really concerns me, you know, is we need to look to the future. We need to look to the future of the children that are involved because of this meth addiction. We need to be thinking about, you know, what is...what are going to be the expenses in years to come and how we're going to be able to afford it. I did pass out one of the Omaha World-Herald pictures of an individual that when she was

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

April 26, 2005 LB 117

12 or 13 years old she was a beautiful young lady, and within a year or a year and a half she had fallen apart drastically, and things ended up real bad. She's not with us anymore. Why? Because she got addicted to meth. So easy to get started; almost impossible to get off of it. So let's keep that in mind for the young people or anyone--easy to get started, but impossible to end, unless you want to do the route that this young lady did. With that, I'll give the balance of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Bourne, did you wish to use...okay. Thank you. There are committee amendments, as stated by the Clerk. Senator Bourne, as Chairman of committee, you're recognized to open on AM0712.

SENATOR BOURNE: Thank you, Mr. President. Members, as I mentioned in my opening, we had extensive testimony on the bill, and if you look at the committee statement you'll see that it was a long hearing. There were retailers. There were pharmacists. There were store owners. There were other interested parties. And the Judiciary Committee tried to be responsive to these interested parties and, yet, still do something that will make a difference in curtailing the one ingredient that is common in all methamphetamine, and that is pseudoephedrine. So again, what I...I think the committee amendment, I think it's a fair compromise. I know that there are people that aren't entirely happy with it and I'm sure we'll get into that throughout the debate, but I think that it goes a long ways towards curtailing the availability of this input. I'll tell you what the committee amendment does. You heard what the green copy did, so here's the difference and here's what I'm proposing and the Judiciary Committee is proposing that you consider. It would limit the packaging of pseudoephedrine products to 1,440 milligrams of pseudoephedrine base. Now, again, that's base. That is not the...that's the amount of pseudoephedrine contained in a tablet or a pill or a liquid. And 1,440 milligrams of pseudoephedrine base is about 48 tablets of a 30-milligram dose. So you will be able to buy 48 tablets of a 30-milligram dose in one 24-hour period. The limitation, as in the committee amendment, is on all products containing multi-ingredient and liquids. It also requires that the product

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

April 26, 2005 LB 117

be stored behind the counter or in a locked case. It requires the product may only be sold by a person 19 years of age or older. That is the exact same age as is required for the sale of alcohol. It requires...oh, let me go back just a little bit again. The green copy of the bill required that it be a pharmacist or a pharmacist intern selling the product. Now we've...we're suggesting that we make it just a 19-year-old, and I think our friends and colleagues in the rural communities will understand how significant that concession or that change is to your communities. It also requires that the purchaser be at least 18 years of age. That is the same as the purchase of alcohol or, excuse me, the same as purchase of tobacco products. It requires the customer show proof of identification; however, it does not require the retail facility to verify the validity of that I.D. You simply have to show the I.D. There's no requirement now under the committee amendment that you sign a logbook. You simply present an I.D. It limits the amount of product that can be sold to one person to 1,440 milligrams in a 24-hour period. Under current law, a violation of this is a civil penalty of \$50 a day. That's not changed. It limits the amount of product a person can buy through retail to 1,440 milligrams in a 24-hour period. A violation is an infraction. First offense is not more than \$100; second offense in a two-year period is \$100 to \$300; a third offense is \$300 to \$500. The amendment also classifies amphetamine or methamphetamine as an exceptionally hazardous drug. It would be a Class II felony for manufacturing, distributing, delivering, possessing with intent to deliver. A max is 50 years; a minimum is 1 year. That's consistent with other hazardous drugs that we, as a state, have determined are hazardous--cocaine, heroin, things of that nature. It makes uniform the penalties for manufacturing, distributing, delivering, possessing with intent to deliver cocaine, heroin, and methamphetamine: 140 grams or more is a Class IB felony, maximum is life, minimum is 25 years; 100 grams to 499 (sic) grams is a Class IC felony; 10 grams to 28 grams is a Class ID felony; and less than 10 grams is a Class II felony. That is what the committee amendment does. Again, I feel that it was a compromise. We tried to be responsive to retailers and pharmaceutical companies and pharmacists. I think that there are still teeth in this bill and it makes sense, and yet, as is our tradition, we have taken

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

April 26, 2005 LB 117

input from interested parties and came up with a compromise that I feel makes sense. I'd be happy to answer any questions that you may have. If I don't know the answer, I certainly will get it for you. I would appreciate your support. I look forward to the debate on this measure. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on the committee amendments offered by Senator Bourne, as Chairman of the committee, to LB 117. (Visitors introduced.) Mr. Clerk, motion please.

ASSISTANT CLERK: Mr. President, there are amendments to the committee amendments. The first is by Senator Beutler, AM1181. (Legislative Journal page 1189.)

SENATOR CUDABACK: Senator Beutler, you're recognized to open on AM1181 to AM0712. Senator Chambers.

SENATOR CHAMBERS: I would like to divide the question.

SENATOR CUDABACK: Senator Chambers, would you come forward, please, maybe with Senator Beutler? Are you dividing the Beutler amendment, or dividing the committee amendments? Senator Beutler, while we're discussing this up here, why don't you open on your amendment first. Thank you. You're recognized to open.

SENATOR BEUTLER: Well, how do we know, Senator, that my amendment goes to the portion of the committee amendments being discussed?

SENATOR CUDABACK: Senator Beutler, you know what's in your amendment. You can open on your amendment.

SENATOR BEUTLER: But I don't want them to forget my amendment by the time we get there.

SENATOR CUDABACK: It's up to you, Senator Beutler.

SENATOR BEUTLER: Well, is...I would ask for a ruling of the Chair. Does my amendment pertain to the part of the committee

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

April 26, 2005 LB 117

amendment that's currently under discussion?

SENATOR CUDABACK: The committee amendments have not been divided yet, Senator Beutler. The committee amendments have not been divided. The committee amendments have not been divided. You may open on your amendment to the committee amendments.

SENATOR BEUTLER: Okay. Senator Cudaback, I'm not sure about the procedure, but they assure me that the part of the committee amendments that I'll be...that I'm working with will be the first section of the divided amendments. And the only reason I'm fussing is because I want there to be some continuity of discussion and not a total disruption in terms of what we're addressing in the amendment. Before I tell you what the amendment does, let me tell you what approach I'm taking to the bill so that none of this is misunderstood, but I'm taking the approach of pressing the Judiciary Committee and those interested in the bill as to whether there is not something more we can do. I perceive the committee amendment as being weak in one part. I appreciate the difficulty of reaching agreements on some of these things in committee and I would acknowledge that from the very beginning that we are dealing with politically difficult decisions. Still, on the other hand, I think it makes sense to have a good discussion of why agreements were made and for what purpose, because I do feel, and I'll try to explain this, that the bill has been watered down substantially. If that's of necessity, considering all the things to be balanced, then fine. If there's something more that we can do, I would like to discover that because I agree with Senator Stuthman and Senator Aguilar and the other members of the Judiciary Committee that this is a difficult, horrendous problem and, in fact, the Judiciary Committee did me the favor of, last year, of passing through the committee a meth bill that I had on my own which was similar somewhat to Senator Aguilar's effort on this particular bill. The amendment that I'm proposing to you is not original. It comes from the green copy of the bill, so it is the idea of the introducers. The question that we all have to think about is whether the balance is right here, and whether this provision should have been stricken. There are two amendments that I have, and both of them are designed to explore alternatives, things, directions in which we might do a little bit more to

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

April 26, 2005 LB 117

deal with the meth problem. Having said that, let me first of all say, with regard to this amendment, basically what it says, and it's very short and I'll...and I'll read it to you, and this, again, was in the green copy of the bill, a person who would come into a seller's store and purchase one of the drug products that we're discussing in this particular bill, and those drug products are identified on lines 17 through 20 on page 16 of the amendment, for those of you who might want to follow, but they're basically pseudoephedrine and the other one that's too long to pronounce. I'll just call it the X component. But those two things cannot be sold without a...can be sold without a prescription only if they meet certain qualifications, which were described to you earlier when Senator Bourne described the committee amendment. As he was describing the committee amendment, he mentioned that the person who wished to buy these drug products had to show identification, but what they did not have to do would be to record their name to sign a logbook. And what this amendment says is the person selling the drug product will record the person's name, address, and date of birth, the date of purchase, and the amount of drug product purchased. The logbook shall be maintained for two years after the last sale logged in the book. The logbook shall be open to enforcement...law enforcement agencies, and may be viewed by law enforcement officers involved in drug enforcement. Let me tell you why I think that is important. A person comes in to buy these drugs and the law creates a 24-hour time period, and it says that you cannot purchase...oversimplifying somewhat, it says you cannot purchase more than X amount of these products within a 24-hour period, and if you do, there is a penalty, but the penalty is a very minor penalty. It is an infraction. And if the seller sells you more of that drug in the 24-hour period, they also are penalized, but it is, again, a very minor penalty. Now, if you're not recording the names of these persons in a logbook, then there is, for all effective purposes, no way that law enforcement is going to go back and figure out if anybody ever violated this law. They don't have a written record. They could go back and try to imagine where these drugs might have been sold and try to interview people, but that would be a terribly expensive process in order to ultimately assess somebody a \$100 fine. In other words, in my opinion, there will never be a conviction under this law because it is too difficult

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

April 26, 2005 LB 117

to enforce without some sort of written record. And so the question is, should we have this in the books at all if we're giving the impression that it's something enforceable when it really will never be enforced, or is there some value to it that would come from merely having to show your identification when you go to a store? I would submit that whatever transitory value there may be to that would soon wear off in the face of a growing knowledge that we have a law that would be basically unenforceable. And so the question I want to pose is, shouldn't we go the other direction and create a logbook which would make it more enforceable and more of a deterrent? And shouldn't we go a step further and have a central data bank with the State Patrol where they could quickly look at what was being purchased at different seller points and really have an effective way of monitoring this law? So that's basically the issue. If we can...if we can make it more effective, that's what we should do, and we need to balance, as we look at this. If a law is effective then, of course, it has great weight. If the law is ineffective then how do we...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...justify consumer inconvenience and product seller inconvenience for a law that may not be effective at all? That's the question that I want to explore with the Judiciary Committee and with you on the floor, with the end in mind of figuring out a way we can do more. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM1181, which is an amendment to the committee amendments to LB 117. Open for discussion on that amendment of Senator Beutler's. Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Cudaback. Members, I rise in strong support of LB 117. I'll speak a little bit about Senator Beutler's amendment first, if I...while I got a chance. Actually, we considered all that. That was in the green copy, as you've stated, and for various reasons, you know, we compromised it out of it. Simply, one of the simple reasons, of course, was we want to make sure we can get something passed. We need to get something passed this year and this...that seemed

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

April 26, 2005 LB 117

to be the most innocuous way to do it, the way we chose. The other part of the problem is, as you know, Oklahoma has a more restrictive form of this law, and the first year they had it in place one of the pharmacies, of course, violated the amount that they were supposed to sell by 100 times and they were actually charged, arrested and charged, with selling more than they were supposed to. So that created a lot of turmoil between the pharmacies. I think the ideal situation, as you talked about, is a central database, and a lot of that was in some of our original legislation as well. Right now, that's not very feasible because too many rural areas don't have access to that type of equipment, and some of them are really, you know, kind of a one-horse town, if you will, and they're very limited on what they have for pharmacies and different businesses that sell that drug. So it's just not feasible at this point in time. I certainly think it's something we need to look at in the future. I want to talk a little about why we're doing this here. As some of you may be aware, a little over a year ago Oklahoma had a huge meth manufacturing problem, and so they instituted these restrictions and tightened up their laws. And this is...I'm going to read now from an article in the Lincoln Journal Star this morning that kind of tells exactly my feelings and why we're doing this. Said, since Oklahoma's strict anti-meth law went into effect about a year ago, the number of meth labs in the state dropped by almost 80 percent, according to police sources; however, the number of meth labs just across the state line in Kansas skyrocketed. Other states in the region have followed Oklahoma's lead. Kansas, Iowa, and South Dakota this year passed stricter laws. Similar bills are pending in Colorado and Missouri. Nebraska cannot afford to allow itself, by inaction, to become a...become a haven for meth labs. Nebraska needs to have its own anti-meth law on the books by the time this session ends. A truer statement can't be put to us right now. That's exactly the scenario. We have to do something. We have to do something now. You're probably going to hear some opposition, and I'm hoping all of you will listen carefully, because I think the arguments we're going to have on the side of this legislation are far going to outweigh some of the opposition arguments. We're talking about something that is a life and death situation. Meth labs are out of control. Children are dying, as well as adults are dying, because of this

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

April 26, 2005 LB 117

horrendous chemical being produced in our state. This is the best way to stop it at this point in time, is to control the meth labs, so that we can concentrate on some of the imported material coming into our state. But the most important thing is to control the labs first, mainly because of their dangerousness, the toxicity of the chemicals involved, the danger of fire hazard, explosion. Like I said, it's a life and death situation. We need to act and we need to act now. If I have any time left, I'd give it over to Senator Bourne, if he so chooses.

SENATOR CUDABACK: Senator Bourne, then Senator Beutler.

SENATOR BOURNE: Thank you, Mr. President, members. Thank you, Senator Aguilar. I'll just tell you procedurally what we're doing. We have a number of divisions to the committee amendment, and the Clerk and his most able staff are dividing those up. So that's what we're in the process of doing now.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: And Senator Beutler will continue to talk about his amendment and then eventually we'll move on to each of these divisions. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Aguilar, did you wish to use your remaining 30 seconds? He waives it. On with discussion. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President, members. I'm a little bit conflicted on the amendment. I know that we need to have access and I think we need a bill that protects our state, especially as someone from the rural area where methamphetamine is growing and also as a border community. My little town of Decatur is right on the...right on the border between Iowa and Nebraska, and if we don't institute protections here in Nebraska, places like Decatur, that are in rural areas where the meth is growing, and on the border, are going to be affected even more than other places. I want to have restrictions in place in Nebraska that are adequate, not overrestrict, because we also need these medications for people with asthma and with a

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

April 26, 2005 LB 117

cold, to be able to get to it in places that don't have 24-hour pharmacies open and we don't have all the facilities that are available in urban areas. So I have this balancing act and so, because of that, I'm a little bit worried about this amendment. At this point, I'm in opposition to the amendment. I am in agreement with the bill as it came out of committee. I think that's as far...but I'd be open next year to come back and add more restrictions or alleviate some restrictions, if that is shown to be enough. I believe that we ought to step up and keep this behind the counter. That's an adequate amount to slow down and to answer this even rising threat in rural Nebraska and in Nebraska, because other states are addressing this and if we don't, we're going to be a haven for it. With that, I'll return my time.

SENATOR CUDABACK: Thank you, Senator Connealy. Further discussion? Senator Chambers. Is Senator Chambers on the floor? Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, let me give my disclaimer. Meth is horrible. I do a weekly cable television program and I've been...I had been talking about meth many years ago, and I talked about how...what the ravages were, and people thought I was making it up, and it's because I had read about what was happening. And things usually will take root someplace else and work their way here. Meth is a scourge, no question about it. But I watched what was done when people discovered crack. All of a sudden, you increased the penalties. Everybody who uses crack is a monster; lock them up and throw them in jail forever, no treatment, nothing. It became one of the most politically charged issues, because black people supposedly use crack as a form of cocaine of choice. But what people didn't know about the statistics, 90 percent plus of the crack abusers were white. That was never pointed out. And the white crack users were not treated the same. I will not be stampeded into taking steps that are not addressed to actually resolving the problem. There are underlying causes for things that happen in society. Many people who are politicians don't want to hear that. They want to pop the pimple that's sticking above the skin and let the puss and maybe a little blood spew out, and the public thinks

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

April 26, 2005 LB 117

something has been done. Then a band-aid is put on it and, if there was infection underneath, it remains there. Another pimple is going to develop. But there are now toxic substances that may be coursing through the body undetected because the pimple that everybody saw was broken. Sometimes the worst thing you can do is pop a swelling, because on occasion there is kind of a protective capsule that is built to contain that poison, and if you just mash on it, you might break the bottom portion of it and what was contained therein will spread throughout the body. Politicians will say, let's do anything just so we're doing something. Something it not always good enough. What will happen to these people if you lock them up? Any treatment? When they come out, what are they going to be? The lion was caged too long and he comes forth roaring, and then what do you say? Well, we need stronger punishments, harsher penalties; build more prisons, more jails. And that's not going to happen on this bill except with great difficulty. We're reaching or approaching the time of the political season when people are going to be running for Governor, House of Representatives, eventually U.S. Senate. A big splash has to be made. I'm still concerned about the encroachments on the rights of people who haven't done anything who are using a legal substance, and an attempt to make it difficult for people who are going to find a way around the law. You're going to inconvenience all of the law-abiding citizens. I want to see how many of these gun carriers and gun toters who favor that for law-abiding citizens are going to agree to inconvenience all these law-abiding citizens because now the hobby horse is methamphetamine. Most of the methamphetamine that is in this country is not made by these people who cook it in this country. That's not where most of it comes from. They know where most of it is coming from. But this is politically potent, and I'm going to resist it. There are older people in my community, for example, who take care of children under the age of 18. Sudafed has been legal.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Those children cannot go to the store and get it for grandma or auntie because they're not 19 and they don't have identification. The older people don't have vehicles. Many of them don't have identification cards. Some of them

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

April 26, 2005 LB 117

couldn't make it to the store anyway. So these are the issues I'm looking at. And as far as the Governor, the Attorney General and other politicians, I want them to try to make their point. There needs to be an emphasis placed on the scourge of methamphetamine, but it's not going to be done, if I can help it, at the expense of ordinary citizens. So there will be things in this bill I'm going to oppose, not because I favor methamphetamine, but the approach I think is all wrong and I never have trusted law enforcement to come up with the solution to any social problem, and this is as much a social problem as it is law enforcement. Thank you, Mr. President.

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

SENATOR BEUTLER: Senator Cudaback, as I understand it, it turns out my amendment does not go to the first division that is being proposed, and for that reason I would like to request that your Clerk to withdraw the amendment and refile it, refile it at the end of the list, please.

SENATOR CUDABACK: So ordered, Senator Beutler. Thank you. There has been a request to divide the question. The Chair has ruled that the question is divisible and they have come to a conclusion. Mr. Clerk, please read the conclusion, please.

CLERK: Mr. President, consistent with your ruling, Senators Chambers and Bourne have agreed to a division of seven components. The first component will be FA188, and I might indicate to the membership the...your laptop system will reflect the division. So the first amendment will be FA188, which will consist of pages 1 through all of page 14 of the original committee amendment; on page 15, lines 1 through 19; lines 26 and 27 on page 15; all of page 16; lines 1 through 10 on page 17; and lines 24 through 27, page 17; and lines 1 through 6 on page 18. That will be the first component. And I'll provide you with a breakdown once we get all our work done up here. Senator, I could...that's consistent with your understanding, right? That was the way you wanted to go first?

SENATOR BOURNE: Yes.

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

April 26, 2005 LB 117

CLERK: Okay. The second component, Mr. President, will consist of lines 20 through 25 on page 15. That would be FA189. Third component will be FA190. That will consist of lines 11 through 13 on page 17. FA191 will be lines 14 through 18 on page 17. FA192 will be lines 19 and 20 on page 17. FA193 will be lines 21 through 23 on page 17. And the final component, Mr. President, will be FA194, consisting of lines 7 through 13 on page 18. So, Mr. President, the first amendment pending is Judiciary Committee amendment, FA188. (Legislative Journal page 1301.)

SENATOR CUDABACK: Thank you, Mr. Clerk, for reading that to the body. Senator Bourne, you're recognized to open on FA188. Sorry for that, Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President. Members, bear with us. This is kind of confusing, particularly when you divide in this manner. There's a lot of divisions, but hopefully we can...we can get through this without a lot of confusion. I want to say a couple things up-front. Sometimes when Senator Chambers goes after a bill it, quite honestly, annoys the heck out of me; other times when he does it there's some value. And in this situation I think there's a lot of value to asking questions, to dividing this, to discussing each component of the committee amendment which, of course, will become the bill, should you choose to do so. There's a real value in this. This is a significant piece of legislation and it represents a change. Does it impact law-abiding citizens? Unfortunately, it does. But, on the other hand, when you look at the ills and the societal harms caused by methamphetamine, I think it's entirely justifiable. And I think Senator Chambers knows and understands if...he and I have worked together...he knows that I'm not about enhancing penalties and being punitive for the sake of doing so. I think this is a bill that makes sense. I will also tell you that even though law enforcement did draft the original version of it and they were involved in the committee amendment, which is the bill or will become the bill, they did not drive this. They had input, which is what they're entitled to do and, quite frankly, we should rely on them for that input because they have expertise. But this is the Judiciary Committee's solution to

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

April 26, 2005 LB 117

the methamphetamine problem. Senator Aguilar said it very well. We have got to get control of this or it's going to continue to ruin families in our communities. With that, I'll tell you what the FA188, does. When I mention the penalties, this section deals with the penalties and it also deals with the issue of limiting the quantity of methamphetamine or, excuse me, pseudoephedrine-based product to 1,444 (sic) milligrams of pseudoephedrine base in a 24-hour period. Just to tell you exactly, precisely what it says: Any person who violates subsection (1) of this section with respect to heroin or any mixed...any mixture of substances containing a detectable amount of heroin in a quantity of 140 grams or more shall be guilty of a Class IB felony. That's the harmonizing that I mentioned to you. We're trying to make heroin, cocaine, and methamphetamine similarly treated under the statutes. The rest of the language there on the FA188 deals with harmonizing the penalties, enhancing the penalties for those folks who have large quantities of it. And it also limits the package size as follows, except for liquids, sold in package sizes of not more than 1,444 (sic) milligrams of pseudoephedrine base or 1,444 (sic) milligrams of phenylpropanolamine base in blister packs. Basically, it says the most you can purchase in a 24-hour period is 1,444 (sic) milligrams of base. Now, again, that's not...that is not the size of the pill. It's the pseudoephedrine base contained within the pill. To give you an idea, again, of what 1,440 milligrams of pseudoephedrine base, that's about 48 tablets of a 30-milligram dose, so...and that would be about 48 tablets of a drug that you probably know as Sudafed. So what we're saying is, is you can buy 48 tablets of Sudafed or similarly type product in a 24-hour period. I think that's reasonable, I think that's fair, and I also think that it goes a long ways towards controlling the one input that the meth cooks need, and that's pseudoephedrine. And with that, I'd answer any questions that you may have. Again, I look forward to the debate. It's valuable, it matters, and I appreciate your interest in this measure. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on the first portion of the divided committee amendments, FA188. There are several lights on. Senator Jensen, followed by Senators Brown, Flood, Cunningham, Johnson,

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

April 26, 2005 LB 117

and others. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. Members of the Legislature, first of all, I do stand in support of LB 117. I think it's very important that we move and move this year on a bill to control methamphetamine. I do have, however, a little bit of concern, and this is what happens on an issue like this. So many states have come up with their own bills, and Oklahoma has a tough one, Iowa just passed one recently, and I am concerned as to what our surrounding states are doing. And certainly if Iowa is a tough legislation on methamphetamine and Nebraska is not, I certainly do feel that we're going to have a reverse effect to our casinos in that we're going to have people over in Iowa coming over to Nebraska and producing methamphetamines. And I wonder, Senator Bourne, if you would reply. Do you know the difference between Nebraska's proposed bill, here in LB 117, and what Iowa just passed?

SENATOR CUDABACK: Senator Bourne, would you reply?

SENATOR BOURNE: Yes. Thank you, Senator Jensen. Iowa has passed the most restrictive bill in the entire country. It limits...it limits the pseudoephedrine base to, I believe, 300 milligrams. It also requires the logbook, so you have to present I.D. and sign in. There was an article in the paper recently that said that it is the most restrictive bill in the entire country. And I will also agree with you that if we don't respond to what the states around us are doing, you are exactly right, they're going to come here to cook the meth. I have a chart here that shows what all the states are doing and I'll read from that, but Iowa is pretty much at the top of the heap in terms of how they're addressing the problem.

SENATOR JENSEN: Well, I appreciate that and I do hope that whatever we do pass here this session is somewhat comparable, because I think they will go to the state that is the least restrictive where they can produce their methamphetamine and then get it back out on the market. So it would be great if there was a federal law on this that was uniform, but there isn't, so I think we need to be very cognizant of what surrounding states are doing to ensure that we don't become the

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

April 26, 2005 LB 117

dumping spot for pseudoephedrine, or not pseudoephedrine, but for methamphetamine. And I will look with interest as to how we proceed here. I think Senator Beutler's amendment is worthy. And so I'll return the rest of my time back to the Chair and see how we proceed from here. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. On with discussion. Senator Brown, followed by Senator Flood. Is Senator Brown on the floor? I do not see her. We will pass over here and, Senator Flood, you're recognized.

SENATOR FLOOD: Thank you, Mr. President. Members, you know, there's some in this state, maybe some in this body, that will say that they don't know enough about meth and they're not for sure what it does or what the impact is on someone taking meth or using meth or being around meth. It's inconceivable to me and the people in my district that you wouldn't know what methamphetamines is, but the fact is, this scourge is going to raise a new generation of felons in Nebraska. It's a Class IV felony to possess, it's a Class III felony to manufacture, and it is going to take over our youngest generation. And I don't want to be an alarmist and I don't want to ring bells that don't need to be rung. Sit down in your district court and watch the people that are walking through that court and you will see your neighbors and your friends and these children that are no more than 18 years old, don't understand what's going on. They've got a felony now. They're addicted to meth. We send them to prison, sit them there, and nothing happens, no treatment. But that's a separate issue. Let's talk about what this drug does. Taking it just once can lead to a lifetime addiction. Just one time for a 14-year-old and you've got somebody on the public roll for the rest of their life, trying to get them back on track. The average meth offender commits 63 crimes per year on average. Now granted, most of those are nonviolent crimes, like stealing Sudafed; going to the Hy-Vee up in Norfolk, taking all the Sudafed boxes they can get, putting the wrappers behind the bread and taking the pills out so that they can make meth. That's what's happening right now. How do I know? Well, my community has been affected and yours has as well, maybe not to the extent, but those defendants that robbed the U.S. Bank in Norfolk, they were on meth, and what would have been a bank

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

April 26, 2005 LB 117

robbery, which is bad enough, turned into a killing spree. That's methamphetamine. Three meth labs busted by the State Patrol in one day in Madison County, that's methamphetamine. That's meth labs being busted, one ten walking steps away from a house with a day care. That's meth. And the children that Health and Human Services deals with today that are walking into school, they haven't eaten all weekend, they haven't taken a bath, they haven't showered, they've got parents who no longer care because they're on meth. There are those that say this bill, in the green copy and as amended, go too far. You know what? I'm fine with the logbook, personally. I understand that there's a lobby out there that says, no, we shouldn't have that. I believe it when the State Patrol says this will help. These are nervous people. Imagine walking into your pharmacy, asking for a pseudoephedrine, having to sign a logbook. You're on meth. You've got schizophrenia-like symptoms and you're nervous and jittery, and now you're giving your I.D. and signing your name to a book. That's good. I like that. Let's do something bold. Let's not do it halfway, so we don't ruin this little parcel over here or this little parcel over here. Let's do it so we don't have kids coming to school that haven't eaten because Mom is on a four-day meth binge. Maybe we should do Schedule V. I'm okay with that too. Why? Because I've seen firsthand, and I'm sure a number of you have as well, that meth is going to take us over. And I don't...I really don't want to be an alarmist, but it's not just kids. It's 45-year-old business owners in my area that are taking this stuff and making it for their own personal habits and their own friends. I'm fine with the restrictions on sale.

SENATOR CUDABACK: One minute.

SENATOR FLOOD: Let's reduce the theft. I'm fine. I've talked to grocery owners that are fine. Senator Chambers raised an important issue. This is an 80/20 problem: 20 percent of it makes...20 percent of the meth made in Nebraska, obviously in meth labs, is being sold to people; 80 percent of it comes from the American southwest and Mexico. But attacking the meth labs does two things. It takes the head off of these folks that are profiting off of others and making the methamphetamine in this state, and it keeps our children away from anhydrous ammonia and

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

April 26, 2005 LB 117

backdoor Quonset labs where meth...where meth labs are located next to home-based day cares. That bothers me. Does it go too far? Do we have an important or legitimate state interest? Yes, we do, and that's the health and safety and the protection of our citizens. People are dying. They're killing others, as we've seen. Meth destroys families. It breaks people apart. It's a scourge.

SENATOR CUDABACK: Time, Senator.

SENATOR FLOOD: Thank you.

SENATOR CUDABACK: Thank you, Senator Flood. Senator Brown, followed by Senator Cunningham and others.

SENATOR BROWN: Mr. President, members, I will be talking at different points about other aspects of this, but Senator Chambers advised us not to...not to limit the rights of ordinary citizens in order to address this, but we do that all the time with lots of substances that are legal. We absolutely have to slow down the access to the precursor chemicals that go into this. We need to do that so that there is less available. And if there's less available, possibly we can prevent some young people, like the young woman who is in the picture, from getting involved in the first place. But we also need to do it because of some of the things that Senator Flood just mentioned. Yes, we're only talking about 20 percent of the meth being homemade, but it will give us, as Senator Bourne said, more time to spend on stopping the 80 percent that's coming across the borders if we're not dealing with the 20 percent that is made here. But there is a danger to all of us by having the homemade meth, even apart from people taking it, because of all the dangerous chemicals that are used. And each time we cut back on the access to precursor chemicals that are easily made into meth, we add other chemicals that must be added to pull it out, to pull out the ingredients, and so you have people using Drano and anhydrous ammonia and all kinds of things. As Senator Chambers said something about making a big splash, well, I don't think this bill is necessarily a big splash but I think it is the first splash that we have to make. And I would be willing to go, and I'm going to talk more on Senator Beutler's amendment,

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

April 26, 2005 LB 117

to some things. I don't want to put individuals who are...who are not trained to be law enforcement individuals in the position of having to do that, and so I have some concerns and...but we absolutely have to slow down the access to these precursor chemicals, and that is something that is a legitimate issue. Now, the amendment that is before us has to do with the penalties. And I understand what Senator Chambers said in terms of people who are addicts and just adding penalties to them and not providing treatment in our correctional facilities, and we are going to have to do more of that. And methamphetamine is one of the drugs that is the hardest to counsel your way out of. It's the most...one of the most addictive substances. And so what we're going to have to do in terms of substance abuse programs is going to be much more substantive than what we've been doing with some of the other drug counseling that we have, and we are going to have to deal with that, too, Senator Chambers, but the...having penalties for...especially for those individuals who are not small-time addicts, but the ones that are...

SENATOR CUDABACK: One minute.

SENATOR BROWN: ...that are making this stuff in great quantities. But as to the piece of home...the homemade...the danger of homemade meth, the danger also is what can happen with some of the chemicals that are used when individuals who are out of control don't really know what they're doing other than what they may have heard from a friend who may have also been out of control, what they're doing with that and how that could impact all of us. I think Senator Flood made a really good case that this is something that we absolutely have to address. Is LB 117 the perfect answer? Probably not. Nothing that we do is exactly perfect, but we have to continue to make sure that we are doing the right things in society to address those issues that have proven to be a problem. And I think the most compelling...

SENATOR CUDABACK: Time, Senator Brown.

SENATOR BROWN: ...information is what has happened in border states. Thank you.

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

April 26, 2005 LB 117

SENATOR CUDABACK: Thank you, Senator Brown. (Visitors introduced.) On with discussion. Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I would like to yield my time to Senator Flood.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Thank you, Senator Cunningham. Members, I want to finish up some of the points that I had here, and I ended last time with a comment about, is asking for I.D.--let's go to the amended version of the bill--that great of an inconvenience for the people of the state of Nebraska? Senator Chambers raised the point, there are a lot of people out there that have nothing to do with meth, they might have a cold, they go to the store to get cold medicine and now it becomes a big hassle. And I've said I don't mind logbooks, I don't mind Schedule V, but let's look at what the amended version of the bill says. They have to ask a clerk to go behind a counter and get the medicine. There are plenty of examples requiring I.D., and going far beyond just requiring I.D. Think about going to an airport. You walk in there. You show your I.D. They check your picture. They check your bags. They check your person. They run you through a scanner. They use a wand to look for weapons. We do all of that because a few people in this country have breached security and have caused problems. But more telling, I find, and in support of the idea that this is not an unreasonable inconvenience, look at what we do with another drug that's available to people over the age of 21. Think about buying a keg. Section 53-167.02 governs how we sell kegs in the state of Nebraska. Now, a keg of beer and cold medicine, used for their primary purpose, do two separate things, but for a moment think about cold medicine in the context of being used as a method to make meth. Both are legal drugs, if you're over the age of 21 purchasing a keg; both can lead to addiction; and both can cause increased crime. Cold medicine used as an ingredient to make meth destroys families; so does alcohol. In 1993, the Legislature said, okay, if you're going to buy a keg you're going to show us your I.D. on the date of the sale. We're going to write down the keg identification number. We're going to

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

April 26, 2005 LB 117

write down your name and address, the number of the purchaser's motor vehicle operator's license, state identification card or military identification if it has a picture, together with the purchaser's signature. Did I mention the plate number on your vehicle? Oh yeah, we're going to take all that if you want a keg, but now we have a problem with the lobby because we can't buy cold medicine? If you have to sign a logbook, it's a great inconvenience? Put meth up to alcohol. I would challenge you to find a drug more dangerous than meth. You try it once and you're hooked. And I'm not one for more regulation and more rules to follow, but this drug, meth, presents a clear and present danger. This is the first step. And I want to thank Senator Bourne for looking all the legitimate business interests in the eye and saying, when he wrote the bill originally, let's look at everything. Let's put logbooks on the table. And he hammered out the compromise himself, together with the Governor, who stood up on his first day in office and said this is a problem. And Senator Aguilar has been a champion for drug courts. Senator Stuthman has been involved in fighting methamphetamines. Everybody involves understands what's going on. This is a supply and demand issue. This addresses one-half of the problem. The supply problem, yes, 20 percent of it can be reduced with less...with fewer meth labs; 80 percent of it we have to rely on meth...on law enforcement to curb the supply. The debate I hope we have at some point in my time in the Legislature is how we're going to affect the demand side and that, in my opinion, requires treatment, and it's just as important, if not more important, than the supply side.

SENATOR CUDABACK: One minute.

SENATOR FLOOD: Members of the Legislature, I want to do something bold. I want methamphetamine abuse and use in the state of Nebraska to significantly decrease. It's going to...it has a grip on rural Nebraska that some just can't imagine, but it does. I don't know what it's like in Omaha and Lincoln, but I know what it's like in small towns like Platte Center and Madison and Pierce and Wayne and Norfolk, and it's ugly and it's creating a generation of felons that we will not get back. Thank you, Mr. President.

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

April 26, 2005 LB 117

SENATOR CUDABACK: Thank you, Senator Flood. On with discussion of FA188. Senator Johnson, followed by Senator Don Pederson.

SENATOR JOHNSON: Mr. President and members of the body, I think that we need to do something and I think we need to do something very significant. Meth is of epidemic proportions. I think that's a pretty good word. It's in epidemic proportions. We need to look at it that way. Now, let's just talk a little bit about the mechanics of this. Why do we have pharmacists? You ever stop to think of that? We used to have pharmacists so that they made medicines or mixed medicines together. If you look at their symbol in front of the pharmacist, that's exactly what they were talking about. Do they do that now? No. What does the pharmacist do today? Well, he protects the public. If a person comes to him and presents the note from the doctor saying that he needs these medicines, he will look up on his computer and say, oh, your doctor had you on this other medicine as well and one of them will make the other one bad, or there will be some reaction if you take both of these medicines; let me call your doctor and get this straightened out. Or they will look at prescriptions coming from two different physicians; see the same kind of problem. The fact of the matter is this; pharmacists are there to protect the public. Now, what's the difference if they protect the public in this way? Logbook? Why not get modern? We have computers these days. Why not use them? Now, Senator Chambers raised some very, very good points. What we do is we don't treat people very well that have these problems. Back in the nineties, we had where the philosophy was, lock them up, throw away the key; didn't work. We still haven't learned our lesson in this state. We don't treat people. Our treatment is totally inadequate. We absolutely need to go this route. People that take meth aren't inherently bad. Many of them are good people who became terribly addicted to this problem. What must we do? Well, let's start thinking about treatment and not just go back to our thinking of ten years ago. One of the suggestions that was made last summer, and Senator Flood is looking into it, is the possibility of creating so-called drug prisons where the aim is treatment, not punishment. Maybe we ought to investigate this more, and I suspect that we'll have better success than what we're having now.

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

April 26, 2005 LB 117

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: We're certainly not doing very well at this point in time. But the crisis is here regarding the meth. I think we do need to cut the head off of the problem now and I think that LB 117, with not a logbook but a computer registration, is the best available thing that we have at this time. Let's not forget about the other, however. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. And it was Senator Dwite Pedersen. I'm sorry for the mistake. Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. President. Members of the Legislature, this month I completed 23 years as a substance abuse counselor. I have worked specifically in this field of drug and alcohol addiction and, yes, this stuff is bad. It is by far the worst substance I've seen come along in my 23 years as a counselor. The euphoria that goes with the use of methamphetamine is absolutely far better than anything that's ever been made, and a lot of people become addicted immediately. And then they chase their tail the rest of their lives, and I mean the rest of their lives without treatment, trying to find that same euphoria that they had the first time. It's different than alcohol, because very few people...I shouldn't say very few, but around 10 to 15 percent of the population becomes addicted to alcohol. That means that we have 85 percent to 90 percent that can use it without addiction. The picture that was handed out of this young lady is something I have seen on almost a weekly basis for the last five years. The massive weight loss, the rotting of the teeth, and the chasing and fighting to find out when they're going to get their nex' hit is unbelievable. Now, I'm telling you my experiences, as I see it as a drug and alcohol counselor, of the people who come to me. I don't treat them. I do not treat meth addicts people because I cannot. I have not found one who could make it in outpatient treatment, and outpatient treatment is what I do. We need inpatient treatment. I'm not sure this bill answers everything. I don't like the idea of just going out and grabbing every meth pusher and throwing them in jail, because my experience has been the ones who are cooking it are also users of it. But I can

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

April 26, 2005 LB 70A, 117

tell you those of us who have not been touched with this drug in this room even only have to wait for a short while, because it is on a weekly basis that I have people, from bankers, doctors and lawyers to mail carriers, whatever it may be, come in with their children or grandchildren, and usually about the age of 18, few underneath, 18 to 30 who are still out there thrill seeking. I've also had the opportunity to see some of these people after they've ended their life on the table in the morgue. One beautiful girl had lost 85 pounds in less than six months. She only weighed 64 pounds. She didn't have enough teeth left to identify her body, if she needed to...if she hadn't had family and if she was an unidentified body, to even do a dental search to find out where she came from or who she was. But all that talk in the world of what it has done to these people is not stopping people from using it.

SENATOR CUDABACK: One minute.

SENATOR Dw. PEDERSEN: And throwing them in jail is not going to stop them from using it, because they're going to find it. It's got euphoria in it. I believe we need to do a lot more with education, especially with our young people today, on what they're using and make some comparison between the euphoria and death. And then those that are addicted, we have to do more about treatment, and it's got to be inpatient treatment. Outpatient doesn't work. You've got to get them off the street and away from where they can get it, and even then sometimes, believe it or not, they bring it into the treatment centers, because it has a euphoria in it and it has a pleasure in it that most of us will never experience, and I hope to hell...

SENATOR CUDABACK: Time, Senator Beut...or, Senator Pedersen.

SENATOR Dw. PEDERSEN: ...that most of us never do. Thank you.

SENATOR CUDABACK: I'm sorry. Mr. Clerk, items for the record?

CLERK: Mr. President, amendments to be printed to LB 70A and to LB 117. (Legislative Journal pages 1301-1302.)

I do have a priority motion, Mr. President. Senator Schrock

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

April 26, 2005 LB 40

would move to recess until 1:30 p.m.

SENATOR CUDABACK: You've heard the motion to adjourn till 1:30. All in favor say aye. Opposed, nay. We are recessed till 1:30.

RECESS

SENATOR CUDABACK PRESIDING

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

ASSISTANT CLERK: There's a quorum present, Mr. President.

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

ASSISTANT CLERK: I have no items at this time.

SENATOR CUDABACK: Mr. Clerk, it is 1:30. As the agenda states, General File, 2005 senator priority bills, the Bourne division; Mr. Clerk, LB 40.

ASSISTANT CLERK: Mr. President, LB 40 was introduced by Senator Redfield. (Read title.) The bill was read for the first time on January 6, referred to Revenue Committee. That committee reported the bill to General File with committee amendments attached. They were considered on April 25. At that time, an amendment to the committee amendments from Senator Redfield was adopted, and an amendment had been offered by Senator Beutler, AM1263. That item is now pending. (Legislative Journal page 1281.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Redfield, would you like to give us a review on the contents of LB 40?

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

April 26, 2005 LB 40

SENATOR REDFIELD: Thank you, Senator Cudaback. Members of the body, LB 40 raises the documentary stamp tax by \$.50. And we have also adopted the amendment to the committee amendment, which I introduced, and that becomes the bill. It divides it up into funds, allocating \$.30 for rental assistance for those with severe mental illness, leaves \$1.20 for the Affordable Housing Trust Fund, and leaves the current \$.50 to counties and \$.25 to the homeless shelters. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Would you like to give us...Senator Landis is not here, of the Revenue Committee. Would you like to give us an update on the Revenue Committee amendments as well?

SENATOR REDFIELD: I can do so, Senator. The amendment that was adopted actually replaces the committee amendment, becomes the committee amendment. It includes an operative date, as well as the elements that I already have reviewed for you. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield, for doing that. Senator Beutler, would you like to give us the update on your amendment to the committee amendments?

SENATOR BEUTLER: Senator Cudaback, basically, this amendment is a fund flow amendment; that is, it takes the process whereby money goes directly into certain earmarked cash funds and changes the flow so that it goes to the General Fund and then goes from the General Fund to the various program funds. And that's the basic thrust of the amendment, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. As stated by the Clerk, we are on AM1263, which is the Beutler amendment to the Revenue Committee amendments to LB 40. We're first on that amendment. Senator Beutler, you're recognized first.

SENATOR BEUTLER: Members of the Legislature, you'll recall that when we were last on this bill we had a couple of conversations. One was about the idea of earmarking funds and whether that should or should not be done in any particular circumstance. And I related to you the history of the matter; that is, that generally speaking, we don't earmark funds but rather try to

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

April 26, 2005 LB 40, 312

deal holistically with the entire General Fund in every two-year period and make decisions with respect to what is most worthy of funding, regardless of where the source of money may come from. The other conversation we started to have, and I hope people are interested in talking a little bit more about it, is the conversation about the coming collision next week, and I don't think that's an overstatement, between the Appropriations Committee budget, which allows essentially for \$10 million a year of new spending and/or exempted revenues, and the demand that may be forthcoming from the Revenue Committee for business incentives in the amount of I'm not sure how much. And maybe a good way to open this conversation would be to ask Senator Redfield, since she's been on the Revenue Committee, to discuss with us, to the extent that she is able at this point in time, what the form of business incentives and what the dollar amount of business incentives might be forthcoming from the Revenue Committee. I don't want to put you on the spot, Senator Redfield.

SENATOR CUDABACK: Senator. Senator Redfield, would you...

SENATOR REDFIELD: Thank you, Senator Beutler. No, I'm not on the spot. We do have a bill that we have held in committee, LB 312. We are still working on the details of that package. I will tell you it's more money than I'm probably going to make in my lifetime but I'm hoping that the package that comes out will in fact make Nebraska a lot richer in the days to come. And the details are still being worked out so I can't tell you exactly what we'll arrive at, but I will tell you that we need to improve the business climate in this state or we will see a mass exodus of the jobs that we now have. Thank you.

SENATOR BEUTLER: Senator, I couldn't agree with you more. Could you give us some idea of whether we're talking in the range of...in terms of the total package that might come out here and the cost, either through exemptions or appropriated amounts? Are we talking in the range of \$20 million, \$40 million, \$60 million, 80 million?

SENATOR REDFIELD: Are you talking per week, per month, or per year, or per lifetime?

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

April 26, 2005 LB 40, 312

SENATOR BEUTLER: Well, I hope I'm not talking in terms of days, months, or weeks. (Laugh) How about years?

SENATOR REDFIELD: Senator Baker has a bill which would exempt the sales tax on manufacturing equipment, and that has a sizeable double-digit million dollar price tag, and that's an annual package, and that would be one element. So we are looking at something that's sizeable. But if you've looked at any of the packages that we have had under LB 775, the reports that come out that are multipages, you'll see that over time the costs look very high, but on an annual basis we're probably talking at something that is indeed several million dollars more than our current costs under LB 775, and I would say double-digit millions.

SENATOR BEUTLER: Senator, let me ask you this, because I've never quite understood this. The additional incentives that we're talking about, are those in addition to the incentive programs that we currently have in place, or are those a replacement for the incentive programs that we currently have in place?

SENATOR REDFIELD: Under the terms of Senator Landis' bill, LB 312, actually LB 775, as we know it, goes away and is replaced by the terms in that bill, but there will be elements that will be very similar to what we have in LB 775 that still work very well...

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: ...for our businesses.

SENATOR BEUTLER: Okay. So then, in terms of the total between Senator Baker's proposal and this revamping of LB 775 and whatever other revamping is done, are we closer to the \$20 million, \$40 million, \$60 million, or \$80 million?

SENATOR REDFIELD: We are talking about LB 775 plus, so you look at the annual cost of LB 775 and then add on about \$30 million to that probably.

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

April 26, 2005 LB 40

SENATOR BEUTLER: About \$30 million? Okay. Thank you. Let me continue the conversation on my next opportunity to speak.

SENATOR CUDABACK: Thank you, Senator Beutler. We did change agenda items over the lunch hour and there were several lights on, so if you do not wish to address the new agenda item just say so. Senator Engel. Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, so that I can say something on Senator Beutler's amendment before I forget it, I'll indicate that I'm still opposed to it today as I was yesterday. Some things require the earmarking of funds in order that they won't be ignored and kicked to the curb. When it comes to affordable housing and those who are in a set of circumstances where they need this kind of a system...assistance, the likelihood is that they will be shunted aside. What Senator Beutler is suggesting even now is that with the giveaways that Senator Redfield, Senator Landis, and their cohorts, and Senator Connealy intend to make available to the big shots, money is being sought now, and I don't want to start with this program giving them that money. I want to ask Senator Redfield a question. I think I know the answer, but I'm not sure. Senator Redfield, since Senator Beutler brought up the issue of these giveaways, as I call them, you didn't vote for the tax increases when we were referred to as the dirty thirty, did you?

SENATOR REDFIELD: No, I did not.

SENATOR CHAMBERS: But you are willing to give these, I'm going to use you-all's terminology, incentives to businesses, correct?

SENATOR REDFIELD: I support parts of the package. Yes, I do.

SENATOR CHAMBERS: And that is going to suck money out of the pot of revenue that the state would have available otherwise, isn't it?

SENATOR REDFIELD: It will not take General Fund dollars, but what it will do is reduce the revenue coming into General Fund.

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

April 26, 2005 LB 40

SENATOR CHAMBERS: And that's what I mean. Wherever...when money winds up in the General Fund, it has to come from someplace. When people on one hand don't pay taxes, people on the other hand will have to pay more. So this is the question I would ask you. Is it your and the Revenue Committee's position that this will be a wash; that somehow, when these giveaways are made available to these companies, nobody else and no other sector is going to have to make up what is not available as a result of what is given to these companies? Is that the Revenue Committee's position?

SENATOR REDFIELD: Yes, it would be the fact that the new economic activity would actually pay for the incentives through the growth.

SENATOR CHAMBERS: And that hasn't happened with LB 775 yet, has it?

SENATOR REDFIELD: There are some, and when I look at the numbers I believe it has paid for itself.

SENATOR CHAMBERS: Thank you. I'd like to ask Senator Connealy the same question.

SENATOR CONNEALY: Yes.

SENATOR CUDABACK: Senator Connealy.

SENATOR CONNEALY: No, I don't think you can say that. I think that this is a cost, but I think it's a cost that the Revenue Committee agrees to do. I think that being in the business of trying to grow our state, this is a cost (inaudible). I won't say that it's a fair trade and that we get...we get more dollars back for every dollar we spend, but I still am willing to be in the economic incentive package business.

SENATOR CHAMBERS: Right. And I considered Senator Redfield's orientation on these matters, so I expected her answer and I gave it appropriate weight, which was none. Senator Connealy, these kind of situations that come up are supposed to at least

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

April 26, 2005 LB 40, 312

produce jobs. Did you, a couple of weeks ago or so, read an article, it was on the front page of the World-Herald, pointing out that jobs have not increased?

SENATOR CONNEALY: No, I probably didn't. I don't get to read the World-Herald...

SENATOR CHAMBERS: Okay.

SENATOR CONNEALY: ...every day, but...

SENATOR CHAMBERS: Okay. Well, there's probably some other paper that had it. Did you read a few days ago where corporate profits are increasing but the wages of the working people have actually taken a hit? Did you read that?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: And these corporations are getting giveaways all over the country, aren't they?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: And the working people are not keeping pace with...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the...what they ought to, based on ordinary increases that should come to wage earners, right?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Thank you.

SENATOR CONNEALY: One positive...

SENATOR CHAMBERS: Oh, go ahead.

SENATOR CONNEALY: ...with LB 312 that is...if it comes out here in a form that is...that we're negotiating right now, is that it

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

April 26, 2005 LB 40

does have a labor standard; that it has to have a certain wage requirement before we count those as a job. And also, we have disclosure in the bill, which is better than the current LB 775 (inaudible) incentives (inaudible).

SENATOR CHAMBERS: Are the businesspeople going to allow the Legislature to do that?

SENATOR CONNEALY: Well, I don't think that that's a highlight of what they want out of the package, but it's in the package.

SENATOR CHAMBERS: But it will be taken out if business doesn't want it. Isn't that true?

SENATOR CONNEALY: No. No, I think it will be part of the package or the package won't come.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: Senator Stuthman. He waives his opportunity. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, as I've gotten further input from folks who are knowledgeable about the Revenue Committee's work, it seems like the total cost of the package is going to be maybe as low as \$30 million, but probably more likely in the vicinity of \$50 million a year, \$50 million a year. We have in the budget \$10 million a year. So I, to be honest with you, I guess I'm trying to get you to think about all different alternatives, and one of those alternatives is the alternative of looking at different tax sources, tax revenues. And I don't know what the right one would be and it's premature to really even be discussing any of that until we have seen finally, for sure, the numbers and have talked about the relative difficulties of cutting down either on the incentive package or on spending for the university or education. By the way, I have the Research staff working on a particularly interesting little chart that I think I'll be able to show you shortly, but it's a chart that takes all of the lost revenues in each year, with respect to business incentives, and adds them to the annual spending each year that we do through

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

April 26, 2005 LB 40

appropriations, so that we create a larger budget that represents both what we spend through appropriations and what we forego by way of revenues for business incentives of one type or another. And the interesting thing, you've heard before that with regard to the University of Nebraska as a percentage of the state budget, what we've been spending on the University of Nebraska has been going down fairly rapidly, and state aid to education has been going up, but not as rapidly as I expected. It has been going up some, though. Senator Erdman is right in the sense that Medicaid is going up significantly. But you know the other area that's going up a lot is economic development. When I first started out in this Legislature, and for several years, we spent almost nothing on economic development of any type, and we're now...it looks like the figures are going to come down someplace in the area of 6 or 7 percent of our budget is economic development. So, you know, you can't...you can't be doing all of these things without creating budgetary pressures of one type or another that are very significant. In any event, this documentary stamp tax, I've always felt that that was so peculiar that we gave it that antiquated name when it really is a sales tax, as we discussed yesterday. And not only is it a sales tax, but it's a sales tax being levied on the sale of a product that is currently being levied at .25 percent. You know, compare that to the sales tax of 5, with 7 percent being levied on our other sales of durable products. So...and the interesting thing about this is that at \$2.25 per \$1,000, which is what it would be under Senator Redfield's bill, if you raise that to \$5 per \$1,000, and \$5 per \$1,000 equals .5 percent, okay, so if you raised it just to .5 percent you would bring in \$20 million to \$25 million of revenue annually.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: If you raised it to just 1 percent you'd bring in \$60 million to \$70 million annually in revenue. So I'm just trying to get myself and everybody else to think about all of the different possibilities out there. And as much as I talked against earmarking the other day, you know, it's really not too bad an idea to earmark that whole area for economic development. After all, most of economic development is used to build commercial buildings and facilities and to buy land, the very

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

April 26, 2005 LB 40

thing that real estate is all about, and the principle benefits are to realtors and homebuilders who, as a consequence of the new jobs, build new homes, build new commercial retail establishments. There's kind of a nexus there, isn't there? Thank you.

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

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I will draw your attention back to LB 40, which is the bill that is before us. The Beutler amendment is the next vote that we may have before us, and I do not support the amendment. I don't want to earmark it. I would take a few minutes of my own time to pursue a little further some of the questions that Senator Beutler and Senator Chambers expressed. Senator Beutler, I was looking at a number that might be an average. The package we're looking at starts very small, ramps up in later years, and so it's very hard to give you a dollar figure for one particular year because it will change as the projects are approved. Senator Chambers, I represented a district that has a large industrial area and there are a number of plants there between the interstate and L Street, and many of those companies had plants in other states. When the economic downturn came, what we found is that because of LB 775 and the requirements to maintain the threshold for not only investment but for jobs, then the choice they had was to either pay the recapture on those dollars or to maintain the jobs, and many times those companies laid off in other states in order to protect the jobs here in Nebraska. They also found that there may not have even been enough work for everyone, but they maintained the jobs in Nebraska because of LB 775. That's why I can stand here on the floor and tell you that in my corner of Omaha, I know that LB 775 has made a difference in the number of jobs that have been here. Can I tell you the last four years, during this last crunch from 9-11, has maintained jobs in Nebraska? No. We know that the job growth has only been about 500 a year in the Omaha metro area, and that's not enough for the growth of population. That's why we're talking about economic incentives. If we don't find a way to provide jobs for the Nebraskans that are here, they're going to leave us. If we

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

April 26, 2005 LB 40

don't find jobs, we'll never draw other people here, and the tax burden on those that remain will increase per capita. That's why we're talking about economic incentives. It's not something anyone wants to do. Certainly we'd like it if everyone could prosper without any incentive. But I can tell you that the requirements within the bills that...as they have been framed, are very different from what you see in other states, where many times it's cash up-front. I didn't expect LB 40 to be the economic development bill discussion, but I'm happy to answer those questions. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Mr. Clerk, for an announcement.

ASSISTANT CLERK: Mr. President, the Appropriations Committee is going to meet at 2:00 in Room 2022; that's Appropriations at 2:00, 2022.

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Chambers, your light is on next.

SENATOR CHAMBERS: Thank you. Madam President, before Senator Don Pederson gets away, I need to ask him one question.

SENATOR SCHIMEK: Senator Pederson, would you yield?

SENATOR D. PEDERSON: Yes, I would.

SENATOR CHAMBERS: Senator Pederson, is there anything in the budget that relates to that nuclear waste settlement?

SENATOR D. PEDERSON: Yes, there is.

SENATOR CHAMBERS: How much?

SENATOR D. PEDERSON: That's \$146 million, I believe.

SENATOR CHAMBERS: Then we're not going to give that settlement. If they get what they want, I'm going to try to derail that

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

April 26, 2005 LB 40

settlement. I just thought I'd throw that out there. Thank you. And if they see enough of a political problem, the ones on the other side are going to say, we're not going to risk it, it's off, the deal is over. I'm tired of people coming in here, doing the things that they do for their little corner of Omaha, or whatever it happens to be. You have not heard one time I came in here and said, do this for the 11th Legislative District to the detriment of everybody else because it benefits just us, and yet we're the ones who are entitled to more. I have tried to be a state senator. I told you I'm...that's all I was going to ask you, Senator Pederson. Thank you.

SENATOR D. PEDERSON: I...may I make one comment?

SENATOR CHAMBERS: Oh sure.

SENATOR D. PEDERSON: In regard to that money, at risk, in that if we do not pay it, is over \$200 million, and so the concern is we had to decide whether to pay it in one sum or pay it in payments. We determined it would be better if we paid it in payments. That's why it's included in the budget that way.

SENATOR CHAMBERS: But we don't have to pay it that way. And does the settlement require that it be paid in one lump sum?

SENATOR D. PEDERSON: No.

SENATOR CHAMBERS: What is...what is the minimum...

SENATOR D. PEDERSON: May be paid over a four-year period.

SENATOR CHAMBERS: ...payment that can be made and...

SENATOR D. PEDERSON: It may be made over a four-year period, however, the way we are now it would have to be two payments up-front.

SENATOR CHAMBERS: If it's made over four years, how much would have to be taken out of the budget this year for that?

SENATOR D. PEDERSON: Well, if you divide 146 by 2, basically,

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

April 26, 2005 LB 40

that's what it would be. That would be the amount remaining this year.

SENATOR CHAMBERS: And that would be enough to pay for Senator Redfield and Senator Landis' and Cabela's and everybody else's that they want, wouldn't it, at least in the first go-round?

SENATOR D. PEDERSON: It would, but at risk would be reserving that money, because somebody would think it was a good idea to spend that money and then we wouldn't have the money to pay it when we had to pay it and we would face the risk of loss.

SENATOR CHAMBERS: So?

SENATOR D. PEDERSON: It's only money.

SENATOR CHAMBERS: When business is the one that's going to get it, who cares? I've been here all these years and watched business come in here and plunder the treasury and watch these people with almost religious fervor talk about how these big companies have to be given this money, and people are not even paid generally a living wage in Nebraska. We cannot get an increase that's decent in the minimum wage while talking about giving away millions to these businesses. We cannot put any requirements on these companies to give a decent medical plan to the workers. Workers don't count, but these big shots and these big businesses. And I read where the chamber of commerce is saying they want a segment where no jobs have to be created just so these big companies can expand and they'll be in Omaha. That will redound to the reputation and benefit of Omaha and you all who don't work will not see the working people. You don't know any working people, so you have no respect for them. They are the expendables. They are the ones who can be thrown away. I'm going to have fun on the budget and on those other bills that Senator Redfield, Senator Landis and Walt Radcliffe and the others who want Cabela and the rest of them to run away with the treasury. I'm going to have my fun. It will only be taking time and talking about it, but I'm going to try to expose as much as I can on this floor if nobody else will do it. I don't have to walk light. I don't have to pussyfoot. You know what my colleagues can do, Senator Kopplin? They are such good

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

April 26, 2005 LB 40

pussyfooters that you could stretch a piano keyboard from the Atlantic Coast to the Pacific Ocean and they would tap-dance all the way across that keyboard without striking a note. Now that's pussyfooting. And I've watched it for 35 years. The aberration would be if some concern were given to the working people. You know why companies like to come to Nebraska? Because everything is cheap. The workers don't get paid. Workers' comp benefits are low. Insurance coverage is next to nothing with even some of these big companies. That's why they come here. They don't love Nebraska. They don't love you all. When they have their big balls and their get-togethers, how many senators...

SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: ...do they call here after you've carried water for them and plundered the treasury? How many of you all are invited? You know when they invite you? When they got something that they want, something they want to get from the Legislature. Then they say, come on in, we'll talk to you. Well, we all have our agendas, don't we? I just want to make crystal-clear what mine is. I won't offer you something like that crazy thing you all voted for on that motorcycle helmet bill yesterday. I want you to see me coming. I want you to know what I have planned, because there is another job that has to be done and that involves trying to educate the public to what this Legislature is doing, and I'm going to try to the extent that I can. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Chambers. We are discussing AM1263 to the committee amendments. Senator Chambers, your light is next.

SENATOR CHAMBERS: Madam President, the reason I'm opposed to Senator Beutler's amendment is because if the money went into the General Fund, it's available for the chamber of commerce, Cabela's, and their minions on the floor of this Legislature, and you will find them defending these big companies more than you will ever find them doing anything to help the vulnerable citizens of this state. This Legislature and every Legislature could do so much good. I wish these Catholics who bring bills

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

April 26, 2005 LB 40

in here to push their church dogma would look at some of the other aspects of their Catholic faith--social justice. Where is the social justice? Where is the social conscience of these Catholics? Let it extend beyond a fetus, an embryo, a zygote. Let it relate not just to the shelter of a fetus in the womb, but the shelter for a family of people in being. Help provide enough nutrition. Look at old people who, when the weather is inclement, have to decide whether to buy something to eat or whether to have heat; dressed up in several housecoats, blankets, trying to stay warm because they cannot afford to pay their fuel bill. Then we're going to argue about the concerns of OPPD and M.U.D., the ones that will cut off the power for these people, but that won't come up in the discussion. The interests of the big shots and the big powerful ones catch the attention of the Legislature. It is the little foxes, sayeth the "Bibble," that destroy the vines. I'm going to see just how much havoc I can wreak this session when it comes to the plans and the desires of the big shots. You're going to find people hitching on to the back of their wagon and running right behind them. But then, when they go to campaign for reelection, they talk about, oh, they care about the people, they care about this, they care about that, and none of them boast about how they help plunder the treasury. The public doesn't know. Hitler said words to the effect that rulers are fortunate that the people do not think. Hitler said that and he was right, but he should have said, and they're also fortunate that the public do not know. And Abraham Lincoln was a dreamer. He said you can't fool all the people all the time. Where did he come from? But he did say you can fool all of the people some of the time; you can fool some of the people all of the time. And those people are in the Nebraska Legislature, save one. Except they're not fooled. They are the "foolers." They are the ones who help bewitch, "bebother" and bewilder the public. Then they strut around as though they are representing the interests of the people--I'm senator so-and-so. So what? There has been no net increase in the jobs available to the people in this state. The wages have not improved. Benefits have not improved, except for the big shots. Corporations are realizing more profit than they have in a long time because they are squeezing more out of fewer and fewer workers, giving less and less in the way of benefits. But there are people in this body who identify with

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

April 26, 2005 LB 40

the big shots, so they're looking out for the interests of their big shots. That is their constituency. I have to look out for the...

SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: ...constituency I care about, and since there are not as many who care about that constituency, I have to work harder, and I'm prepared to do it. Expend more energy? I've got it. What is the energy for? Nature tells us if something is unused it becomes unuseful, but if we use and exercise that which nature has given to us, it becomes stronger. That's where we can count on a reward for effort expended, only when we're dealing with Mother Nature. Madam President, is this my third time?

SENATOR SCHIMEK: It is, Senator Chambers.

SENATOR CHAMBERS: Ah, parting is such sweet sorrow, but I must stop for now. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Chambers. Seeing no further lights, Senator Beutler, would you like to close on your amendment?

SENATOR BEUTLER: Senator Schimek, members of the Legislature, I wanted to say just one more word about business incentives and the work of the Revenue Committee. The Revenue Committee has been...the process, as it appears to me, is that they dealt with all of their work except business incentives fairly early on in the process, and for an extended period of time now have been focusing on the business incentives portion of the...of their problems. And for myself, I would like to say that I appreciate very much, Senator Raikes and Senator Redfield and Senator Connealy and Senator Janssen and the rest of you, all this time and effort that you are putting into this package, because I think the chances are it's going to be one of the most well-thought-out packages that we've gotten on this particular type of subject. So I'm looking forward to receiving it, whatever its dollar amount, and grappling with the rest of you as to how we come to terms with it. Having said that, the

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

April 26, 2005 LB 40

discussion on the amendment has been, in large part, on these...on the business incentives and that kind of discussion, which has gotten us off the thought of earmarking of funds. And so what I wanted to do for now is to simply introduce you to that topic and perhaps bring it back on Select File. I hate to let this thing pass into a large earmarked set of funds without at least having some decision, some formal decision, from the Legislature that that's what they want to do. So I'm really very torn and probably will bring it back to you because I think it's an important issue. And besides, Senator Chambers said he was against it yesterday and he's against it today, but he didn't say he'd be against it tomorrow. (Laughter) So with that, I withdraw the amendment, Mr. Clerk.

SENATOR SCHIMEK: Thank you, Senator Beutler. Mr. Clerk, is there another amendment?

ASSISTANT CLERK: Madam President, the next amendment is offered by Senator Chambers. This is FA183.

SENATOR SCHIMEK: Senator Chambers, you're recognized.

SENATOR CHAMBERS: Madam President, because we're dealing with a committee amendment, and I believe I made that to the bill, I withdraw that amendment.

SENATOR SCHIMEK: It is withdrawn. Mr. Clerk.

ASSISTANT CLERK: Senator Chambers, FA184.

SENATOR CHAMBERS: Same with that; I withdraw it.

SENATOR SCHIMEK: Thank you. It's withdrawn.

ASSISTANT CLERK: Next amendment is offered by Senator Synowiecki, but I have a note he wishes to withdraw that.

SENATOR SCHIMEK: It's withdrawn.

ASSISTANT CLERK: Senator Beutler, AM1204.

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

April 26, 2005 LB 40

SENATOR SCHIMEK: Senator Beutler, you are recognized to open on your amendment.

SENATOR BEUTLER: Senator Schimek, members of the Legislature, I filed this amendment before Senator Redfield filed her amendment, and her amendment picked up the language that I wanted to bring up to date in the bill and so, in effect, it has done, I believe, Senator Redfield, isn't this correct? You have picked up that language and made it modern language. So with that, I would withdraw that amendment, Mr. Clerk.

SENATOR SCHIMEK: Thank you, Senator Beutler. It's withdrawn. We are now back to the committee amendments, AM0387. Seeing no lights, Senator Redfield, I understand...I'm sorry. Mr. Clerk.

ASSISTANT CLERK: Senator Chambers would move to amend the committee amendment. (FA195, Legislative Journal page 1303.)

SENATOR SCHIMEK: Senator Chambers, you're recognized to open on your amendment.

SENATOR CHAMBERS: Madam President, what that amendment purport...proposes to do, if you will look on page 6 of the committee amendment, you will see what my reference goes to. My offering says, repeal Section 76-901 outright. That means it would be repealed and stricken from the law, and that talks about imposing a tax on the grantor executing the deed and so forth. I want it clear what this amendment would do. It would strike from the existing law Section 76-901. I'm not simply trying to restore the existing language, which would be done by striking the new language, restoring the old. My amendment is designed to strike from the law Section 76-901. And I think on this I'm going to need a little help from Senator Redfield to make clear what this section does.

SENATOR SCHIMEK: Did you wish to ask a question of Senator Redfield?

SENATOR CHAMBERS: Yes, I do, Madam President.

SENATOR SCHIMEK: Senator Redfield.

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

April 26, 2005 LB 40

SENATOR CHAMBERS: Senator Redfield, are you on page 6 of the committee amendment, or page 2 of the green copy, so that you'll see the text of 76-901?

SENATOR REDFIELD: Yes, I am.

SENATOR CHAMBERS: Okay. In the first sentence it says: There is hereby imposed a tax on the grantor...upon the privilege...oh, executing the deed, upon the privilege of transferring beneficial interest in or legal title to real estate. That tax is on the grantor. Now, when we get further down, the tax is on the document. Isn't that true?

SENATOR REDFIELD: The tax is paid by the grantor, but the stamp is put on the document.

SENATOR CHAMBERS: The tax is on the document. Is that true or untrue?

SENATOR REDFIELD: The tax stamp goes on the document, but a document itself cannot pay a tax. The grantor has to pay the tax.

SENATOR CHAMBERS: I would go to line 15. I'm looking in the green copy. I want to correlate what I'm looking at so it will be...I'll be reading from the amendment. It would be in line 16 in the amendment: Such tax shall be evidenced by stamps to be attached to the deed. The tax we're talking about is the tax on the grantor. Correct?

SENATOR REDFIELD: Correct.

SENATOR CHAMBERS: All deeds purporting to transfer legal title or beneficial interest shall be presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the instrument is exempt. Now line 17: All deeds purporting to transfer legal title or beneficial interest shall be presumed taxable. The deed is what is taxable. Correct?

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

April 26, 2005 LB 40

SENATOR REDFIELD: Correct, I mean in the sense the deed represents the real property.

SENATOR CHAMBERS: Why don't we say what it is that's taxable, because it is not the deed, in fact, is it?

SENATOR REDFIELD: No, it's the property that is represented by the deed.

SENATOR CHAMBERS: And other people are talking about other things that really aren't taxable. I'd like to ask Senator Connealy a question, not to ignore you, Senator Redfield, but he had a comment and I would like to see what he was saying. Senator Connealy.

SENATOR SCHIMEK: Senator Connealy, would you yield?

SENATOR CONNEALY: The way I understand it, it's the transaction that's taxable. Because...

SENATOR CHAMBERS: So in one place we say the tax is on the grantor; further down we say the tax is on the deed; and you say the tax is on the transaction.

SENATOR CONNEALY: You have a deed for each transaction, so it's a new deed.

SENATOR CHAMBERS: So it's not the deed that's taxable. Correct?

SENATOR CONNEALY: Once it's paid then it's done, then the deed isn't taxable. It's when you make a deed and make that transaction.

SENATOR CHAMBERS: Why don't we say the transfer is taxable instead of the deed? I'm reading line 17: All deeds to transfer legal title or beneficial interest shall be presumed taxable. The deed is taxable. If they don't mean the deed is taxable, don't say the deed is taxable. In line 5: There is hereby imposed a tax on the grantor executing the deed. The tax is on the grantor and the transaction, not on the deed. That may be

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

April 26, 2005 LB 40

true and that may not be true. That's why we got to get rid of this language. This is not good. This is not good language. I can't figure this out. Now maybe somebody will turn on their light, if they're in opposition to what I'm doing, and explain just what's going on. For the record, I'm going to read the entire section, 76-901: There is hereby imposed a tax on the grantor executing the deed as defined in Section 76-203 upon the privilege of transferring beneficial interest. So the grantor is taxed upon the privilege of transferring, not even on the transfer but on the privilege of transferring beneficial interest in or legal title to real estate at the rate of \$1.75 for each \$1,000 value or fraction thereof. For purposes of 76-901 to 76-908, value means...value shall mean (1) in the case of any deed, not a gift, the amount of the full actual consideration thereof, paid or to be paid, including the amount of any lien or liens assumed, and (2) in the case of a gift or any deed with nominal consideration or without stated consideration, the current market value of the property transferred. Such tax shall be evidenced by stamps to be attached to the deed. All deeds purporting to transfer legal title or beneficial interest shall be presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the instrument is exempt under Section 76-902. We don't need that. We don't even need that. The statute taxes the grantor. It's imposed on the grantor. Why? Upon the privilege of transferring. That can't be. It can't be a tax on the grantor and a tax upon the privilege. A tax on the grantor for exercising the privilege of transferring the beneficial interest, so the tax is not on the transfer itself. The tax is on the privilege. That's what the law says. I'd like to ask Senator Redfield a question.

SENATOR SCHIMEK: Senator Redfield.

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: Senator Redfield, if you look on page 6 of your amendment, starting in line 5, tell me after I've read this sentence if I've read it correctly: There is hereby imposed a tax on the grantor executing the deed as defined in

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

April 26, 2005 LB 40

Section 76-203 upon the privilege of transferring beneficial interest in or legal title to real estate at the rate of \$1.75 for each \$1,000 value or fraction thereof. Did I read that correctly?

SENATOR REDFIELD: That's the current language, yes.

SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: So is the tax...the tax is imposed upon the grantor but it's upon the privilege of transferring, not on the transfer itself. Is that true, based on what the language says?

SENATOR REDFIELD: Based upon the language, yes.

SENATOR CHAMBERS: And your understanding has been all this time that the tax is on what?

SENATOR REDFIELD: On the transfer.

SENATOR CHAMBERS: That's what I thought when I first read it.

SENATOR REDFIELD: And, Senator, if you would like us to, we could work on the language in this section for Select File. I did not touch the existing language other than the dollar amount.

SENATOR CHAMBERS: I understand. I'm not blaming you for this language, but what I point out and have in the past, Senator Redfield, when a bill comes to us and it has existing language, in the old days they had people so unsophisticated or so unlettered or so uncaring that they wrote things that ought not to have been written that way. But since we have the benefit of the errors they made, we're better educated, we're more sophisticated, we should try to make the language say what it is that we intend it to say.

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Time.

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

April 26, 2005 LB 40

SENATOR CHAMBERS: Thank you, Mr. President.

PRESIDENT SHEEHY: Senator Jensen.

SENATOR JENSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. And, Senator Chambers, I go back to the dark ages, if you will, but many years ago, when I was in construction and in real estate, and it was the federal government that had a stamp, \$.55 per \$500, or \$1.10 per \$1,000, and that was a transfer stamp. You could buy those stamps at the post office. This was a federal transfer tax...not tax, federal transfer stamps that you bought that you applied to the deed. The federal government dropped that. The state of Nebraska picked it up. And so we then were able to charge \$.55 per \$500, \$1.10 per \$1,000, and we did that for years and then we put this into the Affordable Housing Trust Fund. Well, now we're increasing that and, yes, Senator Redfield is talking about adding to that old language and increasing it, but this once was a federal transfer stamp that the state of Nebraska said this is a way that we could get money for affordable housing and that's how this got into being. I believe I'm correct on that. I know I am on, like I said, several years ago when it was a transfer stamp that you were buying to put onto the document, the deed. I don't know, Senator Chambers, if that helps you any or not. Be glad to answer any question you might have.

SENATOR CHAMBERS: Senator Jensen, what I'm looking at is what is actually taxed here. What is actually being taxed?

SENATOR JENSEN: Well, there...it used to be a stamp and we have replaced that with this language, and I understand what you're saying in that this would appear to be, as it says on line 6, upon the privilege of transferring beneficial interest in legal title. Now, whether this is...you call that a tax on a transfer or if you'd call that a tax on the document, but it is in the form of a fee anyway that is charged.

SENATOR CHAMBERS: I'm aware of that. What should the state be taxing with this tax? What should this tax be taxing?

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

April 26, 2005 LB 40

SENATOR JENSEN: The amount of dollars that is in the transfer of property.

SENATOR CHAMBERS: So that talk about a tax on the privilege could...that should be just stricken, shouldn't it?

SENATOR JENSEN: Well, you know, you're an attorney or was trained in the law; I am not, but you are. Whether you call that a privilege or not, you are transferring the property. I suppose in legal terms that is a privilege, so you're taxing a privilege.

SENATOR CHAMBERS: Suppose you'd say there is here...and this wouldn't be the best way but just to try to make the point, there is hereby imposed a tax on the grantor executing the deed as defined in this section. Why don't you say there's a tax on the transfer and the grantor is the one who pays the tax.

SENATOR JENSEN: I would imagine that...

SENATOR CHAMBERS: And you determine the amount based on the value involved instead of talking about it's a tax on the privilege of doing something. Let me ask a question this way, and I know it's your time. What other privilege do you know that is explicitly taxed by the state of Nebraska?

SENATOR JENSEN: I can't think of one. There sure may be, but I cannot think of one.

SENATOR CHAMBERS: I don't think there is one. This makes no sense.

SENATOR JENSEN: Well, and I'm sure that whether the term "privilege" is a legal term, that I cannot attest to, but I can just...all I was is going back into the history of how this came about.

PRESIDENT SHEEHY: One minute.

SENATOR JENSEN: It was a federal tax that went away, or not tax, a federal stamp that went away and the state saw this as a

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

April 26, 2005 LB 40

way that, sure, people were used to paying this, buying those stamps on a...to place on the documents when they transferred property, that they could replace this and then it could be used for a good purpose, which is affordable housing, which I think is a good purpose. Thank you, Mr....

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

SENATOR CHAMBERS: Thank you, Mr. President, and welcome to the caldron. The fires have been banked. You should have been here this morning. Members of the Legislature...because I had a message for the Governor. But he listens, so I know he got it anyway. Just having a little fun to break the ice and make you feel a part of the family while you're here. Mr. President, members of the Legislature, and Senator Redfield, and Senator Jensen, what I'm talking about does not go to the amount of the tax. It does not go to determining the amount of the tax based on the value of what is being transferred. It goes to what is actually being taxed. And some people may think that's inconsequential, but I think it's very significant. And this is more than me just parsing words. I take...I take taxes seriously, so seriously that I refer to surcharges as taxes, fees as taxes, and taxes as taxes. We ought to make it clear what is being taxed. I had said that when I'd get out of the Legislature they ought to hire me to start with page 1 of volume 1 of the statutes and just read through it and all of the existing laws that I see that are poorly written, the language therein does not state what the purpose is, call attention to the Legislature of those parts of the statute, without my making any judgment as to the wisdom or lack thereof of the particular law but just as to whether or not it's poorly written, as this is. They probably, in the old days, copied this from someplace. Many Legislatures wind up with bad laws on the books because they will go to another state's legislature which has nobody in it such as myself, bad stuff appears there, so they'll just lift it bodily and put it into their statutes. In some cases, in addition to the language they incorporate being poorly written, there is not a good fit between what they've brought over and what is already there, which this new is to be put into. Jesus tried to tell you all about that. He said, you don't put new wine in old bottles. He's trying to tell you something. He's

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

April 26, 2005 LB 40

not just talking about wine. He's just not talking about animal skin bottles. He's trying to tell you that if you've got something old you don't just put something new in it on the chance that the winos will think they were the ones being talked about and they'd be so happy they'd go get in their cups and forget that wine drink is...wine is a mocker and strong drink a raging, and whosoever is deceived thereby is not wise, Senator Pahls. Thus sayeth the "Bibble." So Jesus tried to get it to a level where nondrinkers might understand it. If you have an old garment and you take a new piece and sew it into a hole in that old garment and the new piece hasn't been preshrunk, then when you get it wet and it draws up, it will make the rent, as the "Bibble" called it, or the tear, even larger. Things from one location don't always fit when they're attempted to be incorporated into things in another location. Consequently, legislation reduced to statutes in the statute books is some of the most atrocious...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...syntax you will find anywhere on the face of this earth between two covers of a book. It would seem to me that nothing could be drier, more technical and specific and precise than a statute related to taxation, taxing. You can't even say what item is being taxed based on this language, so I think we ought to strike it. That's what my amendment is intending to do. Thank you, Mr. President.

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

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor, welcome, and members of the body. I would ask you not to support the Chambers amendment, because, in fact, it would eliminate the documentary stamp tax entirely and, therefore, we would not have funding for the homeless shelter, for the Behavioral Health Services Fund, or for the Affordable Housing Trust Fund. So, in fact, we will have reduced a tax burden on those transferring property, but we will have lost the funding for those very important programs. I do also have some language that committee counsel handed to me, just briefly looking at it, with some

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

April 26, 2005 LB 40

possible improvements for Section 76-901. I would prefer to wait until Select so we can draft it in proper form, but he suggests that perhaps just very simply saying, there is hereby imposed a tax on the grantor executing the deed as defined in Section 76-203 upon the transfer of a beneficial interest in or legal title to real estate, and so forth. And the last sentence in that paragraph we may be able to drop, because the exemptions are listed in 76-902. So again, I don't think that we would benefit from the adoption of this committee...or from this Chambers amendment, but we can clean up the language for Select. Thank you.

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

SENATOR CHAMBERS: Thank you, Mr. President. Senator Redfield, if you would yield to a question, I would like to ask you one or two.

PRESIDENT SHEEHY: Senator Redfield, would you yield?

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: Senator Redfield, what do you think about making use of my vast knowledge that I've acquired in 35 years, and I should have learned something, my offer to make that available to the state at a very reasonable cost of, say, a penny a word that I would deal with in the statutes?

SENATOR REDFIELD: I thought that \$12,000 a year was a better term.

SENATOR CHAMBERS: Which way would I make the more money do you think?

SENATOR REDFIELD: Probably a penny a word.

SENATOR CHAMBERS: That's the way...who was the guy who wrote the Christmas Carol? We got people who know. That's the way Charles Dickens wrote. That's the way the Dumas brothers wrote, by the word, and that's how they were paid. But we might be

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

April 26, 2005 LB 40

able to work something out, so let's forget the compensation. Do you think somebody at some point perhaps could...that it would be a good idea to have somebody at some point review some of these statutes?

SENATOR REDFIELD: I would agree. However, every time that I have looked at something and tried to construct in a very simple English syntax, I find that the attorneys say, oh no, in legalese you need to do it thus and so. So I would expect that someone with legal training would also be required, not just someone who understands the English language well.

SENATOR CHAMBERS: Thank you. And that's why somebody like myself would probably be perfect. Kipling had talked about somebody who had walked with kings and not lost their virtue, or walked with ordinary people and not lost their virtue, walked with kings and not lost the common touch. Sometimes it does take a degree of specialized knowledge to deal with language that is referred to as terms of art, meaning, in a legal context these words take on a different meaning. They have a precision. They have a history. But even when you're using words such as those, they should be constructed in the form of sentences which are well put together so that a person reading the sentence will understand what is being stated. Many of the sentences that exist in the statutes are far too long. One of the things that I was doing when I wrote a tongue-in-cheek amendment for Senator "Annie Oakley's" gun bill was to show in addition a bit of satire that I could construct the longest sentence in the statute books. It's one long sentence, and I don't think anybody noticed that, but it was to show how statutes often are written. They become so convoluted they turn back upon themselves. You cannot always tell what is being modified by language that you read. At the end of a sentence you don't know whether it's going to refer back to what preceded, or if it's designed to introduce to you...introduce you to that which follows, and that becomes difficult when legal challenges are launched. I know that when statutes are drafted there's a disinclination to use punctuation marks. Punctuation marks serve a purpose. They are designed to help convey to the reader the sense of what those words are to project. So if you took one long statement and did not punctuate it anywhere, there

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

April 26, 2005 LB 40

would be no way to say with certitude what the sentence mean. If you said, Pat the baker...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...bakes bread, are you saying Pat is the baker who bakes bread, or are you telling Pat that the baker bakes bread? So here's the sentence: Pat the baker bakes bread. So unless you punctuate it, you don't know which of those things you're doing, telling Pat something or saying something about Pat. If, in ordinary conversation, a sentence with so few words can be ambiguous, it's problematic when long ambiguous statements exist in the statute. These things trouble me when I read them, just like some of your bills that you bring and I attack. There's something in me that has developed during my time here that causes me to feel a responsibility toward the way we write laws and the way the statutes are constructed, which I would be better off if I didn't feel any concern about.

PRESIDENT SHEEHY: Time.

SENATOR CHAMBERS: Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Further discussion on FA195 to AM0387? Seeing none, Senator Chambers, you're recognized to close.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I don't know that there's too much more work to be done on this amendment. I don't know whether Senator Beutler is going to try to do anything else on the bill. Senator Redfield has talked about being open to suggestions on Select File, and that might go to the underlying purpose of the bill. There were some items of interest that I had expressed earlier, such as protecting these funds from being raided when the state, through the Legislature, decides that this money should be diverted to another purpose. Since the money from this tax, regardless how the tax got into place, and Senator Jensen explained his recollection of it, there was a specific purpose envisioned. In order to serve that purpose, the money should be spent in accord with what is intended to be achieved. As we proceed, I want to

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

April 26, 2005 LB 40

find out where this money has been spent, not just through diverting it someplace else, but those who have had access to this money to spend it have had a reason for spending it in the way that they did, and I don't know at this point how all they have spent it but I'd like to find out. Senator Preister raised an interesting point. It was interesting to me. The majority of the money in this fund will obviously come from Omaha because of the number of transactions and the value of the property involved. The rest of the state, which often takes potshots at Omaha, in some cases justified, would not want their principle that they lay down to be followed across the board. Otherwise, this fund would just be a collecting place for all of these taxes to go when they are paid, but then drawn out of that fund should be the same amount that a locale put into it. So Douglas County should get out of that fund each year the amount that goes into the fund from transactions that occur in Douglas County. I'd like to ask Senator Redfield a question.

PRESIDENT SHEEHY: Senator Redfield, would you yield?

SENATOR REDFIELD: Yes, I would.

SENATOR CHAMBERS: Senator Redfield, would you support an amendment of the kind that I've been discussing, namely that the amount of money a county pays into this fund as a result of these documentary taxes would be the amount each year that county would receive back for the purposes laid out under the laws related to affordable housing?

SENATOR REDFIELD: Senator, I would support a proportionate language in distributing...or distributing the fund. The one thing I might tell you is that sometimes we have some very poor counties that would not raise any funds through the documentary stamp tax that might have great need. So we would want to make sure it's not just those who pay in, but where also the need is greatest. So you might want a little flexibility within that formula.

SENATOR CHAMBERS: And, Senator, since my time has run out, I won't argue with that point, but I'll just make my comments in response to that. Counties are viewed with some degree of

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

April 26, 2005 LB 40

concern when they are poor, but the people, the individuals who are poor and may not be able to...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...put much into the pot are frowned upon, sometimes scorned, because they may be taking from society more than the amount they contribute in a tangible way. So although those people are looked down upon, the counties present a different story. If there are poor counties and they cannot contribute much to this fund, the wealthier counties should forego some of what they put in, in order that those poorer counties can realize something. Why cannot we take that thinking over to people and apply one of Jesus' principles? The Sabbath was not...men were not made for the Sabbath, but Sabbath for people. Counties should not get more consideration than the people, but the people always fall by the wayside. Thank you, Mr. President. I would ask for a call of the house.

PRESIDENT SHEEHY: Thank you, Senator Chambers. We have a request for a call of the house. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 18 ayes, 1 nay to place the house under call.

PRESIDENT SHEEHY: The house is under call. Would all unexcused senators please return to the Chamber. All unauthorized personnel please step from the floor. Senator Foley, would you please check in? Senator Chambers, how would you request the vote?

SENATOR CHAMBERS: I'll take a machine vote.

PRESIDENT SHEEHY: The question before the body is, shall FA195 be adopted to Revenue Committee amendment AM0387? All in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 1 aye, 31 nays, Mr. President, on the adoption of the amendment.

PRESIDENT SHEEHY: FA195 is not adopted. We'll now move back to

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

April 26, 2005 LB 40

floor discussion. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments. (FA196, Legislative Journal page 1303.)

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on your committee amendment...amendment to the committee amendment.

SENATOR CHAMBERS: Thank you. Mr. President, I can't help wondering if I had been less cordial to you maybe I would have gotten a better vote. (Laugh) But anyway, that's one of the vagaries of being in the Legislature. What this amendment would do...

PRESIDENT SHEEHY: House is...the call is raised.

SENATOR CHAMBERS: What this amendment would do is to strike Section 77...I want to make sure that is still in the bill. Yes. In the amendment, it would begin on page 7, I would strike outright, that means repeal outright, striking it from the statutes, Section 77-1327. It begins with this language: It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners for this purpose--in order to ensure the uniformity and proportionality of assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to Section 77-5027. That is just one of the subsections found in Section 77-1327. What I'm looking at, and I would like to call Senator Redfield's attention to it, Senator Redfield, in this amendment, because I'm going back and forth between the green copy and the amendment because I marked up my green copy...

PRESIDENT SHEEHY: Senator, would you yield?

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: On page 8 is where I would call your attention. In line 1: to ensure the uniformity and

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

April 26, 2005 LB 40

proportionality of assessments of real property valuations. Now what would your understanding be of proportionality of assessments?

SENATOR REDFIELD: Well, Senator, under the state constitution we have a requirement for uniformity within the class, and within each class certainly there are differences within each individual parcel. And so the property taxes assessed upon those parcels would have to be proportionate according to their value.

SENATOR CHAMBERS: And the value is determined by the land we're talking about, the property we're talking about, and not the wealth of whoever might happen to own that land. Is that agreed?

SENATOR REDFIELD: That's correct. It's market price, market value.

SENATOR CHAMBERS: So the term and the meaning, the term "proportionality" and its meaning are not foreign to the law of taxation.

SENATOR REDFIELD: No, not at all.

SENATOR CHAMBERS: So what we had talked about briefly in terms of Douglas County taking out of this Affordable Housing Fund the exact same amount that is put into it may not sit well with some people, but such a thing would not be unheard of in the realm of this kind of activity. Would it?

SENATOR REDFIELD: I'm not aware of another program that is dollar for dollar. Most block grants are granted on a per capita basis, but it's certainly not unheard of to distribute funds on a population basis.

SENATOR CHAMBERS: And a purpose could be served, even if the money would be distributed in that way, to have a central collecting place for all of these revenues generated by documentary tax stamps. The taxes derived from that activity, wherever in the state, could come to this central repository and

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

April 26, 2005 LB 40

there could be an understanding for the state's statistical purposes, if nothing else, of how many transactions are taking place, where they're taking place, the relative value of them and so forth. So information that could be of value to the state for other purposes could still be derived from this process even if each county received out of that fund, dollar for dollar, the amount it paid in. Would that be true?

SENATOR REDFIELD: We actually have those figures. The counties would have them. The dollars go into the treasurer of each county and then they are forwarded to the State Treasurer, who distributes them to the funds in the bill.

SENATOR CHAMBERS: Suppose, instead of taking it back dollar for dollar, we would allow the state to keep 10 percent and then the 90 percent would come back to the county. Do you think that 10 percent would adequately recompense the state for being the collecting point for this money?

SENATOR REDFIELD: We're not actually collecting any administrative costs for the state in this transaction. There, as you look at the A bill when we get to it, you'll find that everything passes through and we are not taking any salary or per diem costs.

SENATOR CHAMBERS: Oh, I know that. I mean if it was to be done the way I was talking about, where the only role the state plays is for all of this documentary tax money to come to the state as a centralized location, then the money comes back to the counties, but the state, for being the collecting point, could get 10 percent. How about that?

SENATOR REDFIELD: I'd just as soon not pay any administrative costs since we don't currently, but I do think that we can create a mechanism that would distribute the funds more according to the formula that you're looking at.

SENATOR CHAMBERS: Now, before you jump too quickly to the other side of the fence, let me ask you this. If it were done the way that I'm talking about and the state kept 10 percent and Douglas County got 90 percent back, would Douglas County realize more

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

April 26, 2005 LB 40

under that system or under the current system?

SENATOR REDFIELD: They would receive more under that system.

SENATOR CHAMBERS: So the 10 percent would be a pittance compared to the return if that was the cost of implementing a system like that. Would you agree?

SENATOR REDFIELD: That's true, but...

SENATOR CHAMBERS: And we would have in Douglas County much more money to deal with much larger and more numerous problems than would be found in other counties. Would you agree?

SENATOR REDFIELD: We would. And I certainly think there is great need in Douglas County for these funds. There are a number of people that need these services. At the same time, I believe that in the amendment that we've adopted, we very carefully design the distribution mechanism so that we will get them out to the regions where the people are, and the formula would include some of the factors that you're talking about. Now, that would be the Behavioral Health Services Fund. The Affordable Housing Trust Fund, however, doesn't have a mechanism in here, and that's where you might want to have a formula.

SENATOR CHAMBERS: Why don't we do that?

SENATOR REDFIELD: Why would you do that?

SENATOR CHAMBERS: Why don't we go ahead and do that for the Affordable Housing Trust Fund?

SENATOR REDFIELD: Actually, Senator, there was an amendment that was offered in the committee hearing and it was brought by the city of Omaha because they were looking at the cost...or, I should say, the funds that were being contributed by the people in the Omaha metropolitan area, and they were looking at the distributions back and feeling that they were being neglected. So they offered an amendment and I did support that amendment. The committee felt that the amendment had gone too far in that not only were they allocating the dollars but they were also

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

April 26, 2005 LB 40

allocating them through a certain branch of the city government and they didn't want a flow-through in a different mechanism. They wanted them to all flow consistently through the same program statewide.

SENATOR CHAMBERS: And what program would that be? This one that exists now?

SENATOR REDFIELD: The Affordable Housing Trust Fund. And the bill, with the amendment that we've adopted, would also create Behavioral Health Services Fund, so there would be two...that other fund, as well. But I think that we would want to have a statewide program distributing them out to the regions or the areas of the state uniformly. I don't believe that we want to just send dollars to each municipal government...

PRESIDENT SHEEHY: One minute.

SENATOR REDFIELD: ...to distribute in different mechanisms. I think that we would duplicate a lot of our administrative costs that way.

SENATOR CHAMBERS: That's all I will ask you because the time is almost out. Thank you, Senator Redfield. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Mr. Clerk, do you have a message at the desk?

CLERK: Mr. President, Judiciary with have an Exec Session, 3:00, south balcony; Judiciary, south balcony, 3:00.

PRESIDENT SHEEHY: (Visitors introduced.) Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is an area that I have not looked at before. I would not have looked at it had not Senator Redfield's bill been brought before us. And the reason her bill was brought before us is that an inadvertence resulted in some money, which was to be used for a certain purpose, winding up in somebody's

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

April 26, 2005 LB 40

bureau drawer in the Department of Economic Development and not expended. So, the problem that was to be solved with that money was not solved. It became necessary, because of the inability of the Department of Economic Development to determine how to get this money where it needed to go, the problem that resulted was that it just sat there. I would like to ask Senator Redfield a question.

PRESIDENT SHEEHY: Senator Redfield, would you yield?

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: Senator Redfield, this \$2 million which was not in use, was it being invested or was it just sitting idle someplace?

SENATOR REDFIELD: The Treasurer always invests all idle funds so that they are being used for the purposes of the state in raising revenue. At the same time, they're not being designated for where the Legislature intended them to go.

SENATOR CHAMBERS: So that \$2 million would have realized some interest.

SENATOR REDFIELD: I can't tell you how much, but, yes, there should be some, and that would accrue probably into the General Fund.

SENATOR CHAMBERS: Well, shouldn't we make a determination of that and the \$2 million plus the interest be the amount we're going to make available for this...

SENATOR REDFIELD: Well, one thing you...

SENATOR CHAMBERS: ...Behavioral Fund?

SENATOR REDFIELD: Excuse me, Senator. I didn't mean to interrupt.

SENATOR CHAMBERS: Sure. Go ahead.

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

April 26, 2005 LB 40

SENATOR REDFIELD: One thing you have to understand, that \$2 million, even though it was appropriated last year, did not go in total into the bank the first month, because it was collected month by month as people transferred property. So we didn't have \$2 million sitting there all year. So I can't tell you or give you a figure of how much interest there might be, but I'm assuming that it didn't sit there that long, all of it.

SENATOR CHAMBERS: So then there was not a \$2 million appropriation, but the authorization of this amount to be used as it became available through the collection of these documentary stamp taxes. Is that true?

SENATOR REDFIELD: The transfer, as I recall, and I hope I'm correct, the transfer was made in the bill last year through the appropriations process, so it would have been appropriated by the Legislature. But, still, the collection of...into the Affordable Housing Trust Fund accrued through the year.

SENATOR CHAMBERS: But there was enough money in the Affordable Housing Trust Fund to expend \$2 million at the time the Legislature appropriated it, isn't that true, or the Legislature could not have appropriated it?

SENATOR REDFIELD: Senator, when we go through the budget process, we appropriate money two years out and so we're not necessarily appropriating dollars that are in the bank at the moment. We're talking about dollars that will be there by that time. So we have to balance a budget over the biennium. That does not mean all those dollars are there on day one.

SENATOR CHAMBERS: But there was more than \$2 million in this Affordable Housing Trust Fund at the time the appropriation was made. Isn't that true?

SENATOR REDFIELD: I can't tell you exactly how much was left after we did the transfer of \$1.5 million a year in the General Fund transfer.

SENATOR CHAMBERS: All right. But, at any rate, with your bill amended as you have amended it, this money is going to go into a

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

April 26, 2005 LB 40

fund which is not situated in the Department of Economic Development but, rather, with HHSS. Is that true, or am I...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...misunderstanding still?

SENATOR REDFIELD: That's true. The bill would transfer that one-time money in through HHS. It would go out to the regions through the Behavioral Health Services Fund and they would be able to use this for construction to increase capacity.

SENATOR CHAMBERS: And any...is this an ongoing amount that will go to that Behavioral Fund, or is this a one-time?

SENATOR REDFIELD: The \$2 million is a one-time. That's the dollars that are sitting there now. And then in the bill \$.30 of the documentary stamp tax, ongoing, will be designated for that fund to continually replenish those funds necessary for rental assistance.

SENATOR CHAMBERS: Thank you.

PRESIDENT SHEEHY: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Senator Redfield, if you would indulge me a step further.

PRESIDENT SHEEHY: Senator Redfield, would you yield?

SENATOR REDFIELD: Yes.

SENATOR CHAMBERS: As the money is replenished, is this Behavioral Fund still located within DED? Or is it now in HHSS as a result of this bill?

SENATOR REDFIELD: If we pass LB 40, it will go over to HHS and flow through them to the Behavioral Health Services Fund.

SENATOR CHAMBERS: And when it comes to this particular matter, this fund, it will not be encumbered or entangled with DED

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

April 26, 2005 LB 40

anymore, if LB 40 becomes law.

SENATOR REDFIELD: That's correct.

SENATOR CHAMBERS: But all of the other, the other three, would still be with DED.

SENATOR REDFIELD: Well, the counties keep their money when they collect it.

SENATOR CHAMBERS: Right. Okay, so...

SENATOR REDFIELD: So they would be out of the mix. And then the Affordable Housing Trust Fund does go to DED.

SENATOR CHAMBERS: And are there rules and regulations established by somebody to determine the formula by which this money is distributed to various places throughout the state? Or do they just wait for people to ask for it and make ad hoc judgments?

SENATOR REDFIELD: They have general rules and there is a grant program where people apply, and they weigh those projects and then allocate the money according to what they believe is the best need.

SENATOR CHAMBERS: And is there any appeal for a person seeking a grant, and by "person" I mean the entity, who did not get a grant? Is there any appeal, or the word of DED is final?

SENATOR REDFIELD: I don't know. I can find out for you.

SENATOR CHAMBERS: Thank you. I see Senator Preister. I'd like to ask him a question or two, if he's willing.

PRESIDENT SHEEHY: Senator Preister, would you yield?

SENATOR PREISTER: Yes, I would.

SENATOR CHAMBERS: Senator Preister, if the city makes a grant application and files it, that grant application is filed with

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

April 26, 2005 LB 40

DED. Is that correct?

SENATOR PREISTER: That's my understanding. Yes, Senator Chambers.

SENATOR CHAMBERS: And if the grant is turned down, is there any appeal available for the city?

SENATOR PREISTER: They can wait until the subsequent grant-writing cycle and they can apply again. But I don't know of any appeal. They're just out of luck for that cycle.

SENATOR CHAMBERS: And it's possible then that the city of Omaha would never receive a grant, the way things are operated now. There would be nothing to prevent that from happening, in other words.

SENATOR PREISTER: I don't believe there's anything to prevent that. In fact, there was one year when they didn't receive any money.

SENATOR CHAMBERS: I think I saw on the gadget that you had an amendment, was it to the A bill, to appropriate some money to Omaha? Or what was your amendment going to do?

SENATOR PREISTER: I don't have an amendment, but I believe Senator Bourne has one on Select File that he's going to be proposing that would deal with the congressional districts, and would provide some fairness in returning the money from which congressional district it was generated. But that's Senator Bourne and he could address that more...

SENATOR CHAMBERS: I thought I had seen where, maybe it was just a letter that you wrote pointing out how much money had been paid in by Douglas County and the small amount, relatively speaking, that had come back. I did read a letter that you wrote...

SENATOR PREISTER: Yes.

SENATOR CHAMBERS: ...to that effect. But that letter was not

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

April 26, 2005 LB 40

notifying us that an amendment was going to be offered to correct that. Is that true?

SENATOR PREISTER: I was raise...using the letter, I was raising the issue and talking about doing it on Select File, and then I found out Senator Bourne was doing it. So I don't have one currently filed. But, yes, there was that letter and I did send that and you did see that.

SENATOR CHAMBERS: Thank you, and I will ask Senator Bourne a question because I see him, and maybe he could answer better than you, if Senator Bourne would yield to a question.

PRESIDENT SHEEHY: Senator Bourne, would you yield? Also, one minute.

SENATOR BOURNE: Certainly.

SENATOR CHAMBERS: And, Senator Bourne, if you don't have time to answer it, I will resume when I get a chance to close because this might be my third time. But I'm interested in this amendment that you are considering on Select File that relates to the distribution of this money from the affordable housing fund which takes into consideration the amount that comes from Douglas County into the fund but how little might flow back.

SENATOR BOURNE: I'd..Senator Chambers, I'm at a loss as to how you're aware of that amendment because that was double super secret, top secret, need-to-know basis only, if we disclose would have to kill you, so I don't know how it is you know about this.

SENATOR CHAMBERS: Well, those are the kind that you know everybody is going to find out immediately, (laugh) like the atomic bomb secret. But I will wait until I close to pursue it, because I only had one minute when I asked you the question.

SENATOR BOURNE: Well, I punched my light on, Senator Chambers, so I'll...

SENATOR CHAMBERS: Oh, okay.

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

April 26, 2005 LB 40

SENATOR BOURNE: ...certainly give you time if you want to further pursue.

SENATOR CHAMBERS: I would appreciate that. Thank you, Mr. President.

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

SENATOR BOURNE: Thank you, Mr. President. I'd yield my time to Senator Chambers.

SENATOR CHAMBERS: And, Senator Bourne, would you continue this discussion with me.

SENATOR BOURNE: Certainly.

SENATOR CHAMBERS: What I've been talking to Senator Redfield about is the way this money goes into the fund and there's no assurance that anything in the way of fairness will be observed in returning it to the source that provided it. So what would your amendment aim at doing?

SENATOR BOURNE: Well, what we had discussed was to make a proportional allocation between congressional districts. And I'll tell you, and I thought we'd wait to see how the debate played out here. Senator Synowiecki indicated to me that this might be resolved. But I have a letter from the city of Omaha and they've indicated they've applied for grants from the Nebraska Affordable Housing Program, and even though the majority of this stamp tax is raised from the city of Omaha, they've yet to receive a grant. And I...so I'm just looking for some parity is all, some fairness. And I'm not sure that I'm going to run the amendment. I'm just going to see how the debate plays out here. But I do think it should be allocated equitably.

SENATOR CHAMBERS: Since you yielded me your time, do you mind if I use a little of it to ask Senator Synowiecki a question or two?

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

April 26, 2005 LB 40

SENATOR BOURNE: It's your time. I already yielded it to you.

SENATOR CHAMBERS: Thank you.

PRESIDENT SHEEHY: Senator Synowiecki, would you yield?

SENATOR SYNOWIECKI: Yes, thank you.

SENATOR CHAMBERS: Senator Synowiecki, have you, in general, kind of kept tabs on the way the discussion has gone forth?

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: If you thought this might be resolved in the course of the discussion, how did you feel it would be resolved, or how do you think it should be?

SENATOR SYNOWIECKI: Well, Senator, in my conversation with Senator Bourne, I was talking relative to this 30 cents, this ongoing 30 cents that will be directed to the Behavioral Health Services Fund, and that will be distributed on a more geographical...on a geographical basis that makes some degree of sense in that the six behavioral health regions, by a...an already formula that they already have with Health and Human Services, that will be distributed to the six regional behavioral health services for ongoing rental assistance and utility assistance for those that suffer with mental health disease.

SENATOR CHAMBERS: But that was the only area you're looking at, not the affordable housing part of it?

SENATOR SYNOWIECKI: That is correct. The parameters of my conversation with Senator Bourne were exclusively on the behavioral health services part of this.

SENATOR CHAMBERS: Okay. Thank you. Now I will ask Senator Bourne another question or two.

PRESIDENT SHEEHY: Senator Bourne, would you yield.

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

April 26, 2005 LB 40

SENATOR BOURNE: Certainly.

SENATOR CHAMBERS: Senator Bourne, I'm particularly interested in the affordable housing aspect of it.

SENATOR BOURNE: As am I, Senator Chambers.

SENATOR CHAMBERS: All right, so I think Senator Synowiecki's concerns may have been addressed, and he has something pending now, I think. If your amendment were to be offered, and if you choose not to and I agree with it, I will run with it because I think something has got to be done, how would that operate?

SENATOR BOURNE: Well, and Senator Chambers, I'm not trying to be evasive. I'm uncertain of all the details.

SENATOR CHAMBERS: Uh-huh.

SENATOR BOURNE: But what I think it would...what was contemplated was some sort of an equitable allocation between the three, or amongst the three congressional districts, which of that...no one...not one district would get more than any other and not one district would get aced out, for lack of a better phrase, on these funds.

SENATOR CHAMBERS: So then it would be a division into three parts without reference to population, or how would the determination be made as to what each of the districts would receive?

SENATOR BOURNE: Well, it would have to be equitable. And if you recall from when we redistricted, each congressional district is of an equal number, basically, population, so that each district I think has roughly 430-some thousand individuals. So it would be...the point is, is try to be fair, try to be equitable in how the monies are allocated...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: Okay.

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

April 26, 2005 LB 40

SENATOR BOURNE: ...throughout the state.

SENATOR CHAMBERS: Here's a different aspect of it which may not be contemplated by your amendment. We're not talking about the amount that is paid in from one of these congressional districts, but only the payout once the money is there. It will be equally distributed among the three of them.

SENATOR BOURNE: Right. And again, I'm...I have not looked at which congressional district pays more in terms of the doc stamp. I'm uncertain of that. And again, I think that would have to be considered. I'm trying...I'm looking at something, and this is all preliminary, Senator Chambers, but I...

SENATOR CHAMBERS: I understand.

SENATOR BOURNE: ...received a letter indicating that the city of Omaha had submitted four grant applications to the Nebraska Affordable Housing Program, and were denied on each. And so as I understand it, the city, even though we have significant affordable housing issues up there, we've yet to receive a grant from this fund, and I don't think that's fair. I'm not saying Omaha should get more than they deserve, but they certainly shouldn't be aced out...

PRESIDENT SHEEHY: Time. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I'm in total support of Senator Synowiecki's portion of that that would go to the affordable housing, the mental component of it. I would like to engage in a little bit of a conversation with Senator Jensen. Is he here? No, he's not here, but that's okay. In this affordable housing fund, there's \$2 million in there that's set aside for the LB 1083 component of it for affordable housing to hopefully try to get people back into the communities for community-based treatment of mental health. That would be rental assistance and things like that. The thing that I'm concerned about is, the way I understand, there's \$8 million that is in this fund right now, and they are spending between \$5 million and \$6 million in grants for affordable housing. And there's many, many requests. The thing

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
TRANSMITTAL SECTION
FLOOR DEBATE

April 26, 2009 LB 40

about it is, you know, should they keep that kind of a balance in reserve? Maybe that's justified in doing so. But with this bill, you know, it is expected if the A bill passes, to bring in another \$3.5 million to \$4 million to that fund. Hopefully, I can see that, that it would really expand the affordable housing and also make sure, you know, that the effects of LB 1083, the community-based mental health, really gets some real benefit out of it, because then I think we can really make a difference and get these people back to the community-based system. So I'm not overly excited about adding an additional tax, but I see there is some benefit to this, and so I'm going to listen to the discussion before I make up my mind as to whether I totally support this or not. But there are components of this that I'm very much in favor of that. So with that, I'll give the balance of my time back to the Chair. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President and members. I'd yield my time to Senator Chambers, if he wishes it.

PRESIDENT SHEEHY: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Bourne. Thank you, Mr. President. I may have been overreaching in saying that there should be a dollar-for-dollar takeout by Douglas County for the amount paid in. Senator Redfield and Senator Bourne have taken a much more reasoned approach. You know already it's not the one that I would take. I see too much in the way of ganging up on Omaha. And although I live there, by the way, I'm not a fan of the administration. I certainly am not a fan of the city council. Those rascals would not even allow a neighborhood group to name a mini-park, m-i-n-i park, after me, because they choose to because of the work I've done, I'm a member of that neighborhood, people know me, their children know me, and the city council said no. So if I were going to be of a mind to behave toward them the way they've behaved toward me, and by doing that to me insulted my community. I didn't ask the council to name anything after me; I didn't ask the neighborhood association to do so. They asked me could they do it, and I said, go ahead. So it was the community insulted, people who

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

April 26, 2005 LB 40

followed every rule insulted. The parks commission that rules on these requests had approved it. The mayor had signed off on it. But the racists on the city council, a majority of them, and one misguided Negro, told the black community organization, go to hell; we're in charge, we do what we want to. I could help punish Omaha, but not everybody in Omaha is responsible for what those members of the council did. Not every member on the council agreed with what they did. The mayor, to his credit, vetoed an insulting alternative that the council actually enacted into an ordinance. The mayor vetoed it. The neighborhood group asked him to veto it. It was a second insult heaped on top of the first one. These white people know better than the black neighborhood association what is in the best interests of that neighborhood. So to take the position that I'm taking requires me to transcend a great amount of personal desire for vengeance, and that's why the "Bible" says: Vengeance is mine, I will repay, saith the Lord. Vengeance is so sweet. Vengeance can be so all-consuming that only a God should be allowed the discretion of taking revenge. So I'm not interested in vengeance against small-minded people in Omaha who happen to be elected officials. I'm looking at, to use Senator Bourne's term, equitable distribution. Senator Redfield was in support of such an idea when it came before the Revenue Committee in...or whatever committee that handled this, in a form that was unacceptable because of the agency in the city that would distribute the money. But since there seems to be some movement toward an equitable distribution, I would not insist on even trying..

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...to get a dollar-for-dollar recovery by Douglas County of the amount that goes in. And we know most of the money that comes from Douglas County would come from the city of Omaha. So when we get to Select File, I hope Senator Bourne still has an interest in that amendment, and I would work with him on it and do what I could to help get it accepted. Senator Redfield supports such an idea. Senator Synowiecki is like the dish, "and the dish ran away with the spoon." He will get what he's interested in, and I'm glad, all of those who worked to try to make sure that that money went to the mental

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

April 26, 2005 LB 40

health component. These are, if not the most vulnerable, very close to being the most vulnerable group as a group in society. They could not do better even if they willed to do better. So they are under extreme...

PRESIDENT SHEEHY: Time.

SENATOR CHAMBERS: Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Further discussion on FA196? There are no lights on, Senator Chambers. You're recognized to close.

SENATOR CHAMBERS: Thank you, Mr. President. And this is the last amendment I think I will offer to the bill because I've had a chance to discuss what I wanted to, but it could not be done without having these other opportunities to speak and got me going around trying to hustle time from various senators. The mental health component, as I was saying, directs very much needed assistance to the people who cannot fend for themselves. So it's fortunate that Senator Synowiecki, many times Senator Byars, and others--I'm not going to try to name everybody because I would leave some out--have been willing to fight the good fight to see that a measure of equity would be forthcoming. I just wish that that same attitude could be directed toward all of those in this state who are facing unfortunate circumstances. I will work as hard to try to help human beings as I will to try to help black-tailed prairie dogs. And I was trying to help human beings before the prairie dog bill came up. I can clarify one thing. Since this bill is not in jeopardy, and I know my amendment is not going to be adopted, I don't expect it to be; there was a person who wondered, after hearing me say that I hate the constitution, why then I would take so much time trying to defend it. Am I being the great hypocrite or whatever the word was they used to modify hypocrite? I said, no. And I explained that I thought I had made clear what I was doing, but if I didn't make it clear, the question posed to me was a fair one. And what I was trying to get across is that if I could get people to respect that document, then they might respect what is in it. If they would respect what is in it, justice, fairness, due process, equal protection of the law would become realities

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

April 26, 2005 LB 40

in the public life of this state. And if that were to happen, all problems would not automatically disappear, but the means to address all of them in a meaningful way would be made available because also in the constitution are duties and responsibilities reposed on the branches of government and various specified officials. So the constitution in this state and at the federal level has been honored more in the breach than in the actualization of the promises, the guarantees that are contained therein. I also would like to see stripped out of that document a lot of clutter and unnecessary verbiage and notions put there by people who were not thinking clearly at the time. So if the person is aware of what I'm saying now, I hope there's a better understanding than may have occurred the first time. Back to this bill, it's a small thing being done. It's a necessary thing being done. But the Legislature is behaving in this small corner in the way that it ought to. It ought to use this as a jumping off point to continue to do good things. But, Senator Byars, I've been around so long that I know what's likely to...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...not happen. However, as I often add when I think to add it, the world may come to an end tonight and it won't be necessary for the Legislature to do good things tomorrow because everything is over. But should the world not come to an end tonight, we'll be back here laboring tomorrow and I will be here, too. Mr. President, because of the way the discussion has gone, I'm not going to take a vote on that amendment. I withdraw it.

SENATOR CUDABACK: Thank you, Senator Chambers. The amendment is withdrawn. Anything...

ASSISTANT CLERK: Mr. President, I have nothing further pending to the Revenue Committee amendment.

SENATOR CUDABACK: Thank you, Mr. Clerk. We now...discussion of the advancement of the Revenue Committee amendment offered by the Revenue Committee, AM0387 to LB 40. Further discussion?

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

April 26, 2005 LB 40

Any discussion on the Revenue Committee amendments? Senator Landis, are you going to handle the closing of the Revenue Committee's? If you are you may do so.

SENATOR LANDIS: It is a committee amendment, is it not?

SENATOR CUDABACK: They are.

SENATOR LANDIS: All right.

SENATOR CUDABACK: Is or are.

SENATOR LANDIS: Thank you. Senator Redfield's amendment was, in fact, adopted to the committee amendment and it had added the distribution for behavioral health. I would ask for the adoption of the committee amendment, and I would yield the remainder of my time to the Senator Redfield.

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

SENATOR REDFIELD: Thank you. The bill that is before us is the amendment that was adopted to the committee amendment. I will review for you some facts that we did glean from the Department of Economic Development. The Affordable Housing Trust Fund was collecting roughly \$5 million a year. Last year, when we took our first action to raid it, and I will use the word "raid," for a General Fund transfer of \$1.5 million a year plus \$2 million for rental assistance for those with serious mental illness, that left only \$1.5 million a year for the purpose of the Affordable Housing Trust Fund. The bill before us will make them whole and give them what they need to provide the housing for the people who cannot afford it in this state. It also provides jobs for people as they construct these homes, and it furthers the community within each and every area of our state. I hope you adopt the committee amendment and the bill. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Redfield and Senator Landis. You've heard the closing on the committee amendments, AM0387. The question before the body is the amendments should be adopted. All in favor vote aye; those opposed, nay. We're

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

April 26, 2005 LB 40

voting on the adoption of the committee amendments offered by the Revenue Committee to LB 40. Voting on adoption of the committee amendments. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 30 ayes, 0 nays, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Anything further on the bill, Mr. Clerk?

ASSISTANT CLERK: I have nothing further pending, Mr. President.

SENATOR CUDABACK: Discussion of advancement itself, LB 40, to E & R Initial? Those wishing to discuss advancement? Seeing there are no lights on, Senator Redfield, you're recognized to close.

SENATOR REDFIELD: Thank you, Senator Cudaback, members of the body. I appreciate your patience as we have had a lengthy discussion, and I hope that you better understand how the Affordable Housing Trust Fund works and what we are trying to accomplish through the amendment in this bill. I would like to give the remainder of my close to Senator Synowiecki who has prioritized this bill, and I thank him for his help on this measure. Thank you.

SENATOR CUDABACK: Senator Synowiecki, you're recognized.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. Thank you, Senator Redfield. I just want to thank you for all of your efforts. This is an important, critical component to our mental health reform movement in the state. The housing component is what was lacking. This body, very well-intentioned, set-aside \$2 million last year for rental assistance and so forth for those that are suffering with mental illness. Unfortunately, for one reason or another, that money has not gotten to the targeted population. This is our efforts to do it correctly and to get the money to the Department of Health and Human Services and then to disburse the money equitably through the regional behavioral health system. And I

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

April 26, 2005 LB 40A, 40

think, I honestly, genuinely think it's the best way that we can link services and housing so we can arrive at what were the intentions of LB 1083, and that is treatment for these individuals in their home communities. And the housing component really is the last hurdle, I think, we have to overcome to begin to realize some successful outcomes for our mental health reform. And again, I want to thank Senator Redfield for her efforts, and thank the body for the advancement of LB 40. Thank you.

SENATOR CUDABACK: Thank you, Senator Synowiecki. You've heard the closing on the advancement of LB 40. All in favor of advancement to E & R Initial vote aye; those opposed, nay. The question before the body is advancement of LB 40. Have you all voted on advancement who wish to? Record please, Mr. Clerk.

ASSISTANT CLERK: 31 ayes, 0 nays, on the motion to advance the bill, Mr. President.

SENATOR CUDABACK: LB 40 advances. Mr. Clerk, LB 40A.

ASSISTANT CLERK: Mr. President, LB 40A was introduced by Senator Redfield. It would appropriate funds to carry out the provisions of LB 40. I have an amendment from Senator Redfield with a note she wishes to withdraw. Senator, that was AM1232.

SENATOR REDFIELD: Correct.

SENATOR CUDABACK: It is withdrawn.

ASSISTANT CLERK: Senator Redfield would offer AM1259. (Legislative Journal page 1244.)

SENATOR CUDABACK: Senator Redfield, you are recognized to open on LB 40A first.

SENATOR REDFIELD: Thank you. LB 40A is the Appropriations bill for LB 40. I will remind the body that none of this involves General Funds. This is all a cash fund that is generated by the documentary stamp tax, and I will take this opportunity to save time for all of us by telling you the elements of the amendment.

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

April 26, 2005 LB 40A

In the amendment that will come before us to vote before the A bill, Section 1 appropriates to the Department of Economic Development an additional 20 cents for the documentary stamp tax increase. That will be additional funds that will go to the Affordable Housing Trust fund. In Section 2, it will appropriate \$2 million from the Behavioral Health Services Fund, and that is to reflect the 30-cent increase that we have there designated for rental assistance. In Section 3, it appropriates \$100,000 for Fiscal Year '04-05 and '05-06, and that...or, excuse me, one-time \$100,000, and that is so that we have some seed money to put into rental assistance through the first two months while we are waiting for the doc stamp funds to come in and generate the ongoing funds needed. And in Section 4, it appropriates \$1,845,000 of Fiscal Year '04-05, and that would be the remainder of that \$2 million one-time money. And the emergency clause is in Section 5. I ask for your advancement of the amendment and the bill.

SENATOR CUDABACK: Thank you, Senator Redfield. Mr. Clerk, for the record, we introduced the amendment?

ASSISTANT CLERK: Senator Redfield offers AM1259.

SENATOR CUDABACK: And you have opened on that, Senator Redfield? We are now debating the amendment, AM1259, to LB 40A. Open for discussion on the amendment first. Seeing no lights on, Senator Redfield, did you wish to...she waives closing. The question before the body is adoption of AM1259, offered by Senator Redfield to LB 40A. All in favor vote aye; those opposed, nay. Have you all voted on the amendment who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 27 ayes, 0 nays, on the adoption of AM1259.

SENATOR CUDABACK: The amendment has been adopted. Anything further on the bill, Mr. Clerk?

ASSISTANT CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Discussion on advancement of LB 40A? Seeing no lights on, Senator Redfield. She waives opportunity to

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

April 26, 2005 LB 40A, 114

close. The question before the body is advancement of LB 40A to E & R Initial. All in favor vote aye; those opposed, nay. Have you all voted on advancement who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 30 ayes, 0 nays, on the motion to advance the bill.

SENATOR CUDABACK: LB40A advances. We now go to LB 114, Mr. Clerk, when you get time.

ASSISTANT CLERK: Mr. President, LB 114, introduced by Senator Byars and others. (Read title.) The bill was read for the first time on January 6, referred to the Education Committee. The committee reports the bill to General File with committee amendments attached. (AM0247, Legislative Journal page 440.)

SENATOR CUDABACK: Senator Byars, you're recognized to open on LB 114.

SENATOR BYARS: Thank you, Senator Cudaback and colleagues. LB 114, the children's vision exam legislation, would require that every child would receive a vision exam consisting of testing for vision problems prior to entering kindergarten. And those vision problems specifically would be--I won't use the long words because I can hardly pronounce them--the ability to see up close and at a distance, the ability of the eyes to track together, proper alignment of the eyes, internal and external eye health, and refractive error. This language parallels the current statutory requirement of children to receive a physical exam prior to entering a school. We do run into a situation from time to time, a family who, for whatever reason, chooses that they don't want a physical exam or, in this case, a vision exam. We do provide in the legislation the opportunity for a parent to complete a waiver, as is the current requirement for physical exams prior to entering school. The question is, why aren't screenings performed in schools or in conjunction with school physicals good enough? What we've found, and several of us have had this happen to us personally, that while vision screenings that are being used at the present time are useful tests to measure distance vision, they aren't designed to

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

April 26, 2005 LB 114

identify the breadth of potential vision problems. And unfortunately, more than 11 percent of the children who pass visual acuity screening would fail a professional examination. And approximately 40 percent of those kids who fail visual screenings don't receive the recommended follow-up care. Unfortunately, when a five or...in fact, when a five- or six-year-old fails an initial vision screening, research shows us that the average delay before receiving appropriate evaluation by a professional was 4.1 years. The median cost for an eye exam in the state of Nebraska is \$59. This does not change anything relative to the way that we're doing physical examinations now. This is a cost that would be borne by the family. The question was asked, as the bill was presented, what happens if a family wants this screening but can't afford it? We have a number of resources available in our state for lower-income families who are unable to afford the exam. And there is a Sight for Students plan, their VSP plan, which is sponsored by the vision service individuals which makes free eye care and eyewear available to needy children. Vision USA partners with the American Optometric Association who provide free eye exams for children and adults who live in a household where there is only one working member and they have no vision insurance. And as the bill was presented to the Education Committee, we originally had the bill written so that the screening would be done by a doctor or an optometrist. We have found, through working with the Medical Association, the Optometric Association, and the schools and school boards, that frequently a physician's assistant or a practicing nurse practitioner that's capable of performing the type of screening we're requiring can do this. The committee amendment will deal with that issue. We had broad support for the legislation in introduction. The professional associations, including the Optometric Association and the Medical Association, the Association of School Boards and Lincoln Public Schools and concerned parents all came in, telling personal stories and were supportive of the bill. So there will be a committee amendment, but I would ask that you advance LB 114 with the committee amendment to Select File.

SENATOR CUDABACK: Thank you, Senator Byars. You've heard the opening on LB 114. As stated by the Clerk, there are committee

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

April 26, 2005 LB 114

amendments. Senator Raikes, Chairman of the Education Committee, you're recognized to open.

SENATOR RAIKES: Thank you, Mr. President and members. I'm going to be brief on this. The committee amendment does two things you should be aware of. One, it delays the implementation of the measure until the 2006-2007 school year and, second, it would allow physician's assistants and advanced practice registered nurses to administer the visual evaluations. Those are the two important things that are done. It's important to point out that physician's assistants and advanced practice registered nurses are currently authorized to administer the required physical examination. So with that, I'd be happy to address any questions. I would urge your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on the committee amendments offered by Chairman Raikes of the Education Committee. Open for discussion, Senator Bourne, followed by Senators Schimek and Kruse. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. I rise in support of the committee amendment, but I do have a couple of questions I'd like to ask of Senator Byars, if he would yield.

SENATOR CUDABACK: Senator Byars, would you yield?

SENATOR BYARS: Yes, I certainly will.

SENATOR BOURNE: And, Senator Byars, I sit on the Education Committee with you and you know my concerns with the bill as the discussion in committee, at least during the hearing. What I'm concerned about is people not being able to afford this. And I'll tell you, I have a little different perspective. When my son was ready to go to kindergarten, I was in law school and a single parent at the time and, quite frankly, I was broke. And I could not have afforded the \$150 or \$180 eye exam, and I'll tell you, I know it's \$150 or \$180 because my son now wears glasses and he had an eye exam this summer and, believe it or not, I just got the bill, and not covered by insurance. And I want to say it's 150-some dollars was what the bill is. And I'm

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

April 26, 2005 LB 114

concerned that when a parent, and again I...when my son was in...going to kindergarten, it was all I could do to buy his clothes and the books and the supplies he needed, and then to put another \$150 bill on top of that, I'm concerned about that. And you and I had this discussion. You had a bill similar, it was regarding an inoculation, I believe, for college kids against meningitis a couple of years ago, and you worked with me on providing a means by which people who couldn't otherwise afford it to get the inoculation. And I'm just looking for some assurance here and in this regard. How can we be confident that a child whose parents probably are maybe not be able to afford this type of exam are taken care of?

SENATOR BYARS: Let me go through a couple of the free eye exams that are available for kids who can't afford them, again, Senator Bourne. Sight for Students is one of those, and is called the Vision Service Plan. It's their sponsored program. It makes free eye care and eyewear available to needy kids. The vouchers to do this can be obtained from the local school nurses by meeting the following qualifications: under age 18, not enrolled in Medicaid or other vision insurance, which would take care of a situation like you might have faced; family income is no more than 200 percent of the federal poverty level, which is a high qualification; the child or parent is a U.S. citizen or a legal immigrant; and a listing of the VSP doctors in the areas is provided to the family with the voucher from the school at the time that they make application. And the family can make an appointment with any doctor on that list that's available to all of those. And we have VSP doctors available in 69 Nebraska communities. Vision USA, which is another program, partners with the American Optometric Association. They provide free eye exams for children and adults who live in a household, whether it's one working member, have no vision insurance, have income below 185 percent of the federal poverty level and have not had an eye exam within two years. And there is an 800 number that's available for them to call to be matched with one of the 65 Nebraska volunteer doctors who will provide that comprehensive eye exam and eyewear at no charge. A third source, the Lions Clubs throughout Nebraska, are committed also through their service organization to assisting disadvantaged families via sponsoring eye exams and eyewear. Then, of course,

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

April 26, 2005 LB 40, 114, 211, 566

in Medicaid and Kids Connection, which are pieces that we have, we also cover eye care and eyewear for those that are eligible. And in the testimony, if you'll remember, the Nebraska Optometric Association is so committed to making...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...sure that these kids don't fall through the cracks, that they want to ensure that every child has access to an eye exam prior to entering kindergarten, regardless of their financial means. So I feel comfortable that they're covered.

SENATOR BOURNE: Senator Byars, and I understand your heart is in absolutely the right place, but when you look at the bill, it says they have to have this exam within six months prior to the entrance of a child into the beginner grades. So the vouchers at the school, I'm concerned with the functionality of how this actually would work. And I don't dispute for a second that there are free programs. The optometrists are great at this, but you see my concern, and I'm not sure that the voucher system resolves the problem, given that they're supposed to have this before they start class. And I'll tell you, we could have had this discussion in the Exec Session, but I was absent, and so I have...I apologize for that. But I'm looking for a little reassurance that this isn't going to be an issue, that people will be able to obtain this service.

SENATOR BYARS: And I certainly, Senator Bourne, as we did on immunizations...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BYARS: I think we're out of time. My light is on.

SENATOR CUDABACK: Your time is up. Mr. Clerk, items for the record or announcements?

ASSISTANT CLERK: Thank you, Mr. President. Notice of committee hearing offered by Business and Labor Committee. Amendments to be printed to LB 566 from Senator Don Pederson, to LB 40 by Senator Beutler, and LB 211 by Senator Landis. (Legislative

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

April 26, 2005 LB 114

Journal pages 1304-1310.)

SENATOR CUDABACK: Thank you, Mr. Clerk. On with discussion of Education Committee amendments, Senator Schimek, followed by Senator Kruse and others. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I'd like to follow up a little bit on the discussion that Senator Bourne and Senator Byars were having. And, Senator Byars, I think this is an excellent idea, and let me tell you about my own personal experience years ago when my oldest son was getting ready to go to...well, actually before he was getting ready to go to school. He was about three years old. My husband and I decided that he needed to have his eyes tested because we didn't think that...well, we thought maybe he had a vision problem. Senator Byars, I'm sorry. I want to ask you a question. I'm trying to preface it a little, so I don't want you to miss what I'm saying. Years ago my eldest son, who was three years old at the time, was exhibiting what we thought were some problems with his vision, and we did take him to an optometrist. This was in Hastings. And we were told that, no problem, his sight was fine. And so we, depending on that, did not take this child back to have his vision tested before he got into school. And when he got into school, at some point in time, it was recommended to us by the teachers that we take him to have an eye exam. And that leads to several questions, one of which is, and you already answered it in the discussion with Senator Bourne, it has to be done six months before. So in this case, it has been done two, two and a half years before he was going to go to school, so that wouldn't count. He'd have to go back six months before. How early can something like this be diagnosed is what I want to know.

SENATOR CUDABACK: Senator Byars.

SENATOR SCHIMEK: Do you know?

SENATOR BYARS: Thank you, Senator Schimek, for the question. No, I don't. I don't have the answer. I certainly can find out for you, and any assumption that I might make would be just an assumption. I would presume that maybe some vision problems

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

April 26, 2005 LB 114

could manifest themselves at different times of maturity, and possibly would not be identified at one age but might later on. So does this mean that may when a child was a 7th grader, that they might not have developed some vision problems? No, it doesn't.

SENATOR SCHIMEK: Uh-huh.

SENATOR BYARS: But it will identify those problems prior to them starting school, which is a very critical, critical time.

SENATOR SCHIMEK: I understand that, and that's why we took our son to an optometrist at three years of age. He had, what do you call it, amblyopia, lazy eye. And I'm thinking to myself, well, the bill allows a physician assistant or an advanced practice registered nurse to do this diagnosis, and if my optometrist didn't find it when my child was three, how am I to have confidence that the diagnosis would be made at 4.5 or 5 by somebody who isn't even trained in optometry? And I apologize to you, Senator Byars, for asking these questions. I should have called my optometrist and asked, and I will, but I think it's at least worth discussing on the floor, and so, if you'd like to respond in any way.

SENATOR BYARS: Certainly appreciate that, Senator Schimek, and yes, I certainly...I have a brother who is an ophthalmologist. He might answer those questions, but this Byars does not have that training. I have no idea why that optometrist might have missed the lazy eye. I don't know if it's a circumstance where at three your son didn't have...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...the distinguishing fact...the distinguishing symptoms...

SENATOR SCHIMEK: I understand that.

SENATOR BYARS: ...of lazy eye, and I would suspect that that was the case. But it doesn't mean that there aren't professionals that don't make mistakes.

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

April 26, 2005 LB 114

SENATOR SCHIMEK: Well, and I understand that, too. Okay, one other quick question. You may not have time to answer it, but in response to what Senator Bourne's concerns were, when the papers go to the parent for the registration of this child, could not something be provided at that time to the parent letting them know how they could access some kind of help in the payment of this eye examination, which I think is a...is definitely a concern? And I think I read somewhere in here that it would be more like \$59 rather than \$150, but I may have not read that, I may have dreamed that. And so, Senator Byars, I suspect I'm about out of time.

SENATOR CUDABACK: Time. Yes, you are, Senator Schimek. Sorry about that. On with discussion, Senator Kruse.

SENATOR KRUSE: Mr. President and members, thank you. I stand as one of those that Senator Byars referred to with personal experiences and so on. In interest of time, I will not go through them, but just verify that some of us have dealt with this. My wife had lazy eye, didn't know it for a number of years, and there are stories to go with that. I've dealt with young people, children, who apparently could see well, but would not have passed these kinds of tests, or additional problems would have been discovered if they had it. I have worked with the Lions program, See and Learn, in which we discovered that there are many parents who just assume good vision because their child can see an eye chart. That doesn't cover it. They need a professional exam. The great concern I have has already been indicated by Senator Bourne in a very fine way, so I'm not going to reaffirm that, except to say that there are a number of ways of getting help if the students know about it ahead of time. I will...I was going to give...I will return my...I will yield to Senator Byars, who can answer the question which Senator Schimek just asked.

SENATOR CUDABACK: Senator Byars, would you respond?

SENATOR BYARS: Yes, thank you, Senator Kruse. I'm not sure if Senator Schimek left, but I'm sure it's of interest to everyone. Typically, and in the LPS packets and I think is a typical

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

April 26, 2005 LB 114

process as in Kindergarten Roundup, they put the info in a packet for the parents, including what financial aid would be included. Senator Bourne, are you...did you hear?

SENATOR CUDABACK: Senator Bourne.

SENATOR BYARS: I wanted you to be sure to hear also. LPS, and I'm assuming without talking to the other schools, in Kindergarten Roundup is the typical thing for them to put information in the packet relative to these situations, including what financial aid would be available to someone who could not afford it. And I think that was the answer to Senator Schimek's question. But also, Senator Bourne, in the legislation you'll note if there's someone who, for some reason, truly doesn't get the appropriate information, they're too poor to get the eye exam, and as we did a...a survey was done across the state. The average eye exam across the state is \$59. Now I know Lincoln and Omaha might be substantially higher. But across the state, it's average, \$59. They are...there is a waiver available to all families, as there is now with a physical examination that parents can say, hey, I don't want to do this, so they can get out of it if they don't want to. We don't want them to, we want them to avail themselves of that eye exam. That's the whole reason for the legislation. We don't want kids to get into 1st grade and 2nd grade and all of a sudden somebody discovers they can't see the blackboard, they can't read one sentence after another. And so I hope Senator Bourne...and Senator Bourne, I would yield to you if you had any other questions you might want to ask. And I did also want to take a moment to thank Senator Heidemann, who did prioritize this bill, and I appreciate that very much. Senator Bourne.

SENATOR CUDABACK: Senator Kruse, it is your time, if you wish to yield to Senator Bourne.

SENATOR KRUSE: Yes.

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Well, you can't slip anything past the President, can you? (Laugh)

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

April 26, 2005 LB 114

SENATOR CUDABACK: Sorry about that.

SENATOR BOURNE: Thank you, Senator Cudaback. Thank you, Senator Kruse. Senator Byars, yes, if you would yield, I'd like to ask you a question or two. And again, I'm not opposed to what you're doing here. I think it makes some sense. But I've had this concern in the past...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...when we've had similar bills, and it continues to be here. You mentioned about there's no requirement to disseminate the...or you mentioned that they give the information at Kindergarten Roundup, but in the bill I don't see any area, any language in here that requires the school to disseminate the information.

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: And I think you're correct, Senator Bourne, and I don't see any reason why, between now and Select File, as we have done in other bills, that there can be appropriate information that is required to be made available. I think we did that on, oh, I can't remember, it was one bill you and I worked on.

SENATOR BOURNE: Well, you've always been easy to work with in this regard and I appreciate that. I do think that it's something that we do need to discuss. However, I do have another question. On page 3 of the bill, in line 2, where it calls for both an internal and external eye health exam...

SENATOR CUDABACK: I'm sorry, Senator Bourne, your time is up.

SENATOR BOURNE: Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne, Senator Kruse, Senator Byars. Senator Heidemann, followed by Senator Chambers and others. Senator Heidemann.

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

April 26, 2005 LB 114

SENATOR HEIDEMANN: Thank you very much, fellow members. I rise in support of this bill. I was one of these kids that struggled in my earlier years in school because I couldn't see and I didn't realize it as fast as I probably should have. But I finally did go and I got glasses. I even fought them for a while, so I did struggle in learning for a little bit, so I do rise in support of this bill. I think it...it was my intent that I thought it would be really nice to get children going into kindergarten, get them a really good eye exam. And Senator Bourne has said that he's got some concerns about the help out there. I understand the help is already there, that the Lions Club and other groups actually, if there are parents that are struggling and this would be a burden on them, that they not only will but they already are stepping up and doing this service for the parents that can't afford this. Also, it's...if they don't want to go that route, we're going to go back to the waiver. They can sign this waiver and the obligation is thereby lifted. So if that's what the parent thought was best, he could go this route. It's control at the local level at the most. I mean, if the parent doesn't want to do it, the parent doesn't have to do it. But it's the whole intent of the bill to get that child a very good eye exam. The technology that they have today to test eyes is just...I just got my eyes tested. They have something now called OptiMap where they can actually take a picture of your eye and behind your eye and they can map it and they can store that data and they can always tell how your eye is doing, and if it is changing, and they can tell if there's something wrong with your eye and they can address it at this time. I thought this would be the neatest thing to get a five-year-old child started on this so that if they had problems down the road, that they could always go back to this data and say, okay, it was this when they was five. I've been told that, because of this OptiMap, that they've had children come in already, and they have caught things that they was able to address at the time when they caught it, and if they hadn't caught it, it could have caused a loss of vision in this child. So how neat would it be to give every five-year-old kid this opportunity to catch problems that they might have and they don't even realize it? I know there's been an amendment put on it to let PAs and advanced practice nurses do this. I wish it would be a little bit more specialized test, but I still rise in

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

April 26, 2005 LB 114

support of the bill because they're going to get at least a basic test, and if there's problems, then they can go get a little bit...a better eye exam. With this, I'd just say once again that I do support this bill, and I'll give the rest of my time back to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Heidemann. Senator Chambers, followed by Senator Bourne.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I want to ask Senator Byars a question.

SENATOR CUDABACK: Senator Byars, would you yield?

SENATOR BYARS: Yes, I certainly will.

SENATOR CHAMBERS: Senator Byars, what is the minimum amount of training that a person would have and be allowed to conduct this visual evaluation?

SENATOR BYARS: That would be the...in the committee amendment, which would be the nurse practitioner and the physician's assistant. That would be the professional with the least amount of training.

SENATOR CHAMBERS: And they are not required to have, as a part of their training, any knowledge or expertise in granting these types of evaluations, based on what the amendment says. Isn't that true?

SENATOR BYARS: They do receive, as part of their professional training, a certain amount of practice in these areas, Senator, I am told.

SENATOR CHAMBERS: Are they as competent as an optometrist in conducting this type of evaluation? Let me ask you this question...ask the question this way. Is the training they receive sufficient to meet the requirements that an optometrist must meet to satisfactorily qualify as an optometrist? In other words, if the only training the optometrist had was what this nurse practitioner has, would that satisfy the requirements for

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

April 26, 2005 LB 114

an optometrist?

SENATOR BYARS: No.

SENATOR CHAMBERS: Senator Byars, some people believe that the eyes are a window to the soul, meaning that you can look into a person's eyes and see into the soul. But to the person whose eyes they are, they constitute a window on the world, or to the world. Would you agree?

SENATOR BYARS: Absolutely.

SENATOR CHAMBERS: And those who deal with the eyes, whether it's administering a medication, prescribing a corrective lens, or doing anything of that nature, then added to that diagnosing conditions, such a person should be highly qualified, especially when dealing with children at formative stages. Would you agree?

SENATOR BYARS: Yes.

SENATOR CHAMBERS: And you're comfortable with what this amendment requires in the way of competency on the part of those who would conduct these?

SENATOR BYARS: Yes. May I explain that just a bit, Senator?

SENATOR CHAMBERS: Sure. I don't want to just ask you and you can't elaborate.

SENATOR BYARS: In our visits with the optometrists and the ophthalmologists, the doctors, they have told us that what they intend to do, because so often the PAs, and they have the training, and the nurse practitioners, they have the training to do the actual school physical as it is, have enough training and the appropriate equipment to see if there's a possibility of one of these diagnosis, internal or external; at that point, they would not practice past their scope, but they would say, we need to have an optometrist or a doctor see you to do a further evaluation.

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

April 26, 2005 LB 114

SENATOR CHAMBERS: But suppose the optometrist for which this person works is very busy, or these are poor children, and they roll the dice and say, well, I think you can probably handle this one, go on and do it. How do we know that won't happen?

SENATOR BYARS: We don't.

SENATOR CHAMBERS: How about putting in a liability provision here, an explicit liability on the part of anybody who, in conducting this evaluation, fails to detect a condition which was there to be...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...detected by somebody with the qualification of an optometrist or ophthalmologist? In other words, if they're going to do the work of this person, hold him to the same standard of professionalism. Would you be in favor of an amendment such as that?

SENATOR BYARS: I think I'd have to talk to the professionals first to see what type of insurance they have at this point, to see what type...

SENATOR CHAMBERS: I don't care about their insurance.

SENATOR BYARS: Excuse me.

SENATOR CHAMBERS: I'm talking about the welfare of the child.

SENATOR BYARS: ...see what type of liability exposure that they have. I'm not sure...

SENATOR CHAMBERS: I don't want to leave...

SENATOR BYARS: ...it's necessary, Senator.

SENATOR CHAMBERS: Senator Byars, if I were involved in some kind of activity that involves the public and I was the one to determine whether I will face liability, I'm going to say no. We have to put it in the statute. You are creating a scheme to

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

April 26, 2005 LB 114

allow what I consider unqualified people to make examinations and diagnose conditions which they very well may miss, and the child will be damaged for I don't know how long. And if they're poor children, or especially those of a minority, their problem will be attributed to lack of mental capability,...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...and instead of having their eyes tested, they may be put in a special education class. You said one minute?

SENATOR CUDABACK: I said time. Sorry.

SENATOR CHAMBERS: I'm sorry. Okay, Mr. President.

SENATOR CUDABACK: Next speak, Senator Bourne, followed by Senator Byars.

SENATOR BOURNE: Thank you, Mr. President, members. Senator Byars, would you yield to another question or two?

SENATOR BYARS: I certainly will, Senator.

SENATOR CUDABACK: Senator Byars.

SENATOR BOURNE: Thank you. In our...in the testimony or the hearing, we talked about how right now when a youngster gets ready to go to school, they go and have a physical exam by a doctor or a PA, I guess oftentimes they're doing those exams now. And as a part of that, there is a limited eye exam that they conduct. And I guess what I'm curious about is where, in line 2 on page 3, it talks about within six months prior to the entrance of the child into kindergarten, they shall do this eye test which consists of testing, and it names a couple of diseases. But it also says internal and external eye health. Does that mean that a person has to...a young person has to have their eyes dilated to look at the internal components of the eye? And is that why the examination is different between the optometrist or the physician's exam and the normal one that a child would go through as a part of the physical exam?

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

April 26, 2005 LB 114

SENATOR BYARS: It's my understanding that that does not have to take place, the dilation does not have to take place for them to identify these diseases.

SENATOR BOURNE: Okay. Then, and could you tell us then, what is the difference between the exam that is part of the...the eye exam that is part of a physical exam that a kid goes through now and what you are advocating, should LB 114 pass? How are they different? You see what...in the green copy of the bill, it talks about an optometrist, and I understand how an optometrist is different than a physician. The committee amendment adds back in physician, PA, or an advanced nurse of some sort. And what I'm trying to say is that it's...on one hand it seems to me that the exam, after the committee amendment, is similar to the exam that we already do, but somehow it must be different or we wouldn't be discussing the bill.

SENATOR BYARS: I think that the exam as it's used today, Senator, is basically pointed toward a 20/20 issue rather than into any kind of depth or breadth as far as vision is concerned, and there is a difference in the way that those testings are done. And now it's a vision screening, and it's not an exam, and it is pointed toward 20/20 rather than toward if there is significant breadth, vision problems.

SENATOR BOURNE: So what you had said in your dialogue with Senator Chambers is that they go through a physical exam now. Part of the physical exam is an eye exam. If the doctor or nurse or PA or whatever determines that their acuity, meaning they can't read the chart as well as they should, then they would refer them on to an optometrist. Is that what your understanding of it is?

SENATOR BYARS: I'm not sure if they give an actual referral at this point. I think they would tell the parent, or on the exam they would note that they weren't seeing 20/20. They either had...

SENATOR BOURNE: Okay. Yeah, and I didn't mean the technical term for referral. I mean they would just say to the parent, go

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

April 26, 2005 LB 114

take the kid to the optometrist for further testing because there's a problem. Okay.

SENATOR BYARS: They would tell them there was a problem, yes.

SENATOR BOURNE: Okay. So I guess what I'm saying, if that's the current status of the law...I'm trying to distinguish between what you're contemplating in LB 114 and what, with the committee amendment, versus what goes on today. I would assume that even today when the vision exam is part of the physical exam, if there was a problem, meaning the child couldn't read the chart, they would say, hey, look, go put the person on...or the child on to an optometrist, an ophthalmologist. How is that different, assuming the committee amendment gets adopted? It just seems to be...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...it seems to be redundant from what we're already doing.

SENATOR BYARS: As...in talking in professional terms, screenings are not designed to test the breadth of potential vision problems. They're only designed as a sorting mechanism to separate those that likely have vision disorder and those that likely do not. And they are not designed to broadly assess vision skills. Vision exams are designed specifically to take a comprehensive look at everything, including visual efficiency. There is a definite difference in the breadth of the exam.

SENATOR BOURNE: Okay. So they, the physician, the PA, or the advanced nurse, under this bill, would have to conduct the enhanced exam, not just the vision, the 20/20 chart, look up to the wall, can you see the numbers or the letters?

SENATOR BYARS: That is correct.

SENATOR BOURNE: Okay. So it still would be an enhanced exam? All right. Thank you, Senator Byars. I appreciate that. I do want to clarify, we...I had said that my child had a \$150 eye exam, and that's because...

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

April 26, 2005 LB 114

SENATOR CUDABACK: Your time is up.

SENATOR BOURNE: ...the first time he had his eyes examined, he did go to an M.D. So that's a little higher cost.

SENATOR CUDABACK: Thank you Senator Bourne. Senator Byars, you may continue.

SENATOR BYARS: Thank you, Senator Cudaback. Senator Chambers, I think we had some dialogue, and it would be good probably for us to continue on that dialogue and the question you had, if you would yield.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Yes.

SENATOR BYARS: Senator Chambers, I think your question basically was, do we have the appropriate training, the appropriate scope of practice abilities in the PA and in the nurse practitioner to be able to do these, and is there an additional liability because they're doing these exams in addition to the optometrist or the M.D. Is that correct? Those were your questions?

SENATOR CHAMBERS: Generally, and I'll hear your answer to determine if I need to refine it.

SENATOR BYARS: Okay. From a liability standpoint...and again, my naivete--you have experience of the law itself--I would presume that there would already exist a...some sort of liability on the part of those professionals, and I think when I brought up insurance earlier, I think one of the reasons for them to have their malpractice insurance and what have you is because of the fact that they can make mistakes, and they should be covered and they should have a liability to the people that they're practicing with. And so I'm not certain that we have to have additional language within the statutes to cover that. It's probably already there. And then I'll give you my time. I'll yield to you and let you respond.

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

April 26, 2005 LB 114

SENATOR CHAMBERS: And Senator Byars, I would like to continue the discussion with you on your time if you are willing.

SENATOR BYARS: Certainly.

SENATOR CHAMBERS: What harm would exist if we called attention to these people the fact that this is a very serious undertaking, it's mandated by the state? It is not voluntary, it is mandated. And I'm not comfortable with what Senator Heidemann suggested about parents signing waivers. If there is something which seems beneficial to the child, the parent is not going to willingly say, well, I don't want my child to have that, I'll try to find a way to pay for it. Also, they would not want to be put in a position...I deal with poor people. In fact, I'm poor myself, so I'm not speaking about what I've heard or read. I'm speaking about what I know and what, when I was younger, I experienced and my friends and playmates experienced, their families did, to always be put in a position to be singled out because you can't afford this, you can't afford that, so we're going to give you some charity. And you are again singled out, and that is not good when a child is young. So if you're going to mandate this...Senator Bourne had discussed with me his plan for simply having a parent make the assertion that I can't afford this. Then there are not going to be a lot of background checks and examinations of their personal finances or whatever. It will just be one of those situations where the schools will absorb the cost of this and the practitioner or whoever is going to do this evaluation will not know that the family could not afford to pay for it. There would be no way to make distinctions so that one gets lesser treatment than the other. I'm very concerned and I'm distrustful of these people that you and others have so much confidence in. In the schools in my district, the children are not treated fairly, and it's intentional. They don't have adequate textbooks, they have the most poorly-trained teachers. Children are put into special education classes who should not be there. They're not given the tests or the evaluations. Teachers not trained and qualified and certified to teach special education have these classes. And if there are too many of them in that class, the child is put into what they call a regular classroom, and that

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

April 26, 2005 LB 114

teacher has no training in dealing with kids with special education needs. I mean, it is hellish in the black schools in Omaha. Calling them academies is just another way to brand them so people know what's going on. This is the context in which I expressed my lack of trust in these people that you have so much confidence in. If you're going to create a scheme by statute and mandate it, then I'm going to want to build in some protections at the same time that scheme is being presented. And if it hurts the feelings of nurse practitioners and optometrists, don't put this in the statute then. Leave things as they are. That's my position.

SENATOR BYARS: Senator Chambers and Senator Bourne both, I think you both have worked with me often enough to know that I also have in the best interests the children that we're attempting to make certain that they're going to be able to be on the same level with every other child when they start to school, and that's my purpose. I don't want them to be behind. I don't want them to be different. I don't want anybody to look at them different. I want them to be on the same playing field. That's our obligations as policymakers. And I will certainly work with both of you to try to find appropriate language to make sure that each one of these children is treated fairly. I don't know at this point what form that might take, but certainly...and we have done this before, and Senator Bourne and I have done it before, between now and Select File I certainly would work with you on some appropriate language to see if we could satisfy your concerns.

SENATOR CHAMBERS: That was a very good use you made of your time, Senator Byars.

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

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Byars, I've been off the floor a little bit so I don't know how much I've missed, but I have gone ahead and looked at Senator Bourne's amendment and I, too, think that it might be good to have a standard such as there is in that amendment that would make it very easy to determine. If the parent says that

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

April 26, 2005 LB 114

they're less than 150 percent of poverty, then maybe that should be good enough. I'm sensitive to what Senator Chambers is saying. I also made a suggestion sort of casually or off-the-cuff a little while ago that I'd like you to think about at least, and that would be that when the parents receive the registration materials, that included with that would be a notice about the eye exam and how you can go about accessing an eye exam, even if you are the single parent like Senator Pat Bourne. And I think that could be a way that the parent could be told. They could process that information on their own, and it would be a very private kind of thing. So I would like you to consider that that might be one way that we could get this information to the parents. But I'm fully in support of your bill. I'm afraid I raised a few questions initially that maybe are causing you some problems now, but I think eventually what we'll have is a bill that everybody can support and that's very workable, and I know that you're doing the right thing. So I just wanted to say that one more time. I'd be happy to work with you in any way. Thank you.

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

SENATOR CHAMBERS: Thank you, Mr. President. I'll be in this Legislature three more years and some months. Time is rapidly running out for me. Issues which in the past I was willing to work on incrementally I would do so. Now, because time is compressed and there's less of it, I have to be much more focused, much more direct, and less willing to spread these issues out and gently introduce them to my colleagues. I have to hit immediately and follow the advice of Teddy Roosevelt to his sons: Never strike unless you must, but if you must, never strike softly. So these issues that are related to my district, to people of my race--whatever that term means--to people of my complexion regardless of their ethnicity, race, or national origin, those problems need to be presented and dealt with to the extent that I can in the three years I have left in this Legislature, unless something happens. So I'm going to be raising these issues more and more. It's not as though they just developed, but I've addressed some of these problems down through the years incrementally. Now I have to make it crystal

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

April 26, 2005 LB 114

clear for new people who are here and haven't heard me talk about anything, and they probably think it's utopian where black people live, because where they come from, they may be told that we have everything given to us, we have all the opportunities, we just won't take advantage of them, and on and on and on, and all the claptrap that I read and hear all the time. When a program is mandated and it's going to impact those children about whom I care deeply--and I care about all children, but these are the ones that I see, the ones that I know, the ones that I have a particular responsibility to--I'm going to make sure that that scheme is not going to further damage our children. A difference between my children and your children is that grown white people deliberately, intentionally, and maliciously do things to hurt our children, intentionally do things to hurt our children. And many white people don't want to accept that as a fact, but all they need to do is look inside themselves. Do you know what I've heard in the last few days? There was a three-year-old black girl in a school in Florida, and she had...she was five years old, had a five-year-old's tantrum, not even big for her age. They called in three white police officers and they put handcuffs on this five-year-old black girl, in America. And you're talking about teaching people in Afghanistan how to educate their children, people in Iraq how to educate their children, and this kind of barbaric conduct goes on in America? And there's no outcry, there's no outrage. So black people had better look out for our children, and while I'm here, that's what I'm going to do. Senator Byars has always shown himself to be a man of goodwill who acts in good faith, but Senator Byars is not the one who is going to be conducting these evaluations or being present in the schools to make sure that the evaluations are conducted properly, that the children and their parents are treated with respect and accorded dignity. These are not things that automatically happen in the area where I live. So my job is to be there as the hammer and make them know that there will be a price to pay.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: On this floor, while we are formulating policy, I'm not going to swallow spit and bite my tongue just to get along with you all or to keep from upsetting you or some

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

April 26, 2005 LB 114

lobbyist out there. I don't care the pop of a finger for any of them. I'm looking at the welfare of children. Right now the day is wearing on and people are tired. Their judgment will be influenced by that. If we were looking at a bill right now that would say if a black child has a tantrum, that child can be taken to the nearest place where there is sufficient voltage, strapped down and electrocuted, you all would vote cloture so you could vote to put that in place, because your minds are tired, because your rump is tired. We're going to have more days so it can be demonstrated the truth of what I'm saying, but there's work that has to be done on this bill. Thank you, Mr. President.

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

SENATOR BYARS: Thank you, Senator Cudaback. Appreciate it. And I was just sharing with Senator Schimek, and I also would share with Senator Chambers and Senator Bourne, they both know me, this...I consider this good dialogue, I consider it the type of conversation that is very, very important, and certainly my history, my professional conduct within this body has always been to advocate for and to protect not only the health of but the rights of children and other individuals who I feel need me to be in assistance to them. So, Senator Schimek, I think your question was appropriate. And actually, I got more information about amblyopia, and that I'm told that it can be treated fairly successfully between the ages of two and six, but not always is diagnosed. So sometimes the diagnosis doesn't come at a time you might think that it would come. So I'm learning that, you know, a little bit more about these diseases, too, and I think your question is very, very appropriate. And as I said before, I think the bill is a good bill. I think what we're trying to do here is appropriate. I think what I'm trying to do and what I want to continue to do to move this bill to Select File is to find a way to make sure that every child that starts to kindergarten starts on the same level, and they don't have to discover, as Senator Heidemann and I both discovered when we were in the 3rd grade, we couldn't see the blackboard, or one sentence ran into the other. The same thing happened to me. And it wasn't because I came from a poor family, it wasn't because I was disadvantaged in any way, it was because of the

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

April 26, 2005 LB 114

fact that there wasn't a vision exam that could detect the fact that I couldn't see. And what we're trying to do here...and obviously, you know, the interpretation of words and to get appropriate language to make sure everybody is protected, I'm totally in support of that. I want to do that. But I also don't want to do something that will destroy the substance or the whole vision, if you will, the play on words, the vision that we have in the bill of making sure that kids can see and, if they can't, that they have appropriate treatment when they start to school, so that two years later they don't develop all of the additional social problems that goes along with it. And something that I was surprised at when I started looking at this and getting information, I didn't realize it but research shows us that 70 percent of all juvenile offenders have had a vision or vision perception problem, and that's something that was very, very surprising to me. But I also didn't realize that 20 percent of all school-age children have a learning disability in reading, they have some sort of visual impairment--ocular, motor, perceptual, binocular dysfunction--that is interfering with their reading skills. And we need to find a way to do this, so let's make sure that we have a good bill and that it's written properly, but let's also make sure that we don't make it so that we're going to destroy the bill, and people who have offered to do things for, and the organizations that will do things on a charitable basis, will back away from it because we try to put it in statutory language. So I would ask you to give careful consideration to the bill, listen carefully to the dialogue, but let's...certainly, I'm certainly open to working with Senator Chambers and Senator Bourne and anything that Senator Schimek has to offer, between now and Select File, to find some appropriate language but still language that won't basically just shut off what we're trying to accomplish.

SENATOR CUDABACK: One minute.

SENATOR BYARS: Thank you very much, Senator Cudaback.

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

SENATOR MINES: Question.

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

April 26, 2005 LB 114

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 Education Committee amendment? All in favor vote aye; opposed, nay. We're voting on ceasing debate on AM0247, offered by the Education Committee. Have you voted on the question who care to? We're voting on ceasing debate. Have you all voted who care to? Have you all voted who care to? Senator Mines.

SENATOR MINES: Call the house, Mr. President.

SENATOR CUDABACK: There's been a request for...Mr. Clerk. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Debate does cease. Senator Raikes, Chairman of the Education Committee, you're recognized to close on AM0247.

SENATOR RAIKES: Thank you, Mr. President, members. It's been a long discussion. I'll remind you this amendment would make two changes in the green copy of the bill: Change the implementation date to the 2006-2007 school year, and allow physician's assistants and advanced practice registered nurses to administer the visual evaluations. I urge your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the closing on AM0247 by the Education Committee to LB 114. The question before the body is, shall those amendments be adopted? All in favor vote aye; opposed, nay. The question before the body is adoption of the committee amendments. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: Committee amendments are adopted.

CLERK: Senator Chambers would move to amend, FA201. (Legislative Journal page 1310.)

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

April 26, 2005 LB 114

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA201.

SENATOR CHAMBERS: Mr. President, I'm going to attempt to improve on the language in the existing law. If you look on your gadget, you will see that my amendment directs your attention to page 3 of the bill, line 16. The word "for" is there. My amendment would strike the word "for" and substitute "to." The physical examination is provided "to" the child, not "for" the child. The visual examination and the immunization is to the child. So it would say...I guess I have to start way at the top: At the time the parent or guardian of any child is notified that such child must have a physical examination and a visual evaluation pursuant to the section, or immunizations pursuant to a section, the parent or guardian shall also be notified in writing of his or her right to submit a written statement refusing a physical examination, a visual evaluation, or immunization to his child, his or her child. Immunizations are given to...the word should be "to" rather than "for." That's my view. I thought Senator Schimek was listening. She might disagree. I'd like to ask Senator Schimek a question.

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

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: Senator Schimek, this is one of those amendments of mine with which you may disagree. On page 3 of the bill...and I'm not going to rush. You can take your time.

SENATOR SCHIMEK: Okay.

SENATOR CHAMBERS: In line 16 I would strike the word "for" and substitute in its place the word "to."

SENATOR SCHIMEK: Oh. Yeah, I probably would.

SENATOR CHAMBERS: Say it again.

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

April 26, 2005 LB 114

SENATOR SCHIMEK: I probably would.

SENATOR CHAMBERS: You would oppose it.

SENATOR SCHIMEK: I would probably oppose it, yes. (Laugh)

SENATOR CHAMBERS: Okay. So we've come to loggerheads. I've given my reason as to why I think it should be done and I will listen to the opposition and see whether or not I'm persuaded. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Heard the opening on FA201. Senator Chambers, your light is next.

SENATOR CHAMBERS: Well, Mr. President, I'm certainly not going to oppose it. So, while Senator Schimek has an opportunity to examine that amendment, I'm going to touch on this overall subject again. There are certain requirements that the law places on the duty of a parent to allow certain tests to be taken with reference to his or her child. One led to a law case that was decided a few weeks ago in Omaha. Blood is drawn from, I believe, the heel of a newborn or within a certain period of time after a child is born. Born. This family, for religious reasons, said no. Others, looking out for what they felt was the best interest of the child, went to court, or the parents went to court to not have it done, but in either case it wound up in court and the judge ruled that it was in the best interest of the child to have the blood test taken, the small amount of blood drawn, the test taken, and there were certain specific potential ailments that the test was designed to disclose. Were they not disclosed and were they to strike the child, there would be devastating consequences, so the judge ruled that the state's requirement was not unreasonable and, therefore, the parents could not prevent that from being done. There are certain requirements the state imposes with which I agree. Down through the years I have resisted what has come to be known as the Christian Science amendment. I haven't seen it surface lately, but when we would talk about child abuse, they would want to come running in here and saying that if it had violated your religion then you could whatever you wanted to do. And I was able to defeat that, which meant I was the antichrist to

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

April 26, 2005 LB 114

them, and I said thank God. If a child were sick, they wanted to be able to treat that child with prayer alone and all this other crazy stuff, which in other states where they had the Christian Science amendment resulted in the death of children, sometimes a very painful, agonizing death. So I had reasons for opposing the insertion of such an amendment in the statutes. Parents, as George Bernard Shaw said, sometimes are the very ones who ought not to be allowed to have children. Just because a man and a woman can mix their sexual juices and produce a baby does not mean they have the knowledge or whatever it takes to properly see to that child's welfare. So the state steps in and will interpose itself between the foolishness of people who happen to be parents in order that the child may be protected. We're talking now about a type of evaluation which I have confidence, from what I've heard, can disclose eye problems which, if corrected, will give the child a better chance of succeeding in school because he or she can see clearly. The eye beholds everything, but cannot see itself. So there are all types of things said about the eye, but eyes are extremely important. I would certainly want any negative condition affecting a child's eyes to be discovered at the earliest possible date. I'd like to ask Senator Byars a question now.

SENATOR CUDABACK: Senator Byars, would you yield?

SENATOR BYARS: Certainly will.

SENATOR CHAMBERS: Senator Byars, if one of these conditions is discovered, what happens if the family is poor?

SENATOR BYARS: If the family is poor, this is where they are given the information that they have available to them options that will cost them nothing.

SENATOR CHAMBERS: Okay, to help correct the condition.

SENATOR BYARS: That's correct.

SENATOR CHAMBERS: Now, the last time I heard you speak, I don't know if you were addressing Senator Combs, but she's not here now, but I thought I heard you refer to her as Annie Oakley in

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

April 26, 2005 LB 114

connection with this bill. Was it because Annie Oakley shoots straight? Why did you refer to Annie Oakley?

SENATOR BYARS: Well, certainly, Senator, I didn't think you were listening careful enough to catch that,...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR BYARS: ...but it just inadvertently slipped out.

SENATOR CHAMBERS: I'll resume that later.

SENATOR CUDABACK: Senator Schimek, followed by Senator Chambers.

SENATOR SCHIMEK: Senator Chambers...or, thank you, Mr. President, members of the body. I'd like to ask Senator Chambers a question.

SENATOR CUDABACK: Senator Chambers, would you yield?

SENATOR CHAMBERS: Yes, I will.

SENATOR SCHIMEK: You're really making me think about this silly amendment.

SENATOR CHAMBERS: I'm not going to answer your question.

SENATOR SCHIMEK: (Laugh)

SENATOR CHAMBERS: (Laugh) No, say on.

SENATOR SCHIMEK: Well, Senator Chambers, if we were saying "or administering an immunization to his or her child," then I believe you would say "to." But we're talking about an immunization, which is not an active verb in this case, I don't believe, and it's the immunization for his or her child.

SENATOR CHAMBERS: Senator, if I may, if you were going to say "immunization for the benefit of the child"...

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

April 26, 2005 LB 114

SENATOR SCHIMEK: That's what it is. (Laugh)

SENATOR CHAMBERS: No. I don't see "benefit" in there. The examination is to the child or of the child, but not for the child.

SENATOR SCHIMEK: The immunization is for the child.

SENATOR CHAMBERS: It's for the child's welfare, but it's not for the child. It is of the child or to the child.

SENATOR SCHIMEK: Well, then we do disagree.

SENATOR CHAMBERS: Yeah, I think so.

SENATOR SCHIMEK: And Senator Hudkins has just told me I was wrong and I think we've all had this silly argument before on the floor, and if I'm wrong I'll admit it, but maybe Senator Hudkins can set me straight. And, Senator Chambers, I really got up to give you my time, if you'd like it.

SENATOR CHAMBERS: Oh. Thank you. And, Senator Schimek, I will use your time for something other than that, if you don't mind. Senator Byars.

SENATOR CUDABACK: Senator Byars.

SENATOR CHAMBERS: Senator Byars, not just to terminate your conversation with Senator Engel, but there are a couple of things I'd like to explore with you since we are at somewhat of a lull at this point.

SENATOR BYARS: Certainly will yield to the distinguished senior senator from Omaha.

SENATOR CHAMBERS: Before I go into something serious, how might you have misspoken and made me think you said Annie Oakley? What were you talk...

SENATOR BYARS: Senator, I'm sure it has something to do with our maturity.

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

April 26, 2005 LB 114

SENATOR CHAMBERS: You were talking about various conditions and you said you learned how to...somebody told you how to pronounce one, and that it's easier, or it's diagnosed at a time other than when a person might think, and then you said something about Annie Oakley.

SENATOR BYARS: I don't think I did say Annie Oakley. I'm not sure exactly what I said, but I think you probably did not hear what I said at the time, because I did not say Annie Oakley.

SENATOR CHAMBERS: Well, do you remember what you did say?

SENATOR BYARS: Probably something referring to the fact I had a difficult time pronouncing those illnesses or those diagnoses.

SENATOR CHAMBERS: Would you pronounce the one that you might have had difficulty with that I could have thought you were referring to Annie Oakley when you said it?

SENATOR BYARS: Yes, I can--amblyopia.

SENATOR CHAMBERS: Oh. (Laughter)

SENATOR BYARS: Thank you. Everybody was really wanting to help me with that. Thank you, Senator.

SENATOR CHAMBERS: So Annie Oakley is a condition rather than a name.

SENATOR BYARS: Amblyopia is a condition, yes.

SENATOR CHAMBERS: All right. Thank you. Now, Senator Byars, who originated this bill? Who requested that this bill be taken under consideration by the Legislature?

SENATOR BYARS: Actually, I asked that I could carry it myself, Senator. I went to a meeting of professionals, of optometrists, that were talking about a national crisis that they were seeing relative to kids that were coming into school and having visual problems, and I made the request. I said, why can't we do

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

April 26, 2005 LB 114

something legislatively that would,...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...as we have done in other cases, make sure that these children have an appropriate eye exam? I have done this with newborn hearing relative to...in newborn infants. I've done it to other newborn testing situations. So it was a natural thing that I would request of them. Then we brought people to the table that were professionals and started talking about what it is that we could do to have appropriate legislation.

SENATOR CHAMBERS: Were the schools a part of the discussion?

SENATOR BYARS: Yes.

SENATOR CHAMBERS: And they agreed?

SENATOR BYARS: Yes.

SENATOR CHAMBERS: Then they should not mind a provision that would say they will ensure that these tests will be free to those parents who cannot afford it and we will make sure that they don't require a long list of investigative findings before that test is provided free or at the cost of the schools or however they want to do it. Would you agree with that?

SENATOR CUDABACK: Time, Senator.

SENATOR BYARS: Without asking them, I wouldn't presume to say what they would say.

SENATOR CHAMBERS: Okay.

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

SENATOR CHAMBERS: Thank you, Mr. President. Here's what I'm getting at, Senator Byars. I heard you and others mention

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

April 26, 2005 LB 114

various groups and organizations willing to foot the cost of these tests. It seems to me that the schools could form some kind of an alliance with these groups and let them know that the schools will notify them of the children whose families cannot afford these evaluations, and these groups would agree to absorb the cost. Do you think that would be possible?

SENATOR BYARS: I think in language in the past we've done something similar to this, Senator, where we have made information available to the families, appropriate information that every single family would get so that, yes, they would know that this is available and how to access it. And I don't think in that situation the schools would have any objection.

SENATOR CHAMBERS: Well, I would want the school to be the point of contact and not that the parents would be given a piece of paper that says, I'm poor, and take their child to an optometrist. I want the school to deal with the optometrist. In other words, there are 30 prekindergartners who are going to have to be processed in this manner, and they notify the optometrist or the ophthalmologist, whoever is going to send the people to do this evaluation, and the children just go and obtain the evaluation. Then how it's paid for is between the school and the optometrist, the ophthalmologist/organizations. Couldn't something like that be set up?

SENATOR BYARS: It...many times it's not...it would be a situation, first, in kindergarten roundup and the information stage when children are first enrolling for kindergarten or to go to school; that they receive information from the school relative to the requirement for the exam. It may be that they've already gone, but they need to go to the optometrist or the physician where they're going to get their physical before this identification is made. So I don't think we could put the burden on the school because that might not be the entry point. The entry point could be with the physician who's doing the physical.

SENATOR CHAMBERS: Well, Senator Bourne is going to have an amendment that touches on the issue, and I guess we can more directly discuss it then. But I'm just trying to kind of

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

April 26, 2005 LB 114

prepare the way so you can be thinking about how we're going to get this done. I don't want there to be a gap between the child needing the exam, and it's mandated by law; the parents being unable to have it done; the school giving information but the information says what we don't know. We don't know what they will put in it. So I want, if possible, something to be there that is a bridge all the way across for the child. Then, between the school and whomever, negotiations have to be had for the pay, will happen in that manner, not involving the parents.

SENATOR BYARS: You know, I certainly want to make this the broadest piece of legislation. I want to make this the easiest way for these families to access these treatments, if that's necessary, and appropriate exam also. How we do that I'm...at this point, I don't have all of everything in my head that I think needs to be there, and as we discuss here for a little while, I think I'll start to gel and then we can come together, I'm very confident. If we can move this bill to Select File, and you know my word, that I'll work very hard to get appropriate language so that we have everybody on the same page, Senator. I'll work very hard to do that.

SENATOR CHAMBERS: And to show how much I think of you and trust you, Senator Byars, I've never believed that yarn about Abraham Lincoln walking 20 miles to give a penny back to somebody that he shouldn't have gotten,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...but I do believe you.

SENATOR BYARS: Thank you, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Kruse.

SENATOR KRUSE: Thank you, Mr. President and members. A word to Senator Chambers and Senator Byars, if I might interrupt your conversation with each...don't...no questions. Just a quick

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

April 26, 2005 LB 114

word to you from the Lions Club telling you how we do it, and I've done it many times as president of the local Lions Club. It is with total, complete dignity to the family. We never investigate what the families' conditions are. Somebody like the school notifies us that someone needs glasses or exam, and that's good enough. We do need to have a conversation with that family, so they give us that family's phone number, or that family give...or that family our phone number, so that we can tell them where to call for the appointment. They make the appointment. We call that same place and tell them that if this person shows up for an exam, send the bill to us. The examining physician has no need to know who's paying the bill. We deal with the accounting office and the accounting office sends us the bill. And I'm sure many of those times the physician knows nothing about it. Thank you.

SENATOR CUDABACK: Thank you, Senator Kruse. Senator Byars. He waives his opportunity. Senator, there are no other lights on. Senator Chambers, you are recognized to close.

SENATOR CHAMBERS: Mr. President, I think this has been a good discussion. I have learned a lot by listening, and the main thing I learned is that Senator Byars did not say Annie Oakley. I was going to rib Senator Combs about that because I was saying he's getting awfully familiar and I thought only she and I had that kind of relationship around here. But now that he straightened it out and he was talking about a disease called Annie Oakley, everything is all right. But in reality, there are some questions that I think were raised not just about this particular eye evaluation but all of these types of approaches. And as people who have a genuine concern for the children involved, their families, as well as a sincere desire to address any of these health problems that the particular bill may deal with, when you see people coming together like that, it is encouraging. I don't mind this afternoon having been a member of the Legislature. I wish that what is being shown on this bill in the way of cooperation, genuine concern, would spill over. And for some of the members of the Legislature, that will be the case. I know that because of the political nature of the work that we do we will not always have this kind of a discussion. There will not be the type of consensus that seems

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

April 26, 2005 LB 114

to be developing on this bill. There will not be the type of pointed, searching questions to which the one being questioned will not take offense. Answers will be provided to the extent that they can, and information will be sought to complete the answer if necessary. But that would be a splendid way to proceed. However, these are those moments which we must enjoy as they take place. I even have a kind feeling toward Senator Flood, as I see him ambling down the aisle and making his way to his chair, but I know on the next bill he and I are going to be at loggerheads, because he is too smart a lawyer to have put his name on that bill. But before I break the spell, let me back off. I have a way of causing people to take note of things. But Senator Byars, I believe, is going to help maneuver us and guide us to a proper resolution of this issue. I'm especially grateful of the information given to us by Senator Kruse. That is heartening to me. I have a question, though, I would like to ask Senator Kruse, if he is still in the Chamber.

SENATOR CUDABACK: Senator Kruse, would you reply?

SENATOR KRUSE: Yes.

SENATOR CHAMBERS: Senator Kruse, is there any number of children at a maximum that the Lions Club or group would be able to assist, or is it likely that whatever number of children would come from families unable to pay the costs of these evaluations could be assisted by your group?

SENATOR KRUSE: We have never reached a limit, Senator. Our little club puts up \$2,000 to \$3,000 a year, which covers quite a few. If we were to get close to that, we'd just call on another club, and we don't limit it to people that we know or in a particular area or something. They're simply...well, at any rate, we...I've never turned anybody down.

SENATOR CHAMBERS: Okay. Thank you. That's an additional assurance. And with what Senator Bourne is going to offer, I don't know if the form of his amendment is perfect yet, but I...

SENATOR CUDABACK: One minute.

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

April 26, 2005 LB 114

SENATOR CHAMBERS: ...think it's going to get before us the idea that we've kind of been talking. So I want to ask Senator Schimek one more question.

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

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: Senator Schimek, you still think that that word should remain "for," f-o-r?

SENATOR SCHIMEK: I'm not quite as adamant about it as I was, but I think, yes, it should.

SENATOR CHAMBERS: Why are you not as adamant? Do you have doubts, in other words?

SENATOR SCHIMEK: Well, because now Senator Hudkins is telling me that it should be "to."

SENATOR CHAMBERS: And you respect her view more than you respect mine, huh?

SENATOR SCHIMEK: No, but it's two against one now and so, you know, maybe we could have (laugh) a machine vote on this, Senator.

SENATOR CHAMBERS: Well, what I'm going to do better than that, for the time being I will withdraw that amendment, and then I can talk at greater length with Senator Schimek. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. The amendment is withdrawn. Mr. Clerk, next motion on the desk.

CLERK: Senator Bourne would move to amend, AM0975. (Legislative Journal pages 1310-1311.)

SENATOR CUDABACK: Senator Bourne, to open on AM0975 to LB 114.

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

April 26, 2005 LB 114

SENATOR BOURNE: Thank you, Mr. President and members. This is my attempt to resolve the issue that I discussed earlier and an issue that I've brought up on many of these types of bills, and oftentimes these bills are further by Senator Byars and in principle and in concept I absolutely agree with the bills. I think Senator Heidemann had a good story about how this impacted him and his schooling. And, again, I'm not opposed to the concept at all, but I am...I am concerned about people not being able to afford this. And we've had this discussion on a...I think it was viral meningitis inoculation. Oftentimes, when kids go to college, for some reason they're extremely susceptible to a meningitis type thing and Senator Byars had a bill, I think it was two years ago, that came through the Education Committee as well that required an 18-year-old to get, I think it was at least information, and Senator Byars can flesh this out if he'd like. But basically, it did the same thing. It protected these kids from a potentially deadly disease. And I can remember at the time that we had a doctor that testified on the bill and he said, and these words I still recall, that there's no other disease known to mankind that can take a healthy 18-year-old to death's door in 24 hours than meningitis. And so, obviously, Senator Byars recognized that and brought about legislation that protected our kids, and I think he's trying to do the same thing here. I do think there is room for both he and I to discuss this, and Senator Chambers and Senator Schimek and any other interested party, to allow for this type of examination, but also to provide a mechanism by which parents who can't otherwise afford an eye exam, whether it be a \$60 eye exam from an optometrist or a \$150 exam from an ophthalmologist, but I think there is a way, there is a common ground, and I am encouraged, as is other...as are other people in the body, that we can come to a compromise. And, of course, working with Senator Byars, the optimism is great because he's very good about that. But here's my attempt at trying to resolve the problem of a family that can't afford an eye exam in this regard. What I would...my amendment says that it would create another section on page 3 of the bill and it would say, any licensed physician, physician assistant, advanced practice registered nurse, or optometrist--and that's language that's either in the green copy or in the committee amendment, so I'm trying to be consistent--shall perform the visual evaluation

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

April 26, 2005 LB 114

required by subsection (3)--and if you recall, that's the internal and external eye health exam, and they're testing for amblyphobia (phonetic) or amblyopia and strambiosis (phonetic) or whatever those words are...easy for you to say, Senator Aguilar--of this section, free of charge for any child whose parent or guardian requests such an evaluation if the parent or guardian asserts that the family's income is equal to or less than 150 percent of the Office of Management and Budget income poverty guidelines. So basically, what they would have to do is, however they appeared at an optometrist, a physician, a physician's assistants, an advanced practice registered nurse, however they appeared in front of one of those, whether they were referred from a doctor who recognized there was a vision problem during the course of the physical exam, or if they were made aware of the requirement that there be a vision test prior...in the six months prior to them appearing or presenting themselves at the school door, if they told that provider that they were poor, the provider would have to provide that service for them free of charge. Now I'll tell you what the poverty...150 percent of poverty is the following amounts. A family of two, that would be \$1,605 a month. That's gross. If it was a family of three, if they...it's \$2,012 per month; for a family of four, \$2,420 per month. So if a family made less than that, then they simply indicated to the provider they made less than that; that they couldn't afford the exam. The provider would have to provide that exam to them free of charge. And that, again, is my attempt at a compromise to allow these people, who can't otherwise afford it, to get this eye exam and go about their business. And this is, I believe, something we did similar to...this amendment is something similar to what we did in the meningitis bill. We did come up with a way that poor people could get this inoculation free of charge, and I can't remember in that case if it was the pharmaceutical company that provided the inoculation or agreed to set money aside, but we came to an agreement. There was a fund, I believe, that the pharmaceutical company established, and they also gave literature to the colleges saying that this fund was available. So that's my attempt. I'd appreciate any input on it. No pride of authorship, of course; if there's any changes, suggestions, comments, I'd be happy to look at those. And I look forward to Senator Byars' input as well. Thank you.

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

April 26, 2005 LB 114

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on AM0975 by Senator Bourne to LB 114. Open for discussion. Senator Engel, followed by Senator Byars and Wehrbein. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I'd like to dialogue a little bit with Senator Bourne. I think as far as helping those with less than 100 percent, 50 percent of poverty, we should do everything we can do, but I think it should be on a voluntary basis. I don't think we should mandate that. It would be like...I guess...I guess the question I have to ask Senator Bourne, how about if we mandated everyone with...at this level came in for free legal advice? Should every attorney be mandated to give them free legal advice? Should every CPA be mandated to give them free advice? That's where I'm getting at, is the mandate of it. I think you can find enough volunteers to do this without saying they have to. And of course then a second question, Senator Bourne, my good friend, how would you enforce that?

SENATOR CUDABACK: Senator Bourne, would you reply?

SENATOR BOURNE: Certainly. We could take them one at a time. How would they enforce that? I would assume that a parent would complain if they asked for a free exam and then it wasn't given to them. I assume that they would complain perhaps to the school district or...it's a very good question, Senator Engel. I assume that, given that the optometrists are the ones asking for the bill, that there would be some honor or goodwill on their behalf and that wouldn't occur, but I'm not sure. As far as mandating this free service, I would be willing to bet that if there was a bill that was introduced that said prior to a youngster presenting themselves to kindergarten, their parents had to have a will drafted, I would imagine that the lawyers in this state would be so delighted at the additional work that they would get from this measure that they would be delighted to offer a free will to those people who couldn't afford it. So I think this amendment is responding to a mandate by the government with a mandate that the optometrists do the right thing and provide the service for those who can't afford it.

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

April 26, 2005 LB 114

SENATOR ENGEL: Thank you. But I know the optometrists in my area, they've already mentioned that anyone that would need this who could not afford it, they would certainly provide the services. And I wasn't here for the debate because I had another appointment, but I do believe this is so important, this bill itself, because a few years ago we passed where they had to be checked, their hearing had to be checked. Now their eyes have to be checked and that way these children can start off on a level playing field when they go to school and they won't wind up like Senator Byars, you know, all these years having to try to catch up. But...so I think it is very important, but I just don't...I just don't agree with your...the mandate part. I think we can certainly get enough volunteers to do this without doing that.

SENATOR BOURNE: Well, Senator Engel, if we could continue the dialogue,...

SENATOR ENGEL: Yes.

SENATOR BOURNE: ...don't you think that the bill itself is a mandate?

SENATOR ENGEL: Well, it is a mandate. It is mandated for the health and welfare of our children. Yes, it is, and I don't mind those kind of mandates. Thank you.

SENATOR CUDABACK: Are you...are you finished?

SENATOR ENGEL: Is that it, Senator Bourne, or would you like to continue talking? (Laugh) With that, I turn the rest of my time over to the Chair. Thank you.

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

SENATOR BYARS: Thank you, Senator Cudaback, and thank you, Senator Engel. I think those were compliments, I think. I agree with Senator Engel relative to the language in the amendment and I would oppose it, but I'm not opposing the feeling, I think, that Senator Bourne has and Senator Chambers

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

April 26, 2005 LB 114

has, I think that all of us have, that we want to make certain that every child that needs to have an appropriate vision exam and appropriate treatment gets it. So I think Senator Bourne's intentions are totally honorable. I think it's a matter of how we can get to the appropriate language to make absolutely certain that every child enters school able to have appropriate vision. I think that's the goal of this entire 49-member body. I think that it would be the goal of every school system, the goal of every physician and every optometrist. And I would expect no less of any of us or any professionals. But in the form that Senator Bourne has introduced the amendment, I would need to...I would need to oppose it. I think probably, even though it's fairly cleverly written with the severability clause, I think probably there could be some question as far as constitutionality is concerned, as far as mandating charges on the part of anyone. And so I think there is some constitutional suspicions here, but again I would say one more time I don't think Senator Bourne has anything less than total integrity in mind here. He wants to try to protect young kids who need protecting. I think Senator Chambers feels exactly the same way. I don't think we're actually that far apart. I think that once we move this bill to Select File, I think we can appropriately bring some language that will make sure, and addressing Senator Chambers' concerns, which I think are valid, that if a child or child's family, if we say this information has to be provided to them in their Kindergarten Roundup piece, and then give them a way, confidentiality, to be able to make a contact, whether it be to the school or to the school to get an appropriate number so that other...and other people don't need to know. They shouldn't have to know if somebody needs some assistance. And I think we can...we can make some language available fairly simply within the bill on Select File that will enable us to preserve that confidentiality for families. It will address Senator Bourne's issue of making sure that these kids get to an appropriate place, such as the Lions Club or such as Vision USA or VSP, the people that can do this and do it in a confidential manner to make sure that all kids get appropriately tested, and then they get the treatment necessary. And I think this is something that every single one of us wants. I think we have a common objective in mind. I think the action steps are just where we aren't quite where we need to be yet, but

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

April 26, 2005 LB 114

we're...I think we're getting closer in conversations, both on and off the mike, and I certainly in no way see this as any attack on the bill and the intention of the bill, but I see it as a means of trying to make it better and trying to do something that's going to be appropriate for all children. How much time do I have left, Senator?

SENATOR CUDABACK: About 1, 11.

SENATOR BYARS: Okay. I would give one minute back to Senator Bourne, if you would like to use 60 seconds, Senator?

SENATOR CUDABACK: Senator Bourne, would you like to use Senator Byars' time?

SENATOR BOURNE: Thank you, Senator Byars. I did have my light on and then all of a sudden it went off, so I do appreciate your time. As I listen to you discuss the amendment, I...what I hear you say, and please correct me if I'm wrong, but I don't hear you objecting to providing some assurances that people who can't afford this exam get it free of charge, if. I commend the optometrists for all the community work that they do, and it's similar, Senator Engel, to the community work that the attorneys do. But anyway, I commend the optometrists in this regard, but, you know, it's possible that a child, a poor child, could fall through the cracks with the system the way it is. So I don't hear you objecting to providing some sort of assurances that poor people will get this exam and yet not have to become even more poor, for lack of a better way to say it, through the law or because of the law.

SENATOR BYARS: Absolutely, Senator. I think that's our main outcome that all of us want, and I think we just need to find the appropriate language to be able to do that and do it in a manner that is good law.

SENATOR CUDABACK: Time. Time is up, Senator. Senator Bourne, your light is next. You're the only light on, so you may either speak or you may close, whatever you wish.

SENATOR BYARS: Thank you. I think I'll speak for just a

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

April 26, 2005 LB 114

minute, if I could continue the discussion with Senator Byars. Senator Byars, so again, I don't hear you...I don't hear your opposition to the fact that you would be agreeable to putting some additional language into the green...or, excuse me, into the amended version of LB 114 that would provide some sort of assurance to me and other members of the body that, if a person can't otherwise afford this exam, that somehow there will...it will be taken care of.

SENATOR BYARS: Absolutely, and I will work with all parties to bring us together to find the appropriate language to do that. I want to thank you, because I think that what you're envisioning and what you want to see happen is exactly what I want to see happen, what Senator Chambers wants to see happen, I think every member of this body. We want to make sure every single kid can see appropriately and starts on the same playing field, a level playing field, when they start to school.

SENATOR BOURNE: Absolutely. We're in agreement with that. I did, however, hear you discuss lines 2 through 4 and the reverse inseverability clause, and you seem to be struggling with that, where it says this act is a complete act and its provisions inseverable. You don't like that language?

SENATOR BYARS: No, I have a little problem with the possibility this might be unconstitutional, Senator. And I know it's drafted quite cleverly, but I don't (laugh) think probably this is an amendment that we want to adopt.

SENATOR BOURNE: Okay. All right, Senator Byars. Thank you. Listen, I appreciate all the work that Senator Byars has done on this and other measures like this in the past. He's always been easy to work with and I'm more than comfortable in supporting this bill over to Select File with his commitment and other individuals' involved commitment, that we will find a way that...to change the language in the bill so that people who can't otherwise afford it have some mechanism where they can comply with the law, get the eye exam rather than opt out, and yet have that eye exam paid for. So, Senator Byars, I look forward to working with you on this and, with that, I would withdraw AM0975. Thank you.

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

April 26, 2005 LB 57, 114, 117, 401, 737

SENATOR CUDABACK: Thank you, Senator Bourne. AM0975 is withdrawn. Mr. Clerk, anything further on the bill?

CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Open for discussion. Seeing no lights on, Senator Byars, you may close.

SENATOR BYARS: Thank you, Senator Cudaback and colleagues. I think this has been a wonderful discussion and I think it will heighten the awareness of the general public, as well as us in this body, and I want to thank everybody for that discussion and I would ask that you advance LB 114 to E & R Initial.

SENATOR CUDABACK: Thank you, Senator Byars. You've heard the closing on the advancement of LB 114. The question before the body is, shall LB 114 advance? All in favor vote aye; those opposed vote nay. Question before the body is advancement of LB 114 to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB 114.

SENATOR CUDABACK: LB 114 does advance. Mr. Clerk, items for the record?

CLERK: Mr. President, your Committee on Business and Labor, chaired by Senator Cunningham, reports LB 737 to General File with committee amendments attached. I have amendments from Senator Chambers to LB 57 to be printed; Senator Friend to LB 401. Senator Combs would like to add her name to LB 117, as cointroducer. (Legislative Journal pages 1311-1313.)

And I do have a priority motion, Mr. President.

SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator Byars would move to adjourn until 9:00 a.m., Wednesday, April 27.

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

April 26, 2005

SENATOR CUDABACK: Heard the motion to adjourn, Wednesday, April 27, 2005, 9:00 a.m. All in favor say aye. Opposed, nay. We are adjourned.

Proofed by: AEG