

MAY 26, 2005

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May 26, 2005 LB 40, 40A, 66, 66A, 111, 111A, 117, 146
 146A, 206, 332, 332A, 334, 364, 499, 546
 546A, 566, 645, 664, 664A, 683, 683A, 689
 689A, 713, 753

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Fischer from District 43. Senator Fischer.

SENATOR FISCHER: (Prayer offered.)

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

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

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

ASSISTANT CLERK: No corrections this morning.

SENATOR CUDABACK: Messages, reports, or announcements?

ASSISTANT CLERK: A series of items, Mr. President. The bills that were read yesterday afternoon have been presented to the Governor at 6:00 p.m. last night. (Re: LB 66, LB 66A, LB 111, LB 111A, LB 117, LB 206, LB 334, LB 364, LB 499, LB 546, LB 546A, LB 566, LB 664, LB 664A, LB 683, LB 683A, LB 689, LB 689A, LB 753.) The following bills have been reported as correctly engrossed: LB 40, LB 40A, LB 146, LB 146A, LB 332, and LB 332A, LB 713. A report has been received from the Public Employees Retirement System. That will be on file in the office. And finally, a report of registered lobbyists for the current week. (Legislative Journal pages 1807-1808.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to General File, 2005 committee priority bills. Mr. Clerk, LB 645.

ASSISTANT CLERK: Mr. President, LB 645 was introduced by the Speaker. (Read title.) The bill was read for the first time on January 19, referred to the Telecommunications Committee. That

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

May 26, 2005

LB 645

committee reported the bill to General File with committee amendments attached. The bill has been considered previously, as were the committee amendments. At that time an amendment to the committee amendments from Senator Brashear, Schrock, Baker, and Raikes was adopted. We are now considering AM1351, by Senator Connealy, as an amendment to the committee amendments. (Legislative Journal page 1336.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Brashear, would you give the body a review of what is contained in LB 645, please?

SPEAKER BRASHEAR: Yes. Thank you, Mr. President, members of the body. To summarize, LB 645, as it is now amended, enacts a prohibition on all public entities, which would be state agencies and political subdivisions, from providing telecommunication services, including broadband and Internet service provision, which is called ISP, Internet service provider services, on a retail basis; that is, providing services directly to consumers. All such entities have disavowed any interest or intent to engage in providing those services. For instance, the Nebraska League of Municipalities, the Nebraska Association of County Officials, the Nebraska Power Association have said they do not want to do that. The bill, as amended now, preserves the ability of all public entities to use telecommunications services for internal use related to the public service of that entity. So public power suppliers could use it for the purposes of including meter reading, power supply, monitoring, and other issues...similar uses. Municipalities could use it for purposes including police and fire protection, library services, and internal communication. Provision of Internet services by a library, where the library does not act as the Internet service provider, the ISP, are not threatened by this bill. As amended, the bill would enact a prohibition on public entities, other than public power suppliers, from providing telecommunications services on a wholesale basis; that is, providing infrastructure to others who will use it to provide services to consumers. There are no public entities, other than public power suppliers, that possess infrastructure that can be used to provide telecommunications services to consumers. For other entities to construct

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

May 26, 2005

LB 645

telecommunications infrastructure would be expensive and in every case, duplicative. As amended, the bill enacts a moratorium on public power suppliers from providing telecommunications services on a wholesale basis until December 31, 2007. Public power infrastructure could be used to provide telecommunications services with a technology known as broadband over power lines, or BPL. Any deployment of BPL in Nebraska would be delayed until after the task force report is completed and the Legislature has had the opportunity to consider the results of the study and report. And then finally, the bill, as amended, would create a task force to study the deployment of BPL technology by public power suppliers, the policy implementation thereof, and the potential legislation required with regard to BPL deployment. The members of the study as proposed in the bill now would be three members appointed by the Executive Board of the Legislature; three members appointed by the Governor, three members of the Public Service Commission; the idea being that they will, in fact, themselves serve on the study committee, since they have regulatory involvement; three members of the public...pardon me, three members of the Power Review Board or their designees; three members of the Nebraska Information Technology Commission or their designees. There is authority for the study group to hire a facilitator, which many or most of us think would be absolutely necessary to have an expert to facilitate the study and work, and the report is required by December 1, 2006. Mr. President, that summarizes the bill, as amended, in its pending state. Thank you for your attention.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Connealy, would you give the body a summary of your amendment, AM1351, to the committee amendments?

SENATOR CONNEALY: Thank you, Mr. President. I think the Transportation Committee's amendment is up first.

SENATOR CUDABACK: If you'd like to, Senator Baker, you may.

SENATOR BAKER: Well, thank you, Mr. President, Senator Connealy. I...where we are, we had a committee amendment which has been replaced by what we call a compromise amendment,

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

May 26, 2005

LB 645

AM1334, which has been adopted, and Senator Brashear brought us up to speed on that. I have my light on, so rather than take any more time, that's where we are. The compromise amendment, AM1334, was adopted and now we are working through the process. I believe there are some other amendments that have been filed to AM1334.

SENATOR CUDABACK: Thank you, Senator Baker.

SENATOR BAKER: Thank you.

SENATOR CUDABACK: Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President, members. My amendment would scale us back. As Senator Brashear amended the bill and, as he explained this morning, the current bill states that it would ban retail forever, ban wholesale (inaudible) cooperation of a public entity with a telecom company, until a study is done. My amendment would ban wholesale, I mean, ban retail at this point, through the time of the study. It would allow wholesale at this time. I don't think we ought to stand in the way of technology. I don't think there's going to be a whole lot of these cooperation agreements and working together between public entities and telecom companies, but I don't think that we ought to stand in the way of what could be possibly some breakthrough or the like. We've had a tremendous growth in technology over the last 30 years, and I remember getting my first Apple PC, and it was about 30 years ago, and that technology--between then and now--has been phenomenal. So we don't know what's going to happen in this year. BPL isn't very practical right now, but if we would deliver telecom services through electric generation, through that system, there's only one way to do it in Nebraska. It's for public entities to be a partner. I don't want them to be the retailer, and because of that, I've said we should ban retail for a while. But I don't know if we ought to stand in the way of what could possibly be a breakthrough in the future.

SENATOR CUDABACK: Thank you, Senator Connealy. We go on now to discussion. There are four lights on. Senator Dwite Pedersen, Senator Baker, Senator Preister, and Senator Brown. Senator

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

May 26, 2005

LB 645

Pedersen. Senator Dwite Pedersen. And, Senator Pedersen, I know you won't mind me interrupting you, but I forgot to announce an important person this morning visiting, and it happens to be your grandson. (Visitor introduced.) On with discussion. Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the Legislature. I am pleased that the people have come together on an amendment, to take a look at this. I'm not against technology, either. But the reason I signed on to LB 645 as soon as I had read the bill, with Senator Brashear, was I have a real problem with public entities going in competition with private business. Since I've been in the Legislature and since I've had my name on the ballot running for politics, the thing I hear more from any...than anything else from the constituency out there is, why can't you run government like a business? Well, it's because we're not a business, and it's run by bureaucracies. And we look at the public power, which we have very good and decent public power in the state of Nebraska, and we look at the public utilities. We have MUD in Omaha. I think they serve us well. But I have a terrible fear of these government agencies wanting to grow and get bigger and saying they need to grow, and in the meantime take over private business, and before long we have a monopoly owned by the people, run by elected officials who hire bureaucracies, and that bureaucracy comes back every year and asks for more and more and more money. And that happens because they want to get bigger and bigger and bigger. That scares the dickens out of me. Free enterprise and competition, in all the studies I've had and watched, is what keeps prices down. Monopolies run them up, and I don't see any difference in a public-owned monopoly than it would any other monopoly. When they get so big, they have us. And these bureaucracies, especially with term limits, get more and more powerful, and we are more and more vulnerable. That's why LB 645 was very appetizing to me, in my thoughts and in my training and my experiences. Thank you.

SENATOR CUDABACK: Thank you, Senator Pedersen. Senator Baker, followed by Senator Preister.

SENATOR BAKER: Thank you, Mr. President and members. I don't

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

May 26, 2005

LB 645

think I'll take my full five minutes here, but I may. I need to remind the body this was the Transportation and Telecommunications' number one priority bill. We felt that strongly about it. We had hearings, obviously, and well attended, and voted the bill out and did make it our priority bill. So I think we have an obligation here to the citizens and the businesses, public power, the private businesses, enterprises here, to move this bill, adopt or pass it and have it signed into law. As Senator Brashear said, it creates a task force and within this...on page five of the amendment, AM1334, that does terminate December 1, 2006. I think we would be being...doing a disservice to the citizens of Nebraska if we don't get this bill passed in this session, because we need to get the task force in place. Senator Brashear and his staff have spent countless hours working the compromise. I don't think you'll find anyone in the lobby that probably is 100 percent happy with it, but they've all agreed to this as...you know, this is the process, this is what we need to do and let's get it done. And this is an emergency...emerging technology and, quite frankly, it's not ready to go now. It's cost prohibitive. BPL, I think...I know I asked the question in committee, and I probably mentioned it on the floor when we debated this bill, I don't know, it's been...it seems like a month or so ago, it's about \$5,000 per mile. It's not going to serve the last customer out there now. In my case, I'm the last person on the line that does...would be affected by this. It's not going to be cost-effective for my power company to spend \$12,500 to serve me as the last customer on the line, when I'm two and a half miles away from the next customer. So it's emerging. I think Senator Connealy hit the nail on the head. It's not practical now. It's...but it's something we need to look at. I think everyone in the lobby is on board. I don't know of anyone that is not. I have a letter from Stanton County Public Power here that says we're pulling out of the Sky Blue (sic)--there are some public power districts out there now that were beginning to work--not Sky Blue (sic), WildBlue Project, which is a wireless Internet service that is being implemented in some places. But I think we owe it to the citizens of Nebraska, the businesses, the power companies and so on to get this bill passed this session, get the task force set up, get moving on this, and see if we can give them some

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

May 26, 2005

LB 645

guidance. Because right now, I don't think that there's going to be a power company or a private telecom invest any money to speak of in any of this technology, not knowing exactly what the Legislature is going to do, as far as direction, providing direction to them. So this puts that all on hold, gets the task force set up, and it sunsets the task force December 1, 2006. As Senator Brashear went through the participants in that, I think it's a good cross section of the affected parties. We need to get the bill passed, and get the report back to the Legislature, and then develop legislation from that. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Baker. On with discussion. Senator Preister.

SENATOR PREISTER: Thank you, Honorable President, friends all. The concept of a task force is one to bring people together to make some determinations and to help to shape some policy. That's a good concept. What concerns me about the task force is that we have appointments being made by varying bodies--the Governor, the Executive Board, the Public Service Commission, Power Review Board, and NIT. That in itself isn't bad, but what can end up happening is we have public power looking out for their interests, we have the private telecommunications folks looking out for their interests, putting pressure on these groups to get people appointed that are going to be favorable to their position. What concerns me is not the task force, but how it all plays out, and that we don't just end up with the battle of the Titans, each getting people appointed that are going to be looking out for their view, and then the public is stepped on and squeezed out. These airwaves are part of public domain, just as the water in Nebraska is owned by the state, not for the state, but for the benefit of future generations and for wise management of that resource. The airwaves, I believe, are in the same category. They're here for the benefit of the public. They can be used by public power, they can be used by private enterprise, and the state is in the middle of helping to shape policy in how that is managed. But the state role, our role, should be, I believe, to make sure that the best interest of the public is served. And that's what I hope happens with this task force, but I have caution and I have fear that that isn't as

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

May 26, 2005

LB 645

likely to happen, as the battle of the Titans get going with the task force, and the public does get squashed out of it. I hope that as the Exec Board looks at making appointments, that we have knowledgeable, well-qualified people, but people that are going to have the public interest at heart, and who are going to be looking at what is best for the public, what is going to be good public policy. Because whatever the task force may recommend, we essentially are putting off any decisions until next year or the year after. The original legislation, that this amendment replaces, in some capacity is likely to be here next year. There likely will be a companion dueling bill again next year. What we're doing here is putting off making a decision by getting information and having that information put together by a task force, and bringing it back to us to then look at what is good public policy. Let's make sure that the public is included in that public policy task force, so that when we do come back, their view is there, and it doesn't just become, once again, the battle of the Titans, and the public somehow, and their best interest, is left out. It shouldn't just be, how do we make money off the public? It should be, what's really good for the public? How can, yes, money be made, perhaps, in the private enterprise system? But as we manage the airwaves for the public, let's keep the public in mind. Thank you.

SENATOR CUDABACK: Thank you, Senator Preister. Senator Brown, followed by Senator Connealy, on AM1351.

SENATOR BROWN: Mr. President, members, it seems the amendment that we have before us is absolutely opposite of what we're attempting to do. If we believe that we will make a better decision by virtue of having the information from the task force, then a moratorium on activity...and I...and I want to be really careful that I don't believe that anything that we do is forever. I think that there's something about that that we can't bind another Legislature. And so this is always going to be an evolving discussion. Even if we had decided to pass LB 645 the way that it was originally introduced, it was not going to be the end of this discussion. I support the committee amendment the way that it is proposed, because I think that it's clear that we have a very black and white kind of discussion

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

May 26, 2005

LB 645

going on right now. It's all or nothing, and we really need the information that the task force is going to provide, to enable us to make the decisions in the future, and really find out whether there is not only a viability of this technology, but whether there is any interest on the part of the...of the telecom industry to purchase it. And there are a lot of questions that need to be answered, and I think that that's why we have to go with the amendment as the Transportation Committee advanced it. And let everybody have a cooling off period, but a time when they can bring their side of the issue together, and so that we can move forward with a greater amount of information. And I think that a moratorium on activity is essential if we're going to...if we really believe that this task force is going to help us make decisions. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Senator Connealy, on your amendment.

SENATOR CONNEALY: Thank you, Mr. President, members. I just believe we're overreaching. I believe that we're stepping too far on one side. We're not...this isn't holding harmless; this isn't, you know, just stopping in tracks. We are doing a retail ban forever. We can't bind future Legislatures, but that's...if we say that's our intent, that's our intent. We are stopping any cooperative agreements or any wholesaling until the study is over. I just think it's going too far. If you ban retail till the end of the study, if you allow people to think outside the box in other areas now, it does still accomplish things. It stops some retailing that's going on right now, that I think ought to be stopped. And that's why I think the bill is a good idea. There are public entities that are retailing information services and telecom that they probably shouldn't be doing. We have libraries doing it. We have other things that ought to be in cooperation with the telecom company. We ought to deliver that retail service, at least at this point, through the private sector. But I don't think that we ought to go farther than that. I don't think we ought to put our foot down and say, you can't deliver any other services through the system, the electric system, because that is a publicly owned entity here in Nebraska. It's a different thing than it is in other states. Other states have private power companies and have a different

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

May 26, 2005

LB 645

mixture of law. You can't take the same type of a system from another state and imprint that here in the Nebraska, because we have public entities here that deliver all our power. And if you put a thumb on us, on the public, on the people that own those systems, then I think you're giving away that right to technology, and you're giving away that right to be...to think outside the box. This amendment allows us to put a task force in place. It says you can't retail anymore, if you've been doing it, and you can't retail during this study. But it still allows people to cooperate, to use your facilities, or to cooperate with your system and a telecom or a retailer. I think it's a middle ground. I don't think that we ought to allow ourselves to give away too much of our own rights.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Mines, followed by Senator Burling.

SENATOR MINES: Thank you, Mr. President, colleagues. I support the Transportation Committee and, quite frankly, the reason I do is all sides have come together and there's an agreement, but for AM1351. The industries have both come together in agreement, the Transportation Committee has come together in an agreement, the Speaker has led the bill and allowed the...allowed the amendment to happen. All parties are on the same page, but for AM1351. Here's what's wrong with this amendment, in my estimation. Let's just say that we put a hold on retail, which all...both industries, everyone is agreeing to, and allow wholesale distribution of this new technology for two years. Here's what happens. I...let's say I'm a transporter of information services. I sign an agreement with the power company to have them transport my information, and I build my business based on that. In two years they...that agreement has to expire, because this body may choose to determine that power companies can no longer provide this service. And that's, that's why the study is so important. This is an emerging technology; it doesn't work like some may like to believe. It's not, it's not in the category of wire line provided services or wireless services. Senator Preister had mentioned that...he talked about this being an issue about airwaves, and they are public airwaves. And I do have to qualify and clarify that. This isn't about wireless service. This is about providing

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

May 26, 2005

LB 645

telecommunications services, information services, over public power facilities. Now it's the public domain in either case, and I think he made some good points about representation on the task force. But this isn't wireless; this is a new technology that is not there yet that we are going to determine if, in the future, after a study, that public entities like public power should compete against private companies, whether it's wire line telephone companies, wireless telephone companies, Internet companies themselves. Should the public product, should the public power be in direct competition with those private entities? That's for this body to decide, but we don't have that information. This isn't about wholesale/retail at this point. Let's study the issue, let's put a hold on everything, and I think the amendment makes some sense. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Senator Burling.

SENATOR BURLING: Thank you, Mr. Speaker, members of the body. Is Senator Baker available for a couple of questions?

SENATOR CUDABACK: Senator Baker, would you respond?

SENATOR BAKER: Yes, I would.

SENATOR BURLING: Senator Baker, you touched on this when you spoke a few minutes ago, but to just elaborate a little bit more on it, does the amendments that have been put on this bill since it was heard in committee eliminate the opposition of the public power companies?

SENATOR BAKER: Well, I've had a phone call to the office after...since we started here. I think, yes, for the most part they do. There is still...there was opposition testimony, and you might want to address that question to Senator Brashear. He's the one that actually operated or got the compromise amendment worked out there. But I'd have to say the vast majority of the interested parties, yes, have agreed to the task force concept and moving forward with the bill, as it's amended. That's not to say everyone out there apparently is on board, because there may not be 100 percent.

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

May 26, 2005

LB 645

SENATOR BURLING: Okay, thank you. Is Senator Brashear available?

SENATOR CUDABACK: Senator Brashear, would you...

SPEAKER BRASHEAR: I will, Mr. President.

SENATOR BURLING: Did you hear my question to Mr. Baker?

SPEAKER BRASHEAR: I did not, Senator Burling; I'm sorry.

SENATOR BURLING: The amendments that have been put on the bill, the last time we discussed it on the floor, have they taken away the opposition of the power companies to this green copy, as it was heard in committee?

SPEAKER BRASHEAR: I don't know as I can tell you it has taken away the opposition, but I'm saying it is a consensus work product of multiple people. I read those on General File. I'll give you a list. I won't encumber the record with it again. Lots and lots of people have participated. I have had the conversations that I committed to on General File with Senator Connealy, with Senator Chambers. I've mentioned it with Senator Beutler. He'll speak for himself. He's in the queue. I've talked to Senator Raikes, Senator Schrock. I believe we've put the bill in as good a shape as we can, eliminating people's specific objections, and that's as responsive as I can be. I'm not going to tell you that OPPI and NPPD are enthusiastically publicly supporting the bill. But you'll have to measure for yourself. Are they opposing it?

SENATOR BURLING: Not that I know of, but...

SPEAKER BRASHEAR: That's my point.

SENATOR BURLING: Another question. Is there a cost estimate on the task force?

SPEAKER BRASHEAR: The funding will come from the Nebraska Information Technology Commission, and I don't have a specific

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

May 26, 2005

LB 645

number for you, but they have indicated they will make the monies available to fund the study.

SENATOR BURLING: Okay, thank you. I, too, have always had a real problem with public entities in competition with private in several areas, since I've been in the Legislature. I'm supportive of LB 645 because of that reason, and I thank all of those who have worked so hard already on this bill. And I turn the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Burling. Senator Louden, followed by Senator Chambers.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. When we go into these type of procedures on what we're going to do with public power, and what public power is allowed to do, I think we need to think back on the history in Nebraska, of why we are with public power in Nebraska. I don't know if there's any of you left anymore that remember when we didn't have electricity all over Nebraska. We didn't get it because independent IOUs, investor-owned utilities, went out and put it out there. We got it because it was government subsidies, cheaper interest rates, and we came out with what was REA, rural electrification. Now we have mostly rural public power districts serving Nebraska on electricity. Up until then, we had co-ops that were formed on local levels to start the process, and back in the fifties or sixties, whenever it was, they...a lot of them changed over to public power districts. I think we're on the same edge right now with our telecommunications. In the area where I live, it was...it was a co-op, electrical utility district that brought Internet service into the Alliance area to start with. It wasn't independent investors that brought that in; it was the co-op that put up the money, brought it in. Right now there's Internet service in the area, and that's Hemingford Telephone Co-op brought that in and has developed it after the technology came across, not that they would be controlled by something like this, because they are private cooperatives. We have to remember, then, our Internet service. When we were looking for Internet service, it wasn't the local investor-owned Internet services that were servicing the people out in the rural areas. It was Internet service that

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

May 26, 2005

LB 645

we were getting through satellite service. And in the area where I live, we had to come clear down here to Creighton, Nebraska, or someplace like that, I think it was, that we bought our direct-way Internet service from. So it wasn't an investor-owned one. Part of the reason was, is because our privately owned corporations out in the western end of the state don't want to improve their phone lines so we could get any kind of direct Internet service over our phone lines like you do here in Lincoln, in these cities. So I think we have to be very careful about how we go about putting controls on some of these public power companies, on what they do, because over the years they have been the leaders in bringing this technology forward first. After it's brought forwards, then there are usually "investor-owns" that come in and have the service for the areas, but up until then, they are not always on the edge of the...on the leadership of bringing the service in. I think we have to consider that. Senator Beutler--I looked through the machine there--has an amendment, I think it's FA215, that would probably address those issues. It would put it that if there's geographic areas that no one else is serving, then your public utilities or public power could probably go ahead and do that. I think this is something that's more of a concern in populated areas. That's where the money is, that's where the population is, and that's where the people are concerned about their service. But at the same time, we do not want to put anything into laws or regulations that will stymie any kind of service into our rural areas, where the distance is something. When Senator Baker talks about being two miles from...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...the end of the line, I think the Panhandle REA, their average meter is one and three-quarters of miles apart. And that's the average; that isn't residence, that's meters. Thank you, Mr. President.

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, again, this bill is interesting and, as it's proceeding, it's

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

May 26, 2005

LB 645

interesting to me. And since I have some amendments whose purpose is to offer to strike each section so that I can get an explanation, I'm going to use my first time to talk to kind of digress. I notice that this is supposed to be a compromise that we're dealing with--everybody is on board, but I look out there in the lobby, and they're as thick as fleas on the hound of a mangy dog. So if the compromise is set and everybody is on board, what are they out there for? And while I'm on lobbyists, it came to my attention that the other night food was stolen from the mouths of the hungry and the homeless by a lobbyist. Food that was supposed to feed the spongers and the moochers in the Chamber would not be used for that purpose, so it was to be offered to the City Mission. But a lobbyist found out and got on the telephone and said to the various senators, I'm calling you (singing). And the senators said, what's up? He said, come and get it! Soeey, soeey! And the senators started running. And you know what...you know what the philosophy was that the lobbyist was acting on? Build a better mousetrap and the world will beat a path to your door. In this case, build a better rattrap and the political rats will beat a path to your door. And they fled the sinking ship of compassion, and that food was consumed by some people who had more stomach than heart. I think they were supposed to keep it secret. I told you what the philosophy was--build a better mousetrap. Keeping it secret was based on a biblical exhortation. Solomon supposedly wrote Ecclesiastes, which is a collection of little aphorisms, witticisms, and whatnot. Paraphrasing one of those statements, stolen meat eaten in secret, how sweet it is! This must have been the sweetest meal that those senators ever had in their life. If it was mere hardtack, if it was saltpeter--that's a food, for those of you all who don't know, I'm not being obscene--it was sweet, because they pulled one over on the homeless and the hungry. Do you all see what you contribute to when you mooch and sponge? And fortunately, there was a long article in the Lincoln Journal Star this morning about the "moochery" of the senators, and the Chairperson of the Exec Board made a very candid statement. That's how you keep the senators here to work into the night--you feed them. Not dedication to their job, not devotion to representing the interests of their constituents, but to get that free food that the lobbyists stuff into their mouths, which falls like food

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

going through a funnel into their growling bellies to bring peace to that monster that would roar, and have them running out of here early.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: So the lobbyists feed them. And look at them; they're out there looking at how their minions and charges are behaving on this bill. Having fed them, they own them, because the hand that feeds controls. This is one time--oh, and Senator Foley is not here--I was going to give him a little credit for having taken a position which is correct, for whatever purpose, because he's often wrong. But that's more reason to give a guy credit when he's right. It's a aberration. Senator Foley, if you're within the sound of my voice, I want you to know what I've just said, and I mean every word of it. He took the right position. You all won't have many opportunities to embarrass the Legislature as an institution for the rest of this session, because our days are dwindling down to a precious few. They even broke down in the article how much each lobbyist contributes to the pot.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

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

SENATOR SMITH: Thank you, Mr. President and members. I rise in support of the compromise that has been moved forward, or at least presented to us today. And I want to reiterate the fact that I believe we need to move forward on this, primarily because I think it brings at least some resolution to the dilemma that we face, and that dilemma is that as technology is changing so rapidly, I would even suggest, especially as I found more information today, that we're facing a different situation now than even when the bill was introduced earlier this session. In terms of availability, I see where there are several rural telephone cooperatives, telecommunications cooperatives, that are offering broadband service, I think some now that weren't

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

May 26, 2005

LB 645

even at the beginning of the session, when LB 645 was introduced. But I believe that this compromise reflects a give and take from both sides and, as we all know, that is oftentimes necessary here in the body. And I think it's imperative that we do what we can to encourage the private investment, and that is being able to offer these providers at least some sort of return on their investment, knowing that they can compete consistently and fairly on a level playing field and otherwise, so that they can recoup their investment and hopefully even bring more dollars into Nebraska to expand on their infrastructure. Because as things change so very rapidly, I truly believe that it is...it is the private companies who best apply technology, expand it, and move it to the far reaches of the state, and everyone benefits at that point. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Engel, followed by Senator Janssen, on AM1351 to the Transportation Committee amendments to LB 645.

SENATOR ENGEL: Mr. President, members of the body, I support the Transportation Committee amendment. I believe this has been a long time coming, this compromise, because this has been quite controversial from the beginning, even from the referencing part of it. So I do support this compromise. I think they spent a lot of time working together here, and then with this study, they'll...they've got this next year to figure out what will work for the best interests of the people of the state of Nebraska. I've always drawn that line, private versus public. I don't think public and private...there shouldn't be any competition. A lot of times there's cooperation, but there shouldn't be any competition between public and private, because I don't think it's a fair playing field. I do also want to mention that in Nebraska our public power is, of course, the only one in the country, and it's very, very efficient. We have the best service of any utilities in the country, and we have the best rating structures of anybody in the country, so I do not want to lose that. And I'm concerned if we let the private go over into the public sector...over into the public sector then I'm concerned that there be a more concerted drive to privatize our public power. There have been drives in the past to do that, and internally here and outside the Chambers, and I

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

May 26, 2005

LB 645

believe if we start this competition where the private can get into the...I mean, where the public can get into the private sector, competing with them, that there will be an enhanced effort to privatize something that we have that's so dear to us, and so efficient, and so good for the state...the people in the state of Nebraska. So I do support the committee amendment, and I do support the compromise. And with that, I'd like to offer Senator Mines some time, if he'd like it.

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: Thank you, Mr. President. Thank you, Senator. It was pointed out to me earlier, as I closed on my previous comments, that I said I supported the amendment. And I don't support AM1351. I do support the Transportation Committee amendment. And again, this dialogue will go on for some time, but at the core, at the very heart of this, is public entities competing with private business. And I think it's fair that we as a body study this, include all that we can, include all the people and all the entities we can, to come up with the best information for this body, and at the end of that study we determine whether or not public power should use their facilities in competition with private entities. And I think that's reasonable. Right now it's guess and by golly, and I don't think that's the way that we want to do business, and it's not fair, I don't believe, to the public power or communication companies. Thank you, Mr. President, and thank you, Senator Engel.

SENATOR CUDABACK: Thank you, Senator Engel and Senator Mines. Before we go on, the chocolate-covered strawberries are in honor of Senator Vickie McDonald's birthday, says the 29th birthday. (Laughter) I just read it; I don't write it. Congratulate Senator McDonald. Congratulations, Senator McDonald. On with discussion. Senator Janssen, followed by Senator Connealy.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. I believe it was P.T. Barnum that said, ladies and gentlemen, you haven't seen everything yet. Well...and I think with the communications system in this country, not only in Nebraska but throughout the whole country and the world, that

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

May 26, 2005

LB 645

we have just started to see...we're on the tip of the iceberg. We've come a long way from the old crank telephones and the party lines. How many in here had a party line? I see a few hands coming up. That's all right, you can show your age. But I remember my sister, her boyfriends would call her on the party lines, and my uncle happened to be on the same party line. And she would always be afraid that he would be listening, which he was, because that ring, everyone would hear that on that party line. But it's amazing, over the last 60 years, how we advanced in technology. You remember the old Dick Tracy two-way wrist radios that used to be in the funny papers? I see a few heads shaking. You know, and that was something that was just dreamt up in the comic books and in the newspapers. But it's here, and we've advanced further than that. We've come a long, long way. And this issue will be before us for a long time. We may be studying this for several years. It probably will never end. But we want, you know...I think we need to look at every avenue, and that's why I'm going to support the amendment and the underlying bill, because I believe we do need to protect both our private industry and our public power. We're so fortunate in this state to have public power, and I've mentioned this before. Several years ago we were in San Diego, and they were having problems with their power. There were older people who were actually dying from the heat, because they couldn't afford...they couldn't afford their electric bills. And that was a terrible situation. And I told my wife at that time, I said, you know, we don't know how fortunate we are to have the power structure we have in our state. So I believe that we'll...we went, within the last 60 years, from the old crank telephones to a little advanced Dick Tracy two-way wrist radio, and I support the compromise. I think we need to, we need to look at every avenue, and this will be before us for a long time to come, because as technology advances, we are going to have decisions to make, not only us, but the people that are going to follow us in the Legislature. This will be an issue for a long time. But that's why I think we need to go into this...into this and look at both sides, both public and private, and try to...try to keep those two entities separated in some way. With that, I thank you very much for the time, and I'll give the time back to the Chair.

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

May 26, 2005

LB 645

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Connealy, followed by Senator Chambers.

SENATOR CONNEALY: Thank you, Mr. President, members. A lot of things that have been said, you know, I agree with. I, too, want to protect public power, like Senator Engel talked about, how we can put that at risk if we get into other people's businesses, and that's why, with my amendment, there still is a retail ban. And I don't think that public entities ought to be in the retail business, and there's some of that now. We have some public entities in the retail business and in direct competition, and I think that we probably ought to stop that. But I think we ought to also give some pressure to this commission to...some urgency to it, by setting a cutoff date and saying that we're going to put everything back on the table, so that you look at every entity and that you look at every solution. And that providing service is the number one concern of this commission, not how we make the most money, or not how we divide up the pot. It's how we deliver the highest quality, lowest priced service to our consumers here in the state. And that has to be our number one goal as a public entity, I think. And I think that this temporary retail ban still align cooperative agreements and wholesale, so that you don't get into other people's businesses. You have to cooperate with a private entity, not doing it publicly. I think that's the middle ground in this. I think that that would allow us to have some urgency in the study, and allow us to think outside the box.

SENATOR CUDABACK: Thank you, Senator Connealy. On with discussion of AM1351. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I keep hearing from time to time the statement that a public entity or facility should not compete with private operations. That to me should mean that the University of Nebraska Medical Center shouldn't charge anything for any of the procedures it carries out which are provided by profit-making hospitals. No doctor should be allowed to work within, through, or in conjunction with the University of Nebraska Medical Center if those services provided by that doctor are available to doctors who are not connected with a public entity. Since there are

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

May 26, 2005

LB 312, 645

more private security firms, we ought to begin to cut back the number of police officers there are in every city, reduce the number of state troopers that are on the state payroll, and as private industry begins to do any kind of service which right now is done by the government or governmental entities or agencies, we should immediately take from those governmental agencies or services the things that they perform. That makes no sense whatsoever. Many times we need oversight. We have public power. The Tennessee Valley Authority is no longer called a communist or socialist operation, except by some of those people who are trapped in a time warp. When I look on page 4 of the compromise amendment, as it has been described, I see where this task force is to look at private sector investment in networks for the provision or providing of such services. I would say "providing." That's just a peculiarity of mine. When I see concern with shareholder equity on page 5, I don't know whether shareholder equity relates to equity among shareholders who hold shares in competing entities, or if the state has an obligation to determine what course of action it will take, based on the interests of shareholders who are trying to make a profit. Those who provide services for money are interested in profit, and we know it, and they are interested in giving the maximum amount of profit to their shareholders. That's why, when we talk about MUD and these private gas suppliers, you have one operation which is supposed to work in the best interests of the public, and the other which clearly is working in the best interests of its shareholders, its stockholders, and they will cut corners and do anything else they can to make as much money for their shareholders and stockholders, and the public be darned. That has always been the attitude of business. When we look at LB 312 that was just moved, and the Governor is eager to sign, a hole, as Senator Beutler pointed out, has been dug and the public is going to be harmed by it, but that makes the Legislature no difference, as long as they're giving a benefit and a boon to private businesses which can provide jobs to senators, provide contributions to senators, but are not doing anything of significance for the public. They don't want to guarantee a living wage, they don't want to guarantee healthcare, they don't even want to give information. But the Legislature, like trained...

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

May 26, 2005

LB 645

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...prairie dogs, sit up on their hind end...legs and beg, and do whatever business tells them to do. And this area where I'm looking at the services that may be provided to the public expeditiously and at a reasonable cost, I'm going to be influenced by that more than I am anything that these private operators come to me with. Well, they don't talk to me. But I buy services on my telephone from a private company, and they charge me for services I don't even use; namely, long distance. So they're not upstanding good citizens, as far as I'm concerned, so we'll just have to battle our way through this and see where we wind up. But I'm not opposed to the study under any circumstances, although I'll have some questions about the makeup of the task force and how it will operate. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of AM1351. Senator Beutler, followed by Senator Stuthman.

SENATOR BEUTLER: Senator Connealy, could I address a couple of questions to you, if you would yield?

SENATOR CUDABACK: Senator Connealy, would you yield?

SENATOR BEUTLER: Senator Connealy, I'm trying to catch up with the debate, and reminding myself what this bill says, and just generally reorienting myself to what the different sides are. As I look at Section 2 of the bill, that generally provides that any agency or political subdivision, other than a public power supplier, with regard to those types of agencies and political subdivisions--which I assume would include municipalities in some significant portion--it says they shall not provide on a retail or wholesale basis any broadband services and the other types of services that are prohibited. And then in Section 3 of the bill, it addresses public power suppliers specifically, and it says they shall not provide these things at retail. Agencies and political subdivisions in Section 2 shall not do it at retail or wholesale. Public power suppliers in Section 3 shall

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

May 26, 2005

LB 645

not do it on a retail basis. Now am I correct in understanding that, with regard to both of these sections, one of the things you're doing is putting a termination date on that section, those sections? Is that right?

SENATOR CONNEALY: Yes. A termination on the ban on retail, and eliminating the ban on wholesale.

SENATOR BEUTLER: Right, but just with respect to the termination dates, it's 12-31-07. So these two provisions, unless we adopt your amendment, are not moratoriums to...so that we can get to the outcome of the study, but rather are permanent parts of the law until some Legislature changes it. Is that right?

SENATOR CONNEALY: The retail ban is. The wholesale ban, the way I remember it, is...terminates at the end of the study, I think (inaudible).

SENATOR BEUTLER: The wholesale ban terminates at the end of the study? So you're suggesting that all of these things terminate at the end of the study, more or less, right?

SENATOR CONNEALY: Yes.

SENATOR BEUTLER: Is that accurate?

SENATOR CONNEALY: Yes, and my rationale would be to make sure that we're serious about studying things, and that we take everything into consideration, and not just try to extend things as we go forward.

SENATOR BEUTLER: Okay, what you're saying, in a sense, is that they're putting the horse before the cart. I mean, the study studies such things as the need and necessity for the provision of wholesale broadband services by agencies or public...by agencies or public subdivisions. So really, we're asking the question of whether they should provide these services, but the problem is we're putting the horse before the cart and banning them from doing some of these things before we even study it.

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

May 26, 2005

LB 645

SENATOR CONNEALY: Correct. Yes.

SENATOR BEUTLER: Is that...is that your view of the matter?

SENATOR CONNEALY: Yes. But we are, even with my amendment, we are doing something, because there are retail services going on now that would be terminated with the passage of the bill, if you kept my amendment in it, because there are local public power districts that are providing Internet service, and there's a library here or there (inaudible)...

SENATOR BEUTLER: So those kinds of services would be terminated...

SENATOR CONNEALY: ...so it would be banned.

SENATOR BEUTLER: ...for two...for two years anyway.

SENATOR CONNEALY: Yes, until we study it.

SENATOR BEUTLER: Yeah, all right. So you're trying to make a level playing field and put everything, as much as possible, put everything on a level playing field until the study is completed. Is that accurate?

SENATOR CONNEALY: Yes, and it just seems to me that if we...if we ban wholesale, then we ban the delivery of new technology, that we can't cooperate with other entities, that a public can't work with a telecom company...

SENATOR CUDABACK: One minute.

SENATOR CONNEALY: ...in some cooperative agreement if we reach too far. I believe that we ought to step back and not retail, but I don't know we ought to do more than that.

SENATOR BEUTLER: Okay, but you say wholesale is in another section terminated, in another section?

SENATOR CONNEALY: I think so. Let me...

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

May 26, 2005

LB 645

SENATOR BEUTLER: Okay, Section 5 of the bill? So in that event, they would...all of these changes would be terminated at about the same time, when the study is completed.

SENATOR CONNEALY: Yes. But I struck "wholesale" out of the ban, or moratorium now, in this amendment. So all I'm banning is retail for the term between now and the end of the study.

SENATOR BEUTLER: Okay, thank you, Senator Connealy. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Stuthman, followed by Senator Schrock.

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

SENATOR CUDABACK: Senator Connealy?

SENATOR STUTHMAN: Senator Connealy, on your portion of it, in...on your amendment in Section 2, if the bill were to pass, would the universities in this state, would be...have to cease giving students Internet access to their dorm rooms? Would this have to stop immediately, then, when this bill passed?

SENATOR CONNEALY: I believe that with internal functions, I don't think that that would be banned under the current bill, or with my...or with my amendment. What my amendment does is said that delivery of retail services, which is not really internal--I believe, I'd have to--maybe it would be better to talk to the bill and the committee's author. What mine does is restrict the ban to a termination date.

SENATOR STUTHMAN: Okay. Okay, thank you, Senator Connealy. The way I'm understanding this is that, you know, I guess you really can't say that there's a direct fee charged, you know, to the students, but this is all included as part of their room and board fees, you know, to receive the Internet service to their dorm rooms. So you know, I think we are doing this already, and this would terminate that. And I think if the...if the whole

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

May 26, 2005

LB 645

bill would pass today, it would terminate that. I don't want to see that happen. That's why, that's why I voted no, the only no coming out of committee, and I'm going to stand by that. I do agree and I've been informed that there has been an agreement between the parties, but I think that, you know, maybe they have agreed upon it, but it's really not what they like, and I don't like it at all. So I'm not going to support this at all. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Schrock, followed by Senator Mines, on AM1351.

SENATOR SCHROCK: Mr. President, members of the Legislature, I spent quite a little time on this issue at the start of the session. I would remind you that my parents didn't have electricity when they got married. That's hard to believe we go back that far. That's amazing, 1938. It wasn't private companies that brought power to their farm; it was public. Been a little controversy about whether privates and publics should compete with each other. I just tell you that if we didn't have public power in this state, your electric bill would be 20 percent higher. If you don't believe me, check with the neighboring states. Public power has served this state well, and people say we don't want public and private to compete. I feel that way, also, but let's don't bash what we have, because what we have is pretty darn good. I will also tell you this, that our public power industry pays property taxes, they pay in lieu of taxes. Qwest did not pay any income taxes last year in the state of Nebraska, because they're a LB 775 company, and they had enough credits. So don't tell me we have a tax issue here, because we don't. Public power has served us well. When they build new generation facilities, they won't ask for any LB 775 credits, because they're not eligible for it. Actually, I will probably support the bill either way, but Senator Connealy has a good amendment here. Let's don't get the horse before the cart, is what he's saying. He's probably...that's probably fair enough. I think the most important part of this bill is the task...is the task force. I do think that if this is an emerging technology that other states start using, this will take care of itself. I have not appreciated the way some of the people who have lobbied this bill have gone about their

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

May 26, 2005

LB 645

practice. This is probably the most heavily lobbied that the Executive Board has ever been on this issue. If somebody can prove me wrong, please say so, but I don't think the Executive Board has ever been lobbied more than they have on this issue this year. And so we had a referencing question. Senator Baker gets the telecom issues; as Chair of the Natural Resources Committee, I get the public power issues. I wished...I wish Senator Brashear well. It's probably not quite the shape I'd like for it, but I think it works, and I think time will take care of a lot of this. Thank you for your time.

SENATOR CUDABACK: Thank you, Senator Schrock. Senator Mines, on AM1351.

SENATOR MINES: Question.

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 Connealy amendment, AM1351? All in favor vote aye; those opposed vote nay. We're voting on ceasing debate on the Connealy amendment to the committee amendments to LB 645. Have you all voted on the question of ceasing debate who care to? Have you all voted? Senator Mines, for what purpose do you rise?

SENATOR MINES: I'm not sure yet, Mr. President. You better call the house.

SENATOR CUDABACK: There's been a request for...

SENATOR MINES: No, I take that back. (Laughter) May I?

SENATOR CUDABACK: With the body's permission, no objection, you can take that back.

SENATOR MINES: Thank you. (Laugh)

SENATOR CUDABACK: Mr. Clerk...record please, Mr. Clerk.

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

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

May 26, 2005

LB 645

SENATOR CUDABACK: Debate does cease. Senator Connealy, to close on AM1351.

SENATOR CONNEALY: Thank you, Mr. President and members. I believe that this is as far as we ought to go. I believe that the bill should pass this year, that we ought to ban retail, but I also think that we ought to put some pressure on the commission to bring back the information that serves us all, that allows growth in the private sector and makes sure that they are protected as much as possible, and that retail ban at the beginning of this does that. But I don't think we ought to stand in the way of cooperation. I don't think we ought to stand in the way of cooperation. I think that allowing whatever limited wholesale or cooperation that is in place at this time or going forward is the right thing to do. We have a different situation here in Nebraska. You know, there's a national trend for telecoms to try to restrict this new technology that could come, and that's fine. But if we're going to deliver any type of telecom or information services through the electric system in the United States, Nebraska is going to have to do it through our public entities. We own the system, and so to say we're going to ban this and not have any allowable cooperation I think is the wrong direction and the wrong message to send to new technology. This will ban retail for the time of the study, and allow any cooperation or wholesale going forward until we get a good quality study done by this commission. I ask for your support of AM1351.

SENATOR CUDABACK: You've heard the closing on AM1351. The question before the body is, shall AM1351 be adopted to the committee amendments to LB 645? All in favor vote aye; opposed vote nay. We're voting on the adoption of the Connealy amendment, AM1351. Have you all voted on the question who care to? Voting on the adoption of AM1351, offered by Senator Connealy. Have you all voted? Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 12 ayes, 23 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The amendment is not adopted. Mr. Clerk, please.

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

May 26, 2005

LB 645

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments with FA206. (Legislative Journal page 1809.)

SENATOR CUDABACK: Senator Chambers, to open on FA206 to the committee amendments to LB 645.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, rather than try to divide this question, I want to take it section by section. Some will not require as much discussion as others. I want to do that in order to get a clear understanding for myself, but also to have some things put on the record, so that it's clear what we're doing and why we're doing it. Because of the nature of the type of amendments I'm offering, other aspects of the bill can be discussed, as will happen no matter what kind of an amendment is offered. But to give an example of why I need to go section by section to catch up, I would like to ask Senator Brashear a question, if he's available.

SENATOR CUDABACK: Senator Brashear, are you...

SPEAKER BRASHEAR: Yes, Mr. President, I will yield.

SENATOR CHAMBERS: Senator Brashear, if you have a copy of your amendment, I would ask you to turn to page 4, and I'm going to ask you a question about something appearing in line 4.

SPEAKER BRASHEAR: I'm there, Senator Chambers.

SENATOR CHAMBERS: Okay. This portion that I'm talking about relates to the task force. In line 4 is the word "committees," plural, and I don't see where any committees are involved with this task force at all. So what are the committees that this language envisions? They're going to...

SPEAKER BRASHEAR: With your eagle eye, Senator Chambers, in proofing the text, that should be an apostrophe S, in my opinion, or an S apostrophe--I'm trying to think quickly, are there more than one--the point being that the selection of the

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

May 26, 2005

LB 645

facilitator is optional with the group that is established.

SENATOR CHAMBERS: And the name of the group that is to be established, the term is "task force," and I'm not trying to pick nits at this point, although later I may.

SPEAKER BRASHEAR: That's fine.

SENATOR CHAMBERS: Are we talking about the task force making this appointment?

SPEAKER BRASHEAR: Yes.

SENATOR CHAMBERS: Or would it be some entity outside of the task force?

SPEAKER BRASHEAR: No, it's the task force that will, in fact, decide if it needs facilitation and select the facilitator in accordance with the criteria established.

SENATOR CHAMBERS: So the word "committees" could be stricken and "task force" inserted without deviating from what is really intended here?

SPEAKER BRASHEAR: That is correct.

SENATOR CHAMBERS: Okay, so then that's going to take away some questions I'll ask when I get to that section. But just to mention, brothers and sisters, friends, enemies, neutrals, the problem that I have when I read other people's legislation--I don't say this with regard to this to be derogatory--but all those lobbyists out there have looked at this language. I'm sure some of them have had some English courses. They have lawyers. So they should make my job not so difficult, except that I think they do this to test me to see if I really do read these amendments as I say that I do. So they insert a word which ought not be there, and then they make it plural, which it should not be. So they gave me two tests with one word, and on that word I think I passed. But they might have "was" instead of "were," and I might miss that. They might have "a" instead of "an." I don't think I'd miss that. But with all of the work

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

that has been done on this bill, that kind of situation should not have arisen, and I'll tell you why. I have concerns about the task force, the makeup of it, how selections will be made, but I do want to be sure that the language does accurately reflect what it is we're talking about here. And had there been other committees, I would have wanted to know which they were and where they were referenced in the amendment of Senator Brashear because, to be quite frank, I have not had the opportunity to read it as thoroughly as I would like to, because I didn't become aware until late in the evening that the bill would be up this morning, and I did not have time to go through it as I would like to have done. This matter is very serious, and I see in some parts of the bill where exceptions are made. For example, on page 2, line 3, beginning with Section 2, the language says, in subsection (1), except as provided in sections, and then it gives a listing of those sections. I'd like to ask a question of Senator Baker.

SENATOR CUDABACK: Senator Baker, would you respond?

SENATOR BAKER: Yes, I would.

SENATOR CHAMBERS: Senator Baker, as they do in the courtroom, is it true that you're the Chairperson of the Transportation and Communications (sic) Committee, or Communications (sic) and Transportation Committee, however it is designated?

SENATOR BAKER: That's true.

SENATOR CHAMBERS: Did you say earlier that you agree with this amendment?

SENATOR BAKER: Yes, I voted for it.

SENATOR CHAMBERS: Okay. Have you read it over?

SENATOR BAKER: Yes.

SENATOR CHAMBERS: Have you read each one of those sections which is listed in Section 2, subsection (1) of Section 2, starting at...

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

May 26, 2005

LB 645

SENATOR BAKER: No, I have not.

SENATOR CHAMBERS: Okay, and I'm not going to ask any trick questions, but if you had, I was going to ask you what they say. So I will thank you for the help you would have given me, but which you could not give me.

SENATOR BAKER: Well, some of those refer...I can tell you those chapters refer to public power and so on, is what they do. And I haven't looked at them specifically, though.

SENATOR CHAMBERS: They refer to public power?

SENATOR BAKER: Some of it does.

SENATOR CHAMBERS: But not all of it?

SENATOR BAKER: Not all of it.

SENATOR CHAMBERS: Which ones would?

SENATOR BAKER: I think it's chapters...this is off my...I have looked at these, I guess I should say. I think it's Chapter 79 refers to public power issues, and 81 I'm not sure.

SENATOR CHAMBERS: Okay, thank you. He would have if he could have, and he could have if he would have, but however that turns out, I'm going to ask some questions of Senator Brashear.

SENATOR CUDABACK: Senator Brashear, would you respond?

SPEAKER BRASHEAR: Yes, Mr. President.

SENATOR CHAMBERS: Senator Brashear, is it true that you're the Speaker of the Legislature?

SPEAKER BRASHEAR: It is.

SENATOR CHAMBERS: Is it true that for a number of years you were the Chairperson of the Judiciary Committee?

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

May 26, 2005

LB 645

SPEAKER BRASHEAR: It is.

SENATOR CHAMBERS: Is it true that you're the primary and chief architect of this amendment?

SPEAKER BRASHEAR: No.

SENATOR CHAMBERS: Oh.

SPEAKER BRASHEAR: That would be "overgrandizing" it.

SENATOR CHAMBERS: Well, if you were not so modest, did you play a significant role in the crafting of this amendment?

SPEAKER BRASHEAR: I was part of it, together with a lot of other people, yes.

SENATOR CHAMBERS: Okay.

SPEAKER BRASHEAR: And certainly, I have to stand here responsible for whatever is right or wrong with it, because I'm the sponsor.

SENATOR CHAMBERS: Oh, I'm not going to let you take all that, because there are other people I want to stick my hooks in.

SPEAKER BRASHEAR: I see.

SENATOR CHAMBERS: Okay. Now with reference to these sections, and I would have gotten to them eventually, probably with my next amendment, but have you at some time read each one of these sections?

SPEAKER BRASHEAR: I have not at some time read each of those sections.

SENATOR CHAMBERS: So I wouldn't be unreasonable to say that I would like to know what those sections relate to, since they are part of an exception to what it is we're doing. If I'm going to be a responsible legislator, not speaking for anybody else, I

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

May 26, 2005

LB 645

should know what those sections say, shouldn't I?

SPEAKER BRASHEAR: You may...

SENATOR CHAMBERS: I mean, being the stickler that...

SPEAKER BRASHEAR: ...you certainly may reasonably have that expectation of yourself and your performance.

SENATOR CHAMBERS: Okay. Now, if we're going to broaden this discussion without naming anybody specifically, this is a serious bill we're dealing with. There are serious questions, and there are heavy interests lined up on both sides of the issue. Would responsible legislators know what those sections say, since they comprise an exception to what is in the amendment, before they proceed to vote one way or the other on it, in your opinion? Should they know?

SPEAKER BRASHEAR: Thank you. In my opinion, if you are talking about it in theory, I can agree with you. If you're talking about it in fact, I cannot permit the impression to be left...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...that this is the only bill that has ever excepted out existing law, as it has previously passed the Legislature,...

SENATOR CHAMBERS: Oh, no!

SPEAKER BRASHEAR: ...that people have not read. It happens all the time.

SENATOR CHAMBERS: No, I'm talking about just this bill. If...oh, I've only got a minute.

SPEAKER BRASHEAR: It's reasonable to deal with those sections. I don't disagree with that.

SENATOR CHAMBERS: Thank you. And I have less than a minute now, Mr. President?

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

May 26, 2005

LB 645

SENATOR CUDABACK: About 36 seconds, Senator.

SENATOR CHAMBERS: Okay, I will stop now. Thank you.

SENATOR CUDABACK: On with discussion. Senator Beutler, followed by Senator Chambers, on the Chambers amendment, FA206.

SENATOR BEUTLER: Senator Cudaback, Senator Brashear, I'd like to also just explore some aspects of the bill from you, and mostly I'm approaching the bill from the point of view of, one, getting services to all citizens of the state, wherever they might be, and secondly, protecting citizens who happen to be caught in an area where there are potentially noncompetitive situations. So I'll have three or four different times to speak, I suppose, but I kind of want to go through those kinds of situations. But as an opening question, apparently, in little bits and pieces around the state, there has been some...there have been some small projects relating to retail services of one, in one area or another here, that have gotten established and are operating. Is there any provision in the bill for the protection of existing investment that may be public investment in whatever projects exist around the state?

SENATOR CUDABACK: Senator Brashear, would you...

SPEAKER BRASHEAR: Yes, Mr. President. There is no provision to stand still with regard to retail, and there is no authorization for retail and, yes, I think even the debate on this floor on General File has indicated now people are beginning to come forward. We're finding out that there are situations in which that is taking place and there is no authority for it to do so.

SENATOR BEUTLER: Would you have objection to general grandfathering language that will allow these various small situations to continue, so that the typical concern we have for lost investment, unnecessarily wasted investment, for one, could be recognized?

SPEAKER BRASHEAR: Senator Beutler, I'm certainly...of course, we're all called upon to be reasonable in the approach to this,

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

May 26, 2005

LB 645

and I want to be. I have to throw out a caveat, if I may, and I'll try and be very quick. Some people are doing this illegally, and there may be some misappropriation of a signal to them, which they are retailing with no authority and without paying for it. So I'm...in theory, if somebody is legitimately retailing, I have no problem with a standstill. The problem is that we have some people who are retailing, who never told anybody they were retailing a signal, which they were buying at retail and disbursing, and they have no authority to do so and, in fact, it's illegal to do so.

SENATOR BEUTLER: Okay. So you would have no objection a grandfather clause for legal operations, and they can fend for themselves as to whether it is...it was, in fact, legal at the time or not.

SPEAKER BRASHEAR: I can't think of a reason to have an objection to a legal operation during the period of this study.

SENATOR BEUTLER: Okay. The different types of services that are listed in the bill, they're all defined, more or less: broadband, telecommunications, Internet, and video services. Those...all of those different types of services, are they all provided by either cable or telephone companies at this point in time?

SPEAKER BRASHEAR: I'm sorry, Senator Beutler.

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: Forgive me, please.

SENATOR BEUTLER: I wanted to get firmer in my mind who provides these four different types of categories of services that you are addressing in Sections 2 and 3 of the bill: broadband, Internet, telecommunications, or video.

SPEAKER BRASHEAR: They are...

SENATOR BEUTLER: With regard to broadband services, those are currently provided by cable companies, telephone companies...

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

May 26, 2005

LB 645

SPEAKER BRASHEAR: Yes, sir.

SENATOR BEUTLER: ...and who else?

SPEAKER BRASHEAR: Satellite providers.

SENATOR BEUTLER: Satellite providers? Okay. And then with regard to Internet services, again, cable companies, telephone companies,...

SPEAKER BRASHEAR: Correct.

SENATOR BEUTLER: ...satellite companies?

SPEAKER BRASHEAR: Yes.

SENATOR BEUTLER: Those three categories? Is that also true of telecommunications services, as defined in the bill?

SPEAKER BRASHEAR: I'm not certain that satellite providers...

SENATOR CUDABACK: Time, Senator Beutler.

SPEAKER BRASHEAR: ...are providing telecommunications services, but they may be.

SENATOR CUDABACK: Time, Senator Beutler.

SPEAKER BRASHEAR: But it's true of cable and telecommunications.

SENATOR BEUTLER: And video?

SENATOR CUDABACK: Senator Beutler, time is up.

SPEAKER BRASHEAR: Video is...would be the same way.

SENATOR BEUTLER: I'm sorry. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you. Senator Chambers, on FA206 to the

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

May 26, 2005

LB 645

committee amendments.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have no objection to the study conducted by the task force, none whatsoever. I would want to look at the makeup of it, and how selections are made regarding those who will serve on it. And Senator Preister raised some very good issues that I think need to be resolved, and we'll have the opportunity to do it. But if we enact in statute anything that changes anything from what it is now, we have tilted the playing field, to use that cliché. If you're going to talk about competition, and some suggest that public utilities or power entities are competing with private industry, let those private people get up and boogie and do what they need to do, and what they're able to do. But if what I've been told is correct, that this technology has not yet come to fruition, neither one of them is going to be able to do anything before the study is completed. Now, if what I've been told is not true, or if I have misunderstood, I'm going to have Senator Brashear help me undeceive myself, if he's willing to answer a question or two.

SENATOR CUDABACK: Senator Brashear.

SPEAKER BRASHEAR: Certainly.

SENATOR CHAMBERS: Senator Brashear, there's a type of technology that this bill will deal with. Senator Mines said it's not wireless or whatever the other one was, and I thought I heard somebody say that this type of technology has not yet been developed or that it's not at a stage where it can be utilized. Is that true or false? And you can answer it with as much length and depth as you need to provide the opinion you want me to have.

SPEAKER BRASHEAR: Thank you, Senator Chambers. You are making reference, I believe, to broadband over power line, which is called BPL.

SENATOR CHAMBERS: Yes.

SPEAKER BRASHEAR: And so you're correct, that is not wireless.

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

May 26, 2005

LB 645

That is using present or future upgraded electricity...electrical transmission infrastructure to send these signals.

SENATOR CHAMBERS: Okay.

SPEAKER BRASHEAR: It's called BPL. That is not a proven technology. It is particularly not a proven technology over great distances, so that while you might be able to do it...and I'm not trying to be a technical expert because I'm absolutely not. What I'm saying is, based on what I've read, you might be able to do it for short distances and short periods of time successfully, but what we know and I think is particularly applicable, you said I could elaborate and so I am, what I think is particularly applicable in the great state of Nebraska, with its huge geographic differences, is we know this is not a proven or usable technology at great distances. So, for instance, if the farm home or farmstead is 20 miles from a service source with regard to electrical transmission, you aren't going to put BPL over it. It has not progressed that far.

SENATOR CHAMBERS: All right. So why does...is something in this amendment that exists now designed to prevent any additional utilization, experimentation, or development of this capability by public power districts?

SPEAKER BRASHEAR: Senator Chambers, there is nothing here prohibiting experimentation, invention, development. We are only talking here about implementation. I don't want to take more...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...of your time than you want me to.

SENATOR CHAMBERS: Take all that you need.

SPEAKER BRASHEAR: All right. We are talking about implementation and, with all due respect, I dissent from the view that we are trying to preserve the level playing...that you're...that there are those who believe by not adopting the

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

May 26, 2005

LB 645

bill we will preserve a level playing field. We don't have a level playing field now. We have people who are authorized to do these things, people who don't know whether they're authorized to do these things, and people who clearly aren't authorized to do these things, and we're trying to coalesce them all together in a standstill that does, in fact, level the playing field for the period in question and produce the study upon which the Legislature can then make informed public policy with expert understanding.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: Senator Chambers, you may...

SENATOR CHAMBERS: Thank you, Mr. President.

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

SENATOR CHAMBERS: Oh, good,...

SENATOR CUDABACK: ...if you care to.

SENATOR CHAMBERS: ...because I would like to continue and I don't have...I don't have to make a note. Senator Brashear, are there any provisions in this bill which will remain in effect after December of 2006?

SENATOR CUDABACK: Senator Brashear.

SENATOR CHAMBERS: In other...

SPEAKER BRASHEAR: Yes, the ban, we...and with no criticism expressed or implied, we've used the term "ban" and "moratorium," and the two words, as you would well know, are different.

SENATOR CHAMBERS: Right. And I'm not going to quibble at this point because we're talking in general terms. So I'll...

SPEAKER BRASHEAR: All right. There are some...there are some

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

May 26, 2005

LB 645

prohibitions that would continue beyond the due date for the task force report.

SENATOR CHAMBERS: So this is more than just a hold harmless until the study is done. It continues beyond the end of the study to what date, if there is a date in the bill?

SPEAKER BRASHEAR: Well, there is no end date for those things which would survive the submission of the report, but that's a submission of the report at December 1. We all know this process won't be conducted in secret but will be open, and there's a legislative session which follows, and the idea then is to come in and sort out what needs to take place based upon the study.

SENATOR CHAMBERS: But if it took as much battling as it has to arrive at what is called a compromise here, it doesn't seem to me there's going to be a great likelihood, if there is to be some legislative action taken, it will be any less difficult. In fact, it will be more so because there is no study to be a buffer to hold things off. So now here's what I'm getting to in terms of a question. This bill does more than just authorize the study. It prevents certain things from taking place which can take place right now, isn't that true, and some which are taking place? It will stop some things and cut off the right or the authorization or the allowance with reference to some things that currently are going on. Isn't that true?

SPEAKER BRASHEAR: It will cut off some things which are being done and there are those who would suggest that that's a litigable question and, upon litigation, you would find out those things that it stops that are going on now are illegal and shouldn't be going on.

SENATOR CHAMBERS: So we don't need to stop them with a bill, do we? Because if there's litigation that that is right, it means there are two sides to this question and they will be resolved...the issue will be resolved only by a court. And if the issue remains up in the air, the Legislature is being asked to take a position that will favor one side or the other. Isn't that true?

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

May 26, 2005

LB 645

SPEAKER BRASHEAR: Absolutely, under the premise that public policy is made here and we don't have to punt every question to a court and abide by a court decision, but rather we have the right to decide.

SENATOR CHAMBERS: So those entities who are going to be cut off from doing what they may be doing now, what they're actually doing now, or which they may be able to do now without this bill, they are going to be hindered by the enactment of this bill as the amendment would make it operate. Isn't that true?

SPEAKER BRASHEAR: They would also have the opportunity for access to the courts if they think they've got any rights in order to have standing, number one; and number two, they will benefit from the study because the way the study is put together I think we have to make public...we can't make public policy in a vacuum, but we have to assume, given the great representation that has been achieved in the study, that everybody will get a seat at the table and a voice.

SENATOR CHAMBERS: But here's my question. There are entities or interests which are going to be prevented,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...by the enactment of this bill, from doing things they can do without this bill being enacted. Isn't that true?

SPEAKER BRASHEAR: I cannot concede, Senator Chambers, in the abstract, the point that somebody is going to have to stop doing that which they can. They will have to stop doing that which they are, and it's arguably illegal that they are doing it. But they would have to stop it if anybody enforced it.

SENATOR CHAMBERS: So this is not a hold harmless. It is going to affect things that are happening right now and stop them from happening.

SPEAKER BRASHEAR: It is going to affect things happening right

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

May 26, 2005

LB 645

now and stop them from happening.

SENATOR CHAMBERS: Thank you. Mr. President, how many times have I spoken on this?

SENATOR CUDABACK: Third time, Senator.

SENATOR CHAMBERS: This is my third time?

SENATOR CUDABACK: Yes, it is. You have...

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: You have closing left. Before that, Senator Beutler and Senator Schimek get to talk. Senator Beutler.

SENATOR BEUTLER: Senator Brashear, again, if you could help me explore the parameters of the bill, now I have better in mind which companies are involved in which different categories of service. I want to talk a little bit about services in these four categories in rural areas. How...first of all, is it a distinct possibility that in any one of these four areas in certain rural areas there may be portions of the state that are not served at all by private companies or poorly served by private companies? Is that a...that's a...that's...I assume that's a possibility. Is that a possibility?

SPEAKER BRASHEAR: Senator Beutler, only a fool would suggest that I'm going to say there isn't a possibility of poor service. I am told that there is no area that cannot be served in...by either satellite or physical plant.

SENATOR BEUTLER: By either satellite or physical plant.

SPEAKER BRASHEAR: That there is no area of the state of Nebraska, as great as it is, so remote that people...

SENATOR BEUTLER: Okay.

SPEAKER BRASHEAR: ...cannot get Internet service. I...and I'll stand on what I said with regard to the possibility of poor

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

May 26, 2005

LB 645

service.

SENATOR BEUTLER: So...but if it did happen that there was some area that was not being served, the way this bill operates right now, could a public entity, either at the retail or...at the retail level serve those areas?

SPEAKER BRASHEAR: As the bill stands now, a public entity could not serve at retail. No, it could not serve at retail, and then it would depend upon the legislative result of the study, if any. If there is any legislative result, you'd have to open it back up.

SENATOR BEUTLER: Okay.

SPEAKER BRASHEAR: It'd be an affirmative public policy decision.

SENATOR BEUTLER: You don't think that the possibility exists, as you're being informed, that there would be any rural areas that were not served, but would you have any objection to an amendment to the bill that would allow unserved rural areas to be served in the event that they were not?

SPEAKER BRASHEAR: During the period of the moratorium, Senator Beutler, or...

SENATOR BEUTLER: No.

SPEAKER BRASHEAR: ...under the ban?

SENATOR BEUTLER: Since your provision with respect to retail is permanent...

SPEAKER BRASHEAR: I think if we can...

SENATOR BEUTLER: ...I would suggest a permanent amendment.

SPEAKER BRASHEAR: I always think in terms of being reasonable. That seems like if we can establish what is the unavailability of service, if we can establish that, then I think the

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

May 26, 2005

LB 645

suggestion is reasonable.

SENATOR BEUTLER: Okay. Secondly, besides areas where there may be no service at all, there may be areas where one company is serving but it's effectively a monopoly. Would you grant that that's a distinct possibility?

SPEAKER BRASHEAR: That is in fact a possibility, and I'll be brief because it's your time, Senator Beutler. That is a distinct possibility and that is part of what needs to be figured out as a matter of public policy. Whether it be public monopoly or private monopoly, there's great investment required and the public has an interest in either instance as to how and when and by whom the investment is made and recouped in order that we not have some...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...untoward result.

SENATOR BEUTLER: Okay. Thank you. Senator Cudaback, I think I'll discontinue at this time. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Schimek, followed by Senator Baker. Senator Schimek. Senator Schimek, are you waiving your time?

SENATOR SCHIMEK: Yes, I would like to give my time to Senator Chambers, please.

SENATOR CUDABACK: Senator Chambers, you have almost five minutes.

SENATOR CHAMBERS: Thank you, Senator Schimek. Mr. President, members of the Legislature, I would like to ask Senator Brashear a question or two.

SENATOR CUDABACK: Senator Brashear, would you respond to a question from Senator Chambers?

SPEAKER BRASHEAR: Yes, Mr. President, I will yield.

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

May 26, 2005

LB 645

SENATOR CHAMBERS: Senator Brashear, would you turn to page 7 of your amendment?

SPEAKER BRASHEAR: I'm there, Senator Chambers.

SENATOR CHAMBERS: Okay. Now, the only thing in Section 7 that I can detect that's being altered is on page 7, where two sections of statute are stricken so that when a conflict exists the Uniform Arbitration Act shall not apply to the Uniform Act on Interstate Arbitration and Compromise of Death Taxes and sections, then it lists them, and the two that are stricken, 86-588 through 86-590. And since there were only two or three sections encompassed, I looked these up and they relate to a county telephone system. Why are those sections of statute being eliminated in this bill?

SPEAKER BRASHEAR: Because, Senator Chambers, at Section 10 of the bill, on page 7, you will note that those sections are being outright repealed. So we're being consistent by repealing them in 10 and excepting them or deleting them in 7.

SENATOR CHAMBERS: Now, why are they being repealed?

SPEAKER BRASHEAR: I don't have the text before me. You know, you're just so quick. We managed to get hold of everything that was in 2, and I'm waiting for you to take me back to 2 so I can talk about what all those sections are about, but now...

SENATOR CHAMBERS: Okay.

SPEAKER BRASHEAR: ...you've come up with these and I don't have the text before me, but I'll get the text before me. But they're being repealed in a general sense because they are archaic and the counties don't want them anymore. And so sometimes in the course of doing legislation, as you know, we eliminate things that are no longer necessary and shouldn't be there.

SENATOR CHAMBERS: Then I will proceed in a more methodical manner by taking these individual sections. Here is something

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

May 26, 2005

LB 645

that I've never been able to understand, and it's on page 1 of your amendment, and I'm sure it has to do with the way bills are drafted. In line 5 it says, and that would be Section 1 of this amendment: For purposes of Sections 2 to 6 of this act, then it lists what these various terms mean.

SPEAKER BRASHEAR: That's correct.

SENATOR CHAMBERS: Is that to say that in Section 1, where they're being set out, they mean something different?

SPEAKER BRASHEAR: No. I think that's an artifice of legislating, as you said, and bill drafting so that you don't...it's perfectly obvious that for the purposes of Section 1, the definitions set forth in Section 1 are in fact binding and obligatory upon Section 1. So this is a way to cross-reference to 2 through 6.

SENATOR CHAMBERS: Okay. Is there anything among these items that you think, in your opinion, need clarification?

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: I would hope, Senator Chambers, that if they...it needed...if those four items needed further clarification with all of the skilled people who have looked at it, it would be like the error we didn't catch that you pointed out. I would hope that we've got them in there now. I don't believe there's any clarification required.

SENATOR CHAMBERS: So here's what I'm going to do is, after I make this comment, I'm going to pull this pending amendment. But if it's necessary for me to refer back to something in this first section, I may still do that.

SPEAKER BRASHEAR: I understand.

SENATOR CHAMBERS: Thank you. Mr. President, I will withdraw that pending amendment.

SENATOR CUDABACK: FA206 is withdrawn. Mr. Clerk, please, next

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

May 26, 2005

LB 645

motion.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend with FA207. (Legislative Journal page 1809.)

SENATOR CUDABACK: Senator Chambers, to open on FA207 to AM1334.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is the section where you find a string of existing statutes listed and they are being exempted from the application of the provisions of this bill, should it become law. Now I have to level with you, I have read some of those sections. But I would like to ask Senator Brashear a question, if I may.

SENATOR CUDABACK: Senator Brashear.

SPEAKER BRASHEAR: Yes, Mr. President, I will yield.

SENATOR CHAMBERS: Senator Brashear, have you had a chance to review these sections?

SPEAKER BRASHEAR: In summary.

SENATOR CHAMBERS: And they relate to various activities by various entities,...

SPEAKER BRASHEAR: Yes, they do.

SENATOR CHAMBERS: ...such as universities and...

SPEAKER BRASHEAR: Seventy...I'm sorry.

SENATOR CHAMBERS: Go ahead.

SPEAKER BRASHEAR: Do you want me to detail them?

SENATOR CHAMBERS: Just touch on what...so we can get, for the record, what it is we're excepting.

SPEAKER BRASHEAR: I will be brief. Chapter 79 deals with

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

Nebraska Educational Television. Chapter 81 deals with state government communications. Chapter 85 deals with the University of Nebraska. That's the section, subparts 401 to 418; 85-1501 to 85-1542 deals with the community colleges; and 86-575 deals with dark fiber.

SENATOR CHAMBERS: So why is it not going to deal with dark fiber? Why is the bill not going to address dark fiber?

SPEAKER BRASHEAR: Because there's no need or requirement that it deal with dark fiber. Dark fiber is provided for in those sections and we're not wanting to be in conflict with that.

SENATOR CHAMBERS: Aha! Eureka! Senator Brashear, when we were discussing some other aspects of what certain entities may be doing now, you said some of them are doing things which are illegal, in your opinion. Is that right?

SPEAKER BRASHEAR: I did.

SENATOR CHAMBERS: That would mean the law either prohibits them from doing it or they would need explicit authorization under the law, which they don't have; one or the other. Would you agree?

SPEAKER BRASHEAR: Yes, sir.

SENATOR CHAMBERS: So if that's already in the law, why would we pass a bill that's going to impact on any of those things?

SPEAKER BRASHEAR: Because we're not dealing with dark fiber here.

SENATOR CHAMBERS: No, forgetting dark fiber now, I had been asking, when my time ran out, was...what I was dealing with was the fact that if this bill becomes law, it's going to prohibit some entities from doing things which currently they may lawfully do and which they are doing. That's what I had proposed. And do you agree or disagree with that, before I proceed?

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

May 26, 2005

LB 645

SPEAKER BRASHEAR: I believe where I took exception on the record was that they are not doing it lawfully, but that that may be a matter of dispute. But I'm...but I wanted to be clear that what you're saying in terms of some people are doing things that they will have to stop under the bill, that's true. Where you and I would disagree is whether they are doing those things that they're going to have to stop under the bill lawfully or illegally.

SENATOR CHAMBERS: So we are changing status quo with the enactment of this bill.

SPEAKER BRASHEAR: We are changing status quo, and as it relates to those people, they should not be doing what they're doing. So in effect, if you prohibit somebody from doing that which they aren't authorized to do, I don't think that's really an adverse change to the status quo.

SENATOR CHAMBERS: But we don't need to put in law what already is the law by saying this time we mean it. So I still think we can get rid of all this stuff and just do the study. But here's what I will ask, continuing along the line that I've been pursuing. If this bill is passed, whatever is going to be prohibited by enactment of this bill, whatever it turns out to be, cannot be engaged in again unless and until the Legislature, by a positive enactment, would authorize it. Is that true?

SPEAKER BRASHEAR: That is not true, Senator Chambers.

SENATOR CHAMBERS: Okay. So when...

SPEAKER BRASHEAR: The wholesale aspects fall under the word "moratorium," which ends, I think it's, December 31 of 2007. The moratorium ends and anybody who has legal authority to proceed when that moratorium...to conduct a particular thing now would have the opportunity to resume that right.

SENATOR CHAMBERS: Well, why allow them to resume it without any enactment, any additional enactment, from the Legislature if you're going to cut it off now? In other words, if it's being done now and that's not a good thing, why will it cease to be

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

May 26, 2005

LB 645

not a good thing in 2007?

SPEAKER BRASHEAR: We are confusing possible illegal activities at the retail level, which are banned, with...

SENATOR CHAMBERS: I'm talking about the wholesale...

SPEAKER BRASHEAR: ...with potentially lawful activities at the wholesale level, which nobody is saying are illegal or whatever, but rather we are saying nobody should progress a particular aspect of wholesale until we have the study. So everybody has agreed to what I've called a standstill. That's what the moratorium does.

SENATOR CHAMBERS: But after...but after 2007, they can progress as far as they want to and are able to. Isn't that true?

SPEAKER BRASHEAR: That is correct.

SENATOR CHAMBERS: That doesn't make sense to me. Because if the study comes...

SPEAKER BRASHEAR: I'm sorry. I wish it did.

SENATOR CHAMBERS: If the study comes back, the study's report does not effect any change in the law in and of itself. It merely expresses a consensus with maybe some dissenting opinions included, but that's all that it is, is a report. It has no legally binding effect on anybody or anything. Isn't that true?

SPEAKER BRASHEAR: That is true.

SENATOR CHAMBERS: So what sense does it make to say that what is inappropriate in 2005 is going to become...is going to become appropriate in 2007?

SPEAKER BRASHEAR: Because in 2007 the lawfully instituted, constituted, public policy making body of the state of Nebraska will have before it the detailed, in-depth information it needs in order to make public policy and, in my opinion, will have a duty to react to that report.

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

May 26, 2005

LB 645

SENATOR CHAMBERS: Well, whether they have a duty or not is beside the point, because I think we have a duty to protect the public, but we certainly don't do that when we give big tax breaks to these businesses while raising the taxes on the ordinary citizens. So we're engaged in a difference of opinion and philosophy here. But when we come down to what the impact of the law itself is, there is no change in the law until the Legislature makes it. If something is wrong with allowing those who are engaged in the wholesale end of this activity, why don't you just ban it and say it cannot be reassumed...resumed unless and until the Legislature, based on findings in the study, conclude that these things ought to be done because they're beneficial to the public? That could not have been agreed on in the negotiations, could it, an approach like that?

SPEAKER BRASHEAR: Senator Chambers, I would love to speak to that. I'm worried about time and I...

SENATOR CHAMBERS: Well, you can take my time.

SPEAKER BRASHEAR: I'll turn...shall I turn on my light and...

SENATOR CHAMBERS: Oh, thought you had.

SPEAKER BRASHEAR: ...answer your question?

SENATOR CHAMBERS: That would be a good idea. And how much time do I have, Mr. President?

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: And this is my first time on this one, isn't it?

SENATOR CUDABACK: It is, Senator Chambers. You're...

SENATOR CHAMBERS: Okay. And I'm going to turn on my light, too.

SENATOR CUDABACK: It's your opening. It was your opening.

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

May 26, 2005

LB 645

SENATOR CHAMBERS: Okay. It just runs together in my mind now. And maybe what I'm saying runs together, too, but if somebody reviews the record and is knowledgeable, I think they'll understand what is being said here and there may be some interest, even those with their noses and palms pressed against the windowpane. And, like I say, some of them are so close we can get DNA samples by swabbing that window glass and I don't know what we'll find from those DNA samples. But at any rate, I'm going to wait until I'm recognized before I proceed, because there's some direct assertions that I want to make, after having engaged in the back and forth with Senator Brashear. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA207. Senator Baker, followed by Senator Janssen, Brashear, and Chambers. Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback. I was going to answer some questions that were posed by Senator Beutler as to the service, are we denying someone service out here that doesn't have it now? I live in a very rural area and I'm personally acquainted with what we have out there. Our particular house is served by wireless Internet and it's actually probably better service than they have here in Lincoln. And it's cost-effective. It's not prohibitive at all. It's very competitive. We also have WildBlue Project out there. I know that there's some of the telecoms of trained staff and personnel to do that. That's available to anyone. Distance is not a factor. It's satellite Internet. We have fiber laid to...I know some of the telecoms out in my area have fiber. They're very proud of the fact that fiber goes to every single user. It's amazing it does out there in several instances. Fiber galore out there, so we're not denying anyone. My point I want to make is that status quo, to do nothing here with this bill, we're in a state of limbo. We have power companies wondering what they can do, and Senator Brashear has articulated that very well. We have telecoms saying, well, if they're going to let the power companies do this and so on, we're not going to do anything. So I think it would be a disservice to our citizens to do nothing. We need to get the task force in place.

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

May 26, 2005

LB 645

We need to get a level playing field for the time being, saying they can't go ahead and proceed with whatever it is they may do. And I'm not a lawyer, but I think there are some questions raised here. I have a letter from a power district that says we're getting out; must withdraw its application to participate in NRTC's WildBlue Project due to possible pending litigation; unfavorable statewide attorneys' opinion and reversal of opinion by us, this board..or their attorney. Nobody knows for sure who's...where or what the rules are, so this would clarify it, the amendment. And we're trying to dissect this thing after Senator Brashear and his staff have worked with all the entities involved, and I say all of them. There may be some disagreement amongst one or two or them, I think that's standard for the process, but to do nothing would be a disservice. And back to BPL, the whole crux of this discussion is BPL and, quite frankly, if anyone who would want to go back and look at the transcripts of the hearing, BPL is nowhere near ready to be deployed in the state of Nebraska, nor anywhere else. There's some projects out there that people are looking at it. They've had some failures. They've withdrawn some BPL projects. I could provide a list of that, I think of some of them anyway that we're aware of. It's not cost-effective in rural areas and that seems to be the discussion, is who's being denied service by passage of this bill. BPL is not going to be implemented in rural areas. It's \$5,000 per mile. They have to go around transformers and do this and that. That was a question I asked of a witness in the hearing. It costs \$5,000 per mile. I'm two and a half miles from the next residence. They're not going to spend \$12,500 to get BPL to my house. First place, I don't want it. I already have wireless Internet. So that, to me, has to enter into the discussion. We have the service out there now, if people want it, and it's...BPL is not ready to be deployed. Let's take a breather here, go ahead and get the task force put in place and then we'll come back with some sort of legislation, I'm sure, out of the result of the task force. So I continue to support the bill as amended, and would urge people to go ahead and reject the rest of the amendments and get on with it. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. (Visitors introduced.) On with discussion. Senator Janssen.

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

May 26, 2005

LB 645

SENATOR JANSSEN: Thank you, Senator Cudaback. Members of the Legislature, the discussion we've been having this morning is very interesting. I had some questions, so I went to someone who I thought should know the answer to the questions that I had, and I asked the Public Service Commission is there anywhere in this state that you cannot get access to just about anything you wanted via wireless or with wire, and he said, no, there's nowhere in this state that you can't get anything, the Internet, whatever it is that you're looking for, by some means right at the present time. I understand there's a new satellite, I think they call it Blue Sky or something like that, that is just new and you can get whatever you need for your business or personal use from that satellite right now, or wire, or wireless in that area. So I just wanted to let you know for your information that that is available throughout the whole state. With that, thank you. I'll give the rest of the time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Brashear.

SPEAKER BRASHEAR: Thank you, Mr. President. Members of the body, thank you for your time and attention and patience, and for the debate. This is what we're about. I'm going to try and summarize and be responsive to questions that Senator Chambers has asked, but I wanted to do it on my own time. When we talk about the retail, we're talking about banning something that nobody else is authorized to do, and everybody has agreed it's all right to ban it because nobody who isn't doing it, who's authorized to do it, is opposed to the retail ban. So we can keep going over that if we want to, but that's where it sits. Then we go to wholesale, and at the wholesale level we have three kinds or types of players: those who are authorized to wholesale, those who are not authorized to wholesale, and those who may be authorized to wholesale. Some would argue they are, and some would argue they aren't. So we have three types: the yes, the no, and the maybe. Why are we interested...and that's where we are not talking ban; we are talking moratorium, which is a specified period of time, until December 31, 2007. Why would we have a moratorium there, which is the thrust of what Senator Chambers has been probing and it's the critical part of

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

May 26, 2005

LB 645

the whole? We would have a moratorium among the yes, the no, and the maybes in order that no one spend money, make capital investment, work on technology in an expensive way until we decide how we, as a matter of public policy, are going to resolve the question of the yes, the nos, and the maybes. So we're saying don't...we don't want to have a race to the finance...to the investment bankers to float the bonds to accumulate the debt to build the infrastructure so that the first person to the finish line can then claim, oh, but we've invested so much money, we've worked so hard, we're ahead of everybody else and you're not going to let us take advantage of it. This is the moment in time where the parties can be persuaded to enter into a standstill and moratorium. They are agreeing to the standstill and moratorium so we aren't going to have the competition to beat anybody else, and we won't have the adverse consequences of what we call oversupply. We will not build more plant and infrastructure than we, as a people who have not had growth and are declining in population or static, can utilize. Because the experience with technology has been that you can do more and more with less and less. We keep increasing the capacity of what we can do, the speeds and the volume and quantity, and we don't need any new infrastructure or plant in order to do it. So this is the ideal time to have the yes, the nos, and the maybes agreeing to say we will all wait, we will all come to the table together, we will reason together, we will mutually discuss and we will mutually produce a report which, as Senator Chambers says, may be all positive, may be all negative, or may be positive with some dissent, we all know how it goes, and this body will have what it needs in order in January 2007...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...to begin the thoughtful exercise of deciding what we will do as a people and what we...how we want it done. That is particularly relevant in a state which has a proud, proud tradition of having made public something which all other jurisdictions have made private; namely, our public power. Since we are the owners of our public power, we need to decide how we want this policy question resolved. I thank you for your time and attention and patience. I hope that was responsive to

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

May 26, 2005

LB 645

Senator Chambers' concerns. Thank you.

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

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Senator Brashear, you were responsive, but I still have some concerns. Senator Brashear, on page 3, which would be Section 5 that I'm looking at, even though my amendment says strike Section 2,...

SENATOR CUDABACK: Senator Brashear.

SPEAKER BRASHEAR: Yes, Mr. President.

SENATOR CHAMBERS: ...Senator Brashear, would you be willing to strike subsection (2), which would be lines 6 through 9 on page 3?

SPEAKER BRASHEAR: Senator Chambers, I'm examining it.

SENATOR CHAMBERS: That's why I'm not...I'm going to give you a chance to look at it.

SPEAKER BRASHEAR: Senator Chambers, that would turn a "yes" into a "maybe." That would...that would take a particular...potential wholesaler who clearly has the authority and make them a "maybe" or a "yes," and they could proceed without question.

SENATOR CHAMBERS: The reason I'm doing that, when we look at subsection (1), it says, "Except as otherwise provided in Section 3 of this act, nothing in this section shall be construed to restrict or expand any authority of a public power supplier as that authority existed prior to the effective date of this act." So whatever they could do before the effective date of this act, this bill is not designed to stop that. And Section 3 is talking about providing on a retail basis, which you say everybody has agreed is not going to be done anyway. So if we strike Section 2, subsection (2), a public power supplier would be authorized to provide on whatever basis since they use

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

May 26, 2005

LB 645

any basis, broadband services, Internet services, telecommunications services, or video services. If we'd strike subsection (2), wouldn't that be the effect of striking it? The public power supplier could then do that?

SPEAKER BRASHEAR: Senator Chambers, what you would do is gut the moratorium.

SENATOR CHAMBERS: So?

SPEAKER BRASHEAR: And I agree, that's your point of view. I'm not being disrespectful. I'm just simply saying this guts the moratorium, and so the polite way of saying I decline.

SENATOR CHAMBERS: Oh. I thought you were merely stating what we both know it would do. Okay. Senator Brashear, does this moratorium apply to these companies that have private investors who are interested in making a profit? Are they going to be held right where they are now and make no further progress in any of these areas?

SPEAKER BRASHEAR: They are not going to be bound by the moratorium because they, the private investor-owned companies, already have the authority to do everything here. The question we're trying to decide is whether, as a matter of public policy, those who are authorized to provide power are going to be able to enter into this area.

SENATOR CHAMBERS: So it is a one-sided bill. It took me a long time to get us around here.

SPEAKER BRASHEAR: Well, it isn't a one-sided bill. We've already made the public policy question that telecommunications will be provided...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...by, quote, one side of the world and public power in Nebraska will be provided by government or by public ownership.

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

May 26, 2005

LB 645

SENATOR CHAMBERS: Well, I'm not going to be willing to hold the public power suppliers to a standard that would allow the other side to get a hundred miles ahead of them by the time the moratorium is over.

SPEAKER BRASHEAR: Some would argue they're already ahead, but I understand you're not going to be willing. I got that feeling at about 10:30.

SENATOR CHAMBERS: So if they're that far ahead, what difference does it make if public power comes into it? If it's something that they cannot do, they will not be able to do it. It's as simple as that.

SPEAKER BRASHEAR: Can I actually give you a thoughtful answer?

SENATOR CHAMBERS: I'd appreciate it.

SPEAKER BRASHEAR: The difference it makes, Senator Chambers, I understand on the surface what you're saying, but the difference it makes is if I am a private provider, investor-owned with a responsibility to shareholders, I am going to be concerned about whether the state of Nebraska is going to build a publicly owned, state-of-the-art telecommunications capacity to compete with me after it has authorized me to go out and sink, plan,...

SENATOR CUDABACK: Time.

SPEAKER BRASHEAR: ...buy and pay for plant,...

SENATOR CUDABACK: Time.

SPEAKER BRASHEAR: ...employ people, create jobs and do the rest. I want to know now, before I upgrade my facilities or take any more investment risk.

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

SPEAKER BRASHEAR: I want to know whether public power is going to compete with me, or whether it's going to stay out of it.

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

May 26, 2005

LB 645

SENATOR CUDABACK: Senator Chambers, you may continue.

SENATOR CHAMBERS: No, you said time. Oh, you mean it's my light now.

SENATOR CUDABACK: It's your time. Your new time is starting now.

SENATOR CHAMBERS: Thank you. And I want to be allowed to go over next time a few seconds, too, until I finish what I got to say.

SENATOR CUDABACK: That was your time.

SENATOR CHAMBERS: But he was allowed to go over...oh, so whose time was he talking on?

SENATOR CUDABACK: It was on...

SENATOR CHAMBERS: Is that going to be subtracted from his the next time?

SENATOR CUDABACK: Yes.

SENATOR CHAMBERS: Okay. Well, will it be added to mine this time? (Laugh) No, here I go, Mr. President. I understand everything Senator Brashear is saying. I understood that in the beginning and that's what upset me about this whole thing. One entity, one interest is being protected. Now, if the public can be better served by the government doing it, let the government do it. You see what happens when you let private industry control the drug industry. The government could do a better job on that. But since private industry is doing it, they can corrupt the Food and Drug Administration, get them to approve of drugs being sold when they have reason not only to suspect but to know that these are dangerous drugs. But the pharmaceutical industry contributes so much to the campaigns of politicians that drugs are left on the market which can and have resulted even in death. And I'm not making this up. This has come out in the newspaper, on television broadcasts, so everybody who

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

May 26, 2005

LB 645

pays attention is aware of that. I know that these private, for-profit, investor-owned operations don't want any competition from anybody. Big ones would like to run the little ones out of business. If they can't run them out, they'd like to absorb them. If they can't completely absorb them, they'd like to merge and take over. So we know how profit-seeking operations function, but their only purpose is not to serve the public, but to make as much profit as possible. And that's why I can be charged for long distance service which I don't even use. If the government was providing the service, while I'm here I could do something about that. I do not want these private, investor-owned operations to get a leg up and ban, in effect, the state from even being in a position to try to do something that will benefit the public. I'm not going to take the word of the profit takers that they're the only ones who are capable of providing a service to the public. In fact, the louder they say it, the more I doubt them. You know why? Because the closer you strike to the nest the louder the snakes begin to hiss. And I hear a lot of hissing out there in the lobby, and I'm not, for one, going to stand here and let that happen. And all of you, who've been talking to me on the q.t. about these private companies and the influence they have, stand up and say it on the mike like I will or do like they say at those weddings, shut up and don't talk to me about it anymore. I do the heavy lifting around here because I believe in what I believe in, but I have so many barnacles and hangers-on who will come to me and they know that I will so they say, I can sit back and say nothing. Well, you'll get what you ought to get. I'm not going to make Senator Brashear take this bill to cloture. You all ought to be saying something, but that's what you're hoping that I'll do, isn't it? And that might be what some of you expected me to do, isn't it? This is an issue of broad concern to the public. This is one where it should not be subject to what the media...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...will characterize as a filibuster. But if there's one person fighting it, it can be characterized the way they want to characterize it. And if I'm the only one who has these concerns, let the public be darned and let them come to

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

May 26, 2005

LB 645

you-all's door and ring your telephone, and if they ring mine I'm going to say, I'll get you the transcript, I'll show you what I did; you talk to those others; I don't want to hear a word from you about any of this. We're at that point. Thank you, Mr. President.

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

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'm finding this discussion very interesting, very enlightening, and I would like to offer my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, almost a minute.

SENATOR CHAMBERS: Thank you, Senator Howard.

SENATOR CUDABACK: Five minutes, rather.

SENATOR CHAMBERS: Right, I understood. Thank you, Senator Howard. Thank you, Mr. President. I will go back to Section 2, because that's what this amendment addresses. Senator Brashear pointed out what this string of statutes refer to...refers to. They are activities engaged in by the university, the state colleges, and so forth. They are not going to be affected by this bill. The private entities are not worried about them because they see no competition based on what these groups are doing. In Section 3, it talks about public power suppliers not providing on a retail basis any broadband services, Internet services, telecommunications services, or video services, and nobody is concerned about that. That's the one that all of the warring parties have agreed on. In Section 4, it talks about activities that are provided by these agencies or political subdivisions of the state or public power supplier for their own internal uses and purposes, or to carry out the public purposes that they are required to take care of. That brings us to Section 5, which I was talking about, but I said I would deal with Section 2. I don't see any problem with what Section 2 is providing for, because there is no real issue at that point. So when I finish the time that Senator Howard gave me, I'm going to

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

May 26, 2005

LB 645

withdraw this amendment and get to the next one, but I do want to make a little use of her time. I do not have confidence in the public sector like the rest of you all do. I watch this Legislature time after time roll over for the public...I meant for the private sector. That's what I meant to say. If I said otherwise, I misspoke. It is the private sector that I have no confidence in whatsoever. I see them as thieves and bandits, whose thievery and banditry have been legalized by Legislatures such as this one. But they're being put in a position where they don't have to steal as much anymore because the Legislature does the robbing and plundering of the public to give to these private big-time bandits and thieves the taxpayers' largess. What the big bandits and thieves don't have to pay to help provide the governmental services of which they take advantage, the ordinary citizens do. I think it may have been Senator Schrock who pointed out that Qwest didn't pay any income tax last year, or whichever year he was talking about. That's what your good citizens do. Those are the good citizens you all are so interested in and concerned about. You give them tax breaks, meaning the public has to pay more to keep the government going. They don't pay taxes and that's the form that some of the breaks take, so that's revenue the state otherwise would have which it does not have. We cannot say that the economy of this state has appreciatively benefited from all these jobs these companies were supposed to create in exchange for being allowed to plunder the public till and make the public pay more money to operate government. Now we come to a bill...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...which is to cripple the ability of public power suppliers to be in the business of perhaps providing a service more expeditiously or as expeditiously, but cheaper than these private entities are doing. There is still monopoly-type activity in the so-called private sector. They find ways to thinly disguise it, to thinly mask it, but there are fewer and fewer operators in various areas of activity in this country. Senator Cunningham is always crying about what Wal-Mart is doing; how they run little businesses out of business, then they charge whatever prices they want to, pay whatever low wages they choose,...

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

May 26, 2005

LB 188, 478, 484, 645

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: ...don't provide medical care. Thank you, Mr. President. I would withdraw that pending amendment.

SENATOR CUDABACK: FA207 is withdrawn. Mr. Clerk, items for the record?

CLERK: I do, Mr. President, thank you. Your Committee on Government, Military and Veterans Affairs reports LB 188 to General File with committee amendments attached; that report signed by Senator Schimek, as Chair. Amendments to be printed: Senator Cornett to LB 478, Senator Foley to LB 484. (Legislative Journal pages 1809-1810.)

Mr. President, the next amendment I have to LB 645 and to the committee amendments is by Senator Chambers, FA208.

SENATOR CUDABACK: Senator Chambers, to open on FA208 to the committee amendments to LB 645.

SENATOR CHAMBERS: Mr. President, this amendment would strike Section 3, and since there is no real controversy here I will withdraw that amendment.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to amend with FA209.

SENATOR CUDABACK: Senator Chambers, to open on FA209.

SENATOR CHAMBERS: Thank you. Mr. President, before withdrawing this amendment, I would like to ask Senator Brashear a question or two.

SENATOR CUDABACK: Senator Brashear, when you get back to your microphone.

SPEAKER BRASHEAR: Yes, Mr. President, I will yield.

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

May 26, 2005

LB 645

SENATOR CHAMBERS: Senator Brashear, this proposal of mine would strike Section 4, which begins on page 2. If I'm understanding this section, I may be oversimplifying it, any agency or political subdivision of the state or public power supplier or any of these entities that have come together through these various agreements may continue to provide all of these services for their internal use and to carry out their public purposes that they're required to handle. Is that true?

SPEAKER BRASHEAR: That is correct, Senator Chambers.

SENATOR CHAMBERS: Mr. President, I will withdraw this amendment.

SENATOR CUDABACK: FA209 is also withdrawn. Mr. Clerk, next motion.

CLERK: Mr. President, Senator Chambers would offer FA210. (Legislative Journal page 1811.)

SENATOR CUDABACK: Senator Chambers, to open on FA210 to the committee amendments.

SENATOR CHAMBERS: Thank you, and this one I will want to talk about a bit more. Mr. President, members of the Legislature, Senator Brashear and I had started an exchange on this Section 5. Subsection (1), beginning in line 2 on page 3, says: Except as otherwise provided in Section 3, which deals with the retail providing of these various services, and I accept that, except as otherwise provided in Section 3 of this act, nothing in this section shall be construed to restrict or expand any authority of a public power supplier as that authority existed prior to the effective date of this act. The force of this language would mean that whatever a public power supplier cannot do now, it could not do after the date this bill takes effect. Whatever it can do it would be able to continue doing after the effective date of this act. In other words, it would leave everything exactly as it is with the proviso that there can be no providing of, on a retail basis, of some of these things. We get to subsection (2) and it's where Senator Brashear and I

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

May 26, 2005

LB 645

become the Titanic and the iceberg. I would like to ask Senator Brashear a question.

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

SPEAKER BRASHEAR: Yes, I will...

SENATOR CHAMBERS: Senator Brashear,...

SPEAKER BRASHEAR: ...if I can ask which am I, the Titanic or the iceberg? I'd like to know.

SENATOR CHAMBERS: Don't get...I said I want to ask you a question and that, as Shakespeare would say, is the question. Which would you prefer to be, Senator Brashear, the iceberg or the Titanic?

SPEAKER BRASHEAR: I would prefer to be the iceberg, Senator Chambers.

SENATOR CHAMBERS: Then you also would like to strike subsection (2), correct?

SPEAKER BRASHEAR: (Laugh) I decline.

SENATOR CHAMBERS: I asked you a question and you answered. Members of the Legislature, let me give you another example, which I gave to one of my colleagues. An old fellow was sitting on the riverbank fishing and Daniel Webster came by and kind of made fun of him. Daniel Webster had a head bigger than mine. I can't get a hat to wear because of the size of it. They'd ask me, what you doing with an umbrella on your head, so I don't do that. But I've always wanted to get a very large hat and wear, but it would have to be too large. Daniel Webster's head was bigger than mine and he was kind of having fun with the old guy. He said, how long you been sitting there? Well, as these anglers know, he'd been sitting there all day. And Daniel Webster asked him, what have you caught? He said, nothing. So Daniel Webster said, well, you could do just as well if you didn't have a fishing pole in your hand, couldn't you? And the

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

May 26, 2005

LB 645

old fellow said, I guess so, based on what I have achieved with it. So Daniel Webster was standing there, getting ready to say something else, and the other guy, the old guy, said, I like the hat you got on your head; I'll make a bet with you; I will bet you my fishing pole against your hat that you're on the other side of the river. So Daniel Webster looked on the other side of the river; he said, you got a bet. So the old guy said, Mr. Webster, he pointed over, he said, that's one side of the river, is that right? Daniel Webster said, right. He said, then this is the other side of the river, isn't it? Daniel Webster took his hat off and gave it to him. Sometimes we need to consider what...yeah, that will get...that will come to you all later, and if you don't get it, go ask your staff and they'll explain it. Senator Brashear, the bill, in a sense, represents the Titanic. If you were the iceberg, you'd be joining me, so I will let you decline to answer. But I'm going to talk about why I would not want to accept subsection (2), but before I do let me ask you another question. Do you feel that if the only thing left in this bill would be the task force and its study, that the bill would not be worth having?

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Senator Brashear.

SPEAKER BRASHEAR: Mr. President, I will yield. Senator Chambers, if we only had the task force, I do not feel the bill would be worth having because nobody has to come to the table and work out a common...a common...commonly acceptable or jointly acceptable result.

SENATOR CHAMBERS: Well, if these different groups that you list, who are to put members on the task force, are required to do that, they're all...they would probably obey the law and do that, wouldn't they? They would at least have members on the task force. Don't get ahead of me. The task force would come into existence. Is that true?

SPEAKER BRASHEAR: That's true.

SENATOR CHAMBERS: And they would have a meeting because the

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

May 26, 2005

LB 645

first one would be convened by the Chairperson of the Executive Board.

SPEAKER BRASHEAR: That's true.

SENATOR CHAMBERS: And at that meeting a chairperson of that task force would be selected.

SPEAKER BRASHEAR: That's true.

SENATOR CHAMBERS: And the task force would undertake to study the various specified areas outlined in the bill. Is that true?

SPEAKER BRASHEAR: Depends upon the meaning of the word "undertake."

SENATOR CHAMBERS: Well, let me see if I can find the language in the bill.

SPEAKER BRASHEAR: Do you want me to explain what I meant?

SENATOR CHAMBERS: No, I want to figure out what I need to ask you first.

SPEAKER BRASHEAR: Okay.

SENATOR CHAMBERS: These are the issues which the task force shall study, whatever "study" means. Is that true?

SPEAKER BRASHEAR: True.

SENATOR CHAMBERS: I'm just looking at what is in the law itself, without interpretation.

SPEAKER BRASHEAR: I understand.

SENATOR CHAMBERS: Okay. And whatever money was available through the Nebraska Information Technology Commission, whatever money they could make available for this purpose would be available to contract for the services of a facilitator. Is that correct?

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

May 26, 2005

LB 645

SPEAKER BRASHEAR: That's correct.

SENATOR CHAMBERS: Now, the items to be studied by the task force are laid out in this bill. Would you agree with that?

SPEAKER BRASHEAR: Yes, sir.

SENATOR CHAMBERS: What you are telling me, if I understand you, is that there are people who are in private industry who would not participate in this study if these other items that I'm talking about were not a part of the bill. Did I understand you to say that, or do you mean something else?

SPEAKER BRASHEAR: With all due respect, Senator Chambers, that is not correct and that is not what I'm telling you.

SENATOR CHAMBERS: Then I would like to know what you're telling me.

SPEAKER BRASHEAR: All right. Everything you went through was correct to the point where when you say people in the private industry would not participate. That's not what this is about. This is about the stick. We have the carrot and the stick, and this, what you're talking about now, is keeping the stick in place to compel everybody to come to the table and undertake in a meaningful way the study of specific questions and care about the outcome because they're going to be invested in the result.

SENATOR CHAMBERS: Well, why would they not come if these other provisions are not a part of the bill? Are they...

SPEAKER BRASHEAR: There isn't anything in it for...there's no reason to collaborate if you can run off on your own. This is a collaboration to achieve the appropriate public policy with fiscal responsibility.

SENATOR CHAMBERS: But, Senator Brashear, it is true that even if everything was left in this bill the private sector could run off and continue to run off and run as far and as fast as it chose while public power suppliers are held stationary. Isn't

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

May 26, 2005

LB 645

that true?

SPEAKER BRASHEAR: Respectfully, Senator Chambers, no.

SENATOR CHAMBERS: Tell me why.

SPEAKER BRASHEAR: The private sector is subject to the capacity and requirements of the capital markets. The private sector is subject to a number of regulatory affairs, the whole works.

SENATOR CHAMBERS: I'm talking about under this bill.

SPEAKER BRASHEAR: Not under this bill, you're right.

SENATOR CHAMBERS: Right. So that's...

SPEAKER BRASHEAR: Other areas of the law.

SENATOR CHAMBERS: It's like the example I always give between black people and white people when they want to talk about we have a fair shake. I'm a black gazelle. Senator Beutler, if he'll allow me to use him for the example,...

SENATOR JANSSEN: One minute.

SENATOR CHAMBERS: ...is a white gazelle. They put us both at the starting line and they say, you both have to run 100 yards. And I say, I'm ready to go. They say, oh, but, Chambers, there's a proviso on you; you're in a cage. I say, what? They say, yeah. I say, I don't understand this. So then they shoot the gun and Senator Beutler runs across the finish line. Well, we've always been in the cage. They say its a fair race. No, it's not a fair race to let you come to the starting gate when you've got all kind of impediments on you, which black people have always faced and I know because I'm as competent as any white person I've ever found and I run into the artificial impediments. That is the kind of situation we're building here. The private sector can do whatever it wants to and the private sector is the one that does not have to come to the table, because they've got everything their way. The public power suppliers are the ones who are going to have to come here and

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

May 26, 2005

LB 645

talk to themselves while they watch the private sector run on...

SENATOR JANSSEN: Time.

SENATOR CHAMBERS: ...and do whatever it pleases. Time for what, Mr. President? I'm ready to fight this...oh, time to stop?

SENATOR JANSSEN: Your time is up.

SENATOR CHAMBERS: Okay.

SENATOR JANSSEN: You'll have to push your light again.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR JANSSEN: Senator Connealy, your light is on next.

SENATOR CONNEALY: Thank you, Mr. President, members. Yeah, I'm not...I'm not in opposition to this bill. I believe that we need a retail ban. I just don't think we need to go any farther than that. I think that we're stepping way past where we are because of the fact that we are a different type of state, because of the fact that the only way to deliver, you know, an alternative service is through the public sector. If we say you can't think about that, you stop, you can't do anything in that area, then I think that it really puts a artificial barrier that we don't need at this point. We need to say the competition between public and private should stop on a retail basis, and I believe that that...that the bill needs to get through because of that. But I don't think at the same time that we need to tilt the playing field so heavily in favor of telecom companies that it's to the point where they are not going to think outside the box. They're not going to think about working with the existing structure that's there and built. This is not talking about duplicative investment. This is talking about using something that's there. It's not talking about, you know, trying to stem investment that would be spent wildly. It's about using what we have. And if you can't think about that, if you're going to put a moratorium on that, which will put a hold on it, other investments could be made that doesn't necessarily

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

May 26, 2005

LB 645

need to be made. We ought to have everything on the table. That's what I think we did too much of. I believe we need the bill. I think we need the retail ban and a study, but I don't think we need to go farther than that.

SENATOR JANSSEN: Thank you, Senator Connealy. Senator Beutler, your light is next.

SENATOR BEUTLER: Senator Janssen, members of the Legislature, I was provided with some information off the Internet from a somewhat neutral source, but it was very interesting in the sense that it gave some perspective on what's going on and why this bill is in front of us now and what it's a part of in the national sense, and I just want to read you this CNN.com piece: A number of U.S. cities are becoming giant wireless hot spots where Internet users will be able to log on from the beach or a bus stop, a trend that's triggering a fierce backlash from telecom and cable giants. We look at this as another utility, just like water, sewer, parks and recreation that our communities should have, said Saint Cloud, Florida, mayor, who hopes to provide free wireless service, free wireless service to the entire city by the fall. At a conference last week, officials from dozens of local governments compared notes, et cetera, et cetera; discussed ways to counter lobbying of telecommunications giants that have sought to block them at the state level. Free and discounted wireless service can spur economic development, improve police patrols and other city services, and encourage Internet use in poorer neighborhoods, they said. Slightly more than 100 U.S. cities as big as Philadelphia and as small as Nantucket, Massachusetts, are setting up wireless networks. Conference organizer Daniel Aghion said close to 1,000 local governments worldwide have plans in the works. The trend has prompted an intense backlash from the large telecommunication and cable providers that sell most broadband access in the United States. At their request, 13 states have passed laws restricting cities setting up their own networks, and several others are considering such bans. Why, with so many other issues challenging municipalities today, why on earth should cities waste millions of taxpayer dollars to compete with carriers already offering high-speed Internet service, said a spokesman for the U.S. Telecom Association.

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

May 26, 2005

LB 645

City officials said they don't want to compete head-on, but aren't going to be held hostage to their profit concerns. Providers have shown no interest in setting up broadband wireless services, or offering free or discounted rates, they said. So I read you all this simply to indicate that there are things going on in other places that are certainly very interesting and involve...down in Texas, for example, cities such as Austin, that are apparently providing wireless networks for their whole downtown areas or for whole portions of the city, and apparently doing this...I'm not sure on what basis they're doing it, but all of them have found it necessary, for some reason, to use their municipal networks, their municipal power to get this sort of thing done. So...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...the...that's all the time I have for now, but it certainly seems to me that it behooves us to try to understand a little better what the issues are on the national level and what is happening in some of these cities, because I don't think any city that I know of in this state has yet reached that point where, as an economic development tool, it's trying to provide a top grade, top level Internet system for a particular area of its city. It will be interesting to see if that can get done either privately or through public means. Certainly the end is great one way or the other. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Further discussion? Senator Raikes, followed by Senator Chambers.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I am interested also in Section 5, and a couple, three points that I'm struggling to try to clarify in my own mind, and I'll just state to you where I end up on those. One is it's an unusual situation in, as I understand it, in public power or public entities that these entities are prohibited from doing something unless they have specific authorization. So, therefore, you see in Section 5 that this is not to be construed to restrict or expand any authority of a public power supplier,

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

May 26, 2005

LB 645

but yet if you go to Section 4 there is specific authorization to use Internet or telecommunication services, any form, for its own uses. So my question is, if it's not an expansion, then...well, is it expansion or is it expansion? Are they already authorized in statute to do this sort of thing for own use? And if so, why do you need this section? But I'm not particularly bothered with it, except to point it out, and to me it means that it's sort of maybe a double statement but clearly the Section 5 language on restrict or expand should not mean that companies or public power suppliers, if they're not presently authorized to do this sort of thing for their own use, would not, therefore, in the future be restricted from their own use. Okay. So tortured, I understand. The second thing I think Senator Chambers pointed out about the idea here is that if you talk about putting a ban on services that are currently legal or currently, yeah, currently legal, is there anything in the set? If you restrict public power suppliers, for example, from providing retail services, is there any way that they can legally do that now anyway, so what's the need for the ban? I guess I'm told in that connection that home rule charter cities or entities, for this...for those types of entities, this is in fact a legitimate ban because currently, with the resolution by a city council, without this Section 5, they would be allowed to provide telecom services. A final thing refers to the subsection (2) and there it says that a public power supplier shall not provide on any basis broadband services. I guess I'd just like to make it clear for someone who might like to comment, power suppliers, for example, have poles and so a telecom provider may contract with a power company to hang wires on the poles. So I'm assuming that that language would not mean that a public power company could not agree to provide poles, if you will, for a private company, or in fact I don't know how far you might go with that,...

SENATOR CUDABACK: One minute.

SENATOR RAIKES: ...but I am assuming all of that would be within bounds in terms of what this section would say. So I point those out for purposes of discussion. I don't see a problem with it, but I think maybe it's worth pointing out that there is in fact some legitimacy to the ban with home rule

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

May 26, 2005

LB 645

cities that internal use would in fact be provided and that public power companies could continue, if they haven't done or if they choose to do it in the future, contracting with telecommunications providers to use poles and whatever else they might do. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Chambers, followed by Senator Beutler.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, in Section 4, political subdivisions can provide, they can utilize, they can deploy and utilize broadband services, Internet services, telecommunications services, or video services for their own use, either individually or jointly through various compacts, for their own internal use and to carry out any public purposes of that political subdivision. So even if I were to do something about subsection (2) in Section 5, these political subdivisions could continue doing whatever they're doing for their own internal use and their...and the necessity to do those things to carry out their public purposes. What I see subsection (2) doing is imposing a restriction on what the public power supplier can provide, and this language says the public power supplier shall not provide on any basis broadband services and so forth. That could implicate what Senator Raikes was discussing, so I'd like to ask Senator Brashear a question.

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

SPEAKER BRASHEAR: Yes, Mr. President.

SENATOR CHAMBERS: Senator Brashear, on page 3, subsection (2) beginning in line 6, "Except as otherwise provided in Sections 3 and 4 of this act, a public power supplier shall not provide on any basis broadband services, Internet services, telecommunications services, or video services." What does that phraseology "on any basis" refer to? What does that mean? Let me ask another question...

SPEAKER BRASHEAR: Well, I'm...

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

May 26, 2005

LB 645

SENATOR CHAMBERS: ...so you can see where I'm going.

SPEAKER BRASHEAR: Okay.

SENATOR CHAMBERS: Would that mean they cannot do it in conjunction with some other entity, or does it mean...well, let me let you tell me what it means.

SPEAKER BRASHEAR: Well, specifically, it is prohibiting the concept that Senator Raikes talked about, which is leasing, building infrastructure and leasing it to someone to use competitively, and I'll only elaborate on that if you tell me you want me to, but there's an explanation to go with that.

SENATOR CHAMBERS: Well, how about leasing their poles then for...

SPEAKER BRASHEAR: Well, they do lease the poles. There is...what Senator Raikes said is entirely true in terms of pole attachment agreements, and there's a whole body of law in this area, and the standards are set at the federal power...the federal commission.

SENATOR CHAMBERS: So the state could not prohibit that kind of arrangement even statutorily because of what federal law requires?

SPEAKER BRASHEAR: No. Right. We're not talking here about using the existing plant infrastructure to provide those things.

SENATOR CHAMBERS: I know. But I want to explore beyond what is and see the impact of this bill on what is. The question that I'm putting to you is this. The utilization of public power suppliers' poles by these private telephone companies is covered, or is it not covered, by federal law, which preempts anything the state might do?

SPEAKER BRASHEAR: It is covered by the federal Pole...

SENATOR CUDABACK: One minute.

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

May 26, 2005

LB 645

SPEAKER BRASHEAR: ...Attachments Act.

SENATOR CHAMBERS: And that would preempt anything a state might do. Is that true?

SPEAKER BRASHEAR: Unless that state has exempted itself out, which Nebraska has not done.

SENATOR CHAMBERS: So right now this, the language of this bill, nor the language in any other bill that did it more directly could stop the utilization of these poles by private entities pursuant to a contract.

SPEAKER BRASHEAR: Could or could not?

SENATOR CHAMBERS: Could not.

SPEAKER BRASHEAR: You're correct.

SENATOR CHAMBERS: Okay. I'll wait until I'm recognized before I proceed.

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

SENATOR BEUTLER: Senator Brashear, just wanted to explore a few ideas with you and, again, trying to get my bearings a little bit more on how this all works.

SENATOR CUDABACK: Senator Brashear, would you...

SPEAKER BRASHEAR: Yes, Mr. President, I will yield.

SENATOR BEUTLER: Do you know in these four different areas--broadband, Internet services, telecommunications services, and video services--what is the mechanism in situations where there's a virtual monopoly, what is the mechanism in each one of those areas by which we protect the consumer?

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

May 26, 2005

LB 645

SPEAKER BRASHEAR: In...

SENATOR BEUTLER: I mean, for example, in the electric utility industry, even on the public side, we have an entity that should be helpful in protecting the consumer, I would think. On...in the telecommunications side, to a certain extent, obviously the Public Service Commission is the protector of the public. And I'm thinking that mostly my question is...is to go...I'd like to go through these four areas quickly, if we could, and tell me how in each one the consumer is protected, the average Nebraskan out there is protected in situations where there is not truly a competitive atmosphere.

SPEAKER BRASHEAR: Let me just comment once on the competitive situation, if I may,...

SENATOR BEUTLER: Okay.

SPEAKER BRASHEAR: ...and then I won't repeat it. Actually, the potentiality for competition is ever increasing and it's because of the Wi-Fi and satellite and cellular kinds of concepts that are coming into play. So if you...if we stipulate that, then we go to how is, other than that competition, how is the consumer protected, and I would submit "regulatorily" because, for instance, all the telecommunications providers are governed by the Public Service Commission.

SENATOR BEUTLER: Are all of the different things, I mean, this definition that you have in the bill of telecommunications is...it means the transmission between one or more points specified by a subscriber of information of the subscriber's choosing without a change in the form or content of the information as sent or received.

SPEAKER BRASHEAR: Which is our established definition. I mean that's not being changed by this bill.

SENATOR BEUTLER: Yes, and I understand that and, you know, curiously, it looks like that could include the United States Post Service if you said...use the word "transmission" in a...in

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

May 26, 2005

LB 645

its normal meaning.

SPEAKER BRASHEAR: Or transmittal. I don't know.

SENATOR BEUTLER: Yeah. Well, in any event, it doesn't mean the Postal Service, as we know. But telecommunications services then, as defined in the bill, are all of those under the jurisdiction of the Public Service Commission?

SPEAKER BRASHEAR: Yes. Yes, the only thing we're debating is whether broadband, as such, is. In other words, whether that has been taken care of.

SENATOR BEUTLER: Is broadband a telecommunications service? If it is, why do we have two definitions, I guess?

SPEAKER BRASHEAR: It's a separate definition. It's not included within telecommunications, per se.

SENATOR BEUTLER: Okay, even though it meets, does it, it meets the definition of "telecommunications," does it not?

SPEAKER BRASHEAR: Right, and that's why you have...that we have a definition provided here on page 1, Section 1, subsection (1).

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Okay. So you're saying broadband may be included within the definition of "telecommunications," but in any event you're not sure that broadband is under the jurisdiction of the Public Service Commission.

SPEAKER BRASHEAR: That's correct. I'll check that if you want me to.

SENATOR BEUTLER: Okay. And then with respect to Internet services, are those under the Public Service Commission?

SPEAKER BRASHEAR: No, I don't believe so.

SENATOR BEUTLER: And then with respect to video services, are

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

May 26, 2005

LB 645

those under the Public Service Commission?

SPEAKER BRASHEAR: I'm sorry, would you repeat the question, please?

SENATOR BEUTLER: The fourth category, video services, are those under the Public Service Commission?

SPEAKER BRASHEAR: The issue that's arising in trying to respond to you, Senator Beutler, and I'm not doing it well at all and I apologize and I'll refine it so I can cover it later...

SENATOR BEUTLER: Well, they're pretty broad questions. I don't...I'm not expecting total answers, but...

SPEAKER BRASHEAR: Where the issue becomes...

SENATOR BEUTLER: ...I'm trying to get a general...

SPEAKER BRASHEAR: Where the issue becomes...I can assure you that the Public Service Commission regulates the infrastructure through which the video or...

SENATOR CUDABACK: Time, Senator Beutler.

SPEAKER BRASHEAR: ...broadband would go...would be transmitted.

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

SENATOR CHAMBERS: Mr. President, a thousand plagues on Senator Beutler because now he made me start looking at these definitions and took me away from Section 5, where I have some questions for Senator Brashear. But let me ask Senator Brashear, if he will respond, a question or two.

SENATOR CUDABACK: Senator Brashear.

SPEAKER BRASHEAR: Yes.

SENATOR CHAMBERS: Senator Brashear, do you remember that I said

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

May 26, 2005

LB 645

early on that if I had to come back to page 1 and some of these definitions, I would do so?

SPEAKER BRASHEAR: I do.

SENATOR CHAMBERS: I have to do that. If you have your copy in front of you,...

SPEAKER BRASHEAR: I do.

SENATOR CHAMBERS: ...starting in line 11, it says Internet services means the offering. That's not true. What they should define then is providing Internet services means, because...let me go through it. I think in line 11 you ought to strike "offering of." In line 12, I think "providing" should be stricken. In line 13, I think "providing" should be stricken. And here's the way I think it should read: Internet services means Internet service provider services, voice over Internet protocol services, Internet protocol-based video services. Internet services does not mean the offering. If I'm going to say a lemon pie means, it does not mean offering that, the service...let me not give an example. Let me just take it the way it is. I think if we're defining the services rather than the providing of the services, then we should eliminate those words that I had talked about. What do you think of that?

SPEAKER BRASHEAR: Senator Chambers, I have become convinced throughout this debate that it would be highly desirable for me to commit to you to edit this bill between General File and Select File after we advance it to Select File. And I will make that commitment.

SENATOR CHAMBERS: Okay.

SPEAKER BRASHEAR: This bill will be edited.

SENATOR CHAMBERS: And I wasn't even going to go into that, but Senator Beutler made me start reading these definitions. Can we go back to Section 5 on page 3? If you look in line 10, you will see the language, quote, this section terminates on December 31, 2007. That would mean subsection (1) and

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

subsection (2). Subsection (1) purports to prevent the bill from expanding or restricting anything that the public power supplier could do before the effective date of the bill. With the elimination of this section, December 31, 2007, an argument could be made that if there are provisions that restrict or expand, that prohibition is no longer there. They may be restricted or they may be expanded by other language in the bill. Isn't that true?

SPEAKER BRASHEAR: That argument could be made and we ought to refine the language to avoid it.

SENATOR CHAMBERS: Okay. And the reason I'm doing this, to show you that taking it step by step is not just to take time, but to help improve on the work of all those lobbyists that are highly paid out there, doing...who were paid to do what I'm having to do for \$12,000 a year, no insurance, no pension and so forth, and a lot of aggravation. Now, when we get to subsection (2), it says, where it's pertinent for my purposes, in line 7, a public power supplier shall not provide on any basis these various services.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Once this terminates in December 31, 2007, they are then authorized to provide these services, isn't that true, since this section which prohibits it will no longer exist?

SPEAKER BRASHEAR: This section will no longer exist, and the study will lead us to the public policy that will clarify the questions of whether we want them to provide these things.

SENATOR CHAMBERS: But this is self-executing. If we don't...

SPEAKER BRASHEAR: Yes, but...

SENATOR CHAMBERS: If we don't...

SPEAKER BRASHEAR: ...the elimination of the provision by sunset doesn't mean they then have the underlying authority. This is

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

just trying to make certain that nobody expressly, impliedly, lawfully or otherwise, presumptively proceeds to offer any of those services until we get the study.

SENATOR CHAMBERS: What courts say is that when Legislatures enact laws and the wording is changed to an existing law, or adds something, that enactment by the Legislature means something.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Is that...was that my third time?

SENATOR CUDABACK: It was, Senator.

SENATOR CHAMBERS: Okay.

SENATOR CUDABACK: Senator Beutler. This will be your third time also.

SENATOR BEUTLER: Senator Brashear, I had come to the end, really, of what I wanted to ask about. But...

SENATOR CUDABACK: Senator Brashear.

SENATOR BEUTLER: ...have you taken a look yourself, or have a sense of whether you feel comfortable that the consumer is either protected by the degree of competition that is in fact existent around the state? Or do our regulatory laws need any adjustments to provide that kind of interplay between government on behalf of the consumer and regulated industries? I mean, I'm trying to look at the big picture. And these four categories are extremely broad, confusing to most of us older guys, and probably confusing to younger people, too, because they're in such a rapid state of evolution. And maybe we're doing well to step aside and let all of this develop without getting government much involved, for a while or permanently. But historically, with these kinds of technologies that require heavy investment, there has eventually come to be seen a need for some sort of interplay with virtual monopoly situations, in order to come to a just balance between consumers and virtual

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

monopoly entities. And I was just interested in what your...do you...in doing this, you're taking away a threat from private industry. You look at it the other way, I know. Well, you do look at it as the taking away of the threat. And you see the benefit of that being, they will be more willing to invest. The other side of that is they can more likely charge what they want, because there will be no threat of public takeover or public involvement. It's interesting this session, I think, to watch our play within the gas wars, and how that whole thing kind of plays out, where we've reached the stage where we're considering, as I understand it, geographic jurisdictions to regulate the relationship between public and private as they exist. And then, we have not taken away the right of public entities to take over private systems, although we've made it a long procedural process. Why is it that we want to treat these particular categories differently from how we treat the relationship between public and private in the gas industry? I would yield my time to Senator Brashear.

SENATOR CUDABACK: Senator Brashear, about a minute, twenty-one.

SPEAKER BRASHEAR: Thank you, Mr. President. Thank you, Senator Beutler. I'm not certain I can answer all of those thoughts in the time you've allotted me, but I have turned on my light. You look like you were going to say something?

SENATOR BEUTLER: No, please go ahead.

SPEAKER BRASHEAR: All right. In part...I want to answer your question, when you asked me, am I satisfied? I want to indicate, yes, I am satisfied, in part. Because I believe, going through the process, and we all know it, by which legislation is formulated, and when the question has been asked, am I going to be confronted with an area that can't be served, and so on, I've gotten answers from knowledgeable people who are out there working and know. So I believe that there is service...there is competition or the threat of competition, and people are making the investments and so on. I also believe that we're missing something. And that is, "regulatorily," these existing providers who can provide these services--Internet, broadband, et cetera--are subject to the

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

regulation of the commission. Whether the commission's regulations are all up to date and up to speed in terms of where technology is going, I cannot represent that to you, and I don't know. But that's why I believe we need this study. I never thought it was helpful to stick our head in the sand. And the...

SENATOR CUDABACK: It's now your time, Senator. It's now your time, Senator Brashear.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. I don't think it's helpful to stick our head in the sand. I don't think anybody can dispute that this...these forms and types and kinds of technology, and what they result in, is the future. It is unifying the world. It is replacing a lot of things. You see it happen here on the floor. I used the BlackBerry when I opened on this on General File in the prior section of the debate. We must get there, whether we want to get there or not. And so I believe that there needs to be an informed, sustained study, and we have to bring all the players to the table. And we need to take hold of our destiny with regard to technology and communications. And that's what this bill is about. And I would yield my time back to you, and so you can ask me more, or point me where you wanted me to go.

SENATOR CUDABACK: Senator Chambers. Senator Beutler. We'll get it right here yet.

SENATOR BEUTLER: Thank you, Senator. I don't disagree with you at all, in terms of competitive situations taking care of themselves. The only area that I want to be careful about are areas that are not in fact competitive. And in those areas, the only...if they're not competitive privately, the only competition that exists is the public sector. And if you're not...if they're not otherwise regulated by some entity such as the Public Service Commission, then to take away the only possible competition, which is the public, is to leave them virtually free to raise rates at their own discretion, and to decide what their profit margin is going to be, within some fairly broad bounds. So as we go to Select File, I'm going to try to find out more about how these areas are regulated, and

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

what exactly it means to simply end competition at the retail level, as this bill does. Thank you.

SENATOR CUDABACK: Senator Brashear, you still have about 3 minutes, if you care to use them.

SPEAKER BRASHEAR: Mr. President, members of the body, thank you. Senator Beutler, I understand and appreciate that. There is some regulation with regard to telecommunications. But I'm not certain all the definitions of telecommunications are sufficiently up to date, which I believe they will be after this kind of an intensive study effort, so that we can be assured. I'm interested in that also. You know, the way we got into public power and it became such a glorious part of our history was we couldn't get the service to the people any other way. And so we decided to do it through government, and that's...traditionally, that's been a very noble purpose of government. Government does for people what they cannot any other way otherwise do for themselves. So I'm supportive of that. I'll be happy to discuss it with anybody who wants to, between General and Select. I appreciate the debate and the quality of the debate. And with that, I'll conclude my remarks, thanking the body again for its time and attention.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Connealy.

SENATOR CONNEALY: I yield my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Connealy. I'm looking at Section 5 on page 3. And rather than repeat the same kind of questions to Senator Brashear that I have already, I'm going to just tell you the way I understand this section, when read in conjunction with line 10. Line 10 says this section terminates on December 31, 2007. That means, when that date comes, everything in Section 5 goes away. And what is it in Section 5 that goes away? Especially what I look at subsection (2). A public power supplier shall not provide on any basis broadband services, Internet services,

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

May 26, 2005

LB 645

telecommunications services, or video services. Without that prohibitory language, public power suppliers can do that. The fact that a positive prohibition is put into the statute means that it is pursuant to this language that I just read that power...public power suppliers are prohibited from doing this. I don't care what people out in the lobby talked about or thought. We have to go by what the language of the law says. If that prohibitory language is of no more effect after December 31, 2007, the impact, as far as the law is concerned, is that a public power supplier shall be able to provide on any basis broadband services, Internet services, telecommunications services, or video services. So these people who are in the telecommunications industry and think they're getting such a good deal out of this bill, they better pay attention and realize what actually is being said by the law. If, after that report is delivered by the task force--it may have value and it may not--if the Legislature does not come back and put in place a positive prohibition against public power suppliers delivering broadband, Internet, telecommunications, or video services, then the power suppliers can do that. Now, if you're talking about a stick, that's the one to make these telecommunications operators come back to this Legislature and try to reach some kind of reasonable accord. Because if they simply do nothing, if nobody does anything, the public power suppliers, after December 31, 2007...in other words, as of January 1, 2008, the public power suppliers can provide all of these services, which until then are explicitly prohibited. When the prohibition goes away, the power companies can do that. The suppliers can do it. In subsection (1) it says, in pertinent part, nothing in this section shall be construed to restrict or expand any authority that did not exist...that did exist prior to the effective date of this act. That can go away, and it may or may not mean anything. Because whatever power these public power suppliers were exercising they will continue to exercise, even after this bill takes effect. So that is not going to be affected by Section 5 going away. But when Section 5 goes away,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...at 12:01 a.m. January 1, 2008, if the Legislature has not stepped in to impose an explicit restriction

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 645

by removing that termination date, then public power suppliers shall be authorized to provide on any basis these various services that are prohibited by Section 5. I don't care what they thought they were agreeing to. That's what the law says, and that's what it will mean. And if I were representing any public power supplier, and wanted to provide these services, I'd show what the law was, up until...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...December 31. And after that, all bets are off. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Brown. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Senator Beutler, you know, I think it's come to the point in here where I think Senator Beutler, Chambers, Senator Brashear thought that none of us...none of the rest of us really cared about this issue. I've been listening pretty closely. But once natural gas comes up, you know, I feel like Frodo from The Lord of the Rings. I have the ring, and I can't find my way...I said this out in the lobby yesterday. I can't find my way to the mountain to dump it in and get rid of it. It's...you've got it. The ring...I wish the ring had never come to me, Frodo said. And I don't...and then he had to go away on sailboat at the end. I don't know what that meant. Senator Beutler asked some pretty pertinent questions, one of them, I think, relating to, you know, the direction that we think that we're going with natural gas service territories, or the direction that some hope that we will go with those proposed service territories. There are distinct differences here. I brought this up in debate on this originally. One of the different...one of the key differences or distinctions is that part of the reason that natural gas is treated the way it is, or the issues are treated in a different manner, is because of their inherently dangerous nature of, I guess, the business, and dealing with it. We've got safety issues that are involved. And people...I think the general public looks upon that type of business as something that they don't mind public entities

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

May 26, 2005

LB 645

taking a hold of. It's utility-based. We want to make sure that that...you know, that the people that are coming up and analyzing, you know, the connections to your house and everything else are, I guess, regulated and as certified as...I don't know if that makes any sense. But I'm getting to this idea where the public comes up with a little better feeling about dealing with natural gas issues when they feel like there's maybe more regulation involved. At least, that's the inclination I've always received. Now, this industry, the broadband industry, is closer to free market than utility-oriented. Senator Chambers brought up earlier the whole idea behind hospitals and the competition between publics and privates. Do you think a privately owned hospital enjoys competing against a university-funded and a university-based hospital? I would venture to guess, no, they do not. As a matter of fact, they're losing. And I think if you look at the numbers, that's a difficult situation for those entities. What I brought up on an earlier occasion is that if we can prevent...and part of this study can probably help us deal with some of that. If we can prevent that encroachment, and if LB 645 will allow us or help us to do that, then I think it's worth pursuing. Because if we can prevent that direction, if we can prevent as much of the public and private competition, head to head, as we can, in an industry that's not necessarily expected by the public to be that regulated or to be...or to have that safety consciousness associated with it, then we run forward with it. We do not want publics in general competing with privates, whenever we...private organizations. Whenever we can help it, we need to move in that direction. I don't know...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: I don't know if this helps us move in that direction. What I would say is, incorporating some of the components of LB 645, I would submit that they would. But I also would submit that there's only one way to find out, and that's to drive it forward. I don't know if that helps. I'll get out. Mr. President, thank you.

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

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Transcriber's Office
FLOOR DEBATE

May 26, 2005

LB 577, 645

CLERK: Mr. President, thank you. Your Committee on Enrollment and Review reports LB 577 to Select File. Mr. President, I have a series of amendments to be printed to LB 645 by Senators Chambers and Beutler. (Legislative Journal pages 1811-1812.)

And, Mr. President, I have a priority motion. Senator Brashear would move to adjourn until Tuesday morning, May 31, at 10:00 a.m.

SENATOR CUDABACK: Heard the motion to adjourn, May 31, 10:00 a.m. All in favor say aye. Opposed, nay. Ayes have it. We are adjourned. Have a good weekend.

Proofed by: J. Hurlbut